

The Senate

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Rural and Regional Affairs and  
Transport Legislation Committee

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Provisions of the Dairy Industry Service  
Reform Bill 2003 and the Primary Industries  
(Excise) Levies Amendment (Dairy) Bill 2003

March 2003

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# CHAPTER ONE

## THE COMMITTEE'S INQUIRY

### Reference of the Bill to the Committee

1.1 On 18 March 2003 the Senate referred the Dairy Industry Service Reform Bill 2003 and the Primary Industries (Excise) Levies Amendment (Dairy) Bill 2003 to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 27 March 2003.

1.2 In referring the Bills to the Committee, the Committee was asked by the Senate to

Examine the provisions of the bill proposing the establishment of the Dairy Australia Company and whether it is in the best interests of the dairy industry; the level of support within the industry; the level of support within the industry for the new arrangements, in particular accountability provisions; and whether alternative models/provisions may be more appropriate to the industry in the context of restructuring.

### Purposes of the Bills

1.3 The main purpose of the Dairy Industry Service Reform Bill is to:

- convert ADC into a not for profit Corporations Act limited by guarantee (Dairy Australia) controlled by levy-paying dairy farmers and transfers to Dairy Australia all the DRDCs staff assets and liabilities so that Dairy Australia can provide most of the marketing and research and development, services for the dairy industry presently provided by ADC and DRDC;
- establish the concept of the industry services body, entitled under a funding contract with the Commonwealth to levy payments and matching Commonwealth payments;
- require the industry services body to take over ADCs role in relation to the DSAF;
- simplify the export control arrangements for dairy produce, retaining the function with the Commonwealth.

1.4 The main purpose of the Primary Industries (Excise) Levies Amendment (Dairy) Bill is to provide for the imposition of a new levy, the dairy service levy, to replace the current dairy promotion, research and corporation levies.

## **The Committee's Inquiry**

1.5 Following referral of the Bills, the Committee invited key stakeholder groups, to invite submissions. A list of written submissions is included at Appendix 1.

1.6 The Committee held a public hearing on the Bill in Canberra on Monday, 24 March 2003. The witnesses who appeared at the hearing are listed at Appendix 2 of the report.

1.7 Published submissions and *Hansard* of the Committee's hearing on the Bills are tabled with this report. The *Hansard* of the hearing are available at the Hansard site on the Parliament House homepage on the Internet ([www.aph.gov.au](http://www.aph.gov.au)).

## **Consideration of the Committee's Report**

1.8 The Committee met on Thursday, 27 March 2003 to consider its report.

## **Acknowledgements**

1.9 Given the very short time available, the Committee acknowledges the assistance and contribution made to its inquiry by those who prepared written submissions. The Committee also acknowledges the assistance provided at its public hearing on the Bills by witnesses.

1.10 In particular, the Committee acknowledges the considerable assistance provided by the summary of the Bills provided in the Parliamentary Library Bills Digest which has advised the Committee in the preparation of Chapter 2 of this report.



# CHAPTER TWO

## PROVISIONS OF THE BILLS

### Purpose of the Bills

2.1 The purposes of the Bills are as follows:

- Dairy Industry Service Reform Bill 2003 - convert the Australian Dairy Corporation, the ADC, into a company under the Corporations Act 2001, to be known as Dairy Australia Ltd, and for all the assets and liabilities of the Dairy Research and Development Corporation, the DRDC, to be transferred to this new company merging the R&D and marketing arms of the dairy industry.
- Primary Industries (Excise) Levies Amendment (Dairy) Bill 2003. - provide for the imposition of a new levy, the dairy service levy, to replace the current dairy promotion, research and corporation levies.

### Background to the Bills

2.2 In the late 1990s corporatisation and privatisation received renewed attention under the National Competition Policy and the Competition Principles Agreement among the Commonwealth and State and Territory Governments. There has been a particular focus on review of legislative arrangements and privatisation of agricultural marketing and research and development bodies.

### Main Provisions of the Bills

#### *Dairy Industry Service Reform Bill 2003*

2.3 **Parts 2–4** deal with the provision of levy information to the ADC, the 'privatisation' of the ADC and DRDC and other related matters. Essentially, the intention is that the ADC will apply to be registered as Dairy Australia whereas the DRDC will transfer all assets and liabilities and employees, etc to the new company.

2.4 **Schedule 1** makes consequential amendments to other related legislation.

