

Dairy Industry Restructuring Amendment Bill

Government Bill

As reported from the Primary Production
Committee

Commentary

Recommendation

The Primary Production Committee has examined the Dairy Industry Restructuring Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Dairy Industry Restructuring Act 2001. The bill aims to promote the efficient operation of dairy markets in New Zealand. It introduces a new regime for Fonterra's pricing of milk, setting out guidelines for deciding the base milk price, requiring the maintenance of a milk price panel to review price setting operations, requiring disclosure of the milk price manual, and requiring an annual review of the manual and milk price by the Commerce Commission. The bill enables Fonterra to restructure its capital through the Trading Among Farmers (TAF) scheme, a proposed share-trading system. It also guides Fonterra's conduct regarding co-operative shares, including its valuation of shares, should shareholders vote not

to implement TAF, or if it is implemented and subsequently wound up.

This commentary covers the main amendments we recommend to the bill. It does not cover minor or technical amendments.

Milk price

The bill as introduced could have the effect of prioritising Fonterra's efficiency over the contestability of the farm gate milk market. This is contrary to the intent of the principal Act where contestability is a means to achieving efficient dairy markets. To reflect the principal Act's intention, the farm gate milk price should be set at a level that provides an incentive to Fonterra to operate efficiently while also providing for contestability in the farm gate milk market. Therefore we recommend deleting subsection 4(fa) in clause 4 and amending section 150A in clause 13 to reflect the principal Act's intention.

We also recommend amending the definition of independent in section 5, clause 5. As introduced, the bill classes persons with relevant interests in Fonterra fund securities as independent of Fonterra. Such persons could then be considered for appointment to the Milk Price Panel. This amendment would remove the eligibility of such persons for inclusion on the panel.

We recommend amending section 150C in clause 13 to ensure contestability in the market for raw milk. This amendment would require that any assumptions taken into account in calculating the farm gate milk price be practically feasible for an efficient processor to replicate.

We also recommend amending section 150P in clause 13 to clarify that the Commerce Commission would not be required to calculate the costs of an independent processor when it prepares its milk price report.

Share valuation

We recommend amending new section 77A in clause 7. This new section is intended to guide Fonterra on setting its share price in the absence of TAF. It requires that the co-operative share price be set at fair value; however, the inclusion of "market" in the title could be taken to imply that a restricted market value would apply. There is also a potential to interpret subsections 77A(1) and 77A(2) as in-

consistent. We recommend the removal of “market” from the new section’s title and the removal of new subsection 77A(1), to clarify that an unrestricted fair value co-operative share price should be set in the absence of TAF.

We believe that creating a back-up option to TAF that involved regulating the share price might be unfair for shareholders to consider before they voted on whether to implement TAF.

We also recommend amending the definition of assets in new subsection 77A(2), which provides a formula for calculating fair value of a co-operative share. We propose correcting this definition, to make it clear that the free cash flows are to be valued rather than the assets themselves.

Trading Among Farmers

Should Fonterra’s fund securities cease to be listed on a registered market, the bill would require the reinstatement of share issue and redemption obligations on Fonterra. This action might create a delay between the winding up and de-listing of the Fonterra fund. During this delay, it is unlikely that farmers would be able to enter and exit Fonterra freely. Therefore we recommend amending sections 109F, 109G, and 109H, and inserting subsection 109G(1A) in clause 8 to ensure that if the fund were to be wound up, a transitional period of no more than six months would apply to the reinstatement of the share issue and redemption obligations. We believe that this would ensure farmers’ freedom of entry and exit at all times.

We recommend amending section 109K in clause 8 to prevent Fonterra purposely limiting the liquidity and fungibility of the TAF share and fund markets. We acknowledge that Fonterra has incentives to develop and maintain well-functioning markets; but periodically it could benefit from limiting market liquidity, which in turn would limit farmers’ freedom to enter and exit Fonterra. These amendments would safeguard farmers’ freedom of entry and exit and maintain the contestability of the farm gate milk market.

We also recommend inserting new sections 161AA and 161AB in clause 14 to clarify the process that would apply if Fonterra acquired units from the Fonterra Fund. This new section provides for this process to be completed in accordance with the Companies Act 1993.

This is a similar process to that which Fonterra currently uses to acquire its own shares.

Fonterra was established under statute as a co-operative with ownership by New Zealand dairy farmers. We received submissions about the possible unknown impact of external investment on Fonterra.

Regulation making powers

The Regulations Review Committee expressed concern that sections 109B and 109G would allow regulations to be made that had the effect of suspending certain provisions of the principal Act. It considered that as a matter of principle only Parliament should be able to suspend provisions of an Act, and that this should be done in primary legislation and not in regulations.

We consider that the suspension of certain provisions of the Act should be effected not by an Order in Council, as provided by section 109A, but by a provision directly to that effect. Accordingly, we recommend changes to sections 109A and 109B and in other sections where the Order in Council is referred to. Provision must be made for the repeal of the suspension provision, and we recommend new section 109FA be inserted for this purpose.

Minority views

New Zealand Labour Party and Green Party minority view

The Labour and Green members of the Primary Production Committee have concerns that have not been addressed through the Committee's consideration of the bill. The short timelines for submissions and limited ability of the committee to obtain advice on TAF has resulted in a bill that contains risks for the dairy industry and Fonterra. Independent advice provided to the committee identified risks that have not been properly considered. Advice from officials with limited knowledge of co-operative company principles and objectives left many concerns raised by submitters unanswered.

The Base Milk Price Setting system that the bill legislates for would provide oversight by the Commerce Commission, but both the commission and independent processors identified potential flaws in the policy. The limited time to analyse the changes proposed to the complex system could lead to unintended consequences. The open entry

open exit objectives in a transparent and contestable dairy market may be compromised with harm to farmers, independent processors, and Fonterra.

The enabling provisions of the bill that allow the trading of shares between farmers are subject to requirements laid out in the bill. Insufficient scrutiny of the potential effect of the Shareholder Share Market size and the fungibility with the open trading on the Shareholder Fund Market have prevented analysis of potential gaming and market influence on the operations of the co-operative company.

There is a tension between the differing interests of milk-supplying shareholders and investors who may be more interested in a short-term return rather than the long-term interests of a vertically integrated industry. The legislation contains no legislative limit on the proportion of Fonterra share securities that can be traded in the open market by non-suppliers, which could lead to pressure to demutualise the company. We believe such a protection for the co-operative is needed in law.

In the event of failure or wind-up of share trading, the bill legislates for a “fair value” share in Fonterra. Officials stated the objective is to achieve a full-value discovery. We question this objective, given the co-operative status of Fonterra and the clear desire of farmers to have it remain a co-operative. Many submitters requested the removal of section 77A and, while improvements have been made, we feel the imposition of such a valuation system on a co-operative is untested.

This legislation implements fundamental change to Fonterra, a co-operative that is the largest company in the most significant export sector in New Zealand. Any reduction in control or ownership has risks for farmers and the country. We are concerned that an immediate and unavoidable consequence of the establishment of the TAF scheme will be the loss of an unknown and uncapped proportion of the dividend stream generated by Fonterra’s profits, currently retained by New Zealand farmer shareholders, to overseas investors. We believe the select committee has had insufficient time, resources, and analysis to ensure the passage of the bill will deliver the security of ownership and control in Fonterra long-term that farmers are expecting from Parliament.

New Zealand First concurs with the views of the Labour and Green members.

