



Dairy Adjustment Levy Termination Bill 2008

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Contents

Purpose.	2
Background.	2
Dairy Industry Adjustment Package	3
Dairy Adjustment Levy	3
Committee consideration.	4
Position of significant interest groups.	4
Financial implications	5
Key Issues	5
Main provisions.	6

Dairy Adjustment Levy Termination Bill 2008

Date introduced: 24 September 2008

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Sections 1-3, Schedule 1, items 1, 2 and 4 of Schedule 3 and Schedule 4 on the day after the Royal Assent; Schedule 2 on the day after the day declared for the purposes of subclause 94(1) of Schedule 2 to the *Dairy Produce Act 1986*; and Item 3 of Schedule 3 immediately after the day specified for the purposes of subclause 55(2) of Schedule 2 of the *Dairy Produce Act 1986*.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of this Bill is to amend Schedule 2 of the *Dairy Produce Act 1986* to terminate both the Dairy Adjustment Authority and the Dairy Adjustment Levy, and to wind up the Dairy Structural Adjustment Fund.

Background

The issue of deregulation of the dairy industry was the subject of debate and inquiry over several years, culminating in the inquiry of the Senate Rural and Regional Affairs and Transport References Committee in 1999 (the Senate Committee).

The Senate Committee concluded, in its report entitled [Deregulation of the Australian Dairy Industry](#) (the Senate Committee report), that ‘sooner rather than later the market will force deregulation and that a managed outcome with a soft landing is preferable to a commercially driven crash’.¹

1. Senate Rural and Regional Affairs and Transport References Committee, *Deregulation of the Australian Dairy Industry*, Commonwealth of Australia, Canberra, October 1999, p. xiv.

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Dairy Industry Adjustment Package

On 28 September 1999 the then Minister for Agriculture, Fisheries and Forestry, the Hon. Warren Truss, MP announced a \$1.8 billion [adjustment package](#) for the dairy industry, subject to all States agreeing to deregulate their market milk schemes.

The adjustment package comprised four programs:

- the Dairy Structural Adjustment Program – allocated \$1.63 billion in payments for eligible dairy producers, administered by the Dairy Adjustment Authority
- Supplementary Dairy Assistance - allocated an additional \$139 million in payments, administered by the Dairy Adjustment Authority
- the Dairy Exit Program - provided an optional tax-free exit payment of up to \$45,000 for eligible dairy producers wishing to leave the industry, administered by Centrelink, and
- the Dairy Regional Assistance Program – provided \$65 million to assist regional communities to adjust to dairy deregulation, administered by the Department of Transport and Regional Services.²

The *Dairy Industry Adjustment Act 2000* was part of a raft of legislation that provided the adjustment program for the deregulation of the Australian dairy industry. The relevant [bills digest](#) contains useful background information.

In announcing the package the Minister stated:

In order to smooth the move to a deregulated industry, the Australian Dairy Industry Council has developed a major package to facilitate adjustment. The package will be funded through a levy of 11 cents a litre on all retail milk sales. This levy is unlikely to have any impact on retail prices as farm gate prices are expected to fall after deregulation by at least this amount.³

Dairy Adjustment Levy

The *Dairy Adjustment Levy (General) Act 2000*, *Dairy Adjustment Levy (Excise) Act 2000*, and *Dairy Adjustment Levy (Customs) Act 2000* provide for the imposition of the Dairy Adjustment Levy. The Regulation Impact Statement for the Dairy Industry Adjustment Bill 2000 provides the following explanation for the funding of the adjustment package:

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2. Dairy Adjustment Authority, *Dairy Industry Adjustment Package*, 21 July 2006, available at <http://www.daa.gov.au/package.html> [accessed 8 October 2008]
 3. Hon. Warren Truss, MP, Minister for Agriculture, Fisheries and Forestry, *Dairy Industry Restructure Package*, media release, Canberra, 28 September 1999.

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The adjustment package is to be financed through a levy of 11 cents per litre on sales of liquid milk products. In terms of the levy imposition, consideration has been given to an appropriate point of imposition to ensure that the burden is not passed back to the producer, whilst ensuring efficient levy collection. The levy is to be on cow's milk and will broadly cover whole milk, modified milk, Ultra Heat Treated (UHT) and flavoured milk. The levy will be applied on a 'cents per litre' basis at the retail level. However, collection would be at the processor level for convenience, efficiency and security. As there are far fewer processors than retailers, collecting the levy from processors minimises the number of collection points. As a result, the administrative burden and costs of levy imposition are reduced and there is greater scope for ensuring compliance...

