



The Parliament of the Commonwealth of Australia

Report on the Provisions of the

**DAIRY PRODUCE LEGISLATION AMENDMENT
(SUPPLEMENTARY ASSISTANCE) BILL 2001**

**Report by the Senate Rural and Regional Affairs and Transport
Legislation Committee**

June 2001

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ABBREVIATIONS

DAA	Dairy Adjustment Authority
Dairy RAP	Dairy Regional Assistance Package
DEP	Dairy Exit Program
DIAP	Dairy Industry Adjustment Package
DSAP	Dairy Structural Adjustment Program

CHAPTER ONE

THE COMMITTEE'S INQUIRY

Reference of the Bill to the Committee

1.1 On 24 May 2001, on a motion by Senator Woodley, the Senate referred the Dairy Produce Legislation Amendment (Supplementary Assistance) Bill 2001 (the Bill) to the Legislation Committee for inquiry and report by 18 June 2001.¹

1.2 The motion read:

That, upon its introduction into the House of Representatives, the provisions of the *Dairy Produce Legislation Amendment (Supplementary Assistance) Bill 2001* be referred to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 18 June 2001, with particular reference to the adequacy of the guidelines for distribution of dairy adjustment funds to meet the particular needs of dairy farm lessors and other dairy farmers.²

The Committee's Inquiry

1.3 On referral of the provisions of the Bill, the Committee sought submissions from interested parties. The Committee received 31 written submissions, which are listed at Appendix 1 of the Report.

1.4 The Committee held a one-day public hearing on the Bill in Canberra on Tuesday, 12 June 2001. The witnesses who appeared at the hearing are shown at Appendix 2 of the report.

1.5 All submissions made to the Committee and the *Hansard* of the Committee's hearing on the Bill are tabled with this report, together with supplementary material provided to it following the Committee's hearing. The *Hansard* of the hearing is available at the Hansard site on the Parliament House homepage on the Internet (www.aph.gov.au).

Consideration of the Committee's Report

1.6 The Committee met on Monday, 18 June 2001 to consider its report.

1 *Journal of the Senate*, 24 May 2001, p 4277

2 *Journal of the Senate*, 24 May 2001, p 4277

Acknowledgments

1.7 The Committee acknowledges the assistance and contribution made to its inquiry by all those who prepared written submissions on this inquiry at short notice. The Committee also acknowledges the assistance provided at its public hearing on the Bill by all witnesses, and the prompt provision of supplementary information requested by the Committee. The Committee also acknowledges the assistance of the Department of the Parliamentary Reporting Staff in providing the Hansard transcript of proceedings so promptly. This co-operation has allowed the Committee to prepare and present its report within a short period of time.

CHAPTER TWO

THE DAIRY INDUSTRY ASSISTANCE SCHEME

Background

2.1 The Dairy Produce Legislation Amendment (Supplementary Assistance) Bill enables additional assistance to be provided to those affected by the deregulation of the dairy industry. The Bill is supplementary to the package of legislation passed in 2000 to establish the industry assistance support package. As an introduction, it is useful to summarise the mechanics of the Dairy Adjustment Scheme.

2.2 In March 2000, the Committee reported on the original legislation establishing the dairy adjustment package, ie:

- a) Dairy Industry Adjustment Bill 2000
- b) Dairy Adjustment Levy (Excise) Bill 2000
- c) Dairy Adjustment Levy (Customs) Bill 2000; and
- d) Dairy Adjustment Levy (General) Bill 2000.

2.3 The *Dairy Industry Adjustment Act 2000* provides the framework for the two programs which comprise the scheme, as well as for the establishment of the Dairy Adjustment Authority, which administers the scheme.

2.4 The Committee was required to examine the bills **to determine the adequacy of the bills in meeting their stated aims**, ie to assess the ability of the package of measures to provide financial assistance to dairy producers to enable structural adjustment within the industry with the least possible disruption, following deregulation.

2.5 The Acts provide the framework for implementation of the Dairy Industry Adjustment Program, the main object of which is to assist dairy farmers to adjust to deregulation, either through structural adjustment payments or payments to exit the industry. Specific assistance, in the form of the Dairy Regional Assistance Program, has also been made available to dairy dependent communities to assist in developing sustainable employment opportunities and community infrastructure.¹

2.6 The Commonwealth assumed responsibility for development and management of the structural adjustment scheme, although the most significant impact resulted from the withdrawal of the state regulatory arrangements.

1 Explanatory Memorandum, *Dairy Produce Legislation Amendment (Supplementary Assistance) Bill 2001*, p 2

2.7 A significant issues for farmers in NSW, Queensland and Western Australia was the loss of capital investment in quota entitlements as a result of deregulation and the lack of compensation for that capital loss. There is no constitutional requirement for states to acquire property on just terms as there is in the Commonwealth constitution.²

The structure of the Scheme

2.8 The total package of \$1.78 billion will eventually be paid to producers based on their deliveries of manufacturing and market milk in 1998/99. Payments are made in quarterly instalments over 8 years.

