



REPORT OF THE

STANDING COMMITTEE ON CONSTITUTIONAL

AFFAIRS

IN RELATION TO THE

DAIRY INDUSTRY AND HERD IMPROVEMENT

LEGISLATION REPEAL BILL 2000

Presented by Hon Murray Nixon JP MLC (Chairman)

Report 53

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

Date first appointed:

December 21 1989

Terms of Reference:

- 1 The functions of the committee are to inquire into and report on:
 - a) the constitutional law, customs and usages of Western Australia;
 - b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,
and any related matter or issue;
 - c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
 - d) any petition.
- 2 A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

Members as at the time of this inquiry:

Hon Murray Nixon JP MLC (Chairman)

Hon Ray Halligan MLC

Hon Ken Travers MLC

Hon Kim Chance MLC [participating member for this inquiry only]

Hon Helen Hodgson MLC [participating member for this inquiry only]

Staff as at the time of this inquiry:

Ms Felicity Beattie, Advisory Officer

Mr David Driscoll, Committee Clerk

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

Website: <http://www.parliament.wa.gov.au>

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LIST OF ABBREVIATIONS

ADC	Australian Dairy Council
ADIC	Australian Dairy Industry Council
AEC	Australian Electoral Commission
AMPA	Australian Milk Producers Association
ATO	Australian Taxation Office
Bill	<i>Dairy Industry and Herd Improvement Legislation Repeal Bill 2000</i>
CPU	Competition Policy Unit of the Treasury Department
DAA	Dairy Adjustment Authority
DAAS	Distribution Adjustment Assistance Scheme
Dairy WA Ltd	Dairy Western Australia Limited
DIA	Dairy Industry Authority of Western Australia
DIA (Cth) Act	<i>Dairy Industry Adjustment Act 2000 (Cth)</i>
DIAP	Dairy Industry Adjustment Program
DMS Scheme	Domestic Market Support Scheme
DSA Fund	Dairy Structural Adjustment Fund

DSAP	Dairy Structural Adjustment Payment
Farmwest Ltd	Farmwest Services Limited
Harvey Fresh	Harvey Fresh (1994) Ltd
HISWA	Herd Improvement Service of Western Australia
ITAA 1997	<i>Income Tax Assessment Act 1997 (Cth)</i>
National Foods	National Foods Limited
SWI	South West Irrigation Management Co-operative Limited trading as South West Irrigation
UHT	Ultra Heat Treated
WAFF	Western Australian Farmers Federation (Inc)
WASBEA	West Australian Small Business and Enterprise Association Inc

REPORT OF THE STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

IN RELATION TO THE

DAIRY INDUSTRY AND HERD IMPROVEMENT LEGISLATION REPEAL BILL 2000

1 REFERENCE AND PROCEDURE

- 1.1 The *Dairy Industry and Herd Improvement Legislation Repeal Bill 2000* (the Bill) was referred to the Committee by the Legislative Council under Standing Order 230(d) on May 9 2000.
- 1.2 The Bill implements the deregulation of the dairy industry in Western Australia by effecting the withdrawal of direct government involvement in the industry.

2 BACKGROUND TO THE BILL

The definition of milk

- 2.1 It is important to note that the Western Australian *Dairy Industry Act 1973* and the Commonwealth *Dairy Produce Act 1986* contain different definitions of “milk”. The *Dairy Industry Act 1973* defines milk as “the lacteal fluid product of cows produced for human consumption and includes a substance that has milk as an ingredient and is prescribed by regulation as a substance to be treated as milk for the purposes of this Act.” In the *Dairy Produce Act 1986* milk is defined as “the lacteal fluid product of the dairy cow.”
- 2.2 The definition of milk in the regulations of the Western Australian Act is narrower than the definition in the Commonwealth Act. Under the Western Australian Act, only white milk and hi-lo milk fall within the definition. In contrast, the Commonwealth definition of milk includes white milk and hi-lo milk as well as a range of other dairy products.

- 2.3 Where the phrase “market milk” is used in this report, a note has been included advising whether it is the State or Commonwealth definition of milk to which reference is being made.
- 2.4 A list of abbreviations of terms used in this report is provided at page i.

The current regulation of the Western Australian dairy industry

- 2.5 The dairy industry’s Western Australian regulatory framework can be divided into two broad categories based on whether milk is used as liquid milk, as defined, for human consumption (market milk) or in the manufacture of dairy products, which can include liquid milk products such as flavoured milk (manufacturing milk).
- 2.6 Market milk (ref: State definition) arrangements are underpinned by State legislation and provide a guaranteed producer price for milk used as market milk that is approximately double the producer price for manufacturing milk.
- 2.7 Manufacturing milk arrangements are currently underpinned by Commonwealth legislation which provides for the operation of the Domestic Market Support Scheme (DMS Scheme). This scheme assists producers of manufacturing milk through monthly payments (currently 0.95 cents per litre in 1999-2000) and is funded by a transfer from other Australian dairy producers. The DMS Scheme was introduced for a fixed eight year term in 1992. It will come to an end on July 1 2000.
- 2.8 In February 1999 the National Competition Policy Legislative Review of the Western Australian *Dairy Industry Act 1973* found that a net public benefit arose from:
- the regulated farm-gate price for market milk (ref: State definition) and the vesting of milk, in so far as it provided funds to the Dairy Industry Authority (DIA) to provide services to the industry¹; and
 - licensing of processors and dairy farmers with respect to food safety standards.

¹ Section 61 of the *Dairy Industry Act 1973* deals with the vesting of milk in the DIA. Section 61(1) provides that “All milk produced in the State is, by force of this provision, absolutely vested in, and the property of, the Authority.” Section 61(2) provides that “Milk vested in the Authority under subsection (1) and accepted by the Authority, is so vested, freed from all mortgages, charges, liens, pledges, interests, trusts and all other encumbrances affecting the milk, and the rights and interests of any person in that milk are converted into a claim for payment for the quantity of the milk so accepted.”

The move towards deregulation of the dairy industry at the national level

- 2.9 The national industry has had a view that increasing commercial pressures in an increasingly flexible marketplace would undermine any regulatory regime. In particular, the Victorian milk processors and the United Dairy Farmers of Victoria had been pressing for deregulation in Victoria for some time.
- 2.10 Victoria is the largest milk producing state in Australia, accounting for over 60 per cent of Australia's total milk output. Given this dominance, it was believed by people within industry and government circles that deregulation in Victoria would place considerable pressure on markets in other States. Transport costs give some protection from this pressure to the Western Australian dairy industry.
- 2.11 In addition, the National Competition Policy Review of dairy legislation in Victoria found there was a negative public benefit from retaining regulation of the dairy industry in that state.
- 2.12 Another factor was the approaching end of the DMS Scheme. The Victorian dairy industry was prepared to forgo its right to trade milk interstate as long as the DMS Scheme and its payments were in place. The approaching end of this scheme resulted in the national dairy industry requesting a structural adjustment package from the Federal Government to assist a transition to a deregulated market.
- 2.13 The then Premier of Victoria announced last year that the Victorian dairy industry would be deregulated from July 1 2000. This was later supported by a plebiscite of Victorian producers. Of the 84 per cent who voted, 89 per cent wished to pursue deregulation and access to a national support package if one was made available. The Victorian Parliament has now passed legislation to this effect.

The anticipated effect of deregulation on the Australian dairy industry at the national level

- 2.14 Deregulation of the dairy industry in Australia is expected to precipitate a significant change in the operating environment for most Australian dairy farmers. Given the levels of assistance which are currently generated through Commonwealth and State regulatory arrangements, full deregulation is expected to initially result in significant reductions in farm income with some consequential level of industry dislocation, particularly in the quota states of Western Australia, Queensland and New South Wales.
- 2.15 There are over 13 000 dairy farmers in Australia. The vast majority are expected to experience a fall in income upon deregulation as they will no longer receive either the premium on market milk (ref: State definition) generated through current state legislative arrangements, (it is the removal of these legislative arrangements that is the

subject of the Bill) or a market support payment on manufacturing milk under the DMS scheme.

- 2.16 Given the period in which the Australian dairy industry has operated under the certainty of regulation, the extent to which the producer price for market milk (ref: State definition) will fall upon deregulation is a matter for conjecture. The Australian Bureau of Agriculture and Resource Economics estimates that the impact of deregulation would result in an average annual fall in net income of \$28 350 per farm. This is an Australia-wide figure.

Federal Government involvement

- 2.17 Leaders in the Australian dairy industry, through the Australian Dairy Industry Council (ADIC), put forward for Federal Government consideration an industry agreed proposal aimed at assisting farmers to deal with the impacts of deregulation.
- 2.18 In response to this proposal, on September 28 1999 the Federal Government announced its willingness to provide a major structural adjustment package for dairy farmers on the condition that all States and Territories removed their farm-gate pricing arrangements for milk.²
- 2.19 The Commonwealth *Dairy Industry Adjustment Act 2000* (DIA (Cth) Act) forms part of a package of four Acts that provide an adjustment program for the deregulation of the Australian dairy industry.
- 2.20 The total package is estimated to cost up to \$1.74 billion and will provide eligible dairy farmers with quarterly adjustment payments over a target period of up to eight years, or the option of a tax free dairy exit payment of up to \$45 000 during the first two years of the program where a farmer chooses to leave the industry.
- 2.21 To facilitate this program the DIA (Cth) Act establishes the Dairy Adjustment Authority (DAA), the Dairy Structural Adjustment Fund (DSA Fund) and provides for the collection of the dairy adjustment levy and the payment of grants to eligible dairy producers.
- 2.22 The DIA (Cth) Act provides the framework for implementation of the Dairy Industry Adjustment Program (DIAP). The main object of the DIAP is to assist the dairy industry to adjust to deregulation by providing for Dairy Structural Adjustment Payments (DSAP) and dairy exit payments.

² In this report the Committee has used the phrase “farm-gate pricing arrangements” to mean the net price the farmer receives for his or her product after deducting freight and other marketing charges.

- 2.23 Under the Federal package DSAPs are calculated by reference to 1998-1999 milk deliveries at a rate of 46.23 cents per litre for market milk and a national average rate of 8.96 cents per litre for manufacturing milk. It is anticipated that Western Australian dairy farmers will receive a total of approximately \$109 million in 32 quarterly payments over the next eight years.
- 2.24 Under the Federal package, it is estimated that the national average DSAP will be \$118 192 per farm. Levels of payments to individuals will vary between States. For example, the average in Victoria is expected to be \$95 000 while in Western Australia it is expected to average \$240 000. These estimates represent the sum of payments to farmers over the eight years and do not take account of payments through the dairy exit component of the package.
- 2.25 DSAP rights will be administered by the DAA.
- 2.26 It is envisaged that the DSAPs will be used in whatever investment is considered most appropriate to enhance the viability and competitiveness of the enterprise. This may involve investments designed to achieve economies of scale, relocation or debt restructuring.
- 2.27 Alternatively, where farmers believe exit to be the best option, the dairy exit payments will assist farmers to clear debt and exit the industry to undertake more viable economic activities.
- 2.28 The DIAP will be funded by a dairy adjustment levy of 11 cents per litre on the retail price of market milk (ref: Commonwealth definition) for eight years. The levy will be paid into the DSA Fund, and DSAPs and dairy exit payments will be paid out of that Fund. The DSAP will only be available if all States and Territories repeal legislation providing for the management of the supply of milk.
- 2.29 The *Dairy Adjustment Levy (General) Act 2000*, *Dairy Adjustment Levy (Excise) Act 2000*, and *Dairy Adjustment Levy (Customs) Act 2000* provide for the imposition of the Dairy Adjustment Levy. This levy will generate sufficient Commonwealth revenue to pay for the DIAP, raising \$1.74 billion over a target period of eight years. All money raised will be used to fund the DIAP, including the cost of collecting the levy.
- 2.30 The levy is to be on cow's milk and will broadly cover wholemilk, modified milk, Ultra Heat Treated (UHT) milk and flavoured milk. The levy will be applied on a cents per litre basis at the retail level, however for reasons of convenience, efficiency and security, collection will be at the processor level.

3 MAIN PROVISIONS OF THE *DAIRY INDUSTRY ADJUSTMENT ACT 2000 (Cth)*

Dairy Industry Adjustment Program

- 3.1 As discussed at paragraph 2.22, the DIAP provides two types of grants to dairy producers, namely DSAPs and dairy exit payments.
- 3.2 Eligibility for DSAPs is dependent on having an eligible interest in a dairy farm enterprise. A dairy farm enterprise is a business that delivers market milk and or manufacturing milk. The enterprise may consist of owners, sharefarmers, lessors and lessees.
- 3.3 Dairy producers will have a period of three months to apply for the DSAP. This three month period will be formally specified by way of notice published in the Commonwealth Gazette.
- 3.4 DSAPs will commence from a date to be fixed by Proclamation, which must be after June 30 2000, and within six months of commencement of the DIA (Cth) Act.
- 3.5 If the DSAP start day is not fixed by a Proclamation published in the Gazette within the period of six months beginning on the day on which the DIA (Cth) Act receives Royal Assent, Part 2 of the Schedule is repealed on the first day after the end of that period. This effectively gives the States six months to remove those parts of their legislation relating to the regulation of market milk. Entitlement rights will accrue from July 1 2000 regardless of the date of Proclamation.

The DSAP

- 3.6 The DSAP scheme will provide three types of payment rights:
- standard payment rights;
 - exceptional events supplementary payment rights; and
 - anomalous circumstances payment rights.

Standard payment rights

- 3.7 Standard payment rights will be available to those producers who held an eligible interest in a dairy farm enterprise on September 28 1999, the date of the Commonwealth Government's announcement regarding the provision of the adjustment package. Owner operators, sharefarmers, lessors and lessees will be eligible to claim their share of the overall enterprise amount attributable to a particular dairy farm enterprise.

- 3.8 Standard payment rights will be based on milk deliveries in 1998-1999, and will be worked out by reference to a rate of 46.23 cents per litre for market milk and a national average rate of 8.96 cents per litre for manufacturing milk.

