INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES
PARLIAMENTARY LIBRARY

Bills Digest
No.107 2003–04

Dairy Produce Amendment Bill 2003

ISSN 1328-8091

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2743.

Information and Research Services publications are available on the ParlInfo database.
On the Internet the Parliamentary Library can be found at: http://www.aph.gov.au/library/

Published by the Information and Research Services, Parliamentary Library,
Department of Parliamentary Services, 2004.

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 107 2003–04

Dairy Produce Amendment Bill 2003

David Walsh
Law and Bills Digest Group
10 March 2004

Contents

Dairy Produce Amendment Bill 2003

Date Introduced: 3 December 2003

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Sections 1 to 3 and Schedule 1 commence on the day the Act receives Royal Assent while Schedules 2 and 3 commence immediately after the commencement of Schedule 1 to the *Dairy Industry Service Reform Act 2003* (i.e. 1 July 2003).

Purpose

The Bill makes minor amendments to the *Dairy Produce Act 1986* (Cth) which are designed to facilitate the functioning of Dairy Australia (formerly the Australian Dairy Corporation). The Bill specifically addresses the administration of the Dairy Structural Adjustment Fund by Dairy Australia.

Background

The Australian dairy industry

The number of dairy farmers in Australia has more than halved since 1979–80, from just under 22 000 to 10 500 as at June 30, 2003.[1] Despite this fall in producers the number of dairy cows has, over the same period, increased by over 100 000 to more than 2 million, with the average herd size increasing from 85 to 195. Corporate style production is also occurring where herds are 1000 head or larger.[2]

Milk production fell in 2002-03, for the first time in more than 50 years as a consequence of the drought. However, at 10.3 million litres, production is still nearly double the output in 1979-80 and is expected to start rising slowly again this year.[3]

The total domestic market now accounts for less than half of production. Exports have risen from less than 40% of production a decade ago to 60% today.[4] In monetary terms, this represents a rise from $1 billion to a record $3.2 billion in 2001-02 before falling to about $2 billion this year because of the drought and lower prices.[5]

The dairy industry adjustment package

Deregulation of the dairy industry has been argued at a state level within the industry for some time. Given the different levels of regulation in different states and the increasing impact of the global trade in dairy products it was generally recognised that the continued regulation of the Australian industry was not sustainable. Regulated milk prices were abandoned from 1 July 2000. The Australian Dairy Farmers Federation negotiated a $1.8 billion adjustment package with the Commonwealth Government which has resulted in an average payout per dairy farmer of $130 000. This adjustment package is paid for by consumers through a retail levy of $0.11 per litre of milk. The levy is expected to stay in place at least until 2008 in order to recoup liabilities incurred under the adjustment package.[6]

Basis of policy commitment

Governments at state / territory and federal level together with mainstream dairy groups have all recognised that to have continued or to reimpose regulation on the dairy industry is not economically feasible or desirable in view of the changes that have occurred and are continuing to occur in the industry.

Position of significant interest groups

Opposition to the changes in the industry resulting from deregulation are most emphatically stated by the Australian Milk Producers Association – a minority producers' association. A spokesperson for the Association, Mr Shane Paulger, is quoted as claiming that returns on his [expanded] herd have nearly halved, from an average of $0.57 to $0.32 per litre since deregulation. However, the Minister Mr Warren Truss has observed that some producers have used restructuring money to expand and were mistaken in considering the then market conditions as indicative of what could be expected in the longer term – "Now they are facing more average dairy returns and a slightly above-average dollar, so much of the impact that was expected two years ago is only hitting now".[7]

Significant technical flaws

To the extent that retrospectivity can be regarded as undesirable it should be noted that the indemnity provided in the Bill to Dairy Australia is (in **item 3 of Schedule 1**) said to apply to any liability arising before, on or after the commencement of the item.

Main Provisions

Schedule 1 contains the new indemnity provisions for Dairy Australia. Some may consider the indemnity to be too broad as the effect of the indemnity is to protect the directors of Dairy Australia from any adverse consequences, past, current or future, resulting from the administration of the Dairy Structural Adjustment Fund. It should be noted that the indemnity would only have effect where the directors act bona fide in their capacity both as trustees and directors. It should be further noted that such provisions are not only standard in commercial environments but necessary if appropriately qualified people are to fill responsible positions.

Schedule 2 amends the *Dairy Produce Act 1986* (Cth) to enable Dairy Australia to more adequately fund the operations of the Dairy Structural Adjustment Fund and includes necessary references to more sophisticated financial instruments (e.g. any form of options agreement, any form of securities document, currency contracts, futures contracts and currency hedging).

Schedule 3 inserts a reference to the Reserve Bank of Australia to correct a definitional anomaly.

Concluding Comments

The Bill is not controversial and references to comprehensive indemnities should be recognised for the commercially normal and, in practical terms, required provisions that they are.

Endnotes

1 *Australian Financial Review* 20 January 2004, p. 44, 'Milking the industry' by Cathy Bolt.

2 ibid.

3 ibid.

4 ibid.

5 ibid.

6 ibid.

7 ibid.