

## DAIRY INDUSTRY RESTRUCTURING ACT 2001:

### APPLICATION FORM FOR DISPUTE DETERMINATION

#### *NOTE ON PROCEDURE*

Section 120 (1) of the Dairy Industry Restructuring Act 2001 (DIR Act) allows a person to apply to the Commission for a determination if the person has a dispute with Fonterra about the application of subpart 5 (open entry and exit by farmers and transitional provisions for Tatura and Westland) or the regulations made under section 115 (access to raw milk by independent processors).

Section 145 (Application of Commerce Act 1986 provisions) of the DIR Act empowers the Commission to prescribe a form for applications for determination. Attached is the form to be used in applying under section 120.

Applications under section 120 (1) are required to be given in duplicate in the form attached, typed, or word-processed on A4 paper. **One copy should be clearly marked to indicate any material for which confidentiality is sought.** If possible, an electronic version of the application should be provided as well to the email address: *registrar@comcom.govt.nz*. The application should be sent to:

The Registrar  
Enforcement Branch  
Commerce Commission  
PO Box 2351  
WELLINGTON

The fee, if prescribed, must be attached to each application for which determination is sought, regardless of whether the application is accepted or not.

Section 121 of the DIR Act requires an application to the Commerce Commission for determination to resolve a conflict to:

- be in writing, and
- be given in the prescribed manner, and
- contain the prescribed information, and
- be accompanied by the prescribed fee<sup>1</sup>, if any.

If those requirements are not met, the Commission, may:

- return the application; or

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<sup>1</sup> The fee is to be set by the Dairy Industry (Application Fees and Fonterra Levy) Regulations 2004. The current fee is \$562.50 (GST inclusive).

- decline to accept the application until it complies.

Section 120 (2) of the DIR Act empowers the Commerce Commission to reject an application and return it to the applicant if in its opinion:

- the dispute is not genuine, or is vexatious or frivolous; or
- the applicant does not have a direct financial interest in the matter to which the application relates; or
- the applicant has not made a reasonable attempt to settle the matter with Fonterra; or
- the Commission has made a determination, or is currently considering an application, on the same matter.

Please note that an application under section 120 (1) must be made within three years after the matter giving rise to the dispute arose.

On receiving an application made correctly under section 121, the Commission:

- must notify Fonterra in writing that the application has been made; and
- send Fonterra a copy of the application; and
- request Fonterra to comment on the application in writing within 10 working days from the notification date; and
- may require Fonterra to provide the Commission with information on the matter.

The Commission must then, within 10 working days after the date of the reception of Fonterra's comments, decide whether or not to determine the matter and give written notice of the decision to Fonterra and the applicant.

The Commission must then complete a determination as soon as practicable after it has decided to make a determination.

**If it is not possible to provide some of the information specified in the form, or the information specified is not relevant, please provide a *brief* reason as to why the omission of that information would not affect the Commission's consideration of the application.**

#### **WARNING**

**It is an offence to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission. Any person who does so is liable upon summary conviction to a fine of up to \$10,000 (for an individual) or \$30,000 (for a body corporate). Refer section 145 (Application of Commerce Act 1986) of the DIR Act.**

**DAIRY INDUSTRY RESTRUCTURING ACT 2001:**

**SECTION 120: APPLICATION FOR DISPUTE DETERMINATION**

Date:

The Registrar  
Enforcement Branch  
Commerce Commission  
PO Box 2351  
WELLINGTON

Pursuant to s120 of the Dairy Industry Restructuring Act 2001 notice is hereby given seeking **determination for a dispute with Fonterra.**

**PART I: TRANSACTION DETAILS**

- 1 What is the issue for which **determination** is sought?
  - 1.1 Identify the parties involved in the dispute.
  - 1.2 Provide a description of the dispute that arose between the parties mentioned previously.
  - 1.3 Provide a description of the steps taken by the applicant to resolve the matter with Fonterra.
  - 1.4 Attach a copy of any written material related to the dispute.

**PART 2: THE PERSON GIVING NOTICE**

- 2 Who is the person giving this notice?

State name (including both the name of the company and the name/position of the individual responsible for the notice), postal address, e-mail address, telephone and facsimile numbers.

### **PART 3: CONFIDENTIALITY**

- 3 If you wish to request confidentiality for specific information contained in or attached to the notice, please state why you consider the information to be confidential and state the reasons for your request in terms of the criteria set out in the Official Information Act 1982.
  - 3.1 Provide a separate schedule of all confidential information claimed in the application so the Commission can process the confidentiality request quickly.
- 4 Provide two copies of the application. One copy must be a confidential version and the other a public version.
  - 4.1 In the confidential version of the application any information for which confidentiality is sought must be highlighted in bold and contained in [square brackets].
  - 4.2 In the public version the confidential information should be removed from within the square brackets, with the brackets remaining, thus [ ].

A hard copy, and an electronic copy of the confidential version and the public version both in Microsoft Word format and in PDF format, should be sent to the email address: registrar@comcom.govt.nz.

THIS NOTICE is given by:

\*{individual/s and company }

\*{the company/I/we } hereby confirm(s) that:

all information specified by the Commission has been supplied;

all information known to the applicant/s which is relevant to the consideration of this application has been supplied;

all information supplied is correct as at the date of this application.

\*{the company/I/we } undertake/s to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 .

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\*{Signed by (name of applicant company):

Director/Chief Executive Officer/Other – (specify)}

\*{I am a director/officer of the company and am duly authorised to make this application. }

or

\*{The common seal of (name of applicant company/organisation) was affixed hereto in the presence of:

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[Director/Authorised signatory]

## **PLEASE NOTE**

- The declaration is to be made only by the applicant. It may not be made by a solicitor or other adviser acting on the applicant's behalf.
- The wording in the declaration may not be varied by the applicant.
- If the declaration is not completed, the Commission may decline to register the notice/application.
- Registration may be effected on receipt of a facsimile copy of a completed application or notice together with the confirmation of deposit of the appropriate fee to the Commission's account. The original documentation must be forwarded to the Registrar, Enforcement Branch, Wellington, within 3 working days of registration. For account details, contact the Registrar (04) 924 3654 or the Assistant Accountant (04) 924 3715.