Exceptional events supplementary payment rights

- 3.9 An exceptional events supplementary payment right will only be available to a producer who has been granted a standard payment right. In addition, the producer must be able to demonstrate that, as a result of an exceptional and natural event (including flood, fire, drought or disease) milk deliveries during the 1998-1999 financial year were reduced by 30 per cent or more of the average delivered in the previous three years.
- 3.10 The value of an exceptional events supplementary payment right cannot exceed the amount that would have been the total face value of the standard payment right if the exceptional event had not occurred. The DAA has discretion to determine the value of the payment right and when it is conferred on the producer.

Anomalous circumstances payment rights

- 3.11 Producers who held an eligible interest in a dairy farm enterprise during the whole or part of 1998-1999 but who are not eligible for a standard payment under the scheme may be entitled to payments if they have been affected by anomalous circumstances as defined in the scheme.
- 3.12 An example of an anomalous circumstance would be where a farmer had, on September 28 1999, sold one dairy farm and was in the process of buying another. The farmer would still have been in the dairy industry on that date.
- 3.13 The grant of such payments will be at the discretion of the DAA.

\$350 000 limit

- 3.14 Under clause 16 of Schedule 2 of the DIA (Cth) Act where DSAP entitlements exceed \$350 000, eligible dairy farmers will have to demonstrate that a minimum 70 per cent of their total income in 1998-1999 was earned from dairy production.
- 3.15 To be eligible for the DSAP producers will have an obligation to obtain advice from an independent financial adviser on the long term prospects of their farming enterprise.
- 3.16 Under the scheme, claims for DSAPs must be made within the three month claim period specified by the Gazette Notice advertising the DSAP. Claims will be received outside this timeframe where there is evidence of error on the part of the DAA.

- 3.17 DSAPs are taxable. For the purposes of the *Income Tax Assessment Act 1997* a DSAP is taken to be a subsidy for the particular producer for the purpose of carrying on a business.

Dairy Adjustment Authority

- 3.18 The DIA (Cth) Act establishes the DAA. The DAA has powers to do all things necessary or convenient to be done for or in conjunction with the performance of its functions, including the power to enter into contracts and agreements on behalf of the Commonwealth.
- 3.19 The DAA, under the management of a Board, will assess applications according to the eligibility criteria and direct the ADC (Australian Dairy Council) in delivering payments.
- 3.20 Decisions of the DAA will be appellable to the Administrative Appeals Tribunal.

Dairy Structural Adjustment Fund

- 3.21 The DIA (Cth) Act also establishes the DSA Fund which is to be vested in and administered by the ADC.
- 3.22 The DSA Fund is to be used for the following purposes:
- making DSAP and dairy exit payments;
 - meeting the expenses incurred in the administration of the DIAP;
 - repaying money borrowed by the ADC for the purposes of making payments relating to the DIAP; and
 - paying \$500 000 to the Commonwealth for the purposes of resourcing the Australian Competition and Consumer Commission to monitor milk retail prices after deregulation.
- 3.23 The adjustment package is to be totally financed from the Commonwealth levy of 11 cents per litre on sales of liquid milk products over a target period of up to eight years. The levy is to be imposed as the Dairy Adjustment Levy under the following Commonwealth Acts:
- *Dairy Adjustment Levy (General) Act 2000*;
 - *Dairy Adjustment Levy (Excise) Act 2000*; and
 - *Dairy Adjustment Levy (Customs) Act 2000*.

- 3.24 This levy is to commence on July 8 2000 and will terminate when the Minister is satisfied that all funding obligations associated with the DIAP have been met. As discussed at paragraph 3.5, the levy is also to be terminated if DSAPs do not commence within six months of the DIA (Cth) Act receiving Royal Assent.

Dairy exit payments

- 3.25 The dairy exit package provides access to a grant of up to \$45 000 on the sale of a dairy farm.
- 3.26 In contrast to DSAPs, dairy exit payments will be subject to an assets test. To qualify for the \$45 000 payment, producers must have less than \$157 500 in net assets after the sale of their dairy farm enterprise. The amount of the payment will 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 dairy farm enterprise.
- 3.27 In addition, producers who receive the grant will undertake not to run or operate a dairy farm again for five years.
- 3.28 Dairy exit payments will only be available during the first two years of the DIAP. Applications must be lodged by June 30 2002 and producers must finalise the sale of the farm by June 30 2003.
- 3.29 Dairy exit payments will be exempt from Capital Gains Tax.
- 3.30 Like DSAPs, producers wishing to receive a dairy exit payment have an obligation to obtain financial advice and career counselling where appropriate.
- 3.31 Dairy producers have the option of switching to the exit package from the DSAP if they meet the eligibility criteria. The amount of the dairy exit payments received will be net of any payments received under the DSAP scheme.

Concluding comments

- 3.32 The Federal Minister for Agriculture, Fisheries and Forestry, Hon Warren Truss, has expressed a wish that the package be operating by July 1 2000 to coincide with the termination of the DMS scheme on June 30 2000 and the proposed commencement of deregulation in Victoria.
- 3.33 Accompanying the structural adjustment package are three separate levy bills that impose the 11 cent levy on fluid milk. Collection of the levy will commence on July 8 2000 regardless of whether there is State agreement to deregulate. It is therefore possible that consumers will be funding the levy before State Governments have all

abolished their regulatory controls and before dairy producers are able to receive grants from the DIAP.

State Government involvement

3.34 In his second reading speech on May 9 2000 the Minister representing the Minister for Primary Industry stated that: “If the national dairy industry restructure package is not successful it is likely the national dairy industry will deregulate anyway and Western Australian dairy farmers will miss out on the opportunity to receive the financial restructure assistance money.”

3.35 A plebiscite of all licenced Western Australian dairy producers was conducted in early March 2000 by the Australian Electoral Commission (AEC) at the request of the Dairy Section of the Western Australian Farmers Federation (Inc) (WAFF) from a roll of producers provided and certified by the DIA (the WAFF ballot). The question put to the voters was:

“Do you support the repeal of the WA legislation controlling the farm gate price and supply of milk so you can accept the WA share of the \$1.7 billion dairy [sic] industry adjustment package proposed by the Commonwealth Government?”

3.36 Of the 92 per cent who voted, 58 per cent voted “Yes.”

3.37 The Minister also stated in his second reading speech that: “The Western Australian dairy industry has now formally approached the State Government requesting removal of legislation relevant to the regulation of the industry so as to access the federal package.”

3.38 This statement is subject to dispute.

3.39 The results of the WAFF ballot were conveyed to the Minister for Primary Industry, Hon Monty House MLA, in a letter dated March 28 2000 from the then General President of the WAFF, Mr Kevin McMenemy. This letter is attached as Appendix 1.

3.40 The letter also advised the Minister of a motion carried at a conference of the Dairy Section of the WAFF held on June 30 1999.

3.41 Mr McMenemy stated in his letter that “We provide the above results [of the poll] for your information, and trust that **you** will make a prompt decision regarding deregulation of the dairy industry in WA.” (Emphasis added).

3.42 On March 29 2000 Mr Danny Harris, President, Dairy Section, WAFF, also wrote to the Minister for Primary Industry stating in part “...the Western Australian dairy industry, clearly now requests you to progress the removal of legislation which is

relevant to the regulation of our industry, namely the Dairy Industry Act 1973. Due to the need to finalise access requirements to the Federal Adjustment Package, repealing legislation should be progressed at your earliest convenience.”

- 3.43 In a statutory declaration dated April 20 2000 Mr McMenemy stated that “Danny Harris was not authorised to act in this manner nor does his position carry with it the authority to do so.” This statutory declaration is attached as Appendix 2.
- 3.44 In this context the Committee notes the minutes of a meeting of the Dairy Section of the WAFF dated March 6 2000 attached as Appendix 3.
- 3.45 Any dispute within the WAFF is of no concern to the Committee. However the Minister for Primary Industry, in declining to provide a representative to attend the Committee’s hearing into the Bill, has made it difficult for the Committee to make any findings on this issue.

Herd Improvement Service Act 1984

- 3.46 In association with the request to have legislation concerning milk supply management repealed, dairy farmers in Western Australia have also requested the repeal of the *Herd Improvement Service Act 1984*. This is discussed later in this report.

4 INDUSTRY BALLOTS

The WAFF ballot

- 4.1 The Committee received submissions from a number of people that the WAFF ballot was controversial. Some submissions claimed that the vote was achieved by scare mongering and misinformation and that dairy farmers were told to take the package or get nothing. Some witnesses also claimed that the question on which they were asked to vote was skewed towards the outcome.
- 4.2 Witnesses stated to the Committee that non-quota holding dairy farmers should not have been entitled to vote in a ballot that could only disadvantage quota holders.
- 4.3 Even if non-quota holders had been excluded from the WAFF ballot and on the assumption that all non-quota holders would have voted in the affirmative, the Committee believes that the WAFF ballot would have still resulted in an affirmative decision, although by about one half of the margin.
- 4.4 Further statements were provided that a number of bona fide quota holders only hold very small entitlements, perhaps as little as five litres. The Committee is not in a

position to verify this and will not speculate on the eventual result of the WAFF ballot had these producers also been excluded.

- 4.5 The Committee notes that the WAFF ballot was conducted three months ago and that a shift in farmer opinion may have occurred since that time.

The Australian Milk Producers Association ballot

- 4.6 The Committee notes that the AEC is currently conducting a second poll of producers from a roll supplied to it by the Australian Milk Producers Association (AMPA). This roll was not provided directly by the DIA and may therefore vary from that used in the WAFF ballot.

- 4.7 The AEC has advised the Chairman of the Committee that the question being asked in this second poll is:

“With the information now at hand are you in favour of Dairy Deregulation?”

- 4.8 The AEC has advised the Chairman that the ballot closes at 10.00am on Wednesday, June 21 2000 and that the results are expected that day.

- 4.9 In view of the WAFF ballot and the ongoing debate concerning deregulation, the Committee believes that producers should be aware that access to the national restructure package depends on deregulation of the industry. The result of the AMPA ballot will provide further indication of industry opinion.

5 CONTENTS AND PURPOSE OF THE *DAIRY INDUSTRY AND HERD IMPROVEMENT LEGISLATION REPEAL BILL 2000*

- 5.1 The purpose of the Bill is to effect the withdrawal of direct government involvement, under the *Dairy Industry Act 1973*, in the dairy industry in Western Australia.

- 5.2 There are currently two pieces of State legislation that have a direct impact on the structure of the dairy industry in Western Australia. These are the *Dairy Industry Act 1973* and the *Herd Improvement Service Act 1984*.

- 5.3 The *Dairy Industry Act 1973* regulates the activities of milk and milk product producers in Western Australia by vesting all milk, on production, in the DIA. The DIA is itself established and regulated by the *Dairy Industry Act 1973*. In his second reading speech the Minister representing the Minister for Primary Industry stated that:

“The DIA has responsibility for:

- the regulation of the production of milk at dairies;
- the acceptance of, payment for, and sale of, milk by the authority;
- the regulation of the production of milk so as to ensure, so far as practicable, the continuous availability of milk; and
- for the purposes of ensuring the wholesomeness and purity of milk, the control of the quality, production and treatment of milk at dairies.”

5.4 The *Herd Improvement Service Act 1984* establishes a corporate body, the Herd Improvement Service of Western Australia (HISWA), which has responsibility for:

- assisting with the artificial breeding of stock of a range of types;
- recording the production of stock, and
- involvement in activities that promote the improvement of such stock,

all on a fee-for-service basis.

5.5 The Bill will introduce legislation to repeal the *Dairy Industry Act 1973* and the *Herd Improvement Service Act 1984* and provide mechanisms for the transfer of the relevant functions, responsibilities, assets and liabilities of the DIA and HISWA to two new industry owned and managed companies. These are to be unlisted public companies. The net asset value as at June 30 2000 of the existing organisations, including buildings and laboratory equipment, is in the order of \$10.6 million for the DIA and \$1 million for HISWA

5.6 The Bill will therefore have the effect of implementing the deregulation of two major components of the dairy industry in Western Australia.

5.7 To assist with the adjustment to the proposed new structure, a Transition Advisory Group, in the case of the DIA, and a Steering Committee, in the case of HISWA, have been appointed, under Ministerial authority, to plan and guide the transformation to two new entities.

5.8 The Transition Advisory Group and the Steering Committee are to:

- finalise details of privatisation measures;
- advise on the role of the company in each case;
- if required, issue a prospectus, and
- operate the respective company until the board of each is elected at its first annual general meeting.

- 5.9 The Transition Advisory Group has assessed a range of opportunities including:
- industry research and development;
 - education and training;
 - market development, efficiency and promotion;
 - financial management and investment attraction; and
 - delivery of information.
- 5.10 With respect to HISWA, the Steering Committee is required to advise on opportunities for establishing:
- stock testing and improvement services;
 - semen testing and improvement services;
 - information services;
 - laboratory services; and
 - any other commercial activities that relate to the shareholder base.
- 5.11 Existing HISWA activities will transfer to a new company under the control of those dairy and beef producers who have purchased the services and products of HISWA over the past three years.
- 5.12 The Bill contains 47 clauses in five parts:

Part 1 – Preliminary

Part 2 – Repeal of *Dairy Industry Act 1973* and related provisions

Part 3 – Repeal of *Herd Improvement Service Act 1984* and related provisions

Part 4 – Transitional provisions

Part 5 – Duration of Act

- 5.13 The Committee has provided comment on selected clauses of the Bill in section 9 of this report.

6 ORIGIN OF THE BILL

- 6.1 The Bill was introduced after a request was made to the Minister for Primary Industry by Mr Danny Harris, President, Dairy Section, WAFF, to put into effect legislation which would remove the existing regulations governing the dairy industry in Western

Australia. These circumstances were consistent with the State government's stated position that it would not proceed to deregulate without a clear request from the industry to do so. The Committee has noted the dispute surrounding Mr Harris' request at paragraphs 3.38 to 3.45.

- 6.2 The dairy industry in Western Australia is now represented by two organisations; the Dairy Section of WAFF, the larger of the two which supports the Bill, and the AMPA which is opposed to the Bill. The AMPA was formed recently in response to the deregulation debate.

