

Dairy Industry Restructuring Amendment Bill (No 2)

Government Bill

Explanatory note

General policy statement

Designated export markets

Designated (regulated) dairy markets were established when the Dairy Industry Restructuring Act 2001 (the **DIRA**) was enacted. They generally operate where importing countries have country-specific tariff quotas for New Zealand products.

Under the DIRA, the New Zealand Dairy Board (a wholly owned subsidiary of Fonterra Co-operative Group Limited (**Fonterra**)) was given exclusive access to these markets for fixed periods, expiring progressively between mid-2007 and 2010.

This Bill provides for the rights to export to these designated markets after the expiry of the initial allocations to Fonterra. These amendments will allow a wider group of dairy processors to participate in exporting to these markets and provide future certainty to the industry.

Specifically, this Bill—

- removes export restrictions from some markets (or parts of the United States of America markets):
- provides for the Minister of Agriculture to allocate export licences for other markets (or parts of the United States of America markets) to multiple participants on a periodic basis, and sets out the rules for doing so:
- introduces penalties for false declarations of information used for allocations of export licences:

- provides for transfers of export licences between eligible exporters:
- for 2 markets, restricts the use of export licences for over-quota trade (trade outside the quota over the normal tariff) until the quota has been filled in a quota year, to allow enforcement of in-quota export rights.

For those markets where export licences are allocated to multiple participants, export licences will be allocated on the basis of the proportion of milk solids collected from New Zealand dairy farmers, down to a minimum threshold of 0.1% of total milk solids collected. Export rights that become available during 2008 to 2010 will be allocated for terms of 1 quota year, while export rights that become available in 2011 and later years will be allocated for terms of 3 quota years.

New Zealand Dairy Core Database

The New Zealand Dairy Core Database is a valuable industry asset containing comprehensive information on dairy herds and their production performance.

This Bill amends regulation-making powers in the DIRA relating to the New Zealand Dairy Core Database to provide for the regulations to apply to any new entity operating a copy of the database. The current regulation-making powers apply only to Livestock Improvement Corporation Limited, the current operator of the database.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1 Amendments to Dairy Industry Restructuring Act 2001

Clause 3 provides that *Part 1* amends the Dairy Industry Restructuring Act 2001.

Clause 4 amends section 5(1) by—

- inserting definitions for allocation period, competent authority, dairy season, eligible participant in an allocation round,

- general export licence, interim licence, interim period, marae, Ministry, person eligible to hold an export licence, and quota year; and
- amending the definitions of designated market, export licence, and initial licence.

Clause 5 amends section 21(3) to include a reference to *new Schedule 5A*, which lists designated markets following the expiry of initial and interim licences.

Clause 6 amends section 22(3) (overview provision of subpart 3 of Part 2 of the principal Act) to reflect the amendments made in *Part 1*.

Clause 7 amends section 23 to provide that a person must not export, directly or indirectly, to a designated market the dairy product described in Schedule 5 or *new Schedule 5A* in respect of that market except in accordance with a current export licence in respect of that product and market. *Clause 7* also adds a *new subsection (2)*, which provides that no export restrictions apply to the designated markets listed in Schedule 5 after the expiry of the applicable initial and interim periods.

Clause 8 amends section 25 to provide for the reduction of licences in respect of designated markets in the European Communities during the interim period. The amended section 25 provides that the licences conferred on the Board to export to designated markets in the European Communities for the interim period apply for the amounts of dairy product specified in section 25(2).

Clause 9 inserts *new section 25A* to provide that an export licence conferred on the Board by section 24 or 25 must be recorded in the register of export licence holders in accordance with *new section 29B*.

Clause 10 repeals and substitutes section 26. The amendment sets out the type of rights in respect of designated markets that vest in or revert to the Crown and provides, in respect of designated markets listed in *new Schedule 5A*, that,—

- following the initial and interim periods, export licences must be reallocated by, or on behalf of, the Crown:
- the Minister may allocate export licences to multiple participants:
- the Minister may allocate general export licences for trade over the normal tariff (outside the terms of the quota):

- the Governor-General may allocate or reallocate export licences.

Clause 11 inserts *new section 27A*, which applies if, after the initial period, there is an increase or reduction in rights to secure economic benefits from designated markets that are not allocated in an existing export licence. Under *new section 27A*,—

- an increase in a designated market during the course of an allocation period accrues on a pro rata basis to registered holders of export licences at the time the increase first becomes available for use;
- a reduction in a designated market during the course of an allocation period applies on a pro rata basis to the holders of export licences for that designated market at the time the volumes reduce;
- in the case of interim licences held by the Board, the allocation period for any quantity of licence is the period for which the licence is valid for that quantity.

