

House of Representatives

Supplementary Order Paper

Tuesday, 21 July 2020

Dairy Industry Restructuring Amendment Bill (No 3)

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper amends the Dairy Industry Restructuring Amendment Bill (No 3) to—

- provide for the removal of open entry to Fonterra, but with some adjustments to the approach recommended by the Primary Production Committee in its report on this Bill;
- clarify the difference between the base milk price and the farm gate milk price;
- improve the application of the concept of asset beta in *new section 150C(4)* in *clause 29*;
- change commencement dates to allow a further year for the commencement of various provisions;
- make consequential and technical drafting changes.

Removal of open entry

The Dairy Industry Restructuring Act 2001 (**DIRA**) was passed to enable the formation of Fonterra and to manage risks arising from the company's dominance in the New Zealand dairy market. The purpose of subparts 5 and 5A of Part 2 of DIRA was to promote the efficient operation of dairy markets in New Zealand by regulating the activities of the dominant market player (Fonterra) to ensure that New Zealand markets for dairy goods and services are contestable.

DIRA was comprehensively reviewed in 2018 and this Bill was introduced and referred to the Primary Production Committee in 2019. This Bill (as introduced) maintained the key regulatory measure implemented in 2001, namely open entry, being the requirement on Fonterra (with limited statutory exceptions) to accept applications—

- from persons wishing to become shareholders in Fonterra and supply milk; and
- from existing shareholders to increase their supply to Fonterra; and
- from farmers who had withdrawn from the co-operative to supply another processor and wished to return.

From 1 June 2023, the amendments set out in this Supplementary Order Paper will retain the right of existing shareholders to increase their supply of milk to Fonterra, but remove the right of open entry for persons wishing to become shareholders that is currently in section 73 of DIRA. As open entry is being removed, the existing 2 exceptions in sections 94 to 96 of DIRA and the 2 further exceptions proposed in this Bill (as introduced) are to be removed.

The Primary Production Committee, in its report on this Bill, recommended a *new section 73(1)* to require Fonterra only to accept applications from first-time farmers, that is, new entrants—

- who have never supplied milk to Fonterra or another processor (including through an entity in which they were the beneficial owner) and have more than a 50% beneficial interest in their farm; and

Proposed amendments to

SOP No 547

Dairy Industry Restructuring Amendment Bill (No 3)

- whose application is for less than 300,000 kg of milk solids.

The Committee considered that such an amendment should retain open entry for those who may have previously supplied milk as a sharemilker or contract milker.

This Supplementary Order Paper takes a different approach from the Select Committee's recommendations regarding first-time farmers. This Supplementary Order Paper removes the provision relating to first-time farmers because of the complexities involved in defining first-time farmers, as acknowledged in the Select Committee's report. These complexities could give rise to unintended consequences.

Rather than providing ongoing open entry for first-time farmers, *new section 73 in clause 20B* requires Fonterra to have regard to 2 matters as follows when it considers an application to become a shareholding farmer:

- the effect of its decision on the ongoing viability of the farm, if the farm had a supply agreement with Fonterra in the previous season (so that, if the farm was sold in the previous season, Fonterra must consider the effect on the farm's viability if the farm did not obtain a new supply contract with Fonterra); and
- the land-use opportunities available to the applicant.

The proposed amendments balance the importance of these issues to farmers with Fonterra's ability to better manage its milk supply and investment in processing capacity.

This Supplementary Order Paper makes a number of amendments consequent on the repeal of open entry. It repeals existing exceptions to the open entry requirements that were enacted in 2001 and that permitted Fonterra to decline an application on the basis of very small milk supply or uneconomic transport costs. This Supplementary Order Paper also removes the 2 new exceptions included in the Bill (as introduced). Those further exceptions would have given Fonterra the ability to decline an application that related to a new conversion or where the applicant was unlikely to comply with Fonterra's terms of supply. With the repeal of the open entry requirements, Fonterra need no longer rely on specific exceptions to decline an application.

The amendments relating to the removal of open entry are proposed to take effect on 1 June 2023.

Capacity restraint notices

This Supplementary Order Paper also amends the Bill to reduce the period to which capacity constraint notices can apply from 3 seasons back to 1, as currently set out in DIRA. As Fonterra will have the discretion to refuse applications, it will have no need to rely on capacity constraint notices (which were originally intended to deal with exceptional production, rather than ongoing supply arrangements) to manage milk volumes and capacity.

Base milk price and farm gate milk price

The Bill as reported back by the Primary Production Committee clarifies the difference between the base milk price and the farm gate milk price, 2 concepts that have

often been conflated. The Bill states explicitly that Fonterra may pay a farm gate milk price that differs from the base milk price, and that the 2 prices must be published annually with an explanation as to why they differ or do not differ.

The base milk price is a calculated price based on the revenues and costs of an efficient processor of Fonterra's size and scale, processing all its milk into most basic commodity products, using most cost-efficient processing technologies, selling them in highly competitive global dairy markets, and earning no more than the normal rate of return, in the particular season. This calculation is based on a notional processor that is more cost-efficient than Fonterra in order to incentivise Fonterra to seek further cost efficiencies in its existing operations and provide a benchmark against which to assess performance and efficiency.

DIRA does not require Fonterra to actually pay the calculated base milk price. Such a requirement could have the unintended consequence of forcing Fonterra to pursue a short-term supply-driven commodity-focused processing business and investment strategy, as opposed, for example, to choosing a different strategy (such as a longer-term demand-driven production of higher value-added dairy products).

The farm gate milk price is the total cost of milk divided by the actual kilograms of milk solids supplied in a season by shareholder farmers, and is a price paid by Fonterra based on its strategic and business decisions. The farm gate milk price, therefore, can differ from the base milk price. Actual payments to individual suppliers may vary slightly from the farm gate milk price in line with Fonterra's terms of supply, depending on contractual considerations such as milk quality and on-farm performance.

There are various reasons why Fonterra might chose to pay a farm gate milk price that differs from the base milk price, as follows:

- Fonterra might not be able to afford to pay the base milk price:
- Fonterra could be facing intense competition for its milk supply. At times of scarce milk supply, Fonterra (as well as other dairy processors) might place a higher value on security of supply and pay above the base milk price as a short-term response to market conditions:
- Fonterra might wish to reduce its milk supply volumes and secure funding to pursue a value-added strategy. Investment in such a strategy might require some revenue to be held back (with the agreement of shareholders) rather than paid out in full to suppliers.

This Supplementary Order Paper further clarifies the distinction between the two prices by clarifying the definition of farm gate milk price.

Meaning of asset beta

The Bill (as introduced) required Fonterra to apply the capital asset pricing model when setting the base milk price. An aspect of the capital asset pricing model is the concept of asset beta, which is used to measure the exposure to risk of the notional processor relative to the performance of the stock market as a whole. This Sup-

Proposed amendments to

SOP No 547

Dairy Industry Restructuring Amendment Bill (No 3)

plementary Order Paper clarifies the application of asset beta to reflect the methodology used by the Commerce Commission when reviewing the base milk price, by ensuring the asset beta used by Fonterra is consistent with that of comparable producers of similar products on the world market.

Commencement dates and other amendments

Finally, this Supplementary Order Paper also makes a number of technical amendments and postpones commencement dates, recognising delays in passing the Bill in 2020. Commencement needs to align with the start of the dairy season and provide sufficient time for affected parties (farmers and processors) to manage contractual and investment planning.