7 INQUIRY PROCEDURE

- 7.1 As part of its review, the Committee placed an advertisement in *The West Australian* newspaper inviting submissions on the Bill. In addition, the Chairman issued a media release calling for submissions on the Bill.
- 7.2 The Committee received a great deal of public interest as a result of the advertisement. A list of the names of persons who made written submissions to the Committee is set out in Appendix 4.
- 7.3 As a further part of the review, the Committee conducted hearings on May 24 and 29 and June 12 2000 with persons involved in the dairy industry and others involved in the debate concerning deregulation of the industry. A list of the names of persons who gave oral evidence at these hearings is set out in Appendix 5.
- 7.4 The Committee also invited comment on the Bill from the office of the Minister for Primary Industry however that invitation was declined. In a letter to the Committee dated May 30 2000 the Minister stated that "My views on the deregulation of this industry and the Repeal Bill have been made clear during the debate in the Legislative Assembly."
- 7.5 Further, the Committee also invited the Minister representing the Minister for Primary Industry in the Legislative Council or a representative to give evidence to the Committee. As at June 16 2000 the Committee had not received a response to its invitation.
- 7.6 The Committee also invited comment on the Bill from the Treasury Department of Western Australia. Although the invitation to attend the hearing was declined, the Committee received a facsimile letter from the Competition Policy Unit of the Treasury Department dated May 23 2000 which commented on areas of the Bill relevant to the Treasury Department.

8 SUBMISSIONS

Competition Policy Unit of the Treasury Department

- 8.1 The facsimile letter from the Competition Policy Unit of the Treasury Department (CPU) stated that “The Bill should be a basis for a more dynamic and innovative industry, [which is currently] constrained by regulation as to who can produce market milk [ref: State definition] and how much they can produce. It is also likely to result in lower prices to consumers, particularly in the longer term.”
- 8.2 The letter stated that “Western Australia’s deregulation and agreement to participate in the national restructure package before July 2000 are important to its compliance with National Competition Policy. There is a strong likelihood if Western Australia did not deregulate that Competition Policy payments from the Commonwealth would be withheld.”
- 8.3 The letter concluded by stating that as an indication of the cost of failure to pass the Bill, failure to meet a National Competition Policy obligation in regard to water reform led to the suspension of 25 per cent of Queensland’s payments. The payments were eventually restored when the obligation was met. It stated that Western Australia is expected to receive \$46 million in 2000-2001 so that a 25 per cent deduction would be around \$10.5 million in 2000-2001.
- 8.4 The Committee considered this advice and sought further clarification from the CPU in relation to their assertions.
- 8.5 The Committee has not been provided with evidence to support the CPU’s contention that an agreement to deregulate and to participate in the national restructure package is important to the State’s compliance with National Competition Policy. Similarly, the Committee has not been provided with evidence to support a contention that these objectives must be reached by July 2000.
- 8.6 The CPU has provided no evidence to support their view that “There is a strong likelihood if Western Australia did not deregulate that Competition Policy payments from the Commonwealth would be withheld.”
- 8.7 The Committee expresses its disappointment with the advice it has received from the CPU.

Australian Taxation Office

- 8.8 In response to its request the Committee received a facsimile letter from the Australian Taxation Office (ATO) dated June 5 2000. The Committee had requested

information from the ATO regarding the taxation treatment of milk quotas and the proposed dairy industry restructure payments.

- 8.9 The ATO advised that under the DIA (Cth) Act, DSAPs are treated as subsidies and are therefore assessable under the *Income Tax Assessment Act 1997* (Cth) (ITAA 1997).
- 8.10 With respect to dairy exit payments, the ATO advised that the DIA (Cth) Act amends the capital gains tax provisions in the ITAA 1997 to provide that any capital gain or capital loss made in relation directly to a dairy exit payment is disregarded.

Dairy Section of the Western Australian Farmers Federation (Inc)

- 8.11 The Committee heard evidence from Mr Danny Harris, President, Dairy Section of the WAFF at all of its three hearings.
- 8.12 Mr Harris informed the Committee that he had been involved for the past four years in the politics of the dairy industry. He stated that “Having worked now with the Australian Dairy Farmers Federation and the Australian Dairy Industry Council for some time, we have clearly recognised that Victoria intends to deregulate on 1 July 2000. This deregulation has been a possibility for the past 15 years or more.”
- 8.13 Mr Harris stated that it is now history that Victoria has made the decision to deregulate. He told the Committee that as an organisation industry council, the ADIC had to assess the impact deregulation of the dairy industry in Victoria would have on neighbouring states.
- 8.14 Mr Harris submitted that “Whatever happens, as a neighbour to Victoria, New South Wales would be totally devastated. A similar-type effect would push up into Queensland and across to the other States.” Mr Harris also submitted that it could be debated that Western Australia is protected by the Nullarbor Plain and the fact that Western Australia is separated a little from Victoria will give some protection to dairy industry in this State. He also submitted that the Western Australian dairy industry can identify their milk as being truly Western Australian, and that this may appeal to the public a little.
- 8.15 Mr Harris also stated that the Western Australian dairy industry has a good and sound geographic relationship to South East Asia. He stated “That is something different about Western Australia, and we have a chance to be a little better off.”
- 8.16 The Committee was advised by Mr Harris that in assessing these factors, the ADIC recognised there was only one way to go. It was either deregulation and commercial reality with no supports or restructure package, or deregulation in a managed way. Mr

Harris told the Committee that the ADIC had taken the past two years to develop this managed way. They had consulted with the Federal Government, and agreed that "...if the States carry through the process of deregulation the national restructure package will be made available."

- 8.17 Mr Harris told the Committee that "Australia has six States that operate differently: three are pooled and three are quota States, and each has significant differences. It is nigh impossible to pull together a package that will support everybody in the way they wish at their farm-gate."
- 8.18 It was Mr Harris's submission that following an enormous amount of consultation and meetings, the conclusion was that "...although it would not be absolutely valid in every State, the package that has been put forward represents an attempt to support the fact that the dairy marketing scheme would disappear and market milk premiums and rights would also be under threat and would more than likely disappear. It is a matter of our facing up to reality." Mr Harris also stated that "They are the commercial realities. It is not about Governments driving deregulation or taking away our rights."
- 8.19 Mr Harris informed the Committee that the Commonwealth Bank of Australia will provide an up-front facility to be accessed by dairy farmers. The gross sum of the 32 quarterly payments can be capitalised and taken as a lump sum payment by each dairy farmer. The payment will be discounted by the interest factor and the facility costs. Mr Harris anticipated that the interest factor and the facility costs will result in the value of the payments being reduced by between 23 to 25 per cent of the gross package.
- 8.20 The Committee was advised by Mr Harris that the Commonwealth Bank of Australia has indicated that the discounted figure would be released on June 6 2000.³ Mr Harris stated that it was not a government facility but rather an industry facility that had been brokered by the ADIC. Mr Harris stated that he expected the first payment to be made in October 2000.
- 8.21 Mr Harris submitted that the restructure package will provide two options to dairy farmers. The first option is that they can take the restructure package over an eight year period, which is a quarterly adjustment for their loss of income. The second option is that they can take the restructure package as an up-front lump sum. Mr Harris expressed his opinion that "Technically, that is the greatest advantage that I see because farmers can adjust their business very quickly. In other words, if they have large borrowings – it is clear that is the case in the dairy industry – they can reduce those borrowings overnight."

³ This figure had not been released on June 16 2000.

- 8.22 Mr Harris submitted that the restructure payment – whether taken as a lump sum or in the form of quarterly payments – will give farmers a chance to pay for a new farm development or an upgrade of the dairy or the cows.
- 8.23 In answer to a question put to him by the Chairman, Mr Harris told the Committee that the restructure package was first mooted in August 1998 when it was tabled at the ADIC level. He informed the Committee that all States had reached an in-principle agreement by December 1998. Mr Harris agreed with the Chairman’s statement that “The industry had a fair idea of the negotiations for about 12 months.”
- 8.24 At its hearing on June 12 2000 Mr Harris told the Committee that he wanted to make a clear statement under parliamentary privilege that he felt needed to be documented. He stated that “On behalf of the Western Australian dairy industry, the parliament and the government (*sic*) must pass legislation prior to 30 June in order to deregulate the Western Australian dairy industry to access the national restructure package.”
- 8.25 Four members of the WAFF, Dairy Section Council agreed with the statement made by Mr Harris when the question was put to them by the Chairman.

The Dairy Industry Authority

- 8.26 At its hearing on June 12 2000 the Committee heard submissions from Mr Rodney Sarson, Acting General Manager, DIA and Mr Albert Millard, Secretary, Challenge Dairy Cooperative Limited. Mr Millard told the Committee that he was employed by the DIA but had been seconded to the Challenge Dairy Cooperative Limited.
- 8.27 A number of questions were put to the witnesses. In particular, the Committee asked whether the DIA had ever sold quota entitlements directly to producers and if so, were they new quotas or recycled quotas.
- 8.28 Mr Sarson told the Committee “Quotas issued to dairy farmers in Western Australia were issued free of charge from the late 1930s, when contracts were issued by the then Milk Board. That continued until the repeal of the Milk Act in 1974, when the Dairy Industry Act was enacted. Quota certificates, as they are known today, were issued on the basis of the contracts held previously. Subsequently, market growth has occurred and sales [of milk] in the industry have increased. Those quotas, in turn, have been issued freely by the authority to dairy farmers.”
- 8.29 Mr Sarson also told the Committee that values have been imposed by dairy farmers when they have traded the quotas between themselves. He submitted that “In 1974, when the Dairy Industry Act was enacted and the new quota certificates were issued, a value was placed on quotas.” Mr Sarson told the Committee that he understood that

- quotas were given a value of \$55 per litre. The Committee believes that this was based on the value inherent in dairy farms sold with quota attached.
- 8.30 The Committee was told by Mr Sarson that in 1976 an adjustment was made and, as a result, the price went up to \$63 a litre. The Committee was also told that special milk quotas without any value were introduced in 1978. Mr Sarson told the Committee that the quotas continued to be traded during that period.
- 8.31 Mr Sarson informed the Committee that normal quota transfers occurred between dairy farmers involving a walk in, walk out process; that is, the whole enterprise was sold by one entity to another. Mr Sarson also told the Committee that “Ministerially approved family transfers also occurred in accordance with the relevant provisions.”
- 8.32 The Committee was told by Mr Sarson that a mechanism was provided through the authority to enable farmers to trade a quota by relinquishing it to the authority at \$55 or \$63 per litre, and in 1984 the price went to \$100 per litre. Farmers were able to relinquish [sell] a quota to the authority and the authority made it available [for purchase] at the same price to other farmers. Mr Sarson submitted that it was a case of the authority facilitating a transfer from one farmer to another.
- 8.33 Mr Sarson told the Committee that no brokerage charge was included in the price for the quota. He submitted that farmers did not feel that the increase from \$63 to \$100 per litre was reflective of what was taking place with the walk in, walk out value. He told the Committee that as a result, in 1986 the milk quota auction system was introduced. It was an open system whereby farmers could set their own price on the day based on their assessment of the value of their quota. Mr Sarson told the Committee that that system has been used ever since.
- 8.34 In answer to the Chairman’s question Mr Sarson confirmed that no original quota was sold to dairy farmers but has all been acquired because of past production. He confirmed that quota entitlement was not directly sold.
- 8.35 Hon Kim Chance MLC also questioned Mr Sarson with respect to whether the DIA ever charged for a quota. Mr Sarson told the Committee that to the best of his knowledge the DIA did not charge for a quota. In a written response confirming this fact Mr Sarson stated “I have made a further check of Authority records and can find no evidence to indicate that new quota or market growth quota was ever paid for by dairymen on issue by the Authority. Quota allocations from quota surrendered at a set price was paid for by dairymen at the same price. This was existing quota being transferred from one dairyman to another via the Authority.”

Dairy farmers who hold a quota to supply milk

- 8.36 The Committee heard evidence from a large number of dairy farmers who hold quotas to supply milk. The evidence indicated that dairy farmers who hold quotas are overwhelmingly opposed to the Bill. The Committee notes that this contrasts with the result of the WAFF ballot that had been conducted two and a half months prior to the Committee's hearing, in which 58 per cent of those responding to the poll indicated their assent to the question. See also section 4 of this report.
- 8.37 The Committee notes that two factors may have had a bearing on this apparent change in opinion. Firstly, indicative post-deregulation prices released since the WAFF ballot have generally been lower than had been expected at the time the vote was taken. Secondly, the Committee only received evidence from persons who hold quota entitlements. No evidence was tendered from non-quota interests.

Representative samples of evidence received

- 8.38 The Committee heard evidence from Mr Michael Dagostino who informed the Committee that his father had been a dairy farmer for in excess of 40 years. Mr Dagostino also provided the Committee with a number of written submissions.
- 8.39 Mr Dagostino told the Committee that he and his family were extremely concerned at the deregulation path being undertaken by the Government and submitted that the Western Australian dairy industry should not deregulate.
- 8.40 Mr Dagostino told the Committee that he had considered the various options associated with deregulating and regulating. He stated that "The implications of not deregulating as I see them are that we will lose the package. Obviously in this context I can speak only for my father, but we are better off rejecting the package. Financially for what we will get on an after-tax basis, we would be better off taking the risk that we have quota and there is some value associated with that." Mr Dagostino submitted that the national restructure package was a short-term fix.
- 8.41 It was Mr Dagostino's evidence that if quotas were removed, dairy farmers' only option to get proper compensation was litigation. The national restructure package would not adequately compensate farmers for their lost income.
- 8.42 Mr Dagostino submitted that if the Western Australian dairy industry does not deregulate, the farmers will retain some control of the industry. He expressed concern that if the Western Australian dairy industry deregulates, "...the processors and the supermarkets will run this agenda...and we will have no say whatsoever."
- 8.43 Mr Dagostino submitted that other reasons against deregulation were that consumers would not benefit as it was accepted that milk prices may increase with deregulation,

the Western Australian dairy industry did not breach National Competition Policy, and it was questionable whether farmers wanted deregulation.

