

Review of Fonterra's 2023/24 Milk Price Manual: Dairy Industry Restructuring Act 2001

Draft report

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Associated documents

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| 15 September 2023 | ISBN 978-1-99-101226-5 | Final report – Review of Fonterra’s 2022/23 Base Milk Price Calculation: Dairy Industry Restructuring Act 2001 |
| 1 August 2023 | ISBN 978-1-99-101282-1 | Our approach to reviewing Fonterra's Milk Price Manual and Base Milk Price Calculation - 2023 |
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Chapter 1 Introduction and how you can provide your views

Purpose of this report

1. This report sets out our draft conclusions from our statutory review of the extent to which Fonterra's 2023/24 Milk Price Manual (the **2023/24 Manual**) is consistent with the purposes of the base milk price monitoring regime (**monitoring regime**) under subpart 5A of the Dairy Industry Restructuring Act 2001 (**DIRA**).¹
2. The Manual contains the methodology that will be used to calculate Fonterra's base milk price for the 2023/24 season.

How this report is structured

3. Chapter 2 explains our review framework and the scope of our 2023/24 Manual review.
4. Chapter 3 sets out our draft conclusions.
5. Attachment A provides a glossary of the key terms and abbreviations used in this draft report.

How you can provide your views

Invitation to comment

6. As required under DIRA, we are consulting with Fonterra on this draft report.² We have also extended our consultation process to other interested parties.
7. We welcome stakeholder views on any aspects of this draft report before we finalise our conclusions. Your views on our draft report will help inform our final conclusions for our review.³

Deadline for submissions

8. To allow us time to consider your views, submissions on this draft report must be provided to us no later than **12 noon, Wednesday 15 November 2023**.⁴
9. Our final report on the 2023/24 Milk Price Manual will be published on 15 December 2023.

¹ DIRA, s 150A.

² DIRA, s 150U.

³ DIRA, s 150U.

⁴ A submission from Fonterra, or notification that it does not wish to make a submission, is required not later than 15 November 2023 for this season's Manual review – see s 150M(2) of DIRA.

Format of submissions

10. Please address all submissions to:

Louise Stephenson, Head of Fuel and Dairy

c/o market.regulation@comcom.govt.nz

Subject line: Milk Price Manual 2023/24

11. We prefer submissions in both a format suitable for word processing (such as a Microsoft Word doc), and a 'locked' format (such as a PDF) for publication on our website.
12. The protection of confidential information is something the Commission takes seriously. The process requires you to provide (if necessary) both a confidential and public version of your submission and to clearly identify the confidential and public versions.
13. When including commercially sensitive or confidential information in your submission, we offer the following guidance:
- 13.1 Please provide a clearly labelled confidential version and public version of your submission. We intend to publish all public versions on our website.
- 13.2 The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.
14. Please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material that we do not publish unless good reason existed under the Official Information Act 1982 to withhold it. We would normally consult with the party that provided the information before any disclosure is made.

Chapter 2 Our review framework

Our approach for the Manual review

15. This report should be read along with 'Our approach to reviewing Fonterra's Milk Price Manual and base milk price calculation' (our **Approach paper**), which we have applied in this review and which forms part of this report. The Approach paper provides an overview of the approach we take in our reviews of Fonterra's Manual and base milk price calculation and includes:⁵
 - 15.1 an overview of how the base milk price is set;
 - 15.2 our interpretation of the key legislative provisions guiding our statutory reviews; and
 - 15.3 our analytical and practical approach to our statutory reviews.
16. The base milk price monitoring regime is intended to provide incentives for Fonterra to act efficiently, while providing for contestability in the market for the purchase of raw milk from farmers. The regime also promotes greater transparency of Fonterra's base milk price setting processes.⁶
17. We undertake a review of the Manual for each season. The Manual contains the methodology Fonterra uses to calculate its base milk price. As such, the Manual contains a set of definitions, rules and formulas specifying the inputs and process to be followed in calculating the base milk price.
18. We consider the extent to which the Manual is consistent with the purpose of subpart 5A of DIRA. In particular, our review considers the 'efficiency' and 'contestability' dimensions of the s 150A purpose as required by DIRA. Our review therefore focuses on whether the methodology and rules used in the Manual:
 - 18.1 provide an incentive for Fonterra to operate efficiently (the 'efficiency dimension'); and
 - 18.2 adopt assumptions, inputs and processes that would be practically feasible for an efficient processor (the 'contestability dimension').⁷
19. As set out in the Approach paper, the efficiency dimension is met if Fonterra uses notional inputs in calculating the milk price (independent from Fonterra's actual data).

