

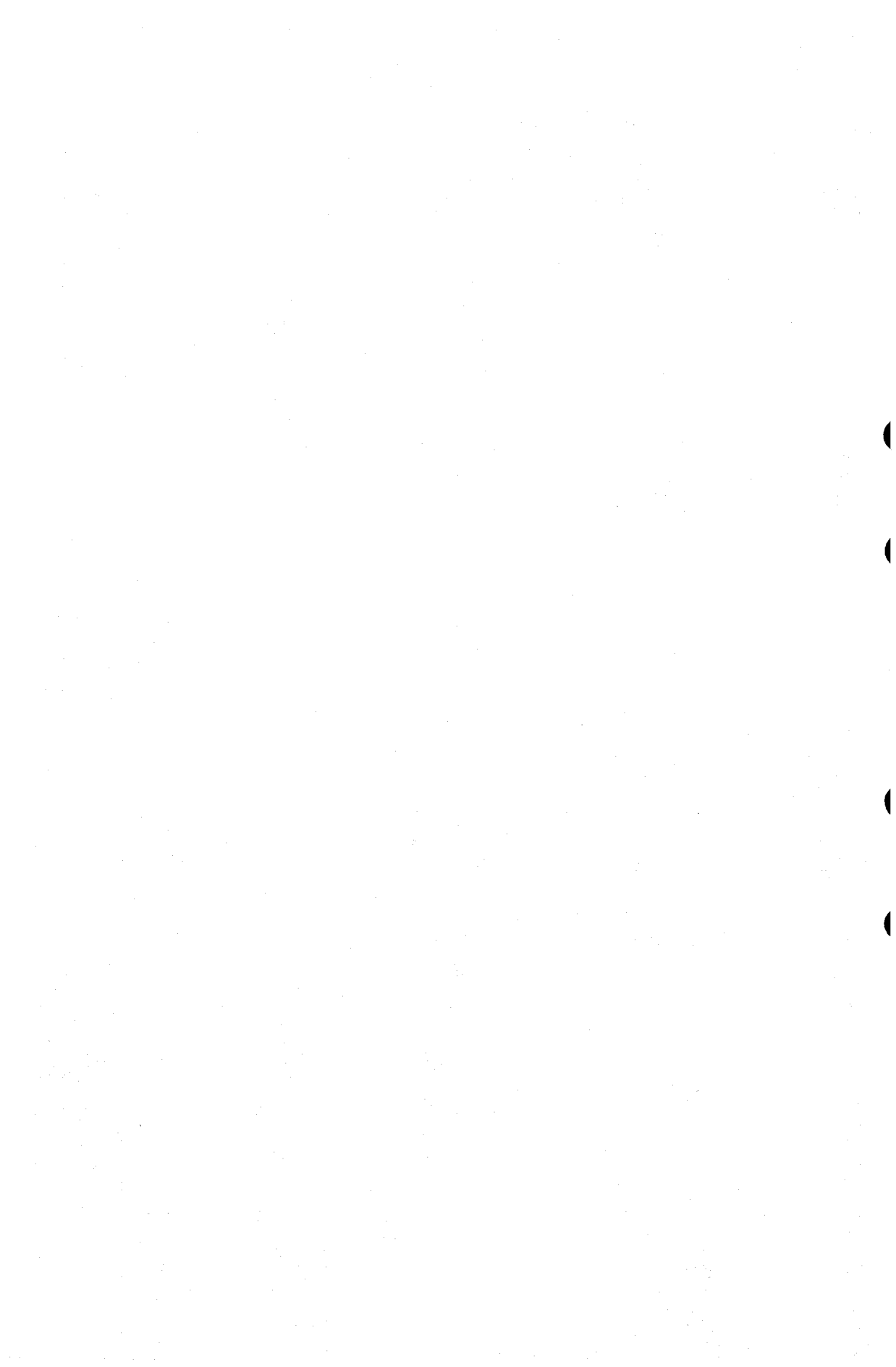
1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

DAIRY PRODUCE MARKET SUPPORT LEVY BILL 1985
DAIRY INDUSTRY STABILIZATION LEVY AMENDMENT BILL 1985
DAIRY PRODUCE MARKET SUPPORT BILL 1985
DAIRY LEGISLATION AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

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



OUTLINE

Dairy Produce Market Support Levy Bill 1985 Dairy Industry Stabilization Levy Amendment Bill 1985 Dairy Produce Market Support Bill 1985 Dairy Legislation Amendment Bill 1985

Introduction

A package of Bills is required in order to implement the Government's new marketing arrangements for the dairy industry. The Bills are: the Dairy Produce Market Support Levy Bill 1985, the Dairy Industry Stabilization Levy Amendment Bill 1985, the Dairy Produce Market Support Bill 1985 and the Dairy Legislation Amendment Bill 1985.

The new dairy marketing arrangements replace, from 1 July 1985, present stabilization and equalization arrangements with a system of market support for the dairy industry funded by a levy on all milk and a levy on certain dairy products. A number of other significant changes to present arrangements are provided for in the Bills including; an upgrading of the financial and operational capabilities of the Australian Dairy Corporation (ADC), repeal of the Dairy Industry Assistance Act 1977 and the Dairy Industry Assistance Levy Act 1977; termination of export pooling and the system of allowances to manufacturers; and a reduction in unnecessary regulation of the dairy industry.

Dairy Produce Market Support Levy Bill 1985

This Bill provides for the imposition of a levy on the milk fat content of relevant dairy produce (whole milk and whole milk dairy products). The maximum amount of the levy is 45 cents per kilogram of milk fat, with the operative rate being established by regulation following a recommendation by the ADC. The levy is payable by the producer of the relevant dairy produce. There are no direct financial implications for the Commonwealth. Costs associated with administration of the market support levy are to be met from levy receipts.

Dairy Industry Stabilization Levy Amendment Bill 1985

This Bill amends the Dairy Industry Stabilization Levy Act 1977 and imposes a levy on certain dairy products produced at a factory on or after 1 July 1985. The products on which a levy can be imposed are butter, butteroil, cheese (unless exempt) and any other product declared to be a dairy product. The levy is payable by the proprietor of the factory at which the relevant product is produced. The rate of levy will for the first year of operation (ie 1 July 1985 to 30 June 1986) be determined by regulation. For subsequent years the levy rate is calculated by a formula.

In essence, dairy product levies will be phased out under the formula, with the timing of the phase-out being determined by the extent to which production and/or market milk prices decline. When the levy rate on a particular product falls to less than \$50 per tonne no levy is payable. The only direct financial implication for the Commonwealth is the cost associated with collection of the dairy products levy which will be in the vicinity of \$120,000 per annum.

