

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**DAIRY ADJUSTMENT LEVY TERMINATION BILL 2008**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry, the  
Hon. Tony Burke MP)

# **DAIRY ADJUSTMENT LEVY TERMINATION BILL 2008**

## **OUTLINE**

The Dairy Adjustment Levy Termination Bill 2008 amends Schedule 2 to the *Dairy Produce Act 1986* finalises the Dairy Industry Adjustment Program by terminating the Dairy Adjustment Levy, winding-up the Dairy Structural Adjustment Fund and terminating the Dairy Adjustment Authority.

Amendments are intended to ensure that the amount of surplus funds collected under the Dairy Adjustment Levy are minimised and all surplus monies collected under the levy are returned to the Commonwealth. The levy is imposed on the retail sale of drinking milk at a rate of 11 cents per litre, and is appropriated to the Dairy Structural Adjustment Fund, which is managed by Dairy Australia Limited.

Amendments proposed by the Bill allow the Minister for Agriculture, Fisheries and Forestry to take into account levy money paid, but not yet received into the Dairy Structural Adjustment Fund, when declaring a levy termination day. This will minimise levy collection surplus to the requirements of the Dairy Structural Adjustment Fund.

Initial outlays associated with the Program, including first payments to farmers and costs of establishing the Dairy Adjustment Authority, were met using borrowed funds. Accordingly the Dairy Structural Adjustment Fund has been in deficit since 2000.

Since the final payment to farmers was made in April 2008, revenue from the levy has been directed to repaying the principal and interest components of these loans. The fund, which stood at a deficit of around \$205 million in July 2008, is expected to be in balance in the first quarter of 2009. Amendments to the Act will allow the Commonwealth to stop the appropriation of levy funds into the Dairy Structural Adjustment Fund as soon as possible after the deficit in the fund has been eliminated and there will be no further calls on it.

The Minister for Agriculture, Fisheries and Forestry will also be able to request that any surplus levy receipts in the fund be returned to the Commonwealth. The Dairy Structural Adjustment Fund will be closed once it has a zero balance. Amendments will clarify that levy funds can be spent on activities related to the closure of the Dairy Industry Adjustment Program.

The Bill allows for the Minister for Agriculture, Fisheries and Forestry, by declaration, to terminate the Dairy Adjustment Authority. The Authority was established as a statutory authority in 2000, with the purpose of administering eligibility determinations under the main components of the Program. With the completion of its core activities and the impending closure of the Program, the Authority is in a position to be wound up once the Bill has received Royal Assent.

The Bill also includes minor consequential amendments to several Acts to remove references to the Dairy Industry Adjustment Program. The Bill repeals the three Acts that set the rate of the Dairy Adjustment Levy.

## **FINANCIAL IMPACT STATEMENT**

The Dairy Industry Adjustment Program was designed to be cost neutral to the Commonwealth; a consumer levy funded all administrative costs, payments to farmers and grants to dairy dependent communities under the program. Any surplus levy collected under the *Dairy Produce Act 1986* will be credited to the Commonwealth.

The Secretary of the Department of Agriculture, Fisheries and Forestry will take on the functions and powers of the Dairy Adjustment Authority following its wind-up. Costs associated with these functions will be minor and will be met from the departmental budget. Main costs relate to records management and payment of unclaimed monies cases.

As the final payments to farmers under the Dairy Industry Adjustment Program were made in April 2008, closure of the program will not adversely affect payment rights of dairy farmers. In the small number of cases where payments were not made successfully (for example where a farmer has died intestate), this Act ensures that these amounts owing can be paid to farmers. Removal of the Dairy Adjustment Levy will save Australian milk consumers around \$20 million per month.

## DAIRY ADJUSTMENT LEVY TERMINATION BILL 2008

### NOTES ON CLAUSES

#### Clause 1: Short title

1. This clause is a formal provision specifying the short title of the Act as the *Dairy Adjustment Levy Termination Act 2008*.

#### Clause 2: Commencement

2. Subclause 2(1) provides the commencement dates for the Act. The subclause includes a table containing commencement information: each provision listed in column 1 of the table commences in accordance with the commencement day listed in column 2 of the same table.