Clause 12 inserts a new cross-heading and *new section 28A*. The new cross-heading reads “Transferring export licences”. *New section 28A* provides that the Governor-General may make regulations for the purpose of governing the transfer of export licences or parts of export licences.

Clause 13 inserts a new cross-heading before section 29.

Clause 14 inserts *new sections 29A to 29J*.

New section 29A provides for trade over the normal tariff (outside the terms of the quota) for prepared edible fat to Japan and milk powder to the Dominican Republic. *New section 29A(2)* states that, in any quota year, holders of export licences for trade over the normal tariff may not use those export licences until the quota for the market is filled in that quota year. *New section 29A(3)* sets out the circumstances in which a quota is considered filled.

New section 29B provides that the chief executive must keep and maintain a register of the holders of export licences and lists the information that the register must contain.

New section 29C provides the chief executive with the power of entry into any place (other than a dwellinghouse or marae) without a search warrant for the purpose of determining and monitoring compliance with the rules set out in *new Schedule 5B*.

New section 29D provides the chief executive with the power to search and seize evidence from any place, dwellinghouse, or marae with a search warrant for the purpose of determining and monitoring compliance with the rules set out in *new Schedule 5B*.

New section 29E provides the chief executive with the power to examine certain things, containers, packages, documents, or other records at any place entered in accordance with *new section 29C* for the purpose of determining and monitoring compliance with the rules set out in *new Schedule 5B*.

New section 29F provides the chief executive with the power to require information or documents from an eligible participant for the purpose of determining and monitoring compliance with the rules set out in *new Schedule 5B*.

New section 29G provides the chief executive with the power to audit the milk collection data received from an eligible participant for the purpose of determining and monitoring compliance with the rules set out in *new Schedule 5B*.

New section 29H sets out the process for a search warrant to be issued by a District Court Judge, Community Magistrate, Justice of the Peace, or Registrar in respect of any place (including any dwellinghouse or marae that the chief executive has no power to enter under *new section 29C*). The form of the search warrant is set out in *new Schedule 5D*.

New section 29I sets out the requirements of the chief executive when executing the search warrant.

New section 29J provides that section 199 of the Summary Proceedings Act 1957 applies to any property seized under a search warrant subject to certain provisions.

Clause 15 amends section 31 by adding the following 2 new offences:

- failing to provide information or documents to the chief executive if required under *new section 29F*; and
- providing a false declaration in relation to milk collection data contrary to *new Schedule 5B*.

Clause 16 amends section 43 (overview provision of subpart 4 of Part 2 of the principal Act) to reflect the amendments made in *Part 1*.

Clause 17 inserts *new section 65A*, which provides that the Governor-General may make regulations for all or any of the purposes set out in sections 62 to 65 in respect of any dairy industry

entity, other than Livestock Improvement Corporation Limited (**LIC**), nominated by the Crown to manage the core database.

Clause 18 amends section 66 (which relates to information to be supplied to the chief executive) to apply to LIC or any other dairy industry entity nominated by the Crown to manage the core database.

Clause 19 amends the heading of Schedule 5 to read “Designated markets for initial and interim licences”.

Clause 20 inserts *new Schedules 5A, 5B, 5C, and 5D*. The new schedules are as follows:

- *new Schedule 5A* lists the designated markets that follow the expiry of initial and interim licences:
- *new Schedule 5B* states the rules for the allocation of export licences to multiple participants for the designated markets listed in *new Schedule 5A*:
- *new Schedule 5C* sets out the form for the statutory declaration required to be submitted by each participant under *new Schedule 5B*:
- *new Schedule 5D* sets out the form for the search warrant that may be issued under *new section 29H*.

Part 2

Amendments to Animal Products Act 1999

Clause 21 provides that *Part 2* amends the Animal Products Act 1999.

Clause 22 inserts *new section 115A* into the Animal Products Act 1999. *New section 115A* provides that section 115(1) (which prevents any regulations that set a fee, charge, or levy from applying in any financial year unless they were made before the start of that financial year) of the Animal Products Act 1999 does not apply to assurances given in respect of export licences issued under the Dairy Industry Restructuring Act 2001 until the financial year beginning on 1 July 2010.