Dairy Produce Market Support Bill 1985

This Bill provides the essential elements of the new market support mechanism for the dairy industry. The Bill provides for collection and administrative arrangements for the market support levy and the dairy products levy; the establishment of a Market Support Fund and the payment of market support payments; and the establishment of a Supplementary Fund and the payment of supplementary market support payments.

Penalty provisions for non-payment of levy are included, together with procedures for the refund of levy that has been overpaid. A provision ensures that where a refund of dairy products levy has occurred due to the export of the dairy product (or a relevant product containing dairy products), the benefit of the refund is to be passed on to the exporter.

A Market Support Fund is established, primarily to receive funds stemming from the imposition of the market support levy (the levy on whole milk and whole milk dairy produce). Funds in the Market Support Fund are to be used to make market support payments to manufacturers of dairy produce that is exported. Market support payments are payable in respect of dairy produce produced in Australia on or after 1 July 1985, and exported from Australia before 1 July 1991. Market support payments increase export returns, thereby increasing the domestic price at which a manufacturer would be indifferent between an export sale and a domestic sale. Consequently market support payments provide a measure of domestic price support.

The rate of market support payment is, for dairy produce prescribed for the purpose, the difference between the export target price and the estimated average export price for that produce. The export target price is calculated as 130% of the average export price for the relevant dairy produce in the past 2 years and the year in which the target price is to apply. A lower export target price than 130% cannot be determined by the Minister otherwise than on the recommendation of the ADC. Market support payments for non-prescribed dairy produce are to be determined by the ADC having regard to the rates of market support payments applicable to prescribed dairy produce.

The ADC may also establish special market support payments in particular circumstances. This capacity is necessary to effect a transition from present arrangements and to deal with other specified contingencies. Also, provision is made for the ADC to guarantee a rate of market support payment in advance of actual export. Market support payments are paid to manufacturers by the ADC on written application by the manufacturer.

A Supplementary Fund is established and will receive, inter alia, moneys from the dairy products levy. For prescribed dairy produce, supplementary market support payments will be determined for a marketing year as a percentage of the export target price. Supplementary payments are also to be made in respect of non-prescribed dairy products. These supplementary market support payments will provide further support for prices of dairy products on the domestic market. Supplementary payments will be reduced as dairy product levies are phased out.

Penalties of \$2,000 (or imprisonment for 1 year) in the case of a natural person, and \$10,000 in the case of a body corporate, are included for offences in relation to applications for payments. As well a court may order refunds of payments from a person convicted of an offence in relation to an application for payments. The ADC may recover the amount of any payment which has been overpaid. A number of provisions relating to the administration of the arrangements are included (eg access to premises, provision of information).

The funds for making market support payments and supplementary market support payments will come from industry sources and hence there are no direct financial implications for the Commonwealth. Any underwriting contributions by the Commonwealth will be paid into the Market Support Fund. Underwriting arrangements agreed to by the Government are not provided for in legislation. Any payments required will be by means of an appropriation from Consolidated Revenue. The amount of underwriting contributions, if any, cannot be determined in advance as they will relate to the actual market circumstances arising from time to time.

Dairy Legislation Amendment Bill 1985

This Bill contains amendments to the Dairy Produce Act 1924 and the Dairy Produce Sales Promotion Act 1958.

The amendments to the Dairy Produce Act 1924 are designed to increase the commercial and operational flexibility of the ADC and to remove unnecessary regulation of the dairy industry.

The power of the ADC to lend money to manufacturers of dairy produce is clarified, as is the ADC's ability to sell on the Australian market.

The means by which the ADC can raise money is expanded to include a wider range of contemporary financial instruments, and a specific power to invest in the short-term money market is provided. In accordance with sound commercial practice the ADC is given, under certain conditions, the ability to engage in futures trading for the purpose of risk minimisation.

The ADC is to be given the power, subject to certain conditions and with Ministerial approval, to borrow from internal sources for the purpose of carrying out the functions of the ADC. For example, a temporary shortfall in a particular Fund could be met, under certain conditions, through a borrowing from another ADC fund which was in surplus rather than from the commercial market. This enhances the ADC's financial flexibility.

A specific power for the ADC to act as an agent for manufacturers in respect of export sales is now given.

Provisions relating to the ADC's power to purchase and dispose of assets are clarified and updated.

Under the new marketing arrangements export pooling is discontinued for production on or after 1 July 1985. This requires the repeal of a number of existing provisions of the Dairy Produce Act 1924. Since existing export pools will continue until finalised appropriate saving provisions have been provided. .

Termination of export pooling requires that surpluses or deficits in respect of the ADC's trading activities are credited or debited (as relevant) to the Market Support Fund.

A number of other regulatory provisions considered unnecessary under the new arrangements are repealed including the licensing of exporters of dairy products (the need for an export permit under the Export Control Act 1982 is, however, not affected); the control of exports for the purpose of ensuring adequate domestic supplies; and the ADC's power to establish conditions relating to contracts for shipment of dairy produce, which has not been exercised in recent years.

Dairy Produce Market Support Levy Bill 1985NOTES ON CLAUSESNO. OF
CLAUSEEXPLANATION

- 1 Short title
- Provides mode of citation of Bill. (This Bill imposes a levy on the milk fat contained in relevant dairy produce (whole milk and whole milk products (see comments on sub-clause 4(1)) produced and sold by the producer. The proceeds of the levy will be used to make market support payments in respect of dairy produce that is exported (see comments on Part IV of the Dairy Produce Market Support Bill 1985).)
- 2 Commencement
- Provides that the Bill will come into operation on 1 July 1985, the same date as the associated legislation, and hence the new dairy marketing arrangements as a whole.
- 3 Dairy Produce Market Support Act 1985 to be read as one with this Act
- Establishes that the Bill is to be read as one with the Dairy Produce Market Support Bill 1985, which provides collection and associated administrative procedures in relation to the levy.
- 4 Interpretation
- (1) This sub-clause establishes definitions for the purposes of the Bill. The majority of definitions are self-explanatory. The definition of "whole milk product" is important because it ensures that the milk fat contained in cream, or any other product produced from milk at the farm level and sold by the producer, is subject to levy - cf the definition of "relevant dairy produce" which includes both whole milk and whole milk products.

(2) This sub-clause provides that relevant dairy produce which is not sold by the producer but is vested in another person, including State Milk Authorities, by operation of law, is deemed to be sold by the producer for the purposes of the Dairy Produce Market Support Levy Bill 1985 and the Dairy Produce Market Support Bill 1985. This provision clarifies the liability of a producer to pay levy on relevant dairy produce that becomes vested in a person or body by operation of the law. It also clarifies the liability of a person or body in whom relevant dairy produce becomes vested to pay an amount equal to the levy to the Commonwealth.

