

Dairy Industry Restructuring Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Dairy Industry Restructuring Act 2001 (the **DIRA**) to prevent the expiry of certain provisions in May 2018 and provide for future periodic reviews of the need for regulation to promote the efficient operation of dairy markets in New Zealand. It also removes an element of the regime that contributes least to the DIRA's efficiency and contestability objectives.

Part 2 of the DIRA regulates 4 key aspects of the New Zealand dairy industry: the dairy export quota management system (subpart 3), herd testing and the New Zealand dairy core database (subpart 4), the activities of Fonterra, to promote the efficient operation of dairy markets in New Zealand (subpart 5), and the monitoring of Fonterra's farm gate milk price (subpart 5A).

The need for the DIRA regulatory provisions on Fonterra in subparts 5 and 5A of Part 2 is contingent on sufficient competition developing in New Zealand dairy markets. If or when sufficient competition develops, competitive pressure will drive the efficiency of New Zealand dairy markets, removing the need for the DIRA regulatory provisions to do the same.

An automatic expiry of key provisions in subpart 5 and all of subpart 5A in the South Island was triggered in 2015. A statutorily required report on the state of competition, undertaken by the Commerce Commission, found that competition is not yet sufficient and that subparts 5 and 5A should remain in place for the time being. The report also recommended that any transition pathway to deregulation should take a staged approach and initially involve removing elements of the regulatory regime that contribute least to efficiency and contestability.

Removal of default expiry, and future reviews

To ensure the efficient operation of New Zealand dairy markets, the Bill prevents parts of subpart 5 and all of subpart 5A from expiring in the South Island, removes

the automatic expiry provisions and the market share thresholds that would trigger them, and establishes a process for periodic reviews of the state of competition and the need for regulation of dairy markets in the future.

The Bill requires that the Minister must, during the year beginning 1 June 2020, commission the next report on the state of competition. Following receipt of the report, the Minister must publish a response in the *Gazette* and on the Internet site of the Ministry for Primary Industries. The Minister's response must include a statement as to whether the Minister intends to promote legislation to repeal or amend subpart 5 or 5A before requesting another report. If subparts 5 and 5A are not repealed or amended, the Minister must request a further report on the state of competition no later than 5 years following his or her response.

The Bill also enables a more flexible process for future reviews of the state of competition. Future reviews will allow the Government to assess whether competition is sufficient to ensure the efficient and contestable operation of dairy markets in the absence of the DIRA regulatory regime, and to determine the appropriate regulatory response.

Allowing Fonterra discretion to accept supply from new dairy conversions

The DIRA requires Fonterra to accept all applications to become a shareholding farmer (with limited exceptions that relate to minimum volume to be supplied and transport costs). This is the "open entry" provision. The "open exit" provisions of the DIRA require that Fonterra must allow shareholding farmers to withdraw without unreasonable restrictions or penalties.

The open entry and exit provisions reduce farmers' switching costs and risks by enabling them to freely enter and exit Fonterra. This lowers the barriers to entry for independent processors by enabling farmers to leave Fonterra and supply someone else, with the confidence of being able to return to Fonterra in the future. This ensures contestability of the market for farmers' milk and simulates the competitive pressures that Fonterra would face in a competitive market.

The Bill establishes a third exception to open entry, which allows Fonterra discretion to accept applications that pertain to new dairy conversions. This exception applies only where an application relates to a new collection point that has not been used to supply milk in the 5 years immediately prior to the application being made to Fonterra. In some situations, a new collection point may be established on existing dairy land. The Bill provides that these situations are not captured by the new exception.

The effect of the provisions for the third exception is that Fonterra has discretion to accept an application to become a shareholding farmer that relates to a new collection point if less than 50% of the land used to supply milk to that point has been used as dairy land in the previous 5 years. The exception allows for existing dairy farms to expand and the references to 5 years allow for land use to change over time to the most efficient use.

To facilitate the application process for Fonterra and farmers, the Bill requires entering farmers, who are not already Fonterra suppliers, to provide evidence that their

farm is not a new dairy conversion. The Bill establishes several types of commonly held information as being conclusive evidence that must be accepted by Fonterra.

Other minor and technical amendments

The Bill establishes a new regulation-making power to enable monitoring of the factory gate market (processors selling raw milk to other processors). This mirrors an existing regulation-making power that allows the Government to monitor the farm gate market (farmers selling raw milk to processors).

