

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DAIRY PRODUCE AMENDMENT BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Primary Industries and Energy, Senator
the Hon Bob Collins)

DAIRY PRODUCE AMENDMENT BILL 1995

GENERAL OUTLINE

1. This Act is required to implement new policy to replace the current dairy market support arrangements so that they are consistent with Australia's commitments to the World Trade Organisation Agreement. The reinstrumented scheme will operate from 1 July 1995.
2. This Act works in conjunction with the *Dairy Produce Levy (No. 1) Act 1986*, the *Dairy Produce Levy (No. 2) Act 1986* and the *Primary Industries Levies and Charges Collection Act (1991)*.
3. The new scheme is designed as a clearly identifiable domestic market support scheme to provide manufacturing milk producers with the same level of support as that which would have been delivered had the current scheme continued until its termination on 30 June 2000. Support for manufacturing milk producers is obtained through an inter-sectoral transfer from market milk producers by a levy on market milk and through a financial transfer from domestic consumers by a levy paid by manufacturers on milk used in manufacturing dairy produce. Manufacturers recoup the levy through the price to domestic consumers or through an export rebate; the latter either claimed as an offset against manufacturing levy liability or paid direct to downstream manufacturers who are not levy payers. The levy imposition and payment are addressed in the *Dairy Produce Levy (No. 1) Act 1986* and the *Dairy Produce Levy (No. 2) Act 1986*.
4. This Act provides for the winding-up of the current Market Support Fund and establishes a new Domestic Market Support Fund for the receipt of the appropriations of the market milk and manufacturing milk levies and for the payment of domestic market support payments to manufacturing milk producers, negative levy payments, rebates to downstream manufacturers for milk products exported, refunds of the stocks levy to be paid for stock on hand at 30 June 2000 and administration costs.
5. The new scheme will terminate on 30 June 2000 with any surplus funds being appropriated by the Corporation. In the event of the fund being in deficit upon termination, the Commonwealth will not be liable for any such deficit. Any deficit at that time will be cleared using funds held by the Corporation or from borrowings by the Corporation against these funds and must be repaid by levies from industry sustaining these funds.

FINANCIAL IMPACT STATEMENT

6. There are no financial implications of this Bill for the Commonwealth as the domestic market support scheme is funded entirely by an inter industry transfer and a consumer transfer from the domestic market. There is no contingent liability on the Commonwealth in relation to winding up the scheme after its termination on 30 June 2000.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short title

7. This Act will be called the *Dairy Produce Amendment Act 1995*.

Clause 2 - Commencement

8. The *Dairy Produce Amendment Act 1995* will commence on 1 July 1995.

Clause 3 - Amendments

9. The *Dairy Produce Act 1986* is subsequently amended as set out in the schedule.

SCHEDULE

1. Subsection 3(1) (definition of "relevant fund"):

10. The definition of a relevant fund for the purposes of the Act is extended to include the Domestic Fund.

2. Subsection 3(1) (definition of "dairy products levy"):

11. The definition of dairy products levy is omitted and substituted by the definition as set out in this schedule.

3. Subsection 3(1):

12. Subsection 3(1) of the *Dairy Produce Act 1986* is amended to provide definitions of Domestic Fund and relevant dairy produce.

4. Part VI:

13. Part VI of the *Dairy Produce Act 1986* is repealed as it is no longer applicable with the introduction of the new Domestic Market Support Scheme.

5. After paragraph 74(1)(ca):

14. Subsection 74(1)(cb) provides for Corporation money to be expended in meeting the payments of the Domestic Fund if in deficit.

6. Paragraph 74(1)(e):

15. It is no longer necessary for the Corporation to provide monies to meet the provisions of the *Dairy Industry Stabilization Act 1977* so reference is omitted.

7. Subsection 80(2):

8. Subsection 80(3):

9. Subsection 80(4):

16. The Market Support Fund will be succeeded by the Domestic Fund.

10. After paragraph 88(1)(h):

17. Money in the Industry Fund may be expended in making payments that would otherwise be made from the Domestic Fund if the Domestic Fund has a net liability upon winding-up after 30 June 2000.

11. Section 91:

18. Section 91 has been amended to clarify that the paragraphs in this section are not mutually exclusive.

12. After paragraph 91 (d):

19. Money in the Promotion Fund may be expended in making payments that would otherwise be made from the Domestic Fund if the Domestic Fund has a net liability upon winding-up after 30 June 2000.

