

**Reprint
as at 20 February 2018**



Dairy Industry Restructuring Act 2001

Public Act 2001 No 51
Date of assent 26 September 2001
Commencement see section 2

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Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
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This Act is administered by the Ministry for Primary Industries.

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1 Title

This Act is the Dairy Industry Restructuring Act 2001.

Part 1

Preliminary provisions

2 Commencement

- (1) The following provisions come into force on the day after the date on which this Act receives the Royal assent:
 - (a) Part 1 (preliminary provisions):
 - (b) subpart 1 of Part 2 (authorisations under Commerce Act 1986), except for section 8:
 - (c) subpart 2 of Part 2 (matters relating to New Zealand Dairy Board):
 - (d) sections 157 to 159 (The New Zealand Dairy Research Institute):
 - (e) section 164 (validation of issue of certain shares):
 - (f) section 166 (Board must supply information about export permits).
- (2) Section 160 (sharemilkers) comes into force on the 21st working day after the date on which this Act receives the Royal assent.
- (3) The rest of this Act comes into force on the amalgamation date.
- (4) New co-op must publish the amalgamation date in the *Gazette* as soon as practicable after it is known.

Section 2(3): 16 October 2001 appointed as amalgamation date, published in *Gazette* 2001, p 3635.

3 Expiry

[Repealed]

Section 3: repealed, on 20 February 2018, by section 5 of the Dairy Industry Restructuring Amendment Act 2018 (2018 No 2).

4 Purpose

The purpose of this Act is to—

- (a) *[Repealed]*

- (b) provide for the transition of the New Zealand Dairy Board to a wholly-owned subsidiary of new co-op and its conversion into a company 12 months after the commencement of this Part; and
- (c) *[Repealed]*
- (d) remove restrictions on the export of dairy products except for exports to designated markets; and
- (e) provide that Livestock Improvement Corporation Limited is established as a co-operative company that is owned by purchasers of its goods and services and provide for regulation of the core database; and
- (f) promote the efficient operation of dairy markets in New Zealand by regulating the activities of new co-op to ensure New Zealand markets for dairy goods and services are contestable; and
- (g) provide for transitional arrangements following the removal of restrictions on the export of dairy products; and
- (h) make provision in relation to certain taxation consequences relating to the amalgamation; and
- (i) require co-operative dairy companies to enable supplying shareholders to transfer their shares to sharemilkers by agreement.

Section 4(a): repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 4(c): repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

5 Interpretation

- (1) In this Act, unless the context otherwise requires,—

allocation period means the quota year or years for which export licences are allocated in accordance with section 26

amalgamation date means the date on which the new co-op amalgamation becomes effective

application period means a period set by new co-op as an application period under section 75

approved restructuring day, in relation to LIC, means 1 June 2002 or any earlier date in the restructuring plan that is approved by the Minister

associated person has the meaning given by subsection (2)

base milk price, in relation to a season, means the price per kilogram of milk solids that is set by new co-op for that season

Board means the New Zealand Dairy Board established under the Dairy Board Act 1961; and, on and after the conversion date, means the company into which the Board converts

Board's constitution means the constitution of the Board that was adopted on 5 November 1996 (as amended on 2 December 1997)

capital notes means the notes issued or to be issued by new co-op (or a wholly-owned subsidiary of new co-op) and defined as capital notes in the constitution of new co-op

chief executive means the chief executive of the Ministry

Commission means the Commerce Commission established by section 8 of the Commerce Act 1986

commodity means a product made by the processing of milk that is—

- (a) traded in significant quantities in globally contested markets; and
- (b) characterised by uniform technical specifications

competent authority means the department of State that is for the time being responsible for the administration of the Animal Products Act 1999

control has the meaning given by sections 5 to 7 of the Companies Act 1993

conversion date means 27 September 2002

co-operative share means a share in new co-op issued, or to be issued,—

- (a) from the new co-op amalgamation; or
- (b) in relation to the supply of milk to new co-op by new entrants or shareholding farmers

co-operative share standard means the share standard referred to in new co-op's constitution that determines the number of shares that a new entrant or shareholding farmer is required to hold

core database means the part of the database operated by LIC that comprises the following information:

- (a) information provided to LIC under the Herd Testing Regulations 1958 or under the terms and conditions of any licence issued under those regulations:
- (b) information provided to LIC under any regulations made under this Act

dairy farmer, in subpart 5 of Part 2,—

- (a) means a person who produces milk, or intends to produce milk, in New Zealand from dairy cows as a business; but
- (b) does not include a sharemilker

default price, in relation to a co-operative share, means—

- (a) the June price, if that price is within the price range, in—
 - (i) the first season for the supply of milk to which an application to supply as a shareholding farmer relates; or
 - (ii) the season after a notice of withdrawal is given; or

- (b) the published price on the date that an application is made or a notice of withdrawal is given plus 7.5% if the June price referred to in paragraph (a) exceeds the highest price in the price range; or
- (c) the published price on the date that an application is made or a notice of withdrawal is given less 7.5% if the June price referred to in paragraph (a) is less than the lowest price in the price range

designated market means,—

- (a) for the initial and interim licences, a market listed in Schedule 5; and
- (b) for the licences that apply following the initial and interim licences, a market listed in Schedule 5A

eligible participant means a person who—

- (a) is eligible to hold an export licence; and
- (b) collects at least 0.1% of total milk solids collected from farmers in New Zealand based on the most representative data of total milk solids collected in New Zealand in the latest year that data is available prior to an allocation period

export means any shipment in any craft for transportation to a point outside New Zealand

export licence, in respect of a designated market, means any of the following:

- (a) the initial licences of the Board;
- (b) a licence allocated under section 25, 26, or 29

general export licence means an export licence allocated under section 26(5)

herd testing means the testing of milk cows for the purpose of recording the production of individual cows in respect of milk or components of milk

holder, in respect of an export licence, means the person recorded in the register of export licence holders kept under section 29B

independent, in relation to a person, means that the person is none of the following:

- (a) a shareholding farmer;
- (b) a relative of a shareholding farmer;
- (c) an employee of new co-op;
- (d) an employee of a shareholding farmer;
- (e) a person who has a direct or indirect financial interest in a farm that supplies milk to new co-op;
- (f) a person who has a relevant interest in new co-op fund securities

independent processor—

- (a) means a processor of milk or milk solids or dairy products who is not an associated person of new co-op; and

- (b) includes New Zealand Dairy Foods Limited and any associated person of that company other than new co-op

initial licence means each licence conferred on the Board by section 24

initial period has the meaning given by section 24

insolvency, in relation to the Board, means—

- (a) the appointment of a receiver in respect of all or substantially all of the property of the Board; or
- (b) the appointment of a liquidator or interim liquidator under Part 16 of the Companies Act 1993; or
- (c) removal from the register of companies kept pursuant to section 360(1)(a) of the Companies Act 1993; or
- (d) the appointment of a statutory manager under Part 3 of the Corporations (Investigation and Management) Act 1989

interconnected body corporate has the meaning given by section 2(7) of the Commerce Act 1986

interim licence means, in respect of exports to designated markets in—

- (a) Canada, the licence for the period beginning on the commencement of the Dairy Industry Restructuring Amendment Act 2007 and ending on 31 December 2007 for a quantity of butter not exceeding 2 000 tonnes; and
- (b) the Dominican Republic, a licence for the period beginning on the commencement of the Dairy Industry Restructuring Amendment Act 2007 and ending on 31 December 2007 for a quantity of milk powder not exceeding 4 800 tonnes; and
- (c) the European Communities—
- (i) as described in section 25(2)(a), a licence for the period beginning on 1 January 2008 and ending on 31 December 2008 for the quantities described in that section; and
- (ii) as described in section 25(2)(b), a licence for the period beginning on 1 January 2009 and ending on 31 December 2009 for the quantities described in that section; and
- (iii) as described in section 25(2)(c), a licence for the period beginning on 1 January 2010 and ending on 31 December 2010 for the quantities described in that section

interim period means the period for which an interim licence is valid

June price means the price of a co-operative share determined as at 1 June by new co-op's board under its constitution

LIC means Livestock Improvement Corporation Limited

LIC board means the board of directors of LIC

licensed market has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

marae includes the area of land on which all buildings such as wharehenui (meeting houses), wharekai (dining rooms), ablution blocks, and any other associated buildings are situated

market maker in co-operative shares means a person who is continuously active in making bids and offers on co-operative shares on the licensed market on which those shares are quoted during the periods that the licensed market is in operation

milk price manual means the manual that must be maintained by new co-op under section 150F

milk solids means the milk-fat and protein components of raw milk

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

new co-op means the amalgamated company under the new co-op amalgamation; and includes any company resulting from a further amalgamation involving new co-op

new co-op amalgamation means the amalgamation that occurs if The New Zealand Co-operative Dairy Company Limited, Kiwi Co-operative Dairies Limited, and Fonterra Co-operative Group Limited amalgamate under Part 13 of the Companies Act 1993

new co-op fund means the fund referred to in section 109D(1)(b)

new co-op fund securities means the securities referred to in section 109D(1)(b)(i)

new entrant means a dairy farmer who is not a shareholding farmer who applies to become a shareholding farmer under section 73

panel means the panel established under regulations made under section 63

panel means the Milk Price Panel established under section 150D

person eligible to hold an export licence means a natural person, unincorporated body, or body corporate who is registered to export under Part 5 of the Animal Products Act 1999

price range, in relation to an application under section 73 or a notice of withdrawal under section 97, means the range of prices from 7.5% more than the published price at the time that the application is made or the notice is given to 7.5% less than the published price at that time

publicly available, in relation to making a document or information available, means that—

- (a) the document or information is available for inspection, free of charge, on an Internet site that is publicly accessible at all reasonable times (except to the extent that making the document or information available would infringe copyright in the material in question or is inconsistent with any enactment or rule of law); and
- (b) a copy of the document or information is available for inspection, free of charge, at all reasonable times at the head office of the person required to make it publicly available or, if that person is a Minister, at the head office of the relevant Ministry; and
- (c) copies of the document or information may be purchased by any person at a reasonable price

published price means the price of a co-operative share set under section 77(1) or amended under section 77(2) as published by new co-op

qualifying company has the meaning given by section 2A of the Dairy Board Act 1961

qualifying products or services means Premier Sires, all nominated semen options, Sire Proving Scheme, contract mating scheme, AB Technician Services, MINDA, MINDA Herd Testing, GeneMark, identification tags, and FarmWise products and services, provided by LIC

quota year means, for designated markets in—

- (a) the European Communities, the United States of America, and the Dominican Republic, a period of 12 months beginning on 1 January and ending on 31 December; and
- (b) Japan, a period of 12 months beginning on 1 April and ending on 31 March in the following year

quoted has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

relative, in relation to any person, means—

- (a) that person's spouse, civil union partner, or de facto partner:
- (b) a parent or step-parent of that person:
- (c) a child or stepchild of that person:
- (d) a brother or sister of that person, including a stepbrother or stepsister:
- (e) a grandchild of that person:
- (f) a grandparent of that person:
- (g) a parent, step-parent, brother, or sister, including a stepbrother or stepsister, of that person's spouse, civil union partner, or de facto partner

relevant interest has the same meaning as in sections 235 to 238 of the Financial Markets Conduct Act 2013

season means a period of 12 months beginning on 1 June in a year and ending on 31 May in the following year

shareholding farmer means a dairy farmer who is registered as the holder of co-operative shares

sharemilker has the meaning given by section 2 of the Sharemilking Agreements Act 1937

specified subpart 5 provisions means the provisions specified in section 109A

supply redemption rights means the rights issued or to be issued by new co-op and defined as supply redemption rights in the constitution of new co-op

surrender amount means the amount payable to a shareholding farmer who reduces or ceases supply under section 97

tariff quota includes trade restrictions with similar effect to a tariff quota

trade has the same meaning as in section 241(3) of the Financial Markets Conduct Act 2013, and for the avoidance of doubt includes exchange

transacting shareholder has the meaning given by section 4 of the Co-operative Companies Act 1996

year means a calendar year ending on 31 December.

- (2) A person is an **associated person** of another person if—
- (a) they are both bodies corporate and they consist substantially of the same members or shareholders or are under the control of the same persons; or
 - (b) either of them has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attached to 25% or more of the voting products (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) of the other; or
 - (c) one is a director of the other; or
 - (d) either of them is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other.

Section 5(1) **allocation period**: inserted, on 15 December 2007, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **base milk price**: inserted, on 27 July 2012, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **chief executive**: substituted, on 15 December 2007, by section 4(2) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **commodity**: inserted, on 27 July 2012, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **competent authority**: inserted, on 15 December 2007, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **conversion date**: replaced, on 27 July 2012, by section 4(2) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **designated market**: substituted, on 15 December 2007, by section 4(3) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **eligible participant**: inserted, on 15 December 2007, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **exiting company**: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **export licence** paragraph (b): substituted, on 15 December 2007, by section 4(4) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **general export licence**: inserted, on 15 December 2007, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **holder**: inserted, on 15 December 2007, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **independent**: inserted, on 27 July 2012, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **initial licence**: amended, on 15 December 2007, by section 4(5) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **interim licence**: inserted, on 15 December 2007, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **interim period**: inserted, on 15 December 2007, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **licensed market**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5(1) **listed**: repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5(1) **marae**: inserted, on 15 December 2007, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **market maker in co-operative shares**: replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5(1) **milk price manual**: inserted, on 27 July 2012, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **milk solids**: inserted, on 15 December 2007, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **Ministry**: inserted, on 15 December 2007, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **new co-op fund**: inserted, on 27 July 2012, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **new co-op fund securities**: inserted, on 27 July 2012, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **panel** second definition: inserted, on 27 July 2012, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **peak note price**: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **peak note standard**: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **peak notes**: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **person eligible to hold an export licence**: inserted, on 15 December 2007, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(1) **publicly available**: inserted, on 27 July 2012, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **quoted**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5(1) **registered market**: repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5(1) **relative**: inserted, on 27 July 2012, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **relevant interest**: replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5(1) **specified subpart 5 provisions**: inserted, on 27 July 2012, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 5(1) **trade**: replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 5(1) **quota year**: inserted, on 15 December 2007, by section 4(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 5(2)(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

6 Act binds the Crown

This Act binds the Crown.

Part 2 Restructuring and regulation of dairy industry

Subpart 1—Authorisations under Commerce Act 1986

[Repealed]

Subpart 1: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

7 Authorisations granted

[Repealed]

Section 7: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

8 Assets and shares acquired after 15 August 2001

[Repealed]

Section 8: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

9 Undertaking to dispose of shares in New Zealand Dairy Foods Limited

[Repealed]

Section 9: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

10 Nature of obligation

[Repealed]

Section 10: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

11 New co-op's constitution

[Repealed]

Section 11: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Subpart 2—Matters relating to New Zealand Dairy Board

[Repealed]

Subpart 2: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

12 Purpose

[Repealed]

Section 12: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Amendments to Dairy Board Act 1961 taking effect on amalgamation date

[Repealed]

Heading: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

13 Amendments to Dairy Board Act 1961

[Repealed]

Section 13: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Conversion of Board into company after 1 year

[Repealed]

Heading: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

14 Conversion of Board into company

[Repealed]

Section 14: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

*Exiting company buy-out agreements**[Repealed]*

Heading: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

15 Agreement for transfer or surrender*[Repealed]*

Section 15: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

*Default procedure for buy-out of exiting companies' interests in Board**[Repealed]*

Heading: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

16 Default procedure for buy-out of exiting companies' interests in Board*[Repealed]*

Section 16: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

17 Notice to stop default procedure*[Repealed]*

Section 17: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

18 Default procedure to stop if new co-op amalgamation does not take effect*[Repealed]*

Section 18: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

*Miscellaneous provisions relating to exiting company buy-out**[Repealed]*

Heading: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

19 Transfer of shares*[Repealed]*

Section 19: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

20 Cancellation of shares surrendered*[Repealed]*

Section 20: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Subpart 3—International trade with designated markets

Access to designated markets

21 Purpose

- (1) The purpose of this subpart is to—
 - (a) maximise the economic benefits to New Zealand arising from tariff quotas maintained by foreign governments controlling access to their domestic markets:
 - (b) provide that the New Zealand dairy industry is the recipient of these benefits:
 - (c) safeguard New Zealand's interests in respect of those tariff quotas:
 - (d) ensure that the administrative and other arrangements made are consistent with New Zealand's international obligations.
- (2) The Crown owns the rights to secure the economic benefits deriving from the tariff quotas referred to in subsection (1).
- (3) Those rights in respect of designated markets described in Schedules 5 and 5A are or will be allocated as provided by this subpart.
- (4) This subpart does not prevent the Crown from engaging in international trade negotiations for the purpose of establishing, amending, or terminating tariff quotas.

Compare: 1999 No 97 s 12

Section 21(3): amended, on 15 December 2007, by section 5 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

22 Overview

- (1) Section 23 restricts exports to designated markets.
- (2) Sections 24 and 25 confer initial export licences on the Board.
- (3) Sections 26 to 42 contain provisions relating to further export licences, restrictions on dealing with export licences, transferring export licences, enforcement, cost recovery, Ministerial directions on international obligations, and other miscellaneous provisions.

Section 22(3): substituted, on 15 December 2007, by section 6 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

23 Restrictions on exports to designated markets

- (1) A person must not export directly or indirectly to a designated market any dairy product that is described in Schedules 5 and 5A for that market unless he or she—
 - (a) is the holder of a current export licence; and

- (b) exports product in accordance with that licence in respect to the product and market.
- (2) No export restrictions apply to a designated market listed in Schedule 5 after the expiry of the applicable initial and interim periods unless that designated market is listed in Schedule 5A.

Section 23: substituted, on 15 December 2007, by section 7 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Export licences conferred on Board

24 Licences during initial period

- (1) The Board has the licences to export to each designated market until the end of the initial period.
- (2) The **initial period** is,—
 - (a) in respect of exports to designated markets in Canada, the period ending on 31 July 2007:
 - (b) in respect of exports to designated markets in the European Communities, the period ending on 31 December 2007:
 - (c) in respect of exports of cheddar cheese and low-fat cheese to designated markets in the United States of America, the period ending on 31 December 2008:
 - (d) in respect of exports of NSPF cheese and other American-type cheeses to designated markets in the United States of America, the period ending on 31 December 2009:
 - (e) in respect of exports to designated markets in Japan, the period ending on 31 March 2010:
 - (f) in respect of exports to designated markets in the Dominican Republic, the period ending on 30 June 2007.

Compare: 1999 No 97 s 14

25 Reduction of licences in respect of designated markets in European Communities during the interim period

- (1) The Board holds the interim licences to export to designated markets in the European Communities for the periods and the reduced amounts specified in subsection (2).
- (2) The reductions applying to the interim licences for designated markets in the European Communities must result in each licence being,—
 - (a) in the 12 months to 31 December 2008,—
 - (i) in the case of butter, for the lesser of 75% of the total available quantity and 57 500 tonnes of that butter:

- (ii) in the case of cheese for processing, for the lesser of 75% of the total available quantity and 3 000 tonnes of that cheese:
- (iii) in the case of cheddar cheese, for the lesser of 75% of the total available quantity and 5 250 tonnes of that cheese:
- (b) in the 12 months to 31 December 2009,—
 - (i) in the case of butter, for the lesser of 50% of the total available quantity and 38 333 tonnes of that butter:
 - (ii) in the case of cheese for processing, for the lesser of 50% of the total available quantity and 2 000 tonnes of that cheese:
 - (iii) in the case of cheddar cheese, for the lesser of 50% of the total available quantity and 3 500 tonnes of that cheese:
- (c) in the 12 months to 31 December 2010,—
 - (i) in the case of butter, for the lesser of 25% of the total available quantity and 19 166 tonnes of that butter:
 - (ii) in the case of cheese for processing, for the lesser of 25% of the total available quantity and 1 000 tonnes of that cheese:
 - (iii) in the case of cheddar cheese, for the lesser of 25% of the total available quantity and 1 750 tonnes of that cheese.

Section 25 heading: substituted, on 15 December 2007, by section 8(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 25(1): substituted, on 15 December 2007, by section 8(2) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 25(2): amended, on 15 December 2007, by section 8(3) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

25A Export licence conferred on Board by section 24 or 25 must be recorded in register of export licence holders

- (1) The chief executive must record an export licence conferred on the Board by section 24 or 25 in the register of export licence holders in accordance with section 29B as soon as reasonably practicable after the commencement of the Dairy Industry Restructuring Amendment Act 2007.
- (2) The Board must supply all necessary information to the chief executive for the purpose of subsection (1).