(3)(a) Provides that relevant dairy produce which is not sold by the producer but is supplied by the producer to another person for sale or processing by that other person on behalf of the producer is deemed to have been sold by the producer and purchased by the other person. This provision clarifies the liability of a producer to pay levy on relevant dairy produce that is supplied to a co-operative dairy factory for processing by that factory. It also clarifies the liability of a co-operative dairy factory which sells or processes relevant dairy produce on behalf of a producer to pay an amount equal to that levy to the Commonwealth.

(3)(b) Provides that any subsequent sale of relevant dairy produce by or on behalf of the producer shall be disregarded for the purpose of imposition of levy. This provision is necessary to ensure that double levy is not imposed where relevant dairy produce is supplied by the producer to a co-operative dairy factory.

5

Imposition of levy

Establishes that levy is imposed on the milk fat content of relevant dairy produce which is produced by the producer on or after 1 July 1985 and is sold by that producer before 1 July 1991. This establishes the intention that the marketing arrangements are to operate for a 6 year period from date of implementation.

6

Amount of levy

(1) Establishes that the rate of levy is a prescribed rate per kilogram of milk fat contained in relevant dairy produce.

- (2) Provides that the rate of levy shall not exceed 45 cents per kilogram of milk fat contained in relevant dairy produce.
- (3) Provides that where it is not possible to ascertain the amount of milk fat contained in relevant dairy produce
- (a) in the case of whole milk, one litre of whole milk shall be deemed to contain 45 grams of milk fat; or
 - (b) in the case of other relevant dairy produce, one unit of the product shall be deemed to contain such weight of milk fat as is prescribed by regulations.

This provision provides for instances where it is not practical or possible to ascertain the actual fat content of relevant dairy produce, such as the case of very small or remote factories.

7

By whom levy payable

Establishes that the producer of relevant dairy produce is liable to pay levy.

8

Regulations

Establishes that the Governor-General may make regulations consistent with the Bill. This clause also provides that, in making regulations prescribing a rate of levy for the purposes of 6(1), any recommendation made to the Minister by the Australian Dairy Corporation shall be taken into consideration.

Dairy Industry Stabilization Levy Amendment Bill 1985NOTES ON CLAUSES

<u>NO. OF CLAUSE</u>	<u>EXPLANATION</u>
1	<u>Short title, &c.</u>
(1)	Provides mode of citation of Bill.
(2)	Establishes the <u>Dairy Industry Stabilization Levy Act 1977</u> as the Principal Act. This Act is used as the basis for establishing the dairy products levy under the new arrangements because the method of levy imposition is very similar.
2	<u>Commencement</u> Provides that the legislation will come into operation on 1 July 1985.
3	Changes the mode of citation of the Principal Act to the <u>Dairy Products Levy Act 1977</u> . This change reflects the altered purpose for which the product levy proceeds will be used ie the proceeds of the levy will be used, until the levy is phased out completely (see comments on clause 7), to make supplementary market support payments (see comments on Part V of the Dairy Industry Market Support Bill 1985). The levy currently imposed under the <u>Dairy Industry Stabilization Levy Act 1977</u> is used for other purposes.
4	<u>Market Support Act to be read as one with this Act</u> Establishes that the Bill is to be read as one with the <u>Dairy Industry Market Support Bill 1985</u> which provides the collection and administrative procedures in relation to the levy.
5	<u>Interpretation</u> Amends section 4 of the Principal Act by omitting those definitions which are not relevant under the new arrangements. The only products which are likely to be levied under the new arrangements are butter, butteroil, and cheese. However, provision is made for additional products to be prescribed as dairy products should it appear, shortly before the inception of the new arrangements, that the arrangements would not adequately support the domestic price of wholemilk powder, skim milk powder or casein. The term "dairy product" is redefined accordingly.

6

Imposition of levy

Omits sub-sections 6(1) and 6(2) of the Principal Act. It is unnecessary to provide for commencement dates for levy imposition other than the date of commencement of the legislation. Section 6(1) as amended will provide for levy to be imposed on dairy products produced at a factory on or after 1 July 1985.

7

Repeals section 7 and substitutes a new proposed section in view of the revised method of setting the rate of levy on dairy products -

Rate of levy

New sub-section 7(1) will establish that the rate of levy to apply to dairy products produced on or after 1 July 1985 and sold before 1 July 1986 is to be fixed by regulation. In this first year the rate of levy will be set at a level which is intended to maintain the level of support for domestic prices for the products at around the June 1985 level.

New sub-sections (2)-(7) and (11) will establish the formula for progressively reducing the rate of levy imposed on dairy products (and hence the level of domestic price support) for 1986/87 and subsequent years. The speed at which the rate of levy will be reduced is affected by changes in the level of milk production and the market milk price. If there is a large fall in either the market milk price or the level of milk production, then the rate of decrease of the levy will be abated.

New sub-sections (8) and (9) will establish procedures for notifying levy payers of the rates of levy that will operate each year.

New sub-section (10) specifies that references in the provision to "market milk" are references to milk used for direct human consumption. This reflects the fact that it is movement in the relatively high-priced fresh milk market that affects the speed with which the reduction in the levy sale will occur, and not the lower priced manufacturing milk market.

8

Repeals section 9 and substitutes a new proposed section which specifies that under certain circumstances levy on dairy products will cease to be payable -

Levy to cease to be payable in certain circumstances

New sub-sections 9(1), (2) and (3) will provide that where the levy that would be imposed on a dairy product during a particular year would be less than \$50 per tonne, levy is not payable on that product.

New sub-section (4) will ensure that the operation of sub-sections (1), (2) and (3) in no way implies that any levy ceases to be due and payable that has become due and payable prior to levy ceasing to be imposed.

9

Regulations

Repeals section 11 of the Principal Act and replaces it with a new proposed section which provides for the making of regulations necessary for the administration of the legislation. The major change effected is to remove consultative procedures which are no longer relevant given the revised method of setting rates of levy and the restricted range of products which will be subject to levy.

10

Continued application of Principal Act and of regulations under that Act

- (1) This provision is a savings provision designed to ensure the continued application of the Dairy Industry Stabilization Act 1977 to dairy products produced prior to 1 July 1985. This will enable final accounting for levy imposed but not collected on such products as at 1 July 1985 when the Act is repealed.
- (2) This provision preserves in force, for the purposes of the amended Act, certain regulations made under the Principal Act, the first being regulations exempting certain varieties of cheese from levy. It is essentially cheddar and cheddar-type cheeses which are now subject to levy and which will continue to be subject to levy. The second regulation preserved prescribes the minimum percentage of dairy products which must be contained in other products that are exported before that dairy produce can qualify for a refund of levy.