#### *Part 2 - Provision of levy information to Australian Dairy Corporation*

2.5 **Part 2** deals with the provision of levy information to the ADC

2.6 **Clause 7** authorises the ADC to obtain names, addresses, contact details and ABNs of dairy farmers from any purchaser of the farmer's dairy products. This is 'to ensure that as many dairy farmers as possible are given appropriate information about

the restructuring effected by the Bill and to encourage dairy farmers to become members of Dairy Australia'.

2.7 **Schedule 1, items 121-124** amend the *Primary Industries Levies and Charges Collection Act 1991* to authorise AFFA to pass information to Dairy Australia on levies paid by dairy farmers. This will allow Dairy Australia to verify which dairy farmers are entitled to membership and the level of voting rights they should receive.

### ***Part 3 – Privatisation of dairy corporations***

2.8 **Part 3** deals with the creation of Dairy Australia, transitional arrangements, etc.

### **Division 2 – Registration of Dairy Australia**

2.9 **Division 2** provides for the registration of ADC as a company limited by guarantee under the Corporations Act 2001, with the new name 'Dairy Australia Limited'. The application for registration must be accompanied by the new company's constitution, which must first be approved in writing by the Minister.

2.10 **Clause 14** provides that Dairy Australia is not to be regarded as a Commonwealth entity 'for the purposes of a law'. Such provisions are usually included to ensure that the Commonwealth is not legally responsible for the actions of a privatised body. However, in the current Bill 'a law' is defined to mean legislation, regulations or other instruments made by the Commonwealth, or a State or Territory. This does not exclude common law litigation against the Commonwealth in relation to actions by Dairy Australia.

2.11 **Schedule 1, item 51** amends the *Dairy Produce Act 1986* to stipulate that a 'funding contract' between Dairy Australia and the Commonwealth must be concluded before the Minister can declare Dairy Australia to be an 'eligible body' able to receive funds from the dairy service levy and matching Commonwealth amounts (**new section 7**). The funding contract must ensure that dairy service payments are spent on 'marketing, promotion, strategic policy development, research and development activities or other activities, for the benefit of the Australian dairy industry' (**new section 5**).

### ***Division 3 – transfer of DRDC assets and liabilities***

2.12 **Division 3** transfers all the assets and liabilities of DRDC to Dairy Australia. This includes the substitution of Dairy Australia for DRDC in any legal proceedings. The Explanatory Memorandum notes that there is no similar provision transferring ADC's assets and liabilities because the legal entity known as the ADC will continue to exist, as a registered company under the Dairy Australia name.

2.13 All contracts and agreements entered into by DRDC will be transferred to Dairy Australia (**clause 18**).

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### ***Division 4 – transferring employees of dairy corporations***

2.14 **Division 4 of Part 3** deems all employees of DRDC to be employees of Dairy Australia. There is no similar provision for ADC employees since they will continue to be employed by the same legal entity, renamed as Dairy Australia.

2.15 **Division 4** provides that:

- DRDC employees will be transferred to Dairy Australia on the same terms and conditions
- accrued entitlements of DRDC employees are unaffected by their transfer to Dairy Australia
- accrued rights of DRDC and ADC employees to compensation under the *Safety, Rehabilitation and Compensation Act 1988* are expressly continued
- accrued rights to maternity leave are not affected by the transfer to Dairy Australia, and
- DRDC and ADC employees retain accrued long service leave rights on transfer to Dairy Australia.

2.16 The Explanatory Memorandum notes that since Dairy Australia will be a private company, former ADC and DRDC employees will no longer be entitled to contribute to Commonwealth superannuation schemes.<sup>(32)</sup>

### ***Primary Industries (Excise) Levies Amendment (Dairy) Bill 2003***

2.17 **Schedule 1** repeals the provisions in the *Primary Industries (Excise) Levies Act 1999* imposing the current Corporation, Promotion and Research Levy on dairy produce, replacing these with a single ‘dairy service levy’.



# Chapter Three

## Issues raised during the Committee inquiry

### Introduction

3.1 Matters raised during the Committee's examination of the Bills are as follows:

- Consultation with independent participants on the scheme to be enacted by the Dairy Industry Service Reform Bill 2003.
- the proposed constitution for Dairy Australia and the proposed Dairy Australia structure for Australian Dairy Corporation (ADC) and Dairy Australia corporate structure.
- details of the collection and proposed use of the dairy service levy to be imposed under the Primary Industries (Excise) Levies Amendment (Dairy) Bill 2003, and the statutory funding agreement required by that legislation.
- accountability mechanisms proposed for Dairy Australia.