Provisions listed in the Bill commence on the day after Royal Assent with two exceptions, explained hereafter.

The Acts being repealed by Schedule 2 to the Bill set the rate of the Dairy Adjustment Levy. Because of subclauses 94(3) and (4) of Schedule 2 to the *Dairy Produce Act 1986*, levy is not payable after the levy termination day. Therefore, the Acts can be repealed from the day after the day declared by the Minister for Agriculture, Fisheries and Forestry to be the levy termination day under subclause 94(1) of Schedule 2 to the *Dairy Produce Act 1986*.

The amendment described by item 3 of Schedule 3 to this Bill removes a reference to the Dairy Adjustment Authority from the *Remuneration Tribunal Act 1973*. The Minister is able to wind-up the Authority under subclause 55(2) of the *Dairy Produce Act 1986* as amended by this Bill. Accordingly, this amendment will take effect immediately after the Dairy Adjustment Authority is wound-up.

Subclause 2(2) provides that column 3 of the table contains additional information that is not part of the Act. It also clarifies that information in column 3 can be added or edited in any published version of the Act.

#### Clause 3: Schedule(s)

3. Clause 3 provides that the legislation and regulations referred to in each schedule of the Bill will be amended or repealed in accordance with the items in that schedule.

Schedule 2 to the Bill repeals the following Acts that set the rate of the Dairy Adjustment Levy:

- *Dairy Adjustment Levy (Customs) Act 2000*
- *Dairy Adjustment Levy (Excise) Act 2000*
- *Dairy Adjustment Levy (General) Act 2000*

The following Acts, listed in schedule 3 to the Bill, require consequential amendment to remove references to the Dairy Industry Adjustment Program:

- *Income Tax Assessment Act 1997*
- *Remuneration Tribunal Act 1973*
- *Social Security Act 1991*

## **SCHEDULE 1 – Amendment of the *Dairy Produce Act 1986***

### **Part 1 – Winding up the Dairy Adjustment Authority**

#### **Item 1: Clause 55 of Schedule 2**

4. This item is an amendment to ensure the formatting of clause 55 is consistent with the rest of Schedule 2 to the Act.

#### **Item 2: At the end of clause 55 of Schedule 2**

5. The addition of subclauses (2) and (3) allow the Minister for Agriculture, Fisheries and Forestry to wind-up the statutory authority known as the Dairy Adjustment Authority. The Minister will wind-up the Dairy Adjustment Authority after it has completed its 2007-08 reporting obligations and when all records have been transferred to the Department of Agriculture, Fisheries and Forestry.

A declaration under subclause 55(2) of Schedule 2 to the Act is a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* and will be drafted and registered on the Federal Register of Legislative Instruments accordingly.

#### **Item 3: Applying provisions referring to the Dairy Adjustment Authority after it ceases to exist**

6. This item allows the Secretary of the Department of Agriculture, Fisheries and Forestry to assume the powers and functions of the Dairy Adjustment Authority immediately after the Authority ceases to exist under the *Dairy Produce Act 1986*. These powers and functions include those listed in clauses 73 and 79 of Schedule 2 to the *Dairy Produce Act 1986*.

The powers and functions of the Authority will need to continue to allow for, among other things, the finalisation of any unclaimed monies cases.

### **Part 2 – Terminating the dairy adjustment levy**

#### **Item 4: After paragraph 79(i) of Schedule 2**

7. Clause 79 of Schedule 2 to the *Dairy Produce Act 1986* lists the activities that Dairy Adjustment Levy funds standing to the credit of the Dairy Structural Adjustment Fund can be spent on, including administration of the Dairy Industry Adjustment Program.

The addition of subclause 79(ia) clarifies that money standing to the credit of the Adjustment Fund can be expended in meeting costs incurred by the Commonwealth in terminating the Dairy Industry Adjustment Program. These costs include, but are not limited to, legal expenses, travel, staff costs, records management, and departmental overheads (such as a review of the program and milk price monitoring).