A levy, set at 11 cents per litre, is calculated to cover the total cost of payments to producers plus interest and administration costs (estimated to be \$1.74 billion) over a target period of 8 years...⁴

The current Bill is directed to the termination of the Dairy Adjustment Authority and Dairy Adjustment Levy as well as the winding up of the Dairy Structural Adjustment Fund.

No exact date has been set for the Dairy Adjustment Levy to end as this depends on when the amount that the government outlaid in assistance to dairy farmers has been fully repaid to the Commonwealth. While the final payment was made to farmers in April 2008, the Dairy Adjustment Levy has continued to pay off the interest on loans the former government used to fund initial payments under the adjustment package.⁵

Committee consideration

At its meeting of 25 September 2008, the Selection of Bills Committee resolved to defer consideration of the Bill until its next meeting.⁶

Position of significant interest groups

The move to terminate the Dairy Adjustment Levy has been welcomed on the grounds that it should lead to a reduction in milk prices by 11 cents a litre.⁷

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4. Explanatory Memorandum, Dairy Industry Adjustment Bill 2000, page 8.
 5. Sophie Morris, 'Milk price to drop as tax goes', *Australian Financial Review*, 25 September 2008, p. 4.
 6. Selection of Bills Committee, *Report No. 12 of 2008*, 25 September 2008.
 7. Sue Dunlevy and Alex Dickinson, 'Tax that milked consumers axed', *Courier Mail*, 25 September 2008, p. 3 and Mark Davis, 'Minister moves for cheaper milk', *Sydney Morning Herald*, 25 September 2008, p. 9.

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Queensland Dairyfarmers' Organisation president Wes Judd was reported as stating that 'the move [to terminate the Dairy Adjustment Levy] was expected. This is just part of the process of winding up the package.'⁸

Financial implications

According to the Explanatory Memorandum, the Dairy Industry Adjustment Program was designed to be cost neutral to the Commonwealth; a consumer levy funded all administrative costs, payments to farmers and grants to dairy dependent communities under the program. Any surplus levy collected will be credited to the Commonwealth.⁹

However it should be noted that the Bill provides that if, as a result of the amendments in the Bill, there is an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation.

Key Issues

The Explanatory Memorandum states that the Dairy Structural Adjustment Fund had a deficit of approximately \$205 million in July 2008, but is expected to be in balance in the first quarter of 2009.¹⁰ The amendments in the Bill are intended to allow the Commonwealth to stop the appropriation of levy funds into the Dairy Structural Adjustment Fund as soon as possible after the deficit in the fund has been eliminated.

Whilst the Dairy Industry Adjustment Program was cost neutral to the Commonwealth, the key issues from the perspective of those consumers who have been paying the levy are:

- Does the Bill effectively minimise the amount of surplus funds collected under the Dairy Adjustment Levy?
 - Steps have been taken (in item 6 of the Bill) to minimise the amount of surplus funds collected under the Dairy Adjustment Levy by reducing the levy termination notification period from 28 days to seven days.¹¹
- Does the Bill make provision for any surplus funds collected under the Dairy Adjustment Levy?

8. Sue Dunlevy and Alex Dickinson, 'Tax that milked consumers axed', *Courier Mail*, 25 September 2008, p. 3.

9. Explanatory Memorandum, Dairy Adjustment Levy Termination Bill 2008, p. 3.

10. *ibid.*, p. 2.

11. According to the Explanatory Memorandum the levy generates approximately \$20 million per month, p. 7.

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- Any surplus funds collected under the Dairy Adjustment Levy are to be paid (under item 5 of the Bill) to the Commonwealth.
- Who has responsibility for any claims made on the Dairy Structural Adjustment Fund after it is wound up?
 - The Secretary of the Department of Agriculture, Fisheries and Forestry will have that responsibility.¹²

Main provisions

Part 1 of **Schedule 1** of the Bill winds up the **Dairy Adjustment Authority**.

Item 2 amends the *Dairy Produce Act 1986* (the Dairy Produce Act) by inserting **proposed subclauses 55(2) and (3)** into existing Schedule 2. The amendment will empower the Minister¹³ to declare that the Dairy Adjustment Authority ceases to exist immediately after a specified day. That declaration will be by legislative instrument which will, in accordance with the *Legislative Instruments Act 2003*, be registered on the Federal Register of Legislative Instruments and will be subject to the disallowance regime.

Item 3 is an applications provision.¹⁴ It allows the Secretary of the Department of Agriculture, Fisheries and Forestry to assume the powers of the Dairy Adjustment Authority immediately after it ceases to exist under **proposed subclause 55(3)**.