### Consultative Process

3.2 The setting up of Dairy Australia resulted from a decision by dairy industry bodies in 2000.

3.3 In October 2002, the Government amended the Dairy Produce Act 1986 so the ADC could fund the involvement of the Commonwealth, the DRDC and the dairy industry in a consultative process, along with the provision of advisers to assist in the investigation of the best options for reform. The Minister for Agriculture, Fisheries and Forestry, The Hon Warren Truss, said that the dairy industry had approached the Government with a proposal that would see the two statutory authorities, ADC and DRDC, become one Corporations Law company, directly accountable to their levy paying members.

3.4 Following this finding, the Minister announced in December 2002 its proposal to combine the Australian Dairy Corporation into a single corporation with Dairy Australia. The Minister noted

Dairy Australia's membership will include dairy farmers and peak farmer and processor groups, and it will manage around \$35 million in levy funds and \$15 million in matching Commonwealth R&D contributions each year<sup>1</sup>

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1 The Hon Warren Truss, MP, 'Dairy Australia gets the go-ahead', *Media Release*, 19 December 2002.

3.5 The Committee asked witnesses about the extent of consultation of the proposed legislative changes. The Australian Dairy Farmers Federation provided the Committee with a summary of the various means of communication and observations it has undertaken.

Mr McQueen—I have a summary of speeches and communications that we have undertaken over the last few years, which I can leave with the committee. The detail is embraced within that to a large extent and, if the committee so wishes, we would be happy to provide copies of it; but we felt that, at least for this point in time, a summary of the consultative processes we have been through—a couple of pages, I hope—might be a better first step.<sup>2</sup>

3.6 This summary is published as Appendix 3 to this report.

3.7 The Australian Milk Producers Association was critical of the lack of consultation and told the Committee that

Mr Cartwright....We hear a lot from the minister that he is talking to and liaising with peak industry bodies, but it seems to us that the peak industry bodies do not represent all the farmers in Australia by a long shot. Having regard to our endeavours in AMPA, many people do not belong to either organisation and are not getting a chance to be heard. They are not even aware of what is going on in the first place to even want to be heard. So our biggest criticism probably relates to consultation, because AMPA has a raft of objections to what is being proposed. If we cannot get consultation to air them, have them taken on board and acted upon, we are just a voice that is not getting heard.

We have tried to talk to Minister Truss and it has taken nearly 12 months to get him to reply to letters. One of the things that concerned us greatly, as this has been proceeding through parliament, was that his office rang us the day after it was read a first time in parliament. They said, ‘Oh, we’d better have you come and see the minister seeing that it is already going through parliament.’ That prompted them to arrange a visit personally with Mr Truss. It concerns us that he is the only one we seem to be able to talk to, yet we cannot get to see him. That is a big concern for us.<sup>3</sup>

3.8 The Australian Dairy Corporation told the Committee that

Mr Phillips—Our primary consultation mechanism has been the same as we have carried out for a number of years in the corporation—that is, primarily through the main industry representative bodies of farmers and manufacturers. As part of the facilitation process for the establishment of Dairy Australia, the corporation and senior management have participated in industry restructure working groups, in the Dairy Restructure Management

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2 *Hansard*, Monday, 24 March 2003, p26.

3 *Hansard*, Monday, 24 March 2003, p16.

Committee, which is a combined industry and government forum, and also in general discussions with the ADIC and its member bodies.

Senator O'BRIEN—So individual dairy farmers have not played any role in the development of this model?

Mr Phillips—The corporation's activity is not so much at that industry policy level. Basically, we are here to implement existing policies and legislation. We have been working with the industry representative bodies to facilitate their consultation, meetings and exercises, such as the publication of articles in the broad stream of farmer journals like the *Australian Dairyfarmer* magazine. But the corporation's role has primarily been consultations with representative groups.

Senator O'BRIEN—So dairy farmers who are not members of industry groups that make up ADIC have effectively been excluded from consultations.

Mr Phillips—As part of the process, we have set up the 1800 phone line. We have publicised that for all farmers and general members of the community who are interested in the creation of Dairy Australia to see whether or not there are questions or issues that they wish to raise in that process. We publicised that line widely in regional Australia to give people, whether they are members of the industry organisations or not, the chance to raise the issues they wish to raise with the ADC and DRDC as part of the process of establishing Dairy Australia.

Senator O'BRIEN—How do you advertise that that mechanism is available and that these are the issues you need to be consulted about?