Green Party minority view

The Green Party also felt that the focus of the bill on the *efficient* operation of dairy markets in New Zealand, missed an opportunity, and fails to allow broader environmental gains, such as the promotion of biological or organic farming models, to be influenced by the bill. Fonterra has already dropped 50 per cent of its organic producers from its organic programme, due primarily to “inefficient” milk pickup runs and processing plant operations. Larger volume independent processors show no sign of picking up what can be seen as more environmentally sustainable production. “Efficient” is primarily a term used for volume-based production and marketing, and does not address long-term economic efficiency, that being sustainable production.

TAF as proposed in the bill has had an evolution from origins that intended open stock exchange listing. The current desire of Fonterra for TAF maintains elements of that, and as such does not fit the co-operative model that has allowed the success of Fonterra. Many submitters pointed out that the purported advantages of TAF for buffering redemption risk can be achieved by other means, such as the retention policy that has already been shown to be successful in accruing significant capital. Fonterra have issued contradictory statements as to the need of the share trading as envisaged in TAF, which is further confused by its complex communications to its member farmers. The Green Party doubt the veracity of some of the Fonterra executive’s statements, and cannot support TAF.

TAF allows investors that are not providers of milk to Fonterra to trade shares that benefit from Fonterra farmer shareholder dividend streams. The Green Party sees this outside “investment” as a weakening of the farmer base of the co-operative, and may better be described as Trading Against Farmers.

Share valuation in the absence of TAF, and the farm gate milk pricing mechanism of the bill, are focused on contestability rather than competition, according to officials. However, no matter the semantics of contestability or competition, the mechanics of the bill seek to open up competition in the dairy industry to the point that there would be significant risk to the dominant single desk co-operative and New Zealand farming families’ economic and intergenerational success. Such success is more likely to drive improvements in enviro-

onmental and social sustainability than the open market model that this bill appears to predicate.

Appendix

Committee process

The Dairy Industry Restructuring Amendment Bill was referred to the committee on 3 April 2012. The closing date for submissions was 24 April 2012. We received and considered 99 submissions from interested groups and individuals. We heard 43 submissions.

We received advice from the Ministry for Primary Industries, the Ministry of Economic Development, and our independent specialist adviser Dr James Morrison. The Regulations Review Committee reported to the committee on the powers contained in sections 109B and 109G.

Committee membership

Shane Ardern (Chairperson)

Steffan Browning

Hon Shane Jones

Colin King

Ian McKelvie

Hon Damien O'Connor

Eric Roy

Richard Prosser participated in the committee's consideration of this item of business.

**Dairy Industry Restructuring
Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon David Carter

Dairy Industry Restructuring Amendment Bill

Government Bill

Contents

		Page
1	Title	4
2	Commencement	4
3	Principal Act	4

Part 1

Amendments to principal Act

5	Section 5 amended (Interpretation)	4
6	Section 72 amended (Overview)	7
7	New sections 77A and 77B inserted	7
	77A Price must be fair value	7
	77B When section 77A first applies	8
8	New sections 109A to 109L and cross-heading inserted	8
	<i>Trading among farmers</i>	
	109A Subpart 5 of Part 2 provisions do not apply	8
	109B Order in Council specifying date on and from which specified subpart 5 provisions do not apply	8
	109C When Minister must recommend that Order in Council be made	8
	109D Preconditions for making Order in Council	9
	109E Requirements for notice given by new co-op to chief executive	10
	109F Notice by new co-op to chief executive triggering repeal of section 109A	10
	109FA Repeal of section 109A	11

**Dairy Industry Restructuring
Amendment Bill**

	109G Conditions of making order under section 109FA(2)	11
	109H Chief executive may give new co-op notice requiring verification	12
	109I When sections 109J to 109L apply	13
	109J New co-op's obligations in relation to market in co-operative shares and to new co-op fund	13
	109K Restrictions on new co-op	13
	109L Expiry of sections 109A to 109K	14
9	Section 134 amended (Levy regulations)	14
10	Cross-heading above section 147 amended	14
11	Section 148 amended (Subpart ceases to apply to island that meets its market share threshold)	14
12	Section 149 amended (Subpart expires if both islands meet their market share thresholds)	15
13	New subpart 5A of Part 2 inserted	15
	Subpart 5A—Base milk price	
	<i>Purpose of subpart</i>	
	150A Purpose of this subpart	15
	150B Certain assumptions do not detract from purpose of subpart	15
	150C Setting of base milk price in way that is consistent with certain principles	16
	<i>Milk Price Panel</i>	
	150D Milk Price Panel	17
	150E Appointment of members of panel	18
	<i>Milk price manual</i>	
	150F New co-op must maintain milk price manual	18
	150G Steps new co-op must take if panel recommendation not followed or implemented	18
	<i>Review of milk price manual by Commission</i>	
	150H Commission must review milk price manual	19
	150I Commission's report	19
	150J Commission must make final report publicly available	19
	<i>Procedure for Commission's review of milk price manual</i>	
	150K Procedure for review of milk price manual	20

**Dairy Industry Restructuring
Amendment Bill**

	150L New co-op must provide Commission with milk price manual and other information	20
	150M Draft Commission report	20
	<i>Base milk price calculation</i>	
	150N Steps new co-op must take if panel recommendation not followed or implemented	21
	150O Commission must review calculation of base milk price	21
	150P Commission's report	22
	150Q Commission must make final report publicly available	22
	150R Steps new co-op must take if base milk price changed after Commission report	22
	<i>Procedure for Commission's review of base milk price calculation</i>	
	150S Procedure for review of base milk price calculation	23
	150T New co-op must provide Commission with certain information	23
	150U Draft Commission report	24
	<i>Application of Commerce Act 1986</i>	
	150V Application of Commerce Act 1986 to review by Commission under this subpart	24
13A	Section 161 amended (Application of Co-operative Companies Act 1996 to new co-op shares)	24
14	New sections 161A to 161C inserted	25
	161A Voting rights in respect of new co-op fund securities held by new co-op or nominee	25
	161AA New co-op may acquire new co-op fund securities	26
	161AB New co-op may exchange new co-op fund securities for co-operative shares	29
	161B Financial assistance by new co-op for purchase of co-operative shares	30
	161C Application of Companies Act 1993	30
15	New section 161D inserted (Application of section 20(2) and (3) of Co-operative Companies Act 1996)	31
	161D Application of section 20(2) and (3) of Co-operative Companies Act 1996	31
16	Other amendments to principal Act	31

Part 2		
Miscellaneous		
17	References are references to principal Act	31
18	Transitional provision for application under section 73 or 74 of principal Act	31
19	Transitional provision for notice of withdrawal under section 97 of principal Act	32
Schedule		33
Other amendments to principal Act		

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Dairy Industry Restructuring Amendment Act **2012**.
- 2 Commencement** 5
(1) Except for **section 15**, this Act comes into force on the day after the date on which it receives the Royal assent.
(2) **Section 15** comes into force on the ~~commencement of date~~ specified in an Order in Council made under **section 109B** of the principal Act (as inserted by **section 8** of this Act). 10
- 3 Principal Act**
This Act amends the Dairy Industry Restructuring Act 2001 (the **principal Act**).

