

Ministry for Primary Industries (MPI)
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Submission by:

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Friday 3 June 2022

**SUBMISSION ON PROPOSED AMENDMENTS TO THE DAIRY INDUSTRY RESTRUCTURING ACT 2001 /
PROPOSED GOVERNMENT RESPONSE TO THE FONTERRA CAPITAL RESTRUCTURING**

INTRODUCTION

1. The Royal Forest & Bird Protection Society of New Zealand Inc. (Forest & Bird) is Aotearoa's longest-running independent conservation organisation. Our constitutional purpose is to take all reasonable steps within our power for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.
2. Over generations Forest & Bird has helped make Aotearoa a better place to live by standing with communities to protect forests, lakes, and rivers from destruction, by campaigning to create marine reserves and eco-sanctuaries, and by working to save threatened species. We have worked for nearly a century on protecting nature for its intrinsic values and rights, but also for the benefit of all of us, who depend on land and water for our enjoyment, cultural identity, and survival.

SUMMARY OF SUBMISSION

1. **Forest & Bird fundamentally disagrees with the Government's decision to support Fonterra's proposed capital restructure and to make changes to the Dairy Industry Restructuring Act (DIRA) to provide for it.** In particular, we consider the decision to progress changes to the DIRA failed to adequately assess and consider the environmental and climate change implications of making changes. This has prevented an environmentally responsible decision from being made.

2. The “challenges of flat or declining New Zealand milk production” for Fonterra are not the Government’s problem – in fact, they’re a good thing for the environment and for climate change because lower milk production (and fewer dairy cows) lowers emissions and nitrate leaching (among other things, such as reducing the imperative for farmers to ‘convert’ native forest, wetlands, or braided river beds into pasture). Amending DIRA to protect Fonterra from changes in the market – such as from public sentiment or legislation designed to protect the environment – is an inappropriate use of public policy.
3. A declining milk curve is good for Aotearoa’s natural environment and reduces greenhouse gas emissions. If Government makes changes to the DIRA, it will secure Fonterra’s monopoly on milk and reinforce – and likely worsen – Fonterra’s position as Aotearoa’s greatest polluter. This is grossly inconsistent with the Government’s commitments to environmental and climate outcomes, both within Aotearoa and internationally.

RECOMMENDATIONS

4. **In the first instance, Forest & Bird seek that Government do not amend the DIRA.** We consider there are numerous mechanisms available allowing Fonterra to continue to operate (and increase its sustainability) within the existing industry structure. Changes to the DIRA should be undertaken either (1) as part of the comprehensive review of the legislation in 2025-2027, or (2) as part of a comprehensive review undertaken outside of the requirements of the DIRA, when the industry structure can be considered in much greater context. **Our preference is for Government to stop making incremental changes to the DIRA, and initiate a comprehensive review sooner than 2025 that includes environmental and climate change considerations.**
5. **If amendments to the DIRA remain under consideration, decisions cannot be made until more information is provided to Government regarding the potential environmental and climate impact of those amendments.** Before decisions are made, MPI must:
 - (a) assess the environmental impacts of the proposed changes. In particular, this should include assessment of potential impacts on (at least):
 - i. surface and groundwater quality and quantity¹
 - ii. drinking water quality, accessibility, and safety²
 - iii. native species, biodiversity, and ecosystems,³ and
 - iv. greenhouse gas emissions (see below)

¹ For example, amendments to DIRA could result in a higher milk price, which could incentivise increased milk production. This is likely to result in greater nutrient leaching and increased demand for irrigation water.

² In particular in regard to the NZ Drinking Water Standards, but also against new evidence that relatively low levels of nitrate could have a negative impact on human health.

³ Similar to footnote 1, any incentive to maintain or increase milk production could result in continued native forest, wetland, and braided river loss/encroachment as it is converted to pasture.

