

DAIRY INDUSTRY AMENDMENT BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the *Dairy Industry Amendment Act 1998*.

Objectives of the legislation

The objective of the Bill is to amend the *Dairy Industry Act 1993* to:

- (a) implement certain recommendations of the Queensland Dairy Legislation Review Committee, particularly-
 - (i) the continuation, for a five year period from 1 January 1999 to 31 December 2003, of a minimum price to be paid for the purchase of milk from producers and processors for processing as market milk; and
 - (ii) the extension of existing supply management arrangements applying in South East Queensland to the entire State's dairy industry for a five year period from 1 January 1999 to 31 December 2003;
- (b) make a number of miscellaneous amendments including amendments necessary as a result of deregulation of the dairy industry beyond the farm gate after 31 December 1998.

Reasons for the objectives

In April 1995, the Council of Australian Governments ('COAG') comprising of the Commonwealth, States and Territories Governments and the Australian Local Government Association signed a set of agreements to implement National Competition Policy. One of the agreements, the Competition Principles Agreement, requires States to review any legislation

restricting competition and undertake a public benefit test to ascertain whether any anti-competitive arrangements should be continued or changed.

A review of the *Dairy Industry Act 1993* was undertaken by the Queensland Dairy Legislation Review Committee ('the Committee') and a public benefit test undertaken of the restrictions on competition in the legislation. The Committee made a number of recommendations in its report, the National Competition Policy Review of the *Dairy Industry Act 1993*. The objectives of the Bill arise from the review undertaken by the Committee.

The Committee identified significant changes occurring or about to occur in the dairy industry including-

- deregulation beyond the farm gate effective after 31 December 1998 (pursuant to sunset provisions already contained in the *Dairy Industry Act 1993*) which will remove exclusive processor franchise and milk distribution arrangements and price control in the wholesale and retail sectors resulting in market changes ;
- potential reforms in other States and at the Commonwealth level which will impact on the Queensland dairy industry.

Further, the public benefit test undertaken suggested there would be significant social, regional and economic costs across the State in moving quickly to a completely deregulated industry.

Given the changes occurring in industry and the results of the public benefit test, the Committee concluded that the producing sector of the dairy industry should not be immediately deregulated. Rather, continued regulation of the producing sector should be maintained for a limited period to allow for industry adjustment.

Accordingly, the Government has agreed to continue legislative arrangements for the pricing of milk purchased from producers and processors for processing as market milk and to extend statutory supply management arrangements, currently only applying in South East Queensland, to the entire State. These arrangements will ensure that individual producers continue to receive equity of access to market milk sales and ensure that there is price and supply certainty for both producers and processors. Producers will continue to receive payments for market milk based on a minimum price and a fixed proportion of monthly market milk sales despite fluctuations in the sales of market milk of a processor to

whom the producer has supplied milk for processing as market milk.

These legislative arrangements will apply for a transitional period of five years, but be subject to earlier review, if necessary, depending upon the outcome of reviews in other States which will impact on the Queensland dairy industry. This transitional period will also allow industry time to adjust to the changing market conditions and industry circumstances resulting from deregulation beyond the farm gate after 31 December 1998.

The Bill will encourage industry adjustment to assist the industry in becoming more competitive compared to interstate suppliers and in response to overseas market forces. This is necessary as, ultimately there will be a reduction in legislative support for industry arrangements across Australia. Industry will need to operate in a more open market environment in order to remain an efficient and sustainable industry in the longer term.

Ways in which the objectives are to be achieved in the Bill

The Bill's objectives are achieved by—

1. providing the Queensland Dairy Authority ('the Authority') with continued power to fix a minimum price to be paid for the purchase of milk for processing as market milk ('the minimum price');
2. extending existing supply management arrangements in South East Queensland to the entire State by-
 - providing that the Authority will have a supply management scheme for the State;
 - requiring the Authority to grant market milk entitlements (that is, an entitlement to supply milk for processing as market milk) to certain producers and other persons not holding entitlements as at the date the Bill receives assent;
 - setting out matters the Authority is to take into account in the granting of these entitlements;
3. ensuring that under the supply management arrangements, producers receive payments based on the minimum price and a fixed proportion of monthly market milk sales despite fluctuations in the sales of market milk by the processor to whom the producer has supplied milk by—