Section 25A: inserted, on 15 December 2007, by section 9 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

26 Later allocation of export licences

- (1) The following are vested in or revert to the Crown:
 - (a) any rights in respect of designated markets that become available as a result of the expiry of the initial period under section 24:

- (b) any rights in respect of designated markets in the European Communities listed in Schedule 5A that become available as a result of reductions under section 25:
 - (c) any quantities that become available as a result of increases in rights in respect of designated markets listed in Schedule 5A after the initial periods, except where the quantities are reallocated in accordance with section 27A(2):
 - (d) any rights in respect of designated markets listed in Schedule 5A that become available at the expiry of any other allocations.
- (2) Following the expiry of the initial and interim licences, export licences for the designated markets listed in Schedule 5A must be allocated or reallocated by, or on behalf of, the Crown.
 - (3) The Minister must, in accordance with the rules set out in Schedule 5B, allocate export licences to multiple participants for the designated markets listed in Schedule 5A unless subsection (4) applies.
 - (4) If the Minister is satisfied that an allocation under subsection (3) is not appropriate, having regard to the purpose in section 21(1), the Minister may recommend to the Governor-General that an Order in Council is made to allocate or reallocate export licences under subsection (7).
 - (5) The Minister may allocate a general export licence for trade at the normal tariff (outside the terms of the quota), in respect of a designated market listed in Schedule 5A, that may be used by any person eligible to hold an export licence for any quantity of the product for which the licence applies.
 - (6) Subsection (5) applies subject to section 29A.
 - (7) The Governor-General may, by Order in Council made on the recommendation of the Minister, allocate or reallocate export licences in respect of designated markets listed in Schedule 5A.
 - (8) Before making an allocation under subsection (5), the Minister must—
 - (a) be satisfied that an allocation is appropriate in the circumstances; and
 - (b) have regard to the purpose in section 21(1).
 - (9) Subsection (1) does not limit the Minister's power under subsection (3) or (5), or the Governor-General's power under subsection (7), to allocate new licences in respect of those rights or quantities to the Board or new co-op.

Section 26: substituted, on 15 December 2007, by section 10 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

27 Increases in rights to export to designated markets during initial period

- (1) This section applies if, during the initial period, there is an increase in the Crown's rights to secure the economic benefits that are obtained from designated markets that are not allocated in an existing export licence.

- (2) Any such increase vests automatically in the Board as part of the initial licences conferred on the Board under this subpart.

Compare: 1999 No 97 s 16

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

- (1) This section applies if, after the initial period, there is an increase or reduction in rights to secure economic benefits from designated markets that are not allocated in an existing export licence.
- (2) An increase in a right to export to a designated market during the course of an allocation period accrues on a pro rata basis to the registered holders of export licences at the time the increase first becomes available for use.
- (3) A reduction in a right to export to a designated market during the course of an allocation period applies on a pro rata basis to the registered holders of export licences for that designated market at the time the volumes reduce.
- (4) In the case of interim licences held by the Board, the allocation period for any licence for a specified quantity is the period for which the licence is valid for that quantity.
- (5) An accrual under subsection (2) and a reduction under subsection (3) applies only for the remainder of the allocation period.
- (6) An accrual or reduction referred to in subsection (5) must be recorded in the register of export licence holders that is kept in accordance with section 29B.

Section 27A: inserted, on 15 December 2007, by section 11 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

28 Restriction on transfer of initial licences

- (1) The Board may not transfer, sub-license, or otherwise dispose of an initial licence in respect of a designated market to any other person.
- (2) In order to comply with the restriction on transfer in subsection (1) and for the purposes of the Customs and Excise Act 1996, the Board must own any dairy products which it exports to designated markets.

Transferring export licences

Heading: inserted, on 15 December 2007, by section 12 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

28A Transferring export licences

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the purpose of governing the transfer of export licences or parts of export licences.
- (2) Export licences may be transferred only in accordance with regulations made in accordance with subsection (1).

- (3) The chief executive is responsible for administering the transfer of export licences.
- (4) Subsection (1) applies subject to section 28.
Section 28A: inserted, on 15 December 2007, by section 12 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Revocation of initial licences

Heading: inserted, on 15 December 2007, by section 13 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

29 Revocation of initial licences

- (1) All of the initial licences of the Board are revoked in the case of—
 - (a) the Board's insolvency:
 - (b) new co-op ceasing to control the Board.
- (2) An initial licence of the Board is revoked if the Board transfers, sub-licenses, or otherwise disposes of any rights conferred by it to another person.
- (3) The rights conferred by a licence that is revoked revert to the Crown.
- (4) The Governor-General may, by Order in Council made on the recommendation of the Minister, allocate new licences in respect of the rights that revert to the Crown under this section.
- (5) Before making a recommendation under subsection (4), the Minister must have regard to the purpose in section 21(1).
- (6) Subsection (1) does not limit the Governor-General's power under subsection (4) to allocate new licences in respect of those rights to the Board or new co-op.

Compare: 1999 No 97 s 17

Quota trade completed before trade at normal tariff

Heading: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

29A Quota trade completed before trade at normal tariff

- (1) This section applies to trade at the normal tariff (outside the terms of the quota) for the following markets:
 - (a) prepared edible fat to Japan:
 - (b) milk powder to the Dominican Republic.
- (2) For the markets listed in subsection (1), in any quota year, holders of export licences for trade at the normal tariff may not use those export licences until the quota for the market is filled in that quota year.
- (3) A quota is to be treated as filled when the competent authority has issued export certificates to all licence holders for at least 95% of each export licence holder's quantity of export licences.

- (4) The competent authority must publicly notify the industry when a quota is filled in accordance with subsection (3).
- (5) When a quota is filled, the competent authority must, as soon as is reasonably practicable,—
 - (a) publish a notice in the *Gazette*; and
 - (b) notify the eligible participants in any manner that the competent authority considers effective and appropriate, including electronically.
- (6) An export licence holder may use the export licence for trade at the normal tariff only for the remainder of the quota year in which publication and notification are made in accordance with subsection (5).

Section 29A: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Maintaining register of licence holders

Heading: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

29B Register of export licence holders

- (1) The chief executive must—
 - (a) keep and maintain a register of export licence holders; and
 - (b) make the register available to the competent authority; and
 - (c) on receipt of a written request, allow a holder of an export licence to inspect information on the register that relates to his or her licence.
- (2) The register must contain the following information:
 - (a) the full name and address of the export licence holder;
 - (b) each designated market for which the holder holds an export licence;
 - (c) the volume of quota rights held in respect of each export licence for each quota year;
 - (d) the following dates for each export licence:
 - (i) date of registration;
 - (ii) date of commencement;
 - (iii) date of expiry;
 - (e) the date of transfer, if any, of the export licence or part of the export licence;
 - (f) the full name and address of the previous holder of the export licence.
- (3) If a person holds more than 1 export licence for a designated market for the same quota year, each export licence must be registered separately.
- (4) This section does not apply to general export licences allocated under section 26(5).

Section 29B: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Powers of chief executive

Heading: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

29C Power to authorise persons

The chief executive may only authorise a person to exercise a power under sections 29E to 29H if that person has appropriate training, experience, or qualifications in the exercise of that power.

Section 29C: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 29C: amended, on 1 October 2012, by section 230(2) of the Search and Surveillance Act 2012 (2012 No 24).

29D Power to require assistance

The chief executive, or a person authorised by the chief executive, may call on any person for assistance in the exercise of any or all of the powers under sections 29E to 29L.

Section 29D: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

29E Power of entry without search warrant

- (1) For the purpose of determining and monitoring compliance with the rules set out in Schedule 5B, the chief executive, or a person authorised by the chief executive, may during business hours enter any place (other than a dwelling-house or marae) without a search warrant.
- (2) Before entering any place under subsection (1), the chief executive or person authorised by the chief executive must—
 - (a) give the owner or occupier reasonable notice of his or her intention to enter the place, unless to do so would defeat the purpose of the entry; and
 - (b) if notice under paragraph (a) is not or cannot be given, leave in a prominent location at the place a written statement of—
 - (i) the time and date of the entry; and
 - (ii) the purpose of the entry; and
 - (iii) the name of the person; and
 - (iv) the address of the office to which inquiries should be made.
- (3) A person who exercises any power under this section must produce his or her evidence of authorisation—
 - (a) on first entering the place; and

- (b) subsequently whenever reasonably required to do so by a person appearing to have charge of the place or any part of the place.

Section 29E: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

29F Power to examine, etc

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

- (a) examine all things, and open containers, packages, and other things to inspect their contents:
- (b) examine, inquire about, and copy any documents or other records (including records held in electronic or other form) and may—
 - (i) remove documents or records to another place for a reasonable time for the purpose of copying them, or require the person having control of the documents or other records to forward them or a copy of them to the officer by way of post, courier post, fax, or other means acceptable to the chief executive or authorised person; and
 - (ii) require a person who has control of or knowledge of the documents or records to reproduce or assist in reproducing in usable form information recorded or stored in a computer or other device or system; and
 - (iii) direct the occupier to identify and hold any equipment, package, container, or document until any lawful direction of the chief executive, or a person authorised by the chief executive, has been complied with; and
 - (iv) take photographs of any container, package, equipment, or thing.

Section 29F: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

29G Power to require information

- (1) For the purpose of determining and monitoring compliance with the rules set out in Schedule 5B, the chief executive, or a person authorised by the chief executive, may require an eligible participant or an employee or agent of an eligible participant to provide any relevant information or documents or answer any relevant questions.
- (2) Any information, documents, or answers required under subsection (1) must be provided within a reasonable time to a person or place as directed by the chief executive, or a person authorised by the chief executive.

- (3) An eligible participant or an employee or agent of an eligible participant may not refuse to answer a question under subsection (1) on the ground that the answer would be likely to incriminate the eligible participant.
- (4) An incriminating answer under this section—
 - (a) may be used in civil or criminal proceedings against the eligible participant if it is a body corporate; but
 - (b) may not be used in civil or criminal proceedings against the employee or agent of the eligible participant who gave the incriminating answer.

Section 29G: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

29H Power to audit milk collection data

- (1) For the purpose of determining and monitoring compliance with the rules set out in Schedule 5B, the chief executive, or a person authorised by the chief executive, may audit the milk collection data received from an eligible participant.
- (2) Participants must be notified of the possibility of an audit on a cost-recovery basis at the time of an application for an export licence.
- (3) Participants may be charged a fee for an audit carried out under subsection (1).

Section 29H: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Search warrants

Heading: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

29I Issue of search warrant

- (1) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may issue a search warrant in respect of any place if satisfied, on application made in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012, that there are reasonable grounds for believing that there is at that place any thing—
 - (a) in respect of which an offence under section 31(3) has been or is being committed; or
 - (b) that has been, is being, or is intended to be used by any person for the commission of an offence under section 31(3); or
 - (c) that is evidence of the commission of an offence under section 31(3) by any person.
- (2) Subject to section 29L and subsection (3), the provisions of Part 4 of the Search and Surveillance Act 2012 apply.

- (3) Despite subsection (2), sections 118 and 119 of the Search and Surveillance Act 2012 apply only in respect of a warrant issued to a named constable or to every constable.

Section 29I: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 29I(1): amended, on 1 October 2012, by section 230(3)(a) of the Search and Surveillance Act 2012 (2012 No 24).

Section 29I(1): amended, on 1 October 2012, by section 230(3)(b) of the Search and Surveillance Act 2012 (2012 No 24).

Section 29I(2): replaced, on 1 October 2012, by section 230(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 29I(3): replaced, on 1 October 2012, by section 230(4) of the Search and Surveillance Act 2012 (2012 No 24).

29J Entry and search powers when executing warrant

[Repealed]

Section 29J: repealed, on 1 October 2012, by section 230(5) of the Search and Surveillance Act 2012 (2012 No 24).

29K Requirements when executing warrant

[Repealed]

Section 29K: repealed, on 1 October 2012, by section 230(5) of the Search and Surveillance Act 2012 (2012 No 24).

29L Disposal of property seized under search warrant

Subpart 6 of Part 4 of the Search and Surveillance Act 2012 applies to any property seized by a constable under a search warrant and, with any necessary modifications, to property seized under a search warrant by the chief executive, or a person authorised by the chief executive, subject to the following provision:

- (a) *[Repealed]*
- (b) *[Repealed]*
- (c) *[Repealed]*
- (d) if any person is convicted of an offence to which the item relates, the court may, if it thinks fit, order that the item be forfeited to the Crown or disposed of as the court directs at the expense of the convicted person, and may order that the person pay any reasonable costs incurred by the Commissioner of Police or the chief executive in retaining the item.

Section 29L: inserted, on 15 December 2007, by section 14 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 29L: amended, on 1 October 2012, by section 230(6)(a) of the Search and Surveillance Act 2012 (2012 No 24).

Section 29L: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 29L(a): repealed, on 1 October 2012, by section 230(6)(b) of the Search and Surveillance Act 2012 (2012 No 24).

Section 29L(b): repealed, on 1 October 2012, by section 230(6)(b) of the Search and Surveillance Act 2012 (2012 No 24).

Section 29L(c): repealed, on 1 October 2012, by section 230(6)(b) of the Search and Surveillance Act 2012 (2012 No 24).

Enforcement

30 Customs and Excise Act 1996 to apply to prohibited exports

- (1) All the provisions of the Customs and Excise Act 1996, and any regulations made under that Act, that apply to prohibited exports apply to the export of any dairy products in contravention of this Act in all respects as if the export of those dairy products were prohibited under Part 5 of the Customs and Excise Act 1996.
- (2) The penalty for an offence against section 209(1)(b) of the Customs and Excise Act 1996 is a fine not exceeding \$200,000 if the offence is in respect of the export of any dairy products in contravention of this Act.

Compare: 1999 No 97 s 27

31 Offences

- (1) Every person commits an offence against this Act and is liable on conviction to a fine not exceeding \$200,000 who exports a dairy product contrary to section 23.
- (2) Every person commits an offence against this Act, and is liable on conviction to the following fines, who does not provide the information or document required under section 29G:
 - (a) a fine not exceeding \$200,000; and
 - (b) a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.
- (3) Every person commits an offence against this Act, and is liable for the following, who provides a false declaration in relation to milk collection data contrary to Schedule 5B:
 - (a) a declaration by a court of competent jurisdiction that the person is not eligible for further allocations of export licences for a period determined by the court; and
 - (b) a fine not exceeding \$200,000 or a term of imprisonment not exceeding 3 months, or both.

Compare: 1996 No 40 ss 13, 15; 1999 No 97 s 28

Section 31(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 31(2): added, on 15 December 2007, by section 15 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 31(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 31(3): added, on 15 December 2007, by section 15 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

32 Strict liability

- (1) In any proceedings for an offence under section 31, it is not necessary for the prosecution to prove that the defendant intended to commit the offence.
- (2) This section does not limit section 239(4) of the Customs and Excise Act 1996 if proceedings are taken for an offence under that Act.

Compare: 1996 No 88 s 240; 1999 No 97 s 29

33 Defence available

- (1) It is a defence in any proceedings for an offence under section 31 if the defendant proves that—
 - (a) the contravention was due to an event or cause beyond the control of the defendant, including natural disaster, mechanical failure, or sabotage; and
 - (b) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) A defendant is not, without leave of the court, entitled as part of a defence provided by this section to rely on any of the matters specified in subsection (1)(a) unless the defendant has, not later than 7 working days before the date on which the hearing of the proceedings commences, served on the prosecutor a notice in writing identifying the event or cause relied on by the defendant.

Compare: 1996 No 88 s 241; 1999 No 97 s 30

Section 33(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

34 Liability of companies and persons for actions of agents or employees

- (1) Any act or omission on behalf of a person other than a body corporate by—
 - (a) an agent or employee of that person; or
 - (b) any person at the direction or with the consent or agreement, whether express or implied, of any person referred to in paragraph (a),—is treated, for the purpose of this subpart, also as the act or omission of the first-mentioned person.
- (2) Any act or omission on behalf of a body corporate by—
 - (a) a director, agent, or employee of that body corporate; or
 - (b) any other person at the direction or with the consent or agreement, whether express or implied, of any person referred to in paragraph (a)—is treated, for the purpose of this subpart, also as the act or omission of the body corporate.

- (3) However, if proceedings are brought under section 31 in respect of an act or omission under subsection (1) or subsection (2), it is a good defence if the defendant proves,—
- (a) in the case of a natural person (including a partner in a firm), that—
 - (i) he or she did not know nor could reasonably be expected to have known that the offence was to be or was being committed; or
 - (ii) he or she took all reasonable steps to prevent the commission of the offence; and
 - (b) in the case of a body corporate, that—
 - (i) neither the directors nor any person involved in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed; or
 - (ii) the body corporate took all reasonable steps to prevent the commission of the offence; and
 - (c) in all cases, that the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.
- (4) For the purposes of this section,—
- (a) a person may act as an agent of another person or body corporate whether or not the first-mentioned person is employed by the other person or body corporate and whether or not he or she is acting for reward:
 - (b) any agent or employee of a person acting as an agent is treated as also acting as an agent for the other person or body corporate referred to in paragraph (a).

Compare: 1996 No 88 s 245; 1999 No 97 s 31

35 Liability of directors and managers

- (1) If a body corporate commits an offence under section 31, every director, and every person concerned in the management of the body corporate, also commits an offence under that section if it is proved that—
- (a) the act or omission that constituted the offence took place with the director's or person's authority, permission, or consent; or
 - (b) the director or person knew or should have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.
- (2) Every person to whom subsection (1) applies is liable on conviction to the fine specified in section 31.
- (3) A person may be convicted of the offence even though the body corporate has not been charged with that offence or a similar offence.

Compare: 1996 No 88 s 246; 1999 No 97 s 31

Section 35(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

36 Presumption as to authority

A return, record, transaction, form, application, or other information purporting to be completed, kept, or provided by, or on behalf of, any person is, for the purpose of this subpart, treated as having been completed, kept, or provided by that person unless the contrary is proved.

Compare: 1996 No 88 s 247; 1999 No 97 s 31

37 No Crown liability

The Crown is not liable to any person for—

- (a) any termination or amendment of tariff quotas, however caused; or
- (b) any reduction, expiry, revocation, or reversion of export licences under this subpart; or
- (c) any reduction in the value of export licences, however caused.

38 Infringement actionable by licensee

- (1) The export of dairy product to a designated market in breach of section 23 is actionable by the holder of an export licence in respect of the export of that product to that market.
- (2) No proceedings may be brought under subsection (1) in respect of the export of any dairy product unless the Customs administration or other authority responsible for the administration of the tariff quota in the market to which the specific product has been exported has treated, or has determined (whether provisionally or finally) to treat, that specific product as falling within the relevant designated market.
- (3) In proceedings under subsection (1), the court may award any relief by way of damages, injunctions, accounts, or otherwise that the court considers appropriate in the circumstances.
- (4) In proceedings under subsection (1), the court may give any directions it thinks just in respect of the joinder of any person having concurrent rights of action under subsection (1) in respect of the alleged breach.

Compare: 1962 No 33 s 24(1); 1994 No 143 ss 120, 124; 1999 No 97 s 33

39 Unjustified proceedings

- (1) If a person brings proceedings under section 38, a court may, on the application of any person against whom the proceedings are brought,—
 - (a) make a declaration that the bringing of proceedings was unjustified;
 - (b) on making a declaration, make an order for the payment of damages for any loss suffered by the person against whom the proceedings are brought.

- (2) A court must not grant relief under this section if the person who brought the proceedings proves that the acts in respect of which proceedings were brought constituted a breach of section 23.
- (3) Nothing in this section makes a barrister or solicitor of the High Court of New Zealand liable to any proceedings under this section in respect of any act done in his or her professional capacity on behalf of a client.

Compare: 1994 No 116 s 40; 1994 No 143 s 130; 1999 No 97 s 34

Notice of international obligations

40 Notice of international obligations

- (1) The Minister of the Crown who (under the authority of any warrant or with the authority of the Prime Minister) is in charge of international trade may at any time give to any exporter to a designated market a written notice specifying—
 - (a) a particular international obligation of New Zealand; and
 - (b) an element of the performance of the exporter's functions or the exercise of the exporter's powers to which, in the Minister's opinion, the obligation is relevant.
- (2) The exporter to whom the notice is given is under a legal duty to ensure that its performance or the exercise of the element is consistent with the obligation until the notice is revoked.

Supply of information

41 Minister may require information

- (1) Any holder of an export licence must supply to the Minister any information relating to designated markets that the Minister considers is relevant to the purpose in section 21(1) and that the Minister from time to time requests in writing.
- (2) Subsection (1) applies only to information that is in the person's possession or that the person can obtain without unreasonable difficulty or expense.
- (3) Every person commits an offence who fails, without reasonable excuse, to comply with a request under subsection (1) and is liable on conviction to a fine not exceeding \$200,000 and, if the offence is a continuing one, to further fines not exceeding \$10,000 for every day or part of a day during which the offence is continued.

Section 41(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

42 Disclosure of information

- (1) The chief executive (or any officer of his or her Ministry authorised in that behalf) and the Comptroller of Customs (or any officer of Customs authorised in that behalf) may, for the purpose of the administration of this Act or the Dairy

Industry Act 1952 or the Customs and Excise Act 1996, disclose to each other, on request, information on exporters of dairy products and dairy products exported or proposed to be exported.