Departmental disclosure statement

The Ministry for Primary Industries is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2020&no=547&>

The Honourable Damien O'Connor, in Committee, to propose the amendments shown in the following document.

Hon Damien O'Connor

Dairy Industry Restructuring Amendment Bill (No 3)

Government Bill

Contents

		Page
1	Title	4
2	Commencement	4
3	Principal Act	4

Part 1

Main amendments to principal Act

4	Section 4 amended (Purpose)	4
5	Section 5 amended (Interpretation)	4
6	New sections 5A and 5B inserted	6
	5A Status of examples	6
	5B Transitional, savings, and related provisions	7
7	Subpart 4 heading in Part 2 replaced	7
8	Section 43 amended (Overview)	7
9	Cross-heading after section 43 repealed	7
10	New section 43A inserted (Manager of core database must retain database)	7
	43A Manager of core database must retain database	7
11	Section 61 and cross-heading above section 61 repealed	8
12	Section 62 amended (Regulations relating to herd testing and provision of information to core database)	8
13	Section 63 amended (Regulations relating to access to core database)	8
14	Section 64 amended (General regulations relating to herd testing and core database)	8
15	Section 65 amended (Regulations requiring disclosure of information by LIC)	8

**Proposed amendments to
Dairy Industry Restructuring Amendment Bill (No 3)**

16	Section 65A replaced (Regulations relating to dairy industry entity other than LIC)	8
	65A Regulations appointing manager of core database	8
	65B Regulations naming intended manager of core database	9
	65C Regulations for previous manager or intended manager of core database	9
	65D Duration of regulations for previous manager or intended manager of core database	10
17	Section 66 amended (Information to be supplied to chief executive)	11
18	Section 68 replaced (Database if LIC wound up)	11
	68 When management of core database reverts to the Crown	11
19	Section 69 repealed (Herd Testing Regulations 1958 deemed to have been made under this Act)	11
19A	Section 71 amended (Statement of principles)	11
19B	Section 72 amended (Overview)	12
20	Section 73 amended (New co-op must accept application)	12
20A	Cross-heading above section 73 amended	12
20B	Section 73 replaced (New co-op must accept application)	12
	73 New co-op's obligations relating to applications by new entrants and shareholding farmers and discretion to accept new entrants	12
20C	Section 74 amended (Commencement and terms of supply)	13
20D	Section 81 amended (Requirements applying to co-operative shares for applications in application period)	13
21	Section 86 amended (Publishing capacity constraint notices)	13
<u>21</u>	<u>Section 87 amended (Effect of capacity constraint notice on supply)</u>	<u>13</u>
21A	<u>Sections 94 to 96 and cross-heading repealed</u>	<u>14</u>
22	New sections 96A to 96J and cross-headings inserted	14
	<i>Third exception</i>	
	96A Supply from new dairy conversion: third exception	14
	96B Definitions relating to third exception	14
	96C Replacement collection point	15
	96D Application relating to 2 or more collection points	16
	96E Evidence to support position that section 96A does not apply	16
	96F Procedure if new co-op considers third exception applies	16
	96G Disclosure of evidence relied on to reject application under section 96A	17
	<i>Fourth exception</i>	
	96H Inability to comply with new co-op's terms of supply: fourth exception	17

**Proposed amendments to
Dairy Industry Restructuring Amendment Bill (No 3)**

	96I	Procedure if new co-op considers fourth exception applies	17
	96J	Disclosure of information relied on to reject application under section 96H(2)	18
23		Section 106 amended (No discrimination between suppliers)	18
23A		Section 107 amended (Regulation of supply contracts for raw milk)	19
23A		<u>Section 107 amended (Regulation of supply contracts for raw milk)</u>	<u>19</u>
23B		Section 109A amended (Subpart 5 of Part 2 provisions do not apply)	19
24		Section 115 amended (Regulations relating to milk)	19
25		Section 134 replaced (Levy regulations)	19
	134	New co-op must pay levy	19
26		Section 145 amended (Application of Commerce Act 1986 provisions)	21
27		New sections 147 to 150 and cross-heading inserted	21
		<i>Regular reports on operation of subparts 5 and 5A</i>	
	147	Minister must require regular reports	21
	148	Commission input	22
	149	Terms of reference for report to be published	22
	150	Limits on effect of report and response	22
29		Section 150C amended (Setting of base milk price in way that is consistent with certain principles)	22
29A		New section 150CA and cross-heading inserted	22
		<i>Farm gate milk price</i>	
	150CA	Provisions relating to farm gate milk price	23
30		Section 150E amended (Appointment of members of panel)	23
31		Section 156 repealed (Gift duty and taxation in respect of Livestock Improvement Corporation Limited)	23
32		New Schedule 1 inserted	23
		Part 2	
		Consequential and other amendments	
33		Consequential amendments to principal Act	23
34		Amendments to regulations	23
35		Revocation of Herd Testing Regulations 1958	23
		Schedule 1	
		New Schedule 1 inserted	
		Schedule 2	
		Consequential and other amendments	
			27

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Dairy Industry Restructuring Amendment Act **(No 3) 2019**.

2 Commencement

- (1) **Sections 19A, 19B, 20A, 20B, 20C, 20D, 21, 21A, 23A, and 23B and 23A** come into force on **1 June 2022**~~2023~~.
- (2) So much of **Part 3 of Schedule 2** as relates to the definition of **own supply** in regulation 3 of the Dairy Industry Restructuring (Raw Milk) Regulations 2012 comes into force on ~~1 July 2023~~ June 2024.
- (3) The rest of this Act comes into force on ~~1 June 2020~~ 2021.

3 Principal Act

This Act amends the Dairy Industry Restructuring Act 2001 (the **principal Act**).

Part 1

Main amendments to principal Act

4 Section 4 amended (Purpose)

Replace section 4(e) with:

- (e) provide for the regulation of matters relating to the core database, including its management; and

5 Section 5 amended (Interpretation)

- (1) In section 5(1), insert in their appropriate alphabetical order:

Access Panel means the Access Panel established by regulations made under section 63

constitution means,—

- (a) in the case of a company within the meaning of section 2(1) of the Companies Act 1993, the constitution of the company; and
- (b) in the case of any other entity, the documents or instruments that form the constitution of the entity

entity means any of the following:

- (a) a company or other body corporate;
- (b) a corporation sole;
- (c) in the case of a trust that has—
 - (i) only 1 trustee, the trustee acting in their capacity as trustee:

(ii) more than 1 trustee, the trustees acting jointly in their capacity as trustees:

(d) an unincorporated body (including a partnership)

farm gate milk price means the total cost of milk divided by kilograms of milk solids ~~that new co-op pays out to shareholder farmers in a season~~