2.9 The package is funded from a levy of 11 cents per litre on the sale or equivalent transaction of all liquid milk products, ie whole milk, modified milk, UHT milk and flavoured milk. The levy will apply to all liquid milk products sold domestically at point of use, thereby including imported milk. The levy commenced on 8 July 2000 and is expected to run for a period of 8 years, although the Minister advised in his second reading speech that the levy 'will cease when all payments are made and costs are met'. The funds raised by the levy will provide for:

- a) payments to producers;
- b) borrowing costs; and
- c) administration costs;
- d) costs incurred by the Australian Competition and Consumer Commission (ACCC) in monitoring the price of retail activity.

2.10 The scheme is a complex one, designed to provide for the many different arrangements which apply to the production sector of the dairy industry, including leasing and shareholding arrangements.

Types of payment

2.11 The Act provided for the establishment of the Dairy Structural Adjustment Fund, which in turn provides for two types of payments:

- a) The \$1.63 billion Dairy Structural Adjustment Program (DSAP);
- b) The \$30 million Dairy Exit Program (DEP); and
- c) The \$45 million Dairy Regional Assistance Program (Dairy RAP).

The Dairy Structural Adjustment Program

2.12 Calculation of entitlement for Dairy Structural Adjustment Program payments is based on 8.96 cents per litre for manufacturing milk and 46.23 cents per litre for market milk. However, payments made under the DSAP will not be subject to a requirement that the recipients remain in the industry. Entitlement holders will be able to exit the industry and

2 Legal Advice to AFFA by AGS and provided to the Committee on 14 March 2000

continue to receive their payment stream. Alternatively, the entitlement can be transferred on sale of the dairy enterprise.

2.13 There is provision within the scheme for the Dairy Adjustment Authority (DAA) to exercise discretion where producers can demonstrate that there are 'anomalous circumstances'. The DAA will be able to consider claims and allocate entitlements to producers who were dairying in 1998/99 and who remain in the industry, yet do not meet the standard criteria.

Exceptional events and anomalous circumstances

2.14 Under the current scheme, there is provision for the Dairy Adjustment Authority (DAA) to exercise discretion where producers can demonstrate that they have experienced either an exceptional event or 'anomalous circumstances'. The DAA will be able to consider claims and allocate entitlements to producers who were dairying in 1998/99 and remain in the industry, and who do not meet the standard criteria. Under the Scheme the DAA has the discretion to provide payments in these categories.

2.15 The extent to which this category has been used and why lessors have not been successful in pursuing their case is an issue of concern to the Committee. Advice received from AFFA indicates that very few payments in either category have been made.

Table 2.1 – Applications for payments under sections 14 and 15 of the current Scheme

	Applications received	Payments granted
Exceptional Events	729	107
Anomalous circumstances	402	36

The Dairy Exit Program

2.16 The Dairy Exit Program provides for the needs of those farmers who may need to leave the industry. The Program is a \$30 million fund, available for the first two years of the package, which will provide payments of up to \$45,000 tax free. Conditions are attached and include the same assets test and eligibility criteria which apply under the Restart Re-establishment Grants of the Farm Family Restart Scheme. To qualify for the payment, producers must have less than \$157,000 in net assets after the sale of their farm enterprise.

2.17 The amount of the payment is to be reduced by \$2 for every \$3 where a producer's net assets, after selling the farm enterprise, exceeds \$90,000. The value of the net assets includes the family home if it has been annexed from the farm enterprise.

2.18 Dairy producers have the option of switching to the exit package from the DSAP, if they meet the eligibility criteria. The amount of DEP received will be net of any payments received under the DSAP scheme.

Dairy Regional Assistance Program

2.19 The Act established a Dairy Regional Assistance Program, amounting to \$45 million over three years from 1 July 2000. The aim of the program was to assist dairy-dependent communities to adjust to deregulation. Dairy RAP grants are designed to generate employment and encourage growth through support for new business investment, and establishment of community infrastructure, including counselling services.

2.20 An additional \$20 million is to be made available for Dairy RAP, with priorities for funding to focus on those regions most adversely affected by deregulation, as identified in the ABARE report.

The Dairy Adjustment Authority

2.21 The Act provided for the establishment of the Dairy Adjustment Authority, under the management of a Board, to assess applications according to the eligibility criteria and to direct the Australian Dairy Corporation in delivering payments.

Committee Comment in 1999 Dairy Report

2.22 The References Committee reported in October 1999 on Deregulation of the Dairy Industry. The Committee made a number of comments on the proposed structure of the Assistance Package. The extract from that report is reproduced below.

Committee conclusions

The Committee is firmly of the view that if deregulation is effected on 1 July 2000, there must be an adequate and effective re-structure package in place, in order to ameliorate the immediate effects on farmers' income and the longer term regional impacts. That package must comprise three elements:

- (a) compensation for loss of income;
- (b) appropriate compensation for the loss of asset values, particularly where quota is concerned; and
- (c) a regional adjustment component, appropriately developed in conjunction with the states.

The Committee notes the expanded package and expanded levy requirement in the Minister's recent announcement. However, the Committee remains concerned about some of the principles behind the package and its adequacy. The administrative arrangements are also a matter for concern.

