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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Dairy Industry Legislation Amendment Bill 2002

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Law and Bills Digest and the Economics, Commerce & Industrial
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Contents

Purpose	1
Background	1
Australian Dairy Corporation (ADC)	1
Industry Activities	2
Commercial Activities	2
The ADC's place in the Dairy Industry	2
Proposed changes to the ADC's functions	3
Assistance for Dairy Farmers.	4
Overview of the Australian Dairy Industry	5
Main Provisions	6
Amendments to the <i>Dairy Produce Act 1986</i> and the <i>Farm Household Support</i> <i>Act 1992</i>	6
Endnotes.	8

Dairy Industry Legislation Amendment Bill 2002

Date Introduced: 28 August 2002

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Royal Assent

Purpose

To amend the *Dairy Produce Act 1986* in order to:

- add extra functions to the role of the Australian Dairy Corporation (ADC) to provide for the planning, funding and participation in the reform or abolition of the ADC and the Dairy Research and Development Corporation (DRDC), and
- provide for holders of entitlements to the Dairy Structural Adjustment Program (DSAP) and the Supplementary Dairy Assistance (SDA) scheme to access a farm exit payment under the Farm Help Re-establishment Grant scheme of the *Farm Household Support Act 1992*.

Background

Australian Dairy Corporation (ADC)

The ADC is a statutory marketing authority that operates under the *Dairy Produce Act 1986* (Principal Act) and is responsible to the Federal Parliament through the Minister for Agriculture, Fisheries and Forestry.¹ The Principal Act empowers the ADC to undertake a range of marketing and regulatory functions in order to achieve its statutory objective of 'enhancing the profitable production and marketing of Australian dairy produce'.² The Principal Act also authorises ADC subsidiaries to undertake overseas commercial activities that further this objective. In 1998 ADC activities were also made subject to the provisions of the *Commonwealth Authorities and Companies Act 1997*.

The ADC works with local industry to increase sales opportunities for Australian dairy products and maximise the returns achieved. In 2000/01 the ADC undertook eight

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separate, but inter-related work programs, grouped under two main activity streams, namely

- collectively funded industry activities, and
- self funded international commercial activities.

Industry Activities

- This activity stream involves collectively funded service and support activities that seek to generate and deliver benefits for the dairy industry as a whole by increasing or defending sales opportunities for all dairy producers. It includes a range of domestic and export market development activities to increase demand for, and consumer confidence in, Australian dairy products.
- The ADC also has a role in advising, collecting data, and providing general secretariat support for the Dairy Adjustment Authority in fulfilling its responsibilities. The ADC's role includes making payments as directed to eligible entitlement holders under the Dairy Structural Adjustment Program (DSAP) scheme, and funding payments by Commonwealth agencies to eligible parties under the Dairy Exit Program (DEP) and the Dairy Regional Adjustment Program (DRAP).

Commercial Activities

At present the ADC undertakes two types of commercial activities in overseas markets.

- Austdairy Trading deals with the international trading, investment, and technical service activities of the ADC's subsidiary, Austdairy Limited (ADL). These activities aim to establish and maintain profitable, long term markets for Australian dairy products. ADL funds these activities through margins on sales, dividends or fees.
- Industry Agency looks after the ADC's activities as a single desk seller agency on behalf of the industry in selected markets. These activities are self-funded through margins on sales, and operate on a break-even basis. They are designed to maximise sales and minimise the risks associated with export sales.

The ADC's place in the Dairy Industry

The ADC is one of six national bodies representing the various production, manufacturing and marketing sectors of the Australian dairy industry. Each body has different but complementary functions. The Australian Dairy Industry Council (ADIC) is the industry's peak body and represents all sectors of the industry to the Australian and international governments. It also co-ordinates industry policy for its three constituent organisations: the Australian Dairy Farmers' Federation (ADFF), the Australian Dairy Products Federation (ADPF) and the Market Milk Federation of Australia (MMFA). These

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three organisations look after the national policy interests of the three key industry sectors – dairy farmers; dairy product manufacturers; and liquid milk processors.

The ADC's role focuses on industry marketing services and the regulation of financial support to the dairy industry. The Dairy Research and Development Corporation (DRDC) is the research management arm of the industry. It is a statutory authority and invests around \$30 million a year. These funds are drawn from levies paid by farmers and matching government funds.

