

18 March 2004

ATTORNEY-GENERAL

**LEGAL ADVICE**

**CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:  
ANIMAL PRODUCTS (DAIRY PRODUCTS AND OTHER MATTERS) BILL**

1. We have considered whether the Animal Products (Dairy Products and Other Matters) Bill (the "Bill") (PCO 4498/12) is consistent with the New Zealand Bill of Rights Act 1990 ("Bill of Rights Act"). We understand the Bill will be considered by the Cabinet Legislation Committee at its meeting on Thursday, 25 March 2004.
2. The stated purpose of the Bill is to provide for the regulation of the dairy industry under the Animal Products Act 1999, thereby ensuring that product safety outcomes in the dairy industry are provided for in a risk-based management environment. The Bill also seeks to repeal the Dairy Industry Act 1952. Through these measures, the Bill will ensure the management of the risks to human and animal health from the consumption and use of dairy products. It will also facilitate the entry of dairy products to overseas markets by providing the controls and mechanisms needed for market access and the giving of official assurances.

**Freedom from unreasonable search and seizure**

3. Section 21 of the Bill of Rights Act provides the right to be secure against unreasonable search and seizure. There are two limbs to the section 21 right. First, section 21 is applicable only in respect of those activities that constitute a "search or seizure". Second, where certain actions do constitute a search or seizure, section 21 protects only against those searches or seizures that are "unreasonable" in the circumstances.

*Power to examine*

4. Section 88(1)(b)(i) of the Animal Products Act currently enables an animal product officer to remove documents or records from any place that is being searched under the Act to another place for the purpose of copying them. Currently, the Act does not expressly authorise the animal product officer to request the production of documents or records that are not located at the

place being searched at the time the search is carried out. Clause 15 of the Bill addresses this point by amending section 88(1) of the Animal Products Act to require the person having control of the documents or records in question to forward them or a copy of them to the animal product officer.

5. We understand that the expansion of this aspect of the seizure powers is necessary given that documents and records relating to an individual's obligations under the Act may be held in different locations. In our view, the expanded seizure power appears to be reasonable in terms of section 21 of the Bill of Rights Act. In reaching this view, we note that section 88(2) of the Animal Products Act requires the animal product officer to return any documents or records that are removed in this way within such time as is reasonable to allow for their copying.

*Schedule 2: Amendments to the Dairy Industry (IMA Certification) Regulations 2000*

6. Schedule 2 of the Bill amends various provisions of Dairy Industry (IMA Certification) Regulations 2000. It is proposed that regulation 15, which sets out the search powers of the animal product officers, be amended to extend the types of premises that may be searched by animal product officers.
7. We understand that this expansion is necessary since the places where dairy products are received, tested, graded, manufactured, or stored are not limited to dairy factories, stores, or recognised laboratories. We consider that the expansion of the types of places that may be searched appears to be reasonable for the purposes of section 21 of the Bill of Rights Act. In forming this view, we note the various safeguards that are currently included in paragraphs (3) and (4) of Regulation 15, in particular the requirement that animal product officers may only enter a dwellinghouse pursuant to a warrant.

**Conclusion**

8. We have concluded that the provisions of the Bill do not appear to be inconsistent with the rights and freedoms contained in the Bill of Rights Act.
9. In accordance with your instructions we attach a copy of this opinion for referral to the Minister of Agriculture and Forestry. A copy is also attached for referral to the Minister of Agriculture and Forestry, if you agree.

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CC Minister of Justice  
Minister of Agriculture and Forestry

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