



**Ministry of Agriculture
and Forestry**

Te Manatu Ahuwhenua,
Ngaherehere

**OPTIONS FOR LEGISLATIVE
REFORM OF DAIRY PRODUCT
SAFETY AND TRADE:**

ADDITIONAL PAPER

MAF Policy

12 March 2001

INTRODUCTION

This paper compares two feasible options for reform of the legislation covering food safety and trade in the dairy industry. The two options, to replace the Dairy Industry Act 1952 (including the regulations made under that Act), are:

- a new Dairy Products Act; or
- the regulation of dairy products under the Animal Products Act 1999.

The Appendix outlines how the Animal Products Act 1999 (which regulates the food safety of all other animal products) is structured and how dairy products could be regulated under the Animal Products Act 1999.

MAF will develop a proposal, based on one of the options discussed in this paper, for the Minister's consideration. MAF expects to be in a position to submit a proposal to the Minister by the end of June 2001.

This paper is for consultation purposes only and the proposals may be subject to change, as they do not necessarily represent agreed Government policy.

NEED FOR REVIEW

The deficiencies of the DIA presently expose the Government and industry to unnecessary constraints and risks.

The Dairy Industry Act 1952 (DIA) is highly prescriptive and envisages a level of Government intervention that is no longer appropriate. The DIA does not provide an adequate platform for the facilitation of trade in dairy products, and its inflexibility constrains industry innovation. For example, the DIA did not provide for the colostrum industry. Prior to the urgent amendment in August 2000, the colostrum industry was inadvertently acting illegally. There is the potential for other problems to arise while the industry continues to operate under outdated and inflexible legislation.

The Dairy Industry Regulations 1990 introduced risk management (including HACCP) principles but are not sufficient to fully allow the adoption of the regulatory model¹. For example, the use of third party agencies (TPAs) to undertake certain functions needs to be properly supported in the legislation. The continued use of administrative or contractual arrangements could lead to inconsistencies.

The discussion paper, *Review of Food Safety and Standards in the Dairy Industry*, was released in July 1999. All six submitters recognised the need for legislative change and for consistency across food legislation in New Zealand. There was support for an approach based on risk management principles and the regulatory model, as used in the Animal Products Act 1999 (APA) and the 1996 amendment to the Food Act 1981.

KEY ELEMENTS OF NEW LEGISLATION

¹ The regulatory model is a system that encourages food operators to accept responsibility to produce food that meets regulated standards, rather than Government dictating how standards will be met and end point testing for compliance. The model provides for third parties to verify compliance.

Any future legislation that regulates the safety and trade of dairy products will provide for:

- a risk management based approach to food safety, product labelling and market access;
- industry developed risk based programmes;
- the setting of product safety standards;
- the provision of official assurances to facilitate the trade of dairy products;
- the setting of clear roles and responsibilities, including those of industry and third parties and clearly defining when Government may intervene; and
- the making of specifications and notices, including those related to market access.

It will be written in an outcome-oriented way that provides industry with flexibility to meet defined standards, and does not put unnecessary constraint on innovation.

The new legislative regime for dairy will not result in major changes “on the ground” for producers and processors. However, it is important that the legislative platform be updated to more effectively assure dairy product safety and better facilitate trade of dairy products into the future.

THE EXPECTED LEGISLATIVE STRUCTURE

Whichever option is chosen, the Act that regulates dairy products is expected to have the following general provisions and structure:

- Preliminary provisions (*definitions, coverage*)
- Risk based industry developed programmes (*i.e PSPs*)
- Regulated control schemes (*to regulate standards across a group eg dairy farms*)
- Standards and Specifications
- Export/official assurances
- Enforcement (*powers of inspectors etc*)
- Third party agencies and accredited persons
- Cost recovery
- Offences, Penalties
- Miscellaneous Provisions (*the making of regulations, consultation requirements, transitional provisions – details on how the DIA will be gradually replaced by the new legislation*)

The Act itself will be supported by regulations (which will set standards), specifications, and notices issued by the Director-General. The detailed operational requirements relating to dairy products will be set out in this “subordinate” legislation, much as is the case now under the DIA.

COMPARISON OF THE OPTIONS

Both of the options under consideration, a new Dairy Products Act or the use of the APA for dairy products, would fulfil the desired outcomes. The question to be determined is which option provides the greatest net benefit. The following table gives a summary comparison of the costs and benefits of the two options in very general terms.