The DIRA provides that Fonterra pay a levy to cover the Commerce Commission's costs of enforcing the DIRA. The Bill simplifies the existing Fonterra levy process to no longer require the Minister for Primary Industries to make annual regulations to recover the levy from Fonterra.

The Bill also makes amendments to reflect changes in responsibility for the management of the New Zealand Dairy Core Database.

Departmental disclosure statement

The Ministry for Primary Industries is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2017&no=242>

Regulatory impact statement

The Ministry for Primary Industries produced the following regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill:

- Regulatory Impact Statement—Dairy Industry Restructuring Act, 7 September 2016:
- Requirements on Livestock Improvement Corporation and the role of the Access Panel—Regulatory Impact Statement, July 2014:
- Regulatory Impact Statement—Transfer of the Dairy Core Database and Herd Improvement Regulatory Review, April 2014.

Copies of these regulatory impact statements can be found at—

- <http://www.mpi.govt.nz/law-and-policy/legal-overviews/regulatory-impact-statements/>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. Most provisions in the Bill come into force on the day after the date on which the Bill receives the Royal assent, but some come into force on later dates specified in *clause 2*.

Clause 3 states that the Act amends the Dairy Industry Restructuring Act 2001 (the **principal Act**).

Part 1

Repeal of provisions that provide for expiry of subparts 5 and 5A of Part 2

Clause 4 repeals sections 147 to 150 to stop the dairy market in the South Island from being deregulated on 31 May 2018. The repeal is in a discrete Part of the Bill so that it may be readily divided into a separate Bill if needed to ensure that the repeal happens before 31 May 2018.

Clauses 5 to 8 consequentially amend the principal Act and consequentially revoke the Dairy Industry Restructuring (Subparts 5 and 5A of Part 2 of Act Disapplied to South Island) Order 2016.

Part 2

Other amendments to Principal Act

Clause 9 amends section 4 (the purpose section) to remove a reference to establishing Livestock Improvement Corporation Limited (**LIC**).

Clause 10 amends section 5 (the interpretation section) to—

- insert new definitions of competition report, constitution, entity, manager of the core database, previous manager, and intended manager; and
- insert the definition of government agency that previously applied only in section 148; and
- replace the definition of core database with a definition that refers to the manager of the core database, the previous manager, and the intended manager, rather than LIC; and
- replace panel with Access Panel as the term for the New Zealand Dairy Core Database Access Panel.

Clause 11 inserts—

- *new section 5A*, which relates to the status of examples; and
- *new section 5B*, which gives effect to transitional, savings, and related provisions set out in *new Schedule 1*.

Clause 12 replaces the subpart 4 heading in Part 2 so that it refers only to management of the core database (and does not refer to LIC).

Clause 13 updates section 43, which is the overview section for subpart 4 of Part 2.

Clause 14 repeals the cross-heading after section 43, which relates to the now-completed restructuring of LIC and is redundant.

Clause 15 inserts *new section 43A*, which states that the document or instrument constituting the manager of the core database (the **manager's constitution**) must be read as requiring the manager to retain the database.

Clause 16 repeals sections 47 to 52, which relate to the constitution and corporate form of LIC. The content of sections 48 to 52 is relocated to *new Schedule 2* (which is inserted by *clause 35*).

Clause 17 repeals section 61 and the cross-heading above it. Section 61 is a spent transitional provision that relates to the now-completed restructuring of LIC.

Clauses 18 to 21 amend sections 62 to 65 to replace references to LIC with references to the manager of the core database.

Clause 22 replaces section 65A with *new sections 65A to 65D*. *New sections 65A to 65C* empower the making of regulations that—

- appoint an entity as manager of the core database;
- name an entity as an intended manager of the core database;
- regulate a previous or an intended manager of the core database.

Under *new section 65D*, regulations made for a previous or an intended manager of the core database are automatically revoked after 5 years, unless an Order in Council is made confirming that the regulations will remain in force.

Clause 23 amends section 66 to replace references to LIC or another entity nominated by the Crown to manage the core database with references to the manager of the core database.

Clause 24 replaces section 68, under which the core database reverts to the Crown if a liquidator is appointed for LIC or LIC is removed from the companies register. *New section 68* provides for the management of the core database to revert to the Crown if—

- the Minister and the manager of the core database agree that *new section 43A(1)* no longer applies (under that section the manager's constitution must be read as requiring the manager to retain the core database); or
- in other specified situations that are similar to, but more extensive than, those currently provided for in section 68.

