

13 August 2019

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Dairy Industry Restructuring Amendment Bill (No 3)

Purpose

1. We have considered whether the Dairy Industry Restructuring Amendment Bill (No 3) ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO21862/3.2). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.

The Bill

3. The Bill amends the Dairy Industry Restructuring Act 2011 (the principal Act) to promote the efficient operation of dairy markets in New Zealand.
4. The Bill provides a package of measures to maintain regulatory disciplines on Fonterra's activities and enhance aspects of the dairy industry's performance by:
 - a. removing some regulatory requirements that are no longer necessary to support and encourage better environmental performance of the dairy industry;
 - b. providing Fonterra with more flexibility to manage some aspects of its operations; and
 - c. providing increased clarity on aspects of the regulatory regime for both Fonterra and other dairy industry stakeholders.
5. Specifically, Part 2 subpart 4 of the principal Act, which regulates aspects of the herd improvement industry and management of the New Zealand Dairy Core Database, is amended to reflect changes in responsibility for the management of the Core Database. The Bill also recognises in law that management of the Core Database was transferred from Livestock Improvement Corporation to DairyNZ in 2014.
6. Subparts 5 and 5A of Part 2 of the principal Act, which regulate Fonterra to manage risks to the dairy industry, farmers and consumers, arising from Fonterra's dominance in New Zealand dairy markets, are amended in order to:
 - a. allow Fonterra to decline applications from dairy farmers to become shareholders in, and supply milk to, Fonterra when it is unlikely that the applicant would comply with Fonterra's terms of supply;
 - b. clarify what Fonterra's terms of supply can include;

- c. provide Fonterra with discretion with regard to accepting or declining applications to become shareholders in, and supply milk to Fonterra if milk is supplied from newly converted dairy farms;
 - d. allow Fonterra to issue capacity constraint notices of a period of up to 3 dairy seasons;
 - e. limit Fonterra's discretion with regard to setting the asset beta in its base milk price calculation;
 - f. require Fonterra to appoint 1 member of its Milk Price Panel on the nomination of the Minister of Agriculture; and
 - g. require the Minister of Agriculture to carry out periodic reviews of whether the provisions in subparts 5 and 5A should be retained, repealed, or amended.
7. The Bill also makes a number of minor and technical changes to support subparts 5 and 5A. It also revokes the Herd Testing Regulations 1958 and provides for consequential amendments to the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001.
8. The Bill also amends the Dairy Restructuring (Raw Milk) Regulations 2012 to:
- a. reduce independent processors' eligibility to purchase up to 50 million litres of raw milk from Fonterra; and
 - b. update the regulated terms on which Goodman Fielder can purchase raw milk from Fonterra.

Conclusion

9. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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