⁵ [Commerce Commission "Our approach to reviewing Fonterra's milk price manual and base milk price calculation" \(1 August 2023\).](#)

⁶ Dairy Industry Restructuring Amendment Bill (Government Bill) 2012, at 2.

⁷ We consider the same 'efficiency' and 'contestability' dimensions when we carry out our base milk price calculation review.

20. Contestability is considered to be provided for if any notional costs, revenues, or other assumptions taken into account in calculating the base milk price are practically feasible for an efficient processor.⁸
21. To satisfy the provisions in s 150A, our interpretation is that our statutory review must assess the extent to which the Manual is consistent with both dimensions. We attach equal weight to both dimensions in our reviews. Our analytical approach to the efficiency and contestability dimensions is described in chapter 4 of the Approach paper.⁹
22. In practice, we mostly focus our review each year on changes to the Manual from the previous year's Manual and on any unresolved issues carried over from our previous reviews.
23. We will also take into account the amendments to DIRA that are relevant to our review functions when deciding where to focus our reviews.
24. As a result of the recent amendments to s 150B of DIRA¹⁰, we have also focused in particular on assessing the way in which Rule 10 of the Manual (FX conversion of USD revenue to NZD) incorporates the s 150B(1)(c) assumption on foreign exchange conversion rates and the extent to which Rule 10 is consistent with the statutory purpose set out in s 150A.¹¹ Paragraph 30 outlines our planned consideration of the other s 150B(1) assumptions.

Scope of this review

25. DIRA requires Fonterra to provide us with the following information for consideration in our Manual review:¹²

25.1.1 the Manual for the current season;

⁸ DIRA, s 150A(2).

⁹ [Commerce Commission "Our approach to reviewing Fonterra's milk price manual and base milk price calculation" \(1 August 2023\).](#)

¹⁰ Section 150B(2) was inserted on 1 January 2023, by section 14 of the Dairy Industry Restructuring (Fonterra Capital Restructuring) Amendment Act 2022.

¹¹ DIRA, s 150B and s 150A

¹² DIRA, s 150L.

- 25.2 any recommendations by the Milk Price Panel (**MPP**)¹³ in relation to the milk price manual;¹⁴
 - 25.3 notification of any change in the economic and business environment that, in Fonterra's view, requires a change to the Manual;
 - 25.4 certification on the extent to which Fonterra considers that the Manual is consistent with the s 150A purpose; and
 - 25.5 the reasoning behind the views expressed in Fonterra's certification.
26. The above information, where relevant, has been provided by Fonterra and has been considered as part of our review. Specifically, Fonterra has provided us with: the Base Milk Price Manual for the 2023/24 season (marked-up version);¹⁵
- 26.2 a Reasons paper in support of Fonterra's Milk Price Manual for the 2023/24 season (**Fonterra's Reasons paper**), which contains the information noted in paragraphs 25.3, 25.4, and 25.5;¹⁶ and
 - 26.3 the MPP recommendations to Fonterra's Board with respect to amendments to the 2023/24 Manual.
27. The 'marked up' version of the 2023/24 Manual shows the changes that have been made to the previous season's version of the Manual. Fonterra has stated in its Reasons paper that the 'marked up' version of the 2023/24 Manual identifies all amendments to the Manual.¹⁷ In addition, we have reviewed the MPP recommendations to Fonterra's Board and confirmed that all recommended amendments are reflected in the 2023/24 Manual.