- Part 1**
- Amendments to principal Act** 15
- 4 Section 4 amended (Purpose)**
In section 4, after paragraph (f), insert:
“(fa) promote the setting of a base milk price that provides an incentive to new co-op to operate efficiently; and”.
- 5 Section 5 amended (Interpretation)** 20
(1) In section 5(1), insert in their appropriate alphabetical order:

“**base milk price**, in relation to a season, means the price per kilogram of milksolids ~~supplied to new co-op~~ that is set by new co-op for that season

“**commodity** means a product made by the processing of milk that is— 5

“(a) traded in significant quantities in globally contested markets; and

“(b) characterised by uniform technical specifications

“**independent**, in relation to a person, means that the person is none of the following: 10

“(a) a shareholding farmer:

“(b) a relative of a shareholding farmer:

“(c) an employee of new co-op:

“(d) an employee of a shareholding farmer:

“(e) a person who has a direct or indirect financial interest in a farm that supplies milk to new co-op; 15

“(f) a person who has a relevant interest in new co-op fund securities

“**listed** has the same meaning as in section 2(1) of the Securities Markets Act 1988 20

“~~**market maker in co-operative shares** means a person who maintains bids and offers on co-operative shares on the registered market on which those shares are listed by standing ready to buy and sell the shares at quoted prices or yields on a continuous basis during the periods that the registered market is in operation~~ 25

“**market maker in co-operative shares** means a person who is continuously active in making bids and offers on co-operative shares on the registered market on which those shares are listed during the periods that the registered market is in operation 30

“**milk price manual** means the manual that must be maintained by new co-op under **section 150F**

“**new co-op fund** means the fund referred to in **section 109D(1)(b)** 35

“**new co-op fund securities** means the securities referred to in **section 109D(1)(b)(i)**

“**panel** means the Milk Price Panel established under **section 150D**

“**publicly available**, in relation to making a document or information available, means that—

- “(a) the document or information is available for inspection, free of charge, on an Internet site that is publicly accessible at all reasonable times (except to the extent that making the document or information available would infringe copyright in the material in question or is inconsistent with any enactment or rule of law); and
- “(b) a copy of the document or information is available for inspection, free of charge, at all reasonable times at the head office of the person required to make it publicly available or, if that person is a Minister, at the head office of the relevant Ministry; and
- “(c) copies of the document or information may be purchased by any person at a reasonable price

“**registered market** has the same meaning as in section 2(1) of the Securities Markets Act 1988

“**relative**, in relation to any person, means—

- “(a) that person’s spouse, civil union partner, or de facto partner:
- “(b) a parent or step-parent of that person:
- “(c) a child or stepchild of that person:
- “(d) a brother or sister of that person, including a stepbrother or stepsister:
- “(e) a grandchild of that person:
- “(f) a grandparent of that person:
- “(g) a parent, step-parent, brother, or sister, including a stepbrother or stepsister, of that person’s spouse, civil union partner, or de facto partner

“**relevant interest** has the same meaning as in section 2(1) of the Securities Markets Act 1988

“**specified subpart 5 provisions** means the provisions specified in **section 109A**

“**trade** has the same meaning as in section 2(1) of the Securities Markets Act 1988, and for the avoidance of doubt includes exchange”.

- (2) In section 5(1), replace the definition of **conversion date** with:
“**conversion date** means 27 September 2002”.

6 Section 72 amended (Overview)

After section 72(5), insert:

- “(5A) **Sections 109A to 109H** provide for the disapplication by an ~~an~~ **Order in Council** of specified provisions in this subpart (being provisions that relate to the requirement for new co-op to issue and accept the surrender of co-operative shares) if there is in place a regime for trading co-operative shares on a registered market and there is established a fund (the new co-op fund) ~~the manager of which issues securities~~ the securities of which are listed on a registered market. 5 10
- “(5B) **Sections 109I to 109K** regulate the conduct of new co-op in relation to the trading of co-operative shares and the functioning of the new co-op fund.” 15

7 New sections 77A and 77B inserted

After section 77, insert:

“**77A Price must be fair market value**

- “(1) The purpose of this section is to ensure that the price of a co-operative share is set at a price that is within the range of the price for which the co-operative share would be traded in an open and unrestricted market between knowledgeable, willing parties who are at arm’s length. 20
- “(2) The price of a co-operative share set by new co-op under section 77(1) must be fair value calculated by using the following formula: 25

$$\frac{\text{assets} - \text{debts}}{\text{shares}} = \text{price}$$

where—

assets means the ~~aggregate fair market value of new co-op’s assets, taking into account the present~~ present value of the forecast free cash flows expected to be generated from the operation of ~~those new co-op’s~~ those new co-op’s assets; and 30

debts means the aggregate fair market value of new co-op's interest-bearing debt; and

shares means the total number of co-operative shares on issue.

“77B When section 77A first applies

Section 77A first applies—

5

“(a) ~~on the revocation of an Order in Council (made under **section 109B**) under **section 109G**; or~~

“(a) on and from the date specified by an Order in Council made under **section 109FA(2)**; or

“(b) on 31 December 2013 if, before 31 December 2013, no Order in Council has been made under **section 109B**.”

10

8 New sections 109A to 109L and cross-heading inserted

After section 109, insert:

“Trading among farmers

“109A Subpart 5 of Part 2 provisions do not apply

15

The following provisions (the specified subpart 5 provisions) do not apply ~~if they are declared by an Order in Council made under **section 109B** not to apply~~ on and from a date specified by an Order in Council made under **section 109B**:

“(a) sections 77 to 85:

20

“(b) sections 88 to 93:

“(c) sections 98 to 105.

“109B Order in Council declaring that specifying date on and from which specified subpart 5 provisions do not apply

The Governor-General may by Order in Council made on the recommendation of the Minister ~~declare that specify a date on and from which~~ the specified subpart 5 provisions do not apply.

25

“109C When Minister must recommend that Order in Council be made

The Minister must recommend that an Order in Council be made under **section 109B** if the Minister is satisfied, on the basis of written confirmation by the chief executive, that the preconditions under **section 109D** for making the order have been met.

30

“109D Preconditions for making Order in Council

“(1) The preconditions for making an Order in Council under **section 109B** are the following:

“(a) co-operative shares are listed on a registered market that provides for the shares to be traded by shareholding farmers; and 5

“(b) there is established ~~and maintained~~ a fund (the new co-op fund) that satisfies the following requirements:

“(i) the securities issued in respect of the fund (the new co-op fund securities)— 10

“(A) are listed on a registered market that provides for the securities to be traded by the public; and

“(B) entitle the holders of those securities to receive distributions equal to the ~~dividends~~ distributions they would receive if they were holders of co-operative shares; and 15

“(ii) the rules of the fund permit shareholding farmers to exchange co-operative shares for an equal number of new co-op fund securities, and vice versa; and 20

“(iii) the manager of the fund has issued, or has entered into binding obligations to issue, new co-op fund securities for consideration of not less than \$500 million; and 25

“(c) new co-op has given a notice to the chief executive that complies with **section 109E**.

“(2) The chief executive, subject to being satisfied as to the sufficiency and authenticity of the certificate in question,—

“(a) must confirm to the Minister that the precondition in **subsection (1)(a)** has been met if the chief executive has received from the registered exchange in question a certificate verifying the matters set out in **subsection (1)(a)**: 30

“(b) must confirm to the Minister that the precondition in **subsection (1)(b)** has been met if the chief executive has received from the board of new co-op a certificate verifying the matters set out in **subsection (1)(b)**. 35

“109E Requirements for notice given by new co-op to chief executive

For the purposes of **section 109D(1)(c)**, the notice given by new co-op to the chief executive must—

- “(a) be in writing; and 5
- “(b) request that an Order in Council be made under **section 109B**; and
- “(c) specify the date on which the order should come into force and from which the specified subpart 5 provisions should not apply. 10

“109F Notice by new co-op to chief executive triggering revocation of Order in Council ~~repeal of section 109A~~

“(1) New co-op must without delay give written notice to the chief executive if—

- “(a) co-operative shares are no longer able to be traded on a registered market by shareholding farmers (other than in the case of a temporary halt in, or suspension of, trading in the shares); or 15
- “(b) new co-op fund securities have ceased to be listed on a registered market that provides for the securities to be traded by the public; or 20
- “(c) the new co-op fund has been wound up; or
- “(d) an event occurs that creates a binding obligation to wind up the new co-op fund including, without limitation,—
 - “(i) an order by a court, a regulatory body, or any other person; or 25
 - “(ii) a resolution by the holders of new co-op fund securities or by any other person; or
 - “(iii) an event specified in the contractual arrangements relating to the new co-op fund. 30

“(2) The notice must be accompanied by the evidence relied upon by new co-op for asserting that **subsection (1)** applies.