Dairy Produce Market Support Bill 1985NOTES ON CLAUSESNO. OF
CLAUSEEXPLANATIONPART I - PRELIMINARY

1

Short title

Provides mode of citation of Bill. (This Bill provides collection and administrative arrangements for the levies imposed by the Dairy Produce Market Support Levy Bill 1985 and the Dairy Industry Stabilization Levy Act 1977 as amended by the Dairy Industry Stabilization Levy Amendment Bill 1985 and also authorises the payment, by the Australian Dairy Corporation, of market support payments and supplementary market support payments in respect of dairy produce that is exported.)

2

Commencement

Provides that the legislation will come into force on 1 July 1985.

3

Repeal

(1)

Provides for the repeal of the Dairy Industry Stabilization Act 1977 (and subsequent amendments) which will be replaced by this Bill.

(2)

Provides for repeal of the Dairy Industry Assistance Act 1977 and the Dairy Industry Assistance Levy Act 1977. These Acts were passed in 1977 but have never been proclaimed. It was intended that they be proclaimed in the event of a threat to the orderly marketing arrangements for milk established by the States but have been seen by the dairy industry to inhibit inter-State trade in milk. The repeal of these Acts is consistent with the intention of reducing the amount of regulation by the Government of the dairy industry.

(3)

Provides for the continued application of the Dairy Industry Stabilization Act 1977 and regulations made under that Act in relation to leviable dairy products produced up until 30 June 1985.

4

Interpretation

- (1) Provides definitions for the purposes of the Bill. The majority of terms are self-explanatory, however, it is worth noting that the Australian Dairy Industry Conference, denoted by the term "Conference", is the peak representative body of the Australian dairy industry. The Conference has a consultative role in relation to the operation of parts of the Bill - see especially clauses 19 and 27.

The definition of "dairy produce" is tied to the definition of that term in the Dairy Produce Act 1924 as amended by the Dairy Legislation Amendment Bill 1985. Under that definition will fall all dairy products with respect to which the Australian Dairy Corporation has responsibility, either generally, or especially in relation to making market support payments, under the new legislative arrangements.

- (2) Provides that levy imposed on the production of cheese is to be calculated on the matured weight of the cheese. Cheese kept for maturation loses weight in the form of moisture.
- (3) Defines the year commencing on 1 July 1985 and each subsequent year to be a marketing year for the purposes of the Bill. Marketing years are relevant in determining rates of market support payments to apply during these years - see especially section 19.

5

Act to bind Crown

Provides that the States (including the Northern Territory) and their authorities are subject to the legislation.

PART II - COLLECTION OF MARKET SUPPORT LEVY

6

Time for payment of market support levy

- (1) & (2) Provide that market support levy (the levy on the milk fat contained in whole milk and whole milk produce imposed by the Dairy Produce Market Support Levy Bill 1985), excluding any penalty levy at any time payable, is to be paid 28 days after the month in which the produce on which levy is imposed is sold.

7 Liability of purchaser from producer

- (1) - (7) Provide the arrangements whereby levy on milk fat may be paid to the Commonwealth on behalf of the producer by the purchaser of the product, who may in turn deduct the amount paid to the Commonwealth from payments for the product to the producer.
- (8) Provides that the Minister may in exceptional circumstances release a purchaser of leviable product from liability to pay levy on behalf of the producer.

8 Penalty for non-payment of market support levy

- (1), (2) & (5) Provide for imposition of a penalty of 20% per annum on any levy not paid on time by either the producer or by a person liable to pay an amount on behalf of a producer under clause 7.
- (3) Provides for the Minister or an authorized person to remit an amount of penalty that is payable.
- (4) Limits the amount of penalty that may be remitted by an authorized person to \$1,000.

9 Recovery of market support levy

Provides that outstanding amounts relating to the levy on milk fat are debts due to the Commonwealth.

10 Refund of market support levy

- (1) Provides that the Commonwealth is to refund any levy or amount on account of levy that is overpaid.
- (2) Provides that the Australian Dairy Corporation, to which the levy proceeds are paid, is to refund to the Commonwealth amounts corresponding to amounts refunded by the Commonwealth under sub-section (1).

PART III - COLLECTION OF DAIRY PRODUCTS LEVY11 Time for payment of dairy products levy

- (1) - (4) Provide that dairy products levy (the levy imposed under the proposed Dairy Products Levy Act 1977), excluding any penalty levy payable, is to be paid within 14 days after the month in which the products on which levy is imposed are sold or used in the production of other products.

- 12 Penalty for non-payment of dairy products levy
- (1) - (4) Provide for the imposition of a penalty of 20% per annum on any levy not paid on time, and for the Minister or an authorised person to remit an amount of penalty that is payable. The amount of penalty that may be remitted by an authorized person is limited to \$1,000.
- 13 Recovery of dairy products levy
- Provides that outstanding amounts relating to the levy on dairy products are debts due to the Commonwealth.
- 14 Refund of dairy products levy
- (1) Provides that the Commonwealth is to refund any levy that is overpaid.
- (2) Provides that the Corporation, to which the levy proceeds are paid, is to refund to the Commonwealth amounts corresponding to amounts refunded either by the Commonwealth under sub-clause (1) or pursuant to the provisions of the proposed Dairy Products Levy Act 1977 which provide for the refund of levy on products that are exported (see comments on clause 15).
- 15 Benefit of refund of dairy products levy to be passed on to exporter
- (1) & (2) This sub-section requires producers who obtain a refund of dairy products levy to pass on the benefit of that refund to the exporter. Refunds of levy are provided in respect of dairy products that are exported since the levy is the mechanism for maintaining the domestic price of those kinds of dairy products in excess of the export price plus the combined rate of market support payments and supplementary market support payments (see comments on Parts IV and V of this Bill). 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. (A provision in similar terms has applied under the Dairy Industry Stabilization Act 1977 in respect of stabilization levy.)

PART IV - MARKET SUPPORT FUND
AND MARKET SUPPORT PAYMENTS

- 16 Dairy Produce Market Support Trust Fund
- (1) & (2) Establish the Dairy Produce Market Support Trust Fund and vest it in the Australian Dairy Corporation. It is into this Fund that the levy imposed by the Dairy Produce Market Support Levy Bill 1985 (the levy on milk fat) is paid and from this Fund that market support payments are paid to manufacturers on export of dairy produce.
- 17 Payments into Market Support Fund
- (1) Provides for the payment to the Corporation by the Commonwealth of amounts equal to amounts of levy collected by it under the Dairy Produce Market Support Levy Bill 1985.
- (2) Provides for other money to be credited to the Fund, including: any Commonwealth underwriting contributions; monies lent by the Corporation, including from Corporation Trust Funds, for the purposes of the Fund; interest on investments of the money of the Fund; any surpluses that might result from time to time from sales of dairy produce by the Corporation and the amount, if any, remaining to the credit of the Dairy Produce Supplementary Market Support Trust Fund (see clauses 28 and 35) on its winding up. (A provision to allow borrowing among certain Corporation Funds is proposed in the accompanying Bill to amend the Dairy Produce Act 1924.)
- 18 Market Support Payments
- This section authorises the payment to manufacturers of dairy produce of market support payments in relation to dairy produce produced in Australia on or after 1 July 1985 and exported from Australia before 1 July 1991. The latter date reflects that the legislative arrangements in relation to dairy produce established by this Bill and the related legislation will cease to operate after 6 years ie on 30 June 1991.