¹³ The MPP is a committee that Fonterra is required to establish and maintain under s 150D of DIRA. The MPP is required, for each season, to supervise the calculation of the base milk price; advise Fonterra on the application of the Manual; and recommend the base milk price to Fonterra. See also [Fonterra "Base Milk Price Manual for the 2023/24 season \(marked up version\) - 1 August 2023" \(23 August 2023\), at page 27.](#)

¹⁴ Fonterra has "interpreted this provision as in fact relating to recommendations by the Milk Price Panel in relation to amendments to the Milk Price Manual." (See [Fonterra "Reasons Paper in support of Fonterra's Milk Price Manual for the 2022/23 season - 1 August 2022" \(23 August 2022\), at footnote 1.](#)) We agree with this interpretation.

¹⁵ [Fonterra "Attachment 1 – Base Milk Price Manual for the 2023/24 season \(marked up version\) - 1 August 2023" \(23 August 2023\).](#)

¹⁶ [Fonterra "Reasons Paper in support of Fonterra's Milk Price Manual for the 2023/24 season - 1 August 2023" \(23 August 2023\).](#)

¹⁷ [Fonterra "Reasons Paper in support of Fonterra's Milk Price Manual for the 2023/24 season - 1 August 2023" \(23 August 2023\), at page 3.](#)

28. We have focused on the amendments Fonterra has made to the Manual for the 2023/24 season. This season, the only substantive change to the Manual was the definition of Standard Product Offering.
29. In addition to the change referred to in paragraph 28, for this review, we have focused in particular on assessing how the s 150B(1)(c) assumption relating to foreign currency gains and losses is incorporated into the Manual rules, focusing specifically on Rule 10. This follows from the amendment to s 150B which now expressly provides that we can assess the way in which Fonterra uses the assumptions in s 150B(1)(a) to (d) in setting the base milk price.¹⁸
30. The remaining s 150B assumptions (s 150B(1)(a), (b) and (d)) apply to a wide range of interrelated rules. While we have not examined these rules as part of this review, we are conscious of the importance of these assumptions to the operation of the price setting methodology and stakeholders' confidence in the process. We will begin the process of reviewing these rules in light of the amendments to s 150B as a matter of priority in advance of the 2023/24 Calculation and 2024/25 Manual reviews. We anticipate engaging with Fonterra and interested parties on these rules in the new year to ensure we are able to address them fully as part of our 2023/24 Calculation and/or 2024/25 Manual reviews as appropriate.
31. Fonterra has also made amendments to the description of the Milk Price Group, and the addition of text relating to Fonterra's mandatory information disclosures under s 150JA and s 150QA. These amendments do not directly affect efficiency or contestability in terms of s 150A. They have come about due to the changes to DIRA. We discuss these changes in paragraphs 56 to 69 and suggest Fonterra makes some further amendments to better reflect the disclosure requirements.

¹⁸ DIRA, s 150B(2).

Chapter 3 Draft conclusions

32. This chapter sets out our draft conclusions on the extent to which the 2023/24 Manual is consistent with the s 150A purpose.

Our draft conclusions

33. Based on the assessment we have undertaken:
- 33.1 Our overall draft conclusion is that the Manual is consistent with the statutory purpose set out in s 150A.
 - 33.2 Regarding Fonterra's amendment to the Manual since last year's review, our draft conclusion is that the amendment is consistent with the statutory purpose set out in s 150A.
 - 33.3 Regarding our assessment of Rule 10 (including its incorporation of s 150B(1)(c)), our draft conclusion is that Rule 10 is consistent with the statutory purpose set out in s 150A.

Fonterra's amendments to the 2023/24 Manual

34. Fonterra has made the following amendment to the 2023/24 Manual:
- 34.1 revised wording to clarify the description of Standard Product Offering.