**Item 5: After subclause 83(3) of Schedule 2**

8. The addition of subclause 83(3A) allows the Minister for Agriculture, Fisheries and Forestry to declare a date, after which the Commonwealth is no longer obliged to pay proceeds collected under the Dairy Adjustment Levy (or penalty provisions) to the industry services body, Dairy Australia Limited. After the Minister has made a declaration under subclause 83(3A), no Dairy Adjustment Levy funds will flow from the Commonwealth to Dairy Australia Limited.

This amendment recognises there is likely to be an over-collection of Dairy Adjustment Levy, and by allowing the Commonwealth to stop the appropriation of levy being made to the Dairy Structural Adjustment Fund, the amendment allows the Commonwealth to hold over-collection in the Consolidated Revenue Fund. The Minister will only make this declaration when satisfied the fund has sufficient monies to meet its commitments.

To ensure that the Dairy Structural Adjustment Fund remains solvent, a declaration under this item cannot be made until the Dairy Adjustment Levy has been terminated under subclause 94(1) of the *Dairy Produce Act 1986*.

A declaration under subclause 83(3A) of Schedule 2 to the Act is a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* and will be drafted and registered on the Federal Register of Legislative Instruments accordingly.

**Item 6: Subclause 94(1) of Schedule 2**

9. This amendment reduces the levy termination notification period from 28 days to 7 days to minimise collection of levy funds surplus to the needs of the Program. The amendment allows the Minister to declare, by legislative instrument, that the 7th day after the declaration is registered on the Federal Register of Legislative Instruments is the levy termination day.

Levy will no longer be imposed on milk sold after the termination day. The amendment reduces the levy termination notification period by 21 days and accordingly, when read in conjunction with the amendment outlined by item 7, minimises the over-collection of levy funds.

It is not appropriate to fix a specific levy termination day in the Act. The difficulty in forecasting the monthly flow of revenue from the levy and subsequently the balance of the Dairy Structural Adjustment Fund means that the levy termination day needs to be set by Ministerial declaration.

A declaration under subclause 94(1) of Schedule 2 to the Act is a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003* and will be drafted and registered on the Federal Register of Legislative Instruments accordingly.

#### **Item 7: Subclause 94(2) of Schedule 2**

10. Currently, clause 94(2) of Schedule 2 to the *Dairy Produce Act 1986* prevents the Minister for Agriculture, Fisheries and Forestry from terminating the Dairy Adjustment Levy using subclause 94(1) of the Schedule until the Dairy Structural Adjustment Fund is solvent. The fund holds proceeds from the Dairy Adjustment Levy; it is administered by Dairy Australia Limited, the industry services body.

The levy generates around \$20 million per month and the average lead time for the levy collection process is around 60 days. It is likely, therefore, that the triggering of the termination process currently set out in the Act would lead to over \$50 million being collected surplus to the requirements of the Dairy Structural Adjustment Fund.

This amendment allows the Minister, in declaring a levy termination day, to consider levy funds that have been collected but not yet paid to the industry services body under clause 83 of Schedule 2 to the *Dairy Produce Act 1986*.

With this amendment, the Dairy Structural Adjustment Fund will not be in a solvent position when the Minister declares a levy termination day. However, the Minister cannot make a declaration under subclause 94(1) of Schedule 2 to the Act unless satisfied that there is sufficient levy revenue collected, but not yet paid, to cause the Dairy Structural Adjustment Fund to become solvent after the declared levy termination day.

After the Minister has declared the levy termination day and the Dairy Structural Adjustment Fund is in a solvent position, the Minister will make a declaration under subclause 83(3) of Schedule 2 to stop levy being appropriated into the Dairy Structural Adjustment Fund over and above the outstanding requirements of the Dairy Industry Adjustment Program.

### **Part 3 – Winding up the Dairy Structural Adjustment Fund**

#### **Item 8: After clause 77A of Schedule 2**

11. This item allows the Minister for Agriculture, Fisheries and Forestry to request that a nominated amount of Dairy Adjustment Levy funds standing to the credit of the Dairy Structural Adjustment Fund be paid to the Commonwealth by the industry services body.

The item allows the Minister to make multiple notices, reflecting that returning levy funds to the Commonwealth may need to be done in a staged process, with one transfer likely to occur soon after the final payment to the industry services

body is made under clause 83(3), and a final transfer being made once no more funds are required from the Dairy Structural Adjustment Fund.