Proposed changes to the ADC's functions

In his second reading speech the Minister for Agriculture, Fisheries and Forestry, Hon Warren Truss, said that the dairy industry had approached government with a proposal that would see the two statutory authorities, ADC and DRDC, become one Corporations Law company, directly accountable to their levy paying members.³ The origins of the proposal date back to meetings of a large number of industry leaders, including dairy company CEOs, held in 2000 to discuss possible future industry services, structures and funding mechanisms.

As a result of these meetings a draft possible structure was outlined at the December 2000 AGM of the ADIC. The matter was further developed during 2001 and broad agreement on a proposed set of arrangements to put to Government was reached in December 2001.⁴

The proposed change would be similar to that which has already taken place in the red meat, horticulture, pig and wool industries.⁵ The Minister explained that 'a particular focus of the dairy industry proposal is on providing the industry with greater ownership of R&D and market development priorities, as well as enabling levy payers to have a greater direct input into the nature and direction of these key service delivery activities'.⁶

The purpose of the changes proposed by this Bill is to provide a mechanism whereby the ADC can fund an investigation into the viability, suitability and efficiency of what is being proposed. In addition, the proposed amendments provide for the ADC to fund the involvement of the Commonwealth, the DRDC and the dairy industry in a consultative process, along with the provision of advisers to assist in the investigation of the best options for reform. According to the Minister, '[w]ith the passage of this bill, the work can begin in earnest so that the government can work towards industry's desired start date for the reformed bodies of 1 July 2003'.⁷

The Minister issued a media release on the same subject on 29 August 2002⁸ but to date there has been no press comment or comment from any of the dairy industry bodies about the proposal.

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Assistance for Dairy Farmers

The \$30m Dairy Exit Program (DEP) was one component of the Government's Dairy Industry Adjustment Package (DIAP) introduced in response to deregulation of the dairy industry in 2000.⁹ It began on 1 July 2000 and ceased on 30 June 2002. Dairy farmers who lodged an initial application for the DEP before 30 June 2002 still have until 1 October 2003 to lodge a claim form following the sale of their farm.

Under the DEP, eligible dairy farmers who decided to leave agriculture could receive a tax-free lump sum payment of up to \$45 000. A retraining grant of \$3 500 was also available to eligible farmers to assist them in finding an alternative career after they left farming. Centrelink administered the DEP on behalf of the Department of Agriculture, Fisheries and Forestry.

The eligibility requirements for the DEP were similar to those for the re-establishment grant paid under the Farm Help scheme.¹⁰ That is, to qualify for the DEP, a person must:

- be a farmer, and have been for a continuous period of at least two years immediately prior to applying for the DEP
- be over 18 years old
- be an Australian resident and living in Australia
- hold a Certificate of Inability to obtain finance from a financial institution, and
- be granted a payment right under the Dairy Structural Adjustment Program (DSAP) or the Supplementary Dairy Assistance (SDA) scheme.

The DEP payment of \$45 000 was subject to an assets test on the sale of the farm. Farmers may have up to \$100 000 in assets to qualify for the maximum grant. The grant reduced by \$2 for every \$3 in assets above \$100 000. No grant was payable when assets reached \$167 500. Any amount of Farm Help Income Support paid by Centrelink, or DSAP entitlements paid by the Dairy Adjustment Authority, reduced the amount of grant payable.

There has been some criticism of the DEP. For example, the Queensland Minister for Primary Industries and Rural Communities, Henry Palaszczuk was reported as saying on 31 January 2001 that no Queensland dairy farmers had yet received assistance under the DEP, principally because of their reluctance to sell the family farm. He was quoted drawing attention to a precedent in the Pork Producer Exit Package, announced in 1999, under which 'farmers will be required to leave pork production for five years rather than leave agriculture entirely as under FFRS (Family Farm Restart Scheme)' to be eligible for up to \$45 000 assistance.¹¹