Clarification in the Manual of Standard Product Offering

35. In our 2022/23 Manual review, we suggested that Fonterra consider whether the definition of Standard Product Offering in the Manual can be clarified, particularly with respect to the cascable product rule, or the application of the definition explained more clearly in the Calculation Reasons paper.¹⁹ We also noted this in our 2021/22 Calculation review.²⁰
36. As a result, Fonterra has amended the text in Part C, 1.2 to the below:

A Reference Commodity Product specification which:

- 1. Is a Standard Specification Product, or
- 2. Is sold on GDT, or
- 3. Is otherwise a product which:

¹⁹ [Commerce Commission "Review of Fonterra's 2022/23 Milk Price Manual: Final report" \(15 December 2022\), at page 13, paragraph 48.](#)

²⁰ [Commerce Commission "Review of Fonterra's 2021/22 Milk Price Calculation: Final report" \(15 September 2022\), at page 11, paragraph 3.6.3.](#)

- Is traded in significant quantities in globally contested markets, and
- Is characterised by uniform technical specifications.

When determining whether a specific product specification satisfies the conditions specified in paragraph (3) the MPG will disregard any element of the product specification which it can reasonably be expected would not give rise to a requirement for consultation with a customer if that product was used to fulfil an order for a similar product.

When determining whether a product is traded in significant quantities in globally contested markets, the MPG will have regard to the quantity of functionally equivalent products traded in globally contested markets, and not to the quantity of an individual product specification.

37. Fonterra has extended the definition to include ‘functionally equivalent products traded in globally contested markets’. This is more specific and relevant than the previous text which specified ‘multiple regions’ and ‘to multiple customers’. A product can be sold to multiple regions and to multiple customers without also being sold in globally contested markets. Furthermore, it is not limited only to Fonterra sales channels as it was previously. The definition of ‘globally contested’ is more appropriate than the previous text, as Reference Commodity Products (RCPs) are expected to be sold in a global market.
38. In Fonterra’s 2022/23 Calculation Reasons paper, it noted that milk price revenue-informing inclusions are cascable, in that [the product] “...can be used to satisfy an order for a standard product offering... without any prima facie reason to believe prior consultation is needed with the customer”. The revised Manual text gives effect to this.
39. ‘Standard Specification Product’ as referred to in the revised text is defined in Part C, 1.1 of the Manual. The definition covers specific grades of each RCP sold on GDT along with a requirement to maintain a product specification for each Standard Specification Product.
40. Furthermore, in its Reasons paper in support of the 2022/23 Calculation, Fonterra provided a table of Standard Product Offering categories and Standard Packaging formats. Fonterra noted that products which do not fall within these categories are excluded from the schedule of Qualifying Materials.²¹ This further outlines what Fonterra considers to be a Standard Product Offering.
41. We consider the revised wording adequately clarifies what Fonterra considers a Standard Product Offering is under the Manual, and is consistent with the s 150A purpose.

²¹ [Fonterra “Reasons Paper in support of Fonterra’s Milk Price Calculation for the 2022/23 season – 15 June 2023” at page 50.](#)

Assessment of Manual rules relating to s 150B

42. For this Manual review we have focused our assessment on Rule 10 of the Manual in consideration of its relation to the s 150B(1)(c) assumption on foreign currency gains and losses.²²
43. As part of our review of Rule 10, we have examined the following matters:
 - 43.1 How does Rule 10 incorporate, engage or reference the s 150B(1)(c) assumption? (paragraphs 44 to 50)
 - 43.2 Does the use of the s 150B(1)(c) assumption in Rule 10 correctly apply the s 150B(1)(c) assumption? Or as the Approach paper puts it, has Fonterra correctly interpreted the meaning of s 150B(1)(c)?²³ (paragraph 51)
 - 43.3 To what extent is the way in which the s 150B(1)(c) assumption is used in Rule 10 consistent with s 150A (but leaving out an examination of the s 150B assumption in itself)? (paragraphs 52 to 55)

Use of the s 150B assumption in the Manual

44. Section 150B(1)(c) reads:

- (1) 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:
 - ...
 - (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.

