



Requirements on Livestock Improvement Corporation and the role of the Access Panel

Regulatory Impact Statement

ISBN No: 978-0-478-43762-1 (online)

July 2014

Disclaimer

While every effort has been made to ensure the information in this publication is accurate, the Ministry for Primary Industries does not accept any responsibility or liability for error of fact, omission, interpretation or opinion that may be present, nor for the consequences of any decisions based on this information.

Requests for further copies should be directed to:

Publications Logistics Officer
Ministry for Primary Industries
PO Box 2526
WELLINGTON 6140

Email: brand@mpi.govt.nz
Telephone: 0800 00 83 33
Facsimile: 04-894 0300

This publication is also available on the Ministry for Primary Industries website at <http://www.mpi.govt.nz/news-resources/publications.aspx>

© Crown Copyright - Ministry for Primary Industries

1.	Agency disclosure statement	1
2.	Executive summary	2
3.	Background.....	3
3.1.	Transfer of the Dairy Core Database.....	3
3.2.	Current requirements on LIC.....	3
3.3.	Purpose of the requirements	3
3.4.	The Access Panel	4
4.	Problem definition.....	5
4.1.	Problem 1: Legislative Requirements on LIC	5
4.2.	Problem 2: Access Panel oversight	5
5.	Options for policy problem 1 –legislative requirements on LIC	6
5.1.	Option 1: Status Quo – Retention of all three provisions.....	6
5.2.	Option 2: Removal of the requirements (preferred option)	6
5.3.	Option 3: Sunset clause on requirement to provide nation-wide herd testing at uniform regional prices.....	8
5.4.	Preferred option for legislative requirements on LIC.....	10
6.	Options for Policy Problem 2 – Access Panel oversight of Core Data	11
6.1.	Option 1: Status Quo - Access Panel decisions apply only to the database held by DairyNZ.....	11
6.2.	Option 2: Access Panel decisions apply to core data held by DairyNZ and LIC.....	11
6.3.	Preferred option for Access Panel.....	13
7.	Consultation.....	13
8.	Implementation of preferred options and risk mitigation	14
9.	Monitoring, evaluation and review	14

1. Agency disclosure statement

This Regulatory Impact Statement has been prepared by the Ministry for Primary Industries (MPI). It provides an analysis of whether current legislative and regulatory requirements on Livestock Improvement Corporation (LIC), a commercial entity, should be removed, and whether the historical copy of the core database, and future core data LIC collects, should be subject to oversight by the Access Panel. All proposals and timeframes for implementation of regulatory change are dependent on the transfer of the Dairy Core Database taking place.

This analysis was prompted by a request from LIC, which considers that the upcoming transfer of the Dairy Core Database from LIC to DairyNZ negates the need for the legislative requirements on LIC.

MPI consulted with stakeholders in April and May 2014 on these issues. There was wide support for the transfer of the Dairy Core Database. Other results from consultation were mixed, and submitters raised significant new industry issues in relation to dairy herd improvement, which require further analysis. The consultation and a market review conducted by MPI found that the requirements on LIC do not reduce industry risk or address competition issues. However, the analysis concluded that the requirements impose undue cost and uncertainty on LIC, and impede its ability to source equity capital needed to implement its global growth strategy. Further work is required to determine what, if any, further intervention is needed to manage industry good and/or competition policy issues related to cow breeding information and indices beyond the regulated core data fields.

Consultation also revealed that industry considers access to core data by foreign entities to be a substantial risk. Further work is required to determine what impact foreign access to core data would have on the profitability of the New Zealand dairy industry, and on the role of the Access Panel in light of this risk and the potential need to manage other policy issues raised by the consultation and further analysis.

Jarred Mair, Director Sector Policy, Ministry for Primary Industries

[Signature of person] [Date]

2. Executive summary

The Dairy Core Database contains data collected through herd testing that contributes to key industry indices. These indices are used to make decisions on herd improvement and to monitor progress toward the achievement of New Zealand's National Breeding Objective.

The Dairy Core Database will be transferred from Livestock Improvement Corporation (LIC), a farmer owned co-operative, to DairyNZ, the industry good organisation.

