DAIRY INDUSTRY BILL 1992

Legislative Council, 17 November 1992, pages 833-5

Second reading

 The Hon. BARBARA WIESE (Minister of Transport Development): I move:

That this Bill be now read a second time.

In view of the lateness of the hour, I seek leave to have the second reading explanation inserted in Hansard without my reading it.

Leave granted.

Explanation of Bill

There are currently two State Acts covering the dairy industry in South Australia. These are the Metropolitan Milk Supply Act 1946 which covers the area from Meningie to Gawler and the Dairy Industry Act 1928 which covers the rest of the Slate. There is also Commonwealth legislation that levies all milk to support the lower returns received on export markets.

There is an increasingly national focus on returns from dairying and the legislation to achieve this . There is also a move in all States to reduce legislation in the dairy industry by giving more responsibility to the industry for its own pricing mechanisms and quality control.

The Daily Industry Bill 1992 follows this national perspective and is in line with national requirements and pricing, particularly at the farm gate. The Bill repeals the Dairy Industry Act 1928 and the Metropolitan Milk Supply Act 1946 and allows the industry to take increased responsibility in quality control especially at the farm level.

Some of the provisions of the- Bill arc as follows:

The Dairy Authority of South Australia is established consisting of three members appointed by the Governor. There will be an orderly transition from the current Metropolitan Milk Board to the new Authority which will allow for industry to reorganise its staff requirements as they become more involved with responsibilities of quality and safety control through specific codes of practice.

Provision is made to set prices. However, as has been outlined in the White Paper, it is anticipated that these prices will be progressively removed so that from 1 January 1995, the only price control will be at the farm gate. However, in line with Commonwealth legislation, this farm gate price control may cease by the year 2000.

Provision is made to ensure that milk for market milk, no matter from where sourced or sold, is paid for at the declared farm gate price. This provision is to ensure national discipline as agreed to by all States.

Provision is made to allow for two (one cent) increases in the wholesale price of milk to be paid into a fund to be distributed to dairy farmers outside the current Metropolitan Milk Board area arid so increase their farm gate price to the same as that received by dairy farmers in the Metropolitan Milk Board area. This provision will allow for a statewide farm gate price and not put at risk country milk processing plants.

Provision is made for the Minister of Primary Industries to have reserve powers in the event of a breakdown in an industry equalisation agreement.

Provision is made for unpasteurised milk to be sold which will need to meet satisfactory safety and labeling standards.

Provision is made for codes of practice to be administered by the various industry segments.

Provision is made for the milk testing equipment (currently the responsibility of the Metropolitan Milk Board) to be transferred to the dairy industry, as determined by the Minister in consultation with the industry. The benefits from herd recording cover all dairy farmers and provision is made for the industry to fund the replacement and operational costs of this equipment.

Staff currently employed by the Metropolitan Milk Board will be transferred to the Auihority.

I commend the Bill to Members.

Part 1 of the Bill (clauses 1 to 3) contains preliminary matters. Clause 1: Short title—This clause is formal.

Clause 2: Commencement—This clause provides for commencement on a day to be fixed by proclamation.

Clause 3: Interpretation—This clause contains definitions of words and phrases used in the Bill.

Part 2 of the Bill (clauses 4 to 11) deals with the Dairy Authority of South Australia.

Claus3 4: Establishment of the Authority—This clause provides that the Authority is established as a body corporate and an instrumentality of the Crown.

Clause 5: Ministerial control—This clause provides that the Authority is subject to control and direction by the Minister.

Clause 6: Composition of the Authority—This clause provides that the Authority consists of 3 members appointed by the Governor of whom at least 1 must be a person with wide experience in the dairy industry.

Clause 7: Conditions of membership—This clause provides that a member of the Authority is appointed for a term not exceeding 3 years and is eligible for reappointment. The terms for removal from office are set out as are the reasons why such an office may become vacant.

Clause 8: Remuneration—This clause provides that a member of the Authority is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

Clause 9: Disclosure of interest—This clause provides that a member who has a direct or indirect private interest in a matter under consideration by the Authority must disclose the nature of the interest to the Authority and must not take part in any deliberations or decision of the Authority in relation to that matter. Failure to comply with proposed subsection (1) carries a penalty of a fine of $8 000 or imprisonment for 2 years. Proposed subsection (2) provides that it is a defence to a charge of an offence against proposed subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

If a member discloses an interest in a contract or proposed contract under this proposed section and takes no part in any deliberations or decision of the Auihority on the contract, the contract is not liable to be avoided by the Authority and the member is not liable to account for profits derived from the contract.

Clause 10: Members’ duties of honesty, care and diligence—This clause provides that a member of the Authority must at all times act honestly in the performance of his or her official functions. The penalty for an offence is divided as follows:

if an intention to deceive or defraud is proved— the penalty is a $15 000 fine or imprisonment for 4 years or both; in any other ease—the penalty is a $4 000 fine.