²² [Fonterra "Attachment 1 – Base Milk Price Manual for the 2023/24 season \(marked up version\) - 1 August 2023" \(23 August 2023\) at page 39.](#)

²³ [Commerce Commission "Our approach to reviewing Fonterra's milk price manual and base milk price calculation" \(1 August 2023\) at paragraph 59.](#)

45. Rule 10 of the Manual, Conversion of USD revenue to NZD²⁴, reads:

| Rule | Application |
|--|---|
| Because the management and execution of Fonterra's actual hedging activities are governed by an established Financial Risk Management framework, it is appropriate to convert Farmgate Milk Price USD Receipts to NZD at Fonterra's actual average economic conversion rate. | <p>The process for converting USD revenue in respect of a Season to NZD shall reflect the following process:</p> <ul style="list-style-type: none"> ▪ Farmgate Milk Price USD Receipts for each month will be calculated by reference to Farmgate Milk Price US Dollar Commodity Revenue and Farmgate Milk Price Revenue Days ▪ Farmgate Milk Price NZD Receipts for the month will be calculated by multiplying Farmgate Milk Price USD Receipts by the Benchmark FX Conversion Rate for the month. <p>The Benchmark FX Conversion Rate for a month is the average rate at which Fonterra actually converts net receipts denominated in any currency other than NZD to NZD in the month, specified as a ratio of USD to NZD and calculated with regard to all costs and benefits of Fonterra's hedging activities in respect of amounts converted in that month.</p> |

46. Rule 10 is consistent with s 150B(1)(c) in that it provides for the application of an actual average conversion rate to the Notional Producer's business and the conversion rate is calculated with regard to all of Fonterra's costs and benefits of hedging activities.
47. Fonterra in its Reasons Paper for the 2022/23 season base milk price calculation explains that "Fonterra's actual average conversion rates" are applied "without any further adjustments to the NMPB's notional monthly USD cash receipts".²⁵ In our 2022/23 Calculation report we discussed the approach Fonterra uses when calculating and applying its monthly average conversion rate and noted that there is more than one way to calculate an average conversion rate, for example using Fonterra's annual average conversion rate. We concluded that the way in which Fonterra used the assumption in section 150B(1)(c) in calculating and applying a monthly average conversion rate was consistent with s 150A.
48. Fonterra also references foreign exchange in other places in the Manual though Rule 10 explains how Fonterra actually applies the methodology in the base milk price calculation.
- 48.1 In the Executive Summary, referring to how the Aggregate Farmgate Milk Price is calculated: "...Prices primarily reflect US dollar prices achieved by Fonterra on the twice-monthly Global Dairy Trade trading events, converted

²⁴ [Fonterra "Attachment 1 – Base Milk Price Manual for the 2023/24 season \(marked up version\) - 1 August 2023" \(23 August 2023\) at page 39.](#)

²⁵ Fonterra "Reasons Paper in support of Fonterra's Milk Price Calculation for the 2022/23 season – 15 June 2023" at page 10

to New Zealand dollars at Fonterra's actual average monthly foreign-exchange conversion rate."²⁶

- 48.2 Principle 2: the Farmgate Milk Price should be the maximum amount which Fonterra could pay for milk supplied to it in a season including if "Fonterra was appropriately encouraged to make investment, production and sales decisions (including foreign exchange hedging decisions) that maximise the Farmgate Milk Price, both now and in the future".²⁷
- 48.3 Principle 3: "the Farmgate Milk Price Methodology broadly provides for costs and risks, such as changes in international Commodity Product prices and changes in foreign currency exchange rates, to pass through to the Farmgate Milk Price (as suppliers have better incentives and capabilities to manage these types of risks, in the short run by altering feed and milking practice, and in the long run by substituting alternative land uses)..."²⁸
- 48.4 Part A, section 4.3: Farmgate Milk Price Revenue: "FX conversion: That USD Farmgate Milk Price Revenue will then need to be converted to NZD, giving a NZD Farmgate Milk Price Revenue. The conversion rate used for Farmgate Milk Price Revenue in a month will be Fonterra's volume-weighted average conversion rate for the month, based on foreign exchange hedging contracts Fonterra has in place under its financial risk management policies."²⁹
- 49. Rule 10 enables Fonterra to implement the Principles and references described in paragraphs 48.1 to 48.4 above. All gains and losses in relation to foreign currency are incorporated by using the average rate at which Fonterra actually converts net receipts in any other currency into NZD.
- 50. Hedging activities are included in the conversion, thus the gains and losses from foreign currency risk management are incorporated, providing for costs and risks related to foreign exchange to pass through into the base milk price.