~~**government agency** means an agency of the Crown, whether a department, a corporation, a Crown entity, a Crown Research Institute, or another organisation or instrument~~

intended manager, in relation to the core database, means an entity named as the intended manager of the core database by regulations made under **section 65B**

kilograms of milk solids means the number of kilograms of milk solids supplied to new co-op in a season by shareholding farmers

manager of the core database means—

- (a) DairyNZ Limited; or
- (b) an entity appointed by regulations made under **section 65A**, if regulations have been made under that section; or
- (c) the Crown, if the management of the core database has reverted to the Crown under **section 68** (and no entity has been appointed by regulations made under **section 65A**)

organic milk means raw milk certified as organic milk by a certifying entity or person prescribed by regulations made under section 115

previous manager, in relation to the core database, means an entity (or the Crown) replaced as manager of the core database by regulations made under **section 65A**

raw milk—

- (a) means untreated milk from a cow; and
- (b) includes untreated organic milk; and
- (c) includes any other milk of a kind that is not excluded by **paragraph (d)** and is prescribed by regulations made under section 115; but
- (d) does not include—
 - (i) milk or a component of milk from a cow if the milk or component is produced under special conditions by, for example, the use of specialised herd selection, specialised farming practice, specialised feeding practice, or new technology; or
 - (ii) colostrum

total cost of milk means the total calculated by—

- (a) getting a sum by adding together all payments to which all the following apply:

Proposed amendments to

Part 1 cl 6

Dairy Industry Restructuring Amendment Bill (No 3)

- (i) the payment is made by new co-op ~~and~~ or any body that is an interconnected body corporate of new co-op; and
 - (ii) the payment is made to a shareholding farmer; and
 - (iii) the payment is for the raw milk that the farmer supplies to new co-op or any body that is an interconnected body corporate of new co-op in a season; and
- (b) deducting from the sum—
- (i) the total organic milk premium for the season; and
 - (ii) the total winter milk premium for the season

total organic milk premium means the total premium paid to shareholding farmers for the supply of organic milk to new co-op and any body that is an interconnected body corporate of new co-op in a season

total winter milk premium means the total premium paid to shareholding farmers for the supply of winter milk to new co-op and any body that is an interconnected body corporate of new co-op in a season

winter milk means raw milk supplied in June or July, and in any other period prescribed by regulations made under section 115

- (2) In section 5(1), replace the definition of **core database** with:

core database means the database that comprises—

- (a) information provided to the manager of the core database under—
 - (i) the Herd Testing Regulations 1958 or under the terms and conditions of any licence issued under those regulations; or
 - (ii) any regulations made under section 62; and
- (b) information provided to a previous manager under any of the things referred to in **paragraph (a)** while it was the manager of the core database; and
- (c) information provided to a previous manager or an intended manager under regulations made under **section 65C**

- (3) In section 5(1), repeal the definition of **panel** that relates to the panel established under regulations made under section 63.

- (4) In section 5(1), repeal the definitions of **approved restructuring day**, **qualifying company**, and **qualifying products or services**.

6 New sections 5A and 5B inserted

After section 5, insert:

5A Status of examples

- (1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.

- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

5B Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

7 Subpart 4 heading in Part 2 replaced

In Part 2, replace the subpart 4 heading with:

Subpart 4—Management of core database

8 Section 43 amended (Overview)

- (1) Replace section 43(1) and (2) with:

(1) **Section 43A** states that the constitution of the manager of the core database must be read as requiring the manager to retain the core database.

(1A) Sections 48 to 52 contain provisions relating to the constitution and corporate form of LIC.

- (2) Sections 62 to **65D** contain regulation-making powers relating to—
- (a) herd testing:
 - (b) the provision of information to the core database:
 - (c) access to the core database:
 - (d) disclosure of information by the manager of the core database:
 - (e) the appointment of the manager of the core database and the naming of an intended manager:
 - (f) the regulation of a previous manager or an intended manager of the core database.

- (2) In section 43(3), replace “69” with “68”.

9 Cross-heading after section 43 repealed

Repeal the cross-heading after section 43.

10 New section 43A inserted (Manager of core database must retain database)

After section 43, insert:

43A Manager of core database must retain database

- (1) The constitution of the manager of the core database must be read as requiring the manager to retain the core database.
- (2) **Subsection (1)** does not apply if—

Proposed amendments to

- (a) the Minister and the manager of the core database agree in writing that the subsection no longer applies; or
- (b) the manager of the core database is the Crown.

11 Section 61 and cross-heading above section 61 repealed

Repeal section 61 and the cross-heading above section 61.

12 Section 62 amended (Regulations relating to herd testing and provision of information to core database)

- (1) In section 62(e), replace “LIC for entering into the core database” with “the manager of the core database for entering into the core database”.
- (2) In section 62(f), replace “LIC” with “the manager of the core database”.

13 Section 63 amended (Regulations relating to access to core database)

- (1) In section 63(1)(a), (b)(ii), (c), (h), and (j) and (5), replace “LIC” with “the manager of the core database” in each place.
- (2) In section 63(1)(g), replace “LIC’s” with “the manager of the core database’s”.
- (3) In section 63(4), replace “LIC” with “The manager of the core database”.

14 Section 64 amended (General regulations relating to herd testing and core database)

- (1) In section 64(a)(i), replace “LIC” with “the manager of the core database”.
- (2) In section 64(b), replace “LIC’s” with “the manager of the core database’s”.

15 Section 65 amended (Regulations requiring disclosure of information by LIC)

- (1) In the heading to section 65, replace “LIC” with “**manager of core database**”.
- (2) In section 65(a), replace “LIC” with “the manager of the core database”.
- (3) In section 65(a)(i) and (ii), replace “LIC’s” with “the manager’s”.

16 Section 65A replaced (Regulations relating to dairy industry entity other than LIC)

Replace section 65A with:

65A Regulations appointing manager of core database

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations appointing an entity to manage the core database.
- (2) The Minister may make the recommendation only if—
 - (a) the core database reverts to the Crown under **section 68**; or

- (b) the existing manager of the core database asks the Minister in writing to make the recommendation; or
 - (c) the existing manager has changed, or the Minister considers it likely that the existing manager will change, its constitution in a way that the Minister considers may compromise its suitability as manager of the core database; or
 - (d) the Minister considers that the existing manager has failed, or is at risk of failing, to—
 - (i) comply with this Act or any regulations made under sections 62 to 65; or
 - (ii) manage the core database in a way that the Minister considers satisfactory.
- (3) The Minister must,—
- (a) before making a recommendation under **subsection (2)(c)**, consult the existing manager:
 - (b) before making a recommendation under **subsection (2)(d)(ii)**, give the existing manager a reasonable opportunity to manage the database in a way that the Minister considers satisfactory.
- (4) An appointment under **subsection (1)** takes effect on a date specified in the regulations.
- (5) The appointment of an existing manager ends when an appointment under **subsection (1)** takes effect.
- (6) A failure to comply with **subsection (3)** does not affect the validity of regulations made under this section.

65B Regulations naming intended manager of core database

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations naming an entity as the intended manager of the core database.
- (2) The Minister may make the recommendation only on the written request of the entity.

65C Regulations for previous manager or intended manager of core database

- (1) This section applies if 1 or both of the following apply:
 - (a) regulations are made under **section 65A** to appoint a new manager of the core database:
 - (b) regulations are made under **section 65B** naming an intended manager of the core database.

