

Technical amendments to Part 2, subpart 4 of the Dairy Industry Restructuring Act 2001

Proposal

1. This paper seeks the Committee's approval to:
 - amend Part 2, subpart 4 of the Dairy Industry Restructuring Act 2001 (DIRA) to reflect the change in management of the New Zealand Dairy Industry Core Database (core database) from Livestock Improvement Corporation (LIC) to DairyNZ; and
 - revoke the Herd Testing Regulations 1958 by Order in Council, together with all Gazette notices made under these Regulations, as these have been superseded by the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001.

Executive summary

2. Part 2, subpart 4 of the DIRA is out of date. Decisions were taken in 2014 to transfer management of the core database from LIC to DairyNZ. This change has been implemented in practice, but the Act itself has not yet been updated. A DIRA Bill has been proposed for inclusion in the Legislative Programme which would provide a vehicle for this amendment. The amendments proposed in this paper are technical and no new policy decisions are required.
3. It is also proposed to revoke the Herd Testing Regulations 1958. These were left in place as a transitional measure when new regulations and a new herd testing Standard were introduced in 2001. The industry meets the technical requirements of the Standard and no longer needs to rely on the outdated 1958 provisions.

Background

4. The dairy herd improvement industry adds substantial value to the New Zealand economy by supporting continuous genetic gain across the national dairy herd.
5. Genetic gain is achieved through the ongoing collection and use of data on the performance of cows and bulls. At the individual farm level this data informs decisions on herd management and breeding. At the industry level, such data is managed collectively for industry good purposes through the core database which is used by DairyNZ for animal evaluation and which can be accessed for the purposes of research.

Manager, New Zealand Dairy Core Database

6. Part 2, subpart 4 of the DIRA is out of date and requires amendment to align the statutory provisions with agreed developments relating to the management of the core database.
7. The framework for the management and protection of the core database is set out in Part 2, subpart 4 of the DIRA. Part 2, subpart 4 also provides regulation-making powers covering the more detailed requirements around the core database.
8. At present Part 2, subpart 4 specifically refers to LIC as the entity responsible for the management of the core database and makes LIC accountable for compliance with regulations relating to the oversight of core data and associated reporting requirements. It also provides that LIC's Constitution requires it to retain the core database, and imposes some requirements on LIC's corporate form.
9. Part 2, subpart 4 also provides for the Crown to appoint another entity to manage the core database if LIC is wound up or removed from the Register of Companies, or seeks to change its corporate form.
10. In 2014, following consultation with the dairy industry, the then Cabinet agreed to amend the DIRA to enable the management of the core database to be transferred from LIC to DairyNZ. The dairy industry indicated that it wanted the core database to be managed by an industry good body, rather than a commercial entity. The Minister for Primary Industries notified the transfer of responsibilities in the *Gazette* in November 2014. However, the DIRA has not yet been updated to reflect the change of manager.
11. Amendments to Part 2, subpart 4 were drafted by the Parliamentary Counsel Office and included in a DIRA Bill that was introduced in 2017. The primary purpose of that Bill was to amend subpart 5 of the DIRA (which regulated Fonterra) following a review of the state of competition in the dairy industry in 2015. That Bill was withdrawn following the General Election, so that a more comprehensive review of subpart 5 could be undertaken.
12. A new DIRA Bill has category 2 in the Legislative Programme for 2019. The Minister of Agriculture will be reporting to Cabinet separately on the outcome of the review of subpart 5, indicatively in June this year, and seeking policy approvals for amendments to the DIRA as a result of that review. In the meantime the Minister of Agriculture is seeking agreement to drafting amendments to subpart 4, for inclusion in the DIRA Bill.

13. The matters dealt with in subpart 4 are unrelated to the outcome of the current consultations on the regulation of Fonterra in subpart 5. The proposed amendments are to remove references to LIC as responsible for managing the core database. To future-proof the statutory arrangements it is proposed to create a generic concept of “manager” and recognise DairyNZ as the manager.
14. The amendments would also update provisions for the Crown to appoint another entity as a new manager should DairyNZ be unable or unwilling to continue in the role of manager at any time. It would also be necessary to update a number of technical details and cross references to associated regulations which currently refer directly to LIC.
15. As noted above these amendments are of a technical nature and do not involve any new policy decisions. As a separate matter, the Minister of Agriculture notes that there are a number of issues relating to access to data and more integrated data management, on which further work is to be undertaken. These data access and sharing issues involve complex technical and policy considerations, including how to manage the inter-relationship of commercial and industry good interests. Dealing with these matters will require a further extensive consultation with the industry and a longer term work programme, but they do not affect the proposals in this paper.