“(3) If new co-op contravenes this section, it commits an offence and is liable on summary conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for every day that the offence 35 continues.

“109FA Repeal of section 109A

“(1) Section 109A is repealed on and from a date specified by an Order in Council made under **subsection (2)**.

“(2) The Governor-General may by Order in Council made on the recommendation of the Minister specify a date on and from which section 109A is repealed. 5

“(3) The date specified in the order must be the later of 6 months after the order is made and the beginning of the next application period.

“109G Revocation of Order in Council made under section 109B 10
Conditions of making order under section 109FA(2)

“(1) An Order in Council made under ~~section 109B~~ may be revoked ~~section 109FA(2)~~ may be made only on the recommendation of the Minister under subsection (2).

“(2) The Minister must recommend that the order be ~~revoked~~ made if the Minister is satisfied, on written confirmation from the chief executive, that— 15

“(a) co-operative shares are no longer able to be traded on a registered market by shareholding farmers (other than in the case of a temporary halt in, or suspension of, trading in the shares); or 20

“(b) new co-op fund securities have ceased to be listed on a registered market that provides for the securities to be traded by the public; or

“(c) the new co-op fund has been wound up; or 25

“(d) an event has occurred that creates a binding obligation to wind up the new co-op fund including, without limitation,—

“(i) an order by a court, a regulatory body, or any other person; or 30

“(ii) a resolution by the holders of new co-op fund securities or by any other person; or

“(iii) an event specified in the contractual arrangements relating to the new co-op fund.

“(3) The chief executive must confirm that ~~subsection (2)(a) or (b), (b), (c), or (d)~~ applies if the chief executive— 35

“(a) has received a notice from new co-op under section 109F; or

- “(b) is satisfied on reasonable grounds, after making due inquiry, that **subsection (2)(a) or (b), (b), (c), or (d)** applies; or
- “(c) has received a response from new co-op under **section 109H(3)(b)**; or 5
- “(d) has not obtained a response from new co-op, within 5 working days after service, to a notice given under **section 109H**.
- “**109H Chief executive may give new co-op notice requiring verification** 10
- “(1) At any time while ~~an Order in Council made under section 109B is in force~~ the specified subpart 5 provisions do not apply, the chief executive may give new co-op a notice that complies with **subsection (2)** requiring new co-op to verify in writing, with documentary proof, that— 15
- “(a) co-operative shares continue to be listed on a registered market that provides for the shares to be traded by shareholding farmers:
- “(b) new co-op fund securities continue to be listed on a registered market that provides for the securities to be traded by the public: 20
- “(c) the new co-op fund has not been wound up:
- “(d) no event has occurred that creates a binding obligation to wind up the new co-op fund.
- “(2) The notice must be— 25
- “(a) in writing; and
- “(b) dated; and
- “(c) served on new co-op at its address for service.
- “(3) New co-op must respond to the notice not later than 5 working days after service of the notice by— 30
- “(a) verifying the matter in question; or
- “(b) if it is unable to verify it, stating that it is unable to do so.
- “(4) If new co-op contravenes **subsection (3)**, it commits an offence and is liable on summary conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues. 35

“109I When sections 109J to 109L apply

Sections 109J to 109L apply only while an Order in Council made under **section 109B** is in force the specified subpart 5 provisions do not apply.

“109J New co-op’s obligations in relation to market in co-operative shares and to new co-op fund 5

“(1) New co-op must ensure that there are 1 or more market makers in co-operative shares operating during the periods of operation of the registered market on which the co-operative shares are listed. 10

“(2) New co-op must ensure that the holders of new co-op fund securities have the following rights:

“(a) subject to **section 161A(2)**, the right to appoint and remove the manager of the fund; and

“(b) the right to appoint and remove a majority of the board of the manager of the fund; and 15

“(c) the right to vote on resolutions proposed at general meetings of the fund; and

“(d) the right to pass a resolution for the liquidation of the fund. 20

“109K Restrictions on new co-op

“(1) ~~New co-op must not engage in any conduct for the purpose of preventing or hindering~~**Subsection (1A)** applies to conduct by new co-op that restricts, prevents, or deters—

“(a) trading in co-operative shares; or 25

“(b) participation by shareholding farmers, new entrants, and market makers in co-operative shares in trading in co-operative shares or new co-op fund securities; or

“(c) the ability of shareholding farmers and new entrants to exchange co-operative shares for new co-op fund securities, and vice versa; or 30

“(d) the liquidity of the market for co-operative shares or for new co-op fund securities.

“(1A) New co-op must not engage in any conduct to which this subsection applies for the purpose of restricting, preventing, or deterring— 35

- “(a) a new entrant from becoming a shareholding farmer pursuant to an application under section 73(1); or
“(b) a shareholding farmer from increasing the volume of milk supplied to new co-op pursuant to an application under section 73(2); or 5
“(c) a shareholder farmer from ceasing or reducing the supply of milk to new co-op pursuant to a notice of withdrawal under section 97(1).”
- “(2) New co-op must not engage in any conduct that limits the ability of holders of new co-op fund securities to liquidate the fund and receive the proceeds of the fund. 10
- “**109L Expiry of sections 109A to 109K**
Sections 109A to 109K expire and are repealed,—
“(a) if an Order in Council has been made under **section 109B**~~109FA(2)~~ and revoked under **section 109G**, on the revocation of the order, on the date specified in that order; or
“(b) if no Order in Council has been made under **section 109B** by 31 December 2013, on that date.”
- 9 Section 134 amended (Levy regulations)** 20
(1) In section 134(4)(a)(ii), after “subpart”, insert “or **subpart 5A**”.
(2) In section 134(4)(a), after subparagraph (iv), insert:
“(v) the cost of conducting reviews under **subpart 5A**; and” 25
- 10 Cross-heading above section 147 amended**
In the cross-heading above section 147, after “*subpart*”, insert “*and subpart 5A*”.
- 11 Section 148 amended (Subpart ceases to apply to island that meets its market share threshold)** 30
(1) In the heading to section 148, replace “**Subpart ceases**” with “**Subparts 5 and 5A cease**”.
(2) In section 148(4)(a), replace “104, 105, and 110 to 146” with “**77A**, 104, 105, **109A to 109L**, and 110 to 146”.

- (3) In section 148(4)(a), replace “ceases” with “and **subpart 5A** cease”.
- (4) In section 148(4)(b), replace “ceases” with “and **subpart 5A** cease”.
- (5) In section 148(5), replace “ceases” with “and **subpart 5A** 5
cease”.
- (6) In section 148(6)(a), replace “ceases” with “and **subpart 5A**
cease”.

- 12 Section 149 amended (Subpart expires if both islands
meet their market share thresholds) 10**
- (1) In the heading to section 149, replace “**Subpart expires**” with
“**Subparts 5 and 5A expire**”.
- (2) In section 149(1), replace “expires” with “and **subpart 5A**
expire”.