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According to information provided by the Australian Bureau of Agricultural and Resource Economics (ABARE) to Senate Estimates Committee on 27 May 2002, 109 dairy farmers had accessed DEP in the period 1 July 2000 to 30 April 2002.¹² By State, and compared with the ADC's figures for the decline in the number of dairy farms from 1 July 2000 to 30 June 2001, the number of dairy farmers who accessed the DEP are: Victoria 57 (247); NSW 33 (295); Queensland 11 (240); South Australia 4 (80); Tasmania 2 (96); and Western Australia 2 (54). Clearly, there have been a lot of farmers leaving the dairy industry who have not claimed the exit package. In some States, it is suggested that most of the farmers taking the exit package would be lessees. Owners who sold their dairy farms would be likely to fail the assets test for DEP.¹³ It is understood that 85 people applied for the DEP but were refused, chiefly because they had not been farmers for two years.¹⁴ Other possible reasons for the large difference between the number of DEP recipients and the number of exits from the dairy industry are that some former dairy farmers have switched to other enterprises or brought forward their retirement plans but stayed on their farms.

The centrepiece of the DIAP is the DSAP which will provide \$1.63 billion over eight years in quarterly financial assistance payments to individuals and farm businesses. It is funded by a levy of 11c/ltr on retail milk sales and administered by the Dairy Adjustment Authority (DAA). The latest DAA annual report reveals that it granted payment rights to the value of about \$1.63 billion to around 30 000 eligible dairy producers under the DSAP.¹⁵

The average value of a standard entitlement per entity at 30 June 2001 was over \$54 000.¹⁶ Quarterly payments are made to dairy producers who could demonstrate that they had an interest in a dairy farm enterprise as at 28 September 1999, and delivered milk during 1998-99. They are also required to provide certification from an independent qualified financial adviser that they have carried out a farm business assessment. In 2001-02 the levy on consumers collected approximately \$218 million.¹⁷

An issue which has arisen since the ending of the DEP is that dairy farmers who have entitlements under DSAP or SDA cannot access the exit assistance available to other farmers through the Farm Help Re-establishment Grant Scheme. The Government intends that the amendments in this Bill will redress that situation.¹⁸

Overview of the Australian Dairy Industry

Statistics published by the ADC in December 2001 show that the number of dairy farms has declined over the last quarter of a century, from over 30 000 in 1975 to just under 12 000 in 2001. Between June 2000 and June 2001 the number of dairy farms declined by more than 1 000 farms.¹⁹ At the same time, Australian dairy farms have generally become larger and more efficient. Average herd size has increased from 77 cows in 1975 to an estimated 190 in 2001. There are many farms with herds greater than 250 cows. Improved herd genetics, as well as advances in pasture management and supplementary

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feeding regimes, have seen annual average yield per cow increase from 2 750 litres to 4 624 litres over the same period.²⁰

Australian milk production reached a record 11 268 million litres for 2001-02.²¹ The latest result was 6.9 per cent higher than production in 2000-01. Victoria's production was 7.4 billion litres, an increase of 9.2 per cent over the previous year. Almost 66 per cent of Australia's milk production occurs in Victoria. Tasmania recorded the biggest percentage increase over the 2000-01 figure, up 13.9 per cent to 671.4 million litres, or 6.5 per cent of national production. The production levels and share of national production of the other states were: NSW, 1.3 billion litres (11.9 per cent); Queensland, 744.3 million litres (6.6 per cent); South Australia, 714.9 million litres (6.3 per cent); and Western Australia, 391.1 million litres (3.5 per cent).²² However, the Managing Director of the ADC has advised that milk production for the 2002-03 season may be difficult to predict. He is reported as saying that '[w]ith lower international prices impacting on farmgate returns and the likelihood of higher supplementary feeding costs, especially for grain, the extended peak production shoulder we witnessed last season is unlikely to be replicated this year'.²³

The value of Australian dairy exports also reached a record level of \$3.25 billion in 2001-02. This was a rise of \$250 million, or almost 8 per cent, on the previous year's record.²⁴ Figures reported from the Australian Bureau of Statistics show that export sales of Australian dairy products have now increased in value by more than \$1 billion over the past two years. Japan continues to be Australia's largest export customer with purchases worth \$570.1 million during 2001-02. The Philippines was second with \$326.9 million, followed by Saudi Arabia with \$219.7 million.²⁵

Main Provisions

Amendments to the *Dairy Produce Act 1986* and the *Farm Household Support Act 1992*

Item 1 of Schedule 1 gives the Australian Dairy Corporation two additional functions. **Proposed new subsection 7(2)** provides the ADC with the function of planning, facilitating and participating in the reform, privatisation or abolition of the ADC and/or the DRDC, or the establishment of a new body or bodies to perform the current functions of the ADC or DRDC or both. **Proposed new subsection 7(4)** gives the ADC a further function of funding the process of change as set out in **proposed subsection 7(2)**. Both of these additional functions are to be constrained by any written directions from the Minister made under **proposed new subsection 7(5)**.