- (2) For the purposes of this section, the provisions referred to in **subsection (3)** apply as if the previous manager or intended manager were the manager of the core database.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
- (a) the purposes described in—
 - (i) section 62(e) and (f):
 - (ii) section 63(1)(a), (c), (g), (h), and (j):
 - (iii) section 64(a):
 - (iv) section 65:
 - (b) providing for audits of compliance with regulations made under **paragraph (a)(i) to (iii)** and for matters related to the audit, including the auditor's powers:
 - (c) prescribing offences for the breach of, or non-compliance with, regulations made under **paragraph (a)(i) to (iii)**:
 - (d) prescribing penalties not exceeding \$20,000 for any of those offences:
 - (e) providing that a person is liable for damages for any loss or damage caused by that person's contravention of regulations made under **paragraph (a)(i) to (iii)**.
- (4) If regulations are made, or to be made, under this section for the purpose described in section 63(1)(j), section 63(2) to (7) applies—
- (a) to the previous manager or intended manager as if it were the manager of the core database; and
 - (b) to the regulations as if they were made, or to be made, under section 63.
- (5) If regulations are made under this section for a purpose described in section 65, sections 66 and 67 apply—
- (a) to the previous manager or intended manager as if it were the manager of the core database; and
 - (b) to the regulations as if they were made under section 65.

65D Duration of regulations for previous manager or intended manager of core database

- (1) Regulations made under **section 65C** are revoked on the close of the fifth anniversary of their commencement unless—
- (a) the regulations are revoked earlier; or
 - (b) the Governor-General by Order in Council confirms that the regulations will remain in force.
- (2) If an Order in Council is made under **subsection (1)(b)**, the regulations remain in force until they are revoked.

17 Section 66 amended (Information to be supplied to chief executive)

- (1) In section 66(1) and (3), replace “LIC or any other dairy industry entity nominated by the Crown to manage the core database” with “The manager of the core database”.
- (2) In section 66(2), replace “LIC or any other dairy industry entity nominated by the Crown to manage the core database” with “the manager of the core database”.
- (3) In section 66(2), replace “LIC’s or that other dairy industry entity’s” with “the manager’s”.

18 Section 68 replaced (Database if LIC wound up)

Replace section 68 with:

68 When management of core database reverts to the Crown

The management of the core database reverts to the Crown if—

- (a) the Minister and the manager of the core database agree under **section 43A(2)(a)** that **section 43A(1)** no longer applies; or
- (b) a liquidator or interim liquidator is appointed for the manager of the core database under Part 16 of the Companies Act 1993 or any other enactment; or
- (c) an administrator is appointed for the manager of the core database in respect of a voluntary administration under Part 15A of the Companies Act 1993; or
- (d) a receiver is appointed in respect of all or substantially all of the property of the manager of the core database; or
- (e) a statutory manager is appointed for the manager of the core database under Part 3 of the Corporations (Investigation and Management) Act 1989 or any other enactment; or
- (f) the manager of the core database is removed from the register of companies kept under section 360(1)(a) of the Companies Act 1993; or
- (g) the manager of the core database is liquidated, wound up, or dissolved or otherwise ceases to exist.

19 Section 69 repealed (Herd Testing Regulations 1958 deemed to have been made under this Act)

Repeal section 69.

19A Section 71 amended (Statement of principles)

Replace section 71(b) with:

- (b) ~~new co-op must accept applications to supply it with milk from new entrants and existing shareholders who meet the criteria set out in **sec-**~~

Proposed amendments to

Part 1 cl 19B

Dairy Industry Restructuring Amendment Bill (No 3)

~~tion 73 and may, in its discretion, accept applications to supply it with milk from other new entrants by shareholding farmers to supply it with milk:~~

19B Section 72 amended (Overview)

(1) Replace section 72(1) with:

(1) Sections 73 to 85 describe the obligations of new co-op if it accepts applications from new entrants and shareholding farmers to supply milk, as shareholding farmers.

(2) Repeal section 72(2) and (3).

20 Section 73 amended (New co-op must accept application)

Replace section 73(3) with:

(3) New co-op must notify the applicant, within 15 working days of receipt of the application,—

(a) of its acceptance of the application; or

(b) of its rejection of the application under section 94 or 95; or

(c) that it is considering whether to reject the application under ~~section 96A or 96H.~~

(3A) Further provisions relating to the exceptions are in—

(a) section 94 (the first exception);

(b) section 95 (the second exception);

(c) ~~sections 96A to 96G~~ (the third exception);

(d) ~~sections 96H to 96J~~ (the fourth exception);

20A Cross-heading above section 73 amended

In the cross-heading above section 73, replace “*must*” with “*may*”.

20B Section 73 replaced (New co-op must accept application)

(1) Replace section 73 with:

73 New co-op’s obligations relating to applications by new entrants and shareholding farmers and discretion to accept new entrants

(1) It is the intention of this section that an applicant should be entitled to become a shareholding farmer if—

(a) the majority of beneficial ownership or control in the applicant or the supply are held by persons who—

(i) have never previously been the majority partner, shareholder, or beneficiary of a supplier to a dairy processor; and

(ii) are farmers, sharemilkers, or contract milkers; and

- (b) ~~the application relates to the supply of less than 300,000 kg of milk solids in the first season.~~
- (2) New co-op must accept an application to increase the volume of milk supplied as a shareholding farmer to new co-op that is made by a shareholding farmer in an application period.
- (3) ~~In any other case, new~~ New co-op may, in its discretion, accept or decline an application made in an application period by a new entrant to supply milk to new co-op.
- (3A) In exercising its discretion to accept or decline an application to become a shareholder, new co-op must have regard to—
- (a) the effect of its decision on the ongoing viability of the farm to which the application relates, if new co-op had a supply agreement in respect of the farm at any time in the previous season; and
- (b) the land-use opportunities available to the applicant.
- (4) New co-op must notify the applicant of its decision on the application within 15 working days of receipt of the application.
- (5) Sections 136 to 139 specify—
- (a) how an application may be given; and
- (b) when an application is made.
- (6) ~~See sections 94 to 96J for exceptions relating to applications by new entrants and applications by shareholding farmers to increase supply.~~
- (2) ~~In **Schedule 1**, repeal **clauses 4 and 5** and the cross-heading above **clause 4**.~~

20C Section 74 amended (Commencement and terms of supply)

Replace section 74(1) with:

- (1) If new co-op accepts an application under **section 73** made in an application period, new co-op must accept the milk to which the application relates from the beginning of the season following that application period.

20D Section 81 amended (Requirements applying to co-operative shares for applications in application period)

- (1) In section 81(1), replace “is required by section 73 to accept” with “accepts under **section 73**”.
- (2) In section 81(3), replace “is required to accept” with “accepts”.

21 Section 86 amended (Publishing capacity constraint notices)

~~In section 86(2)(d), replace “1 season” with “3 seasons”.~~

21 Section 87 amended (Effect of capacity constraint notice on supply)

- (1) In section 87(1), replace “is required to accept” with “accepts”.

- (2) In section 87(3), replace “is required to accept” with “accepts”.

21A Sections 94 to 96 and cross-heading repealed

Repeal sections 94 to 96 and the cross-heading above section 94.

22 New sections 96A to 96J and cross-headings inserted

After section 96, insert:

Third exception

96A Supply from new dairy conversion: third exception

- (1) This section applies if an application by a new entrant or a shareholding farmer relates to the supply of milk from a new collection point.
- (2) New co-op may reject the application if—
- (a) the application relates to the supply of milk from a new collection point;
and
 - (b) more than 50% of the production land that is used to produce the milk for supply to the new collection point is new production land.

96B Definitions relating to third exception

In **sections 96A to 96G**,

collection point means a place containing a milk vat, or milk vats, from which milk can be collected by new co-op or an independent processor

new collection point—

- (a) means a collection point that has not been used at any time in the preceding 5 years to supply milk from cows as part of a business; but
- (b) does not include—
 - (i) a collection point that will replace another collection point under **section 96C**; or
 - (ii) a collection point for milk produced on particular land if, on a regular basis throughout the preceding 5 years, milk has been produced from the land as part of a business and processed by the applicant themselves or sold to consumers as unprocessed milk.