- providing a formula to calculate the amount of market milk taken to have been supplied by entitlement holders each month;
 - requiring the Authority to determine, using the formula, whether a processor has sold sufficient market milk in a month to meet payment obligations to producers;
 - giving the Authority a power to make directions requiring payments to be made between processors to enable payment obligations to producers to be met;
4. allowing the Authority to continue to licence producers and processors as a mechanism to support the minimum price and the supply management arrangements;
 5. providing a ‘sunset’ date of 31 December 2003 for the power of the Authority to fix a minimum price for the purchase of milk for processing as market milk and the supply management arrangements;
 6. specifically authorising certain anti-competitive conduct about the minimum price and supply management arrangements for the purposes of the *Trade Practices Act 1974 (Cwlth)*;
 7. omitting a number of redundant provisions contained in the legislation no longer required after 31 December 1998 when deregulation of the dairy industry beyond the farm gate occurs.

Alternatives to the Bill

A range of alternatives were considered during the National Competition Policy review of the *Dairy Industry Act 1993*. These included moving more quickly to a completely deregulated industry and to commercial contractual arrangements between producers and milk processors.

For the reasons outlined previously, the Committee did not consider that the industry should be completely deregulated in the immediate future. Further, it was considered that there were no significant advantages in immediately moving to a commercial contract system, particularly given a range of uncertainties existing with reviews into the dairy industry in other jurisdictions which will impact upon Queensland arrangements in the future.

Estimated cost for government implementation

It is not anticipated that there will be any cost to government for implementation of the Bill.

Consistency with fundamental legislative principles

Under the supply management arrangements, producers will receive payments based on a fixed proportion of monthly market milk sales despite fluctuations in the sales of market milk by the processors to whom the producers have supplied milk for processing as market milk. To ensure that producers receive payments based on the fixed proportion of market milk sales, the Bill provides the Queensland Dairy Authority ('the Authority') with the power to direct a processor to make payments to another processor based on a comparison of the processor's monthly market milk sales and producers' entitlements.

The directions given by the Authority may be regarded as operating to the benefit of some processors ('deficit processors') and to the disadvantage of others ('surplus processors') and be seen as impacting on processors' commercial operations. This raises the issue of the Authority's power to make these directions impacting on individuals' rights (the individuals being the processors in this context).

It is considered that the Authority's power of direction is reasonable in the circumstances it will be used, which are defined. Processors will not suffer significant additional costs because it is a requirement that they pay for milk sold as market milk based on the minimum price.

Processors and producers have been extensively consulted on the proposed power of the Authority to make directions requiring payments between processors. Producers support this power as essential to ensuring producers receive payments based on the minimum price for market milk and have equity of access to the market milk market. Without this power, producers may suffer adversely and there would be associated adverse impacts on regional communities.

Both processors and producers view this power as necessary to support workable supply management arrangements. Further, a direction made by the Authority is subject to appeal to the Dairy Industry Tribunal.

Consultation

Extensive consultation was undertaken over a twelve month period throughout all dairy producing regions of Queensland and the major milk consuming areas of the State. The Committee released an issues paper in August 1997 seeking public submissions and conducted public hearings in the Northern, Central and Southern dairy producing areas of the State.

Further consultation was subsequently undertaken by the Supply Management Working Group which released an issues paper on the proposal to extend supply management arrangements throughout the State and conducted a number of industry meetings.

Over 250 written submissions were received by the Committee and the Working Group from producers, processors, Local Government representatives, financial institutions, regional development groups, State Government Departments, Commonwealth Government agencies and a range of other social and community organisations.

The result of this consultation was strong support for the continuation of legislative arrangements for the fixing of the price for milk supplied for processing as market milk and supply management across Queensland. The vast majority of industry participants were supportive of these legislative arrangements continuing for a transitional period to allow industry to adjust to deregulation beyond the farm gate after 31 December 1998 and to take account of other expected changes in other jurisdictions.

NOTES ON PROVISIONS

Clause 1 provides that the short title of the Bill is the *Dairy Industry Amendment Act 1998*.

Clause 2 provides for the commencement of the Bill's provisions. Most of the Bill's provisions will commence on 1 January 1999. This is to coincide with the expiry on 31 December 1998 of a number of existing provisions in the *Dairy Industry Act 1993* as part of the deregulation of the dairy industry beyond the farm gate.