- (2) Information obtained under subsection (1) must not be disclosed except—
 - (a) to the persons authorised under that subsection; or
 - (b) for the purpose of any proceedings that have been commenced or that are reasonably in contemplation and that are connected with a matter in relation to which those persons perform their duties.
- (3) No obligation as to secrecy or other restriction on the disclosure of information imposed by any enactment or otherwise prevents a disclosure under this section.

Subpart 4—Livestock Improvement Corporation Limited and core database

43 Overview

- (1) Sections 44 to 61 describe the procedure by which LIC will be restructured into a co-operative company owned by purchasers of LIC products and services.
- (2) Sections 62 to 65A contain regulation-making powers relating to herd testing, the provision of information to the core database, access to the core database, disclosure of information by LIC, and regulations relating to a dairy industry entity other than LIC.
- (3) Sections 66 to 69 provide for information to be supplied to the chief executive, offences, and deeming herd testing regulations to be made under this Act.

Section 43(2): substituted, on 15 December 2007, by section 16 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Restructuring plan for LIC

44 Restructuring plan

[Repealed]

Section 44: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

45 Contents of restructuring plan

[Repealed]

Section 45: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

46 Share allocation plan

[Repealed]

Section 46: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

47 Constitution must provide for retention of core database

The LIC board must ensure that the constitution in the restructuring plan requires LIC to retain the core database.

48 Constitution must restrict who may hold shares

- (1) The LIC board must ensure that the constitution in the restructuring plan 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 the constitution in the restructuring plan 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 subsection (1) does not prevent—
 - (a) shareholders continuing to hold shares until surrender, in accordance with the provision in the constitution required by subsection (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.

49 Constitution must impose maximum voting rights

- (1) The LIC board must ensure that the constitution in the restructuring plan 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 the constitution in the restructuring plan 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.

50 Constitution must provide for postal voting

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

51 Minister's consent needed to change certain provisions of constitution

The provisions of the constitution of LIC referred to in sections 47 to 50 may not be amended or revoked without the written consent of the Minister.

52 Corporate form

- (1) The LIC board must ensure that, under the restructuring plan, LIC becomes a company registered under Part 2 of the Co-operative Companies Act 1996.
- (2) 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.
- (3) Subsection (2) is additional to the requirements in section 12 of the Co-operative Companies Act 1996.

53 Application for registration of co-operative company

[Repealed]

Section 53: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Minister approves restructuring plan

[Repealed]

Heading: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

54 LIC board must give restructuring plan to Minister

[Repealed]

Section 54: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

55 Approval of restructuring plan

[Repealed]

Section 55: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

56 Revision of restructuring plan

[Repealed]

Section 56: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

57 Approval of revised restructuring plan

[Repealed]

Section 57: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

58 Failure to submit restructuring plan

[Repealed]

Section 58: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

*Notification to prospective shareholders**[Repealed]*

Heading: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

59 Notification to prospective shareholders*[Repealed]*

Section 59: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

*Implementation of restructuring plan***60 Implementation of restructuring plan***[Repealed]*

Section 60: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

61 Employees

For the avoidance of doubt,—

- (a) the restructuring of LIC under this subpart does not affect any employment agreement that is applicable to LIC; and
- (b) each employee of LIC continues to be an employee of LIC and, for the purposes of every enactment, law, award, determination, contract, and agreement relating to the employment of the employee, his or her employment agreement is unbroken and the period of his or her service with LIC, and every other period of service that is recognised by LIC as his or her continuous service, continues to be recognised; and
- (c) the terms and conditions of the employment of each employee with LIC are (until varied) identical to the terms and conditions of his or her employment before the restructuring and are capable of variation in the same manner; and
- (d) an employee is not entitled to receive any payment or other benefit by reason only of the restructuring.

Compare: 1999 No 97 s 38

*Miscellaneous***62 Regulations relating to herd testing and provision of information to core database**

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) prohibiting herd testing except by persons or classes of persons, and in circumstances, specified in the regulations:

- (b) providing for the certification of herd testers or herd testing equipment, including—
 - (i) providing for the approval of persons to issue certifications:
 - (ii) providing for the criteria for, and terms and conditions of, certification:
 - (iii) providing for other matters related to certifications, including applications, procedures, auditing of herd testers against herd testing practice standards, and the keeping of registers:
- (c) requiring LIC to offer a nationwide herd testing service:
- (d) requiring LIC to charge uniform prices for its herd testing service within regions specified in the regulations:
- (e) specifying information that must be provided to LIC for entering into the core database, the persons who are required to provide it, the form in which it must be provided, and the time limits for its provision:
- (f) requiring LIC to retain information specified in the regulations in the manner prescribed in the regulations:
- (g) restricting the liability of the Crown for acts or omissions of persons approved to issue certifications.

63 Regulations relating to access to core database

- (1) 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) prohibiting LIC from entering into exclusive arrangements for access to data in the core database:
 - (b) providing for the establishment of a panel (comprising 2 or more persons) to—
 - (i) decide applications for access to data in the core database; and
 - (ii) determine other circumstances in which LIC must make data in the core database available (including, for example, at the request of persons who have supplied the information from which that data results):
 - (c) restricting LIC from making available data in the core database except—
 - (i) in accordance with a decision or determination of the panel; or
 - (ii) to the owner of the dairy herd to which the data relates:
 - (d) requiring the panel to grant an application for access, or to make a determination regarding access, to data in the core database only if it is satisfied that to do so is likely to be beneficial to the New Zealand dairy industry:
 - (e) if the panel is not satisfied that to do so is likely to be beneficial to the New Zealand dairy industry, enabling the panel to grant an application

for access, or to make a determination regarding access, to data in the core database only if the panel is satisfied that to do so would not be harmful to the New Zealand dairy industry:

- (f) providing for matters concerning the panel's functions, powers, members (including their appointment, removal, duties, and protection from liability), procedures, employees, administration, operation, and reporting requirements:
 - (g) allowing the panel to set terms and conditions (excluding LIC's charges) on which data in the core database may be made available including the form in which it must be made available and time limits for access:
 - (h) requiring LIC to comply with decisions of the panel (subject to payment of any charge for access set by LIC):
 - (i) prescribing fees that may be charged by the panel for applications for access, or the basis on which fees may be calculated:
 - (j) requiring LIC to pay a levy to the Minister in each financial year.
- (2) A levy order under subsection (1)(j) must specify the amount of the levy or the way the levy must be calculated.
 - (3) The Minister must calculate the amount of the levy so as to ensure that the costs of the panel (net of any application fees) are met fully from the levy.
 - (4) LIC must pay any levy required by regulations made under this section.
 - (5) The Minister must consult with LIC before making a recommendation under subsection (1)(j).
 - (6) The Minister may—
 - (a) deduct over-recoveries in respect of a financial year from the levy payable in subsequent financial years; or
 - (b) add under-recoveries in respect of a financial year to the levy payable in subsequent financial years.
 - (7) The amount of unpaid levy is recoverable in a court of competent jurisdiction as a debt due to the Crown.

64 General regulations relating to herd testing and core database

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) providing for the confidentiality of—
 - (i) information supplied to LIC for entry in the core database; and
 - (ii) data in the core database; and
 - (iii) information about applications for access:

- (b) providing for audits of LIC's compliance with any regulations made under section 62 or section 63 or this section and for matters related to the audit, including the auditor's powers:
- (c) prescribing offences for the breach of, or non-compliance with, any of those regulations:
- (d) prescribing penalties not exceeding \$20,000 for any offences prescribed under any of those regulations:
- (e) providing that a person is liable for damages for any loss or damage caused by that person's contravention of any of those regulations.

65 Regulations requiring disclosure of information by LIC

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) requiring LIC to publish, in the prescribed manner, information about the supply of data in the core database, that may include—
 - (i) LIC's pricing methodology and other terms and conditions:
 - (ii) LIC's procedures, including for complying with decisions of the panel, and for ensuring confidentiality:
- (b) prescribing the form of statutory declaration and who must provide it under section 66(4):
- (c) setting rules about when and for how long information must be disclosed.

65A Regulations relating to dairy industry entity other than LIC

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

Section 65A: inserted, on 15 December 2007, by section 17 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

66 Information to be supplied to chief executive

- (1) LIC or any other dairy industry entity nominated by the Crown to manage the core database must send a copy of the information that it is required to make publicly available by regulations under section 65 to the chief executive within 20 working days of making it publicly available.

- (2) The chief executive may request (in writing) information, statements, or reports from LIC or any other dairy industry entity nominated by the Crown to manage the core database to monitor LIC's or that other dairy industry entity's compliance with regulations made under section 65.
- (3) LIC or any other dairy industry entity nominated by the Crown to manage the core database must comply with a request made under subsection (2) within 20 working days of receiving the request or within any longer period allowed by the chief executive.
- (4) Information, statements, or reports supplied to the chief executive under this section must be verified by statutory declaration in the form and by the persons prescribed by regulations made under section 65(b).

Section 66(1): amended, on 15 December 2007, by section 18(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 66(2): substituted, on 15 December 2007, by section 18(2) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Section 66(3): amended, on 15 December 2007, by section 18(1) of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

67 Offences

- (1) Every person commits an offence against this section who—
 - (a) fails, without reasonable excuse, to comply with any information disclosure requirements prescribed in regulations made under section 65; or
 - (b) fails, without reasonable excuse, to comply with the requirements of section 66(1) or (3).
- (2) Every person commits an offence against this section who makes a false declaration under section 66(4) in relation to any statement, forecast, report, agreement, particulars, or information supplied under section 66(1) or (3).
- (3) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$200,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.
- (4) Every person who commits an offence against subsection (2) is liable on conviction to a fine not exceeding \$20,000.

Section 67(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 67(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

68 Database if LIC wound up

- (1) This section applies if—
 - (a) a liquidator or interim liquidator is appointed in respect of LIC under Part 16 of the Companies Act 1993; or

- (b) LIC is removed from the register of companies kept pursuant to section 360(1)(a) of the Companies Act 1993.
- (2) In that case, any interest of LIC in the core database reverts to the Crown until ongoing arrangements can be made for it to be taken over by a dairy industry body.

69 Herd Testing Regulations 1958 deemed to have been made under this Act

The Herd Testing Regulations 1958 (SR 1958/44) are deemed to have been made under this Act, and may be amended and revoked accordingly.

Subpart 5—Regulation of dairy markets and obligations of new co-op

Purpose and principles

70 Purpose

The purpose of this subpart is to promote the efficient operation of dairy markets in New Zealand.

71 Statement of principles

The intention of this subpart is to promote the following principles:

- (a) independent processors must be able to obtain raw milk, and other dairy goods and services, necessary for them to compete in dairy markets:
- (b) new co-op must accept applications by new entrants and shareholding farmers to supply it with milk, as shareholding farmers:
- (c) new co-op must not discriminate between new entrants and shareholding farmers whose circumstances are the same:
- (d) shareholding farmers who withdraw from new co-op, and cease or reduce supply, must receive their capital in new co-op without unreasonable delay:
- (e) the amount per unit of milk production paid, at a time, to new co-op to become a shareholding farmer must be the same as the amount per unit of milk production received, at the same time, from new co-op by a shareholding farmer who withdraws from new co-op.
- (f) *[Repealed]*

Section 71(f): repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

72 Overview

- (1) Sections 73 to 85 describe the obligation of new co-op to accept applications from new entrants and shareholding farmers to supply milk, as shareholding farmers.
- (2) Sections 86 to 93 describe circumstances when the commencement of supply of milk to new co-op may be deferred.

- (3) Sections 94 to 96 are exceptions to the obligation to accept applications.
- (4) Sections 97 to 105 describe the right of shareholding farmers to cease or reduce the supply of milk to new co-op as shareholding farmers.
- (5) Sections 106 to 109 regulate the supply of milk to new co-op.
- (5A) Sections 109A to 109J provide for the disapplication of specified provisions in this subpart (being provisions that relate to the requirement for new co-op to issue and accept the surrender of co-operative shares) if there is in place a regime for trading co-operative shares on a licensed market and there is established a fund (the new co-op fund) the securities of which are quoted on a licensed market.
- (5B) Sections 109K to 109M regulate the conduct of new co-op in relation to the trading of co-operative shares and the functioning of the new co-op fund.
- (6) *[Repealed]*
- (7) Sections 115 to 119 are regulatory powers concerning the supply of dairy goods or services, and the publication and supply of information.
- (8) Sections 120 to 133 empower the Commission to determine disputes arising under this subpart.
- (9) Section 134 provides for the imposition of a levy on new co-op to pay the costs of the Commission.
- (10) Sections 135 to 146—
 - (a) allocate responsibility for enforcing this subpart; and
 - (b) contain general provisions.
- (11) *[Repealed]*
- (12) *[Repealed]*

Section 72(5A): inserted, on 27 July 2012, by section 5 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 72(5A): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 72(5B): inserted, on 27 July 2012, by section 5 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 72(6): repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 72(11): repealed, on 20 February 2018, by section 6 of the Dairy Industry Restructuring Amendment Act 2018 (2018 No 2).

Section 72(12): repealed, on 20 February 2018, by section 6 of the Dairy Industry Restructuring Amendment Act 2018 (2018 No 2).

New co-op must accept supply

73 New co-op must accept application

- (1) New co-op must accept an application to become a shareholding farmer that is made by a new entrant in an application period.

- (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) New co-op must notify acceptance to the applicant within 15 working days of receipt of the application.
- (4) Sections 136 to 139 specify—
 - (a) how an application may be given; and
 - (b) when an application is made.

74 Commencement and terms of supply

- (1) If an application referred to in section 73 is made to new co-op 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.
- (2) Despite subsection (1), new co-op is not required to accept milk if the shareholding farmer fails to satisfy the applicable terms of supply.
- (3) New co-op may, in its discretion, accept an application made outside an application period from a dairy farmer, including a shareholding farmer, to supply milk as a shareholding farmer.

75 Application periods

- (1) New co-op must set an application period that is before the commencement of each season in which new entrants may apply to supply milk, and shareholding farmers may apply to increase the volume of milk supplied, as shareholding farmers.
- (2) As a minimum, an application period must span the dates 15 December in a year to 28 February in the next year.

76 Publication of application period

- (1) New co-op must publish details of each application period set by it under section 75,—
 - (a) in each of the daily newspapers published in Whangarei, Auckland, Hamilton, Rotorua, Hawke's Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin, and Invercargill; and
 - (b) on new co-op's website in an electronic form that is publicly accessible.
- (2) New co-op must publish details of an application period before the application period begins.
- (3) New co-op must publish the details under subsection (1)(a) as soon as practicable after those details are determined by new co-op.
- (4) Publication under subsection (1)(b) must be continuous throughout the application period.

77 Price of co-operative share

- (1) New co-op must set a price of a co-operative share to apply from the beginning of each application period.
- (2) New co-op may amend the price set under subsection (1) throughout an application period.
- (3) An amendment to the price set under subsection (1) takes effect on the day after the day it is published under section 80.
- (4) New co-op must set a June price for a co-operative share to apply as at 1 June in each season.

Section 77: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

77A Price must be fair value

The price of a co-operative share set by new co-op under section 77(1) must be fair value calculated by using the following formula:

$$(\text{assets} - \text{debts}) \div \text{shares} = \text{price}$$

where—

assets means the present value of the forecast free cash flows expected to be generated from the operation of new co-op's assets; and

debts means the aggregate fair market value of new co-op's interest-bearing debt; and

shares means the total number of co-operative shares on issue.

Section 77A: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 77A: inserted, on 27 July 2012, by section 6 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

77B When section 77A first applies

Section 77A first applies—

- (a) on and from the date specified by an Order in Council made under section 109G(2); or
- (b) on 31 December 2013 if, before 31 December 2013, no Order in Council has been made under section 109B.

Section 77B: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 77B: inserted, on 27 July 2012, by section 6 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

78 Peak note price

[Repealed]

Section 78: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

79 Co-operative share standard

- (1) New co-op must set a co-operative share standard at the beginning of each application period to apply from the beginning of the next season.
- (2) New co-op may not amend the co-operative share standard set under subsection (1) until the beginning of the next application period.

Section 79: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 79 heading: amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 79(1): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 79(2): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

80 Publication of prices and standards

- (1) New co-op must ensure that the following prices and standards are published on or before the first day of each application period:
 - (a) the price of a co-operative share set at the beginning of the application period:
 - (b) *[Repealed]*
 - (c) the co-operative share standard set at the beginning of the application period.
 - (d) *[Repealed]*
- (2) New co-op must ensure that the price of a co-operative share is published each time it is amended.
- (3) New co-op must ensure that the June price is published as soon as practicable after it is set under section 77(4).
- (4) New co-op must comply with subsections (1) to (3) by publishing the information—
 - (a) once in each of the daily newspapers published in Whangarei, Auckland, Hamilton, Rotorua, Hawke's Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin, and Invercargill; and
 - (b) on new co-op's website in an electronic form that is publicly accessible in the following manner:
 - (i) for information required to be published by subsections (1) and (2), continuously throughout the application period:
 - (ii) for information required to be published by subsection (3), continuously throughout the season to which it applies.

Section 80: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 80(1)(b): repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 80(1)(d): repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

81 Requirements applying to co-operative shares for applications in application period

- (1) The price of a co-operative share issued to a new entrant or a shareholding farmer in response to an application that new co-op is required by section 73 to accept is—
 - (a) the June price in the first season for the supply of milk to which the application relates if the new entrant or shareholding farmer elects to pay that price; or
 - (b) the default price if that election is not made.
- (2) An election under subsection (1)(a) must be made with the application from the new entrant or shareholding farmer.
- (3) The co-operative share standard that applies to a new entrant or a shareholding farmer who makes an application under section 73 that new co-op is required to accept is the co-operative share standard published at the beginning of the application period in which the application is made.

Section 81: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 81 heading: amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 81(3): replaced, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

82 Requirements applying to co-operative shares for applications outside application period

- (1) The price of a co-operative share issued to a new entrant or a shareholding farmer in response to an application to which section 74(3) applies is the June price in the first season for the supply of milk to which the application relates.
- (2) The co-operative share standard that applies to a new entrant or a shareholding farmer who makes an application to which section 74(3) applies is the co-operative share standard published at the beginning of the application period in the season immediately before the first season for the supply of milk to which the application relates.
- (3) *[Repealed]*

Section 82: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 82 heading: amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 82(2): replaced, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 82(3): repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

83 Restrictions on payments

New co-op must not require payment from a new entrant or a shareholding farmer for accepting milk supply as a shareholding farmer other than payment to purchase co-operative shares.

Section 83: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 83: amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

84 Deposit restriction

- (1) This section regulates deposits payable by new entrants or shareholding farmers who apply under section 73.
- (2) New co-op must not require a new entrant or a shareholding farmer to pay a deposit for the purchase of co-operative shares—
 - (a) that exceeds 20% of the total amount payable for the co-operative shares; and
 - (b) before the earlier of—
 - (i) 15 working days from the notification of acceptance of an application; or
 - (ii) the last day of the application period in which the application is made.
- (3) The total amount payable for the co-operative shares referred to in subsection (2)(a) is calculated based on—
 - (a) the published price on the date that the application under section 73 is made; and
 - (b) the co-operative share standard published at the beginning of the application period in which the application is made.

Section 84: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 84(2): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 84(2)(a): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 84(3): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 84(3)(b): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

85 Balance of purchase price

- (1) This section regulates the timing of payment of the balance of the purchase price payable by a new entrant or a shareholding farmer who applies under section 73.

- (2) New co-op must not require a new entrant or a shareholding farmer to pay the balance (or part of it) of the purchase price for the co-operative shares before 1 June in the first season for the supply of milk to which the application relates.

Section 85: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 85(2): replaced, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Supply of milk deferred if capacity constraint notice issued

86 Publishing capacity constraint notices

- (1) New co-op may publish a capacity constraint notice for a geographical area specified in the notice if, in new co-op's reasonable opinion, processing the expected increase in the volume of milk supplied to new co-op from that area in the next season cannot be reasonably managed.
- (2) A capacity constraint notice—
- (a) must define clearly the geographical area to which it applies; and
 - (b) must specify the period in a season to which it applies; and
 - (c) must be published not later than the first day of the application period for the season to which the notice applies; and
 - (d) may not apply to more than 1 season.
- (3) Sections 87 to 93 apply while a capacity constraint notice applies to a geographical area.

87 Effect of capacity constraint notice on supply

- (1) New co-op must defer, until the end of the period specified in the capacity constraint notice, the commencement of the supply of milk that is the subject of applications that new co-op is required to accept under section 73 in the area to which the capacity constraint notice applies.
- (2) However, a subsequent capacity constraint notice is of no effect in relation to a supply of milk that has previously been deferred under subsection (1).
- (3) Despite subsection (1), new co-op may accept a supply of milk that is the subject of an application that new co-op is required to accept under section 73 earlier than the end of a period of deferral specified by new co-op under section 86(2).
- (4) Offers to accept supply of milk under subsection (3) must be made in the same order that applications to supply the milk were received by new co-op.

