

Dairy Industry Restructuring (Fonterra Capital Restructuring) Amendment Bill

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Dairy Industry Restructuring (Fonterra Capital Restructuring) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

The Dairy Industry Restructuring (Fonterra Capital Restructuring) Amendment Bill would amend the Dairy Industry Restructuring Act 2001 to enable Fonterra Co-operative Group Limited (Fonterra, referred to in the Act as “new co-op”) to move to a new capital structure, and adjust existing regulatory settings to mitigate the risks that could arise from that move.

Fonterra shareholders voted in December 2021 in favour of a new capital structure. Although the 2001 Act does not explicitly prohibit Fonterra from moving to a new capital structure, some aspects of its current capital structure are set out in that legislation. The bill would enable Fonterra to set a limit on the size of its unit fund in order to operate a restricted farmer-only market for its shares.

To mitigate the risks arising from a restricted farmer-only market for Fonterra shares, the bill aims to improve the governance and transparency of Fonterra’s base milk price-setting regime. It would require greater independence on Fonterra’s milk price panel and strengthen the Commerce Commission’s oversight of Fonterra’s base milk price-setting arrangements. It would also support liquidity and transparency in the market for Fonterra shares.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss all minor or technical amendments.

Non-sensitive information

Clause 19 would insert new section 150JA to require Fonterra to publish all non-sensitive information requested by, or provided to, the Commerce Commission in relation to its reviews of Fonterra's milk price manual. Proposed new section 150JA(2) provides that "non-sensitive information" is information that Fonterra reasonably considers not to be commercially sensitive.

We believe there are other circumstances where it would be reasonable for Fonterra to withhold information. We recommend amending clause 19 to insert additional criteria that would allow Fonterra to:

- withhold information that is legally privileged
- withhold information in order to protect the privacy of a natural person.

We recommend an equivalent amendment to clause 22, proposed new section 150QA, which would require the publication of non-sensitive information relating to reviews of Fonterra's base milk price calculation. We also recommend an equivalent amendment to clause 25, proposed new section 150UB(3), which would enable the Commerce Commission to give a direction to Fonterra to publish non-sensitive information relating to reviews of Fonterra's milk price manual and the base milk price calculation.

Enforcement

Clause 27 would insert new subpart 5B into Part 2 of the Act. This proposed new subpart provides for the enforcement of the provisions in existing subparts 5 and 5A, which deal with regulating the dairy market, Fonterra's obligations, and the base milk price. We note that these enforcement provisions are already contained in subpart 5 of the Act; the bill would relocate them in order to expand their application to include subpart 5A.

We recommend several amendments to proposed new subpart 5B, outlined below.

Injunctions and actions for damages

The bill would give the Commerce Commission new enforcement powers for a breach of the base milk price provisions by Fonterra. As introduced, proposed new section 150ZA would allow the Commerce Commission or "any other person" to seek an injunction against a person for contravening subpart 5, 5A, or regulations made

under section 115 of the Act. They would also be able to seek damages for the contravention under proposed new section 150ZB.

We understand that it was not part of the policy intent to grant third parties the right to take direct enforcement action against Fonterra, or seek damages, in relation to subpart 5A of Part 2 (the base milk price regime). We note that such powers could potentially be misused by Fonterra's competitors to gain access to commercially-sensitive information through the discovery process. We recommend amending proposed new section 150ZA to remove the ability of "any other person" to seek an injunction for contravention of subpart 5A of Part 2.

Proposed new section 150ZB(1) would extend existing liability for damages for contravention of subpart 5, and regulations made under section 115, to also apply to contravention of subpart 5A. We do not believe it would be appropriate for either the Commerce Commission or a third party to seek damages for a breach of the base milk price provisions. Accordingly, we recommend amending proposed new section 150ZB to exclude its application to subpart 5A.

Pecuniary penalties

Proposed new section 150Z would enable the High Court to order that a person pay a pecuniary penalty for contravening or being involved in a contravention of a relevant provision. New section 150Z is intended to incentivise voluntary compliance with the Act, and strengthen the accountability of Fonterra's key personnel for their decision-making and actions.

We note that the bill as introduced would not provide for defences to a prosecution, although some comparable regulatory regimes do allow this (an example is the Financial Markets Conduct Act 2013). For consistency, we recommend inserting new sections 150ZAAA and 150ZAAB to make available the following defences if:

- a person can prove that the contravention, or their involvement in a contravention, was due to reasonable reliance on information supplied by another person
- a person can prove that the contravention was due to something beyond their control, and they took reasonable steps to avoid contravention
- a person involved in a contravention can prove that they took all reasonable steps to ensure that another person complied with relevant provisions.

