Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016

Explanatory Notes

A Bill

An Act to provide for the establishment of logos for containers of fresh milk produced in particular regions and for which fair prices have been paid to dairy farmers, a mechanism for setting fair prices and offences for particular conduct in relation to the logos.

Policy Objectives

This Bill establishes the eligibility criteria and legal protection for voluntary logos to be placed on containers of milk. The logo will inform Queensland consumers that a price which achieves a sustainable gross margin for producing that milk has been paid to the dairy farmer who produced the milk. The logo is a voluntary market mechanism which processors can choose to incorporate into existing milk labels for milk that meets the eligibility criteria for use.

This Bill requires that a fair milk price logo identifies the region in which the milk was produced, as the costs of production vary from region to region. A region-specific logo also enables consumers to support their local dairy industry.

To ensure the validity of a fair milk price logo, this Bill provides a process for determining a fair price to be paid for the production of milk. Without a legislated criteria, eligibility for a fair milk price logo would be set by industry representatives, producers, processors or retailers. This would carry an inherent bias in the eligibility criteria that would serve the conflicting objectives of the party responsible for establishing a fair price.

This Bill provides for the setting of a minimum price to be paid to dairy farmers for the production of milk carrying a fair milk price logo. The fair milk price logo will signify that the farmer who produced that milk has made a sustainable gross margin.

The Bill legislates offences relating to particular conduct in order to protect the integrity of a fair milk price logo. The Bill ensures consumer confidence that purchasing milk with a fair milk price logo directly supports sustainable Queensland dairy production.

This Bill utilises the Queensland Government's Queensland Dairy Accounting Scheme (QDAS) report to identify the costs of producing milk for a dairy farmer in each Queensland region and uses the QDAS data to determine a sustainable gross margin for milk produced in a particular region.

Reasons for Policy Objectives

The Australian dairy industry is the third largest agricultural industry after beef and wheat. In 2015, the dairy industry brought approximately $4 billion into the Australian economy. The dairy industry employs approximately 50,000 people. Currently, the Australian dairy industry can be divided into two distinct sectors: those producing domestic drinking milk and those producing manufactured product and supplying export markets. The majority of the Queensland industry falls into the domestic drinking milk category.

In 2000, the national dairy industry was deregulated and all state and federal legislation that regulated milk prices was rescinded. At the time deregulation was being considered, the Federal Senate Rural and Regional Affairs and Transport References Committee investigated the domestic dairy industry. It made particular reference to market conditions, competitiveness, regulatory arrangements and measures that the Government could take to facilitate a transition to a less regulated environment. The findings, however, also noted the suggestion that the control regulation provided would shift to processors and large retailers, who would then be able to dictate terms to the industry and marketplace, was of serious concern.

Since deregulation, approximately 1,115 Queensland dairy farmers have exited the industry, according to the Queensland Dairyfarmers' Organisation, leaving approximately 430 dairy farmers. That means only 28 per cent of dairy producers operating in the year 2000 are operating today. Currently, an average of 70 dairy farmers leave the industry each year. If this trend continues, there will be no fresh milk production in Queensland by 2028. The Queensland dairy industry has suffered a steep decline and government policies have failed to address the concerns raised in the Federal Senate Committee's report 'Deregulation of the Australian Dairy Industry'. This report concluded that *sooner rather than later, the market [would] force deregulation and that a managed outcome with a soft landing [was] preferable to a commercially-driven crash.*

In 2012-13, Queensland milk production decreased by six per cent due to lower milk prices, higher cost of production and poor weather conditions. While regional milk production has continued to decline, the regional fresh milk market has continued to grow slightly above population growth. According to Dairy Australia, packaged milk sales increased by 3.38 per cent, from 531 million litres in 2011-12 to an estimated 549 million litres in 2012-13. This represents a shortage of 91.5 million litres of Queensland-produced milk to meet the Queensland drinking milk market demand in 2012-13. This directly reflects the Queensland industry's reliance on production and distribution of drinking milk, which is particularly vulnerable to fluctuating and unreliable pricing. This has resulted in Queensland importing fresh milk from the southern Australian dairy producing regions for three years in a row to meet demand.

The State of the Queensland Dairy Industry

On Australia Day 2011, Coles supermarkets began selling $1-a-litre milk as a 'leader' marketing strategy to increase their market share of milk sales. This began a milk price war between Australia's two major retailers, Coles and Woolworths. The price war has led to smaller grocery chains introducing $1-a-litre milk to remain competitive.