The funding of the package via a consumer levy appears to be opportunistic. Consumers will probably not get any real benefits from the deregulation of the farmgate price for market milk, at least not in the short to medium term. The Committee is therefore at a loss to understand why consumers should fund the package. From a producer's point of view, it seems that they consider that they themselves are funding the package, through the fall in the farmgate price.

The cost to consumers is claimed to be neutral, the price of milk is not expected to increase, as "it replaces the present price structure established through existing regulation". However, there is a fundamental flaw in this claim – it assumes that the full extent or almost the full extent of the fall in price to the producer will be passed on to the consumer. The Committee considers that this assumption is unduly idealistic, that there will be nothing to stop retailers and processors from increasing their margins, and the consumer will be paying the price. The demand for drinking milk is highly inelastic – the processors and retailers know this and will take advantage of that fact.

There is still no compensation for losses relating to quota – farmers in the quota states are highly exposed as a result of capital invested in quota, which will be worthless on 1 July 2000, should deregulation go ahead. This matter must be addressed by state governments.

The administrative arrangements for the collection, management and payment of the funds for the package are not yet finalised. The Committee is concerned that there will not be enough time before the first payments to due be made on 1 July 2000, for the finalisation of appropriate administrative and appeal arrangements.³

CHAPTER THREE

THE DAIRY PRODUCE LEGISLATION AMENDMENT (SUPPLEMENTARY ASSISTANCE) BILL 2001

Introduction - Purpose of the bill

3.1 The purpose of the bill is to provide additional targeted funding to individuals who have been most severely affected by deregulation of the dairy industry or who do not qualify for payments under the DSAP scheme and have experienced financial loss as a result of deregulation. The bill provides specifically for additional assistance to regions. The objectives of the legislation are:

The regulatory objective of the supplementary dairy assistance measures is primarily to facilitate coordinated and targeted assistance measures to dairy farmers and regions most adversely affected by the fall in market milk prices. The measures will also include provision of assistance to those individuals who experienced a significant event, significant crisis or significant anomalous circumstances, which limited their eligibility under DSAP.¹

3.2 Supplementary dairy assistance is to assist the following groups:

- a) those most adversely affected by the fall in market milk prices;
- b) individuals who can establish they have experienced a significant event, crisis or anomalous circumstances which limits their eligibility under the DSAP scheme.

3.3 The additional funding provided by the scheme is \$140 million, with a proposed cap on payments to individual farmers of \$60,000. The \$140 million is made up as follows:

- a) **\$100 million** in additional adjustment assistance payments;
- b) **\$20 million** in discretionary payments [a Discretionary Payment Right];
- c) **\$20 million** in additional regional assistance program payments [Dairy RAP].

The Bill's Provisions

Market milk adjustment assistance payment

3.4 Additional adjustment assistance payments are to be paid to producers whose income stream was heavily reliant on market milk premiums before deregulation, ie, those who delivered more than 35% of their total deliveries as market milk in 1998-99.

1 *Explanatory Memorandum*, p 4

Discretionary Payment Right [DPR]

3.5 The Discretionary Payment Right [DPR] is to be available to those people who have been denied or who have received lower than expected DSAP payments, possibly due to a change in circumstances or the coincidence of the timing of the package and atypical farm management arrangements during the eligibility period. Eligibility is to be determined on the basis that applicants can demonstrate a significant event, crisis or other significant anomalous circumstances which affected their eligibility for, or reduced, their DSAP entitlement. Anomalous circumstances will include illness, injury related incapacity, death or animal disease or atypical farm arrangements in the base year that resulted in lower, or zero, milk deliveries that year.

3.6 Dairy farm lessors will be able to apply for payment under the discretionary payments category if they can demonstrate they suffered a significant event or crisis which resulted in their temporary or unforeseen change in status from producer to lessor. Limited discretionary payments will also be available to lessors who can demonstrate they derived 50% or more of their total income from a dairy enterprise lease and who can also demonstrate their annual lease income has fallen by at least 20% in 2000-2001 as compared with the 1999-2000 financial year.

3.7 If granted a discretionary payment right, producers will receive an entitlement as assessed under the DSAP Scheme.

Administrative arrangements

3.8 The Minister for Agriculture, Fisheries and Forestry is to make the decision to grant a discretionary payment right, though such decision making power may be delegated to the DAA as the statutory authority responsible for administering the dairy adjustment program.²

3.9 Additional payments will be funded from an 'additional application of the levy, expected to be up to 10 months'.³

Submissions to the Committee

3.10 Submissions concentrated on the following major issues:

- a) the 35% threshold and \$60,000 cap on entitlements under the supplementary assistance package;
- b) the proposed discretionary payment scheme and proposed provisions for people who claim disadvantage;
- c) circumstances affecting the entitlements of specific groups of producers in several states, particularly Western Australia, South East Australia and Tasmania;
- d) the limited time available for assessment and enactment of the bill; and
- e) appeal provisions under the current and proposed scheme.

2 *Explanatory Memorandum*, clause 69

3 *Explanatory Memorandum*, p 2

Supplementary market milk payment

3.11 The fall in market milk prices following deregulation of the industry was greater than anticipated. The impact has been consequentially more marked, particularly in ex-quota states, where the fall in prices have been as much as 30%.⁴ The proposed additional assistance is directed at those producers who can demonstrate that their dairy farm enterprise delivered more than 35% of their total deliveries as market milk in 1998-99.⁵

3.12 The two principal issues causing concern are:

- a) the 35% threshold; and
- b) the \$60,000 payment cap.