- (b) work with the Climate Implications of Policy Assessment (CIPA) team (as suggested in the cabinet paper⁴) to assess the potential emissions impacts of DIRA amendments. In particular, this should consider how amendments could:
- i. reduce incentives for land use change (or land retirement/planting, etc), thereby frustrating or preventing future emissions reductions or offsetting
 - ii. reduce the ability of a farmer to move to an alternative dairy processor that has better environmental standards or incentives, thereby frustrating or preventing future emissions reductions
 - iii. disincentivise the decommissioning or reconfiguring of coal-fired milk-drying facilities, which have substantial emissions profiles
 - iv. incentivise an increase in milk production, which would increase emissions,
 - v. incentivise conversion of land to dairy, which would increase emissions – in particular this should consider the (oftentimes legal) conversion of wetlands and native forest, which currently stores carbon
 - vi. disincentivise the restoration or re-wetting of wetlands, particularly peatlands, which are massive stores of carbon and are in many cases emitting carbon as they continue to dry beneath operational dairy farms⁵
 - vii. disincentivise Fonterra moving towards more ‘value-added’ products, thereby maintaining status quo emissions
 - viii. interact the imminent agricultural emissions pricing mechanism
- (c) assess whether any of the potential environmental/climate impacts are inconsistent with, or will frustrate the objectives of, Government ambitions and commitments regarding the environment, such as those in (at least), the Essential Freshwater package,⁶ Te Mana O Te Taiao Aotearoa New Zealand Biodiversity Strategy (and Implementation Plan), the Emissions Reduction Plan, Fit for a Better World,⁷ and the international UN Sustainable Development Goals.
- (d) assess the implications of upcoming changes to greenhouse gas emissions pricing mechanisms for agriculture, such as inclusion in the Emissions Trading Scheme or pricing through an ‘industry-led’ program such as He Waka Eke Noa.

⁴ “...MPI will work with the CIPA team to explore whether further analysis of the climate impacts could be undertaken and would be beneficial as MPI receives further information through the consultation process.” (Paragraph 81)

⁵ For example, peatlands of the Hauraki plains.

⁶ For example, to: “Stop further degradation of our freshwater. Start making immediate improvements so water quality improves within five years. [and] Reverse past damage to bring our waterways and ecosystems to a healthy state within a generation”.

⁷ <https://www.mpi.govt.nz/dmsdocument/41031-Fit-for-a-Better-World-Accelerating-our-economic-potential>

- (e) assess whether changes to the DIRA will frustrate Government ambitions and commitments regarding adaptation to climate change, such as those in the Emissions Reduction Plan and draft national adaptation plan.⁸
 - (f) present any information from the above back to the Minister and Cabinet for reconsideration.
6. **In the event that Government does progress with changes to the DIRA (and we strongly caution against this),** we consider much stronger requirements need to be imposed on the industry structure to mitigate the substantial risk of ‘locking in’ a monopoly on Aotearoa’s milk supply for Fonterra (among other risks), thereby preventing innovation, competition, land use change, and progress against environmental and climate change objectives. We consider the strongest way to ensure this is to **give the Commerce Commission increased power over the industry, including by giving it the power to make its review findings binding** (this is not to say this is the only requirement that should be imposed, simply that we consider it the most necessary, and in fact should probably already apply). However, we do not have confidence this will address the issues of concern raised in our submission, such as making progress on environmental and climate change objectives, and we consider other changes might also be required in light of additional information produced following action on our recommendations above. **For this reason, we consider a much better decision would be to initiate a much broader review of the DIRA, as noted above.**

STATE OF THE ENVIRONMENT IN AOTEAROA

7. In 2020, the Ministry for the Environment’s ‘Our freshwater 2020’⁹ outlined that Aotearoa’s freshwater ecosystems are at breaking point, having suffered overwhelming (and in some cases irreversible) damage. It confirmed that our economy, our identity, our cultural values, and our wellbeing depend on the health of the environment, and that those things are now at risk. It outlined that between 95% and 99% of rivers in urban, pastoral, and non-native forest areas are heavily polluted; 90% of our wetlands have been drained and destroyed; and 76% of our native freshwater fish are heading towards extinction. One of the main causes of that degradation identified in the report was industrial dairy farming.

