

Summary of response to submissions on our approach paper – 1st August 2023

Purpose of this paper

1. This paper provides an overview of our response to the submissions and cross submissions received on our Approach to reviewing Fonterra's Milk Price Manual and base milk price calculation paper (Approach paper).
2. We recommend using this summary of submissions as a companion to the final Approach paper as it provides a high-level summary of the submissions and cross-submissions received on the Approach paper. The summary also outlines our response to these submissions including any amendments made to the paper since its publication on 30 March 2023.

We sought views on our revised Approach paper in March

3. A revised version of our Approach paper was published on 30 March 2023 and reflected changes made to the Dairy Industry Restructuring Act (DIRA) that were enacted on 28 November 2022.
4. We sought submissions on the revised Approach paper from interested stakeholders. We received:
 - a. two submissions on 27 April 2023; and
 - b. three cross submissions on 30 May 2023.

We have now published our final Approach paper which applies to the 2022/23 milk price calculation review and all future reviews

5. The final approach paper outlines our statutory obligations under subpart 5A of DIRA and our approach to the practical implementation of these obligations. The final Approach paper can be found on our website [here](#).
6. The Approach paper is intended to provide an enduring overview of our approach to the annual reviews of Fonterra's Milk Price Manual (the Manual) and the base milk price calculation (the calculation) which informs all future reviews. As such, it does not identify or respond directly to the submissions received at a specific point in time.
7. This paper provides a high-level summary of the views expressed in the submissions and cross submissions we have received, and outlines where we have made amendments to the final Approach paper in response to these submissions. Care has been taken to ensure submitters views are accurately represented, although as this is a summary it will not necessarily convey the full detail of submitters' views. All submissions are available on our website [here](#).
8. We have published a clean version of the final Approach paper and a track-change version. The track-change version has both the changes made prior to 30 March

2023 (showing as blue text) and the amendments made in finalising the Approach paper (showing as red text).

9. The following table summarises the key themes from the submissions received, where in the submissions the comments can be found, and where we have amended the final Approach paper in response to the submissions. Please note, that all paragraph references in the table reflect the final version of the Approach paper and paragraph references will have moved since the version published in March 2023.

Topic	Report reference	Submission reference	Summary of key points	Our response
s 150B	Paragraphs 51, 57, 104	ANB Partners on behalf of Miraka, Open Country, Synlait and Westland (cross submission)	<p>The introduction of s 150B(2) means that, taken together, s 150B(1) and (2) provide that:</p> <ul style="list-style-type: none"> an assumption of the broad type listed in s 150B(1)(a)-(d) is not inconsistent with the s 150A purpose when included in the base milk price calculation; but the way that assumption is used by Fonterra – i.e., applied – in calculating the base milk price including all inputs (costs, quantities etc) and subsidiary assumptions used, must be consistent with the s 150A purpose. 	<p>We do not consider that any changes are required to the Approach paper resulting from this opinion.</p> <p>However, we have made some amendments to the Approach Paper to reflect the new section 150B text.</p>
		<p>Miraka, Open Country, Synlait and Westland submission paragraphs 15 - 24</p> <p>Miraka, Open Country, Synlait and Westland cross-submission paragraphs 12 - 13</p>	<p>Independent dairy processors submitted that we should include additional text noting that we review the assumptions identified under s150B against the s150A purpose.</p> <p>Independent dairy processors also submitted that the reference to s 150B should be removed as a potential carve out to the consideration of practical feasibility and unique features of Fonterra.</p>	<p>We have added text at paragraph 57 to clarify that our review is against the s 150A purpose.</p> <p>We do not agree that the reference to s 150B should be removed from the consideration of practical feasibility at paragraph 51 or unique features at paragraph 104 as s 150B is still relevant to these matters.</p>

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		Fonterra submission page 3	Fonterra submitted that previous statements about s 150B provisions not detracting from the s 150A purpose should be reinstated.	We do not think that the original drafting created prior to the most recent legislative amendments reflected the impact of s 150B(2). We have not reinstated this text.
		Fonterra submission page 4	Fonterra suggests that section 150B(2) only applies where an actual value is translated into a notional value.	We consider that the focus on the translation of actual values into notional values is too narrow an interpretation of section 150B.
Use of term “s 150B provisions”	Paragraph 35.2 and title before paragraph 57	Fonterra submission page 3	Fonterra submitted that the term permitted assumptions should be used in place of s 150B provisions.	We consider our terminology to be accurate and have not made a change.

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Definition of Base Milk Price, Farmgate Milk Price, and Farm Gate Milk Price	Paragraphs 8 - 16	Miraka, Open Country, Synlait and Westland submission paragraphs 45 - 53	<p>Independent dairy processors submitted that they did not support our statement that the FGMP “is calculated in accordance with the Manual. Therefore, this price equates to the base milk price recommended by the Panel.”</p> <p>Independent dairy processors suggest that it is incorrect to state that the FGMP is the same as the BMP, and it is not appropriate to suggest that Fonterra can frustrate the s 150A purpose simply so that the BMP (the statutory regulated milk price) aligns to the milk price the Fonterra Board decides to pay.</p>	We have amended paragraph 10 and removed paragraph 11.
Materiality	FN66	Miraka, Open Country, Synlait and Westland submission paragraphs 54 - 56	Independent dairy processors submitted that we should reconsider Miraka’s request for clarification on the scope and interpretation of materiality.	We have added a section on our use of materiality considerations at paragraphs 127 – 128.
Incentives to maximise profits for shareholders	Paragraphs 82 - 83	Fonterra submission page 3	Fonterra submitted that the deleted text about Fonterra’s incentives to maximise profits for shareholders should be restored.	We do not consider this text is necessary for our approach to the review of the milk price