- 13 New subpart 5A of Part 2 inserted 15**
After section 150, insert:

“Subpart 5A—Base milk price
“Purpose of subpart
- “150A Purpose of this subpart 20**
The purpose of this subpart is to promote the setting of a base milk price that provides an incentive to new co-op to operate efficiently ~~and that as far as possible preserves~~ while providing for contestability in the market for the purchase of milk from farmers.
- “150B Certain assumptions do not detract from purpose of 25
subpart**
It does not detract from the achievement of the purpose set out in **section 150A** that new co-op sets the base milk price using assumptions that include any of the following:
 - “(a) that new co-op operates a national network of facilities 30
for the collection and processing of milk:
 - “(b) that the size of new co-op’s assumed units of processing capacity approximates to the average size of new co-op’s actual units of processing capacity:

- “(c) that gains and losses experienced by new co-op resulting from foreign currency fluctuations, including from new co-op’s foreign currency risk-management strategies, are incorporated in the base milk price:
- “(d) that all milk ~~processed~~ collected by new co-op is processed into commodities at yields that are practically feasible. 5
- “**150C Setting of ~~basic~~ base milk price in way that is consistent with certain principles**
- “(1) For the achievement of the purpose set out in **section 150A**, the base milk price must be set in a way that is consistent with the following principles: 10
- “(a) revenue taken into account in calculating the base milk price is determined from prices of a portfolio of commodities at the times that those commodities are contracted to be sold by new co-op: 15
- “(b) costs taken into account in calculating the base milk price include costs (including capital costs and a return on capital ~~over the long term~~) of—
- “(i) collecting milk; and 20
- “(ii) processing milk into the same portfolio of commodities as the portfolio adopted for the purposes of **paragraph (a)**; and
- “(iii) selling those commodities:
- “(ba) any notional costs, revenues, or other assumptions taken into account in calculating the base milk price must be practically feasible for an efficient processor: 25
- “(c) new co-op collects all milk that it processes from the farms on which the milk is produced.
- “(2) For the purposes of **subsection (1)(a) and (b)(ii)**, the portfolio of commodities must be determined having regard to the following: 30
- “(a) in respect of the commodities included in the portfolio,—
- “(i) the commodities that are likely to be the most profitable over a period not exceeding 5 years from the time when the portfolio is determined; and 35

- “(ii) the need for commodities included in the portfolio to utilise all components of milk; and
- “(b) in respect of the relative proportions of the commodities included in the portfolio, the quantities of commodities likely to be produced by new co-op based on— 5
 - “(i) the mix of commodities that are likely to be most profitable; and
 - “(ii) ~~existing and planned investment by new co-op in~~ new co-op’s physical manufacturing capacity for the production of those commodities; and 10
 - “(iii) the need to utilise all components of the milk processed.

“Milk Price Panel

“150D Milk Price Panel

- “(1) New co-op must establish and maintain a committee known as the Milk Price Panel (the **panel**). 15
- “(2) New co-op must set the terms of reference for the panel, which must include the functions set out in **subsections (3) and (4)**, and the panel must act in accordance with those terms of reference. 20
- “(3) The panel must, for each season,—
 - “(a) supervise the calculation of the base milk price; and
 - “(b) advise new co-op as necessary on the application of the milk price manual; and
 - “(c) recommend to new co-op the base milk price. 25
- “(4) The panel may, as it considers necessary or desirable, make recommendations to new co-op in respect of the milk price manual, including a recommendation that it should be amended and a recommendation that a proposed amendment should not be made. 30
- “(5) New co-op must make the terms of reference of the panel publicly available, including any amendments to those terms of reference.
- “(6) If new co-op contravenes **subsection (1), (2), or (5)**, it commits an offence and is liable on summary conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues. 35

“150E Appointment of members of panel

- “(1) New co-op must appoint the members of the panel and must appoint one of the members as the chair.
- “(2) New co-op must ensure that at all times the chair and a majority of the members (including the chair) are independent. 5
- “(3) If, without reasonable excuse, new co-op contravenes **subsection (2)**, it commits an offence and is liable on summary conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues.

“Milk price manual” 10

“150F New co-op must maintain milk price manual

- “(1) New co-op must maintain a manual (the **milk price manual**) that sets out how the base milk price is calculated.
- “(2) New co-op must make the manual publicly available, including any amendments to the manual. 15
- “(3) If new co-op contravenes **subsection (1) or (2)**, it commits an offence and is liable on summary conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues.

“150G Steps new co-op must take if panel recommendation not followed or implemented” 20

- “(1) This section applies if—
- “(a) new co-op does not amend the milk price manual in accordance with a recommendation by the panel; or
 - “(b) new co-op amends the milk price manual contrary to a recommendation by the panel; or 25
 - “(c) new co-op amends the milk price manual without having received a recommendation by the panel for the amendment.
- “(2) New co-op must,— 30
- “(a) if **subsection (1)(a)** applies, make publicly available—
 - “(i) the recommendation of the panel; and
 - “(ii) new co-op’s reasons for not implementing that recommendation: 35

- “(b) if **subsection (1)(b)** applies, make publicly available—
- “(i) the recommendation of the panel; and
 - “(ii) new co-op’s reasons for amending the milk price manual contrary to that recommendation: 5
- “(c) if **subsection (1)(c)** applies, make publicly available a statement of new co-op’s reasons for amending the milk price manual without having received a recommendation by the panel for the amendment.
- “(3) If new co-op contravenes **subsection (2)**, it commits an offence and is liable on summary conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues. 10
- “Review of milk price manual by Commission*
- “**150H Commission must review milk price manual** 15
The Commission must, for each season, review the milk price manual and make a report under **section 150I**.
- “**150I Commission’s report**
- “(1) The Commission must make a report on the extent to which the milk price manual is consistent with the purpose of this subpart (*see section 150A*). 20
- “(2) In making the report, the Commission must—
- “(a) have regard to the information provided to it by new co-op under **section 150L** or under the procedure agreed under **section 150K**; and 25
 - “(b) have regard to any submission made by new co-op under **section 150M(2)(a)** or under the procedure agreed under **section 150K**; and
 - “(c) give reasons for its conclusions.
- “**150J Commission must make final report publicly available** 30
The Commission must finalise its report under **section 150I** and make it publicly available by 15 December in the season to which the milk price manual relates.

*“Procedure for Commission’s review of milk price manual***“150K Procedure for review of milk price manual**

- “(1) The procedure for the review by the Commission of the milk price manual is— 5
- “(a) the procedure set out in **sections 150L and 150M**; or
 - “(b) if a procedure is agreed between new co-op and the Commission, that procedure.
- “(2) If new co-op fails to comply with the agreed procedure,—
- “(a) the agreed procedure lapses; and 10
 - “(b) the procedure set out in **sections 150L and 150M** applies to the extent that anything that is required to be done by new co-op under those sections remains still to be done.