⁸ For example, if the DIRA is not changed, (1) farmers in high-risk areas – such as the Rangitata River floodplain or coastal areas where saltwater intrusion is an emerging problem – might be more inclined to change land use or take part in proactive managed retreat. However, if the DIRA is changed, those farmers might be incentivised (e.g. through a higher milk price) to continue or to intensify their farming, thereby exposing themselves to increasing risk over time, eventually at a large cost to them, the insurance industry, and the public; or (2) farmers might attempt to continue dairy farming in areas that are not suited to it climatically, such as where high levels of irrigation are required. Their resilience to climate change will be severely reduced because they did not change to a less water-intensive land use, because they were not incentivised to.

⁹ <https://environment.govt.nz/publications/our-freshwater-2020/>

8. While industrial dairy farming is a primary cause of the degradation of freshwater ecosystems in Aotearoa, it is also one of the main sources of greenhouse gas emissions and therefore a leading cause of climate change. Data from Stats NZ shows agricultural emissions make up approximately 50% of Aotearoa's emissions, and emissions from agriculture continue to increase.¹⁰
9. Industrial dairy farming is also the main source of one of the most common contaminants in our drinking water - nitrogen.¹¹ Recent studies suggest nitrate-nitrogen in drinking water is a significant factor in increasing a person's risk of developing certain types of cancer.¹² It is also a well-established cause of methemoglobinemia (blue-baby syndrome) in bottle-fed babies.¹³
10. Numerous report and articles (both peer-reviewed and journalistic) continue to illustrate these and other impacts, including recent illustrations of the loss of braided river beds,¹⁴ forest,¹⁵ and wetlands¹⁶ to agriculture, and the substantial water footprint – up to 11,110 litres of water per litre of milk – of dairy farming in Canterbury.¹⁷

GOVERNMENT COMMITMENT TO ENVIRONMENTAL OUTCOMES

11. Partly in response to the above issues, the Government released the 'Essential Freshwater' package of legislative reform in 2020. This set out to:¹⁸
 - stop further degradation of our freshwater
 - start making immediate improvements so water quality improves within five years
 - reverse past damage to bring our waterways and ecosystems to a healthy state within a generation.
12. Government has also made commitments to slow climate change and adapt to its impacts, such as through the Climate Change Response Act, the draft national adaptation plan, the Emissions Reduction Plan, the establishment of the Climate Commission. Prime Minister Jacinda Ardern referred to climate change as her generation's "nuclear-free moment". One commitment

¹⁰ <https://www.stats.govt.nz/information-releases/greenhouse-gas-emissions-industry-and-household-year-ended-2019>

¹¹ <https://www.sciencedirect.com/science/article/abs/pii/S0022169412004933?via%3Dihub>

¹² <https://onlinelibrary.wiley.com/doi/10.1111/1753-6405.13222>

¹³ <https://www.health.govt.nz/your-health/healthy-living/drinking-water/nitrate-drinking-water>

¹⁴ <https://interactives.stuff.co.nz/2021/06/rewilding-project-nz-braided-rivers/>

¹⁵ <https://www.forestandbird.org.nz/resources/satellite-images-show-new-zealands-environmental-crisis>

¹⁶ <https://www.forestandbird.org.nz/resources/world-wetlands-day-forest-bird-release-maps-showing-extent-wetlands-crisis> and <https://www.forestandbird.org.nz/resources/aerial-images-show-wetlands-private-land-disappearing-alarming-rate>

¹⁷ <https://www.interest.co.nz/public-policy/116142/mike-joy-says-water-becoming-defining-political-and-economic-issue-changing>

¹⁸ <https://environment.govt.nz/assets/Publications/Files/essential-freshwater-overview-factsheet.pdf>

requires particular consideration through this process – the introduction of a mechanism to price agricultural emissions from 2025.¹⁹

