

Dairy Industry Restructuring Amendment Bill (No 2)

Member's Bill

Explanatory note

General policy statement

The Dairy Industry Restructuring Act 2001 places no legislative limit on the proportion of the Fonterra co-operative shares that can be sold by farmers into the new co-op fund. A limit would ensure that the dividends and proceeds of Fonterra remain largely in the hands of farmer shareholders not external investors.

Without such a protection the current proposal for 10–15% of co-operative shares to be sold into the new co-op fund for external investors could easily become the thin end of the wedge and the fund could expand, seeing farmers lose share dividends to foreign and domestic investors.

This Bill provides that Fonterra must ensure the new co-op fund does not constitute more than 20% of the total number of co-operative shares. If the 20% limit is reached, Fonterra must cease the sale of shares into the new co-op fund and take action to reduce the proportion of shares in the new co-op fund to below the 20% limit within 90 days.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Dairy Industry Restructuring Act 2001 (the **principal Act**).

Clause 4 states the purpose of the Bill.

Clause 5 inserts *new section 109JA*, which sets out new co-op's obligation to limit the relevant interest of the new co-op fund in co-operative shares.

Hon Damien O'Connor

Dairy Industry Restructuring Amendment Bill (No 2)

Member's Bill

Contents

	Page
1 Title	1
2 Commencement	1
3 Principal Act	2
4 Purpose	2
5 New section 109JA inserted (New co-op's obligation to limit interest of new co-op fund in co-operative shares)	2
109JA New co-op's obligation to limit interest of new co-op fund in co-operative shares	2

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Dairy Industry Restructuring Amendment Act (No 2) **2012**.

- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Dairy Industry Restructuring Act 2001 (the **principal Act**).

4 Purpose

The purpose of this Act is to ensure the new co-op fund does not constitute more than 20% of the total number of co-operative shares. 5

5 New section 109JA inserted (New co-op’s obligation to limit interest of new co-op fund in co-operative shares)

After section 109J, insert: 10

“109JA New co-op’s obligation to limit interest of new co-op fund in co-operative shares

“(1) New co-op must take all reasonable steps to ensure that the new co-op fund does not, at any time, have a relevant interest in more than 20% of the total number of co-operative shares that are on issue, excluding any co-operative shares that are on issue but have been surrendered to, or have been acquired by, new co-op and have not been cancelled. 15

“(2) If there is a contravention of **subsection (1)**, new co-op must take all reasonable steps to ensure that, within 90 days of the new co-op fund’s relevant interest exceeding the 20% limit, the new co-op fund’s relevant interest is reduced to comply with the 20% limit. 20

“(3) The new co-op fund and any other person must comply with any direction given by new co-op pursuant to **subsection (2)**. 25

“(4) Nothing in this section limits or prevents the constitution of new co-op from providing for a 20% limit on the proportion of co-operative shares held in the new co-op fund.”