- 8.44 Mr Dagostino expressed his opinion that there were benefits in retaining the existing quota system as it works efficiently and effectively and has for many years provided certainty to allow long term planning, particularly in relation to the investment of capital. He submitted that no one has been able to prove to him why the dairy industry in Western Australia would be better off deregulating.
- 8.45 The Committee also heard evidence from Mrs Mavis Daubney, who appeared before the Committee on behalf of her family who run a dairy farm in Northcliffe and have done so for the past 40 years. Mrs Daubney also provided the Committee with a written submission.
- 8.46 Mrs Daubney told the Committee that she was giving evidence primarily because she and her family believe that the dairy industry in Western Australia is in jeopardy, as are the lifestyle and lives of many people in country towns and rural areas. It was Mrs Daubney's evidence that "There will be repercussions throughout the south-west in the dairy areas if this law is passed in its present condition. These repercussions will continue for many years."
- 8.47 Mrs Daubney submitted that, left as it was, the dairy industry was a very good industry. She questioned why the government wanted to alter an industry that was working as well as the dairy industry was working, especially in Western Australia.
- 8.48 Mrs Daubney addressed the issue of taxation of the national restructure payments. She submitted that the payments are not compensation payments for loss of quotas, but are restructure payments on which recipients will be required to pay tax.
- 8.49 Another issue addressed by Mrs Daubney was the way in which the plebiscite of Western Australian dairy producers was conducted. She stated her belief that it was improper that when the vote was taken, people other than quota holders were entitled to vote. It was Mrs Daubney's opinion that the vote "...should have been only for quota holders, because we were the ones who were going to lose out, not the other farmers who had come in over the past four, five or six years."
- 8.50 In her written submission, Mrs Daubney expressed her opinion that Western Australian dairy farmers were placed in an untenable situation when asked to vote. She submitted that voters knew that Queensland, New South Wales, Victoria, Tasmania and South Australia had all agreed to deregulation and the Commonwealth restructure package, and that "It became a case of deregulation without any form of restructure or deregulation with this package." It was her opinion that for this reason the majority voted for the package.

- 8.51 She stated that “At the end of the day when we were asked whether we wanted deregulation and the restructure package from the Commonwealth government, I believe that the majority of people who voted for it did so because they wanted the restructure package which would help them go forward in a deregulated or semi-regulated industry rather than deregulation itself. I do not believe very many of them wanted deregulation.”

Non-dairy farmers who hold a quota to supply milk

Representative samples of evidence received

- 8.52 The Committee also heard evidence from a number of persons who hold quotas to supply milk but who are not themselves dairy farmers. Every non-dairy farmer who holds a quota who gave evidence to the Committee was opposed to deregulation.
- 8.53 The Committee heard evidence from Mr Raymond Ritchie who leases his quota to a third party who produces milk. He stated that as a lessor, he felt his views had not been taken into consideration.
- 8.54 Mr Ritchie told the Committee that “As a lessor, and in support of other lessors, I strongly oppose deregulation of the industry because our quotas are being compulsorily acquired against our wishes. Under the proposed acquisition, we lose 100 per cent of our income and the total capital value of our quota.”
- 8.55 Mr Ritchie also told the Committee that if the dairy industry is deregulated, the lessors’ white milk quota entitlement will be forfeited for no financial consideration.⁴ The total acquired quota milk entitlement is then available to be shared with those who choose to remain in the industry. Mr Ritchie claimed that “They will benefit financially from our losses.”
- 8.56 The Committee also heard evidence from Mr Pino Gangemi. Both Mr Gangemi and his wife, Mrs Frances Gangemi, also provided the Committee with numerous written submissions.
- 8.57 In a letter to the Committee dated May 22 2000 Mr Gangemi informed the Committee that he is a dairy farmer and owns 845 litres of milk quota. In September 1996 he

⁴ The Committee notes that in his evidence, Mr Biddulph, Vice President, Dairy Section, WAFF, informed the Committee that farmers who do not milk cows but lease their quota and receive an income will receive an adjustment under the Federal restructure package. Mr Biddulph told the Committee that under the national restructure package the owner of a property who produces his or her own quota will receive 46.23 cents per litre for market milk (ref: Commonwealth definition). Where there is an agreement to lease a quota, the lessor will receive 37.27 cents per litre and the producer of that quota will receive 8.96 cents per litre.

- decided to lease his milk quota for a period of ten years. He set aside the income he derived from his milk quota to see him through his retirement and help pay the mortgage on his farm.
- 8.58 Mr Gangemi wrote that “Come July 2000 if the proposed legislation to deregulate the dairy industry goes through Parliament, my milk quota becomes dysfunctional and therefore I have no quota to lease.”
- 8.59 Mrs Gangemi also wrote a letter to the Committee dated May 22 2000 in which she advised that she owns 1774 litres of milk quota, which she purchased with her dairy farm in 1974. She also decided to lease her milk quota in September 1996 for a period of ten years. Mrs Gangemi advised the Committee that she uses the money she receives from the lease to pay her mortgage.
- 8.60 Mrs Gangemi stated that if the proposed legislation to deregulate the dairy industry is passed, she will not have a quota to lease and in turn will have no income to pay her mortgage.
- 8.61 In a subsequent letter to the Committee dated May 24 2000, Mrs Gangemi asked the Committee to consider that another vote be put to Western Australian dairy farmers as “...they now know what their options are and what they are going to receive for the package and their future milk price, if the proposed deregulation takes place.”
- 8.62 In his oral submission to the Committee, Mr Gangemi stated that if the Bill is passed, it will affect market milk producers in relation to quota. However it will completely take away the property of dairy farmers who are leasing their quota and give it to non-quota farmers.
- 8.63 Mr Gangemi submitted that this change would make it impossible for lessors to get back into the industry because to do so they would have to upgrade their dairies and purchase new milking herds. He submitted that the predicted fall of sixty per cent in the price of milk after deregulation is a fall no industry can afford.
- 8.64 Mr Gangemi stated that with the rising cost of rates, fuel, fertilisers, farm machinery, spare parts and rising interest rates, dairy farmers will leave the industry and it will be a disaster for Western Australia.
- 8.65 Mr Gangemi also commented on the WAFF ballot held in March 2000. He stated that the Government cannot rely on the result of the vote because it was not undertaken in accordance with proper election procedure guidelines, the covering letter to the ballot paper and the ballot paper question were not impartial but were skewed towards deregulation, and voters were not confined to quota holders but included non-quota holders who have a financial interest in deregulation.

- 8.66 Mr Gangemi stated that the Bill is misconceived as there exists no economically rational explanation for the quota system to be abolished in Western Australia. Mr Gangemi expressed his opinion that it is not in the public interest to have the Bill become law because no price advantage will accrue to consumers, rural communities will be made to suffer unnecessarily, it will result in unemployment in rural areas, and there is no apparent financial gain to dairy farmers or to consumers in Western Australia.
- 8.67 Mr Gangemi also stated that the existing quota system works well and has been working well for the last seventy five years at no cost to the Western Australian government. His question to the Committee was “Why replace it?”
- 8.68 In his concluding remarks, Mr Gangemi stated that he was opposing deregulation of the dairy industry in Western Australia unless the State Government is prepared to fairly compensate all those dairy farmers who clearly show their losses, in particular the lessors who have no chance of getting back into the dairy industry under the proposed change.

Milk processors

- 8.69 At its hearing on June 12 2000 the Committee heard submissions from representatives of PB Foods Limited trading as Peters and Brownes Group (Peters and Brownes Group). The witnesses before the Committee were Mr Robert (Dean) Maughan, Milk Supply Manager, and Mr David May, General Manager, Logistics.
- 8.70 Mr May advised the Committee that the Peters and Brownes Group had just completed a number of meetings with their producers, of which they have approximately 170.
- 8.71 He told the Committee that Peters and Brownes Group milk payments are structured for three different types of milk. The first is market milk. The second type of milk is value-added manufacturing milk. The price for this milk will be the price the company will pay for year-round supply of milk for products like ice-cream, yoghurts and flavoured milk. The third type of milk is commodity or growth milk. He explained that this allows farmers to produce additional milk, if they can produce it at the margin.
- 8.72 Mr May told the Committee that the Peters and Brownes Group is negotiating contracts with its suppliers on volumes based on the total milk volumes that were supplied to the company in 1998-1999 by those suppliers. He informed the Committee that the company would buy the milk at a set price, provided it continued to sell the same quantity of milk as it does now. He told the Committee that the price

for this milk will be equivalent to the current milk quota price, minus 11 cents per litre.

- 8.73 The Committee was informed that the Peters and Brownes Group had received offers from suppliers to the Capel dairy ranging from 23 cents per litre to 25 cents per litre. Mr Maughan told the Committee that the Peters and Brownes Group takes a long-term view on pricing. He informed the Committee that when he had put it to them, the farmers admitted that those prices were not sustainable in the long term.
- 8.74 Mr Maughan told the Committee that as a Western Australian processor that had invested substantial sums (in the company's processing and manufacturing capacity), the Brownes and Peters Group must have a long-term viable supply of milk. Mr Maughan told the Committee that a figure of between 23 cents per litre and 25 cents per litre would not be a sustainable price which would secure a sustainable milk supply for the Brownes and Peters Group.
- 8.75 Mr May agreed with Hon Kim Chance MLC that the market price for milk will probably be at import parity. He stated that it will probably be the manufacturing price (for example, in Victoria) plus freight.
- 8.76 Mr May stated that "Fortunately for us, freight is a significant barrier. Despite there being technological advances, there is a 20 cents per litre premium in price from the east coast of Australia to the west coast for fresh white milk." He also stated that "Unless there is a fundamental change in the dynamics of transport across the Nullarbor Plain, that barrier will remain and it will protect pricing in Western Australia."
- 8.77 In answer to a question put to him by the Chairman, Mr May expressed his opinion that there is still a lot of indecision about deregulation in the industry. It was his view that the biggest single problem is whether deregulation will occur. Mr May stated that "Once the decision about whether to deregulate the industry is clarified, they can start to make some of those decisions."
- 8.78 He also stated that "A decision not to deregulate will create some immediate competitive pressures, particularly from the east coast, because they will see some opportunities in a regulated market whereas they are deregulated."
- 8.79 Mr May told the Committee that "Long-term milk flow is an issue for us, not just for Peters and Brownes, but for the industry. If the industry were to stall in terms of growth, it would lose about five to seven years of getting back into growth mode. A quick decision would be better for the farm base so that they know whether they are in or out."

- 8.80 He concluded by stating that “As the decision [to deregulate or not] is delayed, it creates more and more pressure, therefore people will make decisions that perhaps they should not make.”
- 8.81 Mr Maughan agreed and told the Committee that “One of the key issues is the restructure package.” He told the Committee that he works on farms all the time and many people tell him they do not wish to see deregulation occur. He told the Committee that they accept that deregulation is highly likely to occur.
- 8.82 Mr Maughan stated that the restructure package is crucial for dairy farmers when it comes to working out their business plans, budgeting and whether or not to service debt. He stated that one of the biggest issues facing the farmers is that they want some certainty over the restructure package.
- 8.83 The Committee also heard evidence from Mr Kevin Sorgiovanni, Sales and Marketing Manager, Harvey Fresh (1994) Ltd (Harvey Fresh).
- 8.84 Mr Sorgiovanni told the Committee that Harvey Fresh operates on a two-tier system in that they have a market milk price and a manufacturing milk price. He informed the Committee that the company will probably continue with the two-tier system (following the proposed deregulation) the only difference being that the price in July will be the current price less 11 cents per litre. He also told the Committee that as far as the price of manufacturing milk is concerned, the company will pay a similar amount to what it paid in 1999.
- 8.85 Mr Sorgiovanni stated that “In general, deregulation is something that we are prepared for and should happen.”
- 8.86 Hon Kim Chance MLC pointed out that the Committee had received submissions from some suppliers that they would be prepared to supply milk at the farm-gate price of 23 cents per litre, which was 15 cents per litre cheaper than the price at which Harvey Fresh intended to contract. Hon Kim Chance MLC queried why Harvey Fresh would not take the 15 cents per litre advantage that was being offered. In reply, Mr Sorgiovanni stated “For the simple reason that, although it sounds very attractive, unfortunately, within six months, it would end up in the hands of the supermarkets.” Mr Sorgiovanni expressed the view that “...the supermarkets know exactly what the processors pay and they would want to benefit from it and share in it.”
- 8.87 Mr Sorgiovanni told the Committee that deciding the price of milk was a commercial decision the company would have to make.
- 8.88 The Committee also received a letter dated June 12 2000 from Mr John Watson, Regional General Manager, WA, National Foods Limited (National Foods). Although

Mr Watson declined the Committee's invitation to attend the hearing, he did make some written comments in relation to deregulation of the dairy industry.

8.89 Mr Watson advised the Committee that in the national debate that preceded the State governments agreeing to move to a deregulated dairy industry, the position of National Foods was that the company neither supported nor opposed deregulation.

8.90 Mr Watson advised the Committee that National Foods is a national processor, producing milk for the Australian domestic market and, as long as the company was able to operate according to the same set of rules and in the same environment as its competitors, then the company was happy to accept whatever outcome milk producers determined in respect of industry regulation.

Associated industries

8.91 The Committee received a letter dated May 26 2000 from Mr Donald Vass BVSc, a veterinarian surgeon from Harvey. Mr Vass wrote to the Committee to relate the impact of the proposed deregulation of the dairy industry on his business.

8.92 Mr Vass advised the Committee that he is a veterinarian in a practice that was established in 1955, is based on the dairy industry, and is servicing approximately 100 farmers.

8.93 Mr Vass stated that deregulation "...is going to adversely affect this business, and the regression has already started."

8.94 Mr Vass also stated that "All the businesses and service industries in this town will suffer, and with the withdrawal of Government Services that once were present in Harvey, the social and economic impact on our community will be, and is becoming quite devastating."

8.95 Mr Vass concluded by stating that "The worst feature of deregulation is that it benefits neither the producer, nor the consumer – only the processors."

8.96 The Committee also received a facsimile letter dated May 29 2000 from Mr Geoff Calder, the General Manager of the South West Irrigation Management Co-operative Limited, trading as South West Irrigation (SWI).