88 Effect of capacity constraint notice on purchase of co-operative shares

- (1) This section applies to a new entrant or a shareholding farmer who—
- (a) is in a geographical area to which a capacity constraint notice applies; and

- (b) applies in an application period.
- (2) The price of a co-operative share issued to a new entrant or a shareholding farmer to whom this section applies is—
 - (a) the June price in the first season for the supply of milk to which the application relates if the new entrant or shareholding farmer elects to pay that price; or
 - (b) the default price if that election is not made.
- (3) An election under subsection (2)(a) must be made with the application to which the supply relates.
- (4) The co-operative share standard that applies to a new entrant or a shareholding farmer to whom this section applies is,—
 - (a) if the new entrant or shareholding farmer makes an election under subsection (2)(a), the co-operative share standard published at the beginning of the application period immediately before the first season for the supply of milk to which the application relates; or
 - (b) if that election is not made, the co-operative share standard published at the beginning of the application period in which the application is made.

Section 88: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 88 heading: amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 88(4): replaced, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

89 Effect of change in co-operative share standard before supply commences if default price applies

- (1) This section applies if—
 - (a) a new entrant or shareholding farmer to whom section 88 applies commences supply of milk in a season later than the season immediately following the season in which the application was made; and
 - (b) the new entrant or shareholding farmer does not make an election under section 88(2)(a); and
 - (c) the co-operative share standard published by new co-op at the beginning of the application period immediately before the first season for the supply of milk to which the application relates is different from the co-operative share standard published by new co-op at the beginning of the application period in which the application was made.
- (2) If this section applies, the number of co-operative shares to be issued to the new entrant or shareholding farmer, and the amount payable for those co-operative shares, must be calculated as if—

- (a) the supply of milk to which the application relates commenced in the season immediately following the application period in which the application was made; and
- (b) co-operative shares were issued to the new entrant or shareholding farmer in relation to that supply; and
- (c) all changes to the co-operative share standard since the application was made were applied as if it were existing supply by a shareholding farmer.

Section 89: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 89 heading: amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 89(1)(c): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 89(2): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 89(2)(b): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 89(2)(c): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

90 Deposit if default price applies

- (1) This section applies to a new entrant or a shareholding farmer who is committed under section 88(2)(b) to pay the default price.
- (2) New co-op must not require a new entrant or a shareholding farmer to pay more than 2 deposits for the purchase of co-operative shares.
- (3) A first deposit—
 - (a) must not exceed 10% of the total amount payable for the co-operative shares; and
 - (b) must not be payable before the earlier of—
 - (i) 15 working days from notification of acceptance of an application; or
 - (ii) the last day of the application period in which the application is made.
- (4) A second deposit—
 - (a) must not exceed 10% of the total amount payable for the co-operative shares; and
 - (b) must not be payable earlier than the last day of the application period immediately before the first season for the supply of milk to which the application relates.
- (5) The total amount payable for the co-operative shares referred to in subsections (3)(a) and (4)(a) is calculated based on—

- (a) the published price on the date that the application is made; and
- (b) the co-operative share standard published at the beginning of the application period in which the application is made.

Section 90: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 90(2): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 90(3)(a): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 90(4)(a): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 90(5): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 90(5)(b): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

91 Balance of purchase price if default price applies

- (1) This section regulates the timing of payment of the balance of the purchase price by a new entrant or a shareholding farmer who is committed under section 88(2)(b) to pay the default price.
- (2) New co-op must not require a new entrant or a shareholding farmer to pay the balance (or part of it) of the purchase price for the co-operative shares before 1 June in the first season for the supply of milk to which the application relates.

Section 91: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 91(2): replaced, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

92 Deposit if June price elected

- (1) This section applies to a new entrant or a shareholding farmer who elects under section 88(2)(a) to pay the June price.
- (2) New co-op must not require a new entrant or a shareholding farmer to pay a deposit for the purchase of co-operative shares—
 - (a) that exceeds 20% of the total amount payable for the co-operative shares; and
 - (b) earlier than the last day of the application period immediately before the first season for the supply of milk to which the application relates.
- (3) The total amount payable for the co-operative shares referred to in subsection (2) is calculated based on the most recent published price and co-operative share standard on the date that the deposit is payable.

Section 92: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 92(2): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 92(2)(a): inserted, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 92(3): replaced, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

93 Balance of purchase price if June price elected

- (1) This section regulates the timing of payment of the balance of the purchase price by a new entrant or a shareholding farmer who elects under section 88(2)(a) to pay the June price.
- (2) New co-op must not require a new entrant or a shareholding farmer to pay the balance (or part of it) of the purchase price for the co-operative shares before 1 June in the first season for the supply of milk to which the application relates.

Section 93: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 93(2): replaced, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Exceptions

94 Minimal supply: first exception

New co-op may reject an application by a new entrant or a shareholding farmer if the supply of milk solids obtainable from milk to be supplied by the applicant in a season is less than 10 000 kilograms.

95 Transport costs: second exception

- (1) New co-op may reject an application by a new entrant if the cost of transporting the milk of the new entrant exceeds the highest cost of transporting another shareholding farmer's milk.
- (2) In subsection (1) and this subsection,—

cost of transporting the milk of the new entrant is the lowest cost practically available to new co-op for transporting 1 000 litres of that milk to a factory

highest cost of transporting another shareholding farmer's milk is the highest cost incurred by new co-op of transporting 1 000 litres of milk to the same factory from any of the shareholding farmers whose milk is routinely transported to that factory in the season in which the application is made.
- (3) In subsection (2), **factory** means a facility operated by new co-op that—
 - (a) has a capacity to store at least 50 000 litres of milk; and
 - (b) has operated for more than 120 days in the season before the season in which the application is made.
- (4) New co-op must disclose the evidence on which it relies to reject an application, on demand, to—
 - (a) the new entrant whose application is rejected; and
 - (b) the Commission.

96 Order in Council may terminate second exception

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare that section 95 does not apply to a geographical area specified in the order from a date specified in the order.
- (2) The Minister must not make a recommendation under subsection (1) unless the Minister is satisfied that new co-op pays shareholding farmers in the geographical area different amounts for milk based on the different costs of transporting that milk.

New co-op must allow withdrawal

97 Right to withdraw

- (1) A shareholding farmer who wants to cease or reduce the supply of milk as a shareholding farmer to new co-op may give a notice of withdrawal.
- (2) The right of a shareholding farmer to cease or reduce the supply of milk as a shareholding farmer is subject to the terms governing the relationship between new co-op and the shareholding farmer.

98 Surrender value of co-operative shares for withdrawal notified in application period

- (1) If a shareholding farmer gives a notice of withdrawal to new co-op in an application period, the shareholding farmer must receive—
 - (a) a surrender value for the relevant co-operative shares which is either—
 - (i) the June price immediately following the application period in which the notice of withdrawal is given if the shareholding farmer elects to receive that price, multiplied by the number of shares; or
 - (ii) the default price if that election is not made, multiplied by the number of shares; and
 - (b) *[Repealed]*
- (2) An election under subsection (1)(a)(i) must be made with the notice of withdrawal.

Section 98: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 98 heading: amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 98(1)(b): replaced, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

99 Surrender value of co-operative shares for withdrawal notified outside application period

If new co-op accepts a notice of withdrawal from a shareholding farmer outside an application period, new co-op must pay the shareholding farmer a surrender value for the relevant co-operative shares that is the June price immediately

following the date that the notice of withdrawal is given multiplied by the number of shares.

Section 99: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 99: replaced, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

100 Effect of change in co-operative share standard before withdrawal

- (1) This section applies if the co-operative share standard published by new co-op at the beginning of an application period in a season in which a shareholding farmer gives a notice of withdrawal is different from the co-operative share standard published by new co-op at the beginning of the preceding application period.
- (2) If this section applies, the amount that a shareholding farmer must receive under section 98(1) or section 99, as the case may be, must be calculated after applying all changes to the co-operative share standard as if the shareholding farmer had not given the notice of withdrawal.

Section 100: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 100 heading: amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 100(1): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 100(2): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

101 Payment on withdrawal

- (1) New co-op must ensure that a shareholding farmer who ceases or reduces supply as a shareholding farmer under section 97 receives the surrender value of the relevant co-operative shares notes within 30 working days after the end of the season in which the notice of withdrawal is given.
- (2) New co-op must pay or satisfy the surrender amount payable to a withdrawing shareholding farmer by—
 - (a) payment in cash; or
 - (b) issuing capital notes; or
 - (c) a combination of both cash and capital notes.
- (3) However, new co-op may satisfy all or part of the surrender amount referred to in subsection (1) by issuing supply redemption rights, if the withdrawing shareholding farmer referred to in subsection (1) requests new co-op to do so.
- (4) New co-op may satisfy the surrender amount under subsection (2)(b) or (c) by issuing capital notes itself or by procuring a wholly-owned subsidiary to issue them.

Section 101: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 101(1): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

102 Capital notes

- (1) New co-op must ensure that the total market value of the capital notes issued to satisfy or partly satisfy a surrender amount is not less than the surrender amount to be satisfied by their issue.
- (2) The **total market value** of capital notes in subsection (1) is calculated using their **market price** which is the volume-weighted average sale price for all trades of the capital notes, through the electronic matching markets of all stock exchanges on which the capital notes are quoted, adjusted to remove the impact of any interest accrued on the capital notes, for the 1-month period immediately before the capital notes are issued.
- (3) New co-op may not issue capital notes under section 101 if,—
 - (a) during the month immediately before the capital notes are to be issued, capital notes of the same class as the capital notes to be issued have not been traded on a licensed market; or
 - (b) capital notes of the same class as the capital notes to be issued have not been quoted continuously on the licensed market for 6 months or more.

Section 102: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 102(3): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

103 Repurchase of capital notes by new co-op

- (1) This section applies if any of the following persons acquires or enters into an arrangement to acquire capital notes during the month immediately before new co-op issues capital notes under section 101 and the capital notes are the same as the capital notes issued:
 - (a) new co-op;
 - (b) an associated person of new co-op;
 - (c) a person with whom new co-op or an associated person of new co-op has an arrangement for an acquisition of those capital notes in that period.
- (2) The person to whom the capital notes are issued may require new co-op, by written notice to new co-op, to acquire some or all of those capital notes at any time within 6 weeks after their date of issue.
- (3) New co-op must repurchase capital notes under subsection (2)—
 - (a) by payment in cash; and
 - (b) at a price that is not less than 97.5% of the market price at which they were issued to the person; and

- (c) within 10 working days after receiving the written notice.
- (4) New co-op must, by notice in writing, no later than the day on which the capital notes are issued under section 101, advise every person to whom the capital notes are issued, of the following matters:
 - (a) that a person specified in paragraph (a) or paragraph (b) or paragraph (c) of subsection (1) acquired or entered into an arrangement to acquire the capital notes:
 - (b) that the recipient of the notice may require new co-op to acquire some or all of the capital notes issued to the person, in cash:
 - (c) the price at which the person may require new co-op to acquire the capital notes:
 - (d) the date by which the person must make the requirement under this section.

Section 103: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

104 Use of redeemable preference shares

- (1) This section applies if—
 - (a) the value of equities surrendered in a season minus the value of equities issued in that season exceeds 5% of the value of equities on issue on 31 May in the previous season; and
 - (b) new co-op's board considers and certifies that paying cash and issuing capital notes that exceed the 5% threshold described in paragraph (a) would materially and adversely affect new co-op's ability to implement its business plan.
- (2) If this section applies, new co-op may satisfy that part of the total value of equities surrendered that exceeds the 5% threshold referred to in subsection (1)(a) by—
 - (a) payment in cash; or
 - (b) issuing capital notes, subject to section 102 and section 103; or
 - (c) issuing redeemable preference shares; or
 - (d) a combination of cash, capital notes, and redeemable preference shares.
- (3) However, new co-op may satisfy all or part of any surrender amount that falls within the total value of equities covered by subsection (2) by issuing supply redemption rights if the withdrawing shareholding farmer requests new co-op to do so.
- (4) In subsection (1)(a), **equities** means co-operative shares and supply redemption rights in new co-op.

Section 104: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Section 104(2): amended, on 15 December 2005, by section 3(1) of the Dairy Industry Restructuring Amendment Act 2005 (2005 No 99).

Section 104(3): amended, on 15 December 2005, by section 3(2) of the Dairy Industry Restructuring Amendment Act 2005 (2005 No 99).

105 Provisions concerning redeemable preference shares

New co-op must ensure that redeemable preference shares issued by it under section 104—

- (a) are tradeable; and
- (b) have total face values that at least equal the surrender amount for which they are issued; and
- (c) bear a dividend at a rate that is 50% or more of the interest rate on capital notes issued at the same time as, or most recently before, the redeemable preference shares; and
- (d) entitle the holder to accumulate unpaid dividends; and
- (e) are convertible, at the holder's election, at not less than their face values, into co-operative shares that the holder is entitled to hold under new co-op's constitution at a time specified by new co-op, but not later than 3 years after their issue; and
- (f) are redeemable, at the holder's election, for cash or capital notes (as determined by new co-op) at a time specified by new co-op, but not later than 3 years after their issue.

Section 105: this section does not apply on and from 30 November 2012 because of section 109A and the Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345).

Regulation of milk supply

106 No discrimination between suppliers

- (1) New co-op must ensure that the terms of supply that apply to a new entrant—
 - (a) are the same as the terms that apply to a shareholding farmer in the same circumstances; or
 - (b) differ from the terms that apply to a shareholding farmer in different circumstances only to reflect the different circumstances.
- (2) New co-op must ensure that the terms and effect of financial products offered or issued in new co-op are the same for new entrants as for shareholding farmers.
- (3) In this section, **financial products** has the same meaning as in section 7 of the Financial Markets Conduct Act 2013.
- (4) New co-op must not treat a shareholding farmer who exercises an entitlement under this subpart any less favourably than a shareholding farmer who does not do so.

Section 106(2): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 106(3): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

107 Regulation of supply contracts for raw milk

- (1) New co-op must offer new entrants contracts for milk supply as shareholding farmers for 1 season.
- (2) New co-op may offer new entrants and shareholding farmers longer-term contracts for milk supply if new co-op complies with subsection (3).
- (3) New co-op must ensure that, at all times, 33% or a greater percentage of the milk solids produced within a 160 kilometre radius of any point in New Zealand—
 - (a) is supplied under contracts with independent processors; or
 - (b) is supplied under contracts with new co-op that—
 - (i) expire or may be terminated by the supplier at the end of the current season without penalty to the supplier; and
 - (ii) on expiry or termination, end all the supplier's obligations to supply milk to new co-op.
- (4) A requirement in a supply contract that the supplier give new co-op up to 3 months' notice to terminate the contract is not a penalty under subsection (3)(b)(i).

108 Right to supply independent processors

- (1) Shareholding farmers are entitled to allocate to independent processors up to 20% of their weekly production throughout the season.
- (2) Subsection (1) does not entitle shareholding farmers to allocate to independent processors in any month other than October a higher percentage of their weekly production than their average weekly allocation to independent processors in October.
- (3) A shareholding farmer who exercises the entitlement in subsection (1) must give new co-op 20 working days' notice of the arrangements for the collection of milk allocated to independent processors.
- (4) If new co-op requires separate storage, milk supplied to independent processors must be stored in milk vats that are separate from milk vats that store milk for supply to new co-op.
- (5) This section does not apply to milk with a unique feature that is the subject of a right, privilege, or entitlement that is conferred, or acknowledged as valid, by or under the Patents Act 2013.

Section 108(5): amended, on 13 September 2014, by section 249 of the Patents Act 2013 (2013 No 68).

109 Sale of milk vats

- (1) A shareholding farmer who withdraws totally from new co-op may require new co-op to sell, and new co-op must sell, a milk vat situated on the withdrawing shareholding farmer's farm to—
 - (a) the shareholding farmer; or
 - (b) an independent processor, if the independent processor has agreed with the shareholding farmer to buy the milk vat.
- (2) A shareholding farmer must notify new co-op of a requirement to sell a milk vat under subsection (1) with the relevant notice of withdrawal.
- (3) A sale of a milk vat by new co-op under this section must be at market value.
- (4) If new co-op and the buyer of the milk vat do not agree on the market value of the milk vat within 10 working days of receipt by new co-op of the notification under subsection (2), the following provisions apply:
 - (a) new co-op and the buyer will attempt to agree on a valuer within a further 10 working days:
 - (b) if new co-op and the buyer do not agree on a valuer within that time, the New Zealand Property Institute Incorporated must appoint a valuer:
 - (c) a valuer appointed under paragraph (a) or paragraph (b) acts as an expert:
 - (d) the valuer's decision is binding on new co-op and the buyer, and is not appealable:
 - (e) the costs of valuing a milk vat and appointing a valuer must be shared equally by new co-op and the buyer.
- (5) New co-op must not require payment for a milk vat sold under this section before the end of the season in which the shareholding farmer gives notice of withdrawal to new co-op.

Trading among farmers

Heading: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

109A Subpart 5 of Part 2 provisions do not apply

The following provisions (the specified subpart 5 provisions) do not apply on and from a date specified by an Order in Council made under section 109B:

- (a) sections 77 to 85:
- (b) sections 88 to 93:
- (c) sections 98 to 105.

Section 109A: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

109B Order in Council specifying date on and from which specified subpart 5 provisions do not apply

The Governor-General may by Order in Council made on the recommendation of the Minister specify a date on and from which the specified subpart 5 provisions do not apply.

Section 109B: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

109C When Minister must recommend that Order in Council be made

The Minister must recommend that an Order in Council be made under section 109B if the Minister is satisfied, on the basis of written confirmation by the chief executive, that the preconditions under section 109D for making the order have been met.

Section 109C: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

109D Preconditions for making Order in Council

- (1) The preconditions for making an Order in Council under section 109B are the following:
 - (a) co-operative shares are quoted on a licensed market that provides for the shares to be traded by shareholding farmers; and
 - (b) there is established a fund (the new co-op fund) that satisfies the following requirements:
 - (i) the securities issued in respect of the fund (the new co-op fund securities)—
 - (A) are quoted on a licensed market that provides for the securities to be traded by the public; and
 - (B) entitle the holders of those securities to receive distributions equal to the distributions they would receive if they were holders of co-operative shares; and
 - (ii) the rules of the fund permit shareholding farmers to exchange co-operative shares for an equal number of new co-op fund securities, and vice versa; and
 - (iii) the manager of the fund has issued, or has entered into binding obligations to issue, new co-op fund securities for consideration of not less than \$500 million; and
 - (c) new co-op has given a notice to the chief executive that complies with section 109E.
- (2) The chief executive, subject to being satisfied as to the sufficiency and authenticity of the certificate in question,—
 - (a) must confirm to the Minister that the precondition in subsection (1)(a) has been met if the chief executive has received from the licensed mar-

ket operator in question a certificate verifying the matters set out in subsection (1)(a):

- (b) must confirm to the Minister that the precondition in subsection (1)(b) has been met if the chief executive has received from the board of new co-op a certificate verifying the matters set out in subsection (1)(b).

Section 109D: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 109D(1)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 109D(1)(b)(i)(A): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 109D(2)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

109E Requirements for notice given by new co-op to chief executive

For the purposes of section 109D(1)(c), the notice given by new co-op to the chief executive must—

- (a) be in writing; and
- (b) request that an Order in Council be made under section 109B; and
- (c) specify the date on and from which the specified subpart 5 provisions should not apply.

Section 109E: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

109F Notice by new co-op to chief executive triggering repeal of section 109A

- (1) New co-op must without delay give written notice to the chief executive if—
 - (a) co-operative shares are no longer able to be traded on a licensed market by shareholding farmers (other than in the case of a temporary halt in, or suspension of, trading in the shares); or
 - (b) new co-op fund securities have ceased to be quoted on a licensed market that provides for the securities to be traded by the public; or
 - (c) the new co-op fund has been wound up; or
 - (d) an event occurs that creates a binding obligation to wind up the new co-op fund including, without limitation,—
 - (i) an order by a court, a regulatory body, or any other person; or
 - (ii) a resolution by the holders of new co-op fund securities or by any other person; or
 - (iii) an event specified in the contractual arrangements relating to the new co-op fund.
- (2) The notice must be accompanied by the evidence relied upon by new co-op for asserting that subsection (1) applies.

- (3) If new co-op contravenes this section, it commits an offence and is liable on conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for every day that the offence continues.

Section 109F: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 109F(1)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 109F(1)(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 109F(3): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

109G Repeal of section 109A

- (1) Section 109A is repealed on and from a date specified by an Order in Council made under subsection (2).
- (2) The Governor-General may by Order in Council made on the recommendation of the Minister specify a date on and from which section 109A is repealed.
- (3) The date specified in the order must be the later of 9 months after the order is made and the beginning of the next application period.