13. Section 98:

20. Section 98 of the *Dairy Produce Act 1986* is repealed as there no longer exists a scheme providing special rates of market support payments for underwritten dairy produce.

14. Section 102:

21. Section 102 of the *Dairy Produce Act 1986* is repealed as new arrangements are provided for the winding-up of the Market Support Fund as detailed below.

Winding-up of Market Support Fund

22. Although the Market Support Fund will terminate on 30 June 1995 under the *Dairy Produce (World Trade Organization Amendments) Act 1994*, it will be necessary to continue the fund for the purpose of paying export support payments in respect of exports made before 1 July 1995 and to receive levy payable through Consolidated Revenue in respect of milk produced before 1 July 1995. The final wind-up of the Market Support Fund must be completed as soon as is practically convenient after the termination of the current scheme. Any surplus in the Market Support Fund is to be carried over to the Domestic Fund to be established from 1 July 1995 and administered by the Corporation. Any deficit in the Market Support Fund can be written off by the Domestic Fund.

15. Part VII: add at the end:

23. After Division 4 of Part VII, Division 5 - Domestic Market Support Fund is added.

Division 5 - Domestic Market Support Fund

Definitions

24. In subsection 102A, the terms dairy produce, manufacturer, manufacturing milk, manufacturing milk levy, market milk levy, milk fat rate, month and protein rate are defined.

Establishment of Domestic Market Support Fund

25. The Domestic Market Support Fund will be established as the successor to the Market Support Fund and will be administered by the Corporation.

Money to be paid into Domestic Fund

26. Section 104 of the Act allows for monies to be paid into the Domestic Fund from a variety of sources. The Domestic Fund can be credited with monies:
- a) transferred from Consolidated Revenue after payment of market milk and manufacturing milk levy contributions to the Government either by a manufacturer or producer;
 - b) remaining in the Market Support Fund as at 30 June 1995 and deemed to be in excess of liabilities upon winding-up of that fund;
 - c) earned by the fund through interest on investment of fund monies;
 - d) transferred from Consolidated Revenue after payment of market milk and manufacturing milk levy contributions to the Government by an intermediary;
 - e) refunded for overpayments, incorrect payments or improper claims made against the fund, including as a result of court action;
 - f) paid by any other person to the Corporation for the purposes of the fund;
 - g) an advance paid directly from the Corporation to support the fund;
 - h) borrowed from another relevant fund, such as the promotion or industry fund, under section 85 of the Act;
 - i) repaid as principal with interest on a loan made either to the Corporation under subsection 75(2) of the Act or to another relevant fund as outlined in section 85 of the Act;
 - j) held by the Corporation after sale of dairy produce on which an entitlement under the Market Support Fund was due if such monies are in excess of that needed to meet the liabilities of the Market Support Fund upon winding-up.

Application of Domestic Market Support Fund

27. Under section 105 of the Act, monies in the Domestic Fund can be used to:
- a) pay producers a domestic market support payment in respect of manufacturing milk;
 - b) pay manufacturers the excess of any negative levy payments calculated by offsetting monthly levy liability against exported produce for that month;
 - c) pay exporters of dairy produce for which a rebate has not been paid or levy offset claimed;
 - d) pay eligible persons a refund on the manufacturing milk levy paid on dairy produce which has not been sold or exported by 30 June 2000;

- e) pay the Commonwealth for expenses incurred in the collection of levy or associated penalties;
- f) pay the Corporation for administration expenses relating to the fund;
- g) provide loans to the Corporation under subsection 75(2) of the Act or to other relevant funds under section 85 of the Act;
- h) repay the principal with interest of a loan made by either the Corporation under paragraph 74(2)(b) of the Act or from another relevant fund under section 85 of the Act;
- i) pay the Corporation for any liabilities incurred as a result of the Corporation selling dairy produce before 1 July 1995 that relate to the Market Support Fund, if such liabilities cannot be covered by a surplus in the Market Support Fund upon its winding-up.

Payment of market milk and manufacturing milk levies to Corporation

28. Subsections 106(1), 106(2) and 106(3) of the Act provide for the payment to the Corporation by the Commonwealth of amounts equal to amounts collected by the Commonwealth in respect of market support levies imposed under the *Dairy Produce Levy (No. 1) Act 1986* and under the *Dairy Produce Levy (No. 2) Act 1986* and any penalties payable under the *Primary Industries Levies and Charges Collection Act 1991*. The Consolidated Revenue fund is appropriated accordingly.

