

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Dairying Industry Research and Promotion

Levy Amendment Bill 1983

Dairy Industry Stabilization Levy Amendment Bill 1983

Dairy Industry Legislation Amendment Bill 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for
Primary Industry, the Hon. John Kerin, MP)

OUTLINE

Dairying Industry Research and Promotion Levy Amendment Bill 1983

The Dairying Industry Research and Promotion Levy Act 1972 imposes a levy, with certain exceptions, on the production and sale of whole milk and butter fat. The proceeds of the levy are used for dairy research and to finance the Australian Dairy Corporation in its role of promoting the sale of dairy products in Australia. The rates of levy payable at any given time for the purpose of research or promotion are set by regulation, subject to maximum rates contained in the Act, and are known as the operative rates.

The present operative rates for domestic promotion purposes are equal to the maxima contained in the Act. The Australian Dairy Corporation and the Australian Dairy Farmers' Federation recommended earlier this year that the maximum rates should be increased. They argued that, in the light of falling international prices for dairy products, it would be desirable to increase domestic promotion activity. On 17 June 1983 it was announced that the Government had accepted the industry's recommendation to increase the maxima. Since then the Corporation has recommended that the operative rate be increased to 19 cents per 100 litres produced for whole milk and to \$4.75 per 100 kilograms produced for butter fat. This recommended operative rate is also supported by the Australian Dairy Farmers' Federation.

The purpose of the amendment is to increase the maximum rates contained in the Act thus enabling higher operative rates to be set. The opportunity is also being taken to correct an anomaly in the Act whereby an outmoded reference to gallons is replaced by a reference to litres.

Dairy Industry Stabilization Levy Amendment Bill 1983

The Dairy Industry Stabilization Levy Act 1977 imposes a levy, with certain exceptions, on the production of dairy products (as defined by the Act) at a factory. The proceeds of the levy are used to finance a domestic dairy produce price stabilization scheme, the ultimate result being the equalization of returns on domestic and export sales of dairy products for all producers.

The main purpose of the proposed amendments is to include in the definition of dairy products, and hence in the stabilization scheme, buttermilk powder and whole milk powder which have been produced by the removal of water from a mixture of buttermilk or whole milk and one or more other substances. An amendment is also being made that will provide for the refund, in certain circumstances, of stabilization levy on dairy products contained in other products that are exported. Failure to refund the levy in these circumstances would reduce the export competitiveness of such products.

Dairy Industry Legislation Amendment Bill 1983

This Bill contains amendments to three Acts - the Dairy Produce Act 1924 which establishes the Australian Dairy Corporation and which also contains the legislative framework for the dairy products export return pooling scheme and the Dairy Industry Stabilization Act 1977 and the Dairying Industry Research and Promotion Levy Collection Act 1972 which contain the administrative procedures for collecting, disbursing and accounting for receipts under the respective levy Acts.

The amendments to the Dairy Industry Stabilization Act 1977 and the Dairying Industry Research and Promotion Levy Collection Act 1972 are primarily intended to bring up to date provisions relating to offences and penalties. The opportunity is also being taken, with respect to the Dairying Industry Research and Promotion Levy Act 1972, to increase, from \$10 to \$100, the amount of penalty for non-payment of levy which may be remitted by an authorized person. Amendments to both Acts will provide for an appeal to the Administrative Appeals Tribunal from a decision to refuse to remit an amount of penalty.

The amendments to the Dairy Produce Act 1924 are intended to bring up to date the Corporation's powers over contracts for the carriage of dairy products by sea to places beyond Australia, to provide a legislative basis for the manner in which the Corporation administers certain provisions of the export return pooling scheme and to make other minor adjustments to the scheme, to provide that the Corporation must credit any surplus or debit any deficit incurred by it in respect of its export sales of dairy produce to accounts maintained under the export return pooling scheme, and to bring into line with current levels the penalties for offences under the Act.

DETAILED EXPLANATION

Dairying Industry Research and Promotion Levy
Amendment Bill 1983

NO OF
CLAUSE

EXPLANATION

- 1(1) Provides mode of citation of Act.
- (2) Establishes that references in the Act to the Principal Act are references to the Dairying Industry Research and Promotion Levy Act 1972.
- 2 Provides that the Act will come into operation on the day it receives the Royal Assent. (Regulations will be made to set increased operative rates of levy as soon as possible thereafter).
- 3 The maximum operative rate of levy which may be prescribed in respect of whole milk for promotional purposes is increased from 12 cents to 24 cents.
- 4 An anomalous reference to gallons is replaced with a reference to litres.
- 5 The maximum operative rate of levy which may be prescribed in respect of butter fat for promotional purposes is increased from \$3 to \$6.