Section 109G: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

109H Revocation of order made under section 109G

- (1) This section applies to the revocation, before the specified date, of an order made under section 109G.
- (2) The Governor-General may, before the specified date, by Order in Council revoke an order made under section 109G if, on the date of revocation,—
- (a) an order could have been made under section 109B; and
 - (b) for the purpose of paragraph (a), the requirements of sections 109C and 109D with all necessary modifications have been satisfied.
- (3) When an order is made under subsection (2), the fund that for the purposes of making the order satisfied the requirements of section 109D(1)(b) is for the purpose of this Act and any enactment amended by this Act the new co-op fund.
- (4) In this section, **specified date** means the date specified in the order made under section 109G.

Section 109H: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

109I Conditions of making order under section 109G(2)

- (1) An Order in Council made under section 109G(2) may be made only on the recommendation of the Minister under subsection (2).

- (2) The Minister must recommend that the order be made if the Minister is satisfied, on written confirmation from the chief executive, that—
- (a) co-operative shares are no longer able to be traded on a licensed market by shareholding farmers (other than in the case of a temporary halt in, or suspension of, trading in the shares); or
 - (b) new co-op fund securities have ceased to be quoted on a licensed market that provides for the securities to be traded by the public; or
 - (c) the new co-op fund has been wound up; or
 - (d) an event has occurred that creates a binding obligation to wind up the new co-op fund including, without limitation,—
 - (i) an order by a court, a regulatory body, or any other person; or
 - (ii) a resolution by the holders of new co-op fund securities or by any other person; or
 - (iii) an event specified in the contractual arrangements relating to the new co-op fund.
- (3) The chief executive must confirm that subsection (2)(a), (b), (c), or (d) applies if the chief executive—
- (a) has received a notice from new co-op under section 109F; or
 - (b) is satisfied on reasonable grounds, after making due inquiry, that subsection (2)(a), (b), (c), or (d) applies; or
 - (c) has received a response from new co-op under section 109J(3)(b); or
 - (d) has not obtained a response from new co-op, within 5 working days after service, to a notice given under section 109J.

Section 109I: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 109I(2)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 109I(2)(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

109J Chief executive may give new co-op notice requiring verification

- (1) At any time while the specified subpart 5 provisions do not apply, the chief executive may give new co-op a notice that complies with subsection (2) requiring new co-op to verify in writing, with documentary proof, that—
- (a) co-operative shares continue to be quoted on a licensed market that provides for the shares to be traded by shareholding farmers;
 - (b) new co-op fund securities continue to be quoted on a licensed market that provides for the securities to be traded by the public;
 - (c) the new co-op fund has not been wound up;

- (d) no event has occurred that creates a binding obligation to wind up the new co-op fund.
- (2) The notice must be—
 - (a) in writing; and
 - (b) dated; and
 - (c) served on new co-op at its address for service.
- (3) New co-op must respond to the notice not later than 5 working days after service of the notice by—
 - (a) verifying the matter in question; or
 - (b) if it is unable to verify it, stating that it is unable to do so.
- (4) If new co-op contravenes subsection (3), it commits an offence and is liable on conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues.

Section 109J: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 109J(1)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 109J(1)(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 109J(4): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

109K When sections 109L to 109N apply

Sections 109L to 109N apply only while the specified subpart 5 provisions do not apply.

Section 109K: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

109L New co-op's obligations in relation to market in co-operative shares and to new co-op fund

- (1) New co-op must ensure that there are 1 or more market makers in co-operative shares operating during the periods of operation of the licensed market on which the co-operative shares are quoted.
- (2) New co-op must ensure that the holders of new co-op fund securities have the following rights:
 - (a) subject to section 161A(2), the right to appoint and remove the manager of the fund; and
 - (b) the right to appoint and remove a majority of the board of the manager of the fund; and
 - (c) the right to vote on resolutions proposed at general meetings of the fund; and

- (d) the right to pass a resolution for the liquidation of the fund.

Section 109L: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 109L(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

109M Restrictions on new co-op

- (1) Subsection (2) applies to conduct by new co-op that restricts, prevents, or deters—
- (a) trading in co-operative shares; or
 - (b) participation by shareholding farmers, new entrants, and market makers in co-operative shares in trading in co-operative shares or new co-op fund securities; or
 - (c) the ability of shareholding farmers and new entrants to exchange co-operative shares for new co-op fund securities, and vice versa; or
 - (d) the liquidity of the market for co-operative shares or for new co-op fund securities.
- (2) New co-op must not engage in any conduct to which this subsection applies for the purpose of restricting, preventing, or deterring—
- (a) a new entrant from becoming a shareholding farmer pursuant to an application under section 73(1); or
 - (b) a shareholding farmer from increasing the volume of milk supplied to new co-op pursuant to an application under section 73(2); or
 - (c) a shareholder farmer from ceasing or reducing the supply of milk to new co-op pursuant to a notice of withdrawal under section 97(1).

Section 109M: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

109N Expiry of sections 109A to 109M

Sections 109A to 109M expire and are repealed,—

- (a) if an Order in Council has been made under section 109G(2), on the date specified in that order; or
- (b) if no Order in Council has been made under section 109B by 31 December 2013, on that date.

Section 109N: inserted, on 27 July 2012, by section 7 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Transitional provisions for Tātua and Westland

[Repealed]

Heading: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

110 Purpose

[Repealed]

Section 110: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

111 Application

[Repealed]

Section 111: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

112 New co-op must supply information

[Repealed]

Section 112: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

113 New co-op must purchase produce if required

[Repealed]

Section 113: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

114 Terms of purchase of exiting company's produce

[Repealed]

Section 114: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Regulatory powers

115 Regulations relating to milk

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that—
 - (a) require new co-op to supply in New Zealand 1 or more of the following goods or services:
 - (i) components of milk:
 - (ii) products derived from milk:
 - (iii) transporting, processing, and packaging milk, components of milk, and products derived from milk; and
 - (b) do 1 or more of the following for 1 or more of the goods or services specified in paragraph (a):
 - (i) specify a price or prices for it or them:
 - (ii) specify a method or methods for determining a price or prices for it or them:
 - (iii) specify the terms of supply for it or them; and

- (ba) require new co-op to supply raw milk in New Zealand; and
- (bb) do 1 or more of the following for some or all of the raw milk:
 - (i) specify a price or prices for it:
 - (ii) specify a method or methods, which may include an auction or auctions or any other method at all, for determining a price or prices for it:
 - (iii) specify a method or methods, which may include an auction or auctions or any other method at all, for allocating it:
 - (iv) specify the terms of supply for it; and
- (bc) do some or all of the following for auctions of raw milk:
 - (i) specify what is auctioned:
 - (ii) specify how the auctions are held:
 - (iii) specify a date and time or a range of dates and times on which the auctions must be held:
 - (iv) specify who are eligible bidders at the auctions:
 - (v) allow the Minister to set a reserve or reserves for the auctions by referring to material not set out in the regulations or by any other means:
 - (vi) require the chief executive to hold the auctions or allow the chief executive to arrange for another person to hold the auctions on the chief executive's behalf:
 - (vii) require the chief executive to maintain a system or systems for holding the auctions or allow the chief executive to arrange for another person to maintain a system or systems for holding the auctions on the chief executive's behalf:
 - (viii) provide for the maintenance of the system or systems for holding the auctions:
 - (ix) allow the chief executive to require new co-op to reimburse the chief executive for the annual operating costs of the auctions:
 - (x) allow some or all of the details about matters referred to in subparagraphs (i) to (ix) to be prescribed by the Minister in 1 or more notices in the *Gazette*; and
- (c) limit, subject to subsection (2), the amount of goods or services described in paragraph (a) or (ba) that new co-op is required to supply, including different limitations for—
 - (i) different independent processors; and
 - (ii) different geographical areas; and
- (d) allow new co-op to require independent processors to give new co-op advance notice of their requirements for the goods or services to which

- regulations under paragraph (a) or (ba) apply, prescribe the maximum period of advance notice that it may require, and authorise new co-op to require buyers to buy the amount of goods or services specified in an advance notice; and
- (e) empower the Commerce Commission to fix a discount rate in calculating the price of goods or services regulated under this section; and
 - (f) require new co-op and independent processors to provide—
 - (i) periodic returns of milk solids collected from dairy farmers;
 - (ii) periodic forecasts of milk solids expected to be collected from dairy farmers; and
 - (g) authorise new co-op to perform obligations imposed by the regulations through an associated person.
- (2) Regulations made under subsection (1) must not require new co-op to supply a total amount of goods or services that exceeds, in the Minister's opinion, 5% of the amount of those goods or services produced by, or supplied to, new co-op, as the case may be.
- (2A) For the purpose of any regulations made under subsection (1), unless the context of the regulations otherwise requires, a body is an interconnected body of an independent processor if—
- (a) both the independent processor and the body are bodies corporate and would be treated as interconnected bodies corporate under section 2(7) of the Commerce Act 1986; or
 - (b) one or both of the independent processor and the body is a partnership (including a limited partnership) or an unincorporated joint venture and would be treated as interconnected bodies corporate under section 2(7) of the Commerce Act 1986 if the partnership or joint venture were incorporated as a company with shareholdings corresponding to the interests, including returns, of the partners in the partnership or participants in the joint venture.
- (3) A regulation under this section is not invalid because it leaves a matter or thing to be decided by a person.

Section 115 heading: amended, on 27 July 2012, by section 8(1) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 115(1)(a): substituted, on 9 April 2010, by section 4(1) of the Dairy Industry Restructuring (Raw Milk Pricing Methods) Act 2010 (2010 No 11).

Section 115(1)(b): substituted, on 9 April 2010, by section 4(1) of the Dairy Industry Restructuring (Raw Milk Pricing Methods) Act 2010 (2010 No 11).

Section 115(1)(ba): inserted, on 9 April 2010, by section 4(1) of the Dairy Industry Restructuring (Raw Milk Pricing Methods) Act 2010 (2010 No 11).

Section 115(1)(bb): inserted, on 9 April 2010, by section 4(1) of the Dairy Industry Restructuring (Raw Milk Pricing Methods) Act 2010 (2010 No 11).

Section 115(1)(bc): inserted, on 9 April 2010, by section 4(1) of the Dairy Industry Restructuring (Raw Milk Pricing Methods) Act 2010 (2010 No 11).

Section 115(1)(c): amended, on 9 April 2010, by section 4(2) of the Dairy Industry Restructuring (Raw Milk Pricing Methods) Act 2010 (2010 No 11).

Section 115(1)(d): amended, on 9 April 2010, by section 4(3) of the Dairy Industry Restructuring (Raw Milk Pricing Methods) Act 2010 (2010 No 11).

Section 115(1)(f): replaced, on 27 July 2012, by section 8(2) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 115(2A): inserted, on 27 July 2012, by section 8(3) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

116 Obligations to publish information

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that—

(a) impose obligations on new co-op to publish information about its business, including the following information:

(i) the price of a co-operative share:

(ii) *[Repealed]*

(iii) *[Repealed]*

(iv) the pay-outs to shareholding farmers for the supply of milk to new co-op:

(v) forecasts of the price of dairy goods and services, including components of those prices and information used to calculate those prices:

(vi) prices for dairy goods or services, including components of those prices and information and methodologies used to calculate those prices:

(vii) the total volume of dairy goods or services that new co-op has contracted to supply to independent processors under regulations made under section 115, for current or future seasons:

(viii) the market price of capital notes:

(ix) average premiums payable for winter milk in particular areas; and

(b) prescribe when and how the information must be published; and

(c) prescribe the form of statutory declaration and who must provide it under section 117(4).

(2) Nothing in Part 3 of the Financial Markets Conduct Act 2013 applies to the disclosure of information required by regulations made under subsection (1).

Section 116(1)(a)(ii): repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 116(1)(a)(iii): repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 116(2): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

117 Information to be supplied to Commission

- (1) New co-op must send a copy of the information that it is required to publish by regulations under section 116 to the Commission within 3 working days of publication.
- (2) The Commission may request (in writing) information, statements, or reports from new co-op to monitor new co-op's compliance with regulations made under section 116.
- (3) New co-op must comply with a request under subsection (2) within 20 working days of receiving the request or within a longer period allowed by the Commission.
- (4) Information, statements, or reports supplied to the Commission under this section must be verified by statutory declaration in the form, and by the persons, prescribed by regulations made under section 116(1)(c).

118 Offences

- (1) Every person commits an offence against this section who—
 - (aa) fails, without reasonable excuse, to comply with a requirement to provide periodic returns or periodic forecasts specified in regulations made under section 115; or
 - (a) fails, without reasonable excuse, to comply with any information disclosure requirements prescribed in regulations made under section 116; or
 - (b) fails, without reasonable excuse, to comply with the requirements of section 117(1) and (3).
 - (c) *[Repealed]*
- (2) Every person commits an offence against this section who makes a false declaration under section 117(4) in relation to any information, statement, or report supplied under section 117(1) or (3).
- (3) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$200,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.
- (4) Every person who commits an offence against subsection (2) is liable on conviction to a fine not exceeding \$20,000.

Section 118(1)(aa): inserted, on 27 July 2012, by section 9 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 118(1)(b): amended, on 20 February 2018, by section 7(1) of the Dairy Industry Restructuring Amendment Act 2018 (2018 No 2).

Section 118(1)(c): repealed, on 20 February 2018, by section 7(2) of the Dairy Industry Restructuring Amendment Act 2018 (2018 No 2).

Section 118(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 118(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

119 Regulations prescribing fees

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing fees for applications to the Commission under section 120.

119A Incorporation by reference

Regulations made under this Act may incorporate material by reference under Schedule 5E.

Section 119A: inserted, on 9 April 2010, by section 5 of the Dairy Industry Restructuring (Raw Milk Pricing Methods) Act 2010 (2010 No 11).

Determination by Commission

120 Determination to resolve conflict

- (1) A person may apply to the Commission for a determination if the person has a dispute with new co-op about the application of this subpart (except section 77A) or regulations made under section 115.
- (2) Despite subsection (1), the Commission may reject an application, and return it to the applicant (and do no more in relation to the application), if, in the Commission's opinion,—
 - (a) the dispute is not genuine or is vexatious or frivolous; or
 - (b) the applicant does not have a direct financial interest in the matter to which the application relates; or
 - (c) the applicant has not made a reasonable attempt to settle the matter with new co-op; or
 - (d) the Commission has made a determination, or is currently considering an application, on the same matter.
- (3) The Commission may consider related applications together.
- (4) An application under subsection (1) must be made within 3 years after the matter giving rise to the dispute arose.

Section 120(1): amended, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

121 Requirements for application

An application made under section 120(1) must—

- (a) be in writing; and

- (b) be given in the prescribed manner, if any; and
- (c) contain the prescribed information, if any; and
- (d) be accompanied by the prescribed fee, if any.

122 Commission must notify parties

On receiving an application made correctly under section 121, the Commission—

- (a) must notify new co-op in writing that the application has been made; and
- (b) must provide a copy of the application to new co-op; and
- (c) must request new co-op to comment on the matter in writing to the Commission by a date specified by the Commission, which must be not later than 10 working days after receipt of the notice from the Commission; and
- (d) may require new co-op to provide information about the matter to the Commission.

123 Commission must decide whether to make determination

The Commission must, within 10 working days after the date by which new co-op may comment on the application,—

- (a) decide whether or not to determine the matter:
- (b) give written notice of its decision to the applicant and new co-op.

124 When determination must be completed

The Commission must complete a determination as soon as practicable after it has decided to make a determination.

125 Requirements for determinations

In deciding whether to make a determination under section 123(a) and in making a determination under section 124, the Commission must—

- (a) consider the purpose in section 70; and
- (b) consider whether the decision or determination promotes the principles specified in section 71

126 Matters included in determination

- (1) A determination by the Commission must—
 - (a) state the Commission's decision on the matters in dispute; and
 - (b) state clearly whether a breach of this subpart or any regulations has occurred; and
 - (c) include the reasons for the determination; and

- (d) include the terms and conditions on which the determination is made; and
 - (e) specify the actions that a party to the determination must do or refrain from doing, which may include (without limitation) payment of compensation by one party to the other.
- (2) The Commission may specify an expiry date for the determination.

127 Procedure for determinations

For a determination made under this subpart, the Commission—

- (a) is not bound by technicalities, legal forms, or rules of evidence;
- (b) may inform itself of any matter relevant to the determination in any way that it thinks appropriate.

128 Applicant may withdraw

- (1) An applicant for a determination may, at any time, withdraw the application by written notice to the Commission.
- (2) If the Commission receives a notice of withdrawal under subsection (1),—
 - (a) it must notify the parties to the determination, or to an application for a determination, of the withdrawal and do no more in relation to the application; and
 - (b) it may apportion costs under section 129.

129 Parties' costs

- (1) The parties to a determination or application for a determination bear their own costs.
- (2) However, the Commission may, by written direction to a party to a determination or to an application for a determination, require that party to meet some or all of the other party's costs in respect of the determination or application if, in the opinion of the Commission, the party has contributed unreasonably to costs or delays.
- (3) A party in whose favour a direction under subsection (2) is given may enforce that direction by filing it in the prescribed form (if any) in the Wellington Registry of the High Court.
- (4) A direction that is filed in the High Court under subsection (3) is enforceable as a judgment of the High Court in its civil jurisdiction.

130 Clarification of determination

The Commission may amend a determination to clarify it if—

- (a) the Commission, on its own initiative or on the application of a party to the determination, considers that a determination requires clarification; and

- (b) the clarification is either not material to any person affected by the determination or is agreed to by the parties to the determination; and
- (c) no appeal of the determination is pending.

131 Reconsideration of determination

- (1) The Commission may, on the application of a party to a determination, revoke or amend the determination or revoke the determination and make another determination in substitution for it if the Commission considers that—
 - (a) there has been a material change of circumstances since the date on which the determination was made or last reconsidered; or
 - (b) the determination requires clarification in a material respect and is not agreed to by all persons affected by the determination; or
 - (c) the determination was made on the basis of information that was materially false or misleading.
- (2) Despite subsection (1), a determination may not be reconsidered if an appeal of the determination is pending.
- (3) In reconsidering a determination, the Commission must follow the same process that was followed for the initial determination.
- (4) To avoid doubt, a determination continues to have effect and is enforceable until its reconsideration under this section is complete.

132 Appeals from certain determinations

- (1) A party to a determination made under this subpart may appeal to the High Court against—
 - (a) the determination, including an amended or reconsidered determination, on a question of law;
 - (b) a decision of the Commission not to clarify a determination under section 130 on a question of law;
 - (c) a decision of the Commission not to reconsider a determination under section 131 on a question of law.
- (2) Despite subsection (1), no party may appeal against a determination made under this subpart—
 - (a) while a clarification of the determination under section 130 is pending; or
 - (b) while a reconsideration of the determination under section 131 is pending.
- (3) If appeal or judicial review proceedings are commenced about a determination, the determination continues to have effect and is enforceable as if the proceedings had not been commenced until the proceedings are finally disposed of.

(4) The decision of the High Court on appeal from a determination is final unless leave to appeal to the Court of Appeal is given by the High Court or, if leave is refused by the High Court, by the Court of Appeal.

(5) *[Repealed]*

Section 132(5): repealed, on 1 January 2004, by section 48(2) of the Supreme Court Act 2003 (2003 No 53).

133 Enforcing Commission determinations

(1) A party to a determination made under this subpart, or the Commission, may enforce the determination by filing it in the prescribed form (if any) in the Wellington Registry of the High Court.

(2) A determination filed in the High Court under subsection (1) is enforceable as a judgment of the High Court in its civil jurisdiction.

(3) A party who has filed a determination in the High Court under subsection (1) must file in the High Court in the prescribed form (if any) any clarification or reconsideration of the determination.

Levy

134 Levy regulations

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations requiring new co-op to pay a levy to the Minister in each financial year.

(2) The order must specify the amount of the levy or the way the levy must be calculated.

(3) The Minister must calculate the amount of the levy so as to ensure that the costs to the Commission estimated under subsection (4) are met fully from the levy.

(4) In calculating estimated costs under subsection (3), 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 referred to in subsection (9); 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) A levy may be calculated to include costs to the Commission from 1 July 2001, even though regulations imposing the levy may be made after that date.
- (6) A levy may be calculated to recover estimated costs to the Commission in respect of a period after the expiry of this subpart.
- (7) New co-op must pay any levy required by regulations made under this section.
- (8) The Minister must consult with new co-op before making a recommendation under subsection (1).
- (9) The Minister may—
 - (a) deduct over-recoveries in respect of a financial year from the levy payable in subsequent financial years; or
 - (b) add under-recoveries in respect of a financial year to the levy payable in subsequent financial years.
- (10) The amount of unpaid levy is recoverable in a court of competent jurisdiction as a debt due to the Crown.

Section 134(4)(a)(ii): amended, on 27 July 2012, by section 10(1) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 134(4)(a)(v): inserted, on 27 July 2012, by section 10(2) of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

General

135 Constitution of new co-op

This subpart applies despite anything in the constitution of new co-op or the Companies Act 1993.

