



REPORT OF THE  
STANDING COMMITTEE ON  
PUBLIC ADMINISTRATION  
IN RELATION TO THE

**The Distribution Adjustment Assistance Scheme  
and  
The Committee's Third and Sixth Reports**

Presented by the Hon Kim Chance MLC (Chairman)

## **STANDING COMMITTEE ON PUBLIC ADMINISTRATION**

### **Date first appointed:**

7 November 1996

### **Members of the Committee**

Hon Kim Chance MLC (Chair)  
Hon Barbara Scott MLC (Deputy Chair)  
Hon Cheryl Davenport MLC  
Hon Dexter Davies MLC  
Hon Helen Hodgson MLC  
Hon Barry House MLC

### **Staff of the Committee**

Mia Betjeman, Advisory/Research Officer  
Lisa Hanna, Committee Clerk

### **Terms of Reference**

See Appendix 1

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**Report of the Legislative Council  
Standing Committee on Public Administration**

**in relation to the**

**Distribution Adjustment Assistance Scheme and  
the Committee's Third and Sixth Reports**

**1 Introduction**

- 1.1 In November 1997 the Standing Committee on Public Administration ("Committee") presented its report on its inquiry into the Distribution Adjustment Assistance Scheme ("DAAS") ("Third Report"). In April 1998 the Legislative Council referred the Third Report back to the Committee to prepare guidelines for compensation. The Committee reported to the Legislative Council on that issue in June 1998 ("Sixth Report").
- 1.2 On 14 August 1998 the Minister for Primary Industries, Hon Monty House MLA, wrote to the Committee in respect of the Sixth Report. A copy of that letter is attached as Appendix 2. The Committee notes that the Minister's letter does not state whether or not the further assistance payments to which he refers would follow the Committee's recommendations outlined in the Sixth Report.
- 1.3 Since the tabling of the Sixth Report, as at 29 October 1998, 42 former milk vendors have been offered additional assistance under DAAS and 19 have accepted.<sup>1</sup> However the Committee has received submissions from some of the former milk vendors who have raised concerns about the additional assistance offered to them under DAAS including issues that:
- 1.3.1 The offer still excludes by-products - "*Something like trying to buy a fish shop without the chips*" as one vendor put it<sup>2</sup>; and
- 1.3.2 The offer does not differentiate between the value of a shop as opposed to a household milk vending business with the result that, in some cases, former vendors of a business with a household component, may have been overcompensated.
- 1.4 The Committee has been informed by its Chairman, Hon Kim Chance MLC, that during a meeting held on 25 August 1998 (some days prior to the additional assistance offer being mailed to former vendors) in his capacity as a private member,

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<sup>1</sup> Hansard 1998, Volume 7, Question without Notice No. 421 p2876.

<sup>2</sup> Letter from R & B Thornton - Smith to Members of Parliament dated 24 August 1998.

he formally alerted both the Dairy Industry Authority of Western Australia (“DIA”) and a representative of the Minister’s office of differences between the intent of the Committee’s recommendations in the Sixth Report and the proposal of the Minister in relation to the compensation to former milk vendors. The Chairman further informed the Committee that at that meeting he offered to clarify the Committee’s intent or to facilitate a meeting with the Committee. As at the date of this report neither the DIA nor the Minister has sought an audience with the Committee. However the Chairman has met with the Minister in his capacity as a private member.

- 1.5 On 15 October 1998, Hon Helen Hodgson MLC sought clarification in the Legislative Council of the Minister’s response and the offer of additional assistance. In answer to Questions on Notice, the Legislative Council was advised that the Minister “...had agreed to implement a further assistance payment to former milk distributor/vendors covered by schemes B and C of the DAAS *as outlined in the (Sixth) Report.*”<sup>3</sup> (Committee emphasis).
- 1.6 The Committee noted that differences still exist between the Committee’s recommendations in the Sixth Report and the Minister’s offer of additional assistance to former milk vendors.
- 1.7 In order to clarify the issues the Committee took evidence from Mr John Negus, the DAAS arbitrator, and Mr Adrian Scott and Mr Albert Millard, Manager and Secretary respectively, of the DIA.

## 2 Evidence

- 2.1 With regard to the evidence from Mr Negus, the Committee learned that:
- 2.1.1 The Minister sought the advice of Mr Negus in constructing the terms of the offer of additional assistance and Mr Negus made a recommendation to the Minister for that purpose.<sup>4</sup>
- 2.1.2 Mr Negus did not perceive a conflict between that role and his role as the arbitrator in matters pertaining to DAAS because he believed that the only rulings which he gave on the scheme were in respect of hardship claims by people in relation to which he followed certain guidelines given to him.<sup>5</sup> It appeared to the Committee that Mr Negus viewed the Committee’s recommendations as a simple extension and augmentation of the DAAS provisions.

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<sup>3</sup> Hansard 1998, Volume 5, Question Without Notice No. 294, p2171.

<sup>4</sup> Mr John Negus, Evidence to the Committee, 11 November 1998, p2 and 3.

<sup>5</sup> Ibid at pp4, 5-7.