Appendix

Committee process

The Dairy Industry Restructuring (Fonterra Capital Restructuring) Amendment Bill was referred to the committee on 27 September 2022. We invited the Minister of Agriculture, Hon Damien O'Connor, to provide oral evidence on the bill. He did so on 18 October 2022.

We called for submissions on the bill with a closing date of 11 October 2022. We received and considered 30 submissions from interested groups and individuals. We heard oral evidence from 15 submitters at hearings in Wellington and by videoconference.

We received advice on the bill from the Ministry for Primary Industries. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Jo Luxton (Chairperson)

Mark Cameron

Nicola Grigg

Steph Lewis

Anna Lorck

Todd Muller

Angela Roberts

Tim van de Molen

**Dairy Industry Restructuring (Fonterra Capital
Restructuring) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Damien O'Connor

Dairy Industry Restructuring (Fonterra Capital Restructuring) Amendment Bill

Government Bill

Contents

	Page
1 Title	3
2 Commencement	3
3 Principal Act	3
Part 1	
Amendments to subpart 5 of Part 2	
4 Section 72 amended (Overview)	3
5 Section 109L amended (New co-op's obligations in relation to market in co-operative shares and to new co-op fund)	3
6 New sections 109LA and 109LB inserted	3
109LA New co-op must commission financial markets research and analysis about its performance	4
109LB New co-op must keep list of financial markets research and analysis about its performance	4
7 Section 109M amended (Restrictions on new co-op)	4
8 Section 118 amended (Offences)	5
9 Section 134 amended (New co-op must pay levy)	5
10 New section 135A inserted (Dividend and retentions policy)	5
135A Dividend and retentions policy	5
11 Sections 140 to 146 and cross-heading above section 140 repealed	5
12 Section 148 amended (Commission input)	5
Part 2	
Other amendments	
13 Section 5 amended (Interpretation)	6

**Dairy Industry Restructuring (Fonterra Capital
Restructuring) Amendment Bill**

14	Section 150B amended (Certain assumptions do not detract from purpose of subpart)	6
15	Section 150D amended (Milk Price Panel)	6
16	Section 150E amended (Appointment of members of panel)	6
17	New section 150EA inserted (Calculation of base milk price)	7
	150EA Calculation of base milk price	7
18	Section 150I amended (Commission's report)	8
19	New section 150JA inserted (Milk price manual review information to be published)	8
	150JA Milk price manual review information to be published	8
20	Section 150L amended (New co-op must provide Commission with milk price manual and other information)	9
21	Section 150P amended (Commission's report)	9
22	New section 150QA inserted (Base milk price calculation review information to be published)	9
	150QA Base milk price calculation review information to be published	9
23	Section 150T amended (New co-op must provide Commission with certain information)	9
24	Section 150U amended (Draft Commission report)	9
25	New sections 150UA to 150UD and cross-heading inserted	9
	<i>Directions relating to Commission reviews</i>	
	150UA Commission may give directions in relation to reviews	10
	150UB Criteria for giving directions	10
	150UC Process for giving directions	10
	150UD Amendment and revocation of directions	11
26	Section 150V and cross-heading repealed	11
27	New subpart 5B of Part 2 inserted	11
	Subpart 5B—Enforcement	
	150W Jurisdiction of High Court	11
	150X Meaning of relevant provision	11
	150Y Court may order new co-op to comply with direction	11
	150Z Pecuniary penalties	12
	<u>150ZAA Defences for person in contravention of relevant</u>	<u>12</u>
	<u>A provision</u>	
	<u>150ZAA Defences for person involved in contravention of relevant</u>	<u>12</u>
	<u>B provision</u>	
	150ZA Injunctions	13
	150ZB Actions for damages	13
	150ZC Miscellaneous	13
	150ZD Application of Commerce Act 1986 provisions	14
	150ZE Additional proceedings	15
28	Schedule 1 amended	16

Schedule
New Part 2 inserted into Schedule 1

17

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Dairy Industry Restructuring (Fonterra Capital Restructuring) Amendment Act **2022**.
- 2 Commencement** 5
(1) This Act, other than the provisions specified in **subsection (2)**, comes into force on **1 June 2023**.
(2) **Sections 9(1) and (2), 14, 18, 21, 23(1), and 24** come into force on **1 January 2023**.
- 3 Principal Act** 10
This Act amends the Dairy Industry Restructuring Act 2001.