“150L New co-op must provide Commission with milk price manual and other information 15

New co-op must, not later than 1 August in each year,—

- “(a) provide the Commission with the milk price manual for the current season; and
- “(b) provide the Commission with any recommendations by the panel in relation to the setting of the base milk price; and 20
- “(c) notify the Commission of any change in the economic and business environment that, in new co-op’s view, requires a change to the milk price manual; and 25
- “(d) certify to the Commission the extent to which new co-op considers that the milk price manual is consistent with the purpose of this subpart (*see section 150A*); and
- “(e) provide the Commission with reasons for the view expressed in new co-op’s certificate given under **paragraph (d)**. 30

“150M Draft Commission report

- “(1) Not later than 15 October in the season to which the milk price manual relates, the Commission must provide new co-op with a draft of its report made under **section 150I**. 35

- “(2) Not later than 15 November in the season to which the milk price manual relates, new co-op must—
- “(a) make a submission to the Commission on the draft report; or
 - “(b) notify the Commission that it does not wish to make a submission. 5

“Base milk price calculation

“150N Steps new co-op must take if panel recommendation not followed or implemented

- “(1) This section applies if new co-op sets the base milk price— 10
- “(a) other than in accordance with a recommendation by the panel; or
 - “(b) without having received a recommendation by the panel for the base milk price.
- “(2) New co-op must,— 15
- “(a) if **subsection (1)(a)** applies, make publicly available—
 - “(i) the recommendation of the panel; and
 - “(ii) a statement of new co-op’s reasons for setting the base milk price other than in accordance with that recommendation: 20
 - “(b) if **subsection (1)(b)** applies, make publicly available a statement of new co-op’s reasons for setting the base milk price without having received a recommendation by the panel for the base milk price. 25
- “(3) If new co-op contravenes **subsection (2)**, it commits an offence and is liable on summary conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues.

“150O Commission must review calculation of base milk price 30

- “(1) The Commission must, for each season, review new co-op’s calculation of the base milk price set for that season and make a report under **section 150P**.
- “(2) The first review under this section must be the review to be held in 2013 in respect of the 2012/2013 season. 35

“150P Commission’s report

- “(1) The Commission must make a report on the extent to which the assumptions adopted and the inputs and process used by new co-op in calculating the base milk price for the season are consistent with the purpose of this subpart (*see section 150A*). 5
- “(2) In making the report, the Commission must—
- “(a) have regard to the information provided to it by new co-op under **section 150T** or under the procedure agreed under **section 150S**; and 10
 - “(b) have regard to any submission made by new co-op under **section 150U(2)(a)** or under the procedure agreed under **section 150S**; and
 - “(c) give reasons for its conclusions.
- ~~“(3) In making the report, the Commission is not required to, and must not, state the amount of the base milk price according to its own calculations. 15~~
- “(3) In making the report, the Commission—
- “(a) is not required to calculate the costs of an independent processor; and 20
 - “(b) is not required to, and must not, state the amount of the base milk price according to its own calculations.

“150Q Commission must make final report publicly available

The Commission must finalise its report under **section 150P** and make it publicly available by 15 September following the season to which it relates. 25

“150R Steps new co-op must take if base milk price changed after Commission report

- “(1) This section applies if, after the Commission has made its report under **section 150P** publicly available, new co-op changes the base milk price for the season to which the report relates. 30
- “(2) New co-op must without delay make publicly available—
- “(a) the new base milk price; and
 - “(b) a statement of new co-op’s reasons for the change. 35

- “(3) If new co-op contravenes **subsection (2)**, it commits an offence and is liable on summary conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues.

“*Procedure for Commission’s review of base milk price calculation* 5

“**150S Procedure for review of base milk price calculation**

- “(1) The procedure for the review by the Commission of the calculation of the base milk price is—

- “(a) the procedure set out in **sections 150T and 150U**; or 10
“(b) if a procedure is agreed between new co-op and the Commission, that procedure.

- “(2) If new co-op fails to comply with the agreed procedure,—

- “(a) the agreed procedure lapses; and
“(b) the procedure set out in **sections 150T and 150U** applies to the extent that anything that is required to be done by new co-op under those sections remains still to be done. 15

“**150T New co-op must provide Commission with certain information** 20

New co-op must, not later than 1 July in each year,—

- “(a) provide the Commission with the assumptions adopted and the inputs and process used by new co-op in calculating the base milk price for the preceding season; and
“(b) certify to the Commission the extent to which, in new co-op’s view, the assumptions adopted and the inputs and process used by new co-op in calculating the proposed base milk price are consistent with the purpose of this subpart (*see section 150A*); and 25
“(c) provide the Commission with reasons for the view expressed in new co-op’s certificate given under **paragraph (b)**. 30

“150U Draft Commission report

“(1) No later than 15 August following the season to which the report under **section 150P** relates, the Commission must provide new co-op with a draft of its report.

“(2) No later than 1 September following the season to which the report relates, new co-op must— 5

“(a) make a submission to the Commission on the draft report; or

“(b) notify the Commission that it does not wish to make a submission. 10

*“Application of Commerce Act 1986***“150V Application of Commerce Act 1986 to review by Commission under this subpart**

“(1) The following provisions of the Commerce Act 1986 apply, with all necessary modifications, to a review by the Commission under this subpart as if the review were an investigation by the Commission of a contravention of that Act: 15

“(a) sections 15 to 17:

“(b) sections 98 to 98G:

“(c) section 99: 20

“(d) sections 100 to 103:

“(e) section 106:

“(f) section 109.

“(2) For the purpose of carrying out its functions and exercising its powers under this subpart, the Commission may, in addition to exercising its powers under section 98 of the Commerce Act 1986, by notice in writing, require new co-op, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or from a member of a class of appropriately qualified persons, as determined by the Commission in relation to any matter specified by the Commission.” 25 30

13A Section 161 amended (Application of Co-operative Companies Act 1996 to new co-op shares)

After section 161(2), insert:

35

“(3) When **section 77A** applies (*see* **section 77B**), subsections (1) and (2) do not apply, and **subsections (4) and (5)** apply in their place (but not otherwise).

“(4) Nothing in the Co-operative Companies Act 1996 prevents new co-op from setting a price of a co-operative share under section 77. 5

“(5) Sections 17 to 21, 22(4), 23 to 28, and 29(a) and (b) of the Co-operative Companies Act 1996 apply to the issue, surrender, or forfeiture of co-operative shares as if references in those sections to nominal value were references to the value of the shares set under section 77 and with all other necessary modifications.” 10

14 New sections 161A to 161C inserted

After section 161, insert:

“161A Voting rights in respect of new co-op fund securities held by new co-op or nominee 15

“(1) Subject to **subsection (2)**, new co-op must not exercise voting rights conferred by new co-op fund securities held by new co-op or a nominee.

“(2) Nothing in **subsection (1)** prevents new co-op, any person representing the interests of shareholding farmers, or a nominee of new co-op or shareholding farmers from exercising the right conferred by one new co-op fund security (the **veto security**) held by new co-op or its nominee to veto any of the following matters: 20 25

“(a) any change in the governance structure of the board of the manager of the new co-op fund, including—

“(i) the number of members of the board appointed by holders of new co-op fund securities other than new co-op; and 30

“(ii) the number of members of the board appointed by new co-op; and

“(b) any change in the scope and role of the new co-op fund; and

“(c) any change in the obligation of the new co-op fund to facilitate the exchange of co-operative shares for an equal number of new co-op fund securities, and vice versa; and 35

- “(d) any change in the limit on the number of new co-op fund securities that can be held by a person or an entity (together with any associates of that person or entity); and
- “(e) any change in the terms on which the veto security is issued. 5