Enabling the transfer of the Dairy Core Database will not affect requirements on LIC to:
provide herd testing nationwide at uniform prices within regions

1. obtain Ministerial consent for any changes to LIC's constitution that puts restrictions on who may hold shares, maximum voting rights and provide for postal voting
2. obtain Ministerial consent for any application by LIC to cancel its registration under the Co-operative Companies Act 1996 (to demutualise).

LIC asked that the requirements be removed because it considers they are no longer needed due to the upcoming transfer of the Dairy Core Database from LIC to the industry good body DairyNZ [CAB Min (14) 14/6].

Options considered included:

1. Retention of all requirements
2. Removal of all requirements
3. Removal of all requirements with sub-options to strengthen provisions of the Companies Act
4. Applying a sunset clause to the nationwide herd testing regulation

MPI's preferred option is to remove all of the requirements. A review of the requirements found that they do not reduce industry risk or address competition issues. However, analysis has concluded that the requirements impose undue cost and uncertainty on LIC, and impede its ability to source equity capital needed to implement its global growth strategy. Shareholder interests are adequately protected by the Companies Act, which requires 75% voting shareholder support for demutualisation or significant changes to a company's constitution, including voting rules. Herd testing is a key input to downstream services like animal evaluation, and CRV Ambreed offers some competition to LIC, so farmers will continue to be able to access those services nationwide.

Currently the New Zealand Dairy Core Database Access Panel (the Access Panel) oversees access to core data in the Dairy Core Database held by LIC to enable access that is beneficial to the New Zealand dairy industry, and restrict access if it may do harm. The Access Panel will have oversight over the Dairy Core Database held by DairyNZ when it is transferred. LIC will retain a historic copy of the database, and will continue to collect substantial core data, but its core data will no longer have Access Panel oversight.

We considered whether the Access Panel should have oversight of LIC's core data (with sub-options for review and sunset clause). Our preferred option is to retain Access Panel oversight over LIC's core data, with a review to take place within three years from the transfer of the core database.

Consultation and a market review undertaken by MPI (peer reviewed by MBIE and an economics consultancy) identified new concerns relating to LIC's market power and questioned whether it is responsible for other industry good functions beyond the management of the core database (notably, control over the national cow breeding indices). The Minister has directed officials to do further work on these issues and to advise whether a different set of regulatory interventions should be imposed in the future.

3. Background

3.1. TRANSFER OF THE DAIRY CORE DATABASE

In 2001, the Dairy Industry Restructuring Act 2001 (DIRA) and its associated regulations were enacted to allow Fonterra to form by merging two large dairy co-operatives and the NZ Dairy Board. At the same time LIC was divested as a separate entity from the NZ Dairy Board. The DIRA imposes certain requirements on LIC, including that its constitution provide for the retention of the Dairy Core Database (core database).

The core database holds data collected through herd testing and is an input into breeding worth indices. These indices play a key role in improving the profitability and productivity of the New Zealand dairy industry. The indices are used to monitor progress toward the achievement of New Zealand's National Breeding Objective, which targets the efficient conversion of feed into farmer profit.

The core database comprises 46 regulated data fields and has been built up over many years, including the period before 2001 when LIC was part of the NZ Dairy Board. These fields include information about the cow, its heritage and its milk production and quality. The core fields are a subset of a much wider set of data, with thousands of fields collected during herd recording.

In 2009 the Anderson Committee conducted the New Zealand Dairy Herd Improvement Database Review and recommended that the Dairy Core Database should be transferred from LIC to an industry good body. LIC and DairyNZ have agreed to the transfer of the Dairy Core Database to DairyNZ. The Minister for Primary Industries intends to agree to a change in LIC's constitution to reflect that LIC is no longer the holder of the core database. Cabinet has agreed to the necessary legislative changes.

3.2. CURRENT REQUIREMENTS ON LIC

Enabling the transfer of the Dairy Core Database will not affect requirements on LIC to:

1. provide herd testing nationwide at uniform prices within regions (c19 Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001)
2. obtain Ministerial consent for changes to LIC's constitution including restrictions on who may hold shares, maximum voting rights and postal voting (s51 DIRA)
3. obtain Ministerial consent for any application by LIC to cancel its registration under the Co-operative Companies Act 1996 (ie, to demutualise) (s52 DIRA).