Part 1
Amendments to subpart 5 of Part 2

- 4 Section 72 amended (Overview)**
Replace section 72(10) with: 15
(10) Sections 135 to 139 contain general provisions.
- 5 Section 109L amended (New co-op's obligations in relation to market in co-operative shares and to new co-op fund)**
(1) Replace section 109L(1) with:
(1) New co-op must ensure that there are 1 or more market makers in co-operative shares who— 20
(a) are designated a market maker under the market rules of the licensed market on which the co-operative shares are quoted; and
(b) operate during the periods of operation of the licensed market on which the co-operative shares are quoted. 25
(2) After section 109L(2), insert:
(3) In this section, **market rules** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.
- 6 New sections 109LA and 109LB inserted** 30
After section 109L, insert:

109LA New co-op must commission financial markets research and analysis about its performance

- (1) New co-op must commission, on an ongoing basis, financial markets research and analysis in respect of new co-op's performance.
- (2) New co-op must ensure that the commissioned financial markets research and analysis— 5
- (a) is free from bias and independent of new co-op; and
 - (b) provides credible analysis.
- (3) New co-op must make the commissioned financial markets research and analysis publicly accessible. 10

109LB New co-op must keep list of financial markets research and analysis about its performance

- (1) New co-op must keep and maintain a list of financial markets research and analysis relating to new co-op's performance.
- (2) New co-op must ensure that the list— 15
- (a) reflects a diverse range of financial markets research and analysis of new co-op's performance (to the extent that the research and analysis is readily available); and
 - (b) is regularly updated to maintain currency.
- (3) New co-op must make the list publicly accessible. 20
- (4) New co-op must ensure that the following are complied with in relation to each item of financial markets research and analysis on the list:
- (a) the item is a credible analysis of new co-op's performance; and
 - (b) the item is accompanied by information that describes the extent, if any, of new co-op's involvement in the preparation of the item; and 25
 - (c) the item is available to be accessed; and
 - (d) the item is accompanied by information about how to access the item or a means of accessing the item.
- (5) New co-op may include in the list additional information that is not an item of analysis. Any additional information must be clearly identified in the list as additional information. 30

7 Section 109M amended (Restrictions on new co-op)

- (1) After section 109M(1), insert:
- (1A) Despite subsection (1)(c) and (d), subsection (2) does not apply to conduct by new co-op that— 35
- (a) restricts the exchange of co-operative shares for new co-op fund securities by setting a limit on the number of new co-op shares that may be exchanged for new co-op fund securities; or

- (b) prevents the exchange of co-operative shares for new co-op fund securities when a limit referred to in **paragraph (a)** has been reached.
- (2) In section 109M(2)(a), replace “section 73(1)” with “section 73(2)”.
- (3) In section 109M(2)(b), replace “section 73(2)” with “section 73(1)”.
- 8 Section 118 amended (Offences) 5**
- After section 118(1)(b), insert:
- (c) fails, without reasonable excuse, to comply with the requirements of **section 109LA**; and
- (d) fails, without reasonable excuse, to comply with the requirements of **section 109LB**; and 10
- (e) fails, without reasonable excuse, to comply with the requirements of **section 135A**;
- (f) fails, without reasonable excuse, to comply with the requirements of a notice given under **section 150ZD(2)(a), (b), or (c)**.
- 9 Section 134 amended (New co-op must pay levy) 15**
- (1) In section 134(1), replace “in each financial year” with “for each financial year”.
- (2) In section 134(3), replace “in each of those years” with “for each of those years”.
- (3) In section 134(4)(a)(i), after “determinations”, insert “and directions”. 20
- (4) In section 134(4)(a)(iii), after “determinations”, insert “and directions”.
- (5) In section 134(4)(b)(ii), after “this subpart”, insert “, or directions made under subpart 5A”.
- 10 New section 135A inserted (Dividend and retentions policy) 25**
- After section 135, insert:
- 135A Dividend and retentions policy**
- (1) New co-op must keep and maintain a dividends and retentions policy.
- (2) New co-op must make the policy publicly accessible.
- 11 Sections 140 to 146 and cross-heading above section 140 repealed 30**
- Repeal sections 140 to 146 and the cross-heading above section 140.
- 12 Section 148 amended (Commission input)**
- In section 148(2), replace “section 145” with “**section 150ZD**”.