Hon Jim Anderton

Dairy Industry Restructuring Amendment Bill (No 2)

Government Bill

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**Dairy Industry Restructuring
Amendment (No 2)**

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Dairy Industry Restructuring Amendment Act (No 2) **2007**.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- Part 1**
Amendments to Dairy Industry Restructuring Act 2001 10
- 3 Principal Act amended**
This **Part** amends the Dairy Industry Restructuring Act 2001.
- 4 Interpretation**
- (1) Section 5(1) is amended by inserting the following definitions in their appropriate alphabetical order: 15
- “**allocation period** means the quota year or years for which export licences are allocated in accordance with section 26
- “**competent authority** means the department of State that is for the time being responsible for the administration of the Animal Products Act 1999 20
- “**dairy season** means a period of 12 months beginning on 1 June and ending on 31 May in the following year
- “**eligible participant in an allocation round** means a person who—
- “(a) is eligible to hold an export licence; and 25
- “(b) collects at least 0.1% of total milk solids collected from farmers in New Zealand based on the most representative data of total milk solids collected in New Zealand in the latest year that data is available prior to an allocation period 30
- “**general export licence** means an export licence allocated under **section 26(4)**

- “**interim licence** means, in respect of exports to designated markets in—
- “(a) Canada, the licence for the period beginning on the commencement of the Dairy Industry Restructuring Amendment Act **2007** and ending on 31 December 2007 for a quantity of butter not exceeding 2 000 tonnes; and 5
- “(b) the Dominican Republic, a licence for the period beginning on the commencement of the Dairy Industry Restructuring Amendment Act **2007** and ending on 31 December 2007 for a quantity of milk powder not exceeding 4 800 tonnes; and 10
- “(c) the European Communities—
- “(i) as described in section 25(2)(a), a licence for the period beginning on 1 January 2008 and ending on 31 December 2008 for the quantities described in that section; and 15
- “(ii) as described in section 25(2)(b), a licence for the period beginning on 1 January 2009 and ending on 31 December 2009 for the quantities described in that section; and 20
- “(iii) as described in section 25(2)(c), a licence for the period beginning on 1 January 2010 and ending on 31 December 2010 for the quantities described in that section
- “**interim period** means the period for which an interim licence is valid 25
- “**marae** includes the area of land on which all buildings such as wharenui (meeting houses), wharekai (dining rooms), ablution blocks, and any other associated buildings are situated
- “**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 30
- “**person eligible to hold an export licence** means a natural person, unincorporated body, or body corporate who satisfies the requirements for registration as a dairy exporter under the Animal Products Act 1999 35
- “**quota year** means, for designated markets in—
- “(a) the European Communities, the United States of America, and the Dominican Republic, a period of 12

- months beginning on 1 January and ending on 31 December; and
- “(b) Japan, a period of 12 months beginning on 1 April and ending on 31 March in the following year”.
- (2) Section 5(1) is amended by repealing the definition of **chief executive** and substituting the following definition: 5
“**chief executive** means the chief executive of the Ministry”.
- (3) Section 5(1) is amended by repealing the definition of **designated market** and substituting the following definition: 10
“**designated market** means,—
“(a) for the initial and interim licences, a market listed in Schedule 5; and
“(b) for the licences that apply following the initial and interim licences, a market listed in **Schedule 5A**”.
- (4) The definition of **export licence** in section 5(1) is amended by repealing paragraph (b) and substituting the following paragraph: 15
“(b) a licence allocated under section 25, **26**, or 29”.
- (5) The definition of **initial licence** in section 5(1) is amended by omitting “and continued under section 25”. 20
- 5 Purpose**
Section 21(3) is amended by omitting “Schedule 5” and substituting “Schedules 5 and **5A**”.
- 6 Overview**
Section 22 is amended by repealing subsection (3) and substituting the following subsection: 25
“(3) Sections 26 to 42 contain provisions relating to further export licences, restrictions on dealing with export licences, transferring export licences, enforcement, cost recovery, Ministerial directions on international obligations, and other miscellaneous provisions.” 30
- 7 Restrictions on exports to designated markets**
(1) Section 23 is amended by omitting “Schedule 5” and substituting “Schedules 5 and **5A**”.