The threshold of 35%

3.13 The majority of submissions received by the Committee concerned the impact of the 35% threshold and recommend it be lowered. Any lowering of the threshold will require assessment of the number of additional producers it would capture and its estimated cost. It is the Committee's view that the DAA should be able to calculate the impact of this change based on current information held by it.

Australian Milk Producers Association Ltd

3.14 Australian Milk Producers Association (AMPA) expressed concern about the supplementary assistance package. AMPA concerns centre on the proposed cut in point of 35% and gradual scaling upwards of 1.2 cpl for every 1% increase up to 45%. AMPA argues this arrangement is based on a flawed premise, ie, that losses in market milk income will be partially offset by gains in manufacturing milk production and prices.

3.15 AMPA also argued that the manufacturing sector of the industry is not returning current cost of production to the farmer and it is accordingly unprofitable for dairy farmers in former quota milk states to produce manufacturing milk. AMPA also argue that the 35% threshold is arbitrary and discriminates against those quota holders below 35% of total production. AMPA recommended to the Committee that the 35% threshold be reduced to 20%.

The \$60,000 cap on payments

3.16 A further issue of concern to producers in ex-quota states, is the proposed cap of \$60,000 on payments. In their submission, setting the cap at this sum discriminates proportionately against equitable compensation to holders of substantial quota entitlements. For instance, Mr Tony Ferraro, a Western Australian producer, argued that the cap discriminates against producers hardest hit by deregulation:

In our case we produced over 1.4 million litres in 98/99 with 1.29 million litres into market milk. We will receive the maximum payment of \$60,000. Our neighbours, who produced only half this milk volume, and who are less affected by

4 ABARE, *The Australian Dairy Industry – Impact of an Open Market in Fluid Milk Supply*, January 2001

5 *Explanatory Memorandum*, p 6

deregulation will also receive the same \$60,000 payment. The maximum payment limit needs to be increased if it is to assist those hardest hit.⁶

3.17 Mr Ferraro also noted that, not only did those producers supplying larger volumes of market milk suffered the largest losses, they also typically carried the heaviest load of farm debt.⁷

Committee comment

3.18 Notwithstanding the sum payable being capped at \$60,000, producers whose losses are greatest, and who are carrying debt which threatens the viability of their enterprise due to the change in debt ratio resulting from deregulation should be considered eligible for discretionary payment rights under certain circumstances. **(See Recommendation 1(a)).**

3.19 The Committee recognises that decrease in the threshold of the supplementary market milk payment will have an impact on the total sum available to the whole range of eligible producers. The Committee suggests that, if possible, prior to the final consideration of the bill, a set of comprehensive statistics showing the impact of reducing the threshold be made available using information held by the DAA on:

- a) the quantum of funds available for supplementary assistance; and
- b) any consequential impact on the levy arrangements.

Discretionary payment right

3.20 The explanatory memorandum states:

A second group of dairy farmers identified as facing undue hardship are those who were unintentionally denied, or received lower DSAP payment entitlements than was intended. This situation may have occurred through a combination of circumstances associated with a relatively small proportion of entities who experienced a significant event or crisis, or a coincidence in the timing of the package announcement and changes to their farm management arrangements during the eligibility period which affected entitlements when assessed against relatively narrow eligibility criteria...⁸

3.21 The explanatory memorandum also describes events which might allow eligibility under the Discretionary Payment Right, including "personal circumstances such as illness, incapacity, death or animal disease that significantly disrupted production".

3.22 The draft Ministerial Orders that have been provided to the Committee sets out eligibility criteria for discretionary payment rights [section 8]. There are two ways in which a person or a dairy entity can qualify for the payment, either through:

- a) significant events or significant crises; or
- b) significant anomalous circumstances.

6 *Submission no 28, p 2*

7 *Submission no 28, p 2*

8 *Explanatory Memorandum, p 6*

3.23 A significant event or significant crisis will include illness, incapacity for work due to injury, a person's death, or the death or disease of livestock. If the event causes a significant reduction in the volume of milk delivered by the enterprise during the base year compared to the enterprise's 'normal' annual volume, and the Minister is satisfied that the reduction was attributable to the event or crisis, the entity is eligible for a payment. A significant reduction means a volume of milk less than 70% of the normal volume.

3.24 Significant anomalous circumstances apply in two circumstances. The circumstances are that the Minister can determine that Section 8 applies to an entity if **all** of the following circumstances are found to exist:

- a) the entity held an interest in a dairy farm enterprise at 6.30 pm on 28 September 1999;
- b) before 28 September 1999 there was a change or an atypical feature in the ownership or management of the enterprise; and
- c) the Minister determines that the change or feature significantly and adversely affected the entity's eligibility for a payment right under the DSAP scheme, or significantly and adversely affected the face value of such a payment right.⁹

3.25 The second set of circumstances require **all** of the following to apply before the Minister can determine that the section applies to the entity:

- a) the entity held an interest in a dairy farm enterprise shortly before 28 September 1999 but had assigned the interest to another person by that date;
- b) the entity did not, on that date, hold an interest in a dairy farm enterprise except as mentioned in [the following] subparagraph; and
- c) at 6.30 pm on 28 September 1999 the entity was a party to a binding contract or other arrangement under which it would, after that date, be entitled to hold an interest in a dairy farm enterprise.