19 Rate of market support payments in relation to
prescribed dairy produce

- (1) In respect of dairy produce that is prescribed (by regulations) to be dairy produce for the purposes of the legislation, sets the rate of market support payment at the difference between two values known as the export target price and the estimated average price. The method of calculating these values is set out in subsequent sub-clauses. The products which will be initially prescribed will include at least those which were prescribed products under the old stabilization/export pooling arrangements and about which, consequently, there is a satisfactory data base for accurately determining export target prices and estimated average prices.
- (2) This sub-clause provides that the export target price for any particular product will be calculated by multiplying a percentage (to be 130% except in exceptional circumstances - see comments on sub-clauses (6) and (7)) by a three year average of estimated export prices. The three years involved are the year in question and the previous two years.
- (3) This sub-clause provides that (subject to sub-clauses (4) and (5)) the estimated average price for any particular product in a particular year will be the price estimated by the Corporation for the purpose of sub-section (2) for that year, unless the Corporation determines that another price should be the price. This price will effectively determine the level of market support payment and can be varied if the Corporation believes that market circumstances have changed sufficiently to make the initial calculation for a year substantially inaccurate.
- (4), (5)
& (6) These sub-clauses require the Corporation to notify the Minister if it believes that the estimated average price for products prescribed for the purpose of the sub-clauses should be set at a level which, because of the Government's intention to underwrite, for certain products, an average export price for the year to the extent of 90% of the three year average of export prices, would trigger a Government financial commitment. A determination by the Corporation of such a price will only be effective if approved by the Minister. Products prescribed for the purposes of the sub-clauses would be expected to be a narrower group than products prescribed for the purposes of the Bill.

- (7) & (8) These sub-clauses provide that the Minister may not determine that the relevant percentage for the purpose of determining the export target price will be less than 130% unless such lower figure has been recommended to the Minister by the Corporation and unless the Corporation, before making that recommendation, has consulted with the Conference. The Conference need not be consulted, however, when the Corporation believes that a lower percentage should be determined because there will be insufficient funds generated by the market support levy to support a higher target price.

20 Rate of market support payments in relation to dairy produce other than prescribed dairy produce

In respect of dairy produce that is not prescribed dairy produce for the purposes of the Bill, establishes that the rates of market support payment will be rates determined by the Corporation having regard to the rates of market support payment applying in respect of prescribed produce.

21 Special rates of market support payments

- (1) Provides that in the case of countries which have imposed restrictions on the quantity of dairy produce which Australia may export to that country, the Corporation may determine a special rate at which market support payment is payable, including a zero rate. This section relates to such markets as the USA and EEC and will allow the Corporation to establish rates to preserve the historically determined pattern of equity between manufacturers which has resulted from the way export sales to such markets have been dealt with in the past.
- (2) & (3) Empower the Corporation to determine special rates of market support payment for dairy produce produced in the 1985/86 production year which is exported pursuant to arrangements entered into prior to 22 March 1985. This provision is intended to deal with product which was committed for export prior to the announcement of the new arrangements and will enable the avoidance of large losses to some persons who made decisions on the basis of marketing arrangements in force at the time.
- (4) Empowers the Corporation to set a special rate for dairy produce which is manufactured from ingredients including imported dairy produce, thereby allowing a lower rate to be set so that imports of dairy produce are not indirectly assisted by the market support arrangements.

- 22 Corporation may guarantee rate of market support payments
- This section provides that a person may apply to the Corporation for a guaranteed rate of market support payment to operate over a specified period or in respect of a specified contractual arrangement. This provision recognises that there may be a need at times for certainty as to the rate of support payment to allow Australian traders and manufacturers to compete effectively against traders from other countries.
- 23 Applications for market support payments
- (1), (2) Provides that a manufacturer who believes that he & (3) or she is entitled to a market support payment may apply to the Corporation, on a form approved by the Corporation, to be paid that payment. Information supplied on the form may be required to be supported by a statutory declaration.
- (4) & (5) The Corporation is required to inform applicants of its decision on the application, and where the decision is to make a payment, that payment is to be made at the time of notification.
- 24 Application of Market Support Fund
- Specifies the purposes for which money in the Market Support Fund may be expended. In particular, paragraph (e) provides for the Commonwealth to be reimbursed from the Fund for the costs incurred in collecting the market support levy, paragraph (h) makes provision for payments to the Supplementary Fund (see Part V) (this provision is a necessary safeguard to ensure that there are sufficient funds for the making of supplementary payments), while paragraph (j) makes provision for deficits arising from the Corporation's trading activities to be paid to the Corporation from the Fund.
- 25 Money standing to the credit of Market Support Fund to be kept in separate bank account
- Standard provision - self-explanatory.
- 26 Investment of money standing to credit of Market Support Fund
- Standard provision - self-explanatory.

27 Winding up of Market Support Fund

- (1) & (4) The arrangements established by the present legislation will terminate on 30 June 1991. At that time the Market Support Fund is to be wound up but any investments of Fund moneys still current at that time may be transferred to the credit of the Corporation.
- (2) & (3) Any money in the Fund, and investments held for the purposes of the Fund at the time of winding up of the Fund, are to be used for such purposes as the Corporation believes are appropriate, following consultation with the Conference.

PART V - SUPPLEMENTARY MARKET SUPPORT FUND
AND SUPPLEMENTARY MARKET
SUPPORT PAYMENTS

28 Dairy Produce Supplementary Market Support Trust Fund

- (1) & (2) Establish the Dairy Produce Supplementary Market Support Trust Fund and vest it in the Corporation. It is into this Fund that the levy imposed by the proposed Dairy Products Levy Act 1977 (the levy on dairy products) is paid and from this Fund that supplementary market support payments are paid to manufacturers on export of dairy produce.

29 Payments into Supplementary Fund

- (1) Provides for the payment to the Corporation by the Commonwealth of amounts equal to amounts of levy collected by it under the proposed Dairy Products Levy Act 1985.
- (2) Provides for other money to be credited to the Fund, including money transferred by the Corporation from the Market Support Fund. Money might be transferred from this Fund if there were insufficient money in the Supplementary Fund to make all supplementary market support payments.

30 Supplementary market support payments

- (1) Provides that a supplementary market support payment is payable provided a market support payment is payable.
- (2) Provides for payment of supplementary market support payments at the same time as market support payments are paid.