A Federal Senate inquiry in 2011 found the emphasis on drinking milk meant that any pressure on retail prices could potentially be pushed back down the chain. At the time of the inquiry, it was unclear whether that had happened. In 2015-16, what was clear was that dairy farmers were experiencing a large drop in farmgate prices right across the country.

In response to accusations of gouging the domestic milk market, Coles chief executive Ian McLeod acknowledged there was a lack of transparency between the farmgate price, the cost of production and the price processors received.

The 2011 Federal Senate inquiry 'Milking it for all it's worth: Competition and pricing in the Australian dairy industry' examined the impacts of supermarket price decisions on the dairy industry. It found a group of dairy farmers in Queensland contracted to Parmalat were affected by the cuts in the retail price of private label milk led by Coles. Under the arrangements, the Inquiry found the risk of any retail price movements or other shocks that affected the sales of branded products were being passed immediately onto dairy farmers. The Inquiry also stated it was unclear why this should be the case when the processor had chosen to supply both products to the supermarket.

The Queensland Dairyfarmers' Organisation (QDO) stated that farmgate prices became volatile and inconsistent between producers, dropping between 25 and 50 per cent in 2012-13. At the same time, supermarkets reported sales of drinking milk increased by more than 52 per cent. The average price paid for milk in January 2013 was 51.86 cents per litre (ex. GST), while the total cash cost of production with provisions for retirement, education and contingencies was 64.22 cents per litre. This resulted in an average cost of production that was higher than the return to the dairy farmer. In its submission to the Milk Pricing (Fair Milk Mark) Bill 2013 Queensland Parliamentary Committee review, the QDO highlighted that the $1-a-litre milk price war had a greater negative impact on the Queensland dairy industry relative to other Australian milk production regions.

Two major Queensland processors, Parmalat and Lion Nathan, have both reported that the drop in retail milk prices has negatively impacted processors' and producers' ability to make a consistent profit. Significant increases in electricity and grain costs have added to this pressure on farmers. However, due to a shortage of Queensland-produced fresh milk and slight decreases in the cost of grain and electricity in 2014-15, the average price paid for milk was 63.2 cents per litre (ex. GST). The total cash cost of production in Queensland for the same period was 59.4 cents per litre. This has been recognised across the industry as inconsistent with the declining trend of net profitability over the past decade. Industry analysts have warned that without policies that support milk production, the long-term trend will remain in decline. All indications show that without empowering the purchasing choices of consumers to influence farmgate prices, this national industry decline will continue.

Due to a lack of export opportunities in Queensland, current trends indicate all fresh milk production in Queensland will have ceased by 2028. This risk is recognised by industry leaders as a genuine threat to the sustainability of dairy production in Queensland. Due to Australia's lack of point-of-purchase information, which is available in other jurisdictions such as the European Union and included in protectionist policies for dairy production in the United States of America, the Australian dairy industry carries a higher degree of exposure to the current slump in global milk demand.

This Bill sets a national precedent, with Queensland spearheading a policy platform for a sustainable Australian dairy industry.

Community Expectations and Labelling

After the release of the report 'Milking it for all it's worth: Competition and pricing in the Australian dairy industry', the Senate Economic References Committee stated milk needed to be labelled in such a way *that consumers can make a more informed choice between generic and branded milk.*

The Committee also expressed that Section 46 of the Consumer and Competition Act 2010 was not functioning adequately as it exposed processors to discriminative and disadvantaging corporate manipulation of market power which influenced farmgate prices by coercing processors to create competition between their own products.

Community concerns have been raised regarding the integrity of advertising by major retailers. Legal challenges are currently underway between milk processors for deceptive and misleading conduct relating to labelling on milk.

Consumers have expressed their concern for the projected impact on Queensland dairy producers. However, a lack of readily available information at the point of purchase to differentiate between the return to producers from the sale of branded milk and $1-a-litre milk has provided no opportunity for consumers to influence the market.

In a 2013 poll conducted by the *Fraser Coast Chronicle*, 85 per cent of respondents indicated they would purchase fresh milk products for a higher price if they knew it would help Queensland dairy farmers. The degree of frustration felt by consumers who were unable to influence the market and relieve downward pressure on the price paid to producers was demonstrated when Victorian processor Murray Goulburn reduced farmgate prices in April 2016. Consumers reacted by exercising their purchasing power and buying branded milk, which increased branded milk sales by $114 million, to equal the market share of non-branded fresh milk.