Examples

Examples of a new collection point

A dairy farmer (**A**) adds an additional collection point to A's existing farm. This is a new collection point.

A dairy farmer (**A**) subdivides A's farm, retaining the part of the farm on which the only collection point is located. The purchaser of the other part (**B**) builds a new collection point for the other part. The collection point built by B is a new collection point.

A dairy farmer (**A**) switches A's farm from dairy production to beef and lamb, closes the old collection point, and sells the old milk vats to A's neighbour (**B**). B changes B's land use from forestry to dairy, and builds a collection point for B's farm. This is a new collection point because there is no connection between the closed collection point and the new collection point.

Examples of where there is no new collection point

A dairy farmer (**A**) upgrades or relocates A's collection point on A's farm. This is not a new collection point.

Two dairy farmers (**A** and **B**) were using a shared collection point on A's farm. They close this point and build a collection point on B's farm. The collection point merely replaces an existing collection point and is therefore not a new collection point.

A dairy farmer (**A**) subdivides A's farm, retaining the part of the farm on which the only collection point is located. The purchaser of the other part (**B**) continues to use the collection point on A's farm. This is not a new collection point.

new production land means land that, in the preceding 5 years, has not been used at any time as part of the production land of a business

preceding 5 years, in relation to an application, means the 5-year period immediately preceding the date of receipt of the application

production land means the land that, in the ordinary course of business, is used for grazing lactating cows

Examples

Land that is used only to graze non-lactating dairy cows is not part of the production land.

Land that is used only on a single occasion to graze lactating dairy cows is not part of the production land because it is not used for grazing lactating dairy cows in the ordinary course of business.

96C Replacement collection point

- (1) This section applies for the purposes of **paragraph (b)(i)** of the definition of new collection point in **section 96B**.
- (2) A collection point (**A**) will replace another collection point (**B**) if, at the start of the dairy season to which the application relates,—
 - (a) A will be the collection point for milk produced on particular land; and
 - (b) B will be the immediately preceding collection point for milk produced from that land; and
 - (c) B will have ceased to operate.
- (3) **Subsection (2)** applies regardless of whether the entire volume of milk that was collected from B will be collected from A.
- (4) If 2 or more applications relate to collection points that will replace another collection point (**B**) under **subsection (2)**, only the collection point that

relates to the first application received by new co-op is to be treated as replacing B.

96D Application relating to 2 or more collection points

- (1) If an application relates to 2 or more collection points, new co-op must—
- (a) apply **section 96A** separately to each collection point as if separate applications had been made for each collection point; and
 - (b) separately accept or reject the application in respect of each of those collection points.

Example

A shareholding farmer makes an application in respect of an existing collection point and a new collection point.

The application must be accepted to the extent to which it relates to the existing collection point (because the exception in **section 96A** only relates to new collection points).

However, the production land for the new collection point is new production land. New co-op may reject the application to the extent to which it relates to this new collection point.

- (2) **Sections 96A to 96C and 96E to 96G** apply, with all necessary modifications, for the purposes of **subsection (1)**.

96E Evidence to support position that section 96A does not apply

- (1) New co-op must treat the following as conclusive evidence that the exception in **section 96A** does not apply in respect of a collection point if the evidence relates to any time within the preceding 5 years:
- (a) a contract or correspondence with, or documentation from, an independent processor that clearly indicates that the independent processor has accepted milk from the collection point (for example, a receipt for milk collection);
 - (b) a farm dairy risk management programme applying to the collection point under the Animal Products Act 1999;
 - (c) a farm dairy assessment report applying to the collection point that is prepared for the purposes of the Animal Products Act 1999;
 - (d) any other evidence of a prescribed kind.
- (2) An applicant may provide any other evidence that may establish with reasonable certainty that the exception in **section 96A** does not apply.

96F Procedure if new co-op considers third exception applies

- (1) If new co-op is considering rejecting an application under **section 96A(2)**, the notice that new co-op must give the applicant under **section 73(4)** must state the reasons for new co-op's opinion.

- (2) The applicant must, within 15 working days after receiving a notice under section **73(4)**,—
- (a) provide any further evidence to support the application; or
 - (b) notify new co-op in writing that the applicant agrees to provide further evidence; or
 - (e) notify new co-op in writing that the applicant refuses to provide further evidence.
- (3) If new co-op is notified under **subsection (2)(b)**, it must as soon as is reasonably practicable notify the applicant of a reasonable time within which to provide further evidence.
- (4) New co-op must notify the applicant of the acceptance or rejection of the application within 15 working days after—
- (a) the applicant provides further evidence under **subsection (2)(a)**;
 - (b) the date on which new co-op is notified under **subsection (2)(c)**;
 - (e) the end of the 15-working-day period referred to in **subsection (2)** (if the applicant does not comply with that subsection);
 - (d) the end of the reasonable time set under **subsection (3)**.
- (5) The time frames in **subsections (2) to (4)** do not affect new co-op's obligation under section 73(1) or (2) to accept an application initially made in an application period.
- (6) A second or subsequent request for further evidence does not affect the time frame within which new co-op must act under **subsection (4)**.

96G Disclosure of evidence relied on to reject application under section 96A

If new co-op rejects the whole or a part of an application under **section 96A**, new co-op must provide written reasons for its decision, on demand, to—

- (a) the new entrant or shareholding farmer to which the application relates; and
- (b) the Commission.

Fourth exception

96H Inability to comply with new co-op's terms of supply: fourth exception

- (1) This section applies if an application by a new entrant or a shareholding farmer is made in an application period.
- (2) New co-op may reject the application if new co-op considers that the applicant is not likely to comply with new co-op's terms of supply.

96I Procedure if new co-op considers fourth exception applies

- (1) If new co-op is considering rejecting an application under **section 96H(2)**, the notice that new co-op must give the applicant under section **73(4)** must state—

Proposed amendments to

- (a) ~~that new co-op is considering rejecting the applicant's application because it considers that the applicant is not likely to comply with new co-op's terms of supply; and~~
- (b) ~~the reasons for new co-op's opinion.~~
- (2) ~~The applicant must, within 15 working days after receiving a notice under section **73(4)**,—~~
 - (a) ~~provide further information; or~~
 - (b) ~~notify new co-op in writing that the applicant agrees to provide further information; or~~
 - (c) ~~notify new co-op in writing that the applicant refuses to provide further information.~~
- (3) ~~If new co-op is notified under **subsection (2)(b)**, it must as soon as is reasonably practicable notify the applicant of a reasonable time within which to provide further information.~~
- (4) ~~New co-op must notify the applicant of the acceptance or rejection of the application within 15 working days after—~~
 - (a) ~~the applicant provides further information under **subsection (2)(a)**;~~
 - (b) ~~the date on which new co-op is notified under **subsection (2)(c)**;~~
 - (c) ~~the end of the 15-working-day period referred to in **subsection (2)** (if the applicant does not comply with that subsection);~~
 - (d) ~~the end of the reasonable time set under **subsection (3)**.~~
- (5) ~~The time frames in **subsections (2) to (4)** do not affect new co-op's obligation under section 73(1) or (2) to accept an application initially made in an application period.~~
- (6) ~~A second or subsequent request for further information does not affect the time frame within which new co-op must act under **subsection (4)**.~~

96J Disclosure of information relied on to reject application under section 96H(2)

~~If new co-op rejects an application under **section 96H(2)**, new co-op must provide written reasons for its decision, on demand, to—~~

- (a) ~~the applicant; and~~
- (b) ~~the Commission.~~

23 Section 106 amended (No discrimination between suppliers)

After section 106(4), insert:

- (5) In its terms of supply, but subject to subsections (1) to (4), new co-op may provide for differential pricing for milk based on any matters specified in the terms of supply, including, but not limited to, matters that relate to animal welfare,

food safety, health and safety, employment conditions, the environment, climate change, and sustainability.

