

# Preliminary impact and risk assessment

## Section 1: General information

Name of the responsible (or lead) government agency:
Ministry for Primary Industries (MPI)
Title of policy work programme or proposal:
<b>Revocation of the Herd Testing Regulations 1958</b>
If known, the title(s) of the main Act and/or Regulations that could be amended or created:
Dairy Industry Restructuring Act 2001 – Subpart 4 (the DIRA) Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 Herd Testing Regulations 1958
Agency contact name and phone number:
Privacy 
Date completed:
17 June 2016

## Section 2: Do the RIA requirements apply?

Do the RIA requirements apply?	Yes/No/Not sure
Is this policy initiative expected to lead to a Cabinet paper?	Yes
Will this policy initiative consider options that involve creating, amending or repealing legislation (either primary legislation or disallowable instruments for the purposes of the Legislation Act 2012)?	Yes

If you can answer “no” to either of these two questions, the RIA requirements do not apply. There is no need to complete a PIRA (though the questions might still provide useful prompts).

Additional exemptions from the RIA requirements	Yes/No/Not sure
If this initiative includes legislative options, are they covered by one or more of the following exemptions?	
<ul style="list-style-type: none"> <li>• Technical “revisions” or consolidations that substantially re-enact the current law in order to improve legislative clarity or navigability (including the fixing of errors, the clarification of the existing legislative intent, and the reconciliation of inconsistencies)</li> </ul>	No
<ul style="list-style-type: none"> <li>• Suitable for inclusion in a Statutes Amendment Bill (if not already covered by the point above).</li> </ul>	No
<ul style="list-style-type: none"> <li>• Would repeal or remove redundant legislative provisions.</li> </ul>	Yes
<ul style="list-style-type: none"> <li>• Provides solely for the commencement of existing legislation or legislative provisions (this does not include changing the existing commencement date).</li> </ul>	No
<ul style="list-style-type: none"> <li>• Needs to be authorised in an Appropriation Bill, an Imprest Supply Bill.</li> </ul>	No
<ul style="list-style-type: none"> <li>• Is for a Subordinate Legislation (Confirmation and Validation) Bill relating to regulations that have already been made</li> </ul>	No
<ul style="list-style-type: none"> <li>• Implements Deeds of Settlement for Treaty of Waitangi claims, other than those that would amend or affect existing regulatory arrangements.</li> </ul>	No
<ul style="list-style-type: none"> <li>• Brings into effect recognition agreements under the Marine and Coastal Area (Takutai Moana) Act 2011</li> </ul>	No
<ul style="list-style-type: none"> <li>• Essential (the minimum necessary) in order to comply with <u>existing</u> international obligations that are binding on New Zealand.</li> </ul>	No
<ul style="list-style-type: none"> <li>• Has no or only minor impacts on businesses, individuals or not-for-profit entities (such as might be the case for certain changes to the internal administrative or governance arrangements of the New Zealand government, like the transfer of responsibilities, staff or assets between government agencies).</li> </ul>	Yes, probably – this will be confirmed through stakeholder meetings.

If all the legislative options associated with this policy initiative qualify for one of these exemptions, then the RIA requirements do not apply.

If claiming a full exemption, please confirm this assessment with your Treasury policy team. You do not need to submit a PIRA for this purpose, but you will need to provide information in support of this claim.

If some aspects of the legislative options for this initiative can stand independently from the rest, and qualify for one of these exemptions, then the RIA requirements do not apply to those aspects. Since a PIRA will still need to be completed and submitted to your Treasury policy team, it should note any important aspects of the initiative for which an exemption is claimed.

## Section 3: Description and context

### The policy issue

What is the intended scope of the policy initiative?

This initiative is expected to result in the revocation of the Herd Testing Regulations 1958, and associated consequential amendments to the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001. Revoking the 1958 Regulations (including the revocation of all Gazette notices and Tribunal decisions made under these regulations) would complete the change to the 2001 Regulations. This would both reflect original legislative intent and simplify the regulatory environment.

What are the main underlying policy issues/problems to which this policy initiative is responding (ie, the root cause of the problem)?

### Context

The Herd Testing Regulations 1958 (1958 Regulations) were made under the old Dairy Board Act 1953. The Dairy Industry Restructuring Act 2001 (DIRA) revoked and replaced the Dairy Board Act. Consequently, the 1958 Regulations are now deemed to come under the DIRA. The DIRA allowed for the 1958 Regulations to continue. The 1958 Regulations were amended to not allow for any further changes.

### There are inconsistent regulations for herd testers which may be causing confusion

The 1958 Regulations require herd testers to be licensed and to use equipment from an approved list. The Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 (the 2001 Regulations), made under the DIRA, require herd testers to be certified and to use approved equipment or meet accuracy standards.

Livestock Improvement Corporation (LIC) and CRV Ambreed are certified under the 2001 Regulations. LIC is also licenced under the 1958 Regulations (while CRV Ambreed is not). This means LIC is subject to two sets of conditions - its licence under the 1958 Regulations and its certification under the 2001 Regulations.