Clause 25 inserts *new section 69A*, which makes LIC subject to the provisions in *new Schedule 2* (those provisions carry over what is currently set out in sections 48 to 52).

Clause 26 amends section 72, which is the overview section for subpart 5 of Part 2 (regulation of dairy markets and obligations of Fonterra). The amendment adds *new sections 96A to 96G* to the exception provisions referred to in section 72.

Clause 27 amends section 73, which requires Fonterra to accept applications to supply milk. The amendment refers to a modification of the time frame within which Fonterra must accept some applications.

Clause 28 inserts *new section 73A*. *New section 73A* requires an application to supply milk from a new entrant or a shareholding farmer to—

- state whether the new dairy conversion exception in *new section 96A* applies; and
- include evidence to support the position that the exception does not apply (unless Fonterra has collected milk from the collection point within the last 5 years).

Clause 29 inserts *new sections 96A to 96G* to provide for a new ground upon which Fonterra may reject an application to supply milk. In summary,—

- the new exception in *new section 96A* applies if the application relates to the supply of milk from a new collection point. A collection point is a place containing a milk vat, or milk vats, from which milk could be collected. A collection point is new if it has not been used in the last 5 years to supply milk as part of a business (unless it is a replacement collection point under *new section 96C*):
- the exception under *new section 96A* allows Fonterra to reject the application if 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. Land is new production land if it has not been used in the last 5 years as part of the production land of a business:
- *new section 96B* sets out definitions relating to the exception:
- *new section 96C* sets out when a collection point (A) replaces another collection point (B). In this case, the collection point is not new and the exception does not apply:
- *new section 96D* deals with the situation where an application relates to 2 or more collection points. In this case, Fonterra must apply *new section 96A* separately to each collection point as if separate applications had been made for each collection point:
- *new section 96E* requires Fonterra to accept certain evidence as conclusive evidence that *new section 96A* does not apply. For example, a receipt for milk collection or other documents from an independent processor that clearly indicate that the independent processor has accepted milk from the collection point:
- *new section 96F* provides for the process if Fonterra does not accept other evidence that is provided. In this case, Fonterra may request further evidence and the time frame for dealing with the application is extended:
- if Fonterra rejects an application, *new section 96G* requires it to disclose the evidence on which it relies to reject the application.

Clause 30 amends section 115 to allow regulations to be made that—

- require Fonterra and independent processors to provide returns for any milk solids supplied by or to them (currently regulations may require only returns for milk solids collected from dairy farmers):

- prescribe further kinds of evidence that Fonterra must accept as conclusive for the purposes of *new section 96E*.

Clause 31 replaces section 134, which requires Fonterra to pay a levy. *New section 134* provides for a more flexible levy-setting process. This includes providing for—

- the levy to apply, and be calculated in respect of, more than 1 financial year (but with the levy still being collected in each of those years from Fonterra); and
- shortfalls in recovering the Commerce Commission’s actual costs. This may allow, for example, a reconciliation of the levy against the levy that would have been payable had the levy calculation used the actual costs and invoicing Fonterra for the amount that was under-recovered.

Clause 32 inserts *new sections 147 to 150AA*, which set out a process that requires the Minister to regularly request and respond to reports on the state of competition in the dairy industry.

Clause 33 repeals section 156, which is a spent provision dealing with gift duty and tax matters related to the now-completed restructuring of LIC.

Clause 34 inserts *new Schedule 1*, which provides for transitional, savings, and related matters.

Clause 35 inserts *new Schedule 2*, which provides for the matters relating to the constitution and corporate form of LIC that are currently set out in sections 48 to 52 (these sections are repealed by *clause 16*).

Part 3

Consequential amendments

Clauses 36 and 37 consequentially amend the principal Act and the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001.

Schedules

Schedule 1 contains *new Schedule 1*.

Schedule 2 contains *new Schedule 2*.

Schedule 3 sets out the consequential amendments effected by *clauses 36 and 37*.

Hon Nathan Guy

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Part 3

Consequential amendments

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Schedule 1

New Schedule 1 inserted

20

Schedule 2

New Schedule 2 inserted

22

Schedule 3

Consequential amendments

24

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Dairy Industry Restructuring Amendment Act **2017**.