Issues	New Dairy Products Act	Dairy under APA
Cost to Government (MAF and Parliamentary Counsel (drafting) resources, Parliamentary and Select	<i>Higher</i> Estimated size of Act: 150 sections, plus transitional	<i>Lower</i> Estimated size of Act: 15 sections, plus transitional

Committee time, opportunity cost of deferred work)	provisions	provisions
Period until implementation of legislative change	<i>Longer</i> Enactment date estimated to be between February 2003 and August 2004	<i>Shorter</i> Estimated introduction date October 2001 and enactment date July 2002
Recognition of the dairy industry	<i>Possibly more</i> Retains a specific Act for dairy products	<i>Potentially less</i> Dairy products combined with other animal products - but there would continue to be dairy specific regulations and specifications.
Consistency across food legislation	<i>Lower</i> Retains three pieces of food legislation – largely duplicative	<i>Greater</i> Consolidates MAF’s food legislation

COSTS

Compliance costs are not expected to increase because of the legislative reform.

The cost of developing a new legislative regime for dairy products, whether that is a new Act or an amendment to an existing Act, will be fully Crown funded. The financial costs (to government) associated with the development, drafting, scrutiny and passage of a new Dairy Products Act would be much higher than if the APA were amended to also regulate dairy products.

A separate Dairy Products Act could have additional costs or risks. Duplication of agricultural food legislation may not be looked upon favourably by other Government departments. It would be perceived as leading to less consistency or harmonisation across food regulation in New Zealand. This would not be in line with the long-term government goal of a single, integrated piece of food safety legislation.

A decision is yet to be made on the future of a single food agency for New Zealand. The review of the Food Act 1981 is expected to be a high priority for a new agency, should one be formed.

These risks and costs would need to be balanced against the benefits the industry considers are associated with a separate Dairy Products Act.

TIMEFRAMES

Many aspects of the development and passage of legislation are outside the direct control of MAF, for example, availability of Parliamentary Counsel drafting time, legislative priority, Parliamentary rules dictating timing and processes. It is not possible to be certain about when Bills may be debated through the various readings (stages) and passed.

Developing the policy for a new Act, although it would largely duplicate the APA, would be a much bigger task than amending the APA to regulate dairy products. For example, there were

13 cabinet papers on the policy for the APA. The length of time needed to develop a Dairy Products Act would partly depend on the amount of debate over the policy direction. It would also take longer for Parliament (including Select Committee) to scrutinise a bigger Bill. It could take 6 to 18 months longer to put through a new Dairy Products Act than it would take to amend the APA (to achieve the same objectives).

INITIAL CONCERNS RAISED BY INDUSTRY REPRESENTATIVES ABOUT THE APA OPTION

Concerns have been raised about the option to use the APA to regulate safety and trade of dairy products. These concerns relate to the level of influence industry may have over the system of regulation, the implications of being associated with other animal products, a possible loss of recognition for the industry, and how international markets may view such a change in the legislative regime.

If dairy products were regulated under the APA, there would continue to be a dairy specific package of requirements. The Appendix provides further information.

The likely presence of dairy specific regulations and specifications may address some of the industry's concerns. However, MAF would like to respond to these concerns in more detail below.

International acceptability

The way New Zealand legislation is perceived can be judged by the attitude of overseas authorities, by the approach other countries take to their own legislation, by guidance from international bodies, and by the possible attitude of other overseas audiences to the safety and integrity of New Zealand dairy products. MAF considers that overseas regulatory authorities are interested in the effectiveness of the legislation, not its form. Some countries have omnibus legislation for export food industries, for example Australia's Export Control Act 1982. Other countries have specific dairy legislation, but generally this relates to dairy products for sale on the domestic market. For example, in the US the Grade A Pasteurised Milk Ordinance provides model legislation which is adopted by most states, and forms the basis of interstate trade in fresh milk products.

Codex, wherever possible, establishes standards that apply generally to all foods, covering hygiene, additives, residues and contaminants, labelling, and methods of analysis and sampling. However, there are some specific dairy standards that might influence the form of national legislation for the dairy industry: the General Standard for the Use of Dairy Terms, the proposed Code of Hygienic Practice for Milk and Milk Products, and the proposed model export certificate for milk and milk products.

For marketing purposes, specific dairy legislation might be considered an advantage. However, there would be specific regulatory requirements for dairy products under the APA (set out in regulations and specifications). A specific Act is not necessary to demonstrate control.

Loss of influence over the way the industry is regulated

Concern has also been raised that the industry may lose some of its influence over the way the dairy industry is regulated if dairy products come within the APA. MAF considers that this option would not lead to significant changes "on the ground". The operational requirements

that have a day to day impact on the operation of the dairy industry would likely be at the level of official market access requirements and specifications. These would be dairy specific and not linked to other animal products. The costs of services relating to the regulation of dairy products would continue to be recovered separately from those relating to other animal products.

