

14 December 2017

Hon David Parker, Attorney-General

**Consistency with the New Zealand Bill of Rights Act 1990: Dairy Industry Restructuring Amendment Bill (No 2)**

1. We have considered whether the Dairy Industry Restructuring Amendment Bill (No 2) ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have not yet received a final version of the Bill. This advice has been prepared with the latest version of the Bill (PCO 20865/1.0). We will provide you with further advice if the final version of the Bill includes amendments that affect the conclusions in this advice.
3. The Bill amends the Dairy Industry Restructuring Act 2001 ('the principal Act'). Among other purposes, the principal Act promotes the efficient and contestable operation of the New Zealand dairy sector by regulating and monitoring Fonterra's activities. Key provisions to this effect (Part 2, Subparts 5 and 5A) are subject to statutory review and expiry mechanisms contained in sections 147 to 150 of the principal Act, which were triggered in the 2014-15 dairy season when Fonterra's market share fell below 80 percent. As a result, an Order in Council<sup>1</sup> was made in 2016, to the effect that subparts 5 and 5A will cease to apply to the South Island on 31 May 2018.
4. The Bill revokes the Order in Council, so that subparts 5 and 5A will continue to apply to the South Island. It also repeals sections 147 to 150 and related provisions in the principal Act, preventing any further operation of the automatic expiry and statutory review provisions. These measures are intended to provide the Government more time to consider its preferred course of action for regulation of the dairy sector.
5. We have been advised that a previous Bill, which included amendments to the principal Act similar to those proposed in this Bill, has been discharged. We provided advice on the previous Bill in November 2016 to the effect that it was consistent with the Bill of Rights Act. Among other amendments, that Bill would have replaced sections 147 – 150 with requirements for a five-yearly report on the state of competition in the dairy industry, while the current Bill simply repeals those sections. We understand a Government review of the principal Act will commence in early 2018.
6. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

Jeff Orr  
**Chief Legal Counsel**  
**Office of Legal Counsel**

---

<sup>1</sup> Dairy Industry Restructuring (Subparts 5 and 5A of Part 2 of Act Disapplied to South Island) Order 2016.