Subclause (2) provides that a member of the Authority must at all times exercise a reasonable degree of care and diligence in the performance of his or her official functions. A fine of $4 000 may be imposed for failure to comply with this duty.

Subclauses (3) and (4) provide for penalties of a $15 000 fine or imprisonment for 4 years or both where a member of the Authority makes improper use of his or her official position to gain a personal advantage for himself, herself or another or to cause detriment to the Authority; or a member or former member of the Authority makes improper use of information acquired through his or her official position to gain directly or indirectly a personal advantage for himself, herself or another, or to cause detriment to the Authority.

Clause 11: Proceedings—This clause sets out the procedures of business conducted by the Authority, including the quorum necessary (2 members) and voting rights (1 vote per member and the presiding member has a casting vote if necessary). A decision earned by a majority of the votes cast by members at a meeting is a decision of the Authority. The Authority may conduct a meeting via a telephone or video conference. The Authority must cause accurate minutes to be kept of its proceedings.

Part 3 of the Bill (clauses 12 to 16) deal with the functions and powers of the Dairy Authority of South Australia.

Clause 12: Functions of the Authority—This clause provides that the Authority’s functions are:

to recommend the imposition, variation or removal of price control in respect of dairy produce under this Act;

to determine the conditions and the fees for licences to be issued under this Act;

to approve, provide, or arrange for the provision of, training programs for implementing appropriate standards and codes of practice for the dairy industry;

to grant, or arrange for the granting of, certificates to persons who successfully complete training programs approved by the Authority;

to monitor the extent of compliance by the dairy industry with appropriate standards and codes of practice; and

to carry out any other functions assigned to the Authority by or under this Act or by the Minister.

Clause 13: Powers of the Authority—This clause provides that the Authority has the powers necessary or incidental to the performance of its functions and may, for example—

enter into any form of contract or arrangement;

employ staff or make use of the services of staff employed in the public or private sector,

engage consultants or other contractors;

delegate any of its powers to any person or body of persons.

Subject to the transitional provisions, an employee of the Authority is not a member of the Public Service, but the terms and conditions of employment of any such employee must be as approved by the Minister.

Clause 14: The Dairy Authority Administration Fund—This clause provides that there is to be a fund called the Dairy Authority Administration Fund which consist of all fees and charges recovered under this Act, all penalties recovered for offences against this Act and any other money appropriated by Parliament for the purposes of the Fund. The fund is to be applied towards the costs of administering this Act.

Clause 15: Accounts and audit—This clause provides that the Authority must keep proper accounting records of its receipts and expenditures, and must, at the conclusion of each financial year, prepare accounts for that financial year. The Auditor-General may audit the accounts of the Authority at any time and must audit the accounts for each financial year.

Clause 16: Annual Report—This clause provides that the Authority must, on or before 31 October in every year, forward to the Minister a report on the administration of this Act during the year that ended on the preceding 30 June. The report must include the audited accounts of the Authority for the relevant financial year and must be laid before Parliament within 12 sitting days after receipt by the Minister.

Part 4 of the Bill (clauses 17 to 27) deals with the regulation of the dairy industry.

Clause 17: Licences—This clause provides for licences of the following classes:

dairy farmer’s licence; processor’s licence; and vendor’s licence.

It is an offence for a person to carry on business as a dairy farmer, processor or vendor unless that person holds an appropriate licence. The penalty for such an offence is a fine of $8 000.

Clause 18: Issue of licences—This clause provides that the Authority may, on receiving an application for a licence, issue the licence.

Clause 19: Licence fee—This clause provides that a person who holds a licence must pay periodic liccncc fees in accordance with the regulations and if a periodic fee payable by the holder of the licence is in arrears for more than 3 months, the Authority may, by written notice given to the holder of the licence, cancel the licence.

Clause 20: Conditions of licence—This clause provides that a licence may be issued on such conditions as the Authority thinks fit and that the Authority may, by written notice to the holder of a licence, add to the conditions of the licence or vary or revoke a condition of the licence. A person who holds a licence who contravenes or fails to comply with a condition of a licence is liable to a fine of S8 000.

Clause 21: Transfer of licence—This clause provides that a licence may be transferred with the consent of the Authority.

Clause 22: Revocation of licence—This clause provides that the Authority may revoke a licence if the holder of the licence ceases to carry on the business in respect of which the licence was issued or the holder of the licence contravenes or fails to comply with a condition of the licence.