The Bill makes a distinction between Ministerial directions made under **proposed new subsection 7(5)** and Ministerial directions made under section 8. Section 8 directions may only be given if the Minister is satisfied that they are necessary because of exceptional circumstances and to ensure that the operations of the ADC do not conflict with major

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Government policies. This is not the case for directions that may be made under **proposed new subsection 7(5)**. Ministerial directions made under **proposed new subsection 7(5)** may deal with specific matters, or they may set out general policies relating to the broad reform process and require the ADC to perform relevant functions consistently with those policies (**proposed new subsection 7(7)**.) The Minister may delegate the power to give such directions to an Agency Head (**proposed new subsection 7(8)**).

Items 2 and 3 are consequential amendments to **item 1**.

The amendments to the *Dairy Produce Act 1986* that are proposed by **items 4-17**, and to the *Farm Household Support Act 1992* by **items 18-23**, all deal with assistance to dairy farmers.

Item 5 provides that ‘dairy-type grant’ has the same meaning as is the *Farm Household Support Act 1992*. This is further defined in **item 18** where the *Farm Household Support Act 1992* is amended to define a ‘dairy-type grant’ to mean a re-establishment grant designated as a dairy-type grant made under the farm help re-establishment grant scheme. These amendments will enable payments made under the Farm Help Re-establishment Grant scheme to be identified as dairy-type grants and allow for the funding of these payments from the Dairy Structural Adjustment Fund, administered by the ADC.

The ADC may share information only in relation to certain schemes. **Item 4** inserts a **proposed new paragraph 2B(e)** into subclause 119(2B) to enable information relating to dairy-type grants to be disclosed for administrative purposes, such as determining eligibility and level of payments to successful applicants. A related amendment to the *Farm Household Support Act 1992*, made by **item 19**, provides for corresponding information in relation to the granting of a dairy-type grant to be provided to the Dairy Adjustment Authority and the ADC to assist in the administration of the DSAP and SDA schemes.

For a successful applicant, payment of a dairy-type grant will cause cancellation of payment rights to future Dairy Structural Adjustment Program (DSAP) units (**item 6**) or entitlements to the Supplementary Dairy Assistance (SDA) scheme (**item 7**). Any payments already received under the DSAP/SDA schemes will be deducted from the total amount of the dairy-type grant (**item 9**).

Dairy-type grants will be funded from the Dairy Structural Adjustment Fund and not out of general revenue (**item 22**). **Item 14** provides that money standing to the credit of the Dairy Structural Adjustment Fund can be expended on making dairy-type grants. Any money recovered from the overpayment of dairy-type grants is to be credited to the Dairy Structural Adjustment Fund (**item 13**). **Item 16** requires that the ADC which administers the Dairy Structural Adjustment Fund, and the Minister, must take all reasonable steps to ensure that there are sufficient funds in the Dairy Structural Adjustment Fund to cover all costs associated with programs, including the dairy-type grants. Money in the Dairy Structural Adjustment Fund can also be used to meet expenses incurred by the

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Commonwealth in relation to the administration of dairy-type grants (**item 15**). The Minister cannot terminate the Dairy Adjustment Levy, which is paid by consumers of drinking milk, before expenses for programs, including dairy-type grants, are fully met (**item 17**).