Mr Phillips—That was done through articles put forward in the Rural Press, such as the *Australian Dairyfarmer* magazine, which goes out to all dairy farmers. There have been discussions on radio programs and so on publicising the existence of the 1800 number. On any documentation that is being prepared in relation to Dairy Australia, that 1800 number is highlighted to allow anyone who wishes to raise issues or questions to bring those forward.<sup>4</sup>

## **Proposed Structure for Dairy Australia**

3.9 During its inquiry the Committee sought details on the proposed structure and constitutional arrangements are expected financial accountability for on Australian Dairy.

3.10 Once established it is proposed that, Dairy Australia will take over the main functions of the ADC and DRDC, namely research and development, information, marketing and trade development. This will include:

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4 *Hansard*, Monday, 24 March 2003, p11.

- investing in over 300 research and development projects for the farm and manufacturing sectors
- trade policy analysis
- promotion of the health and nutritional benefits of dairy products
- provision of industry statistics, and
- management of issues such as criticism of dairy products, environmental concerns etc.

3.11 Dairy Australia will also be responsible for expenditure of levy payments collected from dairy farmers, and for administration of some dairy assistance programs (see further below under the heading Dairy Structural Adjustment Fund).

3.12 Dairy Australia will comprise voting members drawn from dairy levy payers (Group A members) and non-voting members made up of the peak dairy farmer and processor bodies (Group B members). As the Minister explained in the Second Reading Speech, details relating to membership will be contained in the constitution of Dairy Australia and are not dealt with in the current Bill. However, information on the Dairy Australia website includes:

- all levy paying dairy farmers will have the right to be Group A members, but membership will not be compulsory;
- the number of votes at company meetings assigned to each dairy business will be directly linked to the amount of levy the business has paid in the previous financial year. The rate will be one vote for every dollar of levy paid; and
- the new entity will be a company limited by guarantee, with the amount of the guarantee set at \$2 per member.

3.13 The Government has established an interim advisory board to complete a business plan, constitution and management structure for Dairy Australia before the intended start up date of 1 July 2003. Before Dairy Australia is registered with the Australian Securities and Investment Commission, the Minister must approve the constitution and the inaugural directors of the company.

3.14 The Committee was advised by AFFA officials that the company constitution is currently in draft form.<sup>5</sup> The Committee was provided with a copy of the current draft of the Dairy Australia constitution during its inquiry.

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5 *Hansard*, Monday, 24 March 2003, p2-3.



3.15 Of particular interest to the Committee were two matters: the proposed shareholding structure for Dairy Australia and the company voting provisions for the company board. With respect to the statutory structure, the Committee was told by Australian Dairy Corporation that

Mr Phillips—To be a member of the new company, the basic rule is that you would have to have paid a dairy service levy in the last financial year or, prior to set-up this year, a corporation research or promotion levy in the—

CHAIR—Is there a circumstance where the processors could own all the shares?

Mr Phillips—No. The only shareholders will be levy paying dairy farmers, or the only members of the company will be levy paying dairy farmers.

CHAIR—So it all gets wound up. The A-class shareholders get the benefit.

Mr Phillips—The A-class shareholders, being the levy paying dairy farmers, will be the ones who will exercise votes in the company. The B-class shareholders, who are the representative organisations, have limited functions in terms of developing strategy and roles such as that but not votes in the company.

CHAIR—So when I sell the dairy farm, I do not sell the share that I have.

Mr Phillips—The shares are not transferable or tradeable. They will be revised each year according to the amount of levy you have paid in the previous financial year. In effect, the membership base will get renewed each year to dairy farmers who have paid levy in the previous financial year.<sup>6</sup>

3.16 The Committee was concerned to ascertain the proposed method for selection and election of the board of Dairy Australia. In its election, the Australian Dairy Farmers Federation provided a detailed account of this mechanism.

Mr Rowley—Board selection is one thing. We have taken into account all sorts of arguments from people about board selection. Maybe I should just traverse that area a bit. We have looked at other organisations such as those in the wool, meat and horticulture industries. We have taken the view that we will go as far as we possibly can to give everybody an opportunity to democratically become involved in and influence the way this new organisation works. The selection process that we put forward under our constitution is that the two B-class members—the Australian Dairy Product Manufacturers and the Australian Dairy Farmers—will be asked by the board to nominate four people for a selection committee. We are proposing that a member of the board—in particular, the chairman—should chair that committee. It should be widely advertised and the skills base should be widely advertised. The board selection committee should be told by the

board that they must have a nomination for those members in the board's hands within a given period of time. The nomination should be unanimous, by the way. The board should then go to the annual meeting with that recommendation.

