

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

DAIRY PRODUCE AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Primary Industry,  
the Hon John Kerin MP



OUTLINE

Dairy Produce Amendment Act 1985

This Bill contains two amendments to the Dairy Produce Act 1924 (the Act). The first will correct a legal difficulty in the operation of the export pooling arrangements for the dairy industry. The second amendment will remove administrative difficulties with the present legislation with respect to the power of the Australian Dairy Corporation (ADC) to enter contracts.

The amendments contain no financial implications for the Commonwealth.

NOTES ON CLAUSES

<u>NO OF CLAUSE</u>	<u>EXPLANATION</u>
1	(1) <u>Short title</u> Provides mode of citation of Bill.
	(2) Establishes that references to the Principal Act are references to the <u>Dairy Produce Act 1924 (the Act)</u> .
2	<u>Commencement</u> Provides that the legislation shall come into operation on the day it receives the Royal Assent, but that the amendment made by section 3 (in respect of advances from the export pools) shall be deemed to have taken effect on 1 July 1978. Making the amendment retrospective has the effect of authorising advances made without legal authority since the commencement of amendments to the Act on 1 July 1978 (see further comments on clause 3 below).
3	<u>Pools for returns on export sales of dairy products</u> Section 20AB of the Act establishes an export pooling scheme which essentially provides for the averaging of returns for exports of prescribed dairy produce during a season. Since its inception in 1977 advance payments on account of likely final payments have been approved and made under the section. However, amendments which were made to section 20AB of the Act in 1978 led to an anomaly which was only discovered during a recent review of dairy legislation. The effect of the anomaly is to prevent the making of advance payments to exporters of dairy produce from the dairy produce export pools. Clause 3 of the Bill will correct this anomaly both prospectively and retrospectively.

NO OF  
CLAUSEEXPLANATION4 Power to purchase and dispose of assets

This clause provides for the replacement of section 25 of the Act.

Section 25 of the Act requires the ADC to seek Ministerial approval before entering contracts involving more than \$100,000 unless the contract relates to the sale or disposal of dairy produce. The proposed replacement for section 25 will remove from the requirement for prior Ministerial approval two classes of contracts from time to time entered into by the ADC and will also increase the threshold amount for remaining contracts from \$100,000 to \$500,000.

The first class of contracts proposed to be removed from the ambit of section 25 is futures contracts for hedging purposes in relation to sales or proposed sales of dairy produce by the ADC. Until recently the view had been taken that such contracts were an integral part of the sale transaction and were thus automatically excluded from the operation of section 25. However, legal advice has been received which concludes that futures contracts are quite separate from the sale contract and thus technically fall within section 25. Since it is necessary to act very quickly when entering futures contracts for hedging purposes and it is quite possible for delays to attend the Ministerial approval process it is proposed to specifically remove such contracts from the operation of section 25.

NO OF  
CLAUSEEXPLANATION

- 4 (cont) The second class of contracts proposed to be removed from the ambit of section 25 is contracts entered into by the ADC pursuant to the Dairy Produce Sales Promotion Act 1958 (the Sales Promotion Act). Legal advice has been obtained which states that while it is not clear that section 25 of the Act applies to contracts entered into under the Sales Promotion Act it would be prudent to assume that it does. Given that the ADC's promotional activities centre around campaigns mounted by advertising agencies retained by the ADC to act on its behalf there are practical difficulties in identifying specific contractual arrangements to place before the Minister for approval. Further, it seems unreasonable that action specifically authorised under one Act should be subject to conditions in another. In this context it is relevant that the ADC's promotional plans for each year are fully discussed with the industry and that the rate of levy on milk for the purposes of promotion is set having regard to recommendations from the Australian Dairy Farmers' Federation.

The increase in the threshold amount from \$100,000 to \$500,000 is consistent with current practice in respect of similar provisions in legislation establishing statutory authorities, as is the provision for a higher amount to be prescribed. In the absence of the latter provision it would be necessary for the Parliament to amend the legislation to increase the threshold amount as money values changed over time. By providing for higher amounts to be prescribed Parliamentary time will be saved, and the opportunity for Parliamentary scrutiny will still be provided.