3.3. PURPOSE OF THE REQUIREMENTS

LIC considers that these requirements were imposed in relation to its role as holder of the Dairy Core Database. LIC has asked for the requirements to be removed because it considers they are

no longer needed due to the upcoming transfer of the Dairy Core Database from LIC to the industry good body DairyNZ [CAB Min (14) 14/6]. LIC is seeking certainty about the removal of the requirements in order to facilitate the efficient operation and growth of its business. The constitutional requirement, in particular, represents a constraint on LIC's ability to source equity capital to help implement its global growth strategy by limiting share ownership to users of LIC's services.

MPI considers that the requirements were put in place in part to protect farmers and the industry. The requirements ensure that farmers benefit from any market dominance that LIC may have and ensure that LIC's commercial interests do not override the industry's interests in relation to its responsibility for an industry good function, namely the Dairy Core Database.

The Dairy Sector is preparing to transfer the core database from LIC to DairyNZ. However consultation has suggested that this is not the only industry good function that LIC is responsible for. Key data and indices, which are wider in scope than the core data, are used in decision-making about herd improvement at the farm level and to assess progress of the national herd in relation to the National Breeding Objective for dairy cattle. These could be considered an industry good and there is a perception that LIC could disadvantage competitors by restricting access through price.

The information and indices allow farmers to make decisions that best support genetic gain, therefore restricting access could restrict productivity of individual farms and the overall productivity of the dairy industry. The Minister has directed us to do further work to determine if this is the case, and what, if any, interventions are needed.

3.4. THE ACCESS PANEL

The Access Panel was established to make decisions on applications to access data from the Dairy Core Database.

The Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 establish the panel, its functions, and the criteria for granting access, among other things.

The regulations were developed in the context of LIC being the holder of the core database. In accordance with recent decisions, the core database will be transferred to DairyNZ, but LIC will retain a copy of the historic data and will continue to collect and retain core data into the future.

The regulations set out the following criteria for Access Panel decisions:

1. The Panel must grant an application for access to data in the core database only if it is satisfied that to do so is likely to be beneficial to the New Zealand dairy industry. (cl18(1))
2. If the Panel is not satisfied that granting an application for access to data in the core database is likely to be beneficial to the New Zealand dairy industry, the Panel may grant an application for access to data in the core database only if the Panel is satisfied that to do so would not be harmful to the New Zealand dairy industry. (cl18(2))

In the consultation about the possibility of removing the requirements, some stakeholders raised concerns about the disclosure of core data to foreign interests and considered that this would pose a threat to the New Zealand dairy industry.

Further work is required to understand the nature and degree of risk in relation to the release of core data, and the role of the Access Panel in light of this risk. There is also a potential need to

manage other industry good or competition policy issues raised by the consultation and further policy analysis.

4. Problem definition

4.1. PROBLEM 1: LEGISLATIVE REQUIREMENTS ON LIC

The transfer of the Dairy Core Database from LIC to DairyNZ has prompted LIC to request the removal of legislative requirements imposed in the DIRA. A review of the requirements found that they do not reduce industry risk or address competition issues. However, analysis has concluded that the requirements impose undue cost and uncertainty on LIC, and impede its ability to source equity capital needed to implement its global growth strategy.

4.1.1. Policy objectives

The policy objectives of any changes to the requirements on LIC are:

1. farmers have access to affordable herd testing services
2. farmers have access to the information they need to make on-farm decisions
3. protect industry interests by ensuring that commercial interests do not override industry interests in the management of industry good functions
4. enable a competitive environment
5. minimise compliance costs to the Government and industry
6. enable industry to maximise export revenue

4.2. PROBLEM 2: ACCESS PANEL OVERSIGHT

Once the Dairy Core Database has been transferred to DairyNZ, LIC will still hold a historic copy of the core data, and LIC's large market share, withheld under OIA s 9(2)(b)(ii) and s 9(2)(g)(i) will mean that this copy remains very similar to the Dairy Core Database for the near future. Without further regulation, the Access Panel oversight of the Dairy Core Database will only apply to DairyNZ's version of the database and not the duplicate information that LIC holds, once the database is transferred to DairyNZ. This will mean that LIC could make core data available to foreign entities without oversight from the Access Panel. Consultation has indicated that this may pose a risk to the dairy industry.