We have suggested that there ought to be an opportunity for anybody else to nominate outside that system. So, if a person wants to nominate, he must attract 100 signatures on his proposal and he must do it within a time frame that is acceptable to the annual meeting. The ballot paper will include the three members who are rotating and who were selected by the selection committee as well as, let us say, one more person. So there will be four people there for three spots. We are proposing that the position on the ballot paper be drawn out of a hat—in other words, you just do not put the three from the selection committee on the top and the outside person on the bottom of the ballot paper. The ballot should be cast in such a way that a person must receive better than 50 per cent of the votes for the position. The three that have the highest percentage above 50 per cent should go onto the board.

We have gone as far as we possibly can to, firstly, give people an opportunity to go through the selection committee. If they are not satisfied with that, they can take the other course, which then puts them into the ballot at an annual meeting in a way which we think is as fair as possible. Secondly, we would say that if an annual meeting rejects one of the people that have been put forward—let us say there are only three up and no outsider has nominated—the board is obligated to go back to the selection committee. It does so bearing in mind the attitude of the annual meeting—and the annual meeting might say, 'We don't like this person because he has a conflict of interest' or something—and then another person is put forward to the board. That person would be taken on as a casual vacancy until the next annual meeting or duly appointed meeting where the process of the members could be then engaged to endorse or again reject that person.

We have tried to give absolutely the maximum opportunity for every member to have a say by being personally at the meeting or operating through a proxy vote. The proxy votes of course would be on the basis of those numbers of dollars of levy paid in the previous financial year. We put a lot of time into this. We think that is as fair as we can propose from having witnessed the other operations<sup>7</sup>

Senator COLBECK—You mentioned, when you were explaining the election process for the board, that you would have three nominated positions on the ballot paper and one that may come from the independent farmer process. Why limit it to four?

Mr Rowley—There is no limit. I will go back one step. The first board of Dairy Australia will be appointed by the minister. Because the government take the view that they are handing over an asset to an industry, there is

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7 *Hansard*, Monday, 24 March 2003, p29.

some involvement there. After that, the board will roll over on a three-three-two basis, the two being because there will be a managing director who will have a contract of some description. So you will be rolling over a three, a three and a two. When it comes to the selection of the three members who are due to roll over in that first meeting, there will be a skills base which will be advertised, so you will go through that. To explain it a little better, the selection committee will go to the board and the board will recommend Smith, Jones and Brown. But right outside that basis, anyone could apply with 100 signatures et cetera and there could be another three.<sup>8</sup>

3.17 In addition, the Committee was also informed about the voting system. The ADFP told the Committee

Mr Rowley—Yes. There was a lot of debate about the voting system—the single ‘one farmer, one vote’ versus the number of dollars. The industry strongly came down to the position of having votes in proportion to the number of dollars paid in terms of levy. The industry is used to this system through the cooperatives. The vast majority of support has been there.

....

Mr Burgess.....I equally agree, though, that there is a debate about it. There has always been a debate about it, whether it be one vote per person or on the basis of contribution. There was also that debate at the AMPA meeting I was at the other night. Some farmers believe their vote should be based on what they contribute and others believe the opposite. In the end, the industry came down to the same system that operates in the wool and meat industries and the same system that operates in the cooperatives.<sup>9</sup>

3.18 A further noteworthy provision in the Dairy Australia constitution is a prohibition against agripolitical activities.

3.19 In evidence to the Committee, this provision was explained as follows:

Senator O’BRIEN—Do you know how we would define agripolitical conduct?

Mr Williamson—That is an issue that we have all been grappling with. As I understand it, at this point in time it has not been legally defined. It is more a concept that sets a broad parameter for the behaviour of the company.

Senator O’BRIEN—But this prohibition ties in with the fact that the company is intended to be the services body. It says: ‘So long as the company is the services body, it must not’ et cetera.

Mr Williamson—That is correct. In other words, if the government were to, in effect, de-declare the company as a service delivery body, the company

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8 *Hansard*, Monday, 24 March 2003, p34.

9 *Hansard*, Monday, 24 March 2003, p27.

itself could continue to function and it could engage in agripolitical activity under those circumstances. I should say that the statutory funding agreement will also contain a complementary prohibition on agripolitical activity, and there will be further definition of that statement in the funding agreement.