3.26 The Committee was advised that eligibility for these payments would be determined in the first instance by the DAA. For Section 8 eligibility under significant events or crises or anomalous circumstances, a determination by the Minister will be required. There will be some latitude for ministerial discretion for particularly difficult cases or where the DAA wishes to refer an application to the Minister for decision.¹⁰

Committee comment

3.27 The Committee considers that a clearly defined approach to Discretionary Payment Rights, which should allow for the exercise of ministerial discretion in clear circumstances of disadvantage, is appropriate.

9 *Draft Supplementary Dairy Assistance Scheme*, v9 14 June 2001, pp 8-9

10 *Evidence*, RRAT, 12 June 2001, p 4

Lessors' eligibility

3.28 Dairy farm lessors appear to have two options under the proposed legislation. They will be able to apply under the discretionary payments category if they can demonstrate that they suffered a significant event or crisis which resulted in their temporary or unforeseen change in status from producer to lessor. Limited discretionary payments will also be available to those lessors who can demonstrate that:

- a) they derived 50% or more of their total income from the dairy enterprise lease; and
- b) their annual lease income has fallen by at least 20% since 1 July 2000.

3.29 The majority of submissions to the Committee's inquiry were from lessors who have been farming for a number of years and have leased their farms. Many of their lessees, the Committee has been advised, have received significant payments under the DSAP. Some lessees have breached their lease and purchased a farm or taken up another occupation. Lessors have, on occasion, been left with a farm which they are unable either to work themselves, cannot secure or attract a new lessee, or their farm has remained unleased for long periods of time.

3.30 The exclusion of lessors from the initial DSAP package appears to have been decided on the basis that lessors would be less exposed to the consequences of decline in market milk prices. This may not be the case. Major problems for lessors include:

- a) a short term lessee receiving a significant proportion of the DSAP payment [around 95%], while the lessor has received much less, despite a continuing financial commitment to ongoing maintenance of the farm; and
- b) the departure of a lessee and an inability to find a replacement;

3.31 Lessors claim the large payments to lessees represent windfall gain, enabling them to depart the industry with a substantial lump sum, while lessors are left without possibility of ongoing assistance to maintain their investment.

3.32 Submissions to the Committee from lessors challenged assumptions underlying the structure of the DSAP, namely:

- a) that lessees would remain on farm;
- b) that if lessees left the farm in breach of the lease, lessors had the option of resorting to legal redress; and
- c) failure to take into consideration the short term of dairy leases [three years] and consequential lessor exposure to fluctuating milk prices.¹¹

3.33 In evidence, the Committee was told:

11 *Evidence*, RRA&T, 12 June 2001, p 19

...it seems that the purpose of the payment is to assist adjustment to make enterprises more profitable. If this is so, it should seem counterproductive to deny the lessor a significant stake in the payments since it is a lessor who will have to fund on-farm development works that are required for productivity and viability.¹²

Committee comment

3.34 The Committee acknowledges the very difficult situation facing a number of lessors. The Committee considers that one of the unintended consequences of the assistance package may have been to alter the balance of the dairy industry lessor/lessee business relationship.

Anomalous circumstances in other states

3.35 There appear to be a number of anomalies affecting specific groups of farmers in some states, mostly relating to the definition of what constitutes market milk, which is the basis for payments under the DSAP Scheme. Mr Tim Roseby, Executive Manager of Agricultural Industries of AFFA, stated at 12 June public hearing:

When the package was originally put together, the industry was quite adamant that there had to be really firm criteria in place to define the difference between manufacturing and market milk. With the full support of the industry, it was decided then that definition related to the recipients of the DMS – those who paid the levies and those who actually received benefits from the Domestic Market Support Scheme. That provided a very clear definition across Australia as to the difference between manufacturing and marketing milk.¹³

3.36 The anomaly impacts particularly on the following groups of farmers:

- a) the farmers supplying the Capel Dairy in Western Australia; and
- b) producers in the South East of South Australia.

3.37 The Committee has also received representations from Tasmanian farmers in relation to the impact of the pooling arrangements on their assistance entitlements.

- a) *The Capel Dairy suppliers*

3.38 The Committee was advised at public hearing that the Capel Dairy suppliers were disadvantaged as a result of the definition of market milk for the purposes of determining eligibility under the package. The farmers in that region of Western Australia are requesting that assessment of their particular circumstances be a consideration in determination of eligibility for the supplementary payment.