- (2) Section 23 is amended by adding the following subsection as subsection (2):
- “(2) No export restrictions apply to a designated market listed in Schedule 5 after the expiry of the applicable initial and interim periods unless that designated market is listed in **Schedule 5A.**” 5
- 8 Continuation and reduction of licences in respect of designated markets in European Communities after initial period**
- (1) Section 25 is amended by omitting the heading and substituting the following heading: “**Reduction of licences in respect of designated markets in European Communities during the interim period**”. 10
- (2) Section 25 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) The Board holds the interim licences to export to designated markets in the European Communities for the periods and the reduced amounts specified in subsection (2).” 15
- (3) Section 25(2) is amended by omitting “initial” and substituting “interim”.
- 9 New section 25A inserted** 20
- The following section is inserted after section 25:
- “25A Export licence conferred on Board by section 24 or 25 must be recorded in register of export licence holders**
- “(1) The chief executive must record an export licence conferred on the Board by section 24 or 25 in the register of export licence holders in accordance with **section 29B** as soon as reasonably practicable after the commencement of the Dairy Industry Restructuring Amendment Act **2007**. 25
- “(2) The Board must supply all necessary information to the chief executive for the purpose of **subsection (1).**” 30

10 New section 26 substituted

Section 26 is repealed and the following section substituted:

“26 Later allocation of export licences

- “(1) The following are vested in or revert to the Crown:
- “(a) any rights in respect of designated markets that become available as a result of the expiry of the initial period under section 24: 5
 - “(b) any rights in respect of designated markets in the European Communities listed in **Schedule 5A** that become available as a result of reductions under section 25: 10
 - “(c) any quantities that become available as a result of increases in rights in respect of designated markets listed in **Schedule 5A** after the initial periods, except where the quantities are reallocated in accordance with **section 27A(2)**: 15
 - “(d) any rights in respect of designated markets listed in **Schedule 5A** that become available at the expiry of any other allocations.
- “(2) Following the expiry of the initial and interim licences, export licences for the designated markets listed in **Schedule 5A** must be allocated or reallocated by, or on behalf of, the Crown. 20
- “(3) The Minister may, in accordance with the rules set out in **Schedule 5B**, allocate export licences to multiple participants for the designated markets listed in **Schedule 5A**.
- “(4) The Minister may allocate a general export licence for trade over the normal tariff (outside the terms of the quota), in respect of a designated market listed in **Schedule 5A**, that may be used by any person eligible to hold an export licence for any quantity of the product for which the licence applies. 25
- “(5) **Subsection (4)** applies subject to **section 29A**. 30
- “(6) The Governor-General may, by Order in Council made on the recommendation of the Minister, allocate or reallocate export licences in respect of designated markets listed in **Schedule 5A**.
- “(7) Before making an allocation under **subsection (4)**, the Minister must— 35
- “(a) be satisfied that an allocation is appropriate in the circumstances; and
 - “(b) have regard to the purpose in section 21(1).

“(8) **Subsection (1)** does not limit the Minister’s power under **subsection (3) or (4)**, or the Governor-General’s power under **subsection (6)**, to allocate new licences in respect of those rights or quantities to the Board or new co-op.”

11 New section 27A inserted

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The following section is inserted after section 27:

“27A Increases or reductions in rights to export to designated markets after initial period

“(1) This section applies if, after the initial period, there is an increase or reduction in rights to secure economic benefits from designated markets that are not allocated in an existing export licence. 10

“(2) An increase in a right to export to a designated market during the course of an allocation period accrues on a pro rata basis to the registered holders of export licences at the time the increase first becomes available for use. 15

“(3) A reduction in a right to export to a designated market during the course of an allocation period applies on a pro rata basis to the registered holders of export licences for that designated market at the time the volumes reduce. 20

“(4) In the case of interim licences held by the Board, the allocation period for any licence for a specified quantity is the period for which the licence is valid for that quantity.

“(5) An accrual under **subsection (2)** and a reduction under **subsection (3)** applies only for the remainder of the allocation period. 25

“(6) An accrual or reduction referred to in **subsection (5)** must be recorded in the register of export licence holders that is kept in accordance with **section 29B**.”

12 New heading and section 28A inserted

The following heading and section are inserted after section 28: 30

“Transferring export licences

“28A Transferring export licences

“(1) The Governor-General may, by Order in Council, made on the recommendation of the Minister, make regulations for the purpose of governing the transfer of export licences or parts of export licences. 35