Senator O'BRIEN—What sort of behaviour by the company would not be allowed? Can the board express a view on policy matter which affects the industry?

Mr Williamson—As a general rule, I think informing the government on issues is not something that would be seen as agripolitical activity as such. However, effectively opposing the government on an issue would be seen as being agripolitical activity.

Senator O'BRIEN—So it is not agripolitical if the government agrees with it?

Mr Williamson—No. It is not agripolitical if it is simply informing the government of an issue of concern to the industry.

Senator O'BRIEN—But if you disagree with the government, that is being political.<sup>10</sup>

and

Ms Standen—I guess you can look at the definition in broad terms as the difference between providing information of a factual nature and trying to influence through political means the views of people for political purpose. We would assume that the industry services body would have an interest in ensuring that the government and the public generally are properly informed about issues in relation to the dairy industry and the work that they undertake, but we would not expect that they would then undertake a campaigning type role that is not based on providing factual information<sup>11</sup>

## **The Proposed Dairy Service Levy**

3.20 During its inquiry, the Committee sought details on the proposed Dairy Service levy. The legislation considered by the Committee propose amalgamation of the following that levies into one

- Corporation levy;
- research levy; and
- promotion levy.

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10 *Hansard*, Monday, 24 March 2003, p4-5.

11 *Hansard*, Monday, 24 March 2003, p5.

3.21 The Primary Industries (Excise) Levies Amendment (Dairy) Bill, which will combine the levies if enacted - a total levy of approximately 0.32 cents per litre - will also establish a funding agreement which will oblige the Government to pass on the amount collected for the levy to Dairy Australia, less some administrative costs. In addition, Dairy Australia members (see above) will have the right to vote on the rate of the levy

3.22 To achieve this result, all levy payers (not only members of Dairy Australia) will be able to vote at least once in every three years on the rate of the levy. It is intended that the voting entitlement for each dairy business unit will be the same as for members voting at the general meeting for Dairy Australia - ie. for each levy dollar paid in the past financial year. The levy rate will then be set by the Commonwealth Government based on Dairy Australia recommendations.

3.23 It is also proposed - as noted by the Minister in his second reading speech - that Dairy Australia will only receive levy funds and Commonwealth contributions so long as it is accountable for expenditure of funds to both levy payers and the Parliament. In his second reading speech on the Bill the Minister noted that the funding agreement with Dairy Australia will allow the Commonwealth to insure that a proper level of planning and reporting requirements are followed by Dairy Australia.

3.24 It was stated to the Committee that, as far as fixing and expenditure of the levy is concerned, the proposed statutory funding agreement is of central importance as it will govern and regulate such matters. In its hearing on 24 March 2003, the Committee was told

Ms Standen—The draft of the statutory funding agreement that was provided to the minister's office is very much a first draft. It is still the subject of discussion and negotiation with industry at this stage. So it is certainly not a final document in any shape or form.<sup>12</sup>

3.25 During its inquiry, the Committee was provided with an early, though unfinished draft of the agreement which is currently the subject of finalisation by industry and government.

### **Accountability and Additional Regulatory Framework**

3.26 As noted above, accountability mechanisms for Dairy Australia will, in the Committee's view, need to be clear and specific so as to ensure that a proper level of accountability will be in place.

3.27 The Committee was concerned to identify the exact value of the mechanism to be used to expose accountability to the Parliament, given the Minister's indication that accountability would be fundamental.

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12 *Hansard*, Monday, 24 March 2003, p2.

3.28 In discussion with AFFA officials, the Committee was told the following

Senator O'BRIEN—So it is a matter for the minister whether the company will report to parliament on the expenditure of matching Commonwealth R&D funds?

Mr Williamson—No. The company will report to the department in the same way for matching R&D funds as it has for levy funds. The same process will apply whereby the minister will be kept informed by the department of the expenditure of those funds. It would be a matter for the minister to determine whether or not he wishes to inform parliament.

Senator O'BRIEN—So the parliament's opportunity to scrutinise a company's activities will be more limited than is presently the case in respect to ADC and DRDC?

Ms Standen—Yes.

Senator O'BRIEN—In what way?

Ms Standen—Documents such as annual reports will not be laid before the parliament. It is not really the intention, because this is going to be a private Corporations Act company controlled by its members rather than by the government. The reporting requirements need to be different—essentially and predominantly they need to be to the members of the company. After that, in terms of the expenditure of levy funds and matching contributions, they will be reporting to the government, which provides that funding source to the company.