4.2.1. Policy objectives

The policy objectives of any change to the role of the Access Panel are:

1. enable access to core data for research and industry good purposes
2. restrict access to core data that may cause harm to the New Zealand dairy industry
3. minimise compliance costs to the Government and industry

5. Options for policy problem 1 –legislative requirements on LIC

5.1. OPTION 1: STATUS QUO – RETENTION OF ALL THREE PROVISIONS

Under this option no change would be made to the DIRA or related regulations, and LIC would still be required to.

1. provide herd testing nationwide at uniform prices within regions (c19 Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001)
2. obtain Ministerial consent for changes to LIC's constitution including restrictions on who may hold shares, maximum voting rights and postal voting (s51 DIRA)
3. obtain Ministerial consent for any application by LIC to cancel its registration under the Co-operative Companies Act 1996 (ie, to demutualise) (s52 DIRA).

Analysis

The requirement to provide nationwide herd testing at uniform regional prices ensures that all dairy farmers have affordable access to herd testing services. This means that actual costs, such as transport, are not allocated proportionately to dairy farmers, and those closer to urban centres cross-subsidise those who live more remotely.

The purpose of the herd testing requirement was to maximise the number of farmers herd testing. LIC was given this obligation because it was the only provider of herd testing services. They remain by far the dominant herd tester in the market, withheld under OIA s 9(2)(b)(ii) and s 9(2)(g)(i). LIC and its competitor, CRV, are already incentivised to provide herd testing widely to increase their data for animal evaluation.

Retaining the Ministerial oversight requirements on LIC provides an additional threshold above the Companies and Cooperative Companies Act for LIC to either demutualise or make changes to its constitution. This gives the Minister an indirect measure of control over LIC's behaviour, but one that comes at a significant cost to LIC. LIC does not have any certainty that the Minister will consent to any changes. LIC could spend considerable funds on consultation and a shareholder vote with no certainty that shareholders' decision would be upheld by the Minister.

A dairy herd improvement market review conducted by MPI shows that the current requirements do not address issues raised concerning access to key information and indices required to obtain maximum genetic gain, and do not reduce industry risk or address competition issues. Analysis has concluded that the requirements impose undue cost and uncertainty on LIC, and impede its ability to source equity capital needed to implement its global growth strategy.

5.2. OPTION 2: REMOVAL OF THE REQUIREMENTS (PREFERRED OPTION)

Under this option, all three requirements would be removed.

This would entail:

1. repealing DIRA s51 Minister's consent needed to change certain provisions of the constitution, along with the underlying provisions:
 - a) s48 Constitution must restrict who may hold shares
 - b) s49 Constitution must impose maximum voting rights
 - c) s50 Constitution must provide for postal voting

2. repealing DIRA s52 Corporate form
3. repealing Dairy Industry (Herd Testing and Dairy Core Database) Regulations 2001 cl9
LIC must offer nationwide herd testing services and uniform prices within regions.

Analysis

LIC is incorporated under the Companies Act 1993, and registered under the Co-operative Companies Act 1996. In order to be registered as a co-operative company its principal activity must be and be stated in its constitution as being a co-operative activity, and not less than 60% of the voting rights must be held by transacting shareholders. LIC's current share distribution is 60% to transacting shareholders and 40% to investment shareholders.

Changes to the constitution of a company incorporated under the Companies Act require a special resolution. A special resolution requires a majority vote of 75% of shareholders entitled to vote and voting on the question.

If the s51 and s52 requirements in the DIRA to obtain the Minister's consent to change the constitution were removed, a special resolution would still be required to make changes.

LIC's constitution (clause 1.2 (c)) requires that core products and services are made available to all shareholders at fair commercial prices. If the herd testing regulation were removed, this clause, which establishes a similar requirement, would remain and a special resolution would be required to change it.

Removal of the regulation may lead to some farmers in outlying areas paying more for herd testing services. MPI considers LIC and its competitor, CRV Ambreed, have incentives to provide affordable herd testing services to as many farmers as possible, since they use this data for their downstream services, such as animal evaluation. The requirements to obtain Ministerial consent give the Minister an indirect measure of control over services provided by LIC.