- “(2) Export licences may be transferred only in accordance with regulations made in accordance with **subsection (1)**.
- “(3) The chief executive is responsible for administering the transfer of export licences.
- “(4) **Subsection (1)** applies subject to section 28.” 5
- 13 New heading inserted**
The following heading is inserted before section 29: “*Revocation of initial licences*”.
- 14 New headings and sections 29A to 29J inserted**
The following headings and sections are inserted after section 29: 10
- “*Quota trade completed before trade over normal tariff*”
- “29A Quota trade completed before trade over normal tariff**
- “(1) This section applies to trade over the normal tariff (outside the terms of the quota) for the following markets: 15
- “(a) prepared edible fat to Japan;
- “(b) milk powder to the Dominican Republic.
- “(2) For the markets listed in **subsection (1)**, in any quota year, holders of export licences for trade over the normal tariff may not use those export licences until the quota for the market is filled in that quota year. 20
- “(3) A quota is considered filled when all holders of export licences for quota trade declare to the competent authority that 95% of the quantity under the holder’s export licence for the relevant product traded within the quota has been cleared by the customs administration or other authority responsible for the administration of the tariff quota in the importing country. 25
- “(4) The competent authority may require holders of export licences for quota trade to make a declaration under **subsection (3)** in any manner that the competent authority considers fit. 30
- “(5) The competent authority must publicly notify the industry when a quota is filled in accordance with **subsection (3)**.
- “(6) When a quota is filled, the competent authority must, as soon as is reasonably practicable,— 35
- “(a) publish a notice in the *Gazette*; and

- “(b) notify the eligible participants in any manner that the competent authority considers effective and appropriate, including electronically.
- “(7) An export licence holder may use the export licence for trade over the normal tariff only for the remainder of the quota year in which publication and notification are made in accordance with **subsection (6)**. 5

“Maintaining register of licence holders

“29B Register of export licence holders

- “(1) The chief executive must— 10
- “(a) keep and maintain a register of export licence holders; and
- “(b) make the register available to the competent authority.
- “(2) The register must contain the following information: 15
- “(a) the full name and address of the export licence holder:
- “(b) each designated market for which the holder holds an export licence:
- “(c) the volume of quota rights held in respect of each export licence for each quota year:
- “(d) the following dates for each export licence: 20
- “(i) date of registration:
- “(ii) date of commencement:
- “(iii) date of expiry:
- “(e) the date of transfer, if any, of the export licence or part of the export licence: 25
- “(f) the full name and address of the previous holder of the export licence.
- “(3) If a person holds more than 1 export licence for a designated market for the same quota year, each export licence must be registered separately. 30
- “(4) This section does not apply to general export licences allocated under **section 26(4)**.

“Powers of chief executive

“29C Power of entry without search warrant

- “(1) For the purpose of determining and monitoring compliance with the rules set out in **Schedule 5B**, the chief executive, or a 35

person authorised by the chief executive, may at any reasonable time enter any place (other than a dwellinghouse or marae) without a search warrant.

- “(2) A person who enters any place under **subsection (1)** must—
- “(a) give the owner or occupier reasonable notice of his or her intention to enter the place, unless to do so would defeat the purpose of the entry; and 5
 - “(b) if notice under **paragraph (a)** is not or cannot be given, leave in a prominent location at the place a written statement of— 10
 - “(i) the time and date of the entry; and
 - “(ii) the purpose of the entry; and
 - “(iii) the name of the person; and
 - “(iv) the address of the office to which inquiries should be made. 15
- “(3) A person who exercises any power under this section must produce his or her evidence of authorisation—
- “(a) on first entering the place; and
 - “(b) subsequently whenever reasonably required to do so by a person appearing to have charge of the place or any part of the place. 20

“29D Power to search and seize evidence with search warrant

For the purpose of determining and monitoring compliance with the rules set out in **Schedule 5B**, and subject to any conditions imposed on the warrant, a search warrant issued under **section 29H** authorises the chief executive, or person authorised by the chief executive, who is executing the warrant— 25

- “(a) to enter the place, dwellinghouse, or marae on one occasion within 14 days after the date of the issue of the warrant at any time that is reasonable in the circumstances; and 30
- “(b) to use such force as is reasonable in the circumstances, both for making entry and for breaking open anything on the premises; and 35
- “(c) to search for and seize any documents or records (including documents and records in electronic or other form) that the chief executive or authorised person has reasonable grounds to suspect may provide evidence of the commission of an offence under this Act. 40

“29E Power to examine, etc

For the purpose of determining and monitoring compliance with the rules set out in **Schedule 5B**, the chief executive, or a person authorised by the chief executive, may, at any place entered in accordance with **section 29C**,—

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“(a) examine all things, and open containers, packages, and other things to inspect their contents:

“(b) examine, inquire about, and copy any documents or other records (including records held in electronic or other form) relating to the obligations and duties under this Act, and for this purpose may—

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“(i) remove documents or records to another place for a reasonable time for the purpose of copying them, or require the person having control of the documents or other records to forward them or a copy of them to the officer by way of post, courier post, fax, or other means acceptable to the chief executive or authorised person; and

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“(ii) require a person who has control of or knowledge of the documents or records to reproduce or assist in reproducing in usable form information recorded or stored in a computer or other device or system.