Part 2

Other amendments

13 Section 5 amended (Interpretation)

In section 5(1), insert in ~~its~~ their appropriate alphabetical order:

personal information has the meaning given by section 7(1) of the Privacy Act 2020 5

publicly accessible, in relation to making a document or information accessible, means that the document or information is available for inspection, free of charge, on an Internet site that is accessible to the public 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) 10

14 Section 150B amended (Certain assumptions do not detract from purpose of subpart)

In section 150B, insert as subsection (2): 15

- (2) **Subsection (1)** does not extend to the way in which new co-op uses an assumption in setting the base milk price.

15 Section 150D amended (Milk Price Panel)

In section 150D(3)(a), after “price”, insert “carried out by the person or persons engaged under **section 150EA**”. 20

16 Section 150E amended (Appointment of members of panel)

- (1) Replace section 150E(1) and (1A) with:

- (1) New co-op must appoint—

- (a) 2 members nominated by the Minister to the panel; and
- (b) a chair of the panel nominated by new co-op who has been approved by the Minister; and 25
- (c) 2, 3, or 4 more members to the panel; and
- (d) an additional member nominated by the Minister if the chair is a member nominated by the Minister.

- (1A) Members appointed on the nomination of the Minister must be appointed on the same terms and conditions as other members appointed by new co-op to the panel. 30

- (2) After section 150E(2), insert:

- (2A) New co-op must ensure at all times that the chair does not have a meaningful association with new co-op or with a shareholding farmer, for example, the chair must not be— 35

- (a) a sitting director of new co-op, a member of new co-op’s Co-operative Council, or a current panel member appointed by that council; or
 - (b) a relative of a person described in **paragraph (a)**; or
 - (c) an associated person or an employee of a person described in **paragraph (a)**. 5
- (2B) The obligation in **subsection (2A)**—
- (a) is in addition to the obligation in subsection (2); and
 - (b) applies regardless of how a position or relationship referred to in **subsection (2A)(a) to (c)** is described in new co-op’s constitution or any other document. 10
- (3) In section 150E(3), replace “(1A) or (2)” with “(1), (1A), (2), or (2A)”.

17 New section 150EA inserted (Calculation of base milk price)

After section 150E, insert:

150EA Calculation of base milk price

- (1) New co-op must engage 1 or more persons to calculate a base milk price that will enable the panel to perform its function under section 150D(3). 15
- (2) New co-op must ensure that a person—
 - (a) is engaged to provide the service for a term of no more than 6 consecutive seasons; and
 - (b) is not re-engaged to provide the service until at least 4 seasons have passed since the end of their previous term. 20
- (3) New co-op must ensure that a person it engages to provide the service—
 - (a) is independent of new co-op; and
 - (b) operates at arm’s length in relation to new co-op when providing the service. 25
- (4) The requirements in **subsection (2)** apply, in respect of a person that is an entity, to the entity and its key personnel.
- (5) In this section,—

arm’s length includes, without limiting the ordinary meaning of the expression, having relationships, dealings, and transactions that— 30

 - (a) do not include elements that parties in their respective positions would usually omit, if the parties were—
 - (i) connected or related only by the transaction or dealing in question; and
 - (ii) acting independently; and 35
 - (iii) each acting in their own best interests; and

- (b) do not omit elements that parties in their respective positions would usually include, if the parties were—
- (i) connected or related only by the transaction or dealing in question; and
 - (ii) acting independently; and
 - (iii) each acting in their own best interests
- key personnel**, in respect of an entity, means—
- (a) a director, partner, trustee, or senior manager of the entity who has a role in providing the service; and
 - (b) senior personnel engaged by the entity for the purpose of providing the service
- service** means the calculation of the base milk price described in **subsection (1)**.
- (6) If, without reasonable excuse, new co-op contravenes **subsection (1), (2), or (3)**, it commits an offence and is liable on conviction to a fine not exceeding \$200,000 and a fine of \$10,000 for each day that the offence continues.

18 Section 150I amended (Commission's report)

After section 150I(1), insert:

- (1A) To avoid doubt, a report under subsection (1) may include the extent to which the way new co-op uses an assumption described in **section 150B(1)** in relation to the milk price manual is consistent with the achievement of the purpose set out in section 150A.