Does Rule 10 apply the s150B(1)(c) assumption correctly?

- 51. Rule 10 allows Fonterra's gains and losses (including resulting from the application of a foreign currency risk management strategy) to be incorporated into the base milk price. While the rule provides no detail in relation to the hedging strategy Fonterra (and thus the Notional Producer) adopts, and effectively allows Fonterra to adopt

²⁶ [Fonterra "Attachment 1 – Base Milk Price Manual for the 2023/24 season \(marked up version\) - 1 August 2023" \(23 August 2023\) at page 7](#)

²⁷ [Fonterra "Attachment 1 – Base Milk Price Manual for the 2023/24 season \(marked up version\) - 1 August 2023" \(23 August 2023\) at page 10](#)

²⁸ [Fonterra "Attachment 1 – Base Milk Price Manual for the 2023/24 season \(marked up version\) - 1 August 2023" \(23 August 2023\) at pages 10 and 11](#)

²⁹ [Fonterra "Attachment 1 – Base Milk Price Manual for the 2023/24 season \(marked up version\) - 1 August 2023" \(23 August 2023\) at page 20](#)

any strategy with respect to managing foreign currency exposure, we consider the rule reflects a correct interpretation of the s 150B(1)(c) assumption and that there is nothing in the rule that is inconsistent with the assumption.

Does Rule 10 provide for consistency with section 150A

52. Rule 10 allows for an appropriate risk management framework to be used for managing foreign currency exposure and allows certainty in relation to the foreign exchange impacts on the base milk price. Our draft view is both aspects incentivise efficiency with respect to the foreign exchange translation process.
53. With regard to contestability, our draft view is that it is practically feasible for an efficient processor to use a process that is consistent with Rule 10 to achieve similar results in relation to gains or losses from foreign currency fluctuations.
54. The Commission has also considered whether further information about Fonterra's hedging strategy, is necessary for Rule 10 to be consistent with the contestability dimension of s 150A.³⁰
55. The Commission's draft view is that while the additional detail in Rule 10 would better promote transparency and therefore contestability no further amendments to the Manual are required to comply with the contestability dimension in s 150A.

³⁰ In this regard, we note the IDPs' stated concerns that the calculation process is "opaque", including in particular the NP conversion rate. See [Miraka, Open Country Dairy, Synlait Milk and Westland Milk Products "Submissions on the proposed focus areas for our review of Fonterra's 2022/23 base milk price calculation" \(27 April 2023\) at page 9.](#)

Other amendments to the 2023/24 Manual due to DIRA changes

56. Fonterra has also made several amendments to reflect changes to DIRA.

57. In its Reasons paper, Fonterra explains the rationale for the changes:³¹

[The intent of the minor amendments is] principally to align the Manual to amendments to subpart 5A of DIRA in the Dairy Industry Restructuring (Fonterra Capital Restructuring) Amendment Act 2022.

58. The amendments do not affect efficiency or contestability in regard to s 150A. We consider they largely reflect DIRA.

Part A, 5.3 Milk Price Group

59. Fonterra has amended the description of the Milk Price Group, which now reads:³²

The day-to-day administration of the Manual will be carried out by an independent party (the Milk Price Group) appointed by the Board in accordance with subsection 150EA(1) of DIRA, who will be responsible for calculating the Farmgate Milk Price and otherwise undertaking the functions and responsibilities assigned to the Milk Price Group under the Manual. In making this appointment, the Board must comply with the requirements of subsections 150EA(2)-(4) of DIRA. The Milk Price Group will report to the Panel in relation to all matters, including matters relating to, or arising from, the administration, operation and application of the Manual and the performance of the Milk Price Group.

60. In addition, Fonterra has removed the below text from the Glossary, as it is no longer needed:³³

MPG Head has the meaning set out in clause 4.3 of Part A of the Manual.

61. The revised description of the Milk Price Group aligns with DIRA s 150EA(1), which reads:

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).³⁴

62. The revised description of the Milk Price Group references the independence of the party (s 150EA(3)(a)) and for completeness could also reference operating at arm's length from Fonterra (s 150EA(3)(b)).