MAF's Dairy and Plants team would continue to be responsible for the implementation of the legislation as it relates to dairy products. The Dairy Product Safety Advisory Council would continue to fulfil the same function as it does now.

The APA contains comprehensive consultation requirements. MAF considers that the dairy industry would have a number of opportunities to influence and contribute to the policy direction of the legislation and the operational requirements it would be subject to. Where there are specific matters relating to dairy products that need to be addressed, MAF would continue to work with the dairy sector to resolve these issues.

Association with other, "less hygienic" animal products

As previously outlined, the APA is drafted in a general, outcome based manner and does not make specific reference to any animal products (except in definitions). Requirements are product specific at the level of specifications and, in some cases, regulations. MAF consider that regulating dairy products under the APA would not affect the international marketing of New Zealand dairy products.

Any food safety issues that arise have the potential, at least initially, to impact across the food sector. For example, Korea initially stopped the import of all New Zealand food products after the toxic algal bloom, which affects only shellfish, was discovered. However, MAF considers such a reaction is not related to the form or coverage of the New Zealand legislation.

CONCLUSION

The dairy industry is already operating in a risk management based environment. Risk management based legislation was introduced in the 1990 Regulations and more recently, with the new set of Standards. However, the inadequacies of the DIA are increasingly evident. The Act needs to be changed so that the industry is not exposed to unnecessary risks and to allow for further innovation.

Either option, that is, the development of a new Dairy Products Act, or the use of the Animal Products Act to regulate dairy products, would deliver the key elements required of a new legislative framework.

MAF will make its recommendation to the Minister on the basis of the option that is demonstrated to deliver the greatest net benefit. Submissions received on this paper and the earlier discussion paper² will be taken into account when this recommendation is made. Submissions close on **21 March 2001** and should be provided to:

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² *Options for Legislative Reform of Food Safety in the Dairy Industry* was provided to DPSAC in late November 2000 and released publicly in early February 2001.

WELLINGTON

APPENDIX: REGULATION OF DAIRY PRODUCTS UNDER THE APA

The following table shows how the APA is structured and briefly highlights how dairy products could be regulated under the APA and the changes that it is expected would need to be made. It is probable that separate regulations would be made under the APA that would establish specific standards for dairy products. Official market access requirements and specifications covering more detailed requirements for dairy products would be also made. APA specifications are generally at a similar level to the current Dairy Standards made under the DIA.

MAF notes that a new Dairy Products Act for dairy would have a similar structure to the APA.

APA	Amended APA covering dairy products
<p>Part 1 Preliminary Provisions</p> <p><i>Application of the Act, including definitions</i></p>	<ul style="list-style-type: none"> ▪ Long title of the Act would need to be changed to “An Act to replace the Meat Act 1981 <i>and the Dairy Industry Act 1952.....</i>” ▪ Section 8 of the APA outlines the products and material that are excluded from the ambit of the APA. Subsection (b) explicitly excludes material or product that is dairy produce within the meaning of the Dairy Industry Act 1952. This section would need to be repealed³. ▪ Specific definitions may need to be added or amended to cover dairy.
<p>Part 2 Risk Management Programmes</p> <p><i>Relationship Between Food Act Regime and Risk Management Programmes</i></p> <p><i>Recognised Risk Management Programme Verifying Agencies and Accredited Verifiers</i></p>	<ul style="list-style-type: none"> ▪ Dairy product safety is currently provided for under the Dairy Industry Regulations 1990 by use of PSPs. Farm dairies through to transporters and manufacturers are all required to operate in accordance with approved PSPs. Risk Management Programmes (RMPs) are used in the APA to provide that all animal products are “fit for intended purpose”. The APA also states who must have a Risk Management Programme. ▪ The APA recognises the general equivalence of RMPs with Food Safety Programmes (made under the Food Act). ▪ Approved PSPs would remain in force during the transitional period from the current to the new regime⁴. However, it is likely that before the end of the transitional period all PSPs would need to be registered as RMPs and any required changes made.
<p>Part 3 Regulated Control Schemes</p>	<ul style="list-style-type: none"> ▪ Regulated control schemes (RCS, a type of regulation) set out requirements to apply across whole groups when it is not practical or feasible to require each operator to have a separate RMP.

³. There are several other references in the Act that for clarity purposes specifically exclude dairy products and material- such references would also need to be repealed.