2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent. 5
- (2) However,—
- (a) **sections 26(1), 27 to 29, and 30(2)** come into force on the first anniversary of the date on which this Act receives the Royal assent; and
- (b) **section 31** comes into force on **1 July 2018**. 10

3 Principal Act

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

Part 1

Repeal of provisions that provide for expiry of subparts 5 and 5A of Part 2

- 4 Sections 147 to 150 and cross-heading repealed** 5
 Repeal sections 147 to 150 and the cross-heading above section 147.
- Consequential amendments and revocation*
- 5 Section 3 repealed (Expiry)**
 Repeal section 3.
- 6 Section 72 amended (Overview)** 10
 Repeal section 72(11) and (12).
- 7 Section 118 amended (Offences)**
 (1) In section 118(1)(b), delete “; or”.
 (2) Repeal section 118(1)(c).
- 8 Dairy Industry Restructuring (Subparts 5 and 5A of Part 2 of Act Disapplied to South Island) Order 2016 revoked** 15
 The Dairy Industry Restructuring (Subparts 5 and 5A of Part 2 of Act Disapplied to South Island) Order 2016 (LI 2016/129) is revoked.

Part 2

Other amendments to principal Act

- 9 Section 4 amended (Purpose)** 20
 Replace section 4(e) with:
 (e) provide for the regulation of matters relating to the core database, including its management; and
- 10 Section 5 amended (Interpretation)** 25
 (1) In section 5(1), insert in their appropriate alphabetical order:
Access Panel means the Access Panel established by regulations made under section 63
competition report means a report requested under **section 147**
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 30

(b) in the case of any other entity, the documents or instruments constituting or defining the constitution of the entity

entity means any of the following:

(a) a company or other body corporate:

(b) a corporation sole: 5

(c) in the case of a trust that has—

(i) only 1 trustee, the trustee acting in his, her, or its capacity as trustee:

(ii) more than 1 trustee, the trustees acting jointly in their capacity as trustees: 10

(d) an unincorporated body (including a partnership)

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** 15

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 20

(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**)

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** 25

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

core database means the database comprised of—

(a) information provided to the manager of the core database under— 30

(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 this Act; and

(b) information provided to a previous manager under either of the things referred to in **paragraph (a)** while it was the manager of the core database; and 35

(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 by regulations made under section 63.

11 New sections 5A and 5B inserted

After section 5, insert:

5A Status of examples 5

- (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 10

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

12 Subpart 4 heading in Part 2 replaced

In Part 2, replace the subpart 4 heading with:

Subpart 4—Management of core database 15

13 Section 43 amended (Overview)

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 database.
- (2) Sections 62 to **65D** contain regulation-making powers relating to— 20
- (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: 25
 - (f) the regulation of a previous manager or an intended manager of the core database.

14 Cross-heading after section 43 repealed

Repeal the cross-heading after section 43. 30

15 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—
- (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. 5
- 16 Sections 47 to 52 repealed**
Repeal sections 47 to 52.
- 17 Section 61 and cross-heading above section 61 repealed** 10
Repeal section 61 and the cross-heading above section 61.
- 18 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 database”. 15
- (2) In section 62(f), replace “LIC” with “the manager of the core database”.
- 19 Section 63 amended (Regulations relating to access to core database)**
- (1) In section 63(1)(a), (b)(ii), (c), (h), (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”. 20
- (3) In section 63(4), replace “LIC” with “The manager of the core database”.
- 20 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”. 25
- 21 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”. 30
- 22 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— 5
- (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 10
 - (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 15
 - (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: 20
 - (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. 25
- (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. 30

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. 35

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. 5
- (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— 10
- (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: 15
- (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: 20
- (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— 25
- (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— 30
- (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** 35
- (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.	
23	Section 66 amended (Information to be supplied to chief executive)	5
(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”.	10
(3)	In section 66(2), replace “LIC’s or that other dairy industry entity’s” with “the manager’s”.	
24	Section 68 replaced (Database if LIC wound up)	
	Replace section 68 with:	15
68	When management of core database reverts to 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)	any of the following occur:	20
(i)	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:	
(ii)	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:	25
(iii)	a receiver is appointed in respect of all or substantially all of the property of the manager of the core database:	
(iv)	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:	30
(v)	the manager of the core database is a company that is removed from the register of companies kept under section 360(1)(a) of the Companies Act 1993:	
(vi)	the manager of the core database is liquidated, wound up, or dissolved or otherwise ceases to exist.	35