8.97 Mr Calder advised the Committee that SWI had previously stated its objections to the deregulation of the dairy industry to several committees, including the Senate Review Committee. In his letter, Mr Calder set out SWI's objections to deregulation. These include:

- the negative effects it is likely to have on their business. The effects will be

on reduced water sales which may take some time, if ever, to return to historical levels and which may place this business under some financial pressure;

- the nature of the deregulation in which competition is forced upon on a group of farmers without market power, to the benefit of processors and retailers who have no hesitation in exercising extreme market power;
- the resulting transfer of wealth from the farmer in the bush to the city shareholder;
- that experience elsewhere (for example, in the United Kingdom) has shown that this sort of deregulation does not benefit anyone except the processors and retailers. The price of milk to the consumer increases by around 30 per cent while the farmer gets less and the multiplier effect of failing farm businesses impacts severely on rural communities leading to urban drift, particularly of young people; and
- that there are no studies which demonstrate that deregulation is worthwhile in the dairy industry or that there is a net benefit to society from such a move – it is simply the implementation of an economic theory without demonstration of specific benefits.

8.98 Mr Calder concluded his submission by stating that SWI believes that deregulation is not fair because its effect will be to take wealth from rural based producers and redistribute it to city based shareholders without any benefit to consumers.

Former ‘DAAS B’ milk distributors

8.99 The Committee received a letter dated May 15 2000 from Mr Philip Achurch, Executive Director, The West Australian Small Business and Enterprise Association Inc (WASBEA) on behalf of seven former Distribution Adjustment Assistance Scheme (DAAS) milk distributors (the former ‘DAAS B’ distributors) who are also members of WASBEA. The Committee also heard evidence from Mr Achurch at its hearing on May 24 2000.

8.100 The DAAS was an administrative arrangement established to provide an adjustment mechanism for milk vendors and distributors who were displaced from or chose to exit the dairy industry following changes to, and ultimately the deregulation of, the distribution sector of the dairy industry.

8.101 Eight of the former nine DAAS ‘B’ distributors indicated to the Committee that they have not received adequate compensation from the scheme. On behalf of seven of those nine, Mr. Achurch provided a list of the shortfall that the former DAAS ‘B’

- distributors claim in relation to the value of their businesses at the time of deregulation and what they have actually been paid.
- 8.102 This matter has been the subject of extensive inquiry by the Legislative Council's Standing Committee on Public Administration in its Third, Sixth and Tenth Reports.
- 8.103 The amount of the shortfall, a sum of approximately \$2 million, is claimed to be still due to the former DAAS 'B' distributors.
- 8.104 DAAS was funded by an increase of one cent per litre on the wholesale price of milk imposed by the DIA as a part of its general power to establish margins. The DAAS was discontinued while a surplus remained in the reserve account. The increased margin was continued until September 1999. However, revenue from the increased margin has continued to accrue in the DIA general reserve since that time.
- 8.105 In his letter Mr Achurch advised the Committee that since early 1995 the former 'DAAS B' distributors had been pursuing their claim on the State Government for full compensation for the full value of their former milk distribution businesses which were taken from then when the State Government 'deregulated' milk distribution in Western Australia. Their respective claims for full compensation remain outstanding.
- 8.106 Mr Achurch advised the Committee that the former 'DAAS B' distributors are of the opinion that their outstanding claims for full compensation for the full value of their former businesses should be officially registered as a current liability of the DIA. They should therefore be included in the description of the liabilities of the DIA in accordance with clause 15(1)(b) of the Bill and the amount of each liability should be shown in accordance with clause 15(2)(b) of the Bill.
- 8.107 Mr Achurch submitted that the total amount of outstanding compensation is approximately \$2 million. He referred to the statement made by the Minister for Primary Industry in his second reading speech on the Bill that "The net asset value as at 30 June 2000...is in the order of \$10.6 million for the DIA" and submitted that registering the outstanding claims of the former 'DAAS B' distributors as a current liability of the DIA would have the effect of reducing this net asset value.
- 8.108 At the hearing on May 24 2000 Mr Achurch informed the Committee that the main reason for insisting on the outstanding claims is because the former 'DAAS B' distributors were placed in a disadvantaged position compared with other milk distributors when the State Government abolished the milk distribution licensing system in February 1995. The former 'DAAS B' distributors were not offered milk delivery contracts by dairy processing companies and, as a result, their businesses were literally taken from them.

- 8.109 Mr Achurch submitted that “State government action placed them in a grossly inequitable position compared with other milk distributors. This position has not yet been rectified, despite many years of persistent lobbying, correspondence and representations to state government politicians, ministers and authorities.”
- 8.110 Mr Achurch informed the Committee that the former ‘DAAS B’ distributors he represents have written to the DIA seeking to have their outstanding claims officially registered as a current liability of the DIA in accordance with clauses 15(1)(b) and 15(2)(b) of the Bill.
- 8.111 The Committee also heard evidence from Mrs Robin Hinricks who made an oral submission on behalf of her husband and herself as former milk distributors.
- 8.112 Mrs Hinricks spoke about the deregulation of the milk distribution and vending section of the dairy industry in 1995 and submitted that the treatment of the participants in DAAS B was far from equitable. She submitted that they were the only licensees not required under the legislation to sell their entire milk distribution/vendor businesses to an existing licensee. She submitted that the fact that they were denied the opportunity to sell their businesses isolated them from all other participants in the DAAS and that this was the reason they were entitled to full compensation.
- 8.113 Mrs Hinricks submitted that they believed they were part owners of the assets of the DIA and should be beneficiaries in the event of those assets being dispersed. Mrs Hinricks also submitted it was their belief that they were unsecured creditors of the DAAS fund held by the DIA.
- 8.114 Mrs Hinricks concluded by stating that the Bill should “...acknowledge the part ownership of assets by DAAS B distributors and the debt owing to DAAS B distributors. In the event of the dissolution of the DIA, and its assets being disbursed, DAAS B distributors should be acknowledged as beneficiaries unless a satisfactory solution for DAAS B participants can be agreed upon before the Bill is tabled (*sic*) in parliament.”

9 SELECTED CLAUSES OF THE *DAIRY INDUSTRY AND HERD IMPROVEMENT LEGISLATION REPEAL BILL 2000*

Part 1 – Preliminary

- 9.1 Part 1 deals with the preliminary matters that will enable the dairy industry to plan its transition to the proposed new structure. It establishes the process whereby the transfer mechanisms can be activated when the Minister is satisfied that all things that must be done prior to activation, with respect to the repeal of the *Dairy Industry Act 1973* and the *Herd Improvement Service Act 1984*, have been done.

Clause 2 – Commencement

- 9.2 Clause 2 contains the commencement provisions.
- 9.3 Subclause (1) provides that Parts 1 and 5 of the Bill come into operation on receipt of Royal Assent.
- 9.4 Subclause (2) provides that Part 2 of the Bill, dealing with and causing the repeal of the *Dairy Industry Act 1973*, cannot be activated until the Minister is satisfied and has so certified to the Governor that a number of pre-requisites have been completed. These are set out in clause 3 of the Bill.
- 9.5 Subclause (3) provides that Part 3 of the Bill, dealing with and causing the repeal of the *Herd Improvement Service Act 1984*, cannot be activated until the Minister is satisfied and has so certified to the Governor that a number of pre-requisites have been completed. These are set out in clause 4 of the Bill.
- 9.6 Subclause (4) triggers transitional provisions that are common to the repeal of both the *Dairy Industry Act 1973* and the *Herd Improvement Service Act 1984*. These are expressed in clause 4 of the Bill. As it is likely that the provision to the satisfaction to the Minister in each case will not occur simultaneously, this subclause ensures that the common provisions are activated on the proclamation of whichever preliminary repeal procedure is completed first.

Clause 3 – Arrangements for commencement of Part 2

- 9.7 Part 2 deals with the transfer of the business of the DIA to a new company. Before Part 2 can be proclaimed, the Minister is required to certify to the Governor that he is satisfied that a number of specified matters have been appropriately dealt with. The matters to be addressed prior to the commencement of the operation of the company are those set out in paragraphs (a) to (f).
- 9.8 Paragraph (a) directly links the deregulation of the Western Australian dairy industry to the commencement of the payments to farmers from the \$1.74 billion Federal restructure package. This paragraph ensures that deregulation of the Western Australian dairy industry will only take place once the date to commence the \$1.74 billion Federal restructure package payments has been set by the Federal Government and the payments are therefore a certainty.
- 9.9 Paragraph (b) requires that a public company shall be registered under the Corporations Law, by the name “Dairy Western Australia Limited” (Dairy WA Ltd.) In accordance with its proposed constitution it will permit the passage of the net assets of the DIA to the members of the dairy industry in Western Australia, in the form of

shares. These will be allocated in a manner determined by the Minister after consultation with Dairy WA Ltd.

- 9.10 Paragraph (c) requires the Minister to be satisfied that the constitution of Dairy WA Ltd is adequately worded to enable it to handle the transfer of the business of the DIA, in terms of its net assets. The purpose of Dairy WA Ltd is set out in clauses 10 to 16 of the Bill. These matters are included in those being addressed by the Transition Advisory Group.
- 9.11 Paragraph (d) provides that the initial administration of Dairy WA Ltd shall advise the Minister that the transfer of the business of the DIA is satisfactory, so far as it affects the company. This will ensure that:
- Dairy WA Ltd is fully aware of the outcome and method of implementation of the transfer process;
 - this will meet the foreseen objectives; and
 - Dairy WA Ltd accepts the terms of transfer of the DIA's business.
- 9.12 Paragraph (e) deals with the transfer of all existing staff of the DIA in a manner that maintains opportunity of employment or exit on terms that are in accordance with the *Public Sector Management Act 1984*.
- 9.13 Paragraph (f) enables the Minister to determine that all necessary arrangements have been made before he activates the process of transfer of the net assets of the DIA to Dairy WA Ltd.

Clause 4 – Arrangements for commencement of Part 3

- 9.14 Part 3 deals with the transfer of the business of HISWA to a new company. Before Part 3 can be proclaimed, the Minister is required to certify to the Governor that he is satisfied that a number of specified matters have been appropriately dealt with. The matters to be addressed prior to the commencement of the operation of the company are those set out in paragraphs (a) to (e), in a manner identical in principal to that applicable to the DIA.
- 9.15 Paragraph (a) requires that a public company shall be registered under the Corporations Law, by the name "Farmwest Services Limited" (Farmwest Ltd). In accordance with its proposed constitution it will permit the passage of the net assets of HISWA to its customers, in the form of shares. These will be allocated in a manner determined by the Minister after consultation with Farmwest Ltd.
- 9.16 Paragraph (b) requires the Minister to be satisfied that the constitution of Farmwest Ltd is adequately worded to enable it to handle the transfer of the business of HISWA,

in terms of its net assets. The purpose of Farmwest Ltd is set out in clauses 25 to 31 of the Bill. These matters are included in those being addressed by the Steering Committee.

9.17 Paragraph (c) provides that the initial administration of Farmwest Ltd shall advise the Minister that the transfer of the business of HISWA is satisfactory, so far as it affects the company. This will ensure that:

- Farmwest Ltd is fully aware of the outcome and method of implementation of the transfer process;
- this will meet the foreseen objectives; and
- Farmwest Ltd accepts the terms of transfer of HISWA's business.

9.18 Paragraph (d) deals with the transfer of all existing staff of HISWA in a manner that maintains opportunity of employment or exit on terms that are in accordance with the *Public Sector Management Act 1984*.

9.19 Paragraph (e) enables the Minister to determine that all necessary arrangements have been made before he activates the process of transfer of the net assets HISWA to Farmwest Ltd.

Clause 6 – Day to be fixed for purposes of section 22

9.20 The Committee notes that the transfer of the business of HISWA to Farmwest Ltd requires special attention, in view of the absence of a statutory specific interest-based definition of HISWA clientele in the *Herd Improvement Service Act 1984*. (In contrast, DIA clientele can be characterised by the requirement to hold a licence under section 52 of the *Dairy Industry Act 1973*.)

9.21 The intent of the new arrangement with HISWA is to ultimately transfer ownership of the net assets of HISWA to persons who have done business with HISWA.

9.22 Subclause (1) provides that the definition of “HISWA customers” will not come into operation until a day fixed by the Minister. Clause 6 must be read and interpreted in conjunction with clause 22 of the Bill, which essentially requires that a HISWA customer shall be a person who has utilised the services or products of HISWA, on a fee-for-service basis, in the three year period before the day fixed by the Minister under subclause 6(1).

9.23 To prevent the purchase of HISWA services or products with the sole purpose of becoming eligible for an increased proportion of the net value of HISWA, possible after the opportunity becomes publicly known with the tabling of the Bill, it is

intended that the day fixed will be the day on which the Bill receives a second reading.

- 9.24 Subclause (2) requires the Minister to give public notice of the day fixed, by publishing it in the *Gazette*. From the date fixed it will not be possible to take advantage of the opportunity to purchase HISWA services or products at the comparative later expense of other long term users, in terms of a share of HISWA's net assets.

Part 2 – Repeal of *Dairy Industry Act 1973* and related provisions

Division 2 – Repeal and transitional provision

Clause 8 – Dairy Industry Act 1973 repealed

- 9.25 This very succinct clause, with its counterpart in clause 23, lies at the heart of the proposed legislation.
- 9.26 In legislative terms, deregulation of the dairy industry in Western Australia is straightforward. It requires the repeal of the *Dairy Industry Act 1973*. On the day that the Governor proclaims Part 2 of the new Act, the then existing *Dairy Industry Act 1973* is immediately repealed, causing deregulation of the dairy industry. In conjunction with this it makes available the Federal dairy industry support package.
- 9.27 When the principal Act is repealed the *Dairy Industry Regulations 1977*, made under the *Dairy Industry Act 1973*, fall away as a consequence of having lost their legislative support. For this reason, there is no need to formally repeal these regulations.

Clause 9 – Performance of necessary transitional functions

- 9.28 Clause 9 provides for the continuation of the DIA in a limited manner and for a limited time, in order that it may carry out functions that are required to be carried out after the transfer process is initiated and it loses full status.