⁴ Transitional provisions regulate how the move from an old Act to a new one will be managed. For example, existing approved PSPs would be carried over for a certain period. The transitional period is specified and would usually be 2-3 years. This would be determined in consultation with the industry.

	<p>RCS' will set out general, outcome oriented standards to regulate specific issues, but will include some requirements particular to product groups where necessary. Eg there would be dairy specific requirements in an RCS covering control and monitoring of residues.</p> <ul style="list-style-type: none"> It is likely that on-farm requirements for dairy farms would be picked up in an RCS covering all dairy farms, rather than requiring each dairy farm to operate in accordance with an approved RMP/PSP.
<p>Part 4 Animal Product Standards and Specifications</p>	<ul style="list-style-type: none"> Standards (set through regulations) and Specifications set under this Part may apply in respect of any class or description of animal material or product. It is expected there would, however, be dairy product specific Standards and Specifications. It is expected that the existing Dairy Standards would continue to apply during the transition period at least; the current operational requirements would not change significantly.
<p>Part 5 Export of Animal Material and Products</p> <p><i>Registration of Exporters</i> <i>Market Access Requirements and Official Assurances to Foreign Governments</i></p>	<ul style="list-style-type: none"> This Part facilitates overseas market access requirements for animal material and products exported by NZ Market access requirements specific to dairy products would continue under the APA. The requirements of the Dairy (Inward Monitoring Arrangement Certification) Regulations 2000 would continue, as a notified OMAR (Official Market Access Requirement)
<p>Part 6 Homekill and Recreational Catch Service Providers</p> <p><i>Listing of Homekill and Recreational Catch Service Providers</i></p>	<ul style="list-style-type: none"> This Part allows owners of animals and recreational hunters and fishers to kill and process their own animals and recreational catch, outside the normal regulatory requirements of the Act, provided it is for their own use or consumption and is not traded.
<p>Part 7 Officers, Powers, etc</p> <p><i>Appointment of Officers</i> <i>Powers of Director-General</i> <i>Powers of Animal Product Officers</i> <i>Powers of Official Assessors</i> <i>Search Warrants</i></p>	<ul style="list-style-type: none"> This Part relates to duties and rights of animal products officers who investigate whether the APA is being complied with. At present some of the inspectors' powers are provided for in the Dairy Industry Regulations 1990, but this would not continue. Modern drafting convention (taking into account the Bill of Rights) is that significant powers be authorised or conferred through the Act, as changes to Acts are scrutinised more rigorously than changes to regulations.
<p>Part 8 Recognised Agencies and Accredited Persons</p>	<ul style="list-style-type: none"> This Part allows for agencies and individuals to be accredited so that they can carry out verification or other specialist functions - third party verifiers. Third party agencies that are currently operating

	<p>in the dairy industry would be able to continue to do so during the transitional period. There would probably need to be a transitional provision covering recognition of these TPAs under the APA.</p>
<p>Part 9 Cost Recovery</p>	<ul style="list-style-type: none"> ▪ The APA sets out the criteria and methods that can be used to recover costs. Affected parties must be consulted and charges must be equitable, transparent and justified. Costs are generally allocated and recovered so that maximum benefit is delivered at minimum cost. ▪ There would be dairy specific cost recovery regulations. The current fees and charges applying to dairy would continue during the transitional period. Regular reviews of costs and charges, with opportunity for industry input, are generally appropriate in any case.
<p>Part 10 Offences, Penalties, and Proceedings</p> <p><i>Compliance orders</i></p>	<ul style="list-style-type: none"> ▪ This Part sets out offences under the APA, including endangering human or animal health, deception, sale of non-complying animal material or product, presenting non-complying animal material for processing and exporting without being registered. ▪ Most of these offences would also apply to dairy products. ▪ The APA allows for Penalties up to \$500,000 for body corporate; imprisonment not exceeding 5years and a fine not exceeding \$100,000 for an individual (maximum penalty varies depending on type of offence). ▪ This compares with penalties of up to \$20,000 for breaching the current Dairy Industry Act or regulations.
<p>Part 11 Miscellaneous Provisions</p> <p><i>Identification and Related Systems Recordkeeping Requirements and Use of Information Consultation, Notification Regulations, Notices, etc Repeals, Amendments, and Transitional Provisions</i></p>	<ul style="list-style-type: none"> ▪ This Part allows for the making of regulations and the issuing of Notices and also sets out the requirements for the keeping of records and the provision of information. ▪ A regulation making power specifically for dairy products could be added.