136 Making and giving applications or notices

- (1) Applications or notices made or given under sections 73 to 109 may be delivered, posted, or sent by facsimile or electronically.
- (2) Sections 137 to 139 apply to applications or notices under this section.

137 Post

- (1) Applications or notices sent by post are made or given at the time when the letter is posted.
- (2) It is sufficient to prove that the letter was properly addressed and posted.

138 Facsimile

- (1) Applications or notices sent by facsimile are made or given if the facsimile machine of the sender generated a record of the successful transmission to the facsimile machine of the recipient.
- (2) The date and time of that record is the date and time that the application or notice is made or given.

139 Electronic

An application or notice sent electronically is made or given at the time that the electronic communication enters the information system of the addressee.

Enforcement

140 Jurisdiction of High Court

The High Court may hear and determine the following matters:

- (a) proceedings for recovering pecuniary penalties under section 141;
- (b) applications for injunctions under section 142;
- (c) actions for damages under section 143.

141 Pecuniary penalties

- (1) If the court is satisfied, on the application of the Commission, that a person has contravened this subpart or regulations made under section 115, the court may order the person to pay to the Crown a pecuniary penalty that the court determines to be appropriate.
- (2) The maximum amount of a pecuniary penalty under subsection (1) is the same as the amount that applies under section 80 of the Commerce Act 1986.
- (3) Despite section 145, section 79 of the Commerce Act 1986 does not apply to proceedings under this section.

142 Injunctions

If the court is satisfied, on the application of the Commission or any other person, that a person has contravened this subpart or regulations made under section 115, the court may grant an injunction restraining a person from continuing the contravention.

143 Actions for damages

- (1) Every person is liable for damages for loss or damage caused by that person engaging in conduct that constitutes a contravention of this subpart or regulations made under section 115.
- (2) Sections 82 and 82A of the Commerce Act 1986 apply to actions for damages under this section.

144 Miscellaneous

- (1) In determining an appropriate penalty under section 141, the court must have regard to all relevant matters, including the following:
 - (a) the purpose and principles of this subpart, as expressed in sections 70 and 71:
 - (b) the nature and extent of the act or omission:
 - (c) the nature and extent of any loss or damage suffered by any person as a result of the act or omission:
 - (d) in the case of a body corporate, the nature and extent of any commercial gain resulting from the contravention:
 - (e) the circumstances in which the act or omission took place:
 - (f) whether or not the person has previously been found by the court in proceedings under this subpart to have engaged in similar conduct.
- (2) The standard of proof in proceedings under this subpart is the standard of proof that applies in civil proceedings.
- (3) In any proceedings under this subpart, the Commission, on the order of the court, may obtain discovery and administer interrogatories.
- (4) Proceedings under this subpart may be commenced within 3 years after the matter giving rise to the contravention arose.
- (5) If conduct by a person constitutes a contravention of 2 or more provisions of this subpart, proceedings may be instituted under this subpart against that person in relation to the contravention of 1 or more of the provisions, but no person is liable to more than 1 pecuniary penalty under this subpart for the same conduct.

145 Application of Commerce Act 1986 provisions

The following provisions of the Commerce Act 1986 apply with all necessary modifications:

- (a) sections 15 to 17 (proceedings of the Commission):
- (b) sections 77 and 78 (lay members):
- (c) section 79 (evidence not otherwise admissible):
- (d) section 88 (general provisions relating to granting of injunctions):
- (e) section 88A (when undertakings as to damages not required):
- (f) section 89 (other orders):
- (g) section 90 (conduct by servants or agents):
- (h) section 98 (Commission may require person to supply information or documents or give evidence):
- (i) section 98A (power to search):

- (j) section 98G (relating to warrants, etc):
- (k) section 99 (powers of Commission to take evidence):
- (l) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):
- (m) sections 101 and 102 (notices):
- (n) section 103 (offences):
- (o) section 104 (determinations of Commission):
- (p) section 106 (proceedings privileged):
- (q) section 106A (judicial notice):
- (r) section 109 (Commission may prescribe forms).

Section 145(a): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 145(j): amended, on 1 October 2012, by section 230(7) of the Search and Surveillance Act 2012 (2012 No 24).

Section 145(o): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

146 Additional proceedings

Proceedings brought under this Part are in addition to any proceedings brought under any other Act.

Expiry of this subpart and subpart 5A

[Repealed]

Heading: repealed, on 20 February 2018, by section 4 of the Dairy Industry Restructuring Amendment Act 2018 (2018 No 2).

147 Minister to certify that market share thresholds met

[Repealed]

Section 147: repealed, on 20 February 2018, by section 4 of the Dairy Industry Restructuring Amendment Act 2018 (2018 No 2).

148 Subparts 5 and 5A cease to apply to island that meets its market share threshold

[Repealed]

Section 148: repealed, on 20 February 2018, by section 4 of the Dairy Industry Restructuring Amendment Act 2018 (2018 No 2).

148A Report required if not requested before 1 June 2015

[Repealed]

Section 148A: repealed, on 20 February 2018, by section 4 of the Dairy Industry Restructuring Amendment Act 2018 (2018 No 2).

148B Procedure where market share threshold is met after report requested under section 148A

[Repealed]

Section 148B: repealed, on 20 February 2018, by section 4 of the Dairy Industry Restructuring Amendment Act 2018 (2018 No 2).

149 Subparts 5 and 5A expire if both islands meet their market share thresholds

[Repealed]

Section 149: repealed, on 20 February 2018, by section 4 of the Dairy Industry Restructuring Amendment Act 2018 (2018 No 2).

150 Transition

[Repealed]

Section 150: repealed, on 20 February 2018, by section 4 of the Dairy Industry Restructuring Amendment Act 2018 (2018 No 2).

Subpart 5A—Base milk price

Subpart 5A: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Purpose of subpart

Heading: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150A Purpose of this subpart

- (1) The purpose of this subpart is to promote the setting of a base milk price that provides an incentive to new co-op to operate efficiently while providing for contestability in the market for the purchase of milk from farmers.
- (2) For the purposes of this subpart, the setting of a base milk price provides for contestability in the market for the purchase of milk from farmers if any notional costs, revenues, or other assumptions taken into account in calculating the base milk price are practically feasible for an efficient processor.

Section 150A: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150B Certain assumptions do not detract from purpose of subpart

It does not detract from the achievement of the purpose set out in section 150A that new co-op sets the base milk price using assumptions that include any of the following:

- (a) that new co-op operates a national network of facilities for the collection and processing of milk:

- (b) that the size of new co-op's assumed units of processing capacity approximates to the average size of new co-op's actual units of processing capacity:
- (c) that gains and losses experienced by new co-op resulting from foreign currency fluctuations, including from new co-op's foreign currency risk-management strategies, are incorporated in the base milk price:
- (d) that all milk collected by new co-op is processed into commodities at yields that are practically feasible.

Section 150B: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150C Setting of base milk price in way that is consistent with certain principles

- (1) For the achievement of the purpose set out in section 150A, the base milk price must be set in a way that is consistent with the following principles:
 - (a) revenue taken into account in calculating the base milk price is determined from prices of a portfolio of commodities at the times that those commodities are contracted to be sold by new co-op:
 - (b) costs taken into account in calculating the base milk price include costs (including capital costs and a return on capital) of—
 - (i) collecting milk; and
 - (ii) processing milk into the same portfolio of commodities as the portfolio adopted for the purposes of paragraph (a); and
 - (iii) selling those commodities:
 - (c) new co-op collects all milk that it processes from the farms on which the milk is produced.
- (2) For the purposes of subsection (1)(a) and (b)(ii), the portfolio of commodities must be determined having regard to the following:
 - (a) in respect of the commodities included in the portfolio,—
 - (i) the commodities that are likely to be the most profitable over a period not exceeding 5 years from the time when the portfolio is determined; and
 - (ii) the need for commodities included in the portfolio to utilise all components of milk; and
 - (b) in respect of the relative proportions of the commodities included in the portfolio, the quantities of commodities likely to be produced by new co-op based on—
 - (i) the mix of commodities that are likely to be most profitable; and
 - (ii) new co-op's physical manufacturing capacity for the production of those commodities; and
 - (iii) the need to utilise all components of the milk processed.

Section 150C: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Milk Price Panel

Heading: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150D Milk Price Panel

- (1) New co-op must establish and maintain a committee known as the Milk Price Panel (the **panel**).
- (2) New co-op must set the terms of reference for the panel, which must include the functions set out in subsections (3) and (4), and the panel must act in accordance with those terms of reference.
- (3) The panel must, for each season,—
 - (a) supervise the calculation of the base milk price; and
 - (b) advise new co-op as necessary on the application of the milk price manual; and
 - (c) recommend to new co-op the base milk price.
- (4) The panel may, as it considers necessary or desirable, make recommendations to new co-op in respect of the milk price manual, including a recommendation that it should be amended and a recommendation that a proposed amendment should not be made.
- (5) New co-op must make the terms of reference of the panel publicly available, including any amendments to those terms of reference.
- (6) If new co-op contravenes subsection (1), (2), or (5), it commits an offence and is liable on conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues.

Section 150D: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 150D(6): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

150E Appointment of members of panel

- (1) New co-op must appoint the members of the panel and must appoint one of the members as the chair.
- (2) New co-op must ensure that at all times the chair and a majority of the members (including the chair) are independent.
- (3) If, without reasonable excuse, new co-op contravenes subsection (2), it commits an offence and is liable on conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues.

Section 150E: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 150E(3): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Milk price manual

Heading: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150F New co-op must maintain milk price manual

- (1) New co-op must maintain a manual (the **milk price manual**) that sets out how the base milk price is calculated.
- (2) New co-op must make the manual publicly available, including any amendments to the manual.
- (3) If new co-op contravenes subsection (1) or (2), it commits an offence and is liable on conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues.

Section 150F: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 150F(3): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

150G Steps new co-op must take if panel recommendation not followed or implemented

- (1) This section applies if—
 - (a) new co-op does not amend the milk price manual in accordance with a recommendation by the panel; or
 - (b) new co-op amends the milk price manual contrary to a recommendation by the panel; or
 - (c) new co-op amends the milk price manual without having received a recommendation by the panel for the amendment.
- (2) New co-op must,—
 - (a) if subsection (1)(a) applies, make publicly available—
 - (i) the recommendation of the panel; and
 - (ii) new co-op's reasons for not implementing that recommendation:
 - (b) if subsection (1)(b) applies, make publicly available—
 - (i) the recommendation of the panel; and
 - (ii) new co-op's reasons for amending the milk price manual contrary to that recommendation:
 - (c) if subsection (1)(c) applies, make publicly available a statement of new co-op's reasons for amending the milk price manual without having received a recommendation by the panel for the amendment.

- (3) If new co-op contravenes subsection (2), it commits an offence and is liable on conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues.

Section 150G: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 150G(3): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Review of milk price manual by Commission

Heading: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150H Commission must review milk price manual

The Commission must, for each season, review the milk price manual and make a report under section 150I.

Section 150H: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150I Commission's report

- (1) The Commission must make a report on the extent to which the milk price manual is consistent with the purpose of this subpart (*see* section 150A).
- (2) In making the report, the Commission must—
- (a) have regard to the information provided to it by new co-op under section 150L or under the procedure agreed under section 150K; and
 - (b) have regard to any submission made by new co-op under section 150M(2)(a) or under the procedure agreed under section 150K; and
 - (c) give reasons for its conclusions.

Section 150I: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150J Commission must make final report publicly available

The Commission must finalise its report under section 150I and make it publicly available by 15 December in the season to which the milk price manual relates.

Section 150J: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Procedure for Commission's review of milk price manual

Heading: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150K Procedure for review of milk price manual

- (1) The procedure for the review by the Commission of the milk price manual is—
- (a) the procedure set out in sections 150L and 150M; or

- (b) if a procedure is agreed between new co-op and the Commission, that procedure.
- (2) If new co-op fails to comply with the agreed procedure,—
 - (a) the agreed procedure lapses; and
 - (b) the procedure set out in sections 150L and 150M applies to the extent that anything that is required to be done by new co-op under those sections remains still to be done.

Section 150K: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150L New co-op must provide Commission with milk price manual and other information

New co-op must, not later than 1 August in each year,—

- (a) provide the Commission with the milk price manual for the current season; and
- (b) provide the Commission with any recommendations by the panel in relation to the setting of the base milk price; and
- (c) notify the Commission of any change in the economic and business environment that, in new co-op's view, requires a change to the milk price manual; and
- (d) certify to the Commission the extent to which new co-op considers that the milk price manual is consistent with the purpose of this subpart (*see* section 150A); and
- (e) provide the Commission with reasons for the view expressed in new co-op's certificate given under paragraph (d).

Section 150L: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150M Draft Commission report

- (1) Not later than 15 October in the season to which the milk price manual relates, the Commission must provide new co-op with a draft of its report made under section 150I.
- (2) Not later than 15 November in the season to which the milk price manual relates, new co-op must—
 - (a) make a submission to the Commission on the draft report; or
 - (b) notify the Commission that it does not wish to make a submission.

Section 150M: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Base milk price calculation

Heading: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150N Steps new co-op must take if panel recommendation not followed or implemented

- (1) This section applies if new co-op sets the base milk price—
 - (a) other than in accordance with a recommendation by the panel; or
 - (b) without having received a recommendation by the panel for the base milk price.
- (2) New co-op must,—
 - (a) if subsection (1)(a) applies, make publicly available—
 - (i) the recommendation of the panel; and
 - (ii) a statement of new co-op's reasons for setting the base milk price other than in accordance with that recommendation:
 - (b) if subsection (1)(b) applies, make publicly available a statement of new co-op's reasons for setting the base milk price without having received a recommendation by the panel for the base milk price.
- (3) If new co-op contravenes subsection (2), it commits an offence and is liable on conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues.

Section 150N: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 150N(3): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

150O Commission must review calculation of base milk price

- (1) The Commission must, for each season, review new co-op's calculation of the base milk price set for that season and make a report under section 150P.
- (2) The first review under this section must be the review to be held in 2013 in respect of the 2012/2013 season.

Section 150O: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150P Commission's report

- (1) The Commission must make a report on the extent to which the assumptions adopted and the inputs and process used by new co-op in calculating the base milk price for the season are consistent with the purpose of this subpart (*see* section 150A).
- (2) In making the report, the Commission must—
 - (a) have regard to the information provided to it by new co-op under section 150T or under the procedure agreed under section 150S; and

- (b) have regard to any submission made by new co-op under section 150U(2)(a) or under the procedure agreed under section 150S; and
 - (c) give reasons for its conclusions.
- (3) In making the report, the Commission—
- (a) is not required to calculate the costs of an independent processor; and
 - (b) is not required to, and must not, state the amount of the base milk price according to its own calculations.

Section 150P: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150Q Commission must make final report publicly available

The Commission must finalise its report under section 150P and make it publicly available by 15 September following the season to which it relates.

Section 150Q: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150R Steps new co-op must take if base milk price changed after Commission report

- (1) This section applies if, after the Commission has made its report under section 150P publicly available, new co-op changes the base milk price for the season to which the report relates.
- (2) New co-op must without delay make publicly available—
 - (a) the new base milk price; and
 - (b) a statement of new co-op's reasons for the change.
- (3) If new co-op contravenes subsection (2), it commits an offence and is liable on conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues.

Section 150R: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 150R(3): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Procedure for Commission's review of base milk price calculation

Heading: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150S Procedure for review of base milk price calculation

- (1) The procedure for the review by the Commission of the calculation of the base milk price is—
 - (a) the procedure set out in sections 150T and 150U; or
 - (b) if a procedure is agreed between new co-op and the Commission, that procedure.

- (2) If new co-op fails to comply with the agreed procedure,—
- (a) the agreed procedure lapses; and
 - (b) the procedure set out in sections 150T and 150U applies to the extent that anything that is required to be done by new co-op under those sections remains still to be done.

Section 150S: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150T New co-op must provide Commission with certain information

New co-op must, not later than 1 July in each year,—

- (a) provide the Commission with the assumptions adopted and the inputs and process used by new co-op in calculating the base milk price for the preceding season; and
- (b) certify to the Commission the extent to which, in new co-op's view, the assumptions adopted and the inputs and process used by new co-op in calculating the proposed base milk price are consistent with the purpose of this subpart (*see* section 150A); and
- (c) provide the Commission with reasons for the view expressed in new co-op's certificate given under paragraph (b).

Section 150T: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150U Draft Commission report

- (1) No later than 15 August following the season to which the report under section 150P relates, the Commission must provide new co-op with a draft of its report.
- (2) No later than 1 September following the season to which the report relates, new co-op must—
 - (a) make a submission to the Commission on the draft report; or
 - (b) notify the Commission that it does not wish to make a submission.

Section 150U: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Application of Commerce Act 1986

Heading: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

150V Application of Commerce Act 1986 to review by Commission under this subpart

- (1) The following provisions of the Commerce Act 1986 apply, with all necessary modifications, to a review by the Commission under this subpart as if the review were an investigation by the Commission of a contravention of that Act:
 - (a) sections 15 to 17:

- (b) sections 98 to 98G:
 - (c) section 99:
 - (d) sections 100 to 103:
 - (e) section 106:
 - (f) section 109.
- (2) For the purpose of carrying out its functions and exercising its powers under this subpart, the Commission may, in addition to exercising its powers under section 98 of the Commerce Act 1986, by notice in writing, require new co-op, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or from a member of a class of appropriately qualified persons, as determined by the Commission in relation to any matter specified by the Commission.

Section 150V: inserted, on 27 July 2012, by section 14 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Subpart 6—Taxation

151 Shares issued on amalgamation neither dutiable gift nor dividend

- (1) The receipt by a person of shares issued by new co-op on the new co-op amalgamation in respect of shares held by the person in an amalgamating co-operative dairy company is neither a dutiable gift for the purposes of the Estate and Gift Duties Act 1968 nor a dividend for the purposes of the Income Tax Act 2007.
- (2) Neither regulation 7 of the Co-operative Dairy Companies Income Tax Regulations 1955 nor regulation 7 of the Cooperative Milk Marketing Companies Income Tax Regulations 1960 applies to permit the Commissioner of Inland Revenue to deem any of the receipts referred to in subsection (1) to be gross income other than a dividend.

Compare: 1999 No 97 s 7(2), (3), (7)

Section 151(1): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

152 Available subscribed capital of new co-op

For the purposes of the definition of the term available subscribed capital in section YA 1 of the Income Tax Act 2007, and despite anything in that definition,—

- (a) new co-op is deemed to receive, on the amalgamation date, an aggregate amount of consideration in respect of the issue of its shares equal to the total available subscribed capital of the Board at that date (before the application of paragraph (e)); and

- (b) new co-op is deemed to receive on each 1 June after the amalgamation date, up to and including 1 June 2006, an additional aggregate amount of consideration of \$140,000,000 in respect of the issue of its shares; and
- (c) the amounts of consideration new co-op is deemed to receive under paragraphs (a) and (b) are in addition to any other amount of consideration taken into account before the application of this section under the definition of available subscribed capital in the Income Tax Act 2007; and
- (d) the total available subscribed capital of the Board referred to in paragraph (a) includes any amount of consideration that the Board is deemed to have received by virtue of section 15ZE(2) of the Dairy Board Act 1961; and
- (e) the Board is deemed to have no available subscribed capital for the purposes of the Income Tax Act 2007 on the amalgamation date, but is from that time onwards to have the available subscribed capital that it has according to the definition of available subscribed capital in section YA 1 of the Income Tax Act 2007 as if it had never received any consideration in respect of the issue of its shares before that time.

Compare: 1961 No 5 s 15ZE(2); 1999 No 97 s 7(6)

Section 152: amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 152(c): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 152(e): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

153 Class of shares in respect of which available subscribed capital is received

- (1) The consideration deemed to be received by new co-op—
 - (a) under section 152(a) is deemed to be received in respect of the classes of shares of new co-op issued on or before the amalgamation date in the proportions nominated by new co-op; and
 - (b) under section 152(b) is further deemed to be received in respect of the classes of shares of new co-op issued on or before the relevant 1 June in the proportions nominated by new co-op.
- (2) A class of shares referred to in subsection (1)(a) or (b) may, for the purposes of that subsection, be substituted if necessary by any class of shares that may reasonably be regarded as the successor to all or part of the original class.
- (3) Subsections (1) and (2) apply if new co-op nominates the proportions by notice in writing to the Commissioner of Inland Revenue within 30 days after the date on which the consideration is deemed to be received.
- (4) If no valid nomination is made under subsection (3) in respect of an amount of consideration, the amount is deemed to have been received in respect of the

class of shares in new co-op that is required to be held by transacting shareholders.