Dairy Industry Stabilization Levy Amendment Bill 1983

NO. OF
CLAUSE

EXPLANATION

- 1(1) Provides for mode of citation of Act.
- (2) Establishes that references in the Act to the Principal Act are references to the Dairy Industry Stabilization Levy Act 1977.
- 2 The Act will come into operation on the day it receives the Royal Assent. Subsequent provisions, however, limit the operation of the amendments to particular dates.
- 3(1) This sub-clause substitutes new definitions of 'buttermilk powder' and 'whole milk powder' in the Principal Act. The result of the amendment will be that products which are produced by the removal of water from a mixture of buttermilk or whole milk and one or more other substances and which contain at least 25% of buttermilk powder or whole milk powder will be subject to levy calculated having regard to how much buttermilk powder or whole milk powder the product actually contains.
- (2) This sub-clause limits the operation of sub-clause (1) so that levy is imposed on and from the first day of the month following the month on which the Act receives the Royal Assent. This limitation is necessary as levy payments are calculated on a calendar month basis.
- 4(1) (a) Together these paragraphs provide for the addition
& (b) of a new paragraph (d) to sub-section 6(3). The effect of this paragraph will be, subject to proposed sub-section 6(3A), to allow the refund of levy paid on dairy products contained in other products that are exported from Australia. The provision is necessary to preserve the export competitiveness of these products since they would otherwise need to include a component in their price to cover the domestic levy.

- 4(1) (c) Inserts new sub-sections 6(3A) and (3B). The purpose of the sub-sections is to impose practical limitations on the circumstances in which a refund will have to be provided in respect of dairy products contained in other products that are exported. There are two limitations - first, such products must contain a minimum of 50% of dairy products; secondly, the products in respect of which the refund is sought must be part of a consignment weighing at least 15 tonnes. The consignment may contain both dairy products and other products containing dairy products. The limitations recognise that the administrative costs which would be incurred if refunds had to be processed in respect of products containing only very small percentages of dairy products or in respect of numerous small shipments of such products would outweigh the benefit to be gained. Although both limitations may be varied by regulation, the power to do so is clearly circumscribed, i.e. the minimum dairy product content may be set at up to 75%, but no more, and the maximum size of consignment which may be required is 15 tonnes. If these limits did not apply it would be theoretically possible to set the requirements so as to effectively cut off any right to a refund.
- (2) Provides that the amendments made by clause 2 do not apply retrospectively.

Dairy Industry Legislation Amendment Bill 1983

NO. OF
CLAUSE

EXPLANATION

- 1 Provides for mode of citation of Act.
- 2 Provides that the Act will come into operation on the day it receives the Royal Assent.
- 3 Establishes that references in Part II of the Act to the Principal Act are references to the Dairy Produce Act 1924.
- 4 Substitutes a new section 19 dealing with conditions relating to contracts for shipment of dairy produce. Under existing section 19 it was necessary either for the Corporation to determine conditions relating to contracts for the shipment of dairy produce or for such contracts to be made only by the Corporation. The proposed new section provides that the Corporation may approve such conditions (sub-section 19(1)) and further provides that if the Corporation does so it must inform affected persons of those conditions (paragraph 19(2)(a)). Proposed paragraph 19(2)(b) requires compliance with any conditions approved by the Corporation while proposed sub-section 19(3) makes failure to comply with such conditions grounds for revoking a licence to export dairy produce. Proposed sub-section 19(4) makes it clear that failure to comply with conditions approved by the Corporation does not mean that a contract so made will be void or unenforceable. This is in direct contrast to the existing section 19 which provides as a sanction for failing to comply with conditions the result that such contracts are void. Such a sanction is not considered effective, and in any event, if relied upon, could have undesirable consequences for the international marketing of dairy products. The new sanction of cancellation of a licence is considered to be more appropriate and effective and is consistent with the approach taken in such provisions in other similar legislation. Sub-section 19(5) inserts a definition of 'licensee' for the purposes of the section.

- 5(a) Inserts new sub-sections (4AA) and (4AB) in section 20AB. These sub-sections provide more detailed notification arrangements where the assessed export price or the minimum export price is fixed or varied.
- 5(b), (c) Together these paragraphs make minor textual amendments to sub-section 20AB(5) which have the effect of providing that a payment must be made into the export return pooling scheme by exporters where the export price obtained is less than the minimum return set under sub-section 20AB(3) but that minimum return is greater than the assessed return set under sub-section 20AB(4). Since the Act does not presently require a payment in these circumstances, an exporter selling at the minimum price is required to make a payment whereas an exporter selling only marginally below that price is not, with the result that the exporter selling at the minimum price can receive a lower net return than the exporter selling below the minimum price. The amendment would overcome this anomaly.
- 5(d)
- 5(e) Substitutes new sub-sections 20AB(7) and (8) and inserts a new sub-section (8A). The new sub-sections (7) and (8) reverse the current legal requirement that the Corporation receive the proceeds of export sales on behalf of exporters and pay to them that amount, plus or minus pool payments. The new sub-sections in fact authorise the current practice of the Corporation, i.e. that exporters receive direct the proceeds of export sales and then either remit to the Corporation the required contribution to the pool or receive from the Corporation the required payment from the pool. The Corporation's practice has a sound administrative base in that it significantly streamlines the operation of the pooling scheme. It may be noted that proposed new paragraph (8) (a) requires arrangements entered into between exporters and the Corporation for the purpose of the pooling scheme to contain a provision that the exporter will furnish the Corporation with particulars of his export sales. The details of the required particulars are not spelt out in the paragraph even though it is sometimes the practice to do so in similar legislative provisions - e.g. 'such particulars as are prescribed'. In the present case such a provision is unnecessary since exporters already currently provide the necessary details to the Corporation and therefore know exactly what is

required, and also the particulars which may be required are clearly circumscribed by the paragraph itself as relating to export sales only. Proposed new sub-section (8A) is consequent upon the revised arrangements and is intended to facilitate the recovery from exporters of amounts which they are required to pay into the pool but which they have not forwarded to the Corporation at the required time.