- 25 New section 69A inserted (Constitution and corporate form of LIC)**
After section 69, insert:
- 69A Constitution and corporate form of LIC**
The provisions set out in **Schedule 2** apply to LIC.
- 26 Section 72 amended (Overview)** 5
(1) In section 72(3), replace “96 are” with “**96G** provide for”.
(2) After section 72(10), insert:
(11) **Sections 147 to 150AA** set out a process for the Minister to regularly request and respond to reports on the state of competition in the New Zealand dairy industry. 10
- 27 Section 73 amended (New co-op must accept application)**
In section 73(3), after “application”, insert “(subject to **section 96F(1)**)”.
- 28 New section 73A inserted (Application requirements relating to new dairy conversion exception)**
After section 73, insert: 15
- 73A Application requirements relating to new dairy conversion exception**
(1) An application referred to in section 73 must state whether the exception in **section 96A** applies (supply from new dairy conversion).
(2) **Subsection (3)** applies to an application to supply milk from a collection point unless new co-op has collected milk from that collection point at any time during the preceding 5 years. 20
(3) If the applicant considers that the exception in **section 96A** does not apply, the application must include evidence to support that position (*see section 96E*).
(4) New co-op may reject an application that fails to comply with this section only if— 25
(a) new co-op gives the applicant written notice of the requirements under this section; and
(b) despite that, the application— 30
(i) contains no statement for the purposes of **subsection (1)**; or
(ii) includes no evidence at all for the purposes of **subsection (3)**.
(5) In this section, **collection point** and **preceding 5 years** have the same meanings as in **section 96B**.
- 29 New sections 96A to 96G inserted**
After section 96, insert: 35

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 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. 5

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 could be collected by new co-op or an independent processor 10

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 dairy 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 15
- (ii) a collection point for milk produced on particular land if, at any time in the preceding 5 years, milk is produced from the land as part of a business and is processed by the applicant themselves or is sold to consumers as unprocessed milk. 20

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 with the existing collection point on the half that is retained by A. The purchaser of the other half (**B**) builds a new collection point for the other half. The collection point built by B is a new collection point. 25

A dairy farmer (**A**) switches their farm from dairy production to beef and lamb. A's neighbour (**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. 30

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 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. 35

A dairy farmer (**A**) subdivides A's farm with the existing collection point on the half that is retained by A. The purchaser of the other half (**B**) continues to use the collection point on A's farm. This is not a new collection point. 40

A dairy farmer (**A**) closes their business of selling unprocessed milk directly to consumers. Two years later, A applies to supply milk to new co-op from the same location. 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 5

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 or feeding lactating dairy cows

Examples 10

Land that is used to grow crops that are harvested and then used as feed on a dairy farm is not part of the production land. However, land that is used to grow crops that are directly grazed by lactating dairy cows would be part of the production land.

Land that is used only to graze non-lactating dairy cows is not part of the production land. 15

Land that is used only on a single occasion to graze lactating dairy cows is not part of the production land.

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**. 20

(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 25

(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. 30

96D Application relating to 2 or more collection points

(1) If an application relates to 2 or more collection points, new co-op must— 35

(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.	
<hr/>		
	Example	
	A shareholding farmer makes an application in respect of an existing collection point and a new collection point.	5
	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.	10
<hr/>		
(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:	15
(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):	20
(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:	25
(d)	any other evidence of a prescribed kind.	
(2)	An application may include under section 73A(3) any other evidence that may establish with reasonable certainty that the exception in section 96A does not apply.	
	96F Process if new co-op does not accept evidence	30
(1)	If new co-op does not accept the evidence referred to in section 96E(2) , it must request further evidence within 10 working days after receiving the application (and, in that case, section 73(3) does not apply to the application).	
(2)	Subsection (1) does not apply if new co-op decides to accept the application (despite the fact that it does not accept the evidence).	35
(3)	The applicant must, within 15 working days after receiving a request under subsection (1) ,—	
(a)	provide the further evidence; or	