Compare: 1999 No 97 s 7(5), (6)

154 Net losses and imputation credits of amalgamating co-ops

- (1) For the purpose of subsection (2), the holders of shares or options over shares in each company amalgamating in the new co-op amalgamation are deemed, at all times before the new co-op amalgamation, to be the same persons, holding in the same proportions, as the actual holders of shares or options over shares in new co-op immediately after the new co-op amalgamation.
- (2) Subsection (1) applies for the purpose of determining the voting interest or market value interest of any person in the companies amalgamating in the new co-op amalgamation (other than Fonterra Co-operative Group Limited), in the Board, and in all companies in which new co-op has a voting interest or market value interest (determined as if sections YC 4 and YC 5 of the Income Tax Act 2007 did not deem voting interests and market value interests held by new co-op not to be so held by new co-op).
- (3) For the purposes of subpart IE of the Income Tax Act 2007 and the provisions relevant to section IA 6 of that Act, new co-op and all the companies that amalgamate to form new co-op, and all the companies in the same group of companies as any company that amalgamates to form new co-op, including, for the avoidance of doubt, consolidated groups of companies (determined immediately before the new co-op amalgamation), are deemed to be in existence and in the same group of companies at all times before the new co-op amalgamation.
- (4) In this section, **consolidated group**, **group of companies**, **market value interest**, and **voting interest** have the same meanings as in the Income Tax Act 2007.

Section 154(2): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 154(3): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 154(4): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

155 Taxation of company into which Board converts

- (1) This section applies, for the purposes of the Inland Revenue Acts (within the meaning of section 3(1) of the Tax Administration Act 1994), if the Board becomes, under this Act, a company registered under the Companies Act 1993.
- (2) The company is not a statutory producer board for the purposes of the Income Tax Act 2007.
- (3) For the avoidance of doubt, and for the purposes of the Income Tax Act 2007, the unexpired portion of any amount of accrual expenditure of the Board for the tax year of the conversion is deemed to be the unexpired portion of an

amount of accrual expenditure of the company for the tax year of the conversion.

- (4) Subject to section 154 and for the purposes of the Income Tax Act 2007, the voting interests and market value interests in the Board for the period up until the conversion of the Board into a company must be calculated as if section 15ZE(3) to (5) of the Dairy Board Act 1961 had not been repealed.
- (5) Subsections (1) to (3) apply on and after the conversion date.
- (6) Subsection (4) applies on and after the amalgamation date.

Compare: 1961 No 5 s 15ZE(6)

Section 155(2): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 155(3): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 155(3): amended, on 1 April 2005 (effective for 2005–06 tax year and later), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 155(4): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

156 Gift duty and taxation in respect of Livestock Improvement Corporation Limited

- (1) The issue of shares by LIC under section 60 is not a dutiable gift for the purposes of the Estate and Gift Duties Act 1968 or a dividend for the purposes of the Income Tax Act 2007.
- (2) For the purposes of the Income Tax Act 2007, the available subscribed capital of the shares issued under section 60 is equal to the available subscribed capital of the shares which are cancelled under section 60.
- (3) For the purposes of the Income Tax Act 2007, if the constitution of LIC is altered on or after the day on which shares in LIC are issued under section 60 (or with effect as at or after that date) to allow any part of the funds of LIC to be used or be available to be used for the private pecuniary profit of any shareholder referred to in section CW 42(5)(b) of that Act,—
 - (a) the income of LIC that is exempt income only by virtue of section CW 51 of that Act immediately before the alteration that is derived in the tax year in which the alteration comes into effect is income of LIC and is not exempt income under section CW 51 of that Act; and
 - (b) the assets and rights of LIC are deemed to be disposed of to a person, not being an associated person of LIC, immediately before the beginning of the tax year in which the alteration is made, and to be re-acquired by LIC from that person for a consideration equal to their market value at the beginning of that tax year; and
 - (c) the alteration of the constitution may not be treated as altering or affecting in any way the status, as exempt income, of any income of LIC that

is exempt income under section CW 51 of that Act, derived before the beginning of the tax year in which the alteration comes into effect.

- (4) Subsection (3)(c) does not apply if the Board retains any interest in LIC at the time that the constitution comes into effect so that any part of the funds of LIC is used or is available for use for the private pecuniary profit of the Board.
- (5) Subsection (4) does not apply to an interest that the Board retains in LIC by reason of the issue of shares under section 60 to a person.
- (6) The interpretation of the Income Tax Act 2007 is not affected by subsection (3)(a), except to the extent of the effect of the application of that subsection to LIC in the circumstances indicated in that subsection.

Compare: 1999 No 97 s 37

Section 156(1): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 156(2): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 156(3): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 156(3): amended, on 1 April 2005 (effective for 2005–06 tax year and later), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 156(3)(a): amended, on 1 April 2008 (effective for 2008–09 income year and later), pursuant to section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 156(3)(a): amended, on 1 April 2005 (effective for 2005–06 tax year and later), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 156(3)(b): amended, on 1 April 2005 (effective for 2005–06 tax year and later), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 156(3)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 156(3)(c): amended, on 1 April 2005 (effective for 2005–06 tax year and later), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Section 156(6): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

157 Taxation of The New Zealand Dairy Research Institute

- (1) For the purposes of the Income Tax Act 2007, the company referred to in section 158(2)(a)—
 - (a) is deemed to acquire the assets, rights, and liabilities of the charitable trust known as The New Zealand Dairy Research Institute on the amalgamation date for their market values on that date; and
 - (b) despite paragraph (a), is deemed to be the same person as that charitable trust.
- (2) For the purposes of the Income Tax Act 2007, nothing effected by section 158 may be treated as in any way altering or affecting the status, as exempt income under subpart CW of that Act, of any income of that charitable trust before the amalgamation date.

- (3) Subsection (1)(b) also applies for the purposes of the other Inland Revenue Acts (within the meaning of section 3(1) of the Tax Administration Act 1994).
- (4) For the avoidance of doubt, the vesting that takes place under section 158(2)(a) is not a dutiable gift for the purposes of the Estate and Gift Duties Act 1968.

Section 157(1): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 157(2): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 157(2): amended, on 1 April 2005 (effective for 2005–06 tax year and later), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Subpart 7—The New Zealand Dairy Research Institute, sharemilkers, and miscellaneous provisions

The New Zealand Dairy Research Institute

158 The New Zealand Dairy Research Institute

- (1) The charitable trust known as The New Zealand Dairy Research Institute (the **trust**) is terminated on the amalgamation date, and the property of the trust ceases on that date to be trust property.
- (2) Despite the Charitable Trusts Act 1957 or any other Act or rule of law,—
- (a) on the amalgamation date, the assets, rights, interests, obligations, and liabilities of the trust vest beneficially in the company that is on that date the trustee of the trust (the **Institute company**); and
 - (b) the Institute company may, on or after the amalgamation date and without further authority than this section, alter or revoke its constitution in accordance with the Companies Act 1993, including for the purpose of removing the company's charitable purposes and the restrictions on its capacity, rights, powers, and privileges; and
 - (c) proceedings that could have been commenced or continued by or against the trust before its termination may be commenced or continued by or against the Institute company; and
 - (d) all transactions entered into by, and acts of, the trust before the termination of the trust must be treated as having been entered into by, or as being those of, the Institute company and as having been entered into, or performed by, the Institute company at the time when they were entered into, or performed by, the trust; and
 - (e) the Institute company is deemed to be the same person as the trust.
- (3) The New Zealand Dairy Research Institute, a trust board registered under the Charitable Trusts Act 1957, is dissolved on the amalgamation date and the Registrar of Incorporated Societies is directed to remove it from the register under section 26 of that Act.

159 Employees

For the avoidance of doubt,—

- (a) section 158 does not affect any employment agreement that is applicable to the trust; and
- (b) each employee of the trust is an employee of the Institute company and, for the purposes of every enactment, law, award, determination, contract, and agreement that relates to the employment of the employee, his or her employment agreement is unbroken and the period of his or her service with the trust, and every other period of service that is recognised by the trust as his or her continuous service, is a period of service with the Institute company; and
- (c) the terms and conditions of the employment of each employee with the trust company are (until varied) identical to the terms and conditions of his or her employment with the trust and are capable of variation in the same manner; and
- (d) an employee is not entitled to receive any payment or other benefit by reason only of section 158.

Sharemilkers

160 Sharemilkers

- (1) Section 44 of the Co-operative Companies Act 1996 (as repealed and substituted by this section) applies to new co-op with any necessary modifications, while new co-op is registered under either Part 2 or Part 3 of the Co-operative Companies Act 1996.
- (2) *Amendment(s) incorporated in the Act(s).*

Miscellaneous provisions

161 Application of Co-operative Companies Act 1996 to new co-op shares

- (1) New co-op's constitution may include, in relation to any shares or class of shares, provisions that—
 - (a) entitle any shareholder to elect to surrender shares at a value determined in accordance with the constitution; or
 - (b) require shares to be surrendered or forfeited at a value determined in accordance with the constitution.
- (2) Sections 17 to 21, 22(4), 23 to 28, and 29(a) and (b) of the Co-operative Companies Act 1996 apply to the issue, surrender, or forfeiture of those shares by or to new co-op as if references in those sections to nominal value were references to the value of the shares determined in accordance with the constitution and with all other necessary modifications.

- (3) When section 77A applies (*see* section 77B), subsections (1) and (2) do not apply, and subsections (4) and (5) apply in their place (but not otherwise).
- (4) Nothing in the Co-operative Companies Act 1996 prevents new co-op from setting a price of a co-operative share under section 77.
- (5) Sections 17 to 19, 20(1) and (4), 21, 22(4), 23 to 28, and 29(a) and (b) of the Co-operative Companies Act 1996 apply to the issue, surrender, or forfeiture of co-operative shares as if references in those sections to nominal value were references to the value of the shares set under section 77 and with all other necessary modifications.

Section 161(3): inserted, on 27 July 2012, by section 15 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 161(4): inserted, on 27 July 2012, by section 15 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 161(5): inserted, on 27 July 2012, by section 15 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

161A Voting rights in respect of new co-op fund securities held by new co-op or nominee

- (1) Subject to subsection (2), new co-op must not exercise voting rights conferred by new co-op fund securities held by new co-op or a nominee.
- (2) Nothing in subsection (1) prevents new co-op, any person representing the interests of shareholding farmers, or a nominee of new co-op or shareholding farmers from exercising the right conferred by one new co-op fund security (the **veto security**) to veto any of the following matters:
 - (a) any change in the governance structure of the board of the manager of the new co-op fund, including—
 - (i) the number of members of the board appointed by holders of new co-op fund securities other than new co-op; and
 - (ii) the number of members of the board appointed by new co-op; and
 - (b) any change in the scope and role of the new co-op fund; and
 - (c) any change in the obligation of the new co-op fund to facilitate the exchange of co-operative shares for an equal number of new co-op fund securities, and vice versa; and
 - (d) any change in the limit on the number of new co-op fund securities that can be held by a person or an entity (together with any associates of that person or entity); and
 - (e) any change in the terms on which the veto security is issued.

Section 161A: inserted, on 27 July 2012, by section 16 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

161B New co-op may acquire new co-op fund securities

- (1) New co-op may, in accordance with this section, but not otherwise, acquire new co-op fund securities.
- (2) Sections 52 and 56 of the Companies Act 1993 apply, with all necessary modifications, to the acquisition of new co-op fund securities by new co-op as if the acquisition were a distribution.
- (3) Section 53 of the Companies Act 1993 does not apply to the acquisition of new co-op fund securities by new co-op.
- (4) Subject to subsection (5), new co-op fund securities may be held by new co-op and are not required to be exchanged for co-operative shares immediately on acquisition, but may be exchanged after acquisition.
- (5) New co-op fund securities acquired under this section are required to be exchanged for co-operative shares immediately on acquisition if the number of new co-op fund securities acquired, when aggregated with other new co-op fund securities and co-operative shares held by new co-op at the time of the acquisition, exceeds 5% of all co-operative shares issued by new co-op, excluding any co-operative shares deemed to be cancelled under section 66(1) of the Companies Act 1993 or section 161C(3).
- (6) Within 10 working days after the acquisition of new co-op fund securities, the board of new co-op must ensure that notice of the acquisition is delivered to each licensed market on which co-operative shares are quoted.
- (7) If the board of new co-op fails to comply with subsection (6), every director of new co-op commits an offence as if the board of new co-op had failed to comply with section 58(3) of the Companies Act 1993.
- (8) If new co-op acquires or proposes to acquire new co-op fund securities, sections 60(3) to (7), 61(1) to (6) and (8) to (10), 62, 63 (except subsection (3A)), 64, 65 (except subsections (2)(a) and (2B)), and 67 of the Companies Act 1993 apply as if—
 - (a) a reference to a company or the company were a reference to new co-op:
 - (b) a reference to the board were a reference to the board of new co-op:
 - (c) “under subsection (1)” in section 60(3) and (6) were read as “to acquire new co-op fund securities under this section”:
 - (d) “under section 60(1)(b)(ii)” in section 61(1) and (4) were read as “to acquire new fund co-op securities under section 60”:
 - (e) a reference to shares in the following provisions were a reference to new co-op fund securities:
 - (i) section 60(3)(b):
 - (ii) section 60(3)(c)(ii):
 - (iii) section 60(6) (except paragraph (c)(i)):
 - (iv) section 61(1)(b):

- (v) section 61(4):
 - (vi) section 61(8)(b):
 - (vii) section 62(b):
 - (viii) section 63(1) (except paragraph (d)(i)):
 - (ix) section 63(4):
 - (x) section 63(5) (except paragraph (c)(i)):
 - (xi) section 63(8)(b):
 - (xii) section 64:
 - (xiii) section 65 (except subsection (1)(a)(iii)(A) and the third reference to shares in subsection (1)(b)):
 - (xiv) section 67:
- (f) a reference to shares in the following provisions were a reference to co-operative shares:
- (i) section 60(3)(c)(i):
 - (ii) section 60(6)(c)(i):
 - (iii) section 63(1)(d)(i):
 - (iv) section 63(5)(c)(i):
 - (v) section 65(1)(a)(iii)(A):
 - (vi) the third reference to shares in section 65(1)(b):
- (g) a reference to shareholders in the following provisions were a reference to holders of new co-op fund securities:
- (i) section 60(3)(c):
 - (ii) section 60(6)(c):
 - (iii) section 62(a):
 - (iv) section 63(1) (except paragraphs (b) and (c)):
 - (v) section 63(5)(c):
 - (vi) section 65(1)(a)(iii):
- (h) a reference to a shareholder, shareholders, or remaining shareholders in the following provisions were a reference to shareholders of new co-op:
- (i) section 61(1), (4), and (8):
 - (ii) section 63(1)(b) and (c):
 - (iii) section 63(5) (except paragraph (c)):
 - (iv) section 63(8)
 - (v) section 65(1)(a)(i):
 - (vi) section 65(2A):

- (i) a reference to a shareholder in the following provisions were a reference to a shareholder of new co-op and a holder of new co-op fund securities:
 - (i) section 61(5) and (6):
 - (ii) section 63(6) and (7):
- (j) a reference to a reasonable shareholder in sections 62(c) and 64(1)(d) were a reference to a reasonable shareholder of new co-op and a reasonable holder of new co-op fund securities:
- (k) “Without limiting sections 60 and 61,” were inserted at the beginning of sections 63(1) and 65(1):
- (l) the first reference to the board of the company in section 65(1) were a reference to new co-op and the subsequent reference to it in that section were a reference to the board of new co-op:
- (m) “from its shareholders” in section 65(1) were deleted:
- (n) the reference in section 65(2) to each stock exchange on which the shares of the company are listed were a reference to each licensed market on which co-operative shares are quoted and each licensed market on which new co-op fund securities are quoted:
- (o) “in the same class” in section 65(1)(b) were deleted:
- (p) “its” in section 67(1) were deleted:
- (q) a reference to stock exchange were a reference to licensed market.

Section 161B: inserted, on 27 July 2012, by section 16 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 161B(6): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 161B(8)(n): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 161B(8)(q): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

161C New co-op may exchange new co-op fund securities for co-operative shares

- (1) New co-op may acquire co-operative shares by exchanging new co-op fund securities it has acquired in accordance with section 161B for co-operative shares.
- (2) Nothing in section 58(1) of the Companies Act 1993 prevents the acquisition of co-operative shares under subsection (1) and section 58(2) of that Act does not apply to co-operative shares so acquired.
- (3) Subject to subsection (4), co-operative shares acquired under this section are deemed to be cancelled immediately on acquisition.
- (4) Co-operative shares acquired under this section are not deemed to be cancelled immediately on acquisition if—

- (a) the constitution of new co-op expressly permits new co-op to hold its own shares; and
 - (b) the board of new co-op resolves that the co-operative shares concerned must not be cancelled on acquisition; and
 - (c) the number of co-operative shares acquired, when aggregated with other co-operative shares held by new co-op pursuant to this section or section 67A of the Companies Act 1993 and new co-op fund securities held by new co-op pursuant to section 161B at the time of the acquisition, does not exceed 5% of all co-operative shares issued by new co-op, excluding any co-operative shares deemed to be cancelled under section 66(1) of the Companies Act 1993 or subsection (3).
- (5) Co-operative shares acquired under this section that, pursuant to this section, are not deemed to be cancelled must be held by new co-op.
- (6) A co-operative share that new co-op holds under subsection (5) may be cancelled by the board of new co-op resolving that the co-operative share is cancelled, and the co-operative share is deemed to be cancelled on the making of that resolution.

Section 161C: inserted, on 27 July 2012, by section 16 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

161D Financial assistance by new co-op for purchase of co-operative shares

- (1) New co-op may give financial assistance for the purpose of, or in connection with, the purchase of a co-operative share if—
- (a) the financial assistance is given in relation to the establishment and operation of—
 - (i) the licensed market on which co-operative shares are able to be traded by shareholding farmers; or
 - (ii) the new co-op fund; and
 - (b) the financial assistance is given to any of the following:
 - (i) a custodian of co-operative shares:
 - (ii) a holder of shares in a custodian of co-operative shares:
 - (iii) a market maker in co-operative shares:
 - (iv) a broker or other agent in relation to the trading of co-operative shares or new co-op fund securities:
 - (v) a trustee or manager of the new co-op fund:
 - (vi) any other service provider; and
 - (c) the board of new co-op has previously resolved that—
 - (i) new co-op should provide the assistance; and
 - (ii) the giving of the assistance is in the best interests of new co-op; and

- (iii) the terms and conditions under which the assistance is given are fair and reasonable to new co-op.
- (2) The Companies Act 1993, excluding section 76(1) and (2) of that Act, applies with all necessary modifications to the giving of financial assistance under subsection (1) as if the financial assistance were given under section 76(1) of that Act.
- (3) Nothing in this section affects the giving of financial assistance by new co-op under section 76(1) of the Companies Act 1993.

Section 161D: inserted, on 27 July 2012, by section 16 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Section 161D(1)(a)(i): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

161E Application of Companies Act 1993

Nothing in section 82 of the Companies Act 1993 (the **Act**) prevents a subsidiary of new co-op holding shares in new co-op if the only reason that the exemption contained in section 82(6) of the Act does not apply is that new co-op or a subsidiary of new co-op holds new co-op fund securities.

Section 161E: inserted, on 27 July 2012, by section 16 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

161F Application of section 20(2) and (3) of Co-operative Companies Act 1996

Section 20(2) and (3) of the Co-operative Companies Act 1996 do not apply to new co-op.

Section 161F: inserted, on 30 November 2012, by section 17 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

162 Shareholders' Council of new co-op

- (1) This section applies if new co-op's constitution provides for a Shareholders' Council.
- (2) Every application under section 12 of the Co-operative Companies Act 1996 in relation to new co-op must be authorised by an ordinary resolution of the Shareholders' Council and must be accompanied by a copy of the resolution.
- (3) This section is additional to the requirements in section 12 of the Co-operative Companies Act 1996.

163 General regulations

Any regulations made under sections 62 to 65, 115, 116, 119, or 134 may provide for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.

164 Validation of issue of certain shares

- (1) A failure to comply with section 50 of the Companies Act 1993 does not invalidate the issue, before the commencement of this section, of a share in a co-

operative company that is registered as a co-operative dairy company under Part 3 of the Co-operative Companies Act 1996.

- (2) This section does not affect any rights at issue in an action commenced before 6 September 2001.

Repeals, revocations, and amendments

165 Repeals, revocations, and amendments

- (1) The Dairy Board Act 1961 (1961 No 5) is repealed on the conversion date.
- (2) The orders specified in Schedule 6 are revoked on the amalgamation date.
- (3) *[Repealed]*
- (4) The rest of the Acts specified in Schedule 7 are amended in the manner shown in that schedule on the amalgamation date.
- (5) The orders specified in Schedule 8 are amended in the manner shown in that schedule on the amalgamation date.

Section 165(3): repealed, on 1 April 2005 (effective for 2005–06 tax year and later), by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Transitional provisions

[Repealed]

Heading: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

166 Board must supply information about export permits

[Repealed]

Section 166: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Savings provisions

167 Saving relating to export produce

[Repealed]

Section 167: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

168 Annual report and statements for season ending 31 May 2001

[Repealed]

Section 168: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

169 Saving relating to superannuation schemes

Despite section 165(1), section 45(2) and (3) of the Dairy Board Act 1961 continues to apply on and after the conversion date in respect of any person who,—

- (a) before that date, became a member of a scheme established under that section; or
- (b) is entitled to any benefit under the scheme by virtue of a person to whom paragraph (a) applies being a member of that scheme.