Consultation revealed conflicting and strongly held views about the removal of the requirements. Some stakeholders are very concerned that if the requirements are removed, LIC would make changes to its shareholding and corporate form.

While the requirements provide some additional protection for shareholders, we consider that the requirement for a special resolution to change its constitution is adequate to protect shareholder interests.

5.2.1. Option 2a: Option 2 plus increase quorum for special resolution

Under this option, the quorum required for a special resolution in relation to decisions that are in scope of the requirements in question would be increased. This would mitigate the risk that changes to LIC's constitution are made without adequate support.

LIC's constitution currently requires a quorum of 25 shareholders entitled to vote (this includes holders of Co-operative Control Shares and excludes holders of investment shares).

5.2.2. Option 2b: Option 2 plus minimum communication requirements

LIC's Constitution (Schedule 1, cl 2.4) requires that a notice of the meeting be sent to every shareholder at least 10 days before the meeting including the text of any special resolution to be submitted to the meeting. This is consistent with the Companies Act.

Under this option further requirements would be imposed, for example, to hold forums to ensure that shareholders are informed of proposals and their implications prior to the meeting.

5.2.3. Option 2c: Option 2 plus Minister must be satisfied with LIC's efforts to inform shareholders

Under this option, requirements would be imposed, similar to those imposed by the Commodity Levies Act 1990 (s5(2)(ad)), that the Minister is satisfied that potential voters had adequate opportunity to be informed about the proposal and its implications.

Analysis

Options 2a, 2b and 2c could strengthen the involvement of shareholders in decisions that relate to the matters addressed by the three requirements in question. However, we consider that the protections in the Companies and Co-operative Companies Acts are adequate.

5.3. OPTION 3: SUNSET CLAUSE ON REQUIREMENT TO PROVIDE NATION-WIDE HERD TESTING AT UNIFORM REGIONAL PRICES

Under this option, instead of removing the restriction in the near term, the regulations would be amended to add a clause to repeal the provision in the future. This would mean the LIC would no longer be subject to the requirements when the Minister is satisfied that market conditions are such that there is minimal risk of farmers not being able to access herd testing. For example if there is a significant reduction in LIC's market share of the herd testing market.

In its agreement with DairyNZ, (clause 14.4(b)) LIC accepts that this requirement may continue to be imposed for a period of five years.

This could be done in conjunction with retention, removal or amendment of the other two requirements.

Analysis

LIC is incentivised to provide herd testing widely in order to increase their data for animal evaluation. In addition, we understand that CRV has indicated that it will provide testing in the event that LIC refuses the service to any farmer.

Table 1: Assessment of options for policy problem 1 – legislative requirements on LIC

The options are assessed as:

✓ - positive impact on the objective

X - negative impact on the objective

N - Neutral impact on the objective

+/- Indicate the strength of the assessment – eg, ‘N-’ indicates that the impact is slightly more negative than neutral

Options \ Objectives	Access to herd testing	Access to information	Protect industry interests	Enable competitive environment	Minimise compliance cost	Maximise export revenue	Commentary
1 Retain all requirements	✓	N	✓-	N+	X	X	<p>The requirements primarily protect shareholders and only marginally more than what is provided for in the Companies Act.</p> <p>The requirement for nationwide herd testing at regionally uniform prices could be seen as subsidising some farmers at the expense of others.</p> <p>Adds compliance cost for LIC.</p>
2 Remove all requirements	✓-	N	N	N	✓	✓	<p>Removes the marginal protection afforded primarily to shareholders over the protections in the Companies Act.</p> <p>Removes protection in relation to access to herd testing, but there are compensating factors: commercial incentives to provide services and collect the data for key indices</p> <p>Removes compliance cost on LIC.</p>
2a Increase quorum	N	N	N+	N	N-	✓-	<p>Slightly strengthens the protections in the Companies Act with some additional compliance costs on LIC, eg the effort required to obtain the necessary turnout should the meeting quorum be increased. Communications requirements provide more certainty for LIC than other sub-options.</p>
2b Communications requirements	N	N	N+	N	N-	✓	
2c Minister satisfied that shareholders informed	N	N	N+	N	N-	✓-	
3 Sunset clause on nationwide herd testing/regional pricing	✓	Depends on which of the above options are applied to the other two provisions				X	<p>Provides certainty about access to herd testing until such time as the market changes adequately to reduce the risk.</p>

5.4. PREFERRED OPTION FOR LEGISLATIVE REQUIREMENTS ON LIC

The preferred option is option 2 – remove the requirements. Any option other than removing the requirements places additional thresholds on LIC that are not placed on other companies or cooperatives, and there is insufficient justification for continuing to do so.