Herd Testing Regulations 1958

16. The 1958 Regulations were made under the Dairy Board Act 1953. They required herd testers to be licensed by the New Zealand Dairy Board under conditions issued by Gazette notice. Equipment approved for use by herd testers was specified in a Gazetted list. Herd testing data was held in a national database, managed for industry good. Access to this data was approved by a Dairy Herd Improvement Tribunal (the Tribunal).
17. The DIRA provided for new regulatory powers relating to herd testing, but maintained the 1958 Regulations for transitional purposes. The DIRA deemed the 1958 Regulations to have been made under that Act, and allowed for them to be amended and revoked.
18. The 2001 Regulations, made under the DIRA, changed the way in which herd testers were regulated. They require herd testers to be certified by an independent and accredited certification body, and to comply with a Standard as a condition of certification. Herd testers must provide specified data to the New Zealand Dairy Core Database, and access to this data is approved by the New Zealand Dairy Core Database Access Panel (the Access Panel).

19. There is no reason to retain the 1958 Regulations and associated Gazette notices any longer. The Standard referenced in the 2001 Regulations has been updated several times over the last 16 years, most recently in 2015, making the 1958 Regulations redundant.
20. However, the breed societies, which provide valuable services to the industry, continue to rely on the Tribunal decisions which govern access to data referred to in paragraph 16. Decisions of the Tribunal were published in the *Gazette*. The Tribunal was disestablished and replaced by an Access Panel when the 2001 Regulations were made. Transitional provisions in the 2001 Regulations allow Tribunal decisions about access to data to remain in effect. Given the breed societies ongoing requirements the Minister of Agriculture recommends these be retained.

Consultation

21. MPI conducted a full consultation process in 2014 during the policy development stage to which the proposals in this paper refer.
22. On this paper the Treasury, Ministry of Business, Innovation and Employment, Te Puni Kōkiri and Ministry of Foreign Affairs and Trade have been consulted. The Department of the Prime Minister and Cabinet has been informed.

Financial Implications

23. There are no fiscal implications associated with the proposals in this paper.

Legislative implications

24. Legislation is required to give effect to the proposals in this paper. A DIRA Bill has category 2 in the Legislative Programme for 2019.

Impact Analysis

25. The proposals in this paper give effect to policy decisions that were taken in 2014. The regulatory impact analysis requirements applied to the 2014 policy proposals and a regulatory impact statement (RIS) prepared in accordance with the necessary requirements. A copy is attached.
26. A preliminary impact and risk assessment (copy attached) was conducted for the revocation of the Herd Test Regulations 1958, and confirmation was received from the New Zealand Treasury in 2016 that a regulatory impact assessment was not required.

Human Rights, Gender Implications, Disability Perspective

27. There are no human rights, gender, or disability implications associated with the proposals in this paper.

Publicity

28. The proposed amendments are a technical matter so the Minister of Agriculture does not believe there is a need for a media release. Subject to Cabinet's agreement, the Minister of Agriculture will notify relevant stakeholders that the amendments will be included in the proposed 2019 DIRA Bill.

Proactive release

29. Following Cabinet consideration the Minister of Agriculture intends to consider the release of this paper in full.

Recommendations

30. The Minister of Agriculture recommends that the Cabinet Economic Development Committee:
1. **note** that Part 2, subpart 4 of the Dairy Industry Restructuring Act 2001, which governs the management of the New Zealand Dairy Core Database, is out of date
 2. **agree** that the Dairy Industry Restructuring Act 2001 be amended to:
 - 2.1. remove references to Livestock Improvement Corporation as the entity responsible for managing the New Zealand Dairy Core Database
 - 2.2. permit DairyNZ to be recognised as the current manager of the New Zealand Dairy Core Database
 - 2.3. provide that a new manager may be appointed by regulation if the current manager is no longer appropriate to manage the database
 - 2.4. update regulation-making powers consistent with the change of manager of the core database
 3. **note** that a Dairy Industry Restructuring Amendment Bill has category 2 on the Legislative Programme for 2019
 4. **invite** the Minister of Agriculture to issue drafting instructions to the Parliamentary Counsel Office to give effect to the policy decisions in recommendation 2
 5. **note** that officials are currently consulting on other proposed amendments to the Dairy Industry Restructuring Act 2001, which the Minister of Agriculture is proposing to bring to Cabinet in June 2019 for policy decisions
 6. **note** that further drafting instructions for the Dairy Industry Restructuring Amendment Bill will be issued after Cabinet makes the policy decisions referred to in recommendation 5
 7. **agree** that the Herd Testing Regulations 1958, which are now redundant, be revoked
 8. **agree** that Tribunal decisions made pursuant to the Herd Testing Regulations 1958 and published in the *Gazette* be retained
 9. **invite** the Minister of Agriculture to issue drafting instructions to the Parliamentary Counsel Office to give effect to the policy decision to revoke the Herd Testing Regulations 1958.

Authorised for lodgement
Hon Damien O'Connor
Minister of Agriculture