Senator O'BRIEN.....Under the statutory funding agreement, will there be any requirement for special reporting to the Commonwealth other than the normal Corporations Law requirements for the presentation of an annual report to the members of a company?

Mr Williamson—Yes. As I indicated previously, there will be a requirement to provide regular reports to the Commonwealth on the expenditure of levy funds against performance indicators set by the department and agreed to in the funding agreement. As to how regular those reports are, they will be at least annual reports but quite possibly six-monthly reports. There is also a requirement, as I indicated before, for the financial statements in respect of the Dairy Structural Adjustment Fund to be laid before the parliament annually.<sup>13</sup>

3.29 The Australian Dairy Corporation also asked to clarify this issue

Senator CHERRY—How is planning going for the change in the accountability regime? As ADC employees now, how do you think your accountability will change under a privatised corporation model, and what preparations are you putting in place for that?

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13 *Hansard*, Monday, 24 March 2003, p6.

Mr Phillips—The main step we are taking actively at the moment is the creation of the member register. We are doing the planning work on the understanding that legislation will pass through the houses. We have been required under the legislation that was passed last year to do the planning and facilitation work in relation to the creation of that member register for Dairy Australia. So we are doing the initial planning work and program to set up the member register to go forward and to basically establish application kits for individual farmers to invite them to take up their membership in Dairy Australia and to take a direct and active role in overseeing the operations of the company. So the main issue going forward for us, from a management point of view, will be that there will be increased direct accountability of stakeholders, because we will have direct members who will be able to vote on issues related to the new company.<sup>14</sup>

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14 *Hansard*, Monday, 24 March 2003, p10.





# Chapter Four

## Conclusions and Recommendations

4.1 The Committee has considered the matters dealt with during its inquiry in Chapter 3.

4.2 Having regard to the short time allowed for this inquiry, the Committee now makes the following observations on the Bills.

### *A. Consultation*

4.3 The Committee is broadly satisfied that an adequate and acceptable level of consultation by Australian Dairy Industry Council and the Australian Dairy Corporation with milk producers and processor groups was made in development of the scheme proposed by the Bills for the establishment and structure of Dairy Australia, and the mechanisms for raising the proposed dairy service levy.

### *B. Structure of Dairy Australia*

4.4 The Committee draws the Senate's attention to the nature of the proposed structure of Dairy Australia and notes that the company's constitution is not yet finalised. This situation is less than satisfactory, as the Committee considers the Senate should be able to have access to a completed constitution to allow informed debate on the Bill. This matter is particularly important in view of the mechanism proposed for establishing the corporation, its board election system and voting structure.

4.5 Labor and Democrats Senators are concerned that the proposed franchise for the levy poll will permit large milk producers to exercise disproportionate influence on its outcome, and favour a franchise that gives greater weight to the common interest of industry members in the levy rate.

### *C. Accountability of Dairy Australia and for Levy Expenditure*

4.6 The Committee has highlighted in Chapter 3 that the proposed accountability requirements to be placed on Dairy Australia are to be based on two foundations; legislative requirement in the Dairy Industry Service Reform Bill 2003 and the provision of the statutory funding agreement in respect of the dairy service levy. As the Committee has noted with respect to the constitution for Dairy Australia, the Senate should ideally be aware of all provisions of basic regulatory documents before debate on the Bill proceeds.

4.7 In addition, the Committee notes that necessary regulations relevant to matters in the Bill - namely the mechanisms to be used to conduct the poll on the level of the dairy service levy - should ideally be available to the Senate before debate proceeds.

4.8 Labor and Democrats Senators are concerned that the accountability mechanisms proposed in the bill do not provide the Parliament with sufficient opportunity to scrutinise expenditure of dairy service payments and matching funds.

4.9 Labor and Democrats Senators believe the Minister for Agriculture, Fisheries and Forestry should be required to table regular reports in each House of the Parliament on the expenditure of dairy service payments and matching funds.

## **Conclusions**

4.10 The Committee concludes that the Dairy Industry Service Reform Bill 2003 and the Primary Industries (Excise) Levies Amendment (Dairy) Bill 2003 are in a satisfactory form and will enact a scheme broadly acceptable to the dairy industry.

4.11 The Committee also concludes that, to ensure an appropriate minimum level of public, industry and Parliamentary scrutiny of Dairy Australia, the company's constitution should be finalised, tabled in Parliament and distributed to all industry participants as soon as possible.