- b) *South East Region of South Australia*

3.39 DSAP Scheme payments to South East South Australia dairy farmers have been reduced significantly arising from an anomaly in the definition of market milk for SA Equalisation and the DSAP Scheme. A submission from the SE Dairy Farmers' Action Group argued that South East dairy farmers should be eligible for a discretionary payment

12 *Evidence, RRA&T, 12 June 2001, p 19*

13 *Evidence, RRA&T, 12 June 2001, p 64*

right pursuant to the proposed SDA Scheme under the Bill, given that there has been a significant (24% reduction in DSAP Scheme payments) loss as a result of the anomaly.¹⁴

3.40 The claimed anomaly arises from the claim exclusion of UHT and flavoured milk from the definition of market milk under the SA Equalisation Scheme. The submission further argues that, because of the difference in the definition of market milk between the SA Equalisation and the DSAP scheme, the SE dairy farmers market milk share will not qualify them for assistance. The net effect appears to be that SE farmers are deemed to have produced less market milk than is actually the case, meaning those farmers received lower DSAP Scheme payments than other dairy farmers in South Australia, possibly by as much as \$40,000.

c) Tasmania

3.41 In Tasmania, many producers supplied 100% of output as market milk, but were deemed to supply 8-10% because of pooling arrangements. The Tasmanian Farmers and Grazier's Association argued that producers in this category should receive supplementary assistance.

3.42 However, the Committee sees the deeming process as a fair representation of market milk production and as such, is significantly below the 35% threshold.

3.43 If producers are able to demonstrate that market milk production was in excess of the 35% threshold, they would qualify for payment. The Committee is not in a position to assess such a claim; only producers or their co-operatives have conclusive figures to accurately establish the exact position in this regard.

Committee comment

3.44 The Committee's inquiry focussed on an examination of the bill against its stated objectives with particular reference to the adequacy of guidelines for distribution of dairy adjustment funds to meet the needs of dairy farm lessors and other dairy farmers.

The structure of the legislation

3.45 Since the hearing on the bill on 12 June, the Committee was provided with the draft Ministerial Orders during the course of its consideration of the bill.

3.46 The Committee has now had the draft scheme available to it. The Committee remains uncertain that the provisions in the scheme will address all the legitimate concerns which have been expressed in submission and at public hearing.

The Supplementary Market Milk Payment

3.47 The Committee is of the view that there remain issues to be settled in relation to the eligibility and quantum of the supplementary market milk payment. However, in order to determine the impact of any changes to the proposed scheme, the Committee suggests that the DAA provide an analysis of the impact of amending the eligibility criteria by lowering the market milk threshold.

14 *Submission 12*, South East Dairy Farmers Action Group, p 2

3.48 The Committee notes particularly the concerns of some parties regarding the adequacy of the \$60,000 cap and notes the recommendation by AMPA that the cap be retained. The Committee recognises that producers also, in recent times, have bought additional quota (in many cases as part of a restructuring process) and that their enterprise viability could be severely damaged or even destroyed by deregulation. The Committee recommends (see **Recommendation 1 (a)**) that special supplementary payments of up to a maximum additional \$20 000 be included in the legislation to offset this threat to producer viability.

The Discretionary Payment Right

3.49 The Committee notes the provisions in the **current** DSAP scheme, which allow for anomalous circumstances to be considered, but notes that the criteria for both ‘exceptional events’ and ‘anomalous circumstances’ are circumscribed.

3.50 While the DAA has the necessary discretion to authorise payments under these headings, the threshold criteria set have meant that a limited number of producers achieved a benefit assessment stage. The Committee has been advised that the limited number of successful claims under this category gives a limited accessibility to the intended support.

3.51 The revised scheme sets out specific criteria for the Minister to determine eligibility. The Committee remains concerned that, once again, there may be people not eligible who have been genuinely disadvantaged but who will have no right to assistance.

3.52 It is apparent for this evidence that the existing criteria aimed at dealing with anomalous circumstances are too narrow and too inflexible to allow intended benefits to reach the genuinely disadvantaged. The Committee requests that, when debate on the bill is reached, the Parliamentary Secretary address this issue specifically and provide response to the Committee’s observations on this part of the bill.

Appeal rights

3.53 The Committee remains concerned at the nature and extent current appeal rights. While there exists a right of appeal under the current Scheme and that such a right of appeal will also be available under the additional scheme, it appears difficult to establish a ground of appeal – in practical terms an appeal right may be limited.

3.54 The Committee requests that, when debate on the bill is reached, the Parliamentary Secretary address this issue specifically and provide response to the Committee’s observations on this part of the bill.

Conclusion

3.55 It is not surprising, in view of the complexity of the issues raised by dairy industry package developed in 2000, that some broadening and supplementation of the DSAP scheme is now required. Such a necessary supplementation results from the pattern of price changes shown by the findings of the January 2001 ABARE report, *The Australian Dairy Industry – Impact of an Open Market in Fluid Milk Supply*.

3.56 While a number of those making representations to the Committee on the bill consider the bill’s introduction hasty, the bill provides an early response to a range of unforeseen or little-appreciated issues on which the dairy industry has expressed concern

since deregulation. The prompt response is necessary because affected producers require assistance now.

3.57 The Committee accordingly makes the following observations on the bill:

- a) The additional components of assistance to the dairy industry should be speedily implemented;
- b) The amendments appear to adequately meet the needs of those producers and other dairy enterprises affected by the deregulation of the dairy industry; and
- c) Proposed appeal provisions, subject to clarification, which should occur during debate on the bill, appear satisfactory.