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“29F Power to require information

For the purpose of determining and monitoring compliance with the rules set out in **Schedule 5B**, the chief executive, or a person authorised by the chief executive, may require an eligible participant to provide any relevant information or document.

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“29G Power to audit milk collection data

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“(1) For the purpose of determining and monitoring compliance with the rules set out in **Schedule 5B**, the chief executive, or a person authorised by the chief executive, may audit the milk collection data received from an eligible participant.

“(2) Participants must be notified of the possibility of an audit on a cost-recovery basis at the time of an application for an export licence.

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- “(3) Participants may be charged a fee for an audit carried out under **subclause (1)**.

“*Search warrants*”

“**29H Issue of search warrant**”

- “(1) A District Court Judge, Community Magistrate, Justice of the Peace, or Registrar may issue a search warrant in the form set out in **Schedule 5D** in respect of any place (including any dwellinghouse or marae or other place that the chief executive, or authorised person, has no power to enter under **section 29C**) if satisfied, on application in writing made on oath, that there are reasonable grounds for believing that there is at that place any thing—
- “(a) in respect of which an offence under this Act has been or is being committed; or
- “(b) that has been, is being, or is intended to be used by any person for the commission of an offence under this Act; or
- “(c) that is or may be evidence of the commission of an offence under this Act by any person.
- “(2) The District Court Judge, Community Magistrate, Justice of the Peace, or Registrar may impose any reasonable conditions on the warrant that he or she thinks fit.
- “(3) A search warrant must be directed to a member of the police by name or to every member of the police or to the chief executive or to a person authorised by the chief executive by name, but, in any of these cases, the warrant may be executed by any member of the police.

“**29I Requirements when executing warrant**”

- “(1) The chief executive, or a person authorised by the chief executive, who executes a search warrant must carry the warrant with him or her, and produce it for inspection, along with evidence of his or her identity,—
- “(a) on first entering the place specified in the warrant, to the person appearing to be in charge of the place; and
- “(b) whenever subsequently required to do so, at the place specified in the warrant, by any other person appearing to be in charge of the place or any part of the place.

- “(2) If the occupier of the place is not present at the time the search warrant is executed, the chief executive or authorised person must leave in a prominent location at the place a written statement of the time and date of the search, the name of the chief executive or authorised person, and the address to which inquiries may be made. 5
- “(3) If anything is seized in the execution of a search warrant, the chief executive or authorised person executing the search warrant must leave in a prominent location at the place, or deliver or send by registered mail to the occupier within 10 working days after the search, a written inventory of all things seized. 10
- “(4) The chief executive or authorised person who is exercising a power of entry in relation to a marae, or a building associated with a marae, must have regard to the kawa of the marae so far as is practicable in the circumstances. 15

“29J Disposal of property seized under search warrant

Section 199 of the Summary Proceedings Act 1957 applies to any property seized by a member of the police under a search warrant and, with any necessary modifications, to property seized under a search warrant by the chief executive, or a person authorised by the chief executive, subject to the following provisions: 20

- “(a) where a member of the police seized the item in question, it may be retained by the Commissioner of Police pending the trial of the person for the offence in respect of which the item was seized: 25
- “(b) where the chief executive, or a person authorised by the chief executive, seized the item in question, it may be retained by the chief executive pending the trial of the person for the offence in respect of which the item was seized: 30
- “(c) the item in question must be returned to the person from whom it was seized—
- “(i) if no proceedings are taken in respect of an offence to which the item relates within 2 years after its seizure; or 35
- “(ii) if proceedings are completed in respect of such an offence and no order of forfeiture is made in respect of the item: 40

“(d) if any person is convicted of an offence to which the item relates, the Court may, if it thinks fit, order that the item be forfeited to the Crown or disposed of as the Court directs at the expense of the convicted person, and may order that the person pay any reasonable costs incurred by the Commissioner of Police or the chief executive in retaining the item.” 5

15 Offences

Section 31 is amended by adding the following subsections as subsections (2) and (3): 10

“(2) Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$10,000 who does not provide the information or document required under **section 29F**.

“(3) Every person commits an offence against this Act, and is liable for the following, who provides a false declaration in relation to milk collection data contrary to **Schedule 5B**: 15

“(a) a declaration by a court of competent jurisdiction that the person is not eligible for further allocations of export licences for a period determined by the court; and 20

“(b) a fine not exceeding \$200,000 or a term of imprisonment not exceeding 3 months, or both.”