23A Section 107 amended (Regulation of supply contracts for raw milk)

In section 107(1), after “offer new entrants”, insert “it accepts under **section 73**”.

23A Section 107 amended (Regulation of supply contracts for raw milk)

Replace section 107(1) with:

- (1) If new co-op accepts applications from new entrants, it must offer them contracts for milk supply as shareholding farmers for 1 season.

23B Section 109A amended (Subpart 5 of Part 2 provisions do not apply)

Repeal section 109A(b).

24 Section 115 amended (Regulations relating to milk)

- (1) After section 115(1)(f)(i), insert:

(ia) periodic returns of milk solids bought from, or sold to, other persons:

- (2) After section 115(1)(f), insert:

- (fa) prescribe kinds of evidence for the purposes of **section 96E(1)(d)**; and
- (fb) prescribe entities and persons who may certify raw milk as organic milk; and
- (fc) prescribe any matter that is authorised to be prescribed for the purposes of the definitions of raw milk and winter milk in section 5(1); and

25 Section 134 replaced (Levy regulations)

Replace section 134 with:

134 New co-op must pay levy

- (1) New co-op must pay, in each financial year, a levy to the Minister that is determined in accordance with regulations made under **subsection (2)**.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
 - (a) specifying the amount of the levy, or method of calculating or ascertaining the amount of the levy, on the basis that the costs estimated under **subsection (4)** should be met fully out of the levy;
 - (b) including in the levy, or providing for the inclusion in the levy of, any shortfall in recovering those actual costs (including, without limitation, providing for a reconciliation of the levy against the levy that would have been payable had the calculation used the actual costs and invoic-

Proposed amendments to

- ing new co-op for the amount under-recovered from it as part of the levy):
- (c) refunding, or providing for refunds of, any over-recovery of those actual costs:
 - (d) specifying 1 or more financial years or part financial years to which the levy applies:
 - (e) providing for the levy amount to be specified in the *Gazette* or some other publication (if the amount is not specified in the regulations):
 - (f) providing for the payment and collection of the levy:
 - (g) requiring payment of the levy for a financial year or part financial year, even though the regulations may be made after that financial year has commenced:
 - (h) exempting or providing for exemptions from, and providing for waivers of, the whole or any part of the levy.
- (3) The regulations may provide for the levy to apply, and be calculated in respect of, 1 or more financial years (with the levy being collected in each of those years from new co-op).
- (4) In calculating estimated costs for the purposes of **subsection (2)(a)**, the Commission—
- (a) may include—
 - (i) the cost of making determinations; and
 - (ii) the cost of enforcing this subpart or subpart 5A; and
 - (iii) the cost of enforcing determinations in the High Court; and
 - (iv) over-recoveries or under-recoveries of actual costs; and
 - (v) the cost of conducting reviews under subpart 5A; and
 - (b) must exclude—
 - (i) the cost of taking other proceedings in the High Court, or defending proceedings against the Commission in the High Court; and
 - (ii) the cost of investigations that are not related to complaints or determinations made under this subpart; and
 - (iii) the cost of providing input for the reports under **section 147** on the operation of subparts 5 and 5A; and
 - (c) must calculate and deduct the total amount of application fees likely to be received.
- (5) The Minister must consult with new co-op and the Commission before making a recommendation under **subsection (2)**.
- (6) The amount of unpaid levy is recoverable in a court of competent jurisdiction as a debt due to the Crown.

26 Section 145 amended (Application of Commerce Act 1986 provisions)

- (1) After section 145(a), insert:
 - (aa) sections 74A to 74C (provisions relating to undertakings):
- (2) After section 145(l), insert:
 - (la) section 100A (stating case for High Court):

27 New sections 147 to 150 and cross-heading inserted

After section 146, insert:

Regular reports on operation of subparts 5 and 5A

147 Minister must require regular reports

- (1) The Minister must require regular reports from the chief executive on whether this subpart and subpart 5A should be retained, repealed, or amended.
- (2) The Minister must require the first report no earlier than 4 years after the commencement of the Dairy Industry Restructuring Amendment Act (**No 3**) **2019** and present the report to the House of Representatives no later than 6 years after commencement of that Act.
- (3) The Minister must require any subsequent report no earlier than 4 years after presentation of the previous report to the House of Representatives, and present the report to the House of Representatives no later than 6 years after presentation of the previous report to the House of Representatives, unless **subsection (4) or (5)** applies.
- (4) If a Bill is introduced into the House of Representatives to amend this Act in the 6 years before the Minister is required to present a report under **subsection (3)** and the Bill is passed, the Minister must instead—
 - (a) require a report no earlier than 4 years after the commencement of that enactment or (if different provisions come into force on different dates) the earliest date on which any provision of the enactment commences (the **commencement date**); and
 - (b) present the report to the House no later than 6 years after the commencement date.
- (5) If the Bill is withdrawn, lapses with the dissolution or expiry of Parliament, or is defeated, the Minister must—
 - (a) request the report no earlier than 4 years after the withdrawal, lapse, or defeat of the Bill; and
 - (b) present the report to the House of Representatives no later than 6 years after the commencement date.

148 Commission input

- (1) The Minister may, in consultation with the Minister responsible for the Commerce Act 1986, require the Commission to provide input for a regular report under **section 147**.
- (2) In providing any input to the report as required by the Minister, the Commission may exercise the powers specified in section 145.

149 Terms of reference for report to be published

- (1) The terms of reference for a report under **section 147** may provide for any matter that relates to whether subparts 5 and 5A should be retained, repealed, or amended that the Minister considers appropriate.
- (2) The Minister must publish the terms of reference on the Ministry's Internet site.

150 Limits on effect of report and response

- (1) The Crown is not bound by a report under **section 147**.
- (2) **Sections 147 to 149** are not intended to—
 - (a) create any rights or protections in relation to any person or group of persons; or
 - (b) confer any rights or protections on any person or group of persons.

29 Section 150C amended (Setting of base milk price in way that is consistent with certain principles)

After section 150C(2), insert:

- (3) For the purposes of subsection (1)(b), any estimate of the return on capital must be made applying the capital asset pricing model.
- (4) ~~For the purposes of **subsection (3)**, the asset beta used in the application of the capital asset pricing model must be consistent with the estimated asset betas of other dairy and commodity processors.~~
- (4) For the purposes of **subsection (3)**, the asset beta used in the application of the capital asset pricing model must be consistent with the estimated asset betas of other processors of dairy and other food products that are—
 - (a) traded in significant quantities in globally contested markets; and
 - (b) characterised by uniform technical specifications.
- (5) In **subsection (4)**, **asset beta** means a measurement of a firm's exposure to systematic risk where systematic risk measures the extent to which the returns on a company fluctuate relative to the equity returns in the stock market as a whole.

