

Departmental Disclosure Statement

Dairy Industry Restructuring Amendment Bill (No 2)
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Jarred Mair of the Ministry for Primary Industries.

The Ministry for Primary Industries certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

14 December 2017

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Part One: General Policy Statement

The Bill amends the Dairy Industry Restructuring Act 2001 (the DIRA) to prevent expiry of certain provisions in May 2018.

Subpart 5 of Part 2 regulates the activities of Fonterra to promote the efficient operation of dairy markets in New Zealand and subpart 5A of Part 2 provides for the monitoring of Fonterra's farm gate milk price.

The DIRA regulatory provisions on Fonterra in subparts 5 and 5A of Part 2 provide means of promoting efficiency that would ordinarily be provided through competitive market pressures. The need for subparts 5 and 5A is contingent on sufficient competition developing in New Zealand dairy markets, with competitive pressure removing the need for the DIRA regulatory provisions.

An automatic expiry of key provisions in subpart 5 and all of subpart 5A in the South Island was triggered in 2015. A statutorily required report on the state of competition, prepared by the Commerce Commission, found that competition is not sufficient and that subparts 5 and 5A should remain in place.

To ensure the efficient operation of dairy markets in New Zealand, the Bill prevents parts of subpart 5 and all of subpart 5A of Part 2 from expiring in the South Island, removes the automatic expiry provisions, the market share thresholds that would trigger them, and the consequential requirement for a review of the state of competition.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>The DIRA requires that the Minister request a report on the state of competition from the Commerce Commission (or another government agency) once the market share thresholds or the time-bound threshold have been reached. The Commerce Commission's report is linked below.</p> <p><i>Final report – Review of the state of competition in the New Zealand dairy industry – 1 March 2016</i>, Commerce Commission, accessible at: http://www.comcom.govt.nz/dmsdocument/14111</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Regulatory Impact Statement; Dairy Industry Restructuring Act</i>, Ministry for Primary Industries, 7 September 2016, accessible at: http://www.mpi.govt.nz/dmsdocument/14491-dairy-industry-restructuring-act-regulatory-impact-statement</p> <p>This document informed the changes to subpart 5 of the DIRA. Small amounts of content have been withheld to protect:</p> <ul style="list-style-type: none">• information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; and• information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source.	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The Treasury provided the following opinion on the regulatory impact statement relating to changes to subpart 5 of the DIRA (and associated regulations):</p> <p>“The RIS relies on analysis by the Commerce Commission and sets out a possible future direction for regulatory decision makers. However, both the costs of the existing regime and the impacts of uncertainty for investors about future regulatory arrangements is unclear – particularly for smaller players and potential entrants.” 6 September 2016.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>Analysis of the Bill does not indicate any potential for any group of persons to suffer a substantial unavoidable loss of income or wealth. The regulatory impact statement for the changes to subpart 5 analysed the impact of the policy to be given effect by this Bill, as did the Commerce Commission’s report on the state of competition – both are linked below, along with the regulatory impact statements pertaining to subpart 4.</p> <p><i>Final report – Review of the state of competition in the New Zealand dairy industry – 1 March 2016</i>, Commerce Commission, accessible at: http://www.comcom.govt.nz/dmsdocument/14111</p> <p><i>Regulatory Impact Statement; Dairy Industry Restructuring Act</i>, Ministry for Primary Industries, 7 September 2016, accessible at: http://www.mpi.govt.nz/dmsdocument/14491-dairy-industry-restructuring-act-regulatory-impact-statement</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
Consultation with the Ministry of Foreign Affairs and Trade. Consultation with MPI's Legal and International Policy teams.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
Consultation with Te Puni Kōkiri. Consultation with MPI's Legal team.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at: http://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>MPI released a discussion document seeking feedback on proposed amendments to subpart 5 of the DIRA and regulations made under it in response to the Commerce Commission's report on the state of competition.</p> <p>Public meetings were held in Wellington, Hamilton, Stratford, Christchurch, and Invercargill. These meetings were well attended, with between 20 and 70 attendees at each meeting. Participants were a mix of dairy farmers, representatives from Fonterra and other processors, and other interested parties. Individual meetings were held with Fonterra, Goodman Fielder, Federated Farmers, and the six largest independent processors.</p> <p>Submissions could be made over a four week period ending 29 June 2016 through standard post, email and via a survey on MPI's website. MPI received 105 submissions. These submissions expressed a range of views, from those who believed competition was sufficient and that the DIRA provisions should be allowed to expire in the South Island or removed entirely, to those that advocated no lessening of the DIRA requirements.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The Bill removes the automatic expiry provisions of the DIRA.</p> <p>Currently, these provide that once a 20 percent market share by independent processors is achieved in either the North or South Island, the Minister must request a report on the state of competition. Once the Minister has received the report and gazetted his or her response to it, the Governor-General must by Order in Council declare that most of subpart 5 and all of subpart 5A will cease to apply to the Island in which the market share threshold was reached. The Bill also provides that the Minister must request a report on the state of competition as soon as practicable after 1 June 2015, if the market share thresholds have not been reached at that point.</p> <p>The default expiry requirement creates uncertainty for the industry, and imposes time and scope constraints on managing the decision-making process and regulatory response to expiry.</p> <p>The removal of the default expiry provisions would have the effect of maintaining the regulatory regime in place until Parliament decides to amend or repeal it.</p>	