“161AA New co-op may acquire new co-op fund securities

- “(1) New co-op may, in accordance with this section, but not otherwise, acquire new co-op fund securities.
- “(2) Sections 52 and 56 of the Companies Act 1993 apply, with all necessary modifications, to the acquisition of new co-op fund securities by new co-op as if the acquisition were a distribution. 10
- “(3) Section 53 of the Companies Act 1993 does not apply to the acquisition of new co-op fund securities by new co-op. 15
- “(4) Subject to **subsection (3)**, new co-op fund securities may be held by new co-op and are not required to be exchanged for co-operative shares immediately on acquisition, but may be exchanged after acquisition.
- “(5) New co-op fund securities acquired under this section are required to be exchanged for co-operative shares immediately on acquisition if the number of new co-op fund securities acquired, when aggregated with other new co-op fund securities and co-operative shares held by new co-op at the time of the acquisition, exceeds 5% of all co-operative shares issued by new co-op, excluding any co-operative shares deemed to be cancelled under section 66(1) of the Companies Act 1993 or **section 161AB(3)**. 20 25
- “(6) Within 10 working days after the acquisition of new co-op fund securities, the board of new co-op must ensure that notice of the acquisition is delivered to each registered market on which co-operative shares are listed. 30
- “(7) If the board of new co-op fails to comply with **subsection (4)**, every director of new co-op commits an offence as if the board of new co-op had failed to comply with section 58(3) of the Companies Act 1993. 35

- “(8) If new co-op acquires or proposes to acquire new co-op fund securities, sections 60(3) to (7), 61(1) to (6) and (8) to (10), 62, 63 (except subsection (3A)), 64, 65 (except subsections (2)(a) and (2B)), and 67 of the Companies Act 1993 apply as if—
- “(a) a reference to a company or the company were a refer- 5
ence to new co-op:
 - “(b) a reference to the board were a reference to the board of
new co-op:
 - “(c) ‘under subsection (1)’ in section 60(3) and (6) were read
as ‘to acquire new co-op fund securities under this sec- 10
tion’:
 - “(d) ‘under section 60(1)(b)(ii)’ in section 61(1) and (4) were
read as ‘to acquire new fund co-op securities under sec-
tion 60’:
 - “(e) a reference to shares in the following provisions were a 15
reference to new co-op fund securities:
 - “(i) section 60(3)(b):
 - “(ii) section 60(3)(c)(ii):
 - “(iii) section 60(6) (except paragraph (c)(i)):
 - “(iv) section 61(1)(b): 20
 - “(v) section 61(4):
 - “(vi) section 61(8)(b):
 - “(vii) section 62(b):
 - “(viii) section 63(1) (except paragraph (d)(i)):
 - “(ix) section 63(4): 25
 - “(x) section 63(5) (except paragraph (c)(i)):
 - “(xi) section 63(8)(b):
 - “(xii) section 64:
 - “(xiii) section 65 (except subsection (1)(a)(iii)(A) and
the third reference to shares in subsection (1)(b)): 30
 - “(xiv) section 67:
 - “(f) a reference to shares in the following provisions were a
reference to co-operative shares:
 - “(i) section 60(3)(c)(i):
 - “(ii) section 60(6)(c)(i): 35
 - “(iii) section 63(1)(d)(i):
 - “(iv) section 63(5)(c)(i):
 - “(v) section 65(1)(a)(iii)(A):
 - “(vi) the third reference to shares in section 65(1)(b):

- “(g) a reference to shareholders in the following provisions were a reference to holders of new co-op fund securities:
- “(i) section 60(3)(c):
- “(ii) section 60(6)(c):
- “(iii) section 62(a): 5
- “(iv) section 63(1) (except paragraphs (b) and (c)):
- “(v) section 63(5)(c):
- “(vi) section 65(1)(a)(iii):
- “(h) a reference to a shareholder, shareholders, or remaining shareholders in the following provisions were a reference to shareholders of new co-op: 10
- “(i) section 61(1), (4), and (8):
- “(ii) section 63(1)(b) and (c):
- “(iii) section 63(5) (except paragraph (c)):
- “(iv) section 63(8): 15
- “(v) section 65(1)(a)(i):
- “(vi) section 65(2A):
- “(i) a reference to a shareholder in the following provisions were a reference to a shareholder of new co-op and a holder of new co-op fund securities: 20
- “(i) section 61(5) and (6):
- “(ii) section 62(c):
- “(iii) section 63(6) and (7):
- “(iv) section 64(1)(d):
- “(j) ‘Without limiting sections 60 and 61,’ were inserted at the beginning of sections 63(1) and 65(1): 25
- “(k) the first reference to the board of the company in section 65(1) were a reference to new co-op and the subsequent reference to it in that section were a reference to the board of new co-op: 30
- “(l) ‘from its shareholders’ in section 65(1) were deleted:
- “(m) the reference in section 65(2) to each stock exchange on which the shares of the company are listed were a reference to each registered market on which co-operative shares are listed and each registered market on which new co-op fund securities are listed: 35
- “(n) ‘in the same class’ in section 65(1)(b) were deleted:
- “(o) ‘its’ in section 67(1) were deleted:

“(p) a reference to stock exchange were a reference to registered market.

“161AB New co-op may exchange new co-op fund securities for co-operative shares

- “(1) New co-op may acquire co-operative shares by exchanging new co-op fund securities it has acquired in accordance with **section 161AA** for co-operative shares. 5
- “(2) Nothing in section 58(1) of the Companies Act 1993 prevents the acquisition of co-operative shares under **subsection (1)** and section 58(2) of that Act does not apply to co-operative shares so acquired. 10
- “(3) Subject to **subsection (4)**, co-operative shares acquired under this section are deemed to be cancelled immediately on acquisition.
- “(4) Co-operative shares acquired under this section are not deemed to be cancelled immediately on acquisition if— 15
- “(a) the constitution of new co-op expressly permits new co-op to hold its own shares; and
- “(b) the board of new co-op resolves that the co-operative shares concerned must not be cancelled on acquisition; and 20
- “(c) the number of co-operative shares acquired, when aggregated with other co-operative shares held by new co-op pursuant to this section or section 67A of the Companies Act 1993 and new co-op fund securities held by new co-op pursuant to **section 161AA** at the time of the acquisition, does not exceed 5% of all co-operative shares issued by new co-op, excluding any co-operative shares deemed to be cancelled under section 66(1) of the Companies Act 1993 or **subsection (3)**. 25 30
- “(5) Co-operative shares acquired under this section that, pursuant to this section, are not deemed to be cancelled must be held by new co-op.
- “(6) A co-operative share that new co-op holds under **subsection (5)** may be cancelled by the board of new co-op resolving that 35

the co-operative share is cancelled, and the co-operative share is deemed to be cancelled on the making of that resolution.

“161B Financial assistance by new co-op for purchase of co-operative shares

- “(1) New co-op may give financial assistance for the purpose of, or in connection with, the purchase of a co-operative share if— 5
- “(a) the financial assistance is given in relation to the establishment and operation of—
- “(i) the registered market on which co-operative shares are able to be traded by shareholding farmers; or 10
- “(ii) the new co-op fund; and
- “(b) the financial assistance is given to any of the following:
- “(i) a custodian of co-operative shares:
- “(ia) a holder of shares in a custodian of co-operative shares: 15
- “(ii) a market maker in co-operative shares:
- “(iii) a broker or other agent in relation to the trading of co-operative shares or new co-op fund securities:
- “(iv) a trustee or manager of the new co-op fund: 20
- “(v) any other service provider; and
- “(c) the board of new co-op has previously resolved that—
- “(i) new co-op should provide the assistance; and
- “(ii) the giving of the assistance is in the best interests of new co-op; and 25
- “(iii) the terms and conditions under which the assistance is given are fair and reasonable to new co-op.
- “(2) The Companies Act 1993, excluding section 76(1) and (2) of that Act, applies with all necessary modifications to the giving of financial assistance under **subsection (1)** as if the financial assistance were given under section 76(1) of that Act. 30
- “(3) Nothing in this section affects the giving of financial assistance by new co-op under section 76(1) of the Companies Act 1993.

