

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DAIRY PRODUCE AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
for Primary Industries and Energy,
the Honourable John Kerin MP).

DAIRY PRODUCE AMENDMENT BILL 1987GENERAL OUTLINE

The purpose of this Bill is to amend the Dairy Produce Act 1986. The amendments are designed to change the conditions of enforcement of observance of minimum prices under the GATT International Dairy Arrangement (IDA) by Australian exporters of dairy products. The amendment will ensure that penalties for breaches of the pricing provisions of the IDA will in future be exacted by administrative processes and not through proceedings in criminal courts.

2. Australia was one of the original signatories of the IDA, having been a participant since 1980, and accordingly is bound by its minimum pricing disciplines. These require that participating countries "take the necessary steps to ensure" that export prices of applicable dairy products are not less than the prescribed minimum.
3. Under the current legislation, and relevant regulations, a trader who exports in breach of IDA minimum prices is liable not only to a fine but also to a term of imprisonment of up to two years. A breach may also lead to the suspension or loss of an exporter's licence to export dairy products.
4. Under these amendments, Australian traders exporting below the relevant IDA minimum price will be required to pay the difference between the actual sale price and the appropriate IDA price to the Australian Dairy Corporation (ADC). However, where a breach is an unavoidable breach or where the exporter did not knowingly export dairy products below the appropriate IDA minimum price, the ADC will have the power to determine if a breach resulted from "exceptional circumstances". If a determination is made by the ADC that such circumstances exist, the exporter will not be required to pay the difference between the IDA minimum and the actual sale price.
5. Payments by exporters will be credited to the Market Support Fund of the ADC. If an exporter breaches a minimum price but fails to meet his or her payment obligations, the ADC may suspend or cancel the exporter's licence. Decisions made by the ADC on these matters will be subject to appropriate review and appeals procedures. The ADC, as an exporter of dairy products, is itself required to comply with IDA minimum pricing provisions, however under these amendments the Government will reserve the right to grant the ADC an exemption under exceptional circumstances such as national interest considerations.
6. The amendments provide for the elimination of the need for periodic changes to regulations of the Principal Act each time an alteration is made to the IDA minimum prices. The minimum prices adopted by the IDA will automatically be incorporated in the Regulations.

FINANCIAL IMPACT STATEMENT

7. The proposals put forward in the Amendment will not affect Government expenditure and will have no staffing implications in the Department of Primary Industries and Energy.

NOTES ON INDIVIDUAL CLAUSESClause 1 : Short title

8. The Act will be called the Dairy Produce Amendment Act 1987.

Clause 2 : Commencement

9. Clause 2 provides commencement on the day on which the Act receives Royal Assent.

Clause 3 : International Dairy Arrangement (IDA) Minimum Price

10. In this clause an additional section is added after section 51 of the Principal Act outlining procedures whereby economic rather than legal penalties are imposed on exporters of dairy products who make sales below the IDA minimum price. The details are explained below.

11. There is an allowance for regulations to provide a way of arriving at the IDA minimum price for the export of relevant dairy products. An exporter of dairy products is not permitted to export dairy products below the IDA minimum price. Should an exporter undertake such a sale the exporter will be required to pay to the ADC the difference between the IDA minimum price and the actual export price within 60 days of entering into the contract. The money is paid into the Market Support Fund of the ADC.

12. Where a breach is considered "unavoidable" or where an exporter did not knowingly breach the relevant IDA minimum price, the ADC may determine that such a breach resulted from "exceptional circumstances". In such cases the exporter will not be required to pay the difference between the sale price and the IDA minimum price.

13. The ADC itself is not permitted to export dairy products below the IDA minimum price without the written authorisation of the Minister. In the event that the Minister provides such authorisation he is required to place a written copy before each House of Parliament within 15 sitting days of permission being given.

14. A person who breaches these provisions is not considered guilty of a criminal offence as a result of a particular breach. The purpose is to confine the consequences of a breach to an economic penalty and make other criminal penalties provided for in the original Act inapplicable to such breaches.

15. The clause also provides automatic adjustment of IDA minimum prices in the Regulations relating to exports. Currently when the IDA agrees to changes in minimum prices there is an inevitable time lag between the announcement of the new prices and the incorporation of these new prices in the Regulations. Regulations will now automatically reflect changes to minimum prices when they occur and eliminate the abovementioned time lags.

16. The word "Arrangement" in this section refers to the International Dairy Arrangement agreed at Geneva on 12 April 1979, and "controlled dairy export" means dairy produce of a particular kind and quality which is not permitted to be exported.

Clause 4 : Cancellation of Licences

17. In this clause, section 59 of the Principal Act is amended by providing that if an exporter sells below the IDA minimum price and fails to pay the ADC the difference between the IDA minimum price and the actual sale price, the ADC shall write to the exporter advising that either his or her export licence has been cancelled or alternatively that his or her export licence has been suspended for a stated period. The above action will not be taken if the ADC considers that the sale below the GATT minimum was justified due to "exceptional circumstances".

18. Should the ADC suspend an exporter's licence under powers conferred on it by sub-section 59(2) or (4) and circumstances which led to the suspension continue, the ADC is able to cancel the exporter's licence.

Clause 5 : Reconsideration and review of decisions

19. In this clause, section 118 of the Principal Act is amended to include decisions made in section 51A dealing with the payment of the difference between the selling price and IDA minimum prices and determinations of "exceptional circumstances", and sub-section 59(4) dealing with suspension and cancellation of export licences. Both these sections are included in the definition of "relevant licence decision" in section 118, and will allow exporters to appeal against decisions made in section 51A and also in section 59 which deals with suspension and cancellation of export licences. Appeals will be dealt with by the Administrative Appeals Tribunal.