19 New section 150JA inserted (Milk price manual review information to be published)

After section 150J, insert:

150JA Milk price manual review information to be published

- (1) New co-op must make all non-sensitive information publicly accessible within 20 working days after the date on which the Commission makes its final report publicly available under section 150J.
- (2) In this section, **non-sensitive information** means information that has been requested by or provided to the Commission in relation to the review of the milk price manual and that new co-op reasonably considers is not ~~commercially sensitive~~—
- (a) commercially sensitive; or
 - (b) subject to legal professional privilege; or
 - (c) personal information.

- 20 Section 150L amended (New co-op must provide Commission with milk price manual and other information)**
- In section 150L(b), replace “setting of the base milk price” with “milk price manual”.
- 21 Section 150P amended (Commission’s report)** 5
- After section 150P(1), insert:
- (1A) To avoid doubt, a report under subsection (1) may include the extent to which the way new co-op uses an assumption described in **section 150B(1)** in calculating the base milk price is consistent with the achievement of the purpose set out in section 150A. 10
- 22 New section 150QA inserted (Base milk price calculation review information to be published)**
- After section 150Q, insert:
- 150QA Base milk price calculation review information to be published**
- (1) New co-op must make all non-sensitive information publicly accessible within 20 working days after the date on which the Commission makes its final report publicly available under section 150Q. 15
- (2) In this section, **non-sensitive information** means information that has been requested by or provided to the Commission in relation to the review of the calculation of the base milk price and that new co-op reasonably considers is not commercially sensitive. 20
- (a) commercially sensitive; or
- (b) subject to legal professional privilege; or
- (c) personal information.
- 23 Section 150T amended (New co-op must provide Commission with certain information)** 25
- (1) In section 150T, replace “1 July” with “15 June”.
- (2) In section 150T, insert as subsection (2):
- (2) New co-op must, no later than 5 working days before 15 September in each year, provide to the Commission the panel recommendations described in section 150D(3)(c) in relation to the setting of the base milk price. 30
- 24 Section 150U amended (Draft Commission report)**
- (1) In section 150U(1), replace “15 August” with “1 August”.
- (2) In section 150U(2), replace “1 September” with “15 August”.
- 25 New sections 150UA to 150UD and cross-heading inserted** 35
- After section 150U, insert:

*Directions relating to Commission reviews***150UA Commission may give directions in relation to reviews**

- (1) The Commission may, by notice, direct new co-op to do 1 or more of the following in the manner specified in the notice:
- (a) take any action in relation to a matter referred to in any of the following reports:
 - (i) a report made under section 150I:
 - (ii) a report made under section 150P:
 - (b) publish any information requested by or provided to the Commission as part of a review under section 150H or 150O (whether or not the information is actually provided to the Commission).
- (2) A direction must state—
- (a) the date by which, or period within which, the direction must be complied with; and
 - (b) the reasons for which it is given.
- (3) New co-op must comply with a direction given under this section.

150UB Criteria for giving directions

- (1) The Commission may only give a direction that is consistent with the purpose set out in section 150A.
- (2) A direction under **section 150UA(1)(b)** is consistent with the purpose set out in section 150A for the purpose of **subsection (1)**.
- (3) A direction under **section 150UA(1)(b)** to publish information applies despite **sections 150JA and 150QA** if the Commission is satisfied that the information is not ~~commercially sensitive~~.—
- (a) commercially sensitive; or
 - (b) subject to legal professional privilege; or
 - (c) personal information.

150UC Process for giving directions

- (1) Before giving a direction (the **proposed direction**), the Commission must—
- (a) make the proposed direction and the reasons for the proposed direction publicly available; and
 - (b) consult new co-op about the proposed direction (including the Commission's reasons for giving the proposed direction); and
 - (c) have regard to any submissions or evidence provided by the persons consulted.

- (2) ~~The Commission must give the direction to new co-op.~~ If the Commission gives a direction, it must provide the direction to new co-op.
- (3) ~~After giving~~ providing the direction to new co-op, the Commission must make the direction, and the Commission's reasons for giving the direction, publicly available. 5

150UD Amendment and revocation of directions

- (1) The Commission may amend or revoke a direction—
- (a) on its own initiative; or
 - (b) at the request of new co-op, if the Commission is satisfied that new co-op has provided the Commission with evidence of reasonable grounds to amend or revoke the direction. 10
- (2) A direction may be amended or revoked in the same way in which it may be made, except that **section 150UC(1)** does not apply to an amendment of a direction if the Commission is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature. 15

26 Section 150V and cross-heading repealed

Repeal section 150V and the cross-heading above section 150V.