4.12 The Committee further concludes that the funding agreement document to the statutory funding agreement which will support the dairy service levy should also be finalised, tabled in Parliament and distributed to industry participants as soon as possible.

## **Recommendations**

- 1. That the Dairy Industry Service Reform Bill 2003 be brought on for debate and enactment.**
- 2. That the Primary Industries (Excise) Levies Amendment (Dairy) Bill 2003 be brought on for debate and enactment.**

**Senator Bill Heffernan**  
**Chair**

Senate Rural and Regional Affairs and  
Transport Legislation Committee

27 March 2003

# Appendix One

## Submissions

<b>Submission No</b>	<b>Author</b>
1	Australian Dairy Farmers' Federation
2	Australian Dairy Corporation



# **Appendix Two**

## **Hearing and Witnesses**

**Canberra, Monday, 24 March 2003**

### **Department of Agriculture, Fisheries and Forestry**

Mr Greg Williamson, General Manager, Meat, Wool and Dairy Business  
Ms Sally Standen, Manager, Wool and Dairy

### **Australian Dairy Corporation**

Mr John Doyle, Acting Managing Director  
Mr John Aldridge, General Manager of Operations  
Mr Chris Phillips, General Manager, International Trade Development

### **Australian Milk Producers Association**

Mr John Cartwright, National President  
Mr Alex McKenzie, Victorian President  
Mr Glen Hartwig, Vice-Chairman, Queensland (Telephone)  
Mr Michael Kearney, Executive Officer

### **Australian Dairy Farmers' Federation**

Mr Pat Rowley, CMG President  
Mr Allan Burgess, Board Member  
Mr John McQueen, Chief Executive Officer  
Ms Helen Dornom, Executive Officer, Dairy Products Federation



# Appendix Three

## **Dairy Australia**

From Genesis to Fruition - Consultation and Communication  
with Australian dairy Industry

**An overview for the Australian Dairy Farmers (ADF)  
provided by Rob Morton, Communications Manager for the  
Dairy Industry Restructure Working Group**

### **SPEECHES, REPORTS AND MEETINGS**

20 major references to restructure at key industry forums including:

1. December 2000, December 2001, December 2002 -  
ADIC Annual General Meetings - speeches by Pat Rowley;
2. 2000, 2001, 2002 -  
publication of ADIC Annual reports,;
3. Conferences and regional meetings of ADF member organisations including  
UDV, WAFF, SADA, TFGA NSWFA, QDO
4. December 2000,  
ADIC AGM – report on *Dairy 2010*: A process to review current industry  
services/ functions and determine future industry services/ functions to be carried  
out collectively for industry
5. 2 meetings with Australian Milk Producers Association (AMPA).

### **NATIONAL**

Letters, industry newspapers and magazines reaching all dairy farmers

7 major references to restructure in industry magazines and newspapers since October  
2000, including:

1. October 2000  
*The Australian Dairyfarmer – Milk Matters* — AGM notice –  
“... These reviews will determine what organisational structure(s) can best  
deliver those services in a cost-effective manner and what funding mechanism is  
appropriate.”
2. December 2000  
*The Australian Dairyfarmer – Milk Matters* — Industry restructure
3. September-October 2001  
*The Australian Dairyfarmer – Milk Matters* — Industry Restructure model nears  
completion
4. December 2002,  
letter to all dairyfarmers from Pat Rowley

**STATE**

Letters, industry newspapers and magazines reaching the 70 per cent of farmers who are members of state organisations

Around 20 major references to organisational restructure in industry magazines and newspapers since October 2000 including:

1. January 2001  
*Dairy Digest* —“ADFF discusses national restructure”
2. June 2001  
*Australian Dairy Foods – Milk matters* — Future industry structures
3. April 2002  
*Dairy Digest* — Accelerating change needs understanding on all sides –  
“Following deregulation..., the industry... adopted a policy to streamline the service bodies..”

**GENERAL MEDIA**

More than 180 further articles and radio news/current affairs bulletins, published and broadcast throughout Australia since October 2002, particularly those following release of media statements in October, December, 2002 and February 2003. Of these less than five have included any suggestion that Dairy Australia should not progress.

**HELPLINE**

32 calls since 01 February 03

**WEB PAGES – [dairyaustralia.com.au](http://dairyaustralia.com.au)**

895 hits since 01 February 2003

**Attachment 1:**

Listing of specials and news stories, presented, published or broadcast on proposals to restructure dairy industry organisations; ie the development of Dairy Australia.