16 Overview

Section 43 is amended by repealing subsection (2) and substituting the following subsection: 25

“(2) Sections 62 to 65 contain regulation-making powers relating to herd testing, the provision of information to the core database, access to the core database, disclosure of information by LIC, regulations relating to a dairy industry entity other than LIC, and regulations relating to transferring export licences.” 30

17 New section 65A inserted

The following section is inserted after section 65:

“65A Regulations relating to dairy industry entity other than LIC

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the purposes set out in sections 62 to 65 in respect of any dairy industry entity, other than LIC, nominated by the Crown to manage the core database. 5
- “(2) Regulations may be made under **subsection (1)** only— 10
- “(a) if the core database reverts to the Crown under section 68(2); or
- “(b) if provisions of the constitution of LIC are amended or revoked in accordance with section 51; or
- “(c) if LIC makes an application under section 52(2).” 15

18 Information to be supplied to chief executive

- (1) Section 66(1) and (3) are amended by omitting “LIC” in each place where it appears and substituting in each case “LIC or any other dairy industry entity nominated by the Crown to manage the core database”. 20
- (2) Section 66 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) The chief executive may request (in writing) information, statements, or reports from LIC or any other dairy industry entity nominated by the Crown to manage the core database to monitor LIC’s or that other dairy industry entity’s compliance with regulations made under section 65.” 25

19 Schedule 5 amended

The heading to Schedule 5 is omitted and the following heading substituted: “**Designated markets for initial and interim licences**”. 30

20 New Schedules 5A, 5B, 5C, and 5D inserted

The **Schedules 5A, 5B, 5C, and 5D** set out in the Schedule of this Act are inserted after Schedule 5.

Part 2
Amendment to Animal Products Act 1999

- 21 Principal Act amended**
This **Part** amends the Animal Products Act 1999.
- 22 New section 115A inserted** 5
The following section is inserted after section 115:
- “115A Application of section 115(1) to assurances in respect
of export licences issued under Dairy Industry
Restructuring Act 2001** 10
Section 115(1) does not apply to assurances given in respect
of export licences issued under the Dairy Industry Restructur-
ing Act 2001 until the financial year beginning 1 July 2010.”
-

s 20

Schedule

New Schedules 5A, 5B, 5C, and 5D inserted

ss 21(3), 23, 26

Schedule 5A

Designated markets following expiry of initial and interim licences

5

Market	Product	Further product description	
European Commu- nities	Butter	Destined for import into the European Communities under the tariff quota for butter of New Zealand origin, as provided for in the Current Access Quotas part of Section I-B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65), including any amendment or any successor to that schedule.	10 15
European Commu- nities	Cheddar cheese	Destined for import into the European Communities under the tariff quota for cheddar cheese of New Zealand origin, as provided for in the Current Access Quotas part of Section I-B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65), including any amendment or any successor to that schedule.	20 25
European Commu- nities	Cheese for process- ing	Destined for import into the European Communities under the tariff quota for cheese for processing of New Zealand origin, as provided for in the Current Access Quotas part of Section I-B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65), including any amendment or any successor to that schedule.	30 35

Schedule 5A—continued

Market	Product	Further product description	
United States of America	Cheddar cheese	Product that falls within the product description provided in headnote 16 of Schedule XX/United States of America of the World Trade Organization for entry under the tariff quota for cheddar cheese of New Zealand origin, only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product destined for import into the United States of America other than under the terms of that tariff quota.	5
			10
United States of America	Low-fat cheese	Product that falls within the product description provided in headnote 21 of Schedule XX/United States of America of the World Trade Organization for entry under the tariff quota for low-fat cheese of New Zealand origin, not including product destined for import into the United States of America other than under the terms of that tariff quota.	15
			20
United States of America	NSPF cheese	Cheese and substitutes for cheese that fall within the product description provided in headnote 14 of Schedule XX/United States of America of the World Trade Organization for entry under the tariff quota for cheese of New Zealand origin, only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product destined for import into the United States of America other than under the terms of that tariff quota.	25
			30
			35