29A New section 150CA and cross-heading inserted

After section 150C, insert:

Farm gate milk price

150CA Provisions relating to farm gate milk price

- (1) For the purposes of this subpart, new co-op may pay a farm gate milk price to ~~shareholder farmers~~ that differs from the base milk price.
- (2) New co-op must publish as soon as practicable after it ~~sets~~ determines the farm gate milk price for any season, on new co-op's website in an electronic form that is publicly accessible, a notice that ~~states~~—
 - (a) states both the farm gate milk price and the base milk price for that season; and
 - (b) explains why the farm gate milk price differs or does not differ from the base milk price (as the case may be).

30 Section 150E amended (Appointment of members of panel)

- (1) After section 150E(1), insert:
 - (1A) New co-op must appoint 1 member of the panel who is nominated by the Minister, and the appointment must be on the same terms and conditions that apply to members appointed under subsection (1).
- (2) In section 150E(3), after “subsection”, insert “**(1A)** or”.

31 Section 156 repealed (Gift duty and taxation in respect of Livestock Improvement Corporation Limited)

Repeal section 156.

32 New Schedule 1 inserted

Insert the **Schedule 1** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act.

Part 2

Consequential and other amendments

33 Consequential amendments to principal Act

Amend the principal Act as set out in **Part 1 of Schedule 2**.

34 Amendments to regulations

- (1) Amend the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 as set out in **Part 2 of Schedule 2**.
- (2) Amend the Dairy Industry Restructuring (Raw Milk) Regulations 2012 as set out in **Part 3 of Schedule 2**.

35 Revocation of Herd Testing Regulations 1958

The Herd Testing Regulations 1958 (SR 1958/44) are revoked.

Schedule 1
New Schedule 1 inserted

s 32

Schedule 1
Transitional, savings, and related provisions

s 5B

Part 1
Provisions relating to Dairy Industry Restructuring Amendment Act
(No 3) 2019*LIC*

- 1 Employees of LIC from before restructuring under subpart 4 of Part 2**
- (1) This clause applies to a person to whom section 61 applied immediately before its repeal by the Dairy Industry Restructuring Amendment Act **(No 3) 2019**.
 - (2) To avoid doubt, the repeal does not affect the person's status or rights, or terms or conditions of employment, under that section.
- 2 LIC to be treated as previous manager of core database**
- (1) LIC must be treated as a previous manager of the core database for the purposes of this Act.
 - (2) Information provided to LIC, whether before, on, or after the commencement of this clause, must be treated as information that comprises part of the core database if the information was or is provided under—
 - (a) the Herd Testing Regulations 1958 or under the terms and conditions of any licence issued under those regulations; or
 - (b) any regulations made under this Act.
 - (3) Regulations applying to LIC may be made under **section 65C** as if LIC were replaced as manager of the core database by regulations made under **section 65A** (as inserted by the Dairy Industry Restructuring Amendment Act **(No 3) 2019**).
 - (4) **Section 65D** does not apply to regulations made under **section 65C** that apply to LIC.
- 3 Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 continue in force**
- (1) The Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 (the **regulations**) continue in force.

- (2) To the extent that the regulations were made under sections 62 to 65A as in force immediately before the commencement of this clause, they must be treated as having been made under sections 62 to 65 as amended by the Dairy Industry Restructuring Amendment Act (**No 3**) 2019.
- (3) However, to the extent that the regulations apply to LIC, they must be treated as having been made under **section 65C** as inserted by the Dairy Industry Restructuring Amendment Act (**No 3**) 2019.
- (4) **Section 65D** does not apply to the regulations referred to in **subclause (3)**.

New dairy conversions

4 New dairy conversion exception

- (1) ~~The new dairy conversion provisions apply in respect of application periods under section 75 that start after the commencement of those provisions.~~
- (2) ~~The new dairy conversion provisions are sections 96A to 96G.~~

5 New collection points

~~A dairy conversion for which a building consent was granted before the date of commencement of **section 96A** must not be treated as a new collection point for the purposes of that section.~~

Levies

6 Levy payable by new co-op

Regulations made under **section 134** (as replaced by **section 25** of the Dairy Industry Restructuring Amendment Act (**No 3**) 2019) apply to financial years that start on or after 1 July ~~2020~~ 2021 (and regulations may be made for that purpose under **section 134** (as replaced) at any time before that date).

Changes to open entry provisions

7 Effect of changes to open entry provisions on existing shareholding farmers

- (1) The commencement of **section 73** (as ~~replaced~~ enacted by **section 20B** of the Dairy Industry Restructuring Amendment Act (**No 3**) 2019) does not affect the ability of the Commission to receive and determine applications in respect of conduct before that commencement, or the ability of a party to a determination or the Commission to enforce a determination, and sections 120 to 133 have effect for that purpose.
- (2) An application under section 120 may not be made later than 1 year after that commencement.
- (3) The commencement of **section 73** (as ~~replaced~~ enacted) does not affect the liability of a person for a contravention of subpart 5 or regulations made under

this Act committed before that commencement, and sections 140 to 146 have effect for that purpose.

- (4) Proceedings for a contravention described in **subclause (3)** may be taken as if **section 73** (as so ~~replaced~~ enacted) had not been enacted.

Schedule 2 Consequential and other amendments

ss 33, 34

Part 1 Consequential amendments to principal Act

Section 47

Repeal section 47.

Section 63

In section 63(1)(b), replace “a panel” with “an Access Panel”.

In section 63(1)(c)(i), (d), (e), (g), (h), and (i) and (3), replace “panel” with “Access Panel” in each place.

In section 63(1)(f), replace “panel’s” with “Access Panel’s”.

Section 65

In section 65(a)(ii), replace “panel” with “Access Panel”.

Section 72

~~In section 72(3), replace “96” with “96J”.~~

After section 72(10), insert:

(11) **Sections 147 to 150** provide for reports on the operation of subparts 5 and 5A of Part 2.

Section 163

In section 163, replace “65” with “**65C**”.

Part 2 Consequential amendments to Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001

Regulation 3

In regulation 3(1), insert in its appropriate alphabetical order:

Access Panel means the New Zealand Dairy Core Database Access Panel established by regulation 13

In regulation 3(1), revoke the definition of **manager of the core database**.

In regulation 3(1), revoke the definition of **Panel**.

After regulation 3(2)(d), insert:

(e) manager of the core database.

Regulation 11

In regulation 11(b), replace “a Panel” with “an Access Panel”.

In regulation 11(c) and (d), replace “Panel” with “Access Panel”.

Cross-heading above regulation 13

Replace the cross-heading above regulation 13 with:

Access Panel

Regulation 13

In the heading to regulation 13, replace “**Panel**” with “**Access Panel**”.

In regulation 13(1), replace “a Panel” with “an Access Panel”.

In regulation 13(2) and (3), replace “Panel” with “Access Panel”.

Regulation 14

In the heading to regulation 14, replace “**Panel**” with “**Access Panel**”.

In regulation 14, replace “Panel” with “Access Panel”.

Regulation 15

In regulation 15, replace “Panel” with “Access Panel”.

Regulation 16

In the heading to regulation 16, replace “**Panel**” with “**Access Panel**”.

In regulation 16, replace “Panel” with “Access Panel”.