Clauses 3, 4(2), 7 and 29 of the Bill, however, will commence on assent. Clauses 4(2) and 7 commence on assent to allow for the making of a regulation under the *Statutory Bodies Financial Arrangements Act 1982*

providing financial powers to the authority.

Clause 29 is to commence on assent to enable the Queensland Dairy Authority ('the authority') sufficient time to grant market milk entitlements to certain persons before the commencement of the substantive provisions of the Bill.

Clause 3 provides that the Bill amends the *Dairy Industry Act 1993*.

Clause 4 omits a number of definitions that will be redundant after the expiry on 31 December 1998 of certain provisions in the *Dairy Industry Act 1993* and inserts several new definitions.

The clause also amends the definition of 'processor' by removing the exclusion from the definition of producers who only process dairy produce produced at the producer's own dairy. The exclusion was inserted to allow producers who sold unpasteurised bovine milk produced at the producer's own dairy to operate without a processor's licence. It is now illegal under the Food Standards Code (a national code adopted by the *Food Standards (Adoption of Food Standards Code and General) Regulation 1987*) to sell unpasteurised bovine milk.

Clause 5 amends section 12(c) to correct an anomaly with the use of the term 'supply management system'. To ensure consistent use of terminology, the term is amended to 'supply management scheme'.

The clause also removes the term 'distribution' from section 12(e) as distribution of dairy produce will not be regulated after 31 December 1998.

Clause 6 allows the authority to require a processor to provide a certificate from an independent auditor. The certificate is for the purpose of verifying information about market milk sales supplied by processors.

Clause 7 omits provisions that are unnecessary. These provisions relate to the financial arrangements of the authority, matters which are covered by the *Statutory Bodies Financial Arrangements Act 1982*. Clause 7 also declares that the authority is to be a statutory body under the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

Clause 8 amends section 28 to allow the authority to only fix the minimum price to be paid by a processor for the purchase of milk for processing as market milk from a producer or another processor. Previously section 28 permitted the authority to fix prices for matters other than just the purchase of market milk from a producer or another processor.

With deregulation of the dairy industry beyond the farm gate after 31 December 1998, the authority's power to fix prices in relation to these other matters is no longer required. Clause 8 therefore removes the authority's powers to fix prices for these other matters, retains the authority's power to fix a minimum price to be paid by a processor for the purchase of milk for processing as market milk from a producer or another processor and makes a number of consequential amendments to section 28.

Clause 9 inserts a new section 28A authorising, for the *Trade Practices Act 1974* (Cwlth) and the Competition Code of Queensland, the making of pricing orders under section 28 and the imposition of a condition under section 28(4)(a) on a pricing order. The *Trade Practices Act 1974* (Cwlth) prohibits certain types of anti-competitive conduct in the market place unless that conduct is authorised by legislation. As the making of pricing orders and the imposition of conditions on a pricing order is anti-competitive conduct, it is necessary to authorise this conduct specifically in the legislation.

Clause 10 makes a number of consequential amendments to section 29 (which deals with obligations to comply with pricing orders) resulting from amendments to section 28.

Clause 11 inserts a new section 29A authorising, for the *Trade Practices Act 1974* (Cwlth) and the Competition Code of Queensland, certain conduct that is engaged in because of a pricing order made under section 28. This conduct includes the payment and receipt of a minimum price fixed for market milk in accordance with a pricing order. The *Trade Practices Act 1974* (Cwlth) prohibits certain types of anti-competitive conduct in the market place unless that conduct is authorised by legislation. As the payment and receipt of a minimum price fixed for market milk under a pricing order is anti-competitive conduct, it is necessary to authorise this conduct specifically in the legislation.

Clause 11 also inserts a new section 29B which provides that part 3, division 1 expires on 31 December 2003.

Clause 12 removes references to carriers' and vendors' licences as these licences will no longer be issued following deregulation of the dairy industry beyond the farm gate after 31 December 1998.

Clause 13 inserts a new section 40A authorising, for the *Trade Practices Act 1974* (Cwlth) and the Competition Code of Queensland, non-competitive conditions subject to which the authority has granted or

grants a producer's or a processor's licence. The *Trade Practices Act 1974* (Cwlth) prohibits certain types of anti-competitive conduct in the market place unless that conduct is authorised by legislation. As the granting of these licences subject to the conditions referred to in section 40A is anti-competitive conduct, it is necessary to authorise this conduct specifically in the legislation. Section 40A will expire on 31 December 2003.