13. We also note that Government’s Emissions Reduction Plan clearly stated the importance of reducing emissions from agriculture²⁰ (emphasis added):

Reducing [agricultural] emissions is needed to achieve our 2050 target, including the requirement to reduce biogenic methane emissions by 24–47 per cent by 2050. Reducing agricultural emissions will enhance Aotearoa New Zealand’s reputation as a low-emissions and trusted provider of agricultural products. **This plan must work with other initiatives to improve productivity, sustainability and inclusivity in the primary sector** in line with the Government’s Fit for a Better World – Accelerating our Economic Potential roadmap.

...and outlines that a key action is to:

Transition to lower-emissions land uses and systems.

14. The above action in particular (among the many other commitments noted) is directly contradicted by making changes to the DIRA, which could mean that “Farmers wishing to retire, [or] invest in alternative land use or other productive activity... could be constrained or deterred...”²¹
15. Other commitments have been made and aspirations set out regarding biodiversity, such as in the Te Mana O Te Taiao Aotearoa New Zealand Biodiversity Strategy and Implementation Plan.
16. The commitments the Government has made to environmental protection and restoration are significant and explicit, and should be matched by the actions Government, and government departments, then take to deliver on those commitments.

SHORTFALLS OF THE GOVERNMENT DECISION AND RESPONSE

17. Forest & Bird is extremely concerned that the Government appears to have accepted Fonterra’s proposal for a capital restructure largely without question, and in particular without investigating the potentially substantial environmental implications of the restructure.
18. The Regulatory Impact Assessment provided to Government by MPI²², was extremely insufficient in this regard. It did not consider the environmental or climate change implications

¹⁹ <https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/he-waka-eke-noa-primary-sector-climate-action-partnership/>

²⁰ Page 247, <https://environment.govt.nz/assets/publications/Aotearoa-New-Zealands-first-emissions-reduction-plan.pdf>

²¹ MPI Discussion Document, <https://www.mpi.govt.nz/dmsdocument/50971-Fonterra-Capital-Restructuring-Proposed-Government-Response-Discussion-document>

²² <https://www.mpi.govt.nz/dmsdocument/50989-Review-of-Dairy-Industry-Restructuring-Act-2001-in-response-to-Fonterras-capital-restructure-Regulatory-Impact-Assessment>

of the proposed restructure in any depth. In fact, the main commentary on the environmental impact of dairy farming was so short it can be included here:

The dairy industry has negative environmental impacts, including through contaminant discharges to freshwater and greenhouse gas emissions. Both of these environmental impacts are significant in the overall New Zealand context, and have been the focus of industry, regional government and central government initiatives to manage. With rising global demand and high global dairy prices, dairy cow numbers have, until recently, been rising, with dairying expanding into new areas and intensifying in existing areas. This dairy expansion has contributed to poor water quality in rivers that flow through pastoral land. From 2013 to 2017, compared with rivers in native forest land cover, pastoral land had nitrate-nitrogen levels that were 9.7 times higher, phosphorus levels 3.4 times higher and E.coli levels 14.6 times higher. This expansion and intensification has been driven by the increased on-farm profitability of dairying compared to other land-uses. More recently, the growth of dairy cow numbers has flattened. Increased regulatory environmental constraints are expected to reduce any further increases in land use intensification, including dairying. The New Zealand dairy cow population and the national dairy land use area is expected to decline. However, the impact on milk production is likely to be offset to some degree by the adoption of technologies and practices that mitigated environmental impacts, increases in on-farm productivity improvements, specifically in dairy cow genetics, advances in farm management practices and development of new technology. The industry's incentives and ability to reduce its environmental impacts (including on greenhouse gas emissions and water quality) play a key role in the environmental wellbeing of all New Zealanders.

The economic benefits from dairying have come at the cost of environmental harm and loss of environmental amenity value, impacting social wellbeing...