Schedule 5A—*continued*

Market	Product	Further product description	
United States of America	Other American-type cheese	Product that falls within the product description provided in headnote 17 of Schedule XX/United States of America of the World Trade Organization for entry under the tariff quota for other American-type cheese of New Zealand origin, only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product destined for import into the United States of America other than under the terms of that tariff quota.	5
			10
Japan	Prepared edible fat	Product falling within HS code 2106.90 that falls within the product description provided in Schedule XXXVIII/Japan of the World Trade Organization for entry under the tariff quota for prepared edible fat of New Zealand origin, including trade outside the terms of the quota.	15
			20
Dominican Republic	Milk powder	Product that falls within the product description provided in Schedule XXIII/Dominican Republic of the World Trade Organization for entry under the tariff quota for milk powder of New Zealand origin, including trade outside the terms of the quota.	25

Schedule 5B

s 26(3)

Rules for allocation of export licences to multiple participants for designated markets in Schedule 5A

- 1 Export licences are allocated to eligible participants on the basis of the percentage of total milk solids collected directly from dairy farmers in New Zealand in the most recent season for which data is available, or the average of the 2 most recent seasons. 5
- 2 To be eligible to receive a share of export licences, participants must collect at least 0.1% of total milk solids collected from dairy farmers in New Zealand, based on— 10
 - (a) the most representative data of total milk solids collected in New Zealand, in the latest year for which data is available prior to an allocation period; and
 - (b) milk solids collection data submitted by each eligible participant by statutory declaration. 15
- 3 For the purposes of assessing the share of export licences, each participant must submit milk collection data to the chief executive or a person authorised by the chief executive by statutory declaration (as set out in **Schedule 5C**), including— 20
 - (a) data from the most recent dairy season; and
 - (b) data from the previous dairy season (if a participant wishes to use an average of the most recent 2 seasons for the purpose of assessing his or her share of export licences). 25
- 4 Each eligible participant receives an export licence in a market only if that participant's share of export licences in that market equates to a volume of 20 tonnes or more of product. Any volume of export licences that is available as a result of this rule will be allocated pro rata to the remaining eligible participants. 30
- 5 The Minister must ensure all allocations of export licences are notified in the *Gazette*.
- 6 For allocations made in—

Schedule 5B—*continued*

- (a) 2007, 2008, and 2009 (applying to quota years beginning in 2008, 2009, and 2010 respectively), export licences are to be allocated for a period of 1 quota year:
- (b) 2010 (applying to the quota year beginning in 2011) and all later allocations, export licences must be allocated for a period of 3 quota years.

5

Schedule 5C
Form of statutory declaration

Schedule 5B

Form
Form of statutory declaration

- I, [*full name*], of [*address*], being the chief executive officer*/director* of [*name of company*], solemnly and sincerely declare that to the best of my knowledge, having made all reasonable inquiries,— 5
- (a) the information attached to this declaration is a true copy of information that complies with the requirements of **Schedule 5B**; and 10
- (b) the [*specify statement(s), report(s), or information*] attached to this declaration is/are* the [*statement(s), report(s), or information*] required to be supplied by the chief executive under **Schedule 5B**. 15

*Delete if inapplicable.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at [*place*] on [*date*] 20

.....
Registrar
or Justice of the Peace
or Solicitor
or other person authorised to take a 25
statutory declaration

s 29H

Schedule 5D Search warrant

Form Search warrant

Section 29H, Dairy Industry Restructuring Act 2001

5

To every member of the police

or

To [full name], the chief executive officer of the Ministry of Agriculture and Forestry*/person authorised by the chief executive*/member of the police*

10

*Delete if inapplicable.

I am satisfied on an application in writing made on oath by [full name], the chief executive (or an authorised person under the Dairy Industry Restructuring Act 2001), that there is reasonable ground for believing that there is (or are) at [describe place, dwellinghouse, or marae] the following thing(s):

15

- in respect of which an offence against the Dairy Industry Restructuring Act 2001 has been or may have been committed; or
- that is or may be evidence of the commission of an offence against the Dairy Industry Restructuring Act 2001; or
- that is or may be intended to be used for the commission of an offence under the Dairy Industry Restructuring Act 2001.

20

25

[Describe thing or things and, in respect of each, reference to offence concerned.]

I authorise you to enter and search that place on one occasion at any reasonable time within 14 days of the date of this warrant.

I also authorise you to exercise all of the powers of the chief executive, or a person authorised by the chief executive, under **sections 29D to 29G** of the Dairy Industry Restructuring Act 2001 (or such of those powers as are specified).

30

This warrant is issued subject to the following conditions: [specify conditions]*

35

*Delete this sentence if no conditions apply.

Schedule 5D—*continued*

Form—*continued*

Issued at [*place*] on [*date*]

.....
District Court Judge
or Community Magistrate
or Justice of the Peace
or Registrar (not being a member
of the police)

5