27 New subpart 5B of Part 2 inserted

After section 150V, insert:

Subpart 5B—Enforcement 20

150W Jurisdiction of High Court

The High Court may hear and determine the following matters:

- (a) applications for orders under **section 150Y**;
- (b) proceedings for recovering pecuniary penalties under **section 150Z**;
- (c) applications for injunctions under **section 150ZA**; 25
- (d) actions for damages under **section 150ZB**.

150X Meaning of relevant provision

In this subpart, **relevant provision** means subpart 5 or 5A or regulations made under section 115.

150Y Court may order new co-op to comply with direction 30

The court may, on application by the Commission, order new co-op to comply with a direction given under **section 150UA** by a specified date or within a specified period.

150Z Pecuniary penalties

- (1) The court may, on application by the Commission, order a person to pay to the Crown a pecuniary penalty if satisfied that the person—
- (a) has contravened a relevant provision; or
 - (b) has been involved in a contravention of a relevant provision. 5
- (2) The maximum amount of a pecuniary penalty under **subsection (1)** is,—
- (a) for contravention of **section 150UA or 150Y**, \$500,000 in respect of each act or omission; and
 - (b) for any other contravention, the same as the amount that applies under section 80 of the Commerce Act 1986. 10
- (3) Despite **section 150ZD**, section 79 of the Commerce Act 1986 does not apply to proceedings under this section.
- (4) In this section and **section 150ZAAB**, a person is **involved in a contravention** of a relevant provision if the person—
- (a) has attempted to contravene the provision; or 15
 - (b) has aided, abetted, counselled, or procured any other person to contravene the provision; or
 - (c) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene the provision; or
 - (d) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of the provision; or 20
 - (e) has conspired with any other person to contravene the provision.

150ZAAA Defences for person in contravention of relevant provision

- (1) In any proceeding under **section 150Z** against a person (A) for a contravention of a relevant provision, it is a defence if A proves that— 25
- (a) A's contravention was due to reasonable reliance on information supplied by another person; or
 - (b) both of the following apply:
 - (i) A's contravention was due to the act or default of another person, or to an accident or to some other cause beyond A's control; and 30
 - (ii) A took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) For the purposes of **subsection (1)(a) and (b)(i)**, another person does not include a director, an employee, or an agent of A.

150ZAAB Defences for person involved in contravention of relevant provision 35

- (1) This section applies if—
- (a) a person (A) contravenes a relevant provision; and

- (b) another person (B) is involved in the contravention.
- (2) In any proceeding under **section 150Z** against B for involvement in the contravention of a relevant provision, it is a defence if B proves that—
- (a) B’s involvement in the contravention was due to reasonable reliance on information supplied by another person; or 5
- (b) B took all reasonable steps to ensure that A complied with the provision.
- (3) For the purposes of **subsection (2)(a)**, another person does not include a director, an employee, or an agent of B.

150ZA Injunctions

- (1) If the court is satisfied, on application by the Commission or any other person under **subsection (2)**, that a person has contravened a relevant provision, the court may grant an injunction restraining a person from continuing the contravention. 10
- (2) An application may be made by—
- (a) the Commission, if the application relates to the contravention of any relevant provision; 15
- (b) any other person, if the application relates to the contravention of subpart 5 or regulations made under section 115.

150ZB Actions for damages

- (1) Every person (other than the Commerce Commission) is liable for damages for loss or damage caused by that person engaging in conduct that constitutes a contravention of a relevant provision subpart 5 or regulations made under section 115. 20
- (2) Sections 82(1) and 82A of the Commerce Act 1986 apply to actions for damages under this section. 25

150ZC Miscellaneous

- (1) In determining an appropriate penalty under **section 150Z**, the court must have regard to all relevant matters, including the following:
- (a) for a contravention of subpart 5 or regulations made under section 115, the purpose and principles of subpart 5, as expressed in sections 70 and 71; and 30
- (b) for a contravention of subpart 5A, the purpose of subpart 5A, as expressed in section 150A; and
- (c) the nature and extent of the contravention; and
- (d) the nature and extent of any loss or damage suffered by any person because of the contravention; and 35
- (e) any gains made or losses avoided by the person in contravention; and