Schedule 1
Specified provisions of new co-op constitution

[Repealed]

s 11(1)

Schedule 1: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Schedule 2
**Amendments to Dairy Board Act 1961 taking effect on
amalgamation date**

[Repealed]

s 13

Schedule 2: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Schedule 3
Provisions applying in relation to conversion of Board

[Repealed]

s 14

Schedule 3: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Schedule 4
**Default procedure for compulsory buy-out of exiting companies
before conversion of Board into company**

[Repealed]

s 16

Schedule 4: repealed, on 27 July 2012, by section 18 of the Dairy Industry Restructuring Amendment Act 2012 (2012 No 51).

Schedule 5

Designated markets for initial and interim licences

ss 5, 23

Schedule 5 heading: substituted, on 15 December 2007, by section 19 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Market	Product	Further product description
European Communities	Butter	Destined for import into the European Communities under the tariff quota for butter of New Zealand origin, as provided for in the Current Access Quotas part of Section I–B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65) or any successor to that schedule.
European Communities	Cheddar cheese	Destined for import into the European Communities under the tariff quota for cheddar cheese of New Zealand origin, as provided for in the Current Access Quotas part of Section I–B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65) or any successor to that schedule.
European Communities	Cheese for processing	Destined for import into the European Communities under the tariff quota for cheese for processing of New Zealand origin, as provided for in the Current Access Quotas part of Section I–B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65) or any successor to that schedule.
United States of America	Cheddar cheese	Product which falls within the product description provided in headnote 16 of Schedule XX/United States of the World Trade Organization for entry under the tariff quota for cheddar cheese of New Zealand origin, even if the product is destined for import into the United States other than under the terms of that tariff quota.
United States of America	Low-fat cheese	Product which falls within the product description provided in headnote 21 of Schedule XX/United States of the World Trade Organization for entry under the tariff quota for low-fat cheese of New Zealand origin, even if the product is destined for import into the United States other than under the terms of that tariff quota.
United States of America	NSPF cheese	Cheese and substitutes for cheese which fall within the product description provided in headnote 14 of Schedule XX/United States of the World Trade Organization for entry under the tariff quota for cheese of New Zealand origin, even if the product is destined for import into the United States other than under the terms of that tariff quota.
United States of America	Other American-type cheese	Product which falls within the product description provided in headnote 17 of Schedule XX/United States of the World Trade Organization for entry under the tariff quota for other American-type cheese of New Zealand origin, even if the

Market	Product	Further product description
		product is destined for import into the United States other than under the terms of that tariff quota.
Canada	Butter	Butter falling within HS code 0405.10.
Japan	Prepared edible fat	Product falling within HS code 2106.90 which falls within the product description provided in Schedule XXXVIII/ Japan of the World Trade Organization for entry under the tariff quota for prepared edible fat of New Zealand origin, even if the product is destined for import into Japan other than under the terms of that tariff quota.
Japan	Cheese	Product falling within HS code 0406 excluding— <ul style="list-style-type: none"> (a) cheeses not made from cows milk; and (b) mascarpone, ricotta, feta, blue mould cheeses, and white mould cheeses, in each case in immediate packages having a net content not exceeding 12 kilograms; and (c) all other cheese in immediate packages having a net content not exceeding 3 kilograms (prepared for immediate consumption, not for further processing).
Dominican Republic	Milk powder	Product which falls within the product description provided in Schedule XXIII/Dominican Republic of the World Trade Organization for entry under the tariff quota for milk powder of New Zealand origin, even if the product is destined for import into the Dominican Republic other than under the terms of that tariff quota.

Schedule 5A

Designated markets following expiry of initial and interim licences

ss 21(3), 23, 26

Schedule 5A: inserted, on 15 December 2007, by section 20 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Market	Product	Further product description
European Communities	Butter	Destined for import into the European Communities under the tariff quota for butter of New Zealand origin, as provided for in the Current Access Quotas part of Section I-B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65), including any amendment or any successor to that schedule.
European Communities	Cheddar cheese	Destined for import into the European Communities under the tariff quota for cheddar cheese of New Zealand origin, as provided for in the Current Access Quotas part of Section I-B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65), including any amendment or any successor to that schedule.
European Communities	Cheese for processing	Destined for import into the European Communities under the tariff quota for cheese for processing of New Zealand origin, as provided for in the Current Access Quotas part of Section I-B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65), including any amendment or any successor to that schedule.
United States of America	Cheddar cheese	Product that falls within the product description provided in headnote 16 of Schedule XX/United States of America of the World Trade Organization for entry under the tariff quota for cheddar cheese of New Zealand origin, only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product destined for import into the United States of America other than under the terms of that tariff quota.
United States of America	Low-fat cheese	Product that falls within the product description provided in headnote 21 of Schedule XX/United States of America of the World Trade Organization for entry under the tariff quota for low-fat cheese of New Zealand origin, not including product destined for import into the United States of America other than under the terms of that tariff quota.
United States of America	NSPF cheese	Cheese and substitutes for cheese that fall within the product description provided in headnote 14 of Schedule XX/United States of America of the World Trade Organization for entry under the tariff quota for cheese of New Zealand origin, only including those quantities for which designated importer im-

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

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

s 26(3)

Schedule 5B: inserted, on 15 December 2007, by section 20 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

- 1 Export licences are allocated to eligible participants on the basis of the percentage of total milk solids collected by eligible participants, or their employees, contractors, or agents, directly from dairy farmers in New Zealand in the most recent season for which data is available, or the average of the 2 or 3 most recent seasons.
- 2 To be eligible to receive a share of export licences, participants must collect (or a participant's employees, contractors, or agents may collect) and acquire legal title in at least 0.1% of total milk solids collected from dairy farmers in New Zealand, based on—
 - (a) the most representative data of total milk solids collected in New Zealand, in the latest year for which data is available prior to an allocation period; and
 - (b) milk solids collection data submitted by each eligible participant by statutory declaration for—
 - (i) the most recent season; and
 - (ii) the previous season (if a participant wishes to use an average of the most recent 2 seasons for the purpose of assessing his or her eligibility to receive a share of export licences); and
 - (iii) the season immediately prior to the season referred to in subparagraph (ii) (if a participant wishes to use an average of the most recent 3 seasons for the purpose of assessing his or her eligibility to receive a share of export licences).
- 3 For the purposes of assessing the share of export licences, each participant must submit milk collection data to the chief executive or a person authorised by the chief executive by statutory declaration (as set out in Schedule 5C), including—
 - (a) data from the most recent season; and
 - (b) data from the previous season (if a participant wishes to use an average of the most recent 2 seasons for the purpose of assessing his or her share of export licences); and
 - (c) data from the season immediately prior to the season referred to in paragraph (b) (if a participant wishes to use an average of the most recent 3 seasons for the purpose of assessing his or her share of export licences).

-
- 4 Each eligible participant receives an export licence in a market only if that participant's share of export licences in that market equates to a volume of 20 tonnes or more of product. Any volume of export licences that is available as a result of this rule will be allocated pro rata to the remaining eligible participants.
 - 5 The Minister must ensure all allocations of export licences are notified in the *Gazette*.
 - 6 An export licence is to be allocated for a period of 1 quota year.

Schedule 5C Form of statutory declaration

Schedule 5B

Schedule 5C: inserted, on 15 December 2007, by section 20 of the Dairy Industry Restructuring Amendment Act 2007 (2007 No 107).

Form

Form of statutory declaration

I, *[full name]*, of *[address]*, being the chief executive officer*/director* of *[name of company]*, solemnly and sincerely declare that to the best of my knowledge, having made all reasonable inquiries,—

- (a) the information attached to this declaration is a true copy of information that complies with the requirements of Schedule 5B; and
- (b) the *[specify statement(s), report(s), or information]* attached to this declaration is/are* the *[statement(s), report(s), or information]* required to be supplied by the chief executive under Schedule 5B.

*Delete if inapplicable.

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

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

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

Schedule 5D Search warrant

[Repealed]

s 29I

Schedule 5D: repealed, on 1 October 2012, by section 230(8) of the Search and Surveillance Act 2012 (2012 No 24).

Schedule 5E

Incorporation of material by reference in regulations

s 119A

Schedule 5E: inserted, on 9 April 2010, by section 6 of the Dairy Industry Restructuring (Raw Milk Pricing Methods) Act 2010 (2010 No 11).

1 Interpretation

In this schedule,—

incorporated means incorporated by reference

inspection site means—

- (a) the head office of the Ministry;
- (b) any other place determined by the chief executive

material means, except in clause 4,—

- (a) the original material;
- (b) the original material with amendments incorporated;
- (c) material that amends the original material;
- (d) material that replaces the original material

regulations means regulations under this Act.

2 Incorporation in regulations

- (1) The following written or electronic material may be incorporated in regulations:
 - (a) standards, requirements, or recommended practices of international or national organisations;
 - (b) standards, requirements, or recommended practices prescribed in any country or jurisdiction;
 - (c) material that is from any other source, deals with technical matters, and is too large to include in, or print as part of, the regulations;
 - (d) material that is from any other source and deals with technical matters and that it would be impractical to include in, or print as part of, the regulations.
- (2) Material may be incorporated—
 - (a) wholly or partly; and
 - (b) with modifications, additions, or variations specified in the regulations.
- (3) Material incorporated in regulations has legal effect as part of the regulations.

3 Requirement to consult on proposal to incorporate material

- (1) This clause applies if it is proposed to incorporate material in regulations.

- (2) The chief executive must make the material available in 1 or more of the following ways:
 - (a) making it available for reading free of charge during working hours at the inspection sites:
 - (b) making it available for reading free of charge in any other way determined by the chief executive:
 - (c) if it is possible to do so without breaching copyright, making it available free of charge—
 - (i) on an Internet site maintained by or on behalf of the Ministry:
 - (ii) by providing a hypertext link from an Internet site maintained by or on behalf of the Ministry to an Internet site maintained by or on behalf of someone else where the material is available free of charge:
 - (d) if it is possible to do so without breaching copyright, making copies of the material available for purchase.
- (3) The chief executive must—
 - (a) give public notice stating that—
 - (i) the material is proposed for incorporation in the regulations; and
 - (ii) the material is available in the way or ways in which the chief executive has made it available; and
 - (iii) public comment on the proposal to incorporate the material may be made to the chief executive; and
 - (b) allow a reasonable opportunity for the public to comment on the proposal; and
 - (c) consider any comments made.
- (4) If the material is not in an official New Zealand language, an accurate translation of the material into an official New Zealand language must also be available in each of the circumstances described in subclause (2).
- (5) Failure to comply with this clause does not invalidate regulations that incorporate material.

4 Effect of amendments to, or replacement of, material incorporated

- (1) Material that amends or replaces material incorporated in regulations has legal effect as part of the regulations only if the Minister publishes a notice under subclause (2).
- (2) The Minister may publish a notice in the *Gazette* that—
 - (a) states that material that amends or replaces material incorporated in regulations has legal effect as part of the regulations; and

- (b) specifies the date on which the material that amends or replaces material incorporated in regulations has legal effect as part of the regulations.
- (3) Subclause (1) does not apply if the regulations expressly say that it does not apply.

5 Proof of material incorporated

- (1) A copy of material incorporated in regulations must be—
 - (a) certified as a correct copy of the material by the chief executive; and
 - (b) retained by the Ministry.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the regulations of the material.

6 Effect of expiry of material incorporated

- (1) Material incorporated in regulations that expires or that is revoked or that ceases to have effect ceases to have legal effect as part of the regulations only if the Minister publishes a notice under subclause (2).
- (2) The Minister may publish a notice in the *Gazette* that—
 - (a) states that material incorporated in regulations that has expired or has been revoked or has ceased to have effect ceases to have legal effect as part of the regulations; and
 - (b) specifies the date on which the material ceases to have legal effect as part of the regulations.
- (3) Subclause (1) does not apply if the regulations expressly say that it does not apply.

7 Access to material incorporated

- (1) The Minister must make material incorporated in regulations available in 1 or more of the following ways:
 - (a) making it available for reading free of charge during working hours at the inspection sites;
 - (b) making it available for reading free of charge in any other way determined by the Minister;
 - (c) if it is possible to do so without breaching copyright, making it available free of charge—
 - (i) on an Internet site maintained by or on behalf of the Ministry;
 - (ii) by providing a hypertext link from an Internet site maintained by or on behalf of the Ministry to an Internet site maintained by or on behalf of someone else where the material is available free of charge;

- (d) if it is possible to do so without breaching copyright, making copies of the material available for purchase.
- (2) The Minister must give public notice stating that—
 - (a) the material is incorporated in the regulations; and
 - (b) the material is available in the way or ways in which the Minister has made it available.
- (3) If the material is not in an official New Zealand language, an accurate translation of the material into an official New Zealand language must also be available in each of the circumstances described in subclause (1).
- (4) Failure to comply with this clause does not invalidate regulations that incorporate material.

8 Application of Legislation Act 2012

- (1) Part 2 of the Legislation Act 2012 does not apply to material incorporated in regulations.
- (2) Subpart 1 of Part 3 of the Legislation Act 2012 applies to regulations that incorporate material.
- (3) However, nothing in section 41 of the Legislation Act 2012 requires material incorporated in regulations to be presented to the House of Representatives.

Schedule 5E clause 8: replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

9 Regulations (Disallowance) Act 1989

[Repealed]

Schedule 5E clause 9: repealed, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

10 Standards and Accreditation Act 2015

Nothing in this schedule affects the application of sections 29 to 32 of the Standards and Accreditation Act 2015.

Schedule 5E clause 10: replaced, on 1 March 2016, by section 45(1) of the Standards and Accreditation Act 2015 (2015 No 91).

Schedule 6
Orders revoked

s 165(2)

Auckland Milk Supply Association Order 1984 (SR 1984/221)**Dairy Board Amendment Act Commencement Order 1993 (SR 1993/17)****Dairy Board Amendment Act Commencement Order 1996 (SR 1996/210)****Dairy Board Amendment Act (No 2) Commencement Order 1996 (SR 1996/328)****Dairy Board (Local Marketing) Regulations 1987 (SR 1987/131)****Dairy Board (Means of Determining Prices) Order 1973 (SR 1973/138)****Dairy Board Order 1966 (SR 1966/115)****Dairy Companies Borrowing Powers Regulations 1935 (*Gazette* 1935, p 1943)****Hutt Valley and Bays Metropolitan Milk Board Order 1963 (SR 1963/18)****Rotorua and Murupara District Milk Supply Association Order 1986 (SR 1986/174)****Turangi Milk District Regulations 1966 (SR 1966/55)**

Schedule 7 Enactments amended

s 165(3), (4)

Agriculture (Emergency Powers) Act 1934 (1934 No 34)

Amendment(s) incorporated in the Act(s).

Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16)

Amendment(s) incorporated in the Act(s).

Co-operative Companies Amendment Act 1998 (1998 No 117)

Amendment(s) incorporated in the Act(s).

Dairy Industry Act 1952 (1952 No 55)

Amendment(s) incorporated in the Act(s).

Dairy Industry Amendment Act 1954 (1954 No 13)

Amendment(s) incorporated in the Act(s).

Dairy Industry Amendment Act 1955 (1955 No 55)

Amendment(s) incorporated in the Act(s).

Dairy Industry Amendment Act 1975 (1975 No 68)

Amendment(s) incorporated in the Act(s).

Dairy Industry Amendment Act 1976 (1976 No 47)

Amendment(s) incorporated in the Act(s).

Dairy Industry Amendment Act 1980 (1980 No 109)

Amendment(s) incorporated in the Act(s).

Fees and Travelling Allowances Act 1951 (1951 No 79)

Amendment(s) incorporated in the Act(s).

Finance Act 1988 (1988 No 107)

Amendment(s) incorporated in the Act(s).

Finance Act (No 3) 1990 (1990 No 115)

Amendment(s) incorporated in the Act(s).

Finance Act 1993 (1993 No 49)

Amendment(s) incorporated in the Act(s).

Hawke's Bay Earthquake Act 1931 (1931 No 6)

Amendment(s) incorporated in the Act(s).

Marketing Act 1936 (1936 No 5)

Amendment(s) incorporated in the Act(s).

Marketing Amendment Act 1937 (1937 No 21)

Amendment(s) incorporated in the Act(s).

Marketing Amendment Act 1939 (1939 No 40)

Amendment(s) incorporated in the Act(s).

Meat Board Act 1997 (1997 No 105)

Amendment(s) incorporated in the Act(s).

Official Information Act 1982 (1982 No 156)

Amendment(s) incorporated in the Act(s).

Wool Board Act 1997 (1997 No 107)

Amendment(s) incorporated in the Act(s).

Schedule 7 **Income Tax Act 1994**: repealed, on 1 April 2005, by section YA 2 of the Income Tax Act 2004 (2004 No 35).

Schedule 8
Orders amended

s 165(5)

Biosecurity (Bovine Tuberculosis—Cattle Levy) Order 1998 (SR 1998/457)

Amendment(s) incorporated in the order(s).

Biosecurity (National Bovine Tuberculosis Pest Management Strategy) Order 1998 (SR 1998/179)

Amendment(s) incorporated in the order(s).

Co-operative Dairy Companies Income Tax Regulations 1955 (SR 1955/55)

Amendment(s) incorporated in the regulations.

Co-operative Milk Marketing Companies Income Tax Regulations 1960 (SR 1960/1)

Amendment(s) incorporated in the regulations.

Dairy Industry Regulations 1990 (SR 1990/290)

Amendment(s) incorporated in the regulations.

Dairy Industry Restructuring Amendment Act 2012

Public Act	2012 No 51
Date of assent	26 July 2012
Commencement	see section 2

1 Title

This Act is the Dairy Industry Restructuring Amendment Act 2012.

2 Commencement

- (1) Except for section 17, this Act comes into force on the day after the date on which it receives the Royal assent.
- (2) Section 17 comes into force on the date specified in an Order in Council made under section 109B of the principal Act (as inserted by section 7 of this Act).

3 Principal Act

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

Part 2 Miscellaneous

19 References are references to principal Act

In sections 20 and 21,—

- (a) new section 109A and new section 109B mean the corresponding provisions inserted in the principal Act by section 7 of this Act; and
- (b) all other section references are references to the principal Act.

20 Transitional provision for application under section 73 or 74 of principal Act

- (1) This section applies to every application that—
 - (a) must be accepted under section 73 or has been accepted under section 74(3); and
 - (b) is made before the date specified in the Order in Council under new section 109B; and
 - (c) is made in respect of the next season following the date specified in the Order in Council.
- (2) Despite new sections 109A and 109B, the following sections continue to apply in respect of an application to which this section applies as if the Order in Council had not been made:
 - (a) section 77(4):

- (b) section 81(1):
- (c) section 82(1):
- (d) sections 83 to 85:
- (e) section 88(1) and (2):
- (f) sections 90 to 93.

21 Transitional provision for notice of withdrawal under section 97 of principal Act

- (1) This section applies to every notice of withdrawal under section 97 that is—
 - (a) given before the date specified in the Order in Council under new section 109B; and
 - (b) given in respect of the next season following the date specified in the Order in Council.
- (2) Despite new sections 109A and 109B, the following sections continue to apply in respect of a notice of withdrawal to which this section applies as if the Order in Council had not been made:
 - (a) section 98(1):
 - (b) section 99:
 - (c) sections 101 to 105.

Reprints notes

1 *General*

This is a reprint of the Dairy Industry Restructuring Act 2001 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Dairy Industry Restructuring Amendment Act 2018 (2018 No 2)
Standards and Accreditation Act 2015 (2015 No 91): section 45(1)
Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409): regulation 3(1)
Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150
Patents Act 2013 (2013 No 68): section 249
Legislation Act 2012 (2012 No 119): section 77(3)
Dairy Industry Restructuring (Trading Among Farmers) Order 2012 (SR 2012/345)
Dairy Industry Restructuring Amendment Act 2012 (2012 No 51)
Search and Surveillance Act 2012 (2012 No 24): section 230
Criminal Procedure Act 2011 (2011 No 81): section 413
Dairy Industry Restructuring (Raw Milk Pricing Methods) Act 2010 (2010 No 11)
Policing Act 2008 (2008 No 72): section 116(a)(ii)
Dairy Industry Restructuring Amendment Act 2007 (2007 No 107)
Income Tax Act 2007 (2007 No 97): section ZA 2(1)
Dairy Industry Restructuring Amendment Act 2005 (2005 No 99)
Crown Entities Act 2004 (2004 No 115): section 200
Income Tax Act 2004 (2004 No 35): section YA 2
Supreme Court Act 2003 (2003 No 53): section 48(2)
Dairy Industry Restructuring Act 2001 (2001 No 51): section 109A

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Dairy Industry Restructuring Act 2001

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