Part 2 of Schedule 1 of the Bill terminates the **Dairy Adjustment Levy**.

Existing clause 79 of Schedule 2 of the Dairy Produce Act lists the manner in which money standing to the credit of the Dairy Structural Adjustment Fund is to be expended. **Item 4** inserts **proposed paragraph 79(ia)** so that monies can also be expended in meeting the expenses incurred by the Commonwealth in terminating the Dairy Industry Adjustment Program.

Existing subclauses 83(1) and (2) of Schedule 2 of the Dairy Produce Act provide for the payment of dairy adjustment levy to the industry services body, namely Dairy Australia Limited. **Item 5** inserts **proposed subclause 83(3A)** which will allow the Minister to declare that subclauses 83(1) and (2) do not apply. The effect of the amendment is that no

12. Item 3 of the Bill.

13. In accordance with section 19A of the *Acts Interpretation Act 1901* the reference to ‘the Minister’ in this Bill is a reference to the Minister for Agriculture, Fisheries and Forestry.

14. Application provisions serve to remove uncertainties and solve problems as to the manner in which a new law is to affect the variety of complete and incomplete situations and transactions existing at the moment in time that a law comes into force. G C Thornton, ‘*Legislative Drafting: third edition*’, Butterworths, London, 1987, p. 166.

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further payments of Dairy Adjustment Levy will be made to Dairy Australia Limited after the declaration is made. The declaration must be by legislative instrument and the date specified in the legislative instrument must not be before the *levy termination day*.

Existing subclause 94(1) of the Dairy Produce Act provides for the Dairy Adjustment Levy to be terminated by the Minister publishing a notice in the *Gazette* once the Minister is satisfied that all costs associated with the Dairy Industry Adjustment Package have been met. According to the existing provision, the 28th day after the publication of notice is the *levy termination day*.

Item 6 repeals that provision and substitutes **proposed subclause 94(1)** which empowers the Minister to declare by legislative instrument that the seventh day after the day that the instrument is registered on the Federal Register of Legislative Instruments is the *levy termination day*. The effect of this amendment is to reduce the levy termination notification period from 28 days to seven days to minimise collection of levy funds which are surplus to requirements.

Amendments to existing subclause 94(2) under **item 7** will prevent the Minister from making a declaration about *levy termination day* unless there is sufficient money in the Dairy Structural Adjustment Fund for the purposes prescribed in the subclause.

Part 3 of Schedule 1 of the Bill winds up the **Dairy Structural Adjustment Fund**.

Item 8 inserts **proposed clause 77AA** into Schedule 2 of the Dairy Produce Act which will allow the Minister to give written notice (or notices) that monies which are credits in the Dairy Structural Adjustment Fund are to be paid to the Commonwealth. When the Dairy Structural Adjustment Fund is no longer in credit it will be wound up: **proposed subclause 77AA(3)**. According to the Explanatory Memorandum, the rationale for this provision is that sufficient funds be retained in the Dairy Structural Adjustment Fund to ensure its solvency until it is formally wound up.¹⁵

There is, entrenched in section 51(xxxi) of the *Constitution of Australia*, a guarantee which stipulates that property acquired by the Commonwealth Government must be acquired 'on just terms'.

Item 9 refers to an acquisition otherwise than on just terms in the context of section 51(xxxi) of the *Constitution* but then provides that the Commonwealth is liable to pay a 'reasonable amount of compensation'. It should be noted that **proposed clause 132**:

- does not specifically apply paragraph 51(xxxi) of the *Constitution of Australia* to the acquisition

15. Explanatory Memorandum, p. 8.

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- provides that the Commonwealth is liable to pay a ‘reasonable amount of compensation’, as distinct from ‘just terms’, and
- allows for a person to initiate court proceedings to determine the amount of compensation, if an agreement on an amount cannot be reached between parties.

However, use of such a provision is now commonplace, for example, section 152AQC of the *Trade Practices Act 1974* and in section 60 of the *Northern Territory Emergency Response Act 2007*.

Schedule 2 of the Bill contains items which repeal the whole of the following Acts:

- *Dairy Adjustment Levy (Customs) Act 2000*
- *Dairy Adjustment Levy (Excise) Act 2000*
- *Dairy Adjustment Levy (General) Act 2000*

None of these Acts will be required after the Minister has declared the ***levy termination day*** under ***proposed subclause 94(1)*** of this Bill. Subsequently, commencement of these provisions will occur on the day after the levy termination day.

Schedule 3 of the Bill contains consequential amendments.

Item 1 of **Schedule 4** of the Bill provides for the making of any regulations which may be required.

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