Division 3 – Transfer of DIA's business to the Company

Clause 10 – Purposes of this Division

- 9.29 This clause provides that the purposes of Division 3 of Part 2 of the Bill are to cause the transfer of the net assets and liabilities of the DIA to Dairy WA Ltd by way of sale of the DIA's business.
- 9.30 To give effect to this the Minister, on behalf of the State of Western Australia, will receive from Dairy WA Ltd shares equal to the value of the DIA's net assets. The

Minister will then transfer those shares to dairy producers. A cost base related to the net assets of Dairy WA Ltd will be created on the transfer of the shares by the Minister to the dairy producers, without their having to give consideration for the transfer.

Clause 11 – Transfer of DIA’s business to the Company

- 9.31 Subclause (1) provides that on the day on which Part 2 of the Act comes into force, the net assets and rights of the DIA are transferred to Dairy WA Ltd as a statutory sale without the need for any form of contract. This occurs simultaneously with the repeal of the *Dairy Industry Act 1973*.
- 9.32 Subclause (2) provides for the transfer of the liabilities of the DIA to Dairy WA Ltd on the same day as the assets and rights are transferred.

Clause 12 – Determination of amount of consideration for sale

- 9.33 Subclause 12(1) requires the Minister to determine, after consulting with Dairy WA Ltd, the value of the net assets of the DIA on the day the *Dairy Industry Act 1973* is repealed.
- 9.34 To ensure that there can be no doubt that an appropriate value has been ascribed to the assets, rights and liabilities of the DIA, subclause (2) requires that the valuations be made on the basis of their market value.
- 9.35 Subclauses (3) and (4) require that the Minister give Dairy WA Ltd and the DIA written notice of the net asset value of the business of the DIA and the nominal value of the shares to be issued to him by Dairy WA Ltd.

Clause 14 – Minister to transfer shares

- 9.36 This clause ensures that the share transfer process is completed as soon as practicable after determination of the DIA’s net assets and Dairy WA Ltd has been so advised.

Clause 15 – DIA to prepare statement

- 9.37 Clause 15 provides the statutory requirement for many of the duties that have to be performed immediately after the appointed day by the transitional DIA.
- 9.38 Subclause (1) requires the DIA to prepare a statement describing the assets, rights and liabilities of the DIA at the appointed day.
- 9.39 Subclause (2) provides that the statement is to specify the value of each asset and the amount of each liability as at the appointed day.

- 9.40 Subclause (3) provides that the statement of the description and value of the assets and liabilities of the DIA must be published in the *Gazette* for public information.

Division 4 – Consequential amendments to other Acts

- 9.41 This Division provides for the amendment of five Acts as a consequence of the repeal of the *Dairy Industry Act 1973* and the demise of the DIA. The Acts to be consequentially amended are dealt with in clauses 17 to 21 of the Bill.

Part 3 – Repeal of *Herd Improvement Service Act 1984* and related provisions

Division 1 – Interpretation

Clause 22 – Definitions

- 9.42 Clause 22 defines “appointed day” as the day that the Governor proclaims Part 3 of the Bill, after being advised by certificate that the Minister is satisfied that all the preliminary necessities (detailed in clause 3) have been completed in accordance with clause 2(2). On this day, Farmwest Ltd takes over HISWA’s business.
- 9.43 Clause 22 also defines “HISWA customers” as those persons who are either dairy farmers or beef farmers who can be verified in HISWA records as having done business with HISWA in the past three years. The purpose of this requirement is to provide a reasonable relationship between potential benefactors of the intended transfer of the net assets of HISWA and the persons who contributed to those assets. (Refer also to the comment on clause 6 of the Bill at paragraphs 9.20 to 9.24 of this report).

Division 2 – Repeal and transitional provision

Clause 23 – *Herd Improvement Service Act 1984* repealed

- 9.44 This very succinct clause, with its counterpart in clause 8, lies at the heart of the proposed legislation.
- 9.45 On the day that the Governor proclaims Part 3 of the new Act, the then existing *Herd Improvement Service Act 1984* is immediately repealed.
- 9.46 Repeal of the *Herd Improvement Service Act 1984* causes the demise of HISWA and transfers the roles of that service to Farmwest Ltd.

Clause 24 – Performance of necessary transitional functions

- 9.47 Clause 24 provides for the continuation of HISWA in a limited manner and for a limited time, in order that it may carry out functions that are required to be carried out after the transfer process is initiated and it loses full status.

Division 3 – Transfer of HISWA’s business to the Company

Clause 25 – Purposes of this Division

- 9.48 This clause provides that the purposes of Division 3 of Part 3 of the Bill are to cause the transfer of the net assets and liabilities of HISWA to Farmwest Ltd by way of sale of HISWA’s business.
- 9.49 To give effect to this the Minister, on behalf of the State of Western Australia, will receive from Farmwest Ltd shares equal to the value of HISWA’s net assets. The Minister will then transfer those shares to HISWA customers. A cost base related to the net assets of Farmwest Ltd will be created on the transfer of the shares by the Minister to HISWA customers, without their having to give consideration for the transfer.

Clause 26 – Transfer of HISWA’s business to the Company

- 9.50 Subclause (1) provides that on the day on which Part 3 of the Act comes into force, the net assets and rights of HISWA are transferred to Farmwest Ltd as a statutory sale without the need for any form of contract. This occurs simultaneously with the repeal of the *Herd Improvement Service Act 1984*.
- 9.51 Subclause (2) provides for the transfer of the liabilities of HISWA to Farmwest Ltd on the same day as the assets and rights are transferred.

Clause 27 – Determination of amount of consideration for sale

- 9.52 Subclause 27(1) requires the Minister to determine, after consulting with Farmwest Ltd, the value of the net assets of HISWA on the day the *Herd Improvement Service Act 1984* is repealed.
- 9.53 To ensure that there can be no doubt that an appropriate value has been ascribed to the assets, rights and liabilities of HISWA, subclause (2) requires that the valuations be made on the basis of their market value.
- 9.54 Subclauses (3) and (4) require that the Minister give Farmwest Ltd and HISWA written notice of the net asset value of the business of HISWA and the nominal value of the shares to be issued to him by Farmwest Ltd.

Clause 29 – Minister to transfer shares

- 9.55 This clause ensures that the share transfer process is completed as soon as practicable after determination of HISWA’s net assets and Farmwest Ltd has been so advised.

Clause 30 – HISWA to prepare statement

- 9.56 Clause 30 provides the statutory requirement for many of the duties that have to be performed immediately after the appointed day by the transitional HISWA.
- 9.57 Subclause (1) requires HISWA to prepare a statement describing the assets, rights and liabilities of HISWA at the appointed day.
- 9.58 Subclause (2) provides that the statement is to specify the value of each asset and the amount of each liability as at the appointed day.
- 9.59 Subclause (3) provides that the statement of the description and value of the assets and liabilities of HISWA must be published in the *Gazette* for public information.

Division 4 – Consequential amendments to other Acts

- 9.60 This Division provides for the amendment of three Acts as a consequence of the repeal of the *Herd Improvement Service Act 1984* and the demise of HISWA. The Acts to be consequentially amended are dealt with in clauses 32 to 34 of the Bill.

Part 4 – Transitional provisions

- 9.61 Part 4 specifies matters that apply to both Parts 2 and 3 of the Bill. Part 4 comes into operation on the earlier of the days fixed by the Governor by proclamation after receiving a certificate from the Minister that all the necessary arrangements have been completed in each case under subclauses (2) and (3). If the days so fixed are the same day, Part 4 comes into operation on that day.

Clause 35 – Definitions

- 9.62 Clause 35 contains six definitions, three of which require comment.
- 9.63 “Asset” is defined broadly to mean all kinds of assets, in the widest sense of the word, and includes choses in action, goodwill, and any right, interest or claim of any kind.
- 9.64 “Liability” includes all kinds of liabilities, regardless of form or stage of recovery, whether they are currently known, and whether they are contingent or prospective.
- 9.65 “Right” means any right including title to an interest in a property, a right or privilege that is recognised and protected by a law, and the freedom to exercise any lawful power.
- 9.66 These words are defined broadly to describe and value *all* of the assets and liabilities of the DIA and HISWA, and not to give consideration to those selected as having an important significance from one or another point of view.

Clause 37 – Members cease to hold office

- 9.67 This clause makes it clear that members of the DIA and HISWA cease to hold office when the Act governing their respective appointment is repealed. It is for this reason that the Bill proposes that a transitional authority be established in each case and that the person to fulfil the role be appointed by the Minister with specific and limited duties.

Clause 38 – References to former body in agreements and instruments

- 9.68 This clause provides that there is to be a transfer from the DIA and HISWA to the new companies of all responsibilities with respect to the rights and obligations included in any agreements and instruments executed by either the DIA or HISWA before the repeal of the *Dairy Industry Act 1973* and the *Herd Improvement Service Act 1984*.
- 9.69 This will ensure that the business of the DIA and HISWA is taken over by the new companies without legal impediment.

Clause 39 – Proceedings and remedies

- 9.70 Clause 39 ensures that the two new companies assume responsibility for any actions or proceedings that are in force at the time the business of the DIA or HISWA, as the case may be, is transferred to them. The clause also ensures that any proceedings that could have been commenced against or by the former bodies may be commenced as if they involved the two new companies.
- 9.71 This will ensure that any potential action is not denied as a result of the repeal processes.

Clause 40 – Other things in progress

- 9.72 This is another savings clause that ensures that any matter in progress that could still have relevance, force, effect or significance after the appointed day continues to have the same effect as if it had involved the new company.
- 9.73 This clause will provide assurance for any aggrieved (or potentially aggrieved) person that their claim will be dealt with by the new company as if it had been dealt with by the former body. It ensures that there will be a reasonable and fair transition from the previous to the new administrations with respect to matters in progress.

Clause 42 – Stamp duty

- 9.74 Subclause (1) provides that stamp duty is not chargeable on the transfer of the DIA's or HISWA's net assets to the respective new company.

- 9.75 Subclause (2) operates to reduce the need for extensive justification that a specified asset or liability was actually transferred in accordance with the provisions of the Act after full proclamation. The Minister may certify in writing to this effect. This certificate is to be taken as conclusive evidence of the transfer unless disproved in a court of law.

Clause 43 – Annual report for part of year

- 9.76 It is inevitable that the demise of the DIA and HISWA will occur during, not at the end of, a financial year. The Bill therefore provides that the transitional bodies continue to be the accountable authority under the *Financial Administration and Audit Act 1985*.
- 9.77 The DIA and HISWA will therefore each be required to report in accordance with the provisions of the *Financial Administration and Audit Act 1985* as if they were still in existence for the period of time between July 1 and the date of their formal demise. This ensures that the operation of each body for this period continues to be subject to public scrutiny.

Part 5 – Duration of Act

- 9.78 Part 5 is a housekeeping provision to repeal the Act arising from the Bill, on completion of all the actions required by Parts 1 to 4.

Clause 47 – Duration of Act

- 9.79 Subclause (1) establishes a definite day upon which the proposed *Dairy Industry and Herd Improvement Legislation Repeal Act 2000* will be repealed. This day is called the “termination day”.
- 9.80 Subclause (2) specifies that the termination day will be fixed by the Governor by order published in the *Gazette*.
- 9.81 Subclause (3) requires the Minister to certify to the Governor that he is satisfied that the transfer of the DIA’s business to Dairy WA Ltd and HISWA’s business to Farmwest Ltd has been completed. After this time there is no need for the enabling Act to remain on the Statute Book, and it will be removed when the order is published in the *Gazette*.

10 THE COMMITTEE'S SUMMARY

Industry issues

- 10.1 The national industry has had a view that increasing commercial pressures in an increasingly flexible marketplace would undermine any regulatory regime. In particular, the Victorian milk processors and the United Dairy Farmers of Victoria had been pressing for deregulation in Victoria for some time.
- 10.2 The Federal Government announced its willingness to provide a major structural adjustment package for dairy farmers on the condition that all States and Territories removed their farm-gate pricing arrangements for milk.
- 10.3 The Commonwealth DIA (Cth) Act forms part of a package of four Acts that provide an adjustment program for the deregulation of the Australian dairy industry.
- 10.4 The Western Australian government had agreed to deregulate if it received a request from the industry to do so.
- 10.5 It was Mr Harris's submission that following an enormous amount of consultation and meetings, the conclusion was that "...although it would not be absolutely valid in every State, the package that has been put forward represents an attempt to support the fact that the dairy marketing scheme would disappear and market milk premiums and rights would also be under threat and would more than likely disappear. It is a matter of our facing up to reality." Mr Harris also stated that "They are the commercial realities. It is not about Governments driving deregulation or taking away our rights."
- 10.6 Mr Dagostino told the Committee that he had considered the various options associated with deregulating and regulating. He stated that "The implications of not deregulating as I see them are that we will lose the package. Obviously in this context I can speak only for my father, but we are better off rejecting the package. Financially for what we will get on an after-tax basis, we would be better off taking the risk that we have quota and there is some value associated with that." Mr Dagostino submitted that the national restructure package was a short-term fix.
- 10.7 Lessors of quota expressed opposition to the Bill. Mrs Gangemi stated that if the proposed legislation to deregulate the dairy industry is passed, she will not have a quota to lease and in turn will have no income to pay her mortgage.
- 10.8 A ballot was conducted by the AEC on behalf of the WAFF. The voters were asked:

"Do you support the repeal of the WA legislation controlling the farm gate price and supply of milk so you can accept the WA share of the

\$1.7 billion dairy [sic] industry adjustment package proposed by the Commonwealth Government?"

- 10.9 Of the 92 per cent who voted, 58 per cent voted "Yes."
- 10.10 There was a view eloquently put by Mrs Daubney that the vote "...should have been only for quota holders, because we were the ones who were going to lose out, not the other farmers who had come in over the past four, five or six years."

Timing

- 10.11 If the DSAP start day is not fixed by a Proclamation published in the Gazette within the period of six months beginning on the day on which the Commonwealth Act receives Royal Assent, Part 2 of the Schedule is repealed on the first day after the end of that period. This effectively gives the States six months to remove those parts of State legislation which relate to the regulation of market milk. Entitlement rights will accrue from July 1 2000 regardless of the date of Proclamation.