³¹ [Fonterra "Reasons Paper in support of Fonterra's Milk Price Manual for the 2023/24 season - 1 August 2023" \(23 August 2023\), at page 5.](#)

³² [Fonterra "Attachment 1 – Base Milk Price Manual for the 2023/24 season \(marked up version\) - 1 August 2023" \(23 August 2023\) at page 28.](#)

³³ [Fonterra "Attachment 1 – Base Milk Price Manual for the 2023/24 season \(marked up version\) - 1 August 2023" \(23 August 2023\) at page 89.](#)

³⁴ DIRA s 150EA(1)

Part A, 6.1 Disclosure

63. Fonterra has added paragraph (e), which reads:³⁵

The non-sensitive information (as defined in subsection 150JA(2) of DIRA) made publicly accessible by Fonterra in accordance with subsection 150JA(1) of DIRA.

64. Section 6.1 (e) of the Manual refers to the new information disclosure requirements. For completeness, it should also include a reference to s 150QA (calculation disclosure) in addition to s 150JA (Manual disclosure) in order to more fully reflect the disclosure requirements.

Part A, 6.4 Information Disclosure relating to DIRA

65. Fonterra has amended the title of this section to read:

Information Disclosure Relating to the Dairy Industry Restructuring Act 2001

66. Fonterra has also added the below paragraph:³⁶

Fonterra will also make publicly available all information requested by or provided to the Commerce Commission in relation to the Commission's review of the base milk price for a Year, other than information which Fonterra reasonably considers is commercially sensitive, subject to legal professional privilege, or personal information.

67. Section 6.4 of the Manual refers to reports Fonterra must provide under DIRA³⁷ requiring all non-sensitive information requested by or provided to the Commission as part of the calculation review to be made publicly available, as well as the base milk price Manual itself. The new text includes the new information disclosure requirements. The edit is similar to that made to section 6.1. For completeness, it should also include a reference to section 150JA (the equivalent provision for the Manual).
68. The information required to be provided to the Commission under s 150L and s 150T would also be subject to the new disclosure rules, and the grounds for withholding under those rules would apply. The chapeau suggests a slightly different test to the test in the new rules ("modified where necessary to protect the disclosure of information that would be prejudicial to Fonterra's legitimate commercial interests" vs "commercially sensitive").
69. We suggest Fonterra better aligns this text with the new disclosure regime.

³⁵ [Fonterra "Attachment 1 – Base Milk Price Manual for the 2023/24 season \(marked up version\) - 1 August 2023" \(23 August 2023\) at page 31.](#)

³⁶ [Fonterra "Attachment 1 – Base Milk Price Manual for the 2023/24 season \(marked up version\) - 1 August 2023" \(23 August 2023\) at page 33.](#)

³⁷ DIRA, s150L and 150T

Attachment A Glossary

| Term/Abbreviation | Definition |
|--|--|
| DIRA | Dairy Industry Restructuring Act 2001 |
| Approach paper | Commerce Commission's overview of the approach we take in our reviews of Fonterra's Manual and base milk price calculation. |
| Base milk price | Base milk price, in relation to a season, means the price per kilogram of milk solids (kgMS) that is set by Fonterra for that season. |
| Calculation review | Commission's review of Fonterra's base milk price calculation for the prior season. |
| Manual review | Commission's review of Fonterra's Milk Price Manual for the current season. |
| Dairy season | 1 June to 31 May annually |
| GDT | Global Dairy Trade, online auction platform used to sell dairy commodities |
| MPG | Milk Price Group |
| Milk Price Manual or the Manual | Fonterra's Milk Price Manual |
| MPP | Milk Price Panel |
| Notional processor | The notional commodity business that is used to calculate the base milk price (in its Reasons paper Fonterra uses the term notional producer). |
| Reasons paper | Fonterra's Reasons paper which is provided alongside the Manual for each dairy season (this is also provided when Fonterra discloses its base milk price calculation at the end of each dairy season). |