

Chair
Cabinet Economic Development Committee

Review of the Dairy Industry Restructuring Act 2001 and its impact on the dairy industry: Terms of Reference

Proposal

1. I seek approval to publically release the attached terms of reference (**see Appendix 1**) for the review of the Dairy Industry Restructuring Act 2001 (the DIRA) and its impact on the dairy industry.

Background

2. In 2001, the DIRA facilitated the creation of Fonterra through a merger between the two largest dairy co-operatives of the time and the New Zealand Dairy Board. While acknowledging the potential benefits of the merger, the Government also wanted to counter competition concerns arising from Fonterra's dominance in the domestic dairy markets, which, if not managed, had the potential to harm farmers and New Zealand consumers. The DIRA regulatory regime was therefore designed to regulate the activities of Fonterra to ensure that the dairy industry operates in a way that protects the long-term interests of farmers, New Zealand consumers and the wider economy.
3. The DIRA is a significant driver of the dairy industry's performance and, given the industry's size and importance, the nation's economic, environmental and social wellbeing and prosperity.
4. Following a Cabinet decision in December 2017, the Dairy Industry Restructuring Amendment Bill (No.2) was passed in February this year. It allowed for the current regulatory settings to be maintained in place to provide sufficient time for the Government to undertake a comprehensive review of the DIRA regulatory regime and associated issues concerning the dairy industry [CAB-17-MIN-0539.03 refers].
5. I undertook to report to Cabinet with a proposal about the approach to, and timing of, a review of the DIRA. This paper fulfils that undertaking and sets out my proposed terms of reference, including detailed scope, approach, and process for the review (see Appendix 1).
6. To minimise the extent of regulatory uncertainty for the dairy industry, the terms of reference provide for the review process to commence immediately and be completed as soon as possible.

Proposed Terms of Reference

7. The main purpose of the review is to consider the effectiveness of the DIRA regulatory regime and its impact on the New Zealand dairy industry across a range of parameters, including incentives and/or disincentives it creates for the industry to transition to:
 - a. higher value New Zealand-based dairy production and processing; and
 - b. more sustainable environmental practices on and off farm.
8. Although the review will focus on the DIRA regulatory regime, it will take account of the fact that the DIRA operates within, and has important linkages to, the wider regulatory system. This wider regulatory system includes, but is not limited to, the Resource Management Act, the Animal Welfare Act, the Health and Safety at Work Act, the Immigration Act, the Overseas Investment Act, the Financial Markets Conduct Act and the Commerce Act.
9. The proposed terms of reference provide for the review to be run in an open and transparent manner, with industry stakeholders and other interested parties actively contributing information and input throughout the review process.
10. I expect the main concerns raised during the review to be focused on:
 - a. the DIRA open entry and exit provisions and their impact on the industry's environmental outcomes and Fonterra's ability to invest in value-add processing,
 - b. the DIRA requirement for Fonterra to sell milk to its competitors and its impact on the future structure of the dairy industry,
 - c. Fonterra's milk price-setting processes and their impact on land use and land values, and incentives for the dairy processing sector to invest in innovation,
 - d. Fonterra's co-operative structure and its impact on Fonterra's ability to raise capital to invest in innovation and value creation, and
 - e. the changing dynamics in the wholesale supply of domestic consumer dairy products and their impact on the long term interests of consumers in New Zealand.
11. I propose that the review will be carried out by officials, supported by a team of external experts, potentially seeking input from the Commerce Commission on specific questions related to its jurisdiction. While officials from the Ministry for Primary Industries will lead the review, they will require the support of, and will work in close collaboration with, the Ministry for Business, Innovation and Employment, the Ministry for the Environment, the Treasury and the Ministry of Foreign Affairs and Trade.

12. The DIRA also regulates the dairy herd improvement industry, which supports genetic gain across the national dairy herd. The performance and regulatory settings of the dairy herd improvement industry are excluded from the scope of this review. I intend that this issue will be the subject of a separate policy review process, and will report separately to Cabinet on the scope and timing of that review in due course.

Key dates

13. The terms of reference include an indicative high-level timeline for the key stages of the review. This will assist stakeholders in planning their responses to consultation processes and engaging constructively with officials.
14. I expect to seek Cabinet approval to release a public consultation document in the third quarter of 2018, which will set out issues and potential directions for change.
15. The Ministry for Primary Industries will present the findings of the consultation and policy recommendations to me in early 2019. I will then report back to Cabinet with policy and regulatory change proposals.

Consultation

16. The Ministry of Business, Innovation and Employment, Ministry for the Environment, the Treasury, the Ministry of Foreign Affairs and Trade and Te Puni Kōkiri have been consulted on the proposals in this paper. The Department of the Prime Minister and Cabinet has been informed.
17. Once approved for release by Cabinet, the Ministry for Primary Industries will inform key industry stakeholders about the scope of the review before the terms of reference are publically released.

Financial Implications

18. I have asked the Ministry for Primary Industries to reprioritise from existing baselines to fund this work.

Human Rights

19. There are no human rights implications from the proposals in this paper.

Legislative Implications

20. There are no legislative implications from the proposals in this paper. The implementation of the outcomes of the proposed review is likely to require legislative change.

Regulatory Impact Analysis

21. Regulatory impact analysis requirements are not applicable to the proposals in this paper.

Publicity

22. The Ministry for Primary Industries will publish the terms of reference and a copy of this Cabinet paper on its website. I plan to release a media statement that outlines the review and presents opportunities to comment.

Recommendations

23. The Minister of Agriculture recommends that the Committee:
 1. **note** that in December 2017, Cabinet agreed that the DIRA be amended to provide sufficient time for the Government to consider and consult on a comprehensive review of the DIRA [CAB-17-MIN-0539.03 refers];
 2. **note** that the main purpose of the review is to consider the effectiveness of the DIRA regulatory regime and its impact on the dairy industry;
 3. **agree** to the public release of the attached terms of reference for the DIRA review;
 4. **agree** that the review will be carried out by government officials, led by the Ministry for Primary Industries with support from the Ministry for Business, Innovation and Employment, the Ministry for the Environment, the Treasury, and the Ministry of Foreign Affairs and Trade;
 5. **note** that the review will be funded from existing Ministry for Primary Industries baselines;
 6. **note** that, as the next step in the review process, I expect to seek Cabinet approval to release a paper for public consultation in the third quarter of 2018.

Authorised for Lodgement

Hon Damien O'Connor
Minister of Agriculture