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		Miraka, Open Country, Synlait and Westland cross submission paragraphs 7 - 11	Independent dairy processors submitted that they supported the deletion of the text relating to Fonterra's incentives to maximise profits for shareholders. Independent dairy processors noted that the changes to TAF have diminished Fonterra's incentives (which Independent dairy processors did not consider strong prior to the change).	calculation given the uncertainty of the strength of the profit maximising incentive on Fonterra.
Information disclosure requirements	N/A	Miraka, Open Country, Synlait and Westland submission paragraph 25 - 30	Independent dairy processors submitted that the Commission include guidance explaining our approach to the new disclosure requirements. Independent dairy processors outlined several considerations that should be included in the guidance.	We are intending to publish guidance on information disclosure requirements as a separate consultation.
Information disclosure standard for direction powers	Paragraph 78 (FN45)	Fonterra submission page 3	Fonterra has submitted that footnote 43, which outlines the Commission's power to direct Fonterra to publish information except where "the information is reasonably considered to be commercially sensitive, subject to legal privilege or personal information", should be included in the main body of the text.	We have included more text in the main body at paragraph 78. We retained a footnote with additional clarification.

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		<p>Miraka, Open Country, Synlait and Westland submission paragraph 31 – 33</p> <p>Miraka, Open Country, Synlait and Westland cross submission paragraph 14 - 15</p>	<p>Independent dairy processors submitted that they don't agree with footnote 43.</p> <p>Independent dairy processors submitted that we should clarify that the standard under the direction power is that the Commission must be "satisfied" the information is not sensitive.</p>	<p>We have updated the text in the main body at paragraph 78 to reflect that the Commission must be satisfied that the information is not sensitive.</p>
Commission must not determine price of milk	Paragraph 109	Fonterra submission page 3-4	Fonterra submitted that we should include text noting the Commission must not determine the value of the milk price at paragraph 106.	<p>We have included a high-level summary of the purpose of our milk price manual and calculation reviews, including limitations on our role at paragraphs 5 – 6.</p> <p>We also note that the reference to the High Court decision at paragraph 75 already includes text acknowledging that the Commission must not determine the price of milk.</p>
Need for administratively set milk price	Paragraph 22	Fonterra submission page 2	Fonterra submitted revised drafting for the explanation of Fonterra's administratively set milk price.	<p>We have made minor amendments to paragraph 22, but we have retained the reference to DIRA. We have included additional text in footnote 17 noting that Fonterra is able to set a farmgate milk price using an approach other than that of the Manual by following s 150N.</p>

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Description of unit fund changes	Paragraphs 28 - 29	Fonterra submission page 2-3	Fonterra submitted revised drafting for the sections describing the changes to TAF and the need for legislative amendments to DIRA because of these changes.	We have made amendments to paragraphs 28 – 29.
Use of manual and calculation terms	FN17	Fonterra submission page 2	Fonterra submitted we should use DIRA provisions rather than the terms “the Manual” and “the base milk calculation model” in footnote 17.	We have updated footnote 17 to reference subpart 5A.
Stretch targets	Paragraph 88	Miraka, Open Country, Synlait and Westland submission paragraph 34 - 44	<p>Independent dairy processors submitted that we should reconsider any justification for embedding stretch targets in notional data assumptions.</p> <p>Independent dairy processors suggested that the paragraph 87 statement that “using notional data provides Fonterra with a benchmark to beat” implies a stretch target is applied.</p>	<p>All inputs used in the base milk price calculation must meet the limbs of s 150A and be practically feasible while providing an incentive for Fonterra to be efficient.</p> <p>No change has been made to paragraph 88.</p>

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		Fonterra cross submission pages 4-5	Fonterra noted that any notional input provides a benchmark to beat regardless of its level relative to Fonterra's actual performance. Fonterra also noted that all notional input must be consistent with s 150A (ie, be practically feasible).	
s 150E	Paragraph B5	Fonterra submission page 4	Fonterra submitted that additional text should be included relating to s 150E provisions noting that "If the Panel chair is a member nominated by the Minister, the Minister can appoint a third member."	We have amended paragraph B5.
Market share	FN16	Fonterra submission page 2	Fonterra has provided information in support of an updated estimate of market share.	We have updated the market share value and reference in footnote 16.
GDP ownership	FN79	Fonterra submission page 4	Fonterra has provided updated information on GDT's ownership structure.	We have updated the description of GDT's ownership in footnote 79.
Missing cross reference	Paragraph A6	Fonterra submission page 4	Fonterra noted a missing cross reference in the published document.	We have restored the missing cross reference at paragraph A6.

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Requirement for external party to perform milk price calculation	Paragraph B6.1	Fonterra submission page 4	<p>Fonterra submitted that the note about appointing an external party to perform the based milk price calculation should be made its own section (it is currently included in notes about the make-up of milk price panel).</p> <p>Fonterra also notes they, and not the panel, will need to make the appointment.</p>	We have updated the text and moved this to its own paragraph at paragraph B11.