Further work is needed to understand whether LIC does retain responsibility for industry good functions and to understand the nature and magnitude of the competition issues, and what, if any, interventions might be needed to manage these. In the meantime, we will maintain a watching brief.

6. Options for Policy Problem 2 – Access Panel oversight of Core Data

Note that ‘status quo’ is the ‘default’ that will occur after the transfer of the Dairy Core Database to DairyNZ. The Access Panel will have oversight over the core data that sits in the Dairy Core Database held by DairyNZ, and no other core data held by other companies, such as LIC and CRV Ambreed.

6.1. OPTION 1: STATUS QUO - ACCESS PANEL DECISIONS APPLY ONLY TO THE DATABASE HELD BY DAIRYNZ

Under this option, the Access Panel will have oversight of the Dairy Core Database held by DairyNZ. LIC will hold a copy of the historic Dairy Core Database, and will continue to collect a large amount of core data, withheld under OIA s 9(2)(b)(ii) and s 9(2)(g)(i). There will be no constraint on it providing core data to anyone, other than its own commercial incentives, and the clause in the transfer agreement that states that it will not provide core data to anyone or for any purpose that has been denied by the Access Panel.

This does not prevent a requester bypassing the Access Panel and going straight to LIC for core data. This is a reasonable scenario, as anyone wanting to access core data will likely want access to additional fields of data that may be held only by LIC. This means that there would be no independent authority to manage the perceived risk of core data being made available to third parties.

The majority of submitters raised potential harm from core data being made available to foreign entities as a significant risk, but further work is required to fully understand the implications of this risk.

6.2. OPTION 2: ACCESS PANEL DECISIONS APPLY TO CORE DATA HELD BY DAIRYNZ AND LIC

Under this option, the Access Panel would decide on applications for core data received by either DairyNZ or LIC. DairyNZ and LIC would have unrestricted access to the core data that they hold for their own research purposes, but would be required to seek Access Panel permission to make core data available to third parties.

LIC’s set of core data will gradually become less complete over time, and the relevance of the historic core database will diminish as new core data is collected. Further analysis of the nature of the harm of access by third parties to core data is also required. In light of these factors, ongoing oversight of LIC’s set of core data may not be warranted.

6.2.1. Option 2a: Option 2 plus sunset clause

This option would limit option 2 to a specified period of time. MPI suggest a period of three years would be appropriate. This would provide time for further analysis to better understand the risks associated with access to core data by foreign entities.

It could be difficult to reinstate oversight if required after the three years expired, particularly given New Zealand’s international obligations and Free Trade Agreements related to foreign investors and service suppliers.

6.2.2. Option 2b: Option 2 plus a specified review period (preferred option)

Under this option, the need for the Access Panel to oversee LIC's core data would be reviewed after a specified period of time to determine if it was still required. MPI has suggested monitoring and a review taking place within three years of the transfer of the database.

This option takes account of LIC's set of core data gradually becoming less complete over time, and the relevance of the historic core database diminishing as new core data is collected. It also allows for further analysis to better understand the risks posed by foreign entities having access to core data.