Returns to Corporation by manufacturers

29. Within ten days after the end of each month, manufacturers must submit to the Corporation, on a form approved by the Corporation, a return specifying the monthly amount of relevant dairy produce received from producers and the monthly amount of relevant dairy produce produced by that manufacturer for the purposes of manufacturing dairy produce.

Domestic market support payments

30. Under section 107, the Corporation is liable to pay the domestic market support payment on manufacturing milk that is produced in Australia before 1 July 2000.

Rate of domestic market support payments

31. The Corporation, under subsection 108(1), is to set the rate of the domestic market support payment to be paid on the manufactured milk for any particular month. In this regard, the Corporation must consider the anticipated balance of the fund at 30 June 2000 so that there is likely to be enough monies to cover liabilities without generating a significant surplus (subsection 108(2)). The Corporation must consult the Australian Dairy Industry Council in relation to the proposed rate determination for manufactured milk (subsection 108(3)).

Recipients of domestic market support payments

32. The producer of the manufacturing milk will receive the relevant domestic market support payment under subsection 108A.

Negative levy payments

33. If a manufacturer has a negative levy liability for a particular month (i.e effectively a levy credit), then the Corporation must pay the credit balance to that manufacturer as soon as practicable upon provision of the relevant documentation by the Secretary of the Department.

Levy rebates to downstream manufacturers

34. A levy rebate on manufacturing milk is payable, upon submission of the relevant documentation and subsequent approval of the claim, on exported dairy produce for which manufacturing milk levy has been paid and no rebate made or monthly levy offset claimed in respect of that produce. The rebate amount will be calculated by using the appropriate milk fat and protein rates for the month of export. The Corporation has the right to require that any documentation relating to the refund of manufacturing milk levy be verified by statutory declaration. Written notice will be given on the outcome of any rebate claim as soon as is practicable. Successful claims will be paid at the same time as written notice is forwarded to the claimant.

Import offsets against manufacturing milk levy refunds

35. A manufacturer's export milk fat and protein rebate must be reduced by any importation of dairy produce or any subsequent acquisition of produce not derived domestically and for which levy has not been originally paid. The level of reduction is equal to the total of the milk fat and protein levy rates on the respective milk fat and protein content of the imported dairy produce. This protects against export rebate claims being made on produce that is imported and subsequently exported and for which there has been no contribution toward the domestic market support scheme as the produce was not originally subject to levy. The Corporation will determine if there is a need to apply an import offset against any refunds of manufacturing milk levy and will advise the manufacturer in writing of any decision.

Refunds of levy for 1 July 2000 stocks of dairy products

36. Eligible persons are entitled to a refund on the manufacturing milk levy paid on dairy produce which has not been sold or exported by 30 June 2000 providing relevant documentation has been submitted by 31 October 2000. The amount refunded will be calculated using the appropriate milk fat and protein rates at the time of termination of the domestic market support scheme. The Corporation has the right to require that any documentation relating to the refund of manufacturing milk levy for stocks not disposed of by 30 June 2000 be verified by statutory declaration. Written notice will be given on the outcome of any refund claim as soon as is practicable. Successful claims will be paid at the same time as written notice is forwarded to the claimant.

Winding-up of Domestic Market Support Fund

37. The Domestic Fund must be wound-up as soon as is practicable after 30 June 2000. The Corporation must be satisfied at the time of winding-up that the Domestic Fund

will not incur any further liabilities or receive any further applications or claims. Any excess monies in the Domestic Fund upon winding-up, including invested assets, may be banked by the Corporation to be used, after consultation with the Council executive, for any such purposes as it thinks are appropriate. If the fund is in deficit upon winding-up, the Corporation may use monies in a relevant fund to meet such liabilities.

16. After section 111:

38. After section 111 an insertion is made detailing the determination of the milk fat or protein content of dairy produce as outlined below.

Determination of milk fat or protein content of dairy produce

39. Sometimes it may not be possible to determine the milk fat and protein content of a quantity of dairy produce. In such instances, a product's milk fat and protein content will be assumed to be equivalent to the rates prescribed by Regulation for that particular product.

17. Subsection 118(1) (definition of "relevant payment decision"):

40. After "subsection 100(4)" an insertion is made that extends the definition of a "relevant payment decision" which may be appealed to include domestic market support payments, levy refunds to downstream manufacturers and refunds of levy for 1 July 2000 stocks of dairy products.



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