- 6 Inserts a new section 24A into the Act. This section will require the Corporation to credit any surplus made, or debit any deficit incurred, by it as a trader on the export market to the export return pooling scheme and in particular to the production pool year to which the exported product relates, or to pool or pools as the Minister may direct. Proposed sub-section 24A(1) defines 'export sale', 'pool' and 'production period' for the purposes of the section. Proposed sub-section 24A(2) deals with surpluses, while proposed sub-sections (3) and (5) deal with deficits. As there could be circumstances where it may not be entirely appropriate or administratively feasible for the Corporation to carry out the transfer as proposed by sub-sections (3) and (5) it is considered necessary that the Minister has the power of direction as provided in sub-section (4). Proposed sub-section (6) specifies that payments by the Corporation into, or received by it from, the export return pooling scheme (the Corporation is regarded as an ordinary exporter for the purposes of the scheme and thus must contribute or receive payments accordingly), as a result of its export trading activities must be taken into account in determining whether a net surplus has been made or a net deficit incurred. Proposed sub-section (7) will enable the Corporation after consultation with the Australian Dairy Industry Advisory Committee to make recommendations to the Minister as to which pool or pools surpluses or deficits should be credited or debited.
- 7 Provides for revision, in accordance with current practice, of penalties in relation to sub-sections 14(3), 20AA(1), 25B(7) and 26(2) and section 30.
- 8 Establishes that references in Part III of the Act to the Principal Act are references to the Dairy Industry Stabilization Act 1977.

- 9 Inserts a new section 8A. The purpose of the section is to require producers who obtain a refund of levy to pass on the benefit of that refund to the exporter. The provision is necessary since the price paid to the producer for the original dairy products includes an amount to account for the amount of levy payable on those products and this amount is passed on along the purchasing chain, ultimately to the exporter. Although in practice the benefit of refunds of levy is passed on to exporters, it is desirable to provide legal support for the practice, particularly in the light of the additional circumstances in which levy will now be refundable.
- 10(a) Inserts a new sub-section 21(3A). This sub-section, consistent with established practice in relation to provisions empowering the issue of warrants to enter premises, provides that a warrant issued pursuant to sub-section (3) must specify a date on which it ceases to have effect.
- (b) Omits sub-section 21(5). The offence of obstructing etc. an authorized officer in the performance of his duties pursuant to a warrant issued under sub-section (3) is redundant as it is adequately covered by section 76 of the Crimes Act 1914.
- 11(a) Substitutes a new sub-section 24A(1) so as to allow, in accordance with the practice in other similar provisions, an appeal to the Administrative Appeals Tribunal from a decision by the Minister or an authorized person to refuse to remit an amount of penalty.
- (b) Adds new sub-sections 24A(3), (4) and (5) which will require notice of appeal rights to be given when informing persons of decisions to determine or vary production quotas and decisions on applications for remission of penalty.
- 12 Provides for revision, in accordance with current practice, of penalties in relation to section 22 and paragraph 25(e).
- 13 Establishes that references in Part IV of the Act to the Principal Act are references to the Dairying Industry Research and Promotion Levy Collection Act 1972.

- 14 Increases, in accordance with the practice in other similar provisions, the amount of penalty for late payment of levy which may be remitted by an authorized person from \$10 to \$100.
- 15(a) Revises, in accordance with current practice, provision empowering the issue of warrants to enter premises by enabling an application for warrant to be made on affirmation as well as on oath.
- (b) Inserts a new sub-section 10(3A). This sub-section, consistent with established practice in relation to provisions empowering the issue of warrants to enter premises, provides that a warrant issued pursuant to sub-section (3) must specify a date on which it ceases to have effect.
- (c) & (d) Together these paragraphs provide for the omission of sub-section 10(5). The offence of obstructing etc. an authorized officer in the performance of his duties pursuant to a warrant issued under sub-section (3) is redundant as it is adequately covered by section 76 of the Crimes Act 1914.
- 16 Inserts a new section 10A which, in accordance with the practice in other similar provisions, provides for an appeal to the Administrative Appeals Tribunal from a decision by the Minister or an authorized person to refuse to remit an amount of penalty and requires notice of appeal rights to be given at the time of notification of the original decision.
- 17 Provides for revision, in accordance with current practice, of penalties in relation to sub-section 9(1) and paragraph 11(d).