19. This summary is disappointing because:

- a) It failed to recognise and make clear to Cabinet Ministers that a reduction in land use intensification is a positive environmental outcome resulting from “increased regulatory environmental constraints” introduced by the Government to address the biodiversity and climate crisis, as outlined at the start of this submission. This is a mark of the Government's success in addressing a crisis – not something that now requires ‘fixing’ to allow a private company to continue operating.
- b) It failed to recognise that the expectation of a decline in the New Zealand dairy cow population and the national dairy land use area is also a significant positive outcome for the environment. It has been widely acknowledged that the Aotearoa dairy herd is too large and a significant reduction is required to return to anything near a sustainable level.

- c) The statement focused mainly on the existing impact of dairy farming, rather than any potential future impact. Where it did look to the future, it was vague and speculative – i.e., it did not comment on the potential impact of the proposed Fonterra restructure.
20. An additional failing is evident in the Cabinet Paper,²³ which (starting at paragraph 77) notes that “the proposal... is likely to support an increase in emissions...” but then states that “no modelling of the emissions impact has been completed at this stage.” This is disappointing when it is also stated that changes to DIRA could easily create a marginal change in milk production sufficient to exceed the CIPA threshold for climate impact assessment.
21. The potential negative implications of the decision to provide for the Fonterra capital restructure and change the DIRA are highlighted throughout the documents provided as part of the MPI consultation process. For example:
- (a) In the Minute of the Cabinet decision, the committee:
 - i. “**noted** that amending the DIRA, as sought by Fonterra, could reduce contestability for farmers’ milk supply and weaken incentives for Fonterra to drive long-term performance, innovation, sustainability, and value creation for the broader dairy industry and the wider New Zealand economy.” (para. 5)
 - ii. “**noted** that the DIRA regulatory adjustments in paragraph 8 above may not be sufficient to fully mitigate the risks created by Fonterra’s capital restructure” (para. 17)
 - (b) In the MPI consultation document, it is noted:
 - i. “Fonterra’s capital restructuring also creates long-term risks and potential flow-on impacts, which could be detrimental to farmers, the diversity and contestability of the whole dairy industry, Fonterra’s long-term performance, and the wider New Zealand economy.”
 - ii. “Fonterra’s ability to maintain sufficient levels of internal capital could be reduced...”
 - (c) In the Cabinet paper, it is noted:
 - i. “...greenhouse gas emissions from dairy could rise...”

PROPOSED AMENDMENTS TO THE DIRA

22. While in the first instance Forest & Bird seek that Government do not amend the DIRA, in the event that Government does progress with changes to the DIRA (and we strongly caution against this), we consider much stronger requirements need to be imposed on the industry structure to mitigate the risks identified by MPI (and the environmental risks we have discussed in our submission).

²³ <https://www.mpi.govt.nz/dmsdocument/50983-Fonterra-Capital-Restructuring-Proposed-Government-Response-Cabinet-paper>

23. For example, the amendment to “Require Fonterra to maintain and publish a dividends and retentions policy” does nothing to ensure Fonterra will retain sufficient capital to move towards more sustainable production (i.e., to move from volume to value). Fonterra has never been able to develop enough capital to invest in value-added product development and has always focused on large farmer pay-outs and maximising milk volumes. Requiring Fonterra to ‘publish a policy’ will not change this because there is nothing outlining how much should be retained.
24. We do not consider ourselves in a position to comment on the specifics of all the proposed amendments. However, if changes are to be progressed, we consider the strongest way to ensure risks are at least partly mitigated is to give the Commerce Commission increased power over the industry, including by giving it the power to make its review findings binding (and in fact, we consider this power should probably already apply). Note: We do not have confidence this will address the issues of concern raised in our submission, such as making progress on environmental and climate change objectives, and we consider other changes might also be required in light of additional information produced following action on our recommendations above. For this reason, we consider a much better decision would be to stop making incremental changes to the DIRA and initiate a much broader review, where environmental and climate implications can be considered in their full context.

ENDS