“161C Application of Companies Act 1993 35

Nothing in section 82 of the Companies Act 1993 (the **Act**) prevents a subsidiary of new co-op holding shares in new

co-op if the only reason that the exemption contained in section 82(6) of the Act does not apply is that new co-op or a subsidiary of new co-op holds new co-op fund securities.”

- 15 New section 161D inserted (Application of section 20(2) and (3) of Co-operative Companies Act 1996)** 5
Before section 162, insert:
- “161D Application of section 20(2) and (3) of Co-operative Companies Act 1996**
Section 20(2) and (3) of the Co-operative Companies Act 1996 do not apply to new co-op.” 10
- 16 Other amendments to principal Act**
Amend the principal Act as set out in the **Schedule**.

Part 2 Miscellaneous

- 17 References are references to principal Act** 15
In **sections 18 and 19**,—
- (a) **new section 109A** and **new section 109B** mean the corresponding provisions inserted in the principal Act by **section 8** of this Act; and
- (b) all other section references are references to the principal Act. 20
- 18 Transitional provision for application under section 73 or 74 of principal Act**
- (1) This section applies to every application that—
- (a) must be accepted under section 73 or has been accepted under section 74(3); and 25
- (b) is made before the date ~~on which~~ specified in the Order in Council under **new section 109B** comes into force; and
- (c) is made in respect of the next season following the date specified in the Order in Council ~~coming into force~~. 30
- (2) Despite **new sections 109A and 109B**, the following sections continue to apply in respect of an application to which

this section applies as if the Order in Council had not been made:

- (a) section 77(4):
- (b) section 81(1):
- (c) section 82(1): 5
- (d) sections 83 to 85:
- (e) section 88(1) and (2):
- (f) sections 90 to 93.

19 Transitional provision for notice of withdrawal under section 97 of principal Act 10

- (1) This section applies to every notice of withdrawal under section 97 that is—
 - (a) given before the date ~~on which~~ specified in the Order in Council under **new section 109B** ~~comes into force~~; and 15
 - (b) given in respect of the next season following the date specified in the Order in Council ~~coming into force~~.
- (2) Despite **new sections 109A and 109B**, the following sections continue to apply in respect of a notice of withdrawal to which this section applies as if the Order in Council had not been made: 20
 - (a) section 98(1):
 - (b) section 99:
 - (c) sections 101 to 105.

Schedule
Other amendments to principal Act

s 16

Section 4

Repeal section 4(a) and (c).

Section 5

In section 5(1), repeal the definitions of:

5

- (a) **exiting company:**
- (b) **peak note price:**
- (c) **peak note standard:**
- (d) **peak notes.**

Subparts 1 and 2 of Part 2

10

Repeal subparts 1 and 2 of Part 2.

Sections 44 to 46

Repeal sections 44 to 46.

Section 53

Repeal section 53.

15

Sections 54 to 58 and cross-heading above section 54

Repeal sections 54 to 58 and the cross-heading above section 54.

Section 59 and cross-heading above section 59

Repeal section 59 and the cross-heading above section 59.

Section 60

20

Repeal section 60.

Section 71

Repeal section 71(f).

Section 72

Repeal section 72(6).

25

Section 78

Repeal section 78.

Section 79

In the heading to section 79, delete “**and peak note standard**”.

In section 79(1), delete “and a peak note standard”.

5

In section 79(2), delete “or the peak note standard”.

Section 80

Repeal section 80(1)(b) and (d).

Section 81

In the heading to section 81, delete “**and peak notes**”.

10

Replace section 81(3) with:

“(3) The co-operative share standard that applies to a new entrant or a shareholding farmer who makes an application under section 73 that new co-op is required to accept is the co-operative share standard published at the beginning of the application period in which the application is made.”

15

Section 82

In the heading to section 82, delete “**and peak notes**”.

Replace section 82(2) with:

“(2) The co-operative share standard that applies to a new entrant or a shareholding farmer who makes an application to which section 74(3) applies is the co-operative share standard published at the beginning of the application period in the season immediately before the first season for the supply of milk to which the application relates.”

20

25

Repeal section 82(3).

Section 83

In section 83, delete “and peak notes”.

Section 84

In section 84(2), delete “and peak notes” in each place.

30

In section 84(3), delete “and peak notes”.

Section 84—*continued*

In section 84(3)(b), delete “and the peak note standard”.

Section 85

Replace section 85(2) with:

“(2) New co-op must not require a new entrant or a shareholding farmer to pay the balance (or part of it) of the purchase price for the co-operative shares before 1 June in the first season for the supply of milk to which the application relates.” 5

Section 88

In the heading to section 88, delete “and peak notes”.

Replace section 88(4) with: 10

“(4) The co-operative share standard that applies to a new entrant or a shareholding farmer to whom this section applies is,—
 “(a) if the new entrant or shareholding farmer makes an election under subsection (2)(a), the co-operative share standard published at the beginning of the application period immediately before the first season for the supply of milk to which the application relates; or 15
 “(b) if that election is not made, the co-operative share standard published at the beginning of the application period in which the application is made.” 20

Section 89

In the heading to section 89, delete “or peak note standard”.

In section 89(1)(c), delete “or the peak note standard” in each place.

In section 89(2), delete “and peak notes” in each place.

In section 89(2)(c), delete “or the peak note standard”. 25

Section 90

In section 90(2), delete “and peak notes”.

In section 90(3)(a), delete “and peak notes”.

In section 90(4)(a), delete “and peak notes”.

In section 90(5), delete “and peak notes”. 30

In section 90(5)(b), delete “and the peak note standard”.

Section 91

Replace section 91(2) with:

“(2) New co-op must not require a new entrant or a shareholding farmer to pay the balance (or part of it) of the purchase price for the co-operative shares before 1 June in the first season for the supply of milk to which the application relates.” 5

Section 92

In section 92(2), delete “and peak notes” in each place.

Replace section 92(3) with:

“(3) The total amount payable for the co-operative shares referred to in subsection (2) is calculated based on the most recent published price and co-operative share standard on the date that the deposit is payable.” 10

Section 93

Replace section 93(2) with: 15

“(2) New co-op must not require a new entrant or a shareholding farmer to pay the balance (or part of it) of the purchase price for the co-operative shares before 1 June in the first season for the supply of milk to which the application relates.”

Section 98

20

In the heading to section 98, delete “and peak notes”.

Repeal section 98(1)(b).

Section 99

Replace section 99 with:

“**99 Surrender value of co-operative shares for withdrawal notified outside application period** 25

If new co-op accepts a notice of withdrawal from a shareholding farmer outside an application period, new co-op must pay the shareholding farmer a surrender value for the relevant co-operative shares that is the June price immediately following the date that the notice of withdrawal is given multiplied by the number of shares.” 30

Section 100

In the heading to section 100, delete “**or peak note standard**”.

In section 100(1), delete “or the peak note standard”.

In section 100(1), delete “or peak note standard”.

In section 100(2), delete “and to the peak note standard”. 5

Section 101

In section 101(1), delete “and the surrender value of the relevant peak notes”.

Sections 110 to 114 and cross-heading above section 110

Repeal sections 110 to 114 and the cross-heading above section 110. 10

Section 116

Repeal section 116(1)(a)(ii) and (iii).

Section 120

In section 120(1), after “this subpart”, insert “(except **section 77A**)”. 15

Section 166 and cross-heading above section 166

Repeal section 166 and the cross-heading above section 166.

Sections 167 and 168

Repeal sections 167 and 168.

Schedules 1 to 4

Repeal Schedules 1 to 4. 20

**Dairy Industry Restructuring
Amendment Bill**

Legislative history

27 March 2012
3 April 2012

Introduction (11–1)
First reading and referral to Primary Production
Committee