Recommendation 1

3.58 The Committee recommends that:

- a) The bill should be passed subject to consideration of appropriate provisions for producers with a high market milk input under the terms of previously prevailing quota licence (as commercial instruments). Those producers who have suffered a demonstrated greater loss because of a high debt ratio resulting from payment of high prices for quota, and whose debt ratio threatens the viability of their enterprise, should be considered as appropriate cases for payment of an increased maximum amount of \$80,000 (ie, \$60,000 under the cap and up to \$20,000 special supplementary payment); and
- b) the Discretionary Payment Right provisions in the bill and Ministerial Orders setting out the parameters for the Discretionary Payment Right be broadened so that the DAA and/or the Minister are given discretion to approve payments in situations where producers can demonstrate they have been genuinely disadvantaged because of unforeseen circumstances relating to deregulation beyond their control.

Recommendation 2

3.59 The Committee recommends that the matters raised by the Committee be considered by the Government and that the Dairy Produce Legislation Amendment (Supplementary Assistance) Bill 2001 then be passed immediately.

Senator Winston Crane
Chairman

SUPPLEMENTARY COMMENT

SENATORS FORSHAW AND O'BRIEN

As with the first legislative package to assist the dairy industry to manage deregulation this proposal for additional assistance has been presented to the Senate in a hasty and incomplete form.

Senators were given limited time and limited information during the consideration of the first package and the manner in which the scheme was to operate could therefore not be properly considered.

In fact, the need for the second assistance package flows largely from the weaknesses in the Government's first attempt to manage the adjustment process in one of Australia's major rural domestic and export industries.

Senators Forshaw and O'Brien are particularly concerned that the committee was required initially to consider the bill without access to the proposed ministerial orders. The committee was eventually provided with draft ministerial orders but only after the public inquiry process was complete.

Even after consideration of the draft ministerial orders it remains unclear that the scheme will address all the legitimate concerns expressed both in submissions and the public hearing.

Senators Forshaw and O'Brien note that the arrangements put in place by the Commonwealth to deal with exceptional events or anomalous circumstances provisions in the existing program have been unsuccessful.

Only 107 applications from a total of 729 succeeded in gaining assistance through the exceptional events program and only 36 applications for assistance under anomalous circumstances out of 402 received help.

And there has been very little take-up of assistance through the Dairy Industry Exit Program.

Senators Forshaw and O'Brien are concerned that while the eligibility criteria for the Discretionary Payment Right while seeming to capture some situations are still very narrow and restrictively defined.

The Opposition is of the view that a less narrowly defined approach, which allows for a genuine exercise of discretion in some circumstances would be appropriate.

Senators Forshaw and O'Brien note the claim at paragraph 2.6 of the report that "*the Commonwealth assumed responsibility for the development and management of the dairy adjustment scheme although the most significant impact resulted from the withdrawal of state regulatory arrangements.*" This claim is not true. The assistance package was developed by the industry who then sought Commonwealth legislative support for the imposition of the levy and other aspects of the scheme.

Further, the Commonwealth only made assistance available on condition that the quota states dismantled their regulatory arrangements, that all states agreed to the package, and that assistance payments are subject to tax.

The Opposition appreciates the situation that many lessors now find themselves in and is not satisfied that the additional package will address their concerns.

Further, it is now clear that one of the consequences of the Government's first package has been to change fundamentally the balance of the relationship of lessors and lessees in the dairy industry.

The impact of the package in lessors and in some cases lessees clearly illustrates the Government's lack of vision for the future of the dairy industry. Rather than enhance the future prospects of the industry the Government's package has, in fact, laid waste a number of productive dairy farms.

The Opposition Senators note that the Government is arguing that this second package should be progressed as a matter of urgency to enable a quick response to problems.

These problems are largely of the Governments making and, as stated earlier, result in part because of the haste with which the first package was progressed. The same hasty approach with this second package has the potential to further disadvantage sections of the dairy industry rather than correct existing flaws.

Senators Forshaw and O'Brien are concerned that the 35 % arbitrary market milk limit to access the additional DSAP payment will lock out many farmers, especially those who took advice, borrowed, invested and expanded in preparation for deregulation.

The Opposition Senators therefore recommend that:

- **In recognition of the fact that many dairy farmers who relied on market milk for a significant proportion of their income will not have access to the supplementary market milk payment, the 35% threshold be reviewed.**
- **The criteria applied to the Dairy Exit Program be reviewed to ensure that it properly meets the needs of farmers seeking to exit the industry.**
- **The guidelines for the Dairy Regional Assistance Program [DRAP] be reviewed to ensure that projects selected for funding are of direct benefit to those families and regions adversely effected by dairy deregulation.**
- **That the guidelines for access to the discretionary payments scheme be reviewed to ensure that it is capable of providing assistance to those who have suffered considerable financial hardship as a result of dairy deregulation and who are not eligible for payments from other parts of the package, including lessors and lessees of dairy farms.**

Senator Michael Forshaw

Senator Kerry O'Brien

SUPPLEMENTARY REPORT

SENATOR JOHN WOODLEY

The Australian Democrats have never accepted the proposition that deregulation was inevitable and believe that deregulation went ahead because of the lack of political will to resist those commercial forces which were driving deregulation.