Table 2: Assessment of options for policy problem 2 – role of the Access Panel

Options \ Objectives	Enable access / industry good	Restrict access / industry harm	Minimise Compliance cost	Commentary
1 Access Panel applies only to DairyNZ	✓ -	X	✓	Under this option, there would be no oversight of LIC's decisions whether to release data; LIC is not obliged to consider whether the release could cause the industry harm, before releasing data. There would be negligible change in compliance cost; applicants would still be required to make applications to the panel before requesting data.
2 Access Panel applies to core data in the Dairy Core Database, and core data held by LIC	✓	✓	N	Under this option core data held by DairyNZ and LIC would be protected by the Access Panel. There would be a change in compliance cost; applications to the panel for core data held by LIC or DairyNZ would be required
2a Option 2 + sunset clause after three years	✓	✓ -	✓ -	This option would retain the Access Panel's protection in the interim while further work, including a risk assessment, is undertaken. If it is determined that Access Panel oversight should remain for longer, it will be difficult to reinstate oversight, given international obligations and Free Trade Agreements
2b Option 2 + review after three years	✓	✓	✓	This option would retain the protection of the Access Panel while further work, including a risk assessment, is undertaken. It also allows for the oversight period to continue as long as LIC's core data largely mirrors the Dairy Core Database if that is determined to pose a risk. Oversight would not be removed if a risk assessment found it was required.

6.3. PREFERRED OPTION FOR ACCESS PANEL

The preferred option is 2b – retain Access Panel oversight over the core data held by LIC and monitor and review this within three years from the date that the database is transferred to DairyNZ. The Access Panel's oversight will include both the copy of the database that LIC will retain after the transfer to DairyNZ and core data it will collect and retain into the future.

7. Consultation

MPI consulted industry stakeholders in April and May 2014 on the removal of the requirements, Access Panel oversight of LIC's historic and future core data, and the dairy herd improvement industry more broadly. Opinions provided through submissions were mixed and strongly held.

LIC is in favour of removing all the requirements, and supports the timing outlined below. LIC does not believe the Access Panel should have oversight of their core data, but have indicated that it is comfortable with this arrangement until the transfer process is completed.

LIC's shareholder council and some individual farmers were in favour of removing all requirements, and not having Access Panel oversight of LIC's core data. CRV and Federated

Farmers also supported removal of the requirements, and supported Access Panel oversight over LIC's core data.

Some farmers, as well as industry representatives such as DairyNZ, Breed Societies, and related groups, such as the Access Panel, were in favour of retaining the current requirements, and of the Access Panel having oversight of LIC's core data.

A number of these submitters, including Federated Farmers, Breed Societies and farmers noted that they would support the requirements being removed if alternative measures to ensure access to information and key indices used by the industry were put in place. Examples included regulating or having neutral oversight of key indices and expanding the number of fields considered core data. MPI will consider these options as part of its further analysis.

Broader issues with the herd improvement industry related to LIC's perceived market power have been raised in submissions and a herd improvement market review (undertaken by MPI and peer reviewed by MBIE and an economics consultancy), including:

1. Access to and oversight of cow information – the Dairy Core Database includes 46 regulated data fields, but some 300 data fields are required to derive meaningful breeding worth information.
2. Access to cow breeding worth, the top cow list and other nationally recognised indices of dairy cow value
3. The implications of new technologies such as automated herd testing and genomics.

The Minister has directed MPI to conduct further analysis and to monitor the sector after the transfer of the Dairy Core Database takes place, and changes resulting from the Cabinet paper are implemented. This will include monitoring the price of and access to herd testing services.

8. Implementation of preferred options and risk mitigation

Removal of the requirement to provide nationwide herd testing at regionally uniform prices, and retaining Access Panel oversight of the core data to be held by LIC, will be addressed through amendment of the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001. These changes will take place alongside those enabling the transfer of the Dairy Core Database, likely before the end of 2014.

Removal of the requirements for ministerial consent to changes to LIC's constitution can be implemented in an Amendment Bill in conjunction with implementation of the DIRA review, which will commence in June 2015. It is anticipated that any additional changes proposed as part of the further analysis required into the dairy herd improvement industry would also be progressed in this Bill.

MPI will work with the Access Panel and LIC as part of the transfer of the core database to implement changes to the role of the Access Panel.

The removal of the requirements on LIC does not require further implementation.

9. Monitoring, evaluation and review

MPI will monitor and evaluate levels of herd testing within different regions to identify any changes. If significant changes are noted, further investigation, including into the pricing and availability of herd testing within those regions will be carried out.

MPI will monitor the pricing of key indices such as cow breeding worth as part of the further work into issues raised in consultation. We will also monitor applications to the Access Panel for core data to inform the proposed review of the Access Panel and the wider package of further work.