31

Amount of supplementary market support payments

- (1) Provides that the Minister shall, for 1985-86, determine a percentage for the purposes of the provision. This percentage is the percentage which will determine the rate of supplementary market support payments in that year. This provision allows the Minister to establish rates of supplementary market support payments for 1985-86 consistent with the level of domestic market support current at 30 June 1985.
- (2) & (3) Provide that, in respect of the remaining years up to 30 June 1991, the Corporation shall determine a percentage for the purposes of the provision, being a percentage that in the opinion of the Corporation would result in the aggregate of all supplementary market support payments likely to be paid in respect of dairy produce exported during that marketing year as nearly as possible approximating the aggregate of the amounts of dairy products levy likely to be received in respect of sales of dairy products made during that marketing year.
- (4) In respect of dairy produce that is prescribed dairy produce for the purposes of the legislation (see comments on clause 19), provides that the rate of supplementary market support payment will be the export target price for that product multiplied by the percentage determined for the purposes of this provision under sub-clause (1) or (2).
- (5) In respect of dairy produce that is not prescribed for the purposes of the Bill the rate of supplementary market support payment will be determined by the Corporation having regard to the rates of supplementary support payment determined under sub-clause (4).
- (6) In respect of dairy produce for which special rates of market support payment have been determined under clause 21, the rate of supplementary market support payment will be a special rate determined by the Corporation.
- (7) In respect of dairy produce for which the rate of market support payment has been fixed under clause 22, the rate of supplementary market support payment will be determined in accordance with the procedures applying in sub-clauses (4) and (5).

32 Application of Supplementary Fund

Defines the purposes for which money in the Fund may be used. In particular paragraph (f) provides that any money in the Fund at the time it is wound up will be paid into the Market Support Fund.

33 Money standing to credit of Supplementary Fund to be kept in separate bank account

Standard provision - self-explanatory.

34 Investment of money standing to credit of Supplementary Fund

Standard provision - self-explanatory.

35 Winding up of Supplementary Fund

This clause provides for the Supplementary Fund to be wound up once levy ceases to be payable on all products under the Dairy Industry Stabilization Levy Act 1977 as amended by the Dairy Industry Stabilization Levy Amendment Bill 1985. Any balance in the Fund at this time is to be paid into the Market Support Fund. Any investments of money of the Fund at this time may be transferred to the credit of the Market Support Fund.

PART VI - MISCELLANEOUS

36 Exporters other than manufacturers to furnish details of exports

This section requires persons who export dairy produce that they have not themselves manufactured to notify the Corporation of the export on a form approved by the Corporation. Exporters are also to notify that manufacturer that the export has taken place. The purpose of this notification is to ensure that manufacturers know when they are entitled to make application for market support payments and also to ensure that the Corporation has all the information it needs to process the applications. The information supplied to the Corporation may be required to be supported by a statutory declaration.

37 Power to call for returns

Information necessary for the operation of the legislation, and also of the Dairy Produce Market Support Levy Bill 1985 and the Dairy Industry Stabilization Levy Act 1977 as amended by the Dairy Industry Stabilization Levy Amendment Bill 1985 may be requested by an authorized person. Authorized persons will be Investigation Officers of the Department of Primary Industry and a number of officers in the Corporation.

38 Offences in relation to applications for payments under this Act

This clause provides penalties for falsely obtaining payments under the legislation or knowingly providing false information to the Corporation in relation to a payment under the legislation.

39 Offences in relation to returns, &c.

This clause provides penalties for failing to provide returns or information and for providing false information under the legislation.

40 Court may order refunds

Where a person is convicted of an offence under clause 38 a court may order that any payment that was falsely obtained be repaid, as well as imposing a penalty. The Corporation is authorised to deduct any amount so ordered to be repaid from money owing to the person concerned and a certificate of a court attesting that the amount has been ordered to be repaid is, upon filing in a civil court, enforceable as though it were a final judgment of that court.

41 Overpayments

The Corporation is authorised to recover overpayments.

42 Access to premises

Standard provision - self-explanatory.

43

Reconsideration and review of decisions

This clause provides a review process in respect of decisions that may be taken under the Bill by the Minister, the Corporation or an authorized person that directly affect the rights of an individual. Reviewable decisions are -

decisions by an authorized person or the Minister not to remit an amount of penalty that is payable under the Bill

decisions by the Corporation as to the eligibility of a person for a market support payment or supplementary market support payment

decisions by the Corporation as to the amount of market support payment or supplementary market support payment that is payable to a person

decisions by the Minister or the Corporation not to extend the time within which an application may be made by a person for a review of a reviewable decision.

44

Secrecy

Because a great deal of the information that will be supplied by manufacturers and exporters of dairy produce is commercially valuable, it needs to be given appropriate protection. This section prevents members and employees of the Corporation and officers of the Department of Primary Industry to whom such information is made available, from disclosing that information to any unauthorised person. The Corporation is not, however, prevented from publishing information in a form which would not disclose information relating to individuals ie information of a statistical or aggregate nature.

45

Appointment of authorized persons

An administrative provision - self-explanatory.

46

Regulations

Standard provision - self-explanatory.

Dairy Legislation Amendment Bill 1985NOTES ON CLAUSESNO. OF
CLAUSEEXPLANATIONPART I - PRELIMINARY

1

Short title

Provides mode of citation of the Bill. (This Bill makes amendments to the Dairy Produce Act 1924 that are consistent with the revised powers and functions of the Australian Dairy Corporation under the new dairy marketing arrangements being introduced by the associated legislation. Minor consequential amendments are also made to the Dairy Produce Sales Promotion Act 1958.)

2

Commencement

Provides that the legislation will come into operation on 1 July 1985, along with other provisions of comprehensive new dairy marketing arrangements.

PART II - AMENDMENTS OF DAIRY PRODUCE ACT 1924

3

Principal Act

Establishes that references in Part II to the Principal Act are references to the Dairy Produce Act 1924.

4

Interpretation

- (1)(a) This provision is one of several updating the Australian Dairy Corporation's financial provisions, and inserts a more flexible definition of "approved bank".
- (b) Replaces a number of definitions and omits the definition of "dairy products" which is no longer relevant under the new arrangements -
- "dairy industry" is defined more comprehensively, especially to include the export sector of the industry

the definition of "dairy produce" is replaced with a definition which will enable coverage of a wider range of dairy produce. Any dairy produce falling within the definition will qualify for market support payments under the Dairy Industry Market Support Bill 1985.

The majority of dairy produce which is to be included in the definition will be prescribed (by regulation). As it is possible that new products may be developed or that not all products that might qualify for market support payments will be known in advance, the Corporation will be able to determine by notice in writing, that particular products are dairy produce. Such determinations by the Corporation will be reviewable by the Parliament and may be disallowed by either House (see comments on clause 20).