Marketing arrangements

- 10.12 The Committee believes that following deregulation as it is proposed, Australia will have one of the least regulated dairy industries of all trading nations.
- 10.13 The Committee notes from the advice of witnesses that they believed that the dairy industry in Western Australia has been well served by regulation. However, due to the influence of commercial pressures from outside Western Australia and the offer of the national restructure package the industry voted in favour of deregulation.
- 10.14 It is proposed that following deregulation supply contracts will be entered into between processors and farmers. The Committee notes that milk processors are negotiating contracts with their usual suppliers.
- 10.15 The Committee was advised by Mr Harris that in a post deregulatory environment a whole of industry approach to marketing was necessary to ensure equity sharing and to maintain producer milk prices at a viable level.
- 10.16 The Committee has not been provided with evidence that there are alternative marketing arrangements other than processor-supplier contracts in place, or under construction, in Western Australia that could stabilise farm-gate milk prices following deregulation.

Alternatives to deregulation

- 10.17 A legal opinion obtained by AMPA from Mr DF Jackson QC considers a scheme proposed for a restructure of the market milk quota system for the New South Wales

milk market and, in particular, whether there are any serious concerns that it could be subject to a successful challenge under section 92 of the Australian Constitution. Section 92 provides that “On the imposition of uniform duties of custom, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.”

- 10.18 This opinion is based on the premise that provided dairy farmers from other States have the ability to purchase quota entitlement in New South Wales the requirements of section 92 of the Australian Constitution are satisfied. In these circumstances, the opinion states that there would be no impediment to New South Wales retaining its present regulatory arrangements. The Committee believes that if this were the case in New South Wales, it may apply in Western Australia.

11 CONCLUSIONS OF THE EFFECT OF THE DSAP

- 11.1 The Committee concludes that there are two major issues to be addressed with respect to the DSAP.
- 11.2 The first issue relates to the purpose of the DSAP, which is to assist farmers to adjust to altered market conditions. It is the Committee’s belief that this reflects the nature of the challenge facing Victorian farmers but ignores the fundamental issue for farmers in the ‘quota’ States – Western Australia, New South Wales, and Queensland. The Commonwealth has essentially left the issue of compensation for quotas to the States. If the Bill is passed, the matter of compensation for loss of quota entitlements will be raised and almost certainly challenged in the courts.
- 11.3 The Committee notes that farmers in the quota States have a large investment, and frequently a significant debt, as a result of their investment in quota entitlements. Victorian farmers have already been paid for the divestment of their quota entitlements. The Committee believes that while deregulation will result in the complete devaluation of the quota asset, the DSAP will reflect only a fraction of the value of that asset prior to deregulation.
- 11.4 It is the Committee’s opinion that this outcome will leave dairy farmers who have generated most of their income from the production of market milk (ref: State definition) substantially disadvantaged. The Committee notes that it has been predicted that dairy farmers’ annual income will drop substantially and that they will also suffer significant asset losses.
- 11.5 The second issue relates to the imbalance between the revenue that is raised in Western Australia and the funds that flow back to this State in the form of DSAPs.

- 11.6 The Committee heard different figures in relation to each sum, but it was generally indicated that while some \$180 million will be raised over an eight year period within Western Australia via consumer levies, only \$109 million will be paid to Western Australian producers. This is a differential of approximately \$71 million.
- 11.7 The Committee believes that the DSAP in its current form will not compensate all Western Australian producers for losses caused by the deregulation process which began in Victoria.
- 11.8 The Committee concludes that despite outstanding efforts from their representatives, Western Australian dairy farmers have been disadvantaged by the design of the DSAP. The Committee concludes that the DSAP brings no net advantage to Western Australia.

12 CONCLUSIONS

- 12.1 The Bill was introduced into Parliament following notification to the Minister for Primary Industry of the results of a ballot conducted by the AEC on behalf of the WAFF and a subsequent request made by the President, Dairy Section, WAFF, to put into effect legislation which would remove the existing regulations governing the dairy industry in Western Australia. These circumstances were consistent with the State government's stated position that it would not proceed to deregulate without a clear request from the industry to do so.
- 12.2 The Committee concludes that the Bill technically fulfills the request made to the Minister for Primary Industry by the President, Dairy Section, WAFF.
- 12.3 This result was accepted by the Minister for Primary Industry as an expression of dairy industry opinion.
- 12.4 The dairy industry in Western Australia is now represented by two organisations; the Dairy Section of WAFF, the larger of the two which supports the Bill, and the AMPA which is opposed to the Bill. The AMPA was formed recently in response to the deregulation debate.
- 12.5 The Committee notes that the AEC is currently conducting a second poll of producers from a roll supplied to it by AMPA. The results of the AMPA ballot are expected on June 21 2000.
- 12.6 The Committee concludes that because of market pressures in a deregulated industry it will be difficult to maintain the contract prices as suggested to the Committee. Without some form of 'equity sharing' arrangement that would permit the sharing of whatever market milk premium which might continue to exist, it seems certain that

farm-gate milk prices will be variable and subject to frequent underbidding of the contract prices.

12.7 The Committee concludes that it is not its function to comment on the AMPA's alternative proposition outlined in sections 10.17 and 10.18 of this report, however it believes that it is an option that requires consideration.

12.8 The Committee concludes that there is a need for certainty regarding deregulation at the earliest possible time so those within the industry can plan for the future.

13 RECOMMENDATIONS

Recommendation 1: That the portion of the DIA reserve funds that were collected as a one cent per litre margin increase for the purpose of funding the DAAS should be identified and set aside. They should not be distributed while claims by the former DAAS 'B' distributors remain outstanding. The Committee recommends that the Bill be amended to have this effect.

Recommendation 2: That the Bill not be passed until the results of the AMPA ballot are known.

Recommendation 3: That the House give serious consideration to the matters raised in paragraph 10.11 of this report.

Hon Murray Nixon JP, MLC

Date: June 19 2000

APPENDIX 1



28th March 2000

THE WESTERN AUSTRALIAN
FARMERS FEDERATION (INC)

The Hon MG House MLA
Minister for Primary Industry
20th Floor 221 St George's Tce
Perth WA 6000

Dear Minister,

Dairy Poll of Dairy Industry Authority Licensed Producers

I refer to previous communications with your office on the issue of deregulation in the dairy industry.

As you are aware we have recently commissioned the Australian Electoral Commission ("AEC") to conduct a poll of all licensed Dairy Industry Authority of WA licensed producers ("licensed producers") on the issue of deregulation. I advise that the question put to licensed producers was:

Do you support the repeal of the WA legislation controlling the farm gate price and supply of milk so you can accept the WA share of the \$1.7 billion dairy industry adjustment package proposed by the Commonwealth Government?

The poll closed today, Tuesday 28th March 2000 at 10.00am.

We have been advised by the AEC that the poll results are as follows:

**Yes - 284
No - 203**

We provide the above results for your information, and trust that you will make a prompt decision regarding deregulation of the dairy industry in WA.

For your further information, I also advise that the Federation's Dairy Section carried the following motion at its Conference on 30th June 1999:

That this Conference

- (a) *Believes that with deregulation of the dairy industry in Victoria on 1 July 2000, Western Australia has no option but to deregulate at the same time provided that a suitable restructure package is negotiated.*

Telephone 08 9441 4100 Fax 08 9441 4101 Email: wafarmers@bigpond.com
1000 Lakeside Drive, Lakeside, WA 6009, Australia. Mailing list: wafarmers@bigpond.com
Internet: www.wafarmers.com.au

- (b) *Therefore instructs dairy council to progress the development of a restructure package to enable Western Australian dairy farmers to adjust their businesses, by way of accepting the national restructure package and approaching the State Government for support both in financial and human resources to progress the increase in manufacturing infrastructure to support the current and future growth in that sector of our industry.*

Should you wish to consult further with myself or members of the Federation's dairy council, please do not hesitate to contact me.

Yours faithfully,



KEVIN McMENEMY
General President

APPENDIX 2

****STATUTORY DECLARATION**

I, KEVIN GEORGE MCMENEMY, Businessman, of 189 Leake St, Belmont 6104, in the State of WA, DO SOLEMNLY AND SINCERELY DECLARE THAT:

1. This deposition relates to events that occurred when I held the elected position of General President of the Western Australian Farmers Federation Inc 'The Federation'. This is a voluntary membership body established to represent the interests of Farmers in a range of diverse agricultural industry sectors.
2. Until very recent weeks the Federation through its Dairy Section was the only representative body for dairy farmers in this state. While the Federation does not have all dairy farmers as members it does have a significant proportion.
3. The possibility of the Dairy industry being deregulated in this State through the repeal of the Dairy Industry Act 1973 (The Act) has been widely discussed by those in the industry over the past 12-18 months.
4. Earlier this year when it appeared matters were coming to a head and it was likely that deregulation would proceed, I was advised by the Federation's Dairy Section President, Danny Harris that the responsible Minister would not introduce a repealing Bill into Parliament without a formal request from the Dairy industry to do so.
5. During the deregulation debate a belief gained currency amongst some dairy farmers that the quota system established under the Act created rights in property. The validity of this belief is unknown. The Federation's Legal Officer approached me in February of this year and voiced her concern regarding the Federation's exposure should this issue of property rights be taken to the Courts.
6. The Legal Officer also drew attention to the issue of the Federation approaching the Minister on the matter of deregulation and purporting to represent 'the dairy industry' when it clearly represented only a proportion of the industry.
7. In a number of conversations with Danny Harris both these matters were explained to Danny Harris and it was made clear to him by myself that the Federation would have to abide by this advice. In short it could not purport to the Minister that it (The Federation) represented the dairy industry and it would not request the Minister to deregulate the dairy industry.
8. At a subsequent meeting in my office attended by the Federation's Legal Officer, Rochelle Reynolds, Executive Director Alan Hoffman, Danny Harris, Dairy Section Senior Vice President Eric Biddulph, and Dairy Executive Officer Valma Ozich and myself these two issues were further explained and discussed at length.
9. At the conclusion of this meeting I re-inforced the need to observe and be guided by the advice of Rochelle Reynolds and there was no dissent from those present.

10. Subsequent to this meeting, a public meeting on the future of the dairy industry was held in Harvey, Western Australia, on Thursday March 9 hosted by the Federation's dairy section.
11. Immediately following this meeting the Federation's Dairy Council convened in a formal scheduled meeting. The meeting was chaired by Danny Harris. In addition to members of the Dairy Council, Alan Hoffman, Rochelle Reynolds, Valma Ozich and myself were also present.
12. The two issues of the Federation being able to claim it spoke on behalf of the Dairy Industry and the possible exposure to litigation it faced in regard to requesting the Minister to deregulate the industry were discussed.
13. Again, at the conclusion of this particular meeting I re-inforced the need to observe and be guided by the advice given by Rochelle Reynolds and there was no dissent from those present. The meeting was audio-taped by Valma Ozich.
14. At the Dairy Council meeting referred to above, a decision to poll all Dairy Industry Authority registered producers was made. The poll was to be conducted through the Australian Electoral Commission 'AEC' and would pose a question relating to the acceptance or otherwise of a Federal Government financial restructure package. The availability of this national package was contingent on the dairy industry deregulating in all states.
15. I subsequently wrote to the AEC requesting the poll be conducted with the Federation bearing the cost. The poll was to close on Tuesday March 28 with the result available by early afternoon.
16. On or about Thursday March 23 I asked Rochelle Reynolds to draft a letter to the Minister for my signature reflecting the poll outcome either way but in the case of a 'yes' vote being careful not to include any request to the Minister to repeal legislation.
17. This was duly done and the draft was shown to Danny Harris. He requested the inclusion of a 1999 Dairy Section Conference resolution and after a discussion between Rochelle Reynolds and myself this was agreed to. Following this inclusion the re-drafted letter was shown to Danny Harris and he expressed satisfaction with the letter.
18. With the poll results included, the unaltered second draft was duly signed and couriered to the Minister about mid afternoon on Tuesday March 28. A copy was given to Danny Harris who was present in the office together with Eric Biddulph.
19. Over the weekend of April 8-9 I became aware of a second letter sent the day after mine, namely March 29, under the hand of Danny Harris using the title of 'President WA Farmers Federation Dairy Section'. The letter was on the Federation's letterhead.
20. Danny Harris' letter in part stated:

"Dairy Council's assessment is that the majority of Western Australian dairy producers have voted to accept the deregulation of our industry."

With this in mind the Western Australian Dairy Industry, clearly now requests you to progress the removal of legislation which is relevant to the regulation of our industry, namely the Dairy Industry Act 1973."

21. Neither myself or any other Trustee of the Federation, Legal Officer or Executive Director were aware of this action.

22. Danny Harris was not authorized to act in this manner nor does his position carry with it the authority to do so.

23. Accordingly, unless my successor as General President decides otherwise, the official position of the Federation remains as set out in my letter to the Minister of March 28 and any subsequent correspondence from Danny Harris claiming to represent 'the Western Australian dairy industry' and requesting 'the removal of legislation' is unauthorised and in no way represents a formal request from the Federation to repeal legislation.

DECLARED at 4th Floor
239 Adelaide Terrace
Perth in the State of
Western Australia this
20th day of April 2000

)
)
)
)



Before me:



Commissioner for Declarations

APPENDIX 3

**SPECIAL DAIRY COUNCIL MEETING
HARVEY, MARCH 6, 2000**

PRESENT - All Dairy Council, in addition to John McQueen ADFF CEO, Kevin McMenamy, WAFF General President, Alan Hoffman, WAFF Executive Director, Rochelle Reynolds, WAFF Legal Officer.

Mr Harris said the meeting was called to determine how the outcome of the quota compensation claim, bearing in mind the timeline of the national restructure package.

The issue of possibly going to a vote also needed to be discussed.

Mr Harris stressed to council that the state government will not progress deregulation unless clearly requested by dairy farmers to do so.

He said he had been in discussion with Kevin McMenamy and Alan Hoffman regarding areas of concern in working our way through deregulation. Therefore, WAFF legal officer Rochelle Reynolds will be in attendance today.

Mr Harris opened up the discussion regarding the State Government response to quota compensation.

Numerous dairy councilors noted that the package fell long short of what was required and that both Mr Harris and Mr Biddulph would be annoyed with the response considering the amount of time and effort they had put into it.