Through traditional and social media, consumers demanded greater transparency in labelling of fresh milk products that supported dairy production sustainability.

Potential Impacts of Inaction

There are significant threats to the whole supply of fresh milk in Queensland. Industry representatives and analysts are genuinely concerned that without immediate, effective government support, there is a real risk of completely losing fresh milk production in Queensland.

Dairy farmers have outlaid significant capital on buildings and infrastructure to produce milk to a standard required by the processors. The current investment level amounts to approximately $1.5 billion. The social and economic impacts of no fresh milk production in Queensland would be significant. Processing plants and transport companies would shut down, employees would lose jobs and communities would suffer severe flow-on effects. More than 3,000 Queensland jobs would be put at risk. The economic loss to Queensland would amount to approximately $250 million per year at farmgate, approximately $400 million at factory gate and approximately $700 million in retail sales.

Fresh milk could become unavailable in western and far north Queensland, with UHT milk being the only option. This was already happening in some areas, including the Lotus Glen Correctional Centre on the Atherton Tablelands in far north Queensland. This market environment is providing an advantage for major supermarkets to continue to use fresh milk as a 'loss leader' (the practice of undercutting the price of essential items to draw market share away from competitors) by selling fresh milk at a price smaller retailers cannot compete with.

If the projected decline in fresh milk production in Queensland continues, consumers will be faced with paying more for fresh milk, which would have to be freighted from southern states. According to Port Curtis Milk Suppliers Co-operative Association Limited, this situation has a precedent on Norfolk Island, which used to process its own milk, but now has no dairy farms left. In 2014, milk was flown in from New Zealand and consumers paid $7 per litre of fresh milk and $5 per litre of UHT milk. Failure to support the Queensland dairy industry could force the importation of fresh and UHT milk from other states or New Zealand. Ultimately, Queensland consumers would be left with less choice and higher prices for imported fresh milk.

The Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016 does not provide full rectification of the losses and disadvantages of the Queensland dairy industry, nor does it interfere with the supply chain of fresh milk to Queensland consumers. Fundamentally, it aims to increase consumer engagement in the economy of dairy production in Queensland by establishing an eligibility criteria for a market-based mechanism for a legally-protected, easily identifiable logo. The Bill responds to consumer demands for purchasing choices that support a sustainable Queensland dairy industry. Producers and processors would not be penalised if they chose to not adopt the logo.

Achievement of Policy Objectives

In compliance with national competition policies enacted through the Federal Competition and Consumer Act 2010, this Bill does not enable regulation of the Queensland dairy industry. Alternatively, it achieves the policy objective of sustainable dairy production in Queensland through a voluntary fair milk price logos.

The minimum price for milk is not applicable to every contractual agreement or sale between producers, processors, wholesalers, retailers and consumers of all fresh milk, but is a necessary component of the eligibility criteria for a fair milk price logo.

The logos are a market-driven mechanism and is completely subject to consumer demand and industry support.

By establishing a criteria for a fair milk price logo, a price must be determined which will create an industry benchmark for a farmgate price dairy farmers require to ensure a sustainable Queensland dairy industry.

Alternative Ways of Achieving Policy Objectives

During the development of this Bill, the need to legislate a fair milk price logo was questioned and other non-legislative methods were considered. Some alternative methods of achieving the policy objectives included: the Heart Tick label administered by the Heart Foundation, the Rainforest Alliance Certified label administered by the Rainforest Alliance, and the Energy Star Ratings. These labels have a similar intent to this Bill, however, they are administered by non-government agencies and regulated by the Australian Consumer and Competition Act 2010.

Through the consultation process, it became clear that a non-government administered logo related to the cost of dairy production and industry sustainability would be plagued by legal challenges, as reflected in legal undertakings related to A2 milk labelling. By legislating the criteria for a fair milk price logo and giving administrative responsibility to the relevant minister, the logo remains objective, protected by law and retains the non-profit related objective of achieving industry sustainability. The retention of government control over a fair milk price logo also ensures the integrity of the logo is protected and consumers can be confident that milk bearing a fair milk price logo directly supports a sustainable Queensland dairy industry.

Estimated Cost of Government Implementation

It is expected that there will be minimal to no cost to Government.