Endnotes

- 1 The information about the ADC comes from the Australian Dairy Corporation *Annual report 2001* and from the ADC website at: www.dairycorp.com.au.
- 2 Section 6 of the *Dairy Produce Act 1986*.
- 3 Truss, Hon Warren, MP, 'Second Reading Speech', Dairy Industry Legislation Amendment Bill 2002, House of Representatives, *Debates*, 28 August 2002, p. 5607.
- 4 Australian Dairy Industry Council, 16/09/02:
<http://www.dairy.com.au/adic/mmnews010601-02.html>
<http://www.dairy.com.au/adic/mmnews210901.html>
<http://www.dairy.com.au/adic/mmnews030202.html>
- 5 See for example, the changes brought about by the *Pig Industry Act 2001*, *Wool Services Privatisation Act 2000*, *Horticultural Marketing and Research and Development Services Act 2000*, and *Australian Meat and Live-stock Industry Act 1997*.
- 6 Truss, Hon Warren, MP, 'Second Reading Speech', Dairy Industry Legislation Amendment Bill 2002, *op. cit.*, p. 5607.
- 7 *ibid.*
- 8 Truss, Hon Warren, 'Dairy farmers to be eligible for Farm Help', *Media Release*, AFFA02/213WT.
- 9 More information on the deregulation of the dairy industry and the Dairy Industry Adjustment Package is included in the Bills Digest on the Dairy Industry Adjustment Bill 2000 (Bills Digest No. 127, 1999/2000), Bills Digest on the Dairy Produce Legislation Amendment (Supplementary Assistance) Bill 2001 (Bills Digest No. 167, 2000/2001), and the Senate Rural and Regional Affairs and Transport References Committee report entitled *Deregulation of the Australian Dairy Industry*, AGPS, 1999.
- 10 The following information comes from the Centrelink website on the Dairy Exit Program at www.centrelink.gov.au/internet/internet.nsf/services/dairy_exit_program.htm
- 11 'Aid to exit dairy industry, not the farm', *DairyPage: dairy farming online*, 31 January 2001. Official website of the Queensland Dairyfarmers' Organisation Ltd, at: www.dairypage.com.au/
- 12 Evidence given by Dr Brian Fisher, Executive Director of ABARE to Senate Estimates Committee, Estimates Committee, *Hansard*, 27 May 2002, p. 43–44.

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- 13 *ibid.*, p. 44. Note that these figures are not strictly comparable. The figures for the number of people who have accessed the DEP cover a period of 22 months. The figures for the decline in the number of dairy farms covers only 12 of those months. Final figures for the DEP and for the decline in the number of dairy farms to 30 June 2002 are not yet available.
- 14 Senate Estimates Committee, *Hansard*, 18 February 2002, p. 56. In these Hearings, a representative of the Department of Agriculture, Fisheries and Forestry (Mr Paul Sutton, General Manager, Meat, Wool and Dairy) said of the DEP: 'There is eligibility criteria for it, which is strict and reflects the fact that it is a social welfare safety belt in terms of assisting people who had minimal entitlement under the dairy structural adjustment program. It is quite difficult to get the entitlement and it is a maximum of \$45 000.'
- 15 Dairy Adjustment Authority, *Annual Report*, 2000-2001, p. 3. Under the legislation, a dairy entity may consist of owners, sharefarmers, lessors and lessees.
- 16 *ibid.*, p. 10.
- 17 Department of Agriculture, Fisheries and Forestry, *Portfolio Budget Statements* 2002-2003, Part C, p. 94.
- 18 Truss, Hon Warren, 'Dairy farmers to be eligible for Farm Help', *Media Release*, AFFA02/213WT.
- 19 *Australian dairy industry in focus 2001*, Australian Dairy Corporation, December 2001, p. 3. Available on the ADC website at: www.dairycorp.com.au. See above for a state-by-state breakdown of the figure of 1012.
- 20 *ibid.*, p. 3.
- 21 'Australian milk production for 2001/02 exceeds 11,000 million litres', Australian Dairy Corporation, *Media Release*, 9 August 2002, on the ADC website at: www.dairycorp.com.au
- 22 *ibid.*, and 'Milk runs up another record, as dairies grow and improve', by Philip Hopkins, *The Age*, 6 September 2002.
- 23 'Australian milk production for 2001/02 exceeds 11,000 million litres', Australian Dairy Corporation, *Media Release*, 9 August 2002, on the ADC website at: www.dairycorp.com.au
- 24 'Australian dairy exports reach record highs yet again', Australian Dairy Corporation, *Media Release*, 9 August 2002, on the ADC website at: www.dairycorp.com.au
- 25 *ibid.*, and 'Dairy exports up \$1bn to record as world prices fall', by Philip Hopkins, *Sydney Morning Herald*, 9 August 2002.

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