



# Discussion Document: Dairy Industry Restructuring Act

The **Dairy Industry Restructuring Act** (the DIRA) is an Act of Parliament. It was enacted in 2001 to enable the amalgamation of New Zealand's two largest dairy co-operatives and the New Zealand Dairy Board to form Fonterra. You can find more information on the DIRA on MPI's website <http://archive.mpi.govt.nz/agriculture/pastoral/dairy/dairy-industry-restructuring-act>.

When Fonterra was created it collected 96 percent of all raw milk in New Zealand. To protect farmers and other milk processors, the DIRA contains provisions to manage the impacts on competition of having such a large dominant company within New Zealand. We refer to these as the efficiency and contestability provisions, and they are intended to expire when there is sufficient competition in dairy markets within New Zealand and they are no longer needed.

## What are the current 'efficiency and contestability' provisions?

The efficiency and contestability provisions are set out in Part 2, Subparts 5 and 5A of the DIRA. Specifically they require that:

- » Fonterra must accept all applications to become a shareholding farmer and must accept all milk supplied by shareholding farmers (referred to as open entry).
- » Fonterra must allow shareholding farmers to withdraw from the co-operative without unreasonable restrictions or penalties (referred to as open exit).
- » Fonterra shareholding farmers can allocate up to 20 percent of their weekly production to other processors (referred to as the 20 percent rule).
- » Fonterra must publish a milk price manual and explain how the base milk price dairy season is calculated. The Commerce Commission reviews both the manual and setting of the base milk price (referred to as the milk price manual).

## What are the current Raw Milk Regulations?

The Dairy Industry Restructuring (Raw Milk) Regulations were established under the DIRA in 2012. They:

- » Require Fonterra to supply independent processors with a limited amount of raw milk at a regulated price (referred to as regulated milk).
- » Set the maximum total volume of regulated milk that must be supplied to other processors each season to 795 million litres.
- » Require that the total volume of regulated milk is less than 5 percent of the total volume of milk collected by Fonterra.

## Why is there a review?

The DIRA required a review to begin from 1 June 2015. During the 2014/15 milk season, processors other than Fonterra collected more than 20 percent of the milk solids in the South Island, which triggered a default expiry process. This means that the efficiency and contestability provisions will expire in the South Island by 31 May 2018 if the DIRA is not amended.

The Minister for Primary Industries requested a report on the state of competition in the New Zealand dairy industry from the Commerce Commission and the Ministry for Primary Industries has prepared a discussion document informed by these findings that proposes changes to the DIRA.

## What did the Commerce Commission say?

The Commerce Commission concluded that:

- » the current state of competition is not yet sufficient to warrant deregulation at this time;
- » another state of competition review should occur:
  - when independent processors achieve a 30 percent market share in the North Island or South Island; or
  - after five years (the end of the 2021/22 season).
- » the Government should consider amending:
  - the Raw Milk Regulations, to facilitate the development of a functioning market for trading between processors and reduce dependence on regulated raw milk; and
  - the open entry provisions, so that Fonterra no longer has to accept an application from a new conversion to be a shareholding farmer.

The Commerce Commission's report is available at: <http://www.comcom.govt.nz/regulated-industries/dairy-industry/report-on-the-state-of-competition-in-the-new-zealand-dairy-industry/>.

### What are the proposed changes?

The discussion document seeks feedback on whether to:

- » remove the default expiry and reset the market share threshold in the DIRA to 25 percent;
- » no longer require Fonterra to sell regulated raw milk to large, export-focused processors and, over five years, reduce the volumes of regulated milk available to all other processors; and
- » no longer require Fonterra to collect milk from new dairy conversions.

Overall, MPI considers that these proposed changes strike a balance between removing unnecessary costs on Fonterra and its farmer suppliers while continuing to provide for efficiency and contestability in the New Zealand dairy industry. They also aim to provide a pathway to deregulation for the dairy industry.

### How do I give my feedback?

MPI welcomes written submissions on the proposals contained in the discussion document. All submissions must be received by MPI **no later than 29 June 2016**.

Submissions can be sent via email to:

[dairy.consultation@mpi.govt.nz](mailto:dairy.consultation@mpi.govt.nz)

You can also submit online through our website:

<https://www.mpi.govt.nz/news-and-resources/consultations/proposed-changes-to-the-dairy-industry-restructuring-act-2001>

Or, if you would prefer, you can forward hard copy submissions to:

Dairy Consultation  
Sector Policy  
Ministry for Primary Industries  
PO Box 2526  
Wellington 6140  
New Zealand

Submissions are public information.