(c) Definitions of "futures contract" and "futures market" are inserted, consistent with the new capacity of the Corporation to operate in this field (see comments on clause 14)

(d) Further definitions are inserted -

milk is now included in the definition of "dairy produce" and hence is itself defined

"relevant Fund" is defined in association with amendments which will enable the Corporation to make "borrowings" between the various Funds which it is charged with administering (see comments on clause 16)

(2) This sub-clause ensures that the omission of the definition of dairy products does not affect certain appointments to the Corporation viz those which have been made on the basis of the member being appointed to represent particular sections of the dairy industry responsible for producing various dairy products.

5 Constitution of Corporation

An incorrect reference to "Commission" is replaced by a reference to "Corporation" in section 5 of the Dairy Produce Act 1924.

6

Remuneration

These are mechanical amendments consistent with current practice on the Remuneration Tribunal's role in respect of setting remuneration for members of statutory corporations and with current drafting practice.

7

Functions of Corporation

(a) & (b)

Together these paragraphs provide for the addition of two extra functions for the Corporation -

new paragraph 13(ea) will provide an additional function for the Corporation to make loans to manufacturers of dairy produce. Presently the Corporation is empowered to provide loans to producers of dairy produce by a regulation made under paragraph 13(f) of the Act (viz regulation 4A of the Dairy Produce Regulations) and the opportunity has been taken to make this a specific function of the Corporation under its enabling Act. A power consistent with this function is provided in the proposed new section 16 of the Dairy Produce Act 1924 (see comments on clause 12).

new paragraph 13(eb) provides an additional function for the Corporation to deal in dairy produce on the Australian market. Recently a special arrangement had to be made to empower the Corporation, under a regulation made pursuant to paragraph 13(f) of the Dairy Produce Act 1924, to sell cheese on the domestic market which had been purchased for export to Japan but could not be placed on that market after market circumstances changed. The opportunity has been taken to provide a general function for the Corporation to sell dairy produce on the domestic market and a specific power to do so in circumstances approved by the Minister is also provided (see comments on clause 11).

(c)

Provides an additional Constitutional basis for a number of the Corporation's powers and functions.

8 Powers of Corporation

- (a) & (b) Together these provisions insert in section 13A of the Dairy Produce Act 1924 a specific power for the Corporation to act as an agent for manufacturers in respect of export sales of dairy produce.

9 Repeal of section 13B

The Corporation's present powers to restrict the export of dairy products (eg in the belief that otherwise domestic requirements would not be met) is repealed by this section. Given the intention to reduce regulation under the new marketing arrangements such a power is inappropriate.

10 Power to make regulations controlling export of dairy produce

- (a) Consistent with the aim to reduce the amount of regulation of the dairy industry, the requirement for exporters of dairy produce to be licensed has been removed and this section of the Dairy Produce Act 1924 will be amended accordingly.
- (b) This amendment provides that in making regulations prescribing conditions and restrictions to be complied with before dairy produce can be exported the Government may act without a recommendation from the Corporation. Under the old provision a recommendation from the Corporation was essential before such regulations could be made. The Corporation retains the capacity to make recommendations. This amendment is primarily intended to overcome the present difficulty whereby the Corporation is required to recommend action that the Government should take to fulfil its obligations under the General Agreement on Tariffs and Trade - International Dairy Arrangement.
- (c) & (d) These amendments revise the power to restrict the export of dairy produce to particular countries by enabling regulations to be made to prohibit the export of particular dairy produce rather than all dairy products as was previously the case.

11 Power of Corporation to purchase dairy produce, &c.

(a) The general power of direction of the Minister in respect of the Corporation's power to deal in dairy produce in section 15 of the Dairy Produce Act 1924 is removed by this amendment. This general power of direction is replaced by more specific requirements (see comments on paragraph (b)).

(b) Three new paragraphs specifying the circumstances in which the Corporation may deal in dairy produce are inserted by this provision -

new paragraph 15(1)(a) will empower the Corporation to purchase dairy produce, subject to the approval of the Minister

new paragraph 15(1)(b) will empower the Corporation to sell dairy produce it has purchased on the domestic market in circumstances approved by the Minister. The need for such action could arise, for example, if produce purchased by the Corporation for export cannot be in the event exported because of changed market circumstances

new paragraph 15(1)(ba) will empower the Corporation to sell dairy produce it has purchased on the export market without any requirement for Ministerial approval.

(c) This provision removes the restriction on the amount which the Corporation may pay for dairy produce prior to its export. This restriction is no longer considered to be necessary.

12 Inserts a new section 16 into the Dairy Produce Act 1924 dealing with the Corporation's lending powers -

Power of Corporation to lend money

New sub-section 16(1) will provide that the Corporation may lend money to manufacturers of dairy produce who have "prescribed dairy produce" in store. Prescribed dairy produce is dairy produce which is prescribed for the purpose of this provision.

New sub-section 16(2) will provide that the maximum amount which the Corporation can lend is restricted, in respect of dairy produce that is prescribed dairy produce for the purposes of the Dairy Produce Market Support Bill 1985, to the underwritten level (ie 90% of the 3 year average of estimated export returns, with the relevant three years being the past two years and the year to which underwriting is to apply) plus the total of market support payments payable per unit of the product. Products that will be prescribed products for the purposes of the Dairy Produce Market Support Bill 1985 will be the major products, such as butter and wholemilk powder, about which sufficient information is known to be able to calculate the rate of market support payment by reference to average export prices.

Maximum loan amounts for products other than those which are prescribed for the purposes of the Dairy Produce Market Support Bill 1985 are to be determined by the Corporation having regard to the maximum amounts for products prescribed for purposes of the Dairy Produce Market Support Bill 1985.

New sub-section 11(3) will specify the basis for making and securing loans made by the Corporation. These are the same as those presently applying under Regulation 4A of the Dairy Produce Regulations, with minor drafting changes.

New sub-section 11(4) will provide definitions relevant to the section.

13

Repeal of sections 17, 19, 20, 20AA and 20AB

Provides for the repeal of a number of redundant sections of the Dairy Produce Act 1924.

Section 17 is repealed since the Corporation is now authorised by the amendment to section 13A to act as an agent for manufacturers of dairy product in respect of export sales.

It is no longer considered necessary for the Corporation to approve conditions relating to contracts for shipment of dairy produce and hence section 19 is repealed.

Under the new arrangements export pooling is eliminated for production after 30 June 1985. Hence those sections in the Act dealing with export pooling (viz sections 20 (apart from sub-section (1); see below), 20AA and 20AB) are repealed. Appropriate savings provisions are included to enable existing export pools to continue, until closed in accordance with existing procedures. Sub-section 20(1), which allows the Corporation to regulate a number of matters in relation to the export of dairy products, is repealed given the aim of reducing regulation of the dairy industry.

