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**1995**

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**DAIRY PRODUCE AMENDMENT BILL 1995**

**SUPPLEMENTARY EXPLANATORY MEMORANDUM**

**(Circulated by authority of the Minister for Primary Industries and Energy, Senator  
the Hon Bob Collins)**



## DAIRY PRODUCE AMENDMENT BILL 1995

### GENERAL OUTLINE

1. The purpose of this amendment is to give effect to advice received from the Office of General Counsel subsequent to the introduction of the Bill into the House of Representatives that there was a substantial risk that the import offset provisions of the *Dairy Produce Levy (No. 1) Amendment Bill 1995* could be successfully challenged on Constitutional grounds as imposing a duty of customs in a Bill dealing with a duty of excise.
2. Following advice from the Attorney-General's Department, a dual levy mechanism has been adopted. An import offset levy (ie a duty of customs) is proposed to be imposed on imports of dairy products under the *Dairy Produce Levy (No. 2) Amendment Bill 1995* but only up to the level of the levy payer's export credit (if any) ie export rebate or reduction of manufacturing milk levy liability due to exports. An acquisition offset levy (ie a duty of excise) is proposed to be imposed under the *Dairy Produce Levy (No. 1) Amendment Bill 1995* on imported dairy product which is acquired by prescribed exporters (or related companies) after import up to the level of the levy payer's export credit, net of any import offset levy already paid.
3. These levies are designed to prevent exporters manipulating the market support arrangements for financial gain. They are offsets against export credits or export rebates rather than general import duties and will not affect normal import trade.
4. The amendments affect all three related Bills i.e. the *Dairy Produce Amendment Bill 1995*, the *Dairy Produce Levy (No. 1) Amendment Bill 1995* and the *Dairy Produce Levy (No. 2) Amendment Bill 1995*.
5. The amendments provide for the import offset and acquisition offset levies to be imposed, on a financial year basis, on the milk fat and protein content of imported dairy produce up to the level of rebate on the milk fat and protein content of exports, whether that rebate was a reduction in the levy liability of a manufacturer of dairy produce or a direct payment to a downstream manufacturer of dairy produce.

### FINANCIAL IMPACT STATEMENT

6. There are no financial implications of this Bill for the Commonwealth. All levies received into the Consolidated Revenue Fund will be fully appropriated to the Dairy Market Support Fund administered by the Australian Dairy Corporation.
7. The amounts raised by the levies will not increase the level of support to the industry. As the import offset and acquisition offset levies will offset rebates of manufacturing milk levy (which generates the consumer transfer from domestic consumers to manufacturing milk producers) due to exports generated directly or indirectly by imports of dairy products, they will act to preserve that support.

## NOTES ON INDIVIDUAL CLAUSES

### SCHEDULE

#### 14. Section 102:

##### Winding up of Market Support Fund

8. In the eventuality that levy or penalty payable through the Consolidated Revenue Fund in respect of milk produced before 1 July 1995 is paid to the Corporation after the Market Support Fund is wound up, any such funds shall be credited to the Domestic Fund, just as any surplus in the Market Support Fund at the time it is wound up will be credited to the Domestic Fund.

#### 15. Part VII: add at the end:

##### Definitions

9. The definition of dairy produce applying to Division 5 of Part VII is unnecessary because this term is already defined in section 3 of the *Dairy Produce Act 1986*. The terms acquisition offset levy and import offset levy are defined to enable reference to be made to these levies in the *Dairy Produce Act 1986*.

##### Payment of market milk and manufacturing milk levies to Corporation

10. The proposed subsection 106(2) is amended to provide for the payment to the Corporation by the Commonwealth of amounts equal to amounts collected by the Commonwealth in respect of acquisition offset levies imposed under the *Dairy Produce Levy (No. 1) Act 1986* and import offset levies and reimport levies imposed under the *Dairy Produce Levy (No. 2) Act 1986* and any penalties payable under the *Primary Industries Levies and Charges Collection Act 1991* in respect of those levies.

##### Negative levy payments

11. Subsection 108B(5) and section 109D are inserted to provide that information required to be given to the Corporation by the Secretary of the Department of Primary Industries and Energy in respect of negative levy entitlements may be given by an officer of the Australian Public Service, or a person in the employ or service of a collecting authority or organisation (acting as an agent of the Secretary under the *Primary Industries Levies and Charges Collection Act 1991*), authorised for that purpose by the Secretary.

##### Levy rebates to downstream manufacturers

##### Import offsets against manufacturing milk levy refunds

12. Subsection 108C(1) is amended and section 108D is omitted to remove import offsets from the monthly calculation of export rebate. Import offsets will be levied under the *Dairy Produce Levy (No. 1) Act 1986* and the *Dairy Produce Levy (No. 2) Act 1986*, on an annual basis.

**16A. After section 109:**

**Reduction of acquisition offset and import offset levy amounts in certain circumstances**

13. If the amounts of a manufacturer's liability to acquisition offset levy imposed under the *Dairy Produce Levy (No. 1) Act 1986* and that manufacturer's liability to import offset levy imposed under the *Dairy Produce Levy (No. 2) Act 1986*, combined, exceed that manufacturer's maximum amount then that manufacturer is not liable to pay the amount of the excess. This ensures that in any financial year these two levies are applied only as an offset against the benefit the manufacturer has obtained in that financial year in relation to exports.

**Reduction of levies to avoid double payment**

14. The total amount of acquisition offset levy imposed under the *Dairy Produce Levy (No. 1) Act 1986* or import offset levy imposed under the *Dairy Produce Levy (No. 2) Act 1986*, in respect of dairy produce acquired or imported by a company that is related to (but is not itself) a prescribed exporter and payable by more than one related prescribed exporter, is reduced (if necessary) so that the dairy produce in question is only offset once against the combined export benefits of all related prescribed exporters. Where this occurs the reduced amount is divided equally among the prescribed exporters.