Licences remain in force until the 1958 Regulations are revoked, because there are no sunset provisions. Moreover, MPI cannot change the licensing conditions.

Obligations under the two sets of regulations will be in direct conflict if the 1958 Regulations are not revoked before June 2020.

### Access to data

Both sets of regulations provide for access to data. Under the 1958 Regulations a Tribunal was responsible for approving access to data. No new approvals can be granted under the 1958 Regulations, but stakeholders may still be accessing data. MPI does not know who, if anyone, is accessing data under these Regulations. MPI will meet with stakeholders to confirm.

Data can also be accessed under the 2001 Regulations through the statutory Dairy Core Database Access Panel, which regulates data access. If data is being accessed under Tribunal decisions, it is not subject to the Access Panel.

### Overall

Revoking the 1958 Regulations (including the revocation of all Gazette notices and Tribunal decisions made under these regulations) would complete the change to the 2001 Regulations. This would both reflect original legislative intent and simplify the regulatory environment.

## The policy issue

What is known about the magnitude of these policy issues/problems?

The magnitude is thought to be minor, but there is some uncertainty as to the impacts and costs. These include the following:

- There is a cost of uncertainty on LIC as to if it or when it needs to meet new equipment requirements under the 2001 Regulations. This cost is unknown, but potentially significant;
- It is unknown which parties, if any, are accessing data under Tribunal decisions (under the 1958 Regulations). These parties may apply to the Access Panel for renewed access to data. The impact on parties who currently access data under Tribunal decisions could be significant, but could be reduced through transitional provisions;
- It is unknown if the revocation of the 1958 Regulations will have an effect on DairyNZ, in regard to the accuracy and the form of the data it receives;
- It is unknown if the Access Panel will receive an increased amount of data requests as a result of the removal of data access under Tribunal decisions.

What is the type or nature of the evidence supporting the problem definition?

It has been raised by stakeholders in various forums that the 1958 and 2001 Regulations contradict each other in a number of ways.

For example, the 1958 Regulations state that a licensed herd tester must use equipment from a gazetted list of approved equipment, while the 2001 Regulations require a certified herd tester to use equipment that meets the Dairy Herd Testing Standard.

## The policy process

Who has commissioned this work (ie, a portfolio Minister, an agency at the request of industry or the public, etc)? Is this initiative in your current regulatory plan? Who is responsible for its delivery?

The Minister for Primary Industries commissioned a review of issues in the dairy herd improvement industry. Tidying up the 1958 Regulations has arisen from that review and will help ensure the regulatory regime for the industry remains fit for purpose. This initiative is in MPI's regulatory plan.

Animal Sector Policy is responsible for its delivery.

What is the expected policy process, and expected timing of key milestones? *(Please indicate, as far as possible, intended timeframes for consultation, Cabinet consideration, drafting, and implementation)*

Are there any process or timing commitments, existing obligations, constraints, or previous Cabinet decisions that are relevant?

Any legislative amendments are intended to be implemented as part of the wider review of the Dairy Industry Restructuring Act 2001. We are aiming for Cabinet policy approvals in July 2016, with the Bill introduced to the House in late 2016. The following timeline is based on the timing of the DIRA Bill.

*Our expected process is as follows.*

June 2016 – Consult with LIC, CRV Ambreed, DairyNZ and the Access Panel.

July 2016 – Draft paper to seek Cabinet agreement to repeal 1958 Regulations through the DIRA Amendment Bill.

## The policy process

Early 2017 – Repeal 1958 Regulations, and amend the 2001 Regulations accordingly, through the DIRA Amendment Bill.

### *Risk*

There is a timing risk that MPI may not meet the above timeline (based on the DIRA Bill) if it's required to undertake public consultation. If this project does not meet the DIRA timeframes the revocation of the 1958 Regulations may not happen before June 2020, at which time obligations under the two sets of regulations will be in direct conflict.

What consultation process is planned, and who will be consulted?

MPI will meet with LIC, CRV Ambreed, DairyNZ, the Access Panel, and any parties accessing data under Tribunal decisions.

If any established methodology or form of analysis is to be followed or incorporated, please identify

N/a

## The policy options

Are there feasible non-regulatory options to consider? Is it possible that legislation is not required?

No. This policy initiative needs to revoke sub-ordinate legislation.

If the range of policy options to be considered is already constrained by existing government commitments, Ministerial directions, or previous Cabinet decisions, what are those constraints?

The 2001 Regulations are already in force and reflect an intention to revoke the 1958 Regulations.

If this involves only delegated legislation, what is the legislative authority under which it must be made?

Dairy Industry Restructuring Act 2001.

## The policy options

Which groups are might be noticeably affected (either positively or negatively) by the policy options being considered?