- (b) notify new co-op in writing that the applicant agrees to provide the further evidence; or
- (c) notify new co-op in writing that the applicant refuses to provide the further evidence.
- (4) If new co-op is notified under **subsection (3)(b)**, it must as soon as is reasonably practicable notify the applicant of a reasonable time within which to provide the further evidence. 5
- (5) New co-op must notify the applicant of the acceptance or rejection of the application within 15 working days after—
- (a) the applicant provides the further evidence under **subsection (3)(a)**: 10
- (b) the end of the reasonable time set under **subsection (4)**;
- (c) the date on which new co-op is notified under **subsection (3)(c)**;
- (d) the end of the 15-day-period referred to in **subsection (3)** (if the applicant does not comply with that subsection).
- (6) The time frames in **subsections (3) to (5)** do not affect new co-op's obligation under section 73(1) or (2) to accept an application initially made in an application period. 15
- (7) A second or subsequent request for further evidence does not affect the time frame within which new co-op must act under **subsection (5)**.
- 96G Disclosure of evidence relied on to reject application under section 96A** 20
- If new co-op rejects the whole or a part of an application under **section 96A**, new co-op must disclose the evidence on which it relies to reject the application or part, on demand, to—
- (a) the new entrant or shareholding farmer to which the application relates; and 25
- (b) the Commission.
- 30 Section 115 amended (Regulations relating to milk)**
- (1) Replace section 115(1)(f)(i) with:
- (i) periodic returns of milk solids collected from dairy farmers or supplied by or to any other person: 30
- (2) After section 115(1)(f), insert:
- (fa) prescribe kinds of evidence for the purposes of **section 96E(1)(d)**:
- 31 Section 134 replaced (New co-op must pay levy)**
- 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—	5
(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 invoicing new co-op for the amount under-recovered from it as part of the levy):	10
(c)	refunding, or providing for refunds of, any over-recovery of those actual costs:	15
(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 <i>Gazette</i> or some other publication (if the amount is not specified in the regulations):	20
(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.	25
(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—	30
(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	35
(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
 - (c) must calculate and deduct the total amount of application fees likely to be received. 5
- (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. 10

32 New sections 147 to 150AA inserted

After section 146, insert:

Competition reports

147 Minister must request regular competition reports

- (1) The Minister must request a report on the state of competition in the New Zealand dairy industry,— 15
- (a) first, at any point during the season beginning on 1 June 2020; and
 - (b) then, on an ongoing basis, no later than 5 years after the Minister publishes (under **section 150**) his or her response to the most recently completed report. 20
- (2) The Minister must, in consultation with the Minister responsible for the Commerce Act 1986,—
- (a) request the report from—
 - (i) the Commerce Commission; or
 - (ii) any other government agency; and 25
 - (b) determine and publish the terms of reference for the report in accordance with **section 148**.

148 Terms of reference for competition report

- (1) The terms of reference for a competition report must—
- (a) specify the date by which the report must be provided to the Minister, which must be no later than 1 year after the date on which the report was requested; and 30
 - (b) specify the scope of the report, having regard to—
 - (i) the structure of the New Zealand dairy industry; and
 - (ii) any specific competition concerns in any specified New Zealand dairy markets; and 35

<ul style="list-style-type: none"> (c) specify the persons in the dairy industry who must be consulted for the purposes of the report and the method of consultation; and (d) require the Commerce Commission or other government agency preparing the report to ascertain— <ul style="list-style-type: none"> (i) the state of competition in the New Zealand dairy industry; and (ii) whether continued regulation is needed to promote the efficient operation of dairy markets in New Zealand. 	5
(2) The terms of reference may also provide for any other matter that the Minister considers appropriate.	10
(3) The Minister must publish the terms of reference on the Ministry's Internet site.	10
149 Preparation of competition report	
In preparing a competition report,—	
<ul style="list-style-type: none"> (a) the Commerce Commission may exercise any power identified in section 145 in order to ascertain the matters referred to section 148(1)(d), if the Commission is preparing the report; and (b) the Commerce Commission or other government agency preparing the report is not required to consult anyone other than the persons specified in the report's terms of reference. 	15
150 Minister must respond to competition report	
(1) The Minister must publish a response to a competition report no later than 120 working days after receiving it.	20
(2) The response—	
<ul style="list-style-type: none"> (a) must be published in the <i>Gazette</i> and on the Ministry's Internet site; and (b) must state whether the Minister intends to promote legislation to repeal or amend subpart 5 or 5A before requesting another report; and (c) may contain any other statements in response that the Minister considers appropriate. 	25
(3) The Minister is not required to consult anyone before responding to a competition report.	
150AA Limits on effect of competition report and response	
(1) The Crown is not bound by a competition report.	30
(2) Sections 147 to 150 are not intended to—	
<ul style="list-style-type: none"> (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. 	35

- 33 Section 156 repealed (Gift duty and taxation in respect of Livestock Improvement Corporation Limited)**
Repeal section 156.
- 34 New Schedule 1 inserted**
Insert the Schedule 1 set out in **Schedule 1** as the first schedule to appear after the last section of the principal Act. 5
- 35 New Schedule 2 inserted**
Before Schedule 5, insert the Schedule 2 set out in **Schedule 2**.

