

# Departmental Disclosure Statement

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Dairy Industry Restructuring (Export Licences Allocation) Amendment Bill
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This disclosure statement was prepared by the Ministry for Primary Industries.

The Ministry for Primary Industries certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

19/09/2024

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## Part One: General Policy Statement

The Bill amends the Dairy Industry Restructuring Act 2001 (the DIRA) to change how dairy export quotas administered by New Zealand are allocated.

Dairy export quotas enable prescribed quantities of New Zealand dairy products to receive beneficial tariff rates in markets where New Zealand holds dairy export quotas.

Dairy export quotas are negotiated as part of trade agreements. Some were agreed as part of bilateral Free Trade Agreement (FTA) negotiations. Others were agreed as part of multilateral World Trade Organization negotiations during the Uruguay Round (albeit negotiated on a bilateral basis).

New Zealand has retained the right to administer dairy export quotas for the following markets:

- the United States of America; and
- the United Kingdom (**UK**); and
- the European Union (**EU**); and
- Japan; and
- the Dominican Republic.

Dairy export quotas administered by New Zealand are allocated in the form of export licences. Currently, allocation is based on the proportion of bovine milk solids collected by participants (or their employees, contractors, or agents) directly from dairy farmers in New Zealand. Allocations are made annually.

A number of changes have occurred since the current dairy export quota allocation system was established in 2007 as follows:

- there has been an increase in the diversity of business models in the dairy industry, including dairy companies that do not collect milk; and
- there has been low utilisation of dairy export quotas over the last decade; and
- New Zealand has agreed to new FTAs with the UK and the EU, both of which have quota allocations that dairy sector participants have indicated a high level of interest in.

### Policy objectives of Bill

This Bill is intended to achieve the following policy objectives:

- develop a system that reflects the diversity of business models and sizes in the dairy sector; and
- ensure quota allocations are commercially viable and support companies to scale up; and
- maximise the value of New Zealand's dairy export quotas for New Zealand; and
- enhance New Zealand's reputation and relationships in quota markets.

### How the Bill delivers on policy objectives

The Bill delivers on the policy objectives by making 3 significant changes.

#### *An export volume history-based approach to allocation*

Allocation of export licences to participants (among those who apply) will be made proportional to their share of New Zealand export volumes over the previous 3 consecutive seasons. Export volume history will be calculated based on the volume of products exported under a tariff heading to all export markets.

Allocating export licenses based on export volume history is designed to—

- widen quota access to a range of different types of businesses; and
- support smaller companies to scale up by either providing new access to quotas or, for those already eligible, potentially providing export licenses in greater numbers than under the status quo; and

- ensure that participants have demonstrated the ability to export the relevant product; and
- increase utilisation by aligning capability and eligibility.

*A regulation-making power to enable quotas to be reserved*

The Bill creates a regulation-making power, which enables 10% of export licences for a designated market listed in Schedule 5A of the DIRA to be reserved for—

- exporters who would otherwise be ineligible; and
- exporters only eligible for fewer than 200 tonnes of product.

If regulations are made reserving export licences for a designated market listed in Schedule 5A of the DIRA, participants that are ineligible for quotas based on their export volume history would be able to apply annually for export licenses to export up to 200 tonnes to that designated market. Participants that are eligible for less than 200 tonnes based on their export history would be able to apply for a top up from the reserve portion, so that their total allocation would be up to 200 tonnes.

This will allow for new entrants and those who are only eligible for low-volume allocations to enter quota markets and develop their export histories as they scale up. Similarly, it will allow more commercially meaningful access for exporters of niche, low-volume products that may never become eligible on the basis of their export volume history.

*Including non-bovine dairy in quota allocation*

The Bill also opens quota access to non-bovine dairy exporters on the same basis as bovine dairy exporters.