Regulation 17

In regulation 17(a), replace “Panel” with “Access Panel”.

Regulation 18

In regulation 18(1) and (2), replace “Panel” with “Access Panel” in each place.

Regulation 19

In the heading to regulation 19, replace “**Panel**” with “**Access Panel**”.

In regulation 19(1) and (3), replace “Panel” with “Access Panel”.

Regulation 20

In the heading to regulation 20, replace “**Panel**” with “**Access Panel**”.

In regulation 20(1) and (2), replace “Panel” with “Access Panel”.

Regulation 21

In the heading to regulation 21, replace “**Panel**” with “**Access Panel**”.

In regulation 21(1) and (2), replace “Panel” with “Access Panel”.

Regulation 21—*continued*

In regulation 21(2)(a) and (b), replace “Panel’s” with “Access Panel’s”.

Regulation 23

In the heading to regulation 23, replace “**Panel**” with “**Access Panel**”.

In regulation 23, replace “Panel” with “Access Panel”.

Regulation 24

In regulation 24(1)(a), replace “Panel” with “Access Panel”.

Regulation 25

In regulation 25(1)(a), replace “Panel” with “Access Panel”.

Regulation 26

In regulation 26(1)(a), replace “Panel” with “Access Panel”.

Regulation 27

In regulation 27(1), (2), (3), and (5), replace “Panel” with “Access Panel”.

Regulation 32

In regulation 32(2)(c), replace “Panel” with “Access Panel”.

Schedule 1AA

In Schedule 1AA, replace clause 4 with:

4 Transitional provision relating to decisions of Dairy Herd Improvement Tribunal

- (1) This clause applies to decisions of the Dairy Herd Improvement Tribunal that were in effect immediately before the commencement of **Part 2 of Schedule 2** of the Dairy Industry Restructuring Amendment Act (**No 3**) 2019.
- (2) The decisions remain in effect until this clause is revoked.

Schedule 4

In the Schedule 4 heading, replace “**Panel**” with “**Access Panel**”.

In Schedule 4, clauses 4, 7, and 14 to 17, replace “Panel” with “Access Panel” in each place.

In Schedule 4, cross-heading above clause 6, replace “*Panel’s*” with “*Access Panel’s*”.

In Schedule 4, clauses 7, 15(1), 16(a), and 17(1)(a), replace “Panel’s” with “Access Panel’s”.

In Schedule 4, heading to clause 14, replace “**Panel**” with “**Access Panel**”.

Schedule 5

In the Schedule 5 heading, replace “**Panel**” with “**Access Panel**”.

In Schedule 5, clauses 1 to 8, replace “**Panel**” with “**Access Panel**” in each place.

In Schedule 5, clause 8(a), replace “**Panel’s**” with “**Access Panel’s**”.

Schedule 6

In Schedule 6, form, after “manager of the core database”, insert “(or LIC)” in each place.

Part 3 Consequential and other amendments to Dairy Industry Restructuring (Raw Milk) Regulations 2012

Regulation 3

In regulation 3(1), replace the definition of **farm gate milk price** with:

farm gate milk price has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **kilograms of milksolids** with:

kilograms of milk solids, except in Part 1A, has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **organic milk** with:

organic milk has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **own supply** with:

own supply, in relation to an independent processor,—

- (a) means raw milk collected or purchased by or on behalf of the independent processor from dairy farmers or any other source (such as new co-op, a dairy processor, or an intermediary); but
- (b) does not include milk supplied to an independent processor under section 108 of the Act or under regulation 4

In regulation 3(1), replace the definition of **raw milk** with:

raw milk has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **total cost of milk** with:

total cost of milk has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **total organic milk premium** with:

total organic milk premium has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **total winter milk premium** with:

total winter milk premium has the meaning given in section 5(1) of the Act

In regulation 3(1), replace the definition of **winter milk** with:

Regulation 3—*continued*

winter milk has the meaning given in section 5(1) of the Act

Regulation 6

Replace regulation 6(3) with:

- (3) Despite subclauses (1) and (2), new co-op is not required to supply raw milk to an independent processor (other than Goodman Fielder New Zealand Limited) if,—
- (a) in any 3 consecutive seasons before 1 June ~~2023~~ 2024, the independent processor’s own supply of raw milk is 30 million litres or more in each of those seasons as specified in returns provided to new co-op under regulation 18(2); or
 - (b) in any season beginning on or after 1 June ~~2023~~ 2024, the independent processor’s own supply of raw milk is 30 million litres or more as specified in the returns provided to new co-op under regulation 18(2).

Regulation 7

In regulation 7(1)(a), replace “250” with “350”.

Regulation 17

Replace regulation 17 with:

- 17 Return by new co-op relating to actual supply of raw milk to independent processors**
- (1) New co-op must, no later than the first working day in July of the current season, provide a return to the chief executive stating the total quantity of raw milk it actually supplied—
- (a) to each independent processor in each month of the previous season; and
 - (b) to all independent processors for the whole of the previous season.
- (2) For the purposes of **subclause (1)(a) and (b)**, new co-op must specify in the return the total quantity of raw milk supplied by new co-op under these regulations (including raw milk supplied at an agreed price under regulation 20(2)).

Regulation 19

In regulation 19(1), delete “(other than Goodman Fielder New Zealand Limited)”.

Regulation 20

In regulation 20(4), after “**default milk price**”, insert “, in relation to an independent processor other than Goodman Fielder New Zealand Limited,”.

After regulation 20(4), insert:

Regulation 20—*continued*

- (5) In subclause (3), **default milk price**, in relation to Goodman Fielder New Zealand Limited, means the default milk price as defined in subclause (4) plus 10 cents per kilogram of milk solids.

Regulation 23B

Revoke regulation 23B(2).

New cross-heading above regulation 23A inserted

Before regulation 23A, insert:

Returns of milk solids collected from dairy farmers

Regulation 23B

Revoke regulation 23B(2).

New regulations 23D to 23F and cross-headings inserted

After regulation 23C, insert:

Returns of raw milk bought or sold by independent processors

23D Independent processors must provide return

- (1) Each independent processor must, in accordance with this Part, provide a return of raw milk bought from, or sold to, another independent processor in each season.
- (2) The return must be provided to the chief executive within 30 days after the end of the season.

23E Required information

- (1) The return of an independent processor for a season must specify—
- (a) the total amount (in kilograms) of milk solids that the processor bought from, or sold to, another independent processor during the season; and
 - (b) the part of that total amount (if any) that the processor bought or sold under the 20% rule.
- (2) In this regulation,—
- 20% rule** means the entitlement to supply to independent processors up to 20% of weekly production under section 108 of the Act
- processor**—
- (a) means an independent processor that is required to provide a return; but
 - (b) does not include an independent processor for a season if **regulation 23F** applies in respect of that season.

New regulations 23D to 23F and cross-headings inserted—continued

23F Independent processor that collects less than 2,000 kilograms of milk solids

- (1) If the total amount of milk solids that an independent processor collects from dairy farmers and any other source is less than 2,000 kilograms during a season, the return for that season must indicate that fact.
- (2) **Regulation 23E** does not apply to that return.

Certifiers for organic milk

23G Certifiers

Raw milk may be certified as organic milk by—

- (a) Biogro NZ Limited;
- (b) the Bio Dynamic Farming & Gardening Association in New Zealand Incorporated;
- (c)ASUREQuality Limited.