Clause 23: Price control—This clause provides that the Minister may, on the recommendation of the Authority, publish an order fixing a price for the sale of dairy produce of a specified class. An order under this section—

may apply generally throughout the State or be limited, in its application, to a particular part of the State;

may apply generally lo the sale of dairy produce of the relevant class or may be limited to sale by retail or by wholesale or to sale by licensees of a particular class or by reference to any other factor.

may, by further order, be varied or revoked.

This clause further provides that an order under this proposed section fixing a price to be paid to processors for market milk may be subject to a condition, stated in the order, requiring that a specified proportion of the price paid for the milk be paid into a fund to be established by the processors and applied by them, as directed by the Minister, towards enabling them to pay the farm gate price for milk to dairy farmers who would not otherwise receive that price for such milk

Clause 24: Non-compliance with price-fixing order—This clause provides that a person who carries on a business involving the sale of dairy produce must not sell dairy produce to which the order applies for a price that differs from the price fixed in the order. A fine of $8 000 is fixed for non-compliance with this provision. For the purposes of determining the price for which dairy produce is sold, any contractual arrangement which provides in effect for a remission of price or a premium on the price, will be taken into consideration.

Clause 25: Guarantee of adequate farm gate price—This clause provides that a person must not process milk in the State for the purpose of manufacturing market milk unless the raw milk was purchased from a dairy farmer (either within or outside the State) at or above a price determined by the Minister on the recommendation of the Authority as the farm gate price for milk. A fine of $60 000 is the penalty for non-compliance with this provision.

It is further provided that a person must not sell market milk unless the market milk was produced from raw milk purchased from a dairy farmer (cither within or outside the State) at a price determined by the Minister on the recommendation of the Authority as the farm gate price for milk (Penalty: S60 000).

The Minister may, on the recommendation of the Authority, by notice in the Gazette—

determine a farm gate price for milk to be used for manufacturing market milk or

vary or revoke a previous determination under this proposed subsection.

If there is a general consensus throughout Australia on what an appropriate farm gale price for milk should be, the Authority’s recommended farm gale price should reflect that consensus.

Proposed subsection (5) provides that this section does not apply in relation to raw milk sold under a contract that was in existence al the commencement of this Act unless the Minister, by notice published in the Gazette, otherwise determines.

Clause 26: Equalisation schemes—This clause provides that the Minister may, on the recommendation of the Authority, establish a price equalisation scheme that is binding on dairy farmers and wholesale purchaser; of dairy produce of a class stated in the scheme. Such a price equalisation scheme may impose a surcharge on licence fees on licensees who are bound by the scheme. The terms of any such scheme are to be published in the Gazette and the Minister may, on the recommendation of the Authority, by further notice, amend or revoke the scheme.

Any scheme under this proposed section, or an amendment to such a scheme, must be laid before both Houses of Parliament and is subject to disallowance in the same way as a regulation.

This clause further provides that a price equalisation scheme cannot be established if a voluntary price equalisation scheme is currently operating binding dairy farmers and wholesale purchasers of dairy produce throughout the State.

Clause 27: Non-compliance with scheme—This clause provides that a person who sells or purchases dairy produce contrary to the terms of a price equalisation scheme that is binding on that person is guilty of an offence and liable to a fine of $8 000.

Part 5 of the Bill (clauses 28 to 33) contains miscellaneous provisions.

Clause 28: Advisory and consultative committees—This clause provides that the Minister may establish committee(s) of representatives of the dairy industry to obtain advice and facilitate consultation as to any matters relating to the industry or the administration of this Act.

Clause 29: Powers of inspectors—This clause provides that an inspector may enter and inspect any dairy farm or other premises in which dairy produce is produced, processed, stored or kept for sale in order to determine whether appropriate standards and codes of practice are being observed and may take samples of any such dairy produce in order to determine whether the dairy produce complies with standards in force under this Act.

This clause further provides that an inspector (or a person assisting an inspector) who while acting or purporting to act in the course of official duties uses offensive language or hinders or obstructs, or uses or threatens to use force against, some other person knowing that he or she is not entitled to do so, without a belief on reasonable grounds that he or she is entitled to do so, is guilty of an offence, penalty $8 000).

Clause 30: Hindering inspectors—This clause provides that a person must not hinder or obstruct an inspector in the exercise of powers conferred by this Act. The penalty for an offence against this clause is a fine of S8 000.

Clause 31: Protection of staff—This clause provides that an inspector or other person engaged in functions related to the administration or enforcement of this Act incurs no civil liability for an act or omission in the course of the performance or purported performance of those functions.

Clause 32: Review of Act—This clause provides that the Minister must at the end of 3 years from the commencement of this Act review the operation of this Act the report of which review must be prepared and laid before both Houses of Parliament.

Clause 33: Regulations—This clause provides that the Governor may make regulations for the purposes of this Act.

The schedule of the Bill contains repeal and transitional provisions.

The Hon. R.I. LUCAS secured the adjournment of the debate.