David Tognella expressed disappointment that most of the funding was directed to the manufacturing sector, whereas the request was for loss of property rights to be compensated

"The actual request was for compensation and the response was NO to quota compensation"

Danny Harris reiterated that in essence, the response from the State Government to Quota Compensation was -NO

Robert Thompson questioned the ability of dairy farmers to challenge the State Government package if they accepted the Federal Government's Restructure Package.

Danny Harris responded that in terms of anyone's individual rights through law to challenge it, that is always open, but building a case might be somewhat difficult because of the procedure that needs to be followed.

He thought that putting additional pressure back onto the state was near impossible.

The State Government also made it very clear that its package was only available if dairy farmers requested to deregulate and accept the Federal Restructure Package.

He said the state government has stressed that deregulation legislation will not be drawn up until dairy farmers request to deregulate.

However, Mr Harris said that privately he knew the legislation was being drawn up so that WA could fit into the national time line.

Leanne Abbutt said she had been asked the specific question today and yesterday if there was any clause in that national package we sign to waive any other rights to claim.

John McQueen clarified that there were not clauses stopping people to make a claim against state or federal governments.

"The Commonwealth is providing a restructure package to dairy farmers based on their production in 1989/99. It is important that you know that it has got nothing to do with rights to anything"

Robert Thompson said while he respected Mr McQueen's answer he had received information regarding constitutional rights once the package was accepted nationally that we can not sue the state government because of a particular clause.

David Tognella suggested that perhaps if industry requests the state to deregulate, then that may then put a ceiling on any claim because industry actually made the request to deregulate.

Mr. Harris said the State Government had repeatedly said that it had no fear of being involved in a court case.

Eric Biddulph stressed that a decision needed to be made today and that dairy council needed to go out of meeting with a united front.

Kevin McMenamy said that from WAPP's perspective, whatever dairy council decided was the best course of action was what WAPP wanted to try and facilitate.

"The only fence we put around that is that we can not expose the organization to any risks in terms of legal action."

Danay Harris said it was imperative to keep the industry united and for dairy councilors to come out of this meeting with a common point of view.

The idea of putting pressure on the Eastern States for more compensation was unrealistic and considering their average payment was only \$90,000 they would walk away and deregulate anyway.

Rochelle Reynolds pointed out that it was important to remember that WAPP does not represent industry and therefore from a legal point of view the federation could not be seen as speaking on behalf of industry.

David Tognella questioned where to now? He suggested either professional representation on the issue through a political lobbyist or dropping the lobbying to state government as a collective body (WAPP)

Danny Harris said that his opinion was that dairy farmers had exhausted their ability to obtain more funds from the State government.

He said dairy council now had to focus on getting the industry over the line on the federal restructure package.

"I don't believe that we need to or should go back to putting more energy into a claim against the state.

Eric Biddulph echoed his opinion, saying he believed everything that could be done has been done.

"As far as I can see, the door is shut"

Robert Thompson agreed, saying that WAFF had run its race, but that collectively there was nothing stopping dairy farmers approaching the state government.

Discussion surrounded the issue of compensation for quota bought over the past three years and the fact it was unfair and divided the dairy industry.

Danny Harry requested that a clear position be made on the acceptance or not of the state package.

Ian Daubney expressed disappointment in the word of a \$27 million package being offered when \$60 million was offered by the state.

Kevin McMenemy suggested that from a strategic point of view council should write to the Premier expressing extreme disappointment about the fact that the situation with quotas had not been addressed and would not ask for the situation be readdressed.

The issue of going to a vote was discussed and Mr McMenemy suggested that the wording needed to encompass the profuse of growers knowing about the current situation in the dairy industry.

Mr Harris opens up discussion regarding a vote of industry.

Mr McMenemy suggests that Minister Monty House conduct the vote as he had always said he would do whatever industry wanted.

Mr Harris pointed out that the Minister had made it clear he would not conduct a vote.

Mr Harris also pointed out that for government to conduct a poll it would also take six weeks - time the industry did not have right now if it was to fit in with the National Restructure time frame.

John McQueen also pointed out that by giving Government the lead to conduct the vote it would take them a couple of months (going by the Victorian example) to distinguish who has the ability to vote.

Mr Harris said his preferred position was to give all of industry a vote, not just WAFF members as some people had suggested.

He suggested that all DIA licensed producers be polled.

Mr Harris said the vote needed to be concluded by March 24 to ensure the Federal timeline was followed.

He said that by using the Australian Electoral Commission the vote could go out in three days time.

Also pointed out that the DIA was willing to provide its licensed producers list and also pay for the voting process if conducted on an industry basis.

He said the rules would be "One License One Vote"

Kevin McManomy said that to poll outside WAFF membership was to enter murky waters. Things were further complicated by what was done with the vote results. There were legal implications.

Rochelle Reynolds (legal officer) said she did not have a problem with the poll, but what she did have a problem with was what was done with that information.

Mr Harris said it was important to establish if council wished to conduct a poll of whole industry and how to conduct that poll.

One way would be for a peak body, like WAFF, to request for that poll to be undertaken by the AEC because of the time factor.

Rochelle Reynolds said that her advice was that WAFF could not go to the Minister and speak on behalf of industry and request to deregulate, as WAFF does not represent industry.

"We can only provide a representation from WAFF and even then, my advice would be that we can not request to deregulate."

"We can only provide to him the results to the poll for him to use at his discretion.

"If we request him to deregulate, people who suffer losses can come back to WAFF and seek redress from us, because of our actions we could then suffer losses"

Leanne Aldred therefore questioned the option of just polling WAFF members.

Danny Harris said that under such a proposal, WAFF would "get a kicking"

Mr Harris suggested that council agree on some important issues - they being that the vote be conducted among all licensed DIA producers and that it be called by the AEC and that the words of that poll be well chosen because of legal implications

Ms Reynolds said that her advice was -

"We can present the outcome (of the vote) to the minister but at no time can we request the minister to deregulate"

Alan Hoffmann, WAFF Executive Director, clarified that repeatedly the minister had said that he will do nothing until industry requests him to do so. However, industry does not have a vehicle by which to request him to do so.

"We can not request because we are not industry and he (Minister House) will not do anything until industry requests.

"And we are not industry".

Brian Briney said that surely if 499 odd farmers get to vote, that is industry - simple as that .

Mr Harris said that he had repeatedly warned the Minister that like the milk vendor issue, the compensation sought by WA dairy farmers could come back to haunt them.

General consensus at the meeting was that there were 420 dairy farm units in WA.

Mr Harris put forward the following wording to ensure that all dairy council was following that same thought process -

'The we wish to conduct a full poll of all industry, based on registered dairy farmers, gained from the DIA. And that the poll be conducted through the ABC because of the time frame they offer and the results be regular be delivered to the minister.

Mr Harris offered some suggestions regarding the possible question to be asked in the vote.

Ms Reynolds said she had no problems with either question proposed, it was what was done with the results that concerned her.

Mr McQueen said that lobby organisations are on a weekly, monthly, daily basis ask governments to change regulations and often are carrying out an action that disadvantages someone else

He stressed that it was not WAFF who was going to remove the regulation.

"The regulations can only be removed by government and governments don't necessarily do what we ask them to do always"

"At the end of the day it is the government who is repealing the legislation - not WAFF"

Mr Harris suggested that support was not as strong as agree and that in his opinion support simply passed the buck onto someone else to make the decision

Mr McMuncy said he had a concern about non-members voting, saying he was often question by people wanting to know what was the point of belonging to WAFF

Mr Harris said that was an internal problem and that he believed WAFF had neither lost entitled members as a consequence (of the deregulation debate)

Brian Briggs that there would be more harm to WAFF if only WAFF members got to vote.

He said also there was not time to argue who should vote and who should not if we were to fit into the National timeline.

After much discussion and a successful argument by Mrs Lyn Daubney, it was decided to use the word support instead of agree, in the vote question.

Mr Harris questioned Executive Officer Valma Ozich if it was possible to get the vote out within three working days. She replied yes, because of the work that was already in place should such a decision be made.

Mail out on March 14 was possible with return being March 24.

The time frame fitted in with the national time line Mr McQueen said.

After much discussion it was resolved that the motion be -

"That the WA Farmers Federation request the Australian Electoral Commission to conduct a poll of all licensed WA dairy farmers on the question of

"Do you support the repeal of the WA legislation controlling the farm gate price and supply of milk so you can accept the WA share of the \$1.7 billion dairy industry adjustment package processed by the Commonwealth Government?"

And that the results be presented to Primary Industry Minister Monty House with urgency, but stress that as the Federation does not represent all the WA dairy industry, that the results are provided for the Minister's information only."

Moved David Lofthouse
Seconded Malcolm Hayes

APPENDIX 4

APPENDIX 4

PERSONS WHO MADE WRITTEN SUBMISSIONS TO THE COMMITTEE

Mr Bruce & Mrs Leah Jones
Mr Tony Pratico President Australian Milk Producers Association (WA)
Mr R.M. Piggott
Mr Robert Morris
Mr Philip Achurch Executive Director The West Australian Small Business and Enterprise Association Inc
Mr Ball Ball & Co Barristers & Solicitors On behalf of Mr Richard Italiano
Mr Paul Ieraci
Mrs Annette Italiano
Mr Ball Ball & Co Barristers & Solicitors On behalf of Mr Guiseppe Michael Italiano
Ms Joan Jacek AGFECS
S.A. Mitting & Sons
Mr Michelangelo Furfaro
Mr Mark Furfaro
Ms Pamela Italiano
Mr Michael Dagostino
Mr Steven McKay
Ms Roslyn Hoskin
Mr John & Mrs Mary Clifton
Mr Mark Metternick-Jones
Mr Joe, Ms Sue & Mr Paul Dagostino
Mr Dean & Mrs Lynda Barbetti
Mr David Lofthouse

Mr Bernard Ridley
Mr Gavin Crocket & Co Barristers & Solicitors On behalf of Mr Pino & Mrs Frances Gangemi
Mr Pino Gangemi
Mrs Frances Gangemi
Mr Christopher & Mrs Margaret Campbell
Mr Tony Frisina
Mr & Mrs Dungey
P. Bates
Mr Ronny Angi
Mr Graham Manning
Mrs Nola Marino
Mr Michael Hurst
Mr Vincent & Mrs Theresa Hynes
Mr John & Mrs Kerry Giumelli
Mr Patrick Williams
Ms Rhonda Pearson
Mr Frank LoGrande
Mrs Margaret Palmer
Mr Charlie Angi
Mr Robert & Mrs Lisa Clarke
Mr James Drennan
Mr David Morris
Mr Peter & Mrs Johanna Hynes and Mr Jerome Hynes
Mr Paul Curulli & Son
Mr Peter Martella
Mr Ralph & Mrs Anna Maiolo
Mr David Morrison Director Competition Policy Unit Western Australian Treasury
Mr Pat Butler
Mr John Kargotich
Mr Ray Ritchie
Mr Rocci Dagostino
Mr Robert Thompson
Mr Donald Vass BVSc Harvey Veterinary Clinic

Mr Geoff Calder General Manager South West Irrigation
Mr Chris Adams for Mr S Chapman Deputy Commissioner Small Business Australian Taxation Office
Mr Roger Kay Capel Dairy Co

APPENDIX 5

APPENDIX 5

PERSONS WHO GAVE ORAL EVIDENCE TO THE COMMITTEE

Witness Details	Date of hearing
Mr Arthur Green Director Australian Milk Producers Association (WA)	24/5/00
Mr Robert Thompson Secretary Australian Milk Producers Association (WA)	24/5/00
Mr Kingsley Palmer Treasurer Australian Milk Producers Association (WA)	24/5/00
Mr Danny Harris President Dairy Section Western Australian Farmers Federation	24/5/00
Mr William Biddulph Vice President Dairy Section Western Australian Farmers Federation	24/5/00
Mr Philip Achurch Executive Director The West Australian Small Business and Enterprise Association Inc	24/5/00
Mr Glenn Nagy Former DAAS 'B' Distributor	24/5/00
Mr Mark Furfaro M.A.J. Furfaro	24/5/00
Mr Adriano Furfaro	24/5/00
Mr Ray Ritchie R.A & C.A. Ritchie	24/5/00
Mr Bruce Jones B.I. & L.F. Jones	24/5/00
Mr Graham Manning E.D. & N.J. Manning & Son	24/5/00

Mrs Nola Marino Director/Secretary Kimlie Pty Ltd	24/5/00
Mr Tony Ferraro A.C. Ferraro	24/5/00
Mr Robert Morris Teviotdale Pty Ltd	24/5/00
Mr David Morris D & J Morris	24/5/00
Mr Paul Curulli P & T Curulli & Son	24/5/00
Mr Peter Martella Partner C Martella & Co	24/5/00
Mr Pino Gangemi P & F Gangemi	24/5/00
Mrs Mavis Daubney Partner Karri Downs Farm	24/5/00
Mr Greg Chapman Chairman Capel Dairy Co Producer Steering Committee	24/5/00
Mrs Robin Hinricks Partner Formerly Thornlie Milk Supply – Now Stockfeed West	24/5/00
Mr Michael Dagostino	24/5/00
Mr Danny Harris President Dairy Section Western Australian Farmers Federation	29/5/00
Mr William Biddulph Vice President Dairy Section Western Australian Farmers Federation	29/5/00

Mr Antonino Pratico President Australian Milk Producers Association (WA)	29/5/00
Mr Arthur Green Director Australian Milk Producers Association (WA)	29/5/00
Mr Robert Thompson Secretary Australian Milk Producers Association (WA)	29/5/00
Mr Kingsley Palmer Treasurer Australian Milk Producers Association (WA)	29/5/00
Mr Tony Ferraro A.C. Ferraro Australian Milk Producers Association (WA)	29/5/00
Mr Rod Sarson Dairy Industry Authority	12/6/00
Mr Albert Milard Dairy Industry Authority	12/6/00
Mr Danny Harris President Dairy Section Western Australian Farmers Federation	12/6/00
Mr William Biddulph Vice President Dairy Section Western Australian Farmers Federation	12/6/00
Mr Brian Bryney Dairy Section Western Australian Farmers Federation	12/6/00
Mr Andrew Bett Dairy Section Western Australian Farmers Federation	12/6/00
Mr Dean Maughan, Farm Liaison Officer Brownes Dairy Pty Ltd	12/6/00