Consultation

The Bill has been extensively consulted. Industry representative groups, producers and processors have contributed to the development of the Bill over the past three years. They examined drafts and provided feedback which led to significant adjustments to the Bill.

The Bill is also a response to research that identified consumers would pay more for dairy products if they knew the extra cost would result in a sustainable dairy industry.

Consistency with Other Jurisdictions

There is no other legislative provision for a fair milk price logo in any Australian jurisdiction, however, a fair milk label has been implemented in parts of the European Union. After a severe decline in the European dairy industry between 2000 and 2010, European markets experienced a decreased demand for dairy which resulted in a 30 per cent decline in farmgate prices between 2007 and 2009. In response, the European Commission established a High Level Expert Group to supervise the creation of long-term solutions, which resulted in the implementation of the Milk Package scheme. It mediated packaging to contribute to stabilising the market and producers' income and enhancing transparency. The European Milk Package allowed consumers to clearly identify that milk bearing certain packaging met ethical requirements for a sustainable dairy industry. The implementation of labelling transparency endorsed greater competition through fair means while ensuring the majority of producers across Europe were provided with an acceptable price to facilitate production and industry sustainability.

The Milk Package report also acknowledged that dairy farmers were particularly disadvantaged in that they were selling a perishable product in a highly-consolidated market with little choice, at a regional level, to whom they sold.

The situation in Europe prior to the labelling scheme was very similar to Queensland. However, European milk production has shown recovery since the introduction of labelling laws, with no verifiable harm since the implementation.

Notes on Provisions

Clause 1 States the short title of the Act is the Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016.

Clause 2 Provides definitions for terms used in the Act in Schedule 1.

Clause 3 Establishes the objectives of the Act to implement a logo to be added to a label of a milk container. This logo is to identify that a fair price has been paid to the producer for fresh milk. Section 3 (a)(i) specifies the region in which the milk was produced due to the varying costs of production in Queensland's three major dairy producing regions. A region-specific logo will also enable consumers to support their local dairy industry and Section 3 (a)(ii) ensures consumers can be confident that their purchase of milk bearing a fair milk logo directly supports the Queensland dairy industry. (b) Provides criteria for determining a fair price to be paid to producers and (c) creates an offences for particular behaviour relating to the logo to protect the integrity of a fair milk logo.

Clause 4 Establishes criteria to be considered when determining the cost of milk production including the region in which the milk was fresh produced. The minister of the relevant portfolio will approve a logo design in consultation with the corresponding regions' dairy farmers and organisations representing the interests of those dairy farmers.

Clause 5 Provides a sustainable gross margin for producing a litre of fresh milk in each Queensland region utilising data compiled by the Queensland Dairy Accounting Scheme, which is recognised by the Queensland and Australian Governments as a legitimate and reliable data set for determining costs of production. This will be decided by the relevant minister and published in the government gazette (a milk price gazette) at least twice a year. Section 5 (3) defines a process for determining a sustainable gross margin through consulting with dairy farmers and organisations that represent the interests of dairy farmers in each region; the most recent and up-to-date QDAS report with consideration for encouraging best farming practice and innovation for fresh milk production. Section 5 subsection (5) defines the QDAS report.

Clause 6 Section 6 determines that there will be a fair milk price per litre for each Queensland dairy region and sets in place the process by which this can be achieved. Subsection (2) determines that a fair milk price for a Queensland dairy farmer in a Queensland dairy region includes a sustainable gross margin to produce a litre of fresh milk. The fair milk price set by the minister is to be published in each milk price gazette notice.

Clause 7 Addresses variations from a base price that producers receive from processors based on milk quality and composition so that the processor retains the eligibly to use the logo. The processor can make a variation to the price paid to a dairy farmer for milk that a dairy farmer supplies that does not meet the processors' required composition or quality standards. Any variations are applied to the fair milk price in accordance with any contractual arrangement between the dairy farmer and the processor.

Clause 8 Prescribes penalty units to the offence of selling milk bearing the fair milk price logo (marked milk) when a fair price has not been paid for that milk to the dairy farmer. Subsection (2) provides definitions of terms used.

Clause 9 This section enables the Queensland minister to consult with other state and territory ministers to establish a fair milk price logo in their jurisdictions. Subsection (2) provides a timeline for the minister to publish the fair milk price at six-month intervals. Subsection (3) provides definitions of terms used.

Schedule 1 Provides definitions for terms used in this Bill.