*Individuals, families and/or households? Consumers? Employees? Businesses? Not-for-profit organisations (including charities, voluntary organisations and incorporated societies)? People who live in particular regions? Users of resources eg, recreational fishers, road-users? Members of particular groups of the population (eg, ethnicities, genders, age groups etc) Central government agencies? Local government? Other?*

The following groups might be noticeably affected:

- any parties accessing data under Tribunal decisions (under 1958 Regulations)
- LIC
- Access Panel
- DairyNZ
- CRV Ambreed.

Feedback will be sought on the implications to these parties through consultation meetings.

## Section 4: Are the significance criteria met?

A regulatory initiative is considered to trigger the significance criteria if any of the options being considered are likely to have:

- Significant direct impacts or flow-on effects on New Zealand society, the economy, or the environment, or
- Significant policy risks, implementation risks or uncertainty.

Are there significant impacts?	Yes/No/Not sure
Will any policy options that may be considered, potentially:	
<ul style="list-style-type: none"><li>• Take or impair existing private property rights?</li></ul>	No
<ul style="list-style-type: none"><li>• Affect the structure or openness of a particular market or industry? <i>For example, assist or hinder businesses to provide a good or service; establish or remove a licence, permit or authorisation process; create or remove barriers for businesses to enter or exit an industry?</i></li></ul>	No
<ul style="list-style-type: none"><li>• Impact on the environment, such as regulations that affect the use and management of natural resources?</li></ul>	No
<ul style="list-style-type: none"><li>• Have any significant distributional or equity effects? <i>For example, where significant costs are imposed or significant benefits conferred on different sectors of the population?</i></li></ul>	No
<ul style="list-style-type: none"><li>• Alter the human rights or freedoms of choice and action of individuals?</li></ul>	No

Are there significant impacts?	Yes/No/Not sure
<ul style="list-style-type: none"> <li>Have any other significant costs or benefits on businesses, local or central government, individuals or not-for-profit organisations etc? <i>For example impose additional compliance costs; introduce or alter government cost recovery arrangements; impact on New Zealand's international capital flows or trade including the flows of goods, services, investment and ideas to and from New Zealand; impact on the incentives to work or the mobility of labour, or to invest in education or skills; impact on resource allocation, saving or investment, fiscal costs to government?</i></li> </ul>	No

For the major types of impacts you have identified, please provide brief information about the nature and likely magnitude of the impacts (in whatever dimensions seem most useful and available).

Are there significant policy, design or implementation risks?	Yes/No/Not sure
Are any of the legislative options likely to be novel, or unprecedented?	No
Is the evidence-base for the size of the problem or the effectiveness of different policy options weak or absent?	No
Are the benefits or costs of the policy options likely to be highly uncertain? Are there obvious risks that need to be managed?	No
Is the success of any of the options likely to be dependent on other policy initiatives or legislative changes?	No
Are any of the legislative options likely to have flow-on implications for the future form or effectiveness of related legislation?	No
Are there other issues with the clarity or navigability of, or costs of compliance with, the current legislation that it might be good to address at the same time?	No
Do any of the legislative options have the potential to be inconsistent with or have implications for New Zealand's international obligations?	No
Are there any issues arising in relation to New Zealand's commitment toward a single economic market with Australia?  Please check with the Ministry of Business Innovation and Employment. There may be, for instance, issues relevant to the Trans-Tasman Mutual Recognition Agreement (TTMRA).	No
Are any of the legislative options likely create or extend a power to make delegated legislation, or grant a broad discretionary power to a public body?	No
Are any of the legislative options likely to include provisions that depart from existing legislative norms for like issues or situations?  <i>These may include Bill of Rights Act and Privacy Act issues, fundamental common law principles, retrospective rule-making, creation of strict liability offences or burden of proof reversals, and matters affecting civil or criminal immunity. Please see the <a href="#">Legislative Advisory Committee Guidelines on Process and Content of Legislation</a>.</i>	No
Are any of the options likely to create, amend, or remove offences or penalties (including pecuniary penalties), the jurisdiction of a court or tribunal, or impact on court-based procedures and workloads?	Yes (remove £50 penalty)
Has implementation testing and operational expertise been integrated into the plan for evaluating options?	No (n/a)
Is there a possibility that local government will be expected to implement, administer, or enforce any options?	No
Are implementation timeframes likely to be challenging?	Not sure (depends on DIRA Amendment Bill timing)

<b>Are there significant policy, design or implementation risks?</b>	Yes/No/Not sure
Are the actual costs or benefits highly dependent on the capability or discretionary action of the regulator?	No

## Section 5: Agency assessment and Treasury confirmation

<b>Agency's preliminary assessment</b>	<b>Treasury's Assessment</b>
Do the RIA requirements apply to this policy process or proposal?	
No, we do not think the RIA requirements will apply. This will be confirmed through consultation.	
Would any resulting regulatory proposal be likely to have a significant impact or risk and therefore require RIAT involvement?	
No.	