<ul style="list-style-type: none"> (f) whether the person in contravention has paid an amount in compensation or taken other steps for reparation or restitution; and (g) the circumstances in which the contravention or other act or omission took place (including whether it was intentional, inadvertent, or caused by negligence); and (h) any previous contraventions of a similar nature; and (i) any other relevant matter. 	5
(2) The standard of proof in proceedings under this subpart is the standard of proof that applies in civil proceedings.	
(3) In any proceedings under this subpart, the Commission, on the order of the court, may obtain discovery and administer interrogatories.	10
(4) Proceedings under this subpart may be commenced within 3 years after the matter giving rise to the contravention arose.	
(5) If conduct by a person constitutes a contravention of 2 or more provisions of subpart 5 or 5A, proceedings may be instituted under this subpart against that person in relation to the contravention of 1 or more of the provisions, but no person is liable to more than 1 pecuniary penalty under this subpart for the same conduct.	15
 150ZD Application of Commerce Act 1986 provisions	
(1) The following provisions of the Commerce Act 1986 apply in respect of this subpart and subparts 5 and 5A with all necessary modifications:	20
<ul style="list-style-type: none"> (a) sections 15 to 17 (proceedings of the Commission): (b) sections 74A to 74C (provisions relating to undertakings): (c) sections 77 and 78 (lay members): (d) section 79 (evidence not otherwise admissible): (e) section 88 (general provisions relating to granting of injunctions): (f) section 88A (when undertakings as to damages not required): (g) section 89 (other orders): (h) section 90 (conduct by employees or agents): (i) section 98 (Commission may require person to supply information or documents or give evidence): (j) section 98A (power to search): (k) section 98G (relating to warrants, etc): (l) section 99 (powers of Commission to take evidence): (m) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence): (n) section 100A (stating case for High Court): 	25
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(o)	sections 101 and 102 (notices):	
(p)	section 103 (offences):	
(q)	section 104 (determinations of Commission):	
(r)	section 106 (proceedings privileged):	
(s)	section 106A (judicial notice):	5
(t)	section 109 (Commission may prescribe forms).	
(2)	For the purpose of carrying out its functions and exercising its powers under a relevant provision, 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—	10
(a)	to do either or both of the following, at the time and place specified in the notice, if the Commission has reason to believe new co-op may have information relevant for that purpose:	
(i)	prepare and produce, or supply to the Commission, documents and information in relation to any matter specified in the notice:	15
(ii)	answer any questions in relation to any matter specified in the notice; and	
(b)	to have prepared and to produce, or to supply to the Commission, at the time and place specified in the notice, 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 in the notice; and	20
(c)	to provide any or all of the following:	
(i)	a written statement that states whether or not new co-op has complied with relevant provisions:	25
(ii)	a report on the written statement referred to in subparagraph (i) that is signed by an auditor in accordance with any form specified by the Commission:	
(iii)	sufficient information to enable the Commission to properly determine whether relevant provisions have been complied with:	30
(iv)	a certificate, in the form specified by the Commission and signed by at least 1 director of new co-op, confirming the truth and accuracy of any information provided under this section.	
150ZE	Additional proceedings	
	Proceedings brought under this Part are in addition to any proceedings brought under any other Act.	35

28 Schedule 1 amended

- (1) In Schedule 1, clause 5(3), replace “sections 140 to 146” with “**sections 150W to 150ZE**”.
- (2) In Schedule 1,—
 - (a) insert the Part set out in the **Schedule** of this Act as the last Part; and 5
 - (b) make all necessary consequential amendments.

Schedule
New Part 2 inserted into Schedule 1

s 28

Part 2
**Provisions relating to Dairy Industry Restructuring (Fonterra
Capital Restructuring) Amendment Act 2022**

6 Interpretation

In this Part, **commencement date** means the date on which **section 28** of the Dairy Industry Restructuring (Fonterra Capital Restructuring) Amendment Act **2022** comes into force.

7 Calculation of base milk price

- (1) A person that, immediately before the commencement date, was engaged by new co-op to calculate a base milk price is a person engaged by new co-op under **section 150EA(1)** if the person meets the requirements in **section 150EA(3)**.
- (2) Despite **section 150EA(2)(a)**, the maximum term of engagement for a person referred to in **subclause (1)** is 2 consecutive seasons starting on the day after the commencement date.

Legislative history

13 September 2022
27 September 2022

Introduction (Bill 165–1)
First reading and referral to Primary Production Committee