14

Replaces section 23 of the Dairy Produce Act 1924 with a new section which will expand the Corporation's borrowing powers, and inserts a new section 23A which provides for the Corporation to enter futures contracts, in line with its revised commercial role under the new arrangements.

Raising of money by Corporation

New sub-section 23(1) will enable the Corporation to raise money by the use of contemporary financial instruments such as the discounting of commercial bills and the issue of promissory notes in addition to borrowing from more traditional sources. As well, the Corporation will be able, for the purpose of carrying out its functions, to utilise, with the approval of the Minister, money available to it from the various Funds which it administers, as an alternative to raising money from external commercial sources.

New sub-sections (2), (3) and (4) will provide that the raising of money by the Corporation, whether by borrowing commercially or by raising securities, may be subject to terms and conditions approved by the Minister.

New sub-section (5) will require that, in respect of internal borrowings by the Corporation from the various Funds which it administers, the Minister must be satisfied as to all the details of the proposed borrowing.

New sub-sections (6), (7) and (8) will provide that the Treasurer may guarantee any borrowings by the Corporation.

New sub-section (9) will provide for the Corporation to give security over all or any part of its assets, in regard to repayments of a borrowing or money it is liable to pay in respect of a dealing with securities.

New sub-section (10) will require the Corporation to raise money only in accordance with this provision.

New sub-sections (11) and (12) will provide the necessary definitions for the purposes of the provision.

Futures contracts

New section 23A will provide that the Corporation may operate on futures markets for hedging purposes subject to any guidelines approved by the Minister. The Corporation's futures operations could assist in reducing the costs of minimising risks, including currency risks, associated with dairy produce sales and with borrowings for financing its operations.

New sub-sections 23A(1) and 23A(2) will relate respectively to hedging operations carried out in Australia and overseas.

New sub-sections 23A(3) and 23A(4) will provide that the Corporations's futures operations are to be in accordance with any guidelines approved by the Minister.

New sub-section 23A(5) will provide that futures contracts can only be entered into for the purpose of risk minimisation either in respect of a contract for the sale of dairy produce or in respect of borrowing or raising money by the Corporation.

15 Application of moneys of Corporation

- (a) & (b) Amend paragraphs 24(1)(a) and 24(1)(b) of the Dairy Produce Act 1924 by extending the coverage of the section to include the Corporation's operations under the Dairy Produce Market Support Bill 1985.
- (c) Expands the mode of investment of Corporation funds not immediately required to include loans to an authorised dealer in the short term money market. Also enables the Corporation, with the approval of a Minister, to lend moneys to a relevant fund of the Corporation (this is related to the new provisions enabling the Corporation to arrange borrowings between Funds which it administers).

16

A revised section 24A is inserted in the Dairy Produce Act 1924. The revisions are required because section 20AB of the Dairy Produce Act 1924 is to be repealed. Section 20AB establishes the export pools to which any surpluses (deficits) arising from export sales by the Corporation are presently credited (debited). Further, surpluses (deficits) arising from any sale by the Corporation are now to be taken into account, rather than just those relating to export sales.

Surplus or deficit in respect of certain activities of Corporation

New sub-section (1) will provide definitions relevant to the provision.

New sub-section (2) will provide that when the Corporation sells dairy produce purchased by it after 1 July 1985 any surplus is to be credited to the Market Support Fund.

New sub-section (3) will provide that any deficit on a sale by the Corporation of dairy produce purchased by it after 1 July 1985 is to be debited to the Market Support Fund.

New sub-section (4) will provide an offsetting accounting transaction in relation to new sub-sections 24A(2) and (3).

New sub-section (5) will provide for various expenses associated with the export or sale of dairy produce by the Corporation to be deducted prior to determining whether a surplus or deficit has resulted from the sale.

A new section 24B is also inserted into the Act to authorise the Corporation to arrange borrowings between the various Funds which it administers.

Corporation may arrange loans

New sub-section (1) will provide for the Corporation to borrow money from one Fund which it administers and lend it to another such Fund, with Ministerial approval.

New sub-section (2) will provide criteria to which the Minister must have regard in approving a loan under sub-section(1).

17

Section 25 of the Dairy Produce Act 1924 is repealed and a new section is substituted -

Power to purchase and dispose of assets

The new section will update the previous section and will clarify that the Minister's approval is not required before the Corporation can enter into a futures contract or a promotion contract under the Dairy Produce Sales Promotion Act 1958.

18 Section 25E of the Dairy Produce Act 1924 is replaced -

Functions of the Advisory Committee

Under the new marketing arrangements a number of specific legislative functions of the Australian Dairy Industry Advisory Committee are no longer applicable. A new, general function for the Advisory Committee will be established.

19 Membership of Advisory Committee

This section ensures that the omission of references to "dairy products" under the new arrangements does not affect those appointments to the Australian Dairy Industry Advisory Committee which have been made on the basis of the member being appointed to represent particular sections of the dairy industry.

20 A new section 27 is inserted into the Dairy Produce Act 1924 concerning declarations by the Corporation as to what is "dairy produce".

Determinations by Corporation

New sub-section 27(1) will detail the form of the Corporation's determinations.

New sub-section 27(2) will require the Corporation to notify manufacturers of dairy products of any determinations it may make.

New sub-sections 27(3) - (5) will require the Corporation's determinations to be published and laid before the Parliament. Either House will be able to disallow such determinations.

21 Savings

New sub-section (1) will provide savings provisions for presently open export pools.

New sub-section (2) will provide savings provisions in respect of transfers of surpluses or deficits relating to export sales by the Corporation of dairy produce produced prior to 1 July 1985 to and from the export pools.

New sub-section (3) will provide savings provisions to protect loans made by the Corporation under Regulation 4A of the Dairy Produce Regulations.

PART III - AMENDMENTS OF DAIRY PRODUCE SALES
PROMOTION ACT 1958

22

Principal Act

Establishes that references in Part III to the Principal Act are references to the Dairy Produce Sales Promotion Act 1958.

23

Interpretation

Inserts a new definition into section 4 of the Dairy Produce Sales Promotion Act 1958. This definition is associated with the authorisation provided to the Corporation to borrow money from Funds which it administers and lend that money to other funds.

24

Dairy Produce Sales Promotion Fund

Provides for money to be lent to the Fund from other Funds administered by the Corporation and for the repayment of any money borrowed from the Fund by the Corporation for the purpose of lending the money to another Fund.

25

Debiting of money to Dairy Produce Sales
Promotion Fund

Provides for money to be borrowed from the Fund by the Corporation for the purpose of lending the money to another Fund administered by the Corporation and for the repayment of any money lent to the Fund by another Fund administered by the Corporation.

