

Terms of Reference for the Government Inquiry into the Whey Protein Concentrate Contamination Incident

Background

New Zealand has a reputation as a credible and trusted supplier of safe and suitable food to both domestic and international markets. This well-deserved reputation is a vital element in the continuing growth and productivity of the food industry.

Exporting food is critical to New Zealand's economy, with the food industry making up half of New Zealand's merchandise export value. New Zealand has an excellent track record of exporting safe food, and our food safety system is considered world-leading.

The whey protein concentrate (WPC) contamination incident risks damaging the reputation we have worked hard to gain.

This Government Inquiry is about strengthening an already strong system, to ensure that New Zealand food products retain their status as among the world's safest and most desired.

Appointment and order of reference

This Inquiry will inquire into and report (making any recommendation that you think fit) upon the following:

Inquiry into how the potentially contaminated whey protein concentrate entered the New Zealand and international market, and how this was subsequently addressed

- a) In relation to this incident of potential contamination of whey protein concentrate at Fonterra's Hautapu plant in 2012:
 - i. The causes of this incident;
 - ii. The practices used at each stage, from sourcing the raw material to products containing the whey protein concentrate entering the market; and
 - iii. The timeline of steps taken by Fonterra, and any other party, with regard to testing and reporting the potential contamination of whey protein concentrate; and
 - iv. The implementation of contingency plans for food safety incidents by Fonterra;
 - v. Fonterra's history as a significant manufacturer and exporter of safe dairy products; and
 - vi. An examination of the response of the regulator (that is, what actually happened).

This part of the Inquiry will not be undertaken until the Ministry for Primary Industries (MPI) compliance investigation is completed, subject to any views the Inquiry reaches on the application of section 16 of the Inquiries Act 2013.

This part of the Inquiry will rely on findings of fact from the Ministry for Primary Industries' compliance investigation and supplement this as required.

Inquiry into regulatory and best practice requirements

- b) The requirements of any Acts, regulations, or other laws, or of any recognised practices, that govern the following aspects of food safety against the background of this incident in relation to the dairy industry, including how those legal and practice requirements interact with each other:
 - i. Quality and integrity of product testing; and
 - ii. Traceability requirements, including the requirements across the supply chain to retailers; and
 - iii. Reporting and risk management decision-making; and
 - iv. Implementation of food safety standards; and
 - v. Contingency plans for food safety and food quality; and
 - vi. Role of regulators, including any recognised agency; and
 - vii. Potentially affected products, including infant formula.
- c) How the matters referred to in paragraphs (b)(i) to (vii) above compare with similar matters in other comparable jurisdictions.

Matters upon or for which recommendations required

The Inquiry will report on and make any recommendations it considers fit on:

- a) The adequacy of legal and best practice requirements with regard to product testing, traceability, reporting, implementation of food safety standards, contingency planning and role of regulators (refer to paragraph (b)(i) –(vii) and paragraph (c) above); and
- b) Any legal or regulatory changes or additions necessary and desirable to prevent or minimise similar incidents; and
- c) Any changes or additions to operational practices for product testing, traceability, reporting, implementation of food safety standards, contingency planning and response of regulators, to address the lessons from this incident.

Exclusions from inquiry and scope of recommendations

The Inquiry is not to inquire into, determine, or report in an interim or final way, or otherwise prejudice any of the following matters:

- (a) The Ministry for Primary Industries' investigation into the compliance with any legal or practice requirements;
- (b) Whether any questions of liability arise; and
- (c) The legislative structure of the New Zealand dairy industry.

Definitions

'Practice' or 'practices' includes, without limitation, each of the following:

- (a) Decision-making;
- (b) Procedures;
- (c) Processes;
- (d) Services;
- (e) Systems.

Reporting sequence

The Inquiry is to report findings and opinions, together with recommendations, required and otherwise, that you think fit to make in respect of them, to the appointing Ministers in writing in the following sequence:

- (a) Inquiry into regulatory and best practice requirements;
 - i. An interim report is to be provided by no later than three months after notification of the Government Inquiry in the *Gazette*;
 - ii. A final report is to be provided at a date to be specified by the appointing Ministers, following the conclusion of the Ministry for Primary Industries' investigation and any subsequent court action;
- (b) Inquiry into how the potentially contaminated whey protein concentrate entered the New Zealand and international market, and how this was subsequently addressed, at a date to be specified by the appointing Ministers, following the conclusion of the Ministry for Primary Industries investigation and any subsequent court action.

