

# **Dairy Industry Restructuring (Raw Milk Pricing Methods) Bill**

Government Bill

As reported from the Primary Production  
Committee

## **Commentary**

### **Recommendation**

The Primary Production Committee has examined the Dairy Industry Restructuring (Raw Milk Pricing Methods) Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The main purpose of this bill is to permit regulations to be made to allow all or some regulated raw milk to be allocated through an auction process and to prescribe the design details of such an auction.

### **Incorporation by reference**

Clause 5 would insert new section 119A into the Dairy Industry Restructuring Act 2001, which would allow regulations made under that Act to incorporate material by reference under Schedule 5E, which is inserted by clause 6.

Following the advice of the Regulations Review Committee we recommend amending Schedule 5E to insert several of the standard

clauses for incorporating material by reference, which were not in the bill as introduced. These are

- setting out consultation requirements
- that the Acts and Regulations Publication Act 1989 does not apply
- that the Regulations (Disallowance) Act 1989 applies
- that nothing in Schedule 5E affects the application of sections 22 to 25 of the Standards Act 1988.

## **Appendix**

### **Committee process**

The Dairy Industry Restructuring (Raw Milk Pricing Methods) Bill was referred to the committee on 27 October 2009. The closing date for submissions was 3 December 2009. We received and considered 11 submissions from interested groups and individuals. We heard nine submissions.

We received advice from the Ministry of Agriculture and Forestry. The Regulations Review Committee reported to the committee on the incorporation by reference provisions contained in Schedule 5E.

### **Committee membership**

Shane Ardern (Chairperson)

Hon Jim Anderton

Brendon Burns

Hon John Carter (until 10 February 2010)

Dr Ashraf Choudhary

Craig Foss (from 10 February 2010)

Sandra Goudie

Colin King

Hon Damien O'Connor

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon David Carter*

## **Dairy Industry Restructuring (Raw Milk Pricing Methods) Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Dairy Industry Restructuring (Raw Milk Pricing Methods) Act **2009**.
- 2 Commencement**  
This Act comes into force on **1 April 2010**. 5
- 3 Principal Act amended**  
This Act amends the Dairy Industry Restructuring Act 2001.

**4 Obligations concerning milk**

(1) Section 115(1)(a) and (b) are omitted and the following paragraphs substituted:

- “(a) require new co-op to supply in New Zealand 1 or more of the following goods or services: 5
  - “(i) components of milk:
  - “(ii) products derived from milk:
  - “(iii) transporting, processing, and packaging milk, components of milk, and products derived from milk; and 10
- “(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: 15
  - “(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: 20
  - “(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: 25
  - “(iv) specify the terms of supply for it; and
- “(bc) do some or all of the following for auctions of raw milk: 30
  - “(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: 35
  - “(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: 5
  - “(viii) provide for the maintenance of the system or systems for holding the auctions: 10
  - “(ix) allow the chief executive to require new co-op to reimburse the chief executive for the annual operating costs of the auctions: 10
  - “(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” 15
- (2) Section 115(1)(c) is amended by omitting “subject to subsection (2), limit the amount of goods or services” and substituting “limit, subject to subsection (2), the amount of goods or services described in paragraph (a) or **(ba)**”. 20
- (3) Section 115(1)(d) is amended by inserting “or **(ba)**” after “paragraph (a)”. 20
- 5 New section 119A inserted**
- The following section is inserted after section 119:
- “**119A Incorporation by reference** 25  
Regulations made under this Act may incorporate material by reference under **Schedule 5E.**”
- 6 New Schedule 5E inserted**
- The **Schedule 5E** set out in the schedule is inserted after Schedule 5D. 30
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**Schedule** s 6  
**New Schedule 5E inserted**

**Schedule** s 119A  
**Incorporation of material by reference in regulations** 5

**1 Interpretation**

In this schedule,—

**incorporated** means incorporated by reference

**inspection site** means—

(a) the head office of the Ministry: 10

(b) any other place determined by the chief executive

**material** means, except in **clause 3**,—

(a) the original material:

(b) the original material with amendments incorporated:

(c) material that amends the original material: 15

(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: 20

(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: 25

(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. 30

(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. 35

**2A 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: 5
- (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: 10
  - (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: 15
  - (d) if it is possible to do so without breaching copyright, making copies of the material available for purchase. 20
- (3) The chief executive must—
- (a) give public notice stating that—
    - (i) the material is proposed for incorporation in the regulations; and 25
    - (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 30
  - (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)**. 35

(5) Failure to comply with this clause does not invalidate regulations that incorporate material.

**3 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)**. 5
- (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 10
- (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. 15

**4 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 20
- (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. 25

**5 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)**. 30
- (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. 35

- (3) **Subclause (1)** does not apply if the regulations expressly say that it does not apply.

**6 Access to material incorporated**

- (1) The Minister ~~must~~ must make material incorporated in regulations available in 1 or more of the following ways: 5
- (a) ~~must make material incorporated in regulations available for reading free of charge during working hours at the offices of the Ministry; and~~
  - (b) ~~may make the material available for reading free of charge in any other way that the chief executive considers appropriate in the circumstances; and~~ 10
  - (c) ~~must make copies of the material available for purchase, if it is possible to do so without breaching copyright; and~~
  - (d) ~~must give public notice stating that—~~ 15
    - (i) ~~the material is incorporated in the regulations; and~~
    - (ii) ~~the material is available for reading during working hours free of charge and the place or places at which it can be read; and~~ 20
    - (iii) ~~the material is available for reading free of charge in any other way in which the chief executive makes it available; and~~
    - (iv) ~~copies of the material are available for purchase, if they are, and the place or places at which they can be purchased.~~ 25
  - (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: 30
  - (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 35

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- 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— 5  
(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.
- (23) If the material incorporated in regulations is not in an official  
New Zealand language, an accurate translation of the material 10  
into an official New Zealand language must also be available  
in each of the circumstances described in **subclause (1)(a)**  
**to (c).**
- (4) Failure to comply with this clause does not invalidate regula-  
tions that incorporate material. 15
- 7** **Acts and Regulations Publication Act 1989**  
The Acts and Regulations Publication Act 1989 does not apply  
to material incorporated in regulations.
- 8** **Regulations (Disallowance) Act 1989**  
(1) The Regulations (Disallowance) Act 1989 applies to regula- 20  
tions that incorporate material.  
(2) However, nothing in section 4 of that Act requires material  
incorporated in regulations to be presented to the House of  
Representatives.
- 9** **Standards Act 1988** 25  
Nothing in this schedule affects the application of sections 22  
to 25 of the Standards Act 1988.

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**Legislative history**

27 October 2009

Introduction (Bill 94–1), first reading and referral  
to Primary Production Committee

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