The item provides that the Dairy Structural Adjustment Fund is taken to be wound-up immediately after a repayment to the Commonwealth results in no levy funds being left to the credit of the fund.

The overarching consideration of this item is that sufficient funds be retained in the Dairy Structural Adjustment Fund to ensure its solvency.

The addition of subclause 77AA(4) is to state that a written declaration under subclause 77AA is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.

#### **Item 9: At the end of Part 4 of Schedule 2**

12. The addition of subclause 132 provides that if, because of the operation of Schedule 2 to the Bill, including the various declarations allowed by the Schedule, the Commonwealth acquires property from a person other than on just terms, the Commonwealth must pay reasonable compensation to the person for the acquisition of that property.

There may be some unclaimed monies at the time amendments listed in this Bill take effect; if this is the case, the Commonwealth must provide reasonable compensation to the unit holder for the acquisition of these property rights.

Under this provision, property is intended to include any unclaimed monies outstanding at the time the Dairy Structural Adjustment Fund is closed by written notice under subclause 77AA.

The addition of subclause 132(3) of Schedule 2 to the Act clarifies that the terms 'acquisition of property' and 'just terms' have the same meaning as provided in paragraph 51(xxxi) of the Constitution.

### **SCHEDULE 2 – Repeal of Acts**

#### ***Dairy Adjustment Levy (Customs) Act 2000***

##### **Item 1: The whole of the Act**

13. This item enables the entire Act to be repealed.

The *Dairy Adjustment Levy (Customs) Act 2000* is one of three Acts that set the rate of the Dairy Adjustment Levy. This Act will not be required after the Minister for Agriculture, Fisheries and Forestry declares a levy termination day under subclause 94(1).



### ***Dairy Adjustment Levy (Excise) Act 2000***

#### **Item 2: The whole of the Act**

14. This item enables the entire Act to be repealed.

The *Dairy Adjustment Levy (Excise) Act 2000* is one of three Acts that set the rate of the Dairy Adjustment Levy. This Act will not be required after the Minister for Agriculture, Fisheries and Forestry declares a levy termination day under subclause 94(1).

### ***Dairy Adjustment Levy (General) Act 2000***

#### **Item 3: The whole of the Act**

15. This item enables the entire Act to be repealed.

The *Dairy Adjustment Levy (General) Act 2000* is one of three Acts that set the rate of the Dairy Adjustment Levy. This Act will not be required after the Minister for Agriculture, Fisheries and Forestry declares a levy termination day under subclause 94(1).

## **SCHEDULE 3 – Consequential amendments**

### ***Income Tax Assessment Act 1997***

#### **Item 1: Paragraph 118-37(1)(e)**

16. This item enables the paragraph to be repealed. Dairy Exit Payments under the *Farm Household Support Act 1992* have expired.

#### **Item 2: Application**

17. As the Bill will be introduced part way through the 2008-2009 income year and to clarify which financial year the amendment applies to, item two states that the amendment to paragraph 118-37(1)(e) does not take effect until the 2009-2010 income year.

### ***Remuneration Tribunal Act 1973***

#### **Item 3: Paragraph 7(9)(ab)**

18. This item enables the paragraph to be repealed after the Dairy Adjustment Authority ceases to exist.

The amendment removes the Authority from the Remuneration Tribunal's list of agencies.

***Social Security Act 1991***

**Item 4: Subsection 23(1) (definition of *Farm Household Support Act 1992*)**

19. This item removes the ‘Dairy Exit Program’ Scheme from the definition of the *Farm Household Support Act 1992* provided in the *Social Security Act 1991*.

The Dairy Exit Program has closed and accordingly it should no longer be included in the definition of the *Farm Household Support Act 1992*.

**SCHEDULE 4 – Regulations about transitional matters**

**Item 1: Regulations**

20. This provision enables the Governor-General to make regulations prescribing relevant matters required or permitted by the Act or necessary or convenient to give effect to the Act. This includes matters of a transitional nature as part of the closure of the Dairy Industry Adjustment Program that are not specifically addressed by this Bill or the *Dairy Produce Act 1986*.