Part 3

Consequential amendments 10

- 36 Consequential amendments to principal Act**
Amend the principal Act as set out in **Part 1 of Schedule 3**.
- 37 Consequential amendments to Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001**
Amend the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 as set out in **Part 2 of Schedule 3**. 15

Schedule 1
New Schedule 1 inserted

s 34

Schedule 1
Transitional, savings, and related provisions

5

s 5B

Part 1
Provisions relating to Dairy Industry Restructuring Amendment Act 2017

- 1 Employees of LIC from before restructuring under subpart 4 of Part 2** 10
- (1) This clause applies to a person to whom section 61 applied immediately before its repeal by the Dairy Industry Restructuring Amendment Act **2017**.
- (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** 15
- (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— 20
- (a) the Herd Testing Regulations 1958 or under the terms and conditions of any licence issued under those regulations; or
- (b) any regulation 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 **2017**). 25
- (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** 30
- (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 2017 .	
(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 2017 .	5
(4)	Section 65D does not apply to the regulations referred to in subclause (3) .	
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 73A and 96A to 96G .	10
5	Levy payable by new co-op	
	Regulations made under section 134 (as replaced by section 31 of the Dairy Industry Restructuring Amendment Act 2017) apply to financial years that start on or after 1 July 2018 (and regulations may be made for that purpose under section 134 (as replaced) at any time before that date).	15

Schedule 2
New Schedule 2 inserted

s 35

Schedule 2
Constitution and corporate form of LIC

5

s 69A

1 Constitution must restrict who may hold shares

- (1) The LIC board must ensure that LIC's constitution requires that shares in LIC must be held only by persons who—
- (a) derive an income from farming dairy cows in New Zealand whose milk is supplied for processing in New Zealand (including sharemilkers); and
 - (b) purchase products or services from LIC, as determined by LIC.
- (2) The LIC board must ensure that LIC's constitution requires a shareholder who is not, or has ceased to be, a transacting shareholder of LIC to surrender all or any of the shareholder's shares in LIC.
- (3) The provision in the constitution required by **subclause (1)** does not prevent—
- (a) shareholders continuing to hold shares until surrender, in accordance with the provision in the constitution required by **subclause (2)**; or
 - (b) LIC holding its own shares under section 24 of the Co-operative Companies Act 1996 or section 67A of the Companies Act 1993.

2 Constitution must impose maximum voting rights

- (1) The LIC board must ensure that LIC's constitution provides that no person may exercise, or control the exercise of, more than 1% of the maximum number of votes that may be exercised at a meeting of LIC.
- (2) The LIC board must ensure that LIC's constitution provides that the following are included in the calculation of a person's number of votes:
- (a) the number of votes that an associated person of the person may exercise or control the exercise of; and
 - (b) the number of votes that a person may exercise or control the exercise of by reason of being appointed as a proxy.

3 Constitution must provide for postal voting

The LIC board must ensure that LIC's constitution provides for postal voting in accordance with clause 7 of Schedule 1 of the Companies Act 1993.

-
- 4 Minister's consent needed to change certain provisions of constitution**
The provisions of LIC's constitution referred to in **clauses 1 to 3** may not be amended or revoked without the written consent of the Minister.
- 5 Minister's consent needed to cancel registration as co-operative company**
- (1) No application may be made under section 12 of the Co-operative Companies Act 1996 in relation to LIC without the written consent of the Minister. 5
- (2) **Subclause (1)** is additional to the requirements in section 12 of the Co-operative Companies Act 1996.

Schedule 3 Consequential amendments

ss 36, 37

Part 1

Consequential amendments to principal Act 5

Section 63

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

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

In section 63(1)(f), replace “panel’s” with “Access Panel’s”. 10

Section 65

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

Section 163

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

Part 2 15

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 20

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. 25

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

In the cross-heading above regulation 13, replace “*Panel*” with “*Access Panel*”. 30

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

5

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

10

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

15

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

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”.

25

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

30

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

5

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, clause 4(1), replace “Panel” with “Access Panel”.

10

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*”.

15

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**”.

20

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.

25