The Democrats warned during the debate on the original legislation that rushing the debate would ensure that the Senate would need to revisit this legislation, because it failed to address all the concerns of dairy farmers. We also raised the inadequacy of the appeals process and the fact that the legislation excluded certain classes of producer, such as lessors.

The Democrats further note that the majority of the States which legislated to deregulate the dairy industry had Labor Governments.

The Democrats will move amendments to rectify the problems identified in the Committee's report.

Senator John Woodley

SUPPLEMENTARY COMMENTS

SENATOR LEN HARRIS

Pauline Hanson's One Nation

As was discussed during the discussion of the original Bill, the scenario re the situation regarding the lessee / lessor and the opportunities for the lessee to take the payment and run has turned out to be painfully accurate as submitted to the inquiry.

The results of this grossly negligent and inadequate omission is now delivering its results out there in the dairying community. A very high percentage of lessors are now (as was predicted) in the extenuating circumstances of having no lessee, no remaining dairy payment tied to the farm and unable to attract a new lessee.

Amendments were proposed to linking of the farm to the payment and not merely the herd to this payment, this would have resulted in a win win situation for all the parties involved instead of the resulting injustice. This linking provision would have also permitted any new lessee to also to have obtained the payments and not be as has resulted unable to enter the industry.

The focus of the adjustment package is to assist financially the producers during the period while the industry restructured, therefore the adjustment package should have been attached to the land while that land continued to be primarily used to produce dairy produce.

If a lessee exits the industry the adjustment package must remain in the industry.

The unacceptable situation has been raised in submissions where lessees have been in default of their lease agree either prior to 22/9/99 or subsequently after that date and still have received either lump sum pay and exited the industry or continued to be eligible for quarterly payments. Adjustment payments should not be available to any lessee that is in default or defaults in the future.

Due to the continuing financial hardships facing the dairy industry PHON position is that it is preferable that as is with share-farming conditions i.e. the package being equally divided between owner and share-farmer, it is desirable that the lessee/lessor situation be afforded the same conditions. To achieve this equality for all the Bill will need to address the situation where in some cases lessees have received up to 98% of the adjustment package.

Senator Len Harris

APPENDIX ONE

SUBMISSIONS

Submission no	Author
1	Mr Bill Purcell
2	Tasmanian Farmers and Graziers Association
3	Mr Peter Grundy
4	Mr Brian and Mrs June Barling
5	Mr and Mrs Simpson
6	Mr and Mrs Berry
7	Mr George Mynard
8	Mrs Joy Boucher
9	Mrs Averil Kennedy
10	Mr W Verboon
11	Ms Rhonda Andrews
12	South East Dairy Farmers' Action Group Working Party
13	Mr and Mrs Behrens
14	Ms Anne Sansom
15	Mr Graeme and Mrs Rosemary Trease
16	Mr Colin and Mrs Helen Seton
17	Mr and Mrs Meggs
18	Mr Alec McKenzie
19	Mr Stephen Farley
20	Mr Angel and Mrs Maria Bassanese
21	Ms Judith McHugh
22	Mr and Mrs Crouch-Loveday

Submission no	Author
23	Dairy Farm Owners' Action Group
23A	Confidential
24, 24 A	South Australian Dairyfarmers' Association
25	Mr Rob and Mrs Jill Barrett
26, 26A	Australian Milk Producers' Association
27	G A and J M Tieman
28	Mr Tony Ferraro
29	Queensland Dairyfarmers' Organisation
30	Mr Max and Mrs Loraine Cross
31	Mr John and Mrs Julie Mortyn

APPENDIX TWO

HEARINGS AND WITNESSES

Canberra, 12 June 2001

Agriculture, Fisheries and Forestry Australia

Mr Tim Roseby, Executive Manager, Agricultural Industries
Mr Paul Sutton, General Manager, Wool and Dairy
Mr Greg Williamson, Manager, Dairy
Mr Patrick Musgrave, Chairman, Dairy Adjustment Authority

Australian Milk Producers Association

Mr John Cartwright, National President
Mr Michael Kearney, Victorian State President
Mr Tony Pratico, West Australian President

Dairy Farm Owners Action Group

Mr Bill Purcell, President
Ms Fiona Wilson, Vice President
Ms Lynett Griffiths, Committee Member

Department of Employment, Workplace Relations and Small Business

Ms Di Hawgood, Group Manager Regional and Indigenous
Employment Support Group
Ms Janine Pitt, Team Leader, Dairy Regional Assistance Program Team

Mr George Mynard, Private capacity

Mrs Rosemary Trease, Private capacity

Mr Neville and Mrs Joy Boucher, Private capacity

South Australian Dairy Farmers Association

Mr Phil Kernick, General President
Mr Kenneth Lyons, Chief Executive Officer
Mr Gary Spain, Board Member
Mr Murray Klemm, Farmer Member

South East Dairy Farmers Action Group Working Party

Mr Tim Hall, Solicitor
Mr Ron Purvis, Member