Clause 14 omits section 42 as processor's licences will no longer be granted conferring special trading rights to processors.

Clause 15 omits section 45(3) and (4) which provide that a person must not carry on the business of a carrier or a vendor unless they hold a carrier's or vendor's licence. These provisions are unnecessary as carriers' and vendors' licences will no longer be issued.

Clause 16 omits section 46, which provides that certain licence types expire after 31 December 1998. This section is no longer necessary.

Clause 17 omits part 3, division 5, which deals with a scheme for restructuring the distribution of dairy produce. The scheme is now completed and this part is no longer necessary.

Clause 18 omits section 48, which allows for supply management regions to be constituted by regulation. In future, there is to be one supply management scheme for the State. There will no longer be any necessity for separate supply management regions, making section 48 redundant.

Clause 19 makes a consequential amendment to section 49 resulting from the removal of supply management regions from the legislation and clarifies that entitlements deal with the supply of milk for processing as market milk.

Clause 20 makes a minor amendment to section 50 to allow an interest in an entitlement to be transferred, dealt with or disposed of. This clarifies that transactions affecting entitlements may be in relation to part of an entitlement or the entire entitlement held.

Clause 21 amends section 52 to provide that there will be a supply management scheme for the State and makes a number of other minor consequential amendments to section 52.

Clause 22 inserts new sections 53 and 53A. Section 53 provides a formula to calculate the amount of each class of market milk taken to have

been supplied by entitlement holders each month.

Under section 53A, the authority is given a power to determine, using the formula, whether a processor has sold sufficient market milk in a month to meet payment obligations to entitlement holders based on the holders' entitlements and the minimum price. The authority is also given a power to make directions requiring payments to be made between processors to enable payment obligations to entitlement holders to be met. The authority's determination is subject to appeal to the Dairy Industry Tribunal.

Clause 22 also inserts a new section 53B authorising, for the *Trade Practices Act 1974* (Cwlth) and the Competition Code of Queensland, the giving of a direction by the authority under the new section 53A(1)(b)(ii). The *Trade Practices Act 1974* (Cwlth) prohibits certain types of anti-competitive conduct in the market place unless that conduct is authorised by legislation. As the giving of a direction is anti-competitive conduct, it is necessary to authorise this conduct specifically in the legislation.

Clause 23 makes a consequential amendment to section 56 (which deals with the gazettal of entitlements) arising from amendments to section 49.

Clause 24 inserts a new section 56A, which provides that part 3, division 6 expires on 31 December 2003.

Clause 25 removes the term 'distribution' from section 61 as distribution of dairy produce will not be regulated after 31 December 1998.

Clause 26 makes a number of minor amendments to section 106 to clarify that a determination of the authority or an authorised person may be appealed against to the tribunal.

The clause also omits subsection (2)(c) of section 106, which deals with a decision of the authority to grant a processor's licence on terms conferring an exclusive right to sell pasteurised milk and pasteurised cream to a particular segment of the market. This is a consequential amendment arising from the repeal of section 42, which allows the authority to grant a processor's licence on these terms.

Clause 27 makes a minor amendment to section 107A to clarify that a decision includes a determination. Section 107A deals with the power of the tribunal to stay a decision appealed against.

Clause 28 makes a minor amendment to section 107B to clarify that a

decision includes a determination. Section 107B deals with the powers of the tribunal on appeal.

Clause 29 inserts a new section 115 which provides for the renumbering of the provisions of the *Dairy Industry Act 1993* when the Act is next reprinted under the *Reprints Act 1992*. Because of the extent of the amendments to the *Dairy Industry Act 1993* and the number of provisions in the Act due to expire on 31 December 1998, it is appropriate to renumber the provisions of the Act when it is reprinted.

Clause 30 omits section 116 which is redundant because of amendments effected by Clause 7 of the Bill. Clause 30 inserts a new section 116 requiring the authority to grant market milk entitlements (that is, an entitlement to supply milk for processing as market milk) to certain producers and other persons not holding entitlements as at the date the Bill receives assent. Certain matters the authority is to take into account in the granting of these entitlements are set out in the section.

Clause 30 also inserts a new section 117 requiring the authority to gazette all market milk entitlements before 1 February 1999.

Clause 31 inserts a new section 120, which provides that part 8 (transitional provisions) expires on 1 February 1999.