This change is designed to provide new export opportunities for non-bovine dairy producers. It also ensures that the system is future-proofed to accommodate longer-term growth in the non-bovine animal dairy sector.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>N/A</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>A Regulatory Impact Statement (RIS) was prepared by MPI in accordance with Cabinet's Impact Analysis Requirements on 23 August 2023.</p> <p>A copy of the regulatory impact statement can be found at:</p> <ul style="list-style-type: none"><li>• <a href="https://www.mpi.govt.nz/legal/regulatory-impact-statements/">https://www.mpi.govt.nz/legal/regulatory-impact-statements/</a></li><li>• <a href="https://treasury.govt.nz/publications/informationreleases/ris">https://treasury.govt.nz/publications/informationreleases/ris</a></li></ul>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
The RIS did not meet the threshold for an independent RIA Team assessment.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>N/A</b>
<p>A Regulatory Impact Statement (RIS) was prepared by MPI in accordance with Cabinet's Impact Analysis Requirements on 23 August 2023.</p> <p>A copy of the regulatory impact statement can be found at:</p> <ul style="list-style-type: none"> <li>• <a href="https://www.mpi.govt.nz/legal/regulatory-impact-statements/">https://www.mpi.govt.nz/legal/regulatory-impact-statements/</a></li> <li>• <a href="https://treasury.govt.nz/publications/informationreleases/ris">https://treasury.govt.nz/publications/informationreleases/ris</a></li> </ul> <p>Based on feedback received during consultation from two incumbents, current quota users may lose some quota access. Any reduction in quota, however, is expected to be small. In addition, reductions in some quotas are likely to be offset by increases in other quotas.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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MPI has engaged with the New Zealand Customs Service and the Ministry of Foreign Affairs and Trade to ensure the policy changes are consistent with New Zealand's international obligations.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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MPI has undertaken a Treaty of Waitangi analysis in accordance with Cabinet Office Circular 19(5). The proposed changes are consistent with the Crown's Treaty of Waitangi obligations. Consultation identified that Māori have a range of interests across the dairy sector, from the farmgate to processing and exporting. The changes to dairy export quota allocation present an opportunity for Māori dairy sector participants to move further up the value chain, while also safeguarding the interests of established processors with Māori suppliers.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>
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NO
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>
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YES
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>
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NO
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Clause 14 amends section 31(3) of the DIRA in relation to the offence for providing a false milk solids collection declaration. The amendments change the offence from providing a false milk solids declaration, to providing a false declaration in relation to the information or documents applicants are required to provide to demonstrate export history. This reflects the change in the basis of quota allocation from milk solids collected to export volume history.
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Additionally, the existing Act includes a term of imprisonment in the available penalties for the offence of providing a false milk solids collection declaration (above). The Bill removes this penalty.
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<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>Consultation was undertaken with the Ministry of Justice. The Ministry of Justice advised that a strict liability offence should not carry a term of imprisonment unless there is a very strong policy rationale for this approach. Other penalties available to the Court for this offence are a financial penalty, and a declaration by the court that the person is ineligible for further allocations of export licences for a period determined by the court. MPI considers that these penalties are sufficient to incentivise compliance. Consistent with this advice, the Bill removes the term of imprisonment.</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p>The Bill amends the information sharing provisions relating to when MPI and the New Zealand Customs Service can share information. Clause 15 of the Bill widens the scope of the information that can be shared and allows the Minister of Agriculture and the Minister of Customs to also exchange relevant information. The Bill specifies that personal information must not be shared, except where it relates to a sole trader.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Office of the Privacy Commissioner recommended narrowing the information sharing provisions to make clear that these apply only to information about corporate entities and not to information about natural persons (unless the entity is a sole trader). This is reflected in the Bill.</p>	



## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>MPI undertook informal engagement with dairy exporters in late 2021 and early 2022 in order to establish whether there were any problems with the status quo and whether there was interest in export quota among ineligible exporters. Following this engagement and the provision of advice, the Minister of Agriculture (the Minister) directed MPI to undertake a review of dairy export quota allocation.</p> <p>MPI concluded formal public consultation on options for change over a six-week period in March and April 2023. This involved the publication of a discussion document on the MPI website, and engagement with interested parties via MS Teams. Six written submissions were received, and a further three submissions were provided orally.</p> <p>This was followed by further targeted engagement in mid-2023, where MPI met with seven dairy exporters, including three non-bovine animal dairy exporters. A further nine bovine dairy exporters were contacted who either did not see a need to engage further or did not respond.</p> <p>Dairy exporters who submitted to the public consultation, with the exception of Fonterra, were in favour of changing eligibility away from the status quo, though there was no consensus on a preferred option. Although submitters did not have a single preferred option for change, the submissions provided sufficient information to inform MPI's advice.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>Policy recommendations and the Bill were developed in consultation with the MPI operational staff responsible for administering the quota system. Feedback relating to details such as timeframes for Gazetting of the opening of applications and calculating allocations was used to ensure the Bill will lead to a workable new system.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

Clause 14 amends section 31(3) of the DIRA in relation to the offence for providing a false milk solids collection declaration to reflect the change in information required to demonstrate an export volume history. Section 32 of the DIRA provides that the offence in section 31(3) is a strict liability offence. The offence was designed to provide an effective deterrent against providing a false declaration. This is because a participant stands to gain significant benefits by submitting a false declaration.

The potential adverse effects of a strict liability offence are mitigated by the defence available in section 33 of the DIRA. This provides that the defendant has a defence if they can prove that: the contravention was due to event beyond the control of the defendant; and they took reasonable precautions and exercised due diligence to avoid the contravention.

## Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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## Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
<p>The Bill modifies the process for allocating rights to utilise New Zealand's dairy export quotas. It also provides that applicants who have previously received quota but not obtained a Quota Compliance Programme be declined a quota allocation unless they provide satisfactory reasons (to the Minister) why they have not obtained one.</p> <p>Allocations are made annually, and the Bill does not modify or rescind any existing quota allocations. The changes apply only to future allocations.</p>	

## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>Clause 7 enables regulations to be made reserving 10 per cent of quota for new entrants, or those only eligible for less than 200 tonnes of quota based on their export volume history.</p> <p>This is necessary to allow for new entrants and those who are only eligible for low volumes to enter quota markets and develop their export histories. It will also enable access for exporters of niche, low-volume products that may never become eligible on the basis of their export history.</p> <p>The Minister of Agriculture may only recommend the making of regulations to reserve quota if the Minister is satisfied of all of the following:</p> <ul style="list-style-type: none"><li>• dairy exporters (including non-bovine dairy) have provided evidence of their interest in and ability to use the relevant quotas through a reserved portion;</li><li>• consultation has been undertaken with current holders of the corresponding quotas, and impacts on their businesses of any consequent reductions in entitlement have been considered, including considering their historic utilisation of the quotas in question;</li><li>• the reservation of that quota is consistent with any import licensing, or other requirements in destination markets; and</li><li>• reserving the quota is consistent with the purpose of New Zealand's quota management system as set out in section 21(1) of the DIRA.</li></ul> <p>If a portion of quota is reserved by regulations, applicants that are ineligible for quota for that product based on their export volume history would be able to apply annually for up to 200 tonnes for that quota. Applicants that are eligible for fewer than 200 tonnes based on their export volume history would be able to apply for a top up from the reserve portion, up to 200 tonnes.</p>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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