- 2.1.3 Mr Negus believed that the process which he designed for the additional assistance placed those affected persons in the same position in which they would have been prior to deregulation but only insofar as the licensed product component of their business<sup>6</sup>. Mr Negus did not believe that determining compensation for trade that had been lost in non-licensed product (sometimes referred to as by-product or non-white milk), which may have formed part of a vendor's business prior to deregulation, was within his scope.<sup>7</sup>
- 2.1.4 Mr Negus informed the Committee that the Minister had instructed the DIA that the offer of assistance was to be limited to licensed product.<sup>8</sup>

The Committee are advised that the rationale for this is that since by-product was never the subject of licensing, the State has no responsibility to compensate for the loss of its marketing opportunity. In this respect the Committee notes comments attributed to the Minister as reported in the Sunday Times on 15 November 1998 that "*It would be illegal to pay for something that was not under our control*".<sup>9</sup>

The Committee has not considered that issue in detail, however on 24 November 1998 it wrote to the Minister making certain inquiries in relation to the legality of providing assistance for non-licensed product under DAAS. The Minister replied on 1 December 1998 advising the Committee that "*...my office has received advice from Crown Solicitor's Office advising that the wording of the three schemes, restricts assistance so as to relate only to sales of licensed product (white wholemilk and Hi-Lo reduced fat milk)*". A copy of those letters are attached as Appendix 3.

- 2.1.5 The reason for the choice of calculating the offer of additional assistance by means of extending the daily per unit margin was that Mr Negus saw that as the logical way of reflecting the Committee's recommendations in that the figures were readily available as they had been submitted to the DIA by the former milk vendors during the initial stages of DAAS.<sup>10</sup> In doing this Mr Negus has set aside the Committee's principal view that compensation should reflect the capital value of the vendor's former business<sup>11</sup>, as he only addressed licensed product and did not differentiate between household and shop rounds.

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<sup>6</sup> Ibid at p6.

<sup>7</sup> Ibid at pp3, 12 & 15.

<sup>8</sup> Ibid at p12.

<sup>9</sup> The Sunday Times, "Sour milkos scream", 15 November 1998, p24.

<sup>10</sup> Ibid at p10.

<sup>11</sup> Sixth Report at paragraph 2.1.1

2.2 With regard to the evidence from Mr Scott and Mr Millard, the Committee learned that:

2.2.1 At the Minister's request the DIA liaised with Mr Negus in constructing the terms of the offer of additional assistance.

2.2.2 It was the DIA's view that, as they only licensed certain products, they attempted to include only the capital value of the licensed product in the scheme and did not estimate the capital value of the non-licensed business. Mr Scott advised the Committee that his interpretation of the Sixth Report was that the former vendors be compensated only to the extent of the capital value of the licensed trade.<sup>12</sup>

2.2.3 Mr Scott was insistent that the extension of the daily unit margin was a logical way of expressing the Committee's intentions and achieving a "capital value of a former business." However Mr Scott, and the resulting offer of additional assistance, have not recognised the inbuilt flexibility and discretion in the Committee's recommendation at paragraph 2.1.2 of the Sixth Report that "a multiple of no less than two and no more than four to obtain a base figure" for each business. As stated by Mr Scott "*We took the view that the Committee had recommended that it be based on two years of the gross margin.*"<sup>13</sup> Accordingly the offer applies a multiple of two to all businesses and does not differentiate between businesses with shop trade or household trade or a mixture of those type of rounds.

The Committee notes that the ACIL Report provided to the DIA just prior to deregulation noted the following:<sup>14</sup>

“• *Household vending trade*  
*Values have been stable over the 5 years to 1990 at 40 to 45 weeks gross profit (in some cases up to 55 weeks). According to the (Milk Vendors Association), in September 1990 they were reportedly worth around 30 weeks of gross profit. Individual vendors contacted during the study believed that values had not altered much during 1990 but may have fallen slightly. Interestingly, the range of 30 to 50 weeks is about the same as currently applies to businesses in industries where there are no entry restrictions (e.g. delicatessens).*

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<sup>12</sup> Mr Adrian Scott, Evidence to the Committee, 11 November 1998, pp17 & 18.

<sup>13</sup> Ibid at p18.

<sup>14</sup> "An Adjustment Assistance Scheme for the Milk Distribution Sector - A Report for The Dairy Industry Authority of Western Australia", February 1991, by ACIL Australia Ltd., pp17 & 18.

- Shop distributor trade

*Shop distributor licences were issued separately as from November 1981. These licences were “endorsed” to give a distributor exclusive access to a retail outlet.*

*In 1982 the “rule of thumb” for calculating capital value was twice annual gross profit. This increased to 2.5 in 1984 and between 1984 and 1988 has been stable at between 2.5 to 3 years gross profit (with the odd sale at 3.5). In the last two years distributor trade has been difficult to sell and sales have been almost non-existent. Many licensees were holding off until there is more certainty in the market.”*

- 2.2.4 The DIA obtains its margin, which can be set or amended, on the purchase of market milk and the onsale of market milk to companies. At present the DIA is collecting margins for its own administration and operating expenses, the country freight allowance and DAAS. The Committee was informed by Mr Scott that if the Government of the day determined that the margin should be varied then it could be done.<sup>15</sup>

### 3 The Sixth Report and the Offer of Additional Assistance.

- 3.1 The following table summarises the main differences between the Committee’s recommendations in its Third and Sixth Reports and the offer of additional assistance:

| THE COMMITTEE’S RECOMMENDATIONS   | THE OFFER OF ADDITIONAL ASSISTANCE   |
|---|--|
| DAAS did not provide compensation - it was specifically an adjustment mechanism. The Committee recommended that full compensation should be paid such that the former vendor’s financial position should be restored to that which existed prior to deregulation. <sup>16</sup> | Does not provide full compensation in the sense intended by the Committee. |

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<sup>15</sup> Ibid at p18.

<sup>16</sup> In the Third Report (at paragraph 3.5.10 & 6.3.1) the Committee noted that even if the State did not have a legal duty to provide compensation when property rights are removed by legislation that a clear moral and ethical duty exists to compensate the vendors.

| <b>THE COMMITTEE'S RECOMMENDATIONS</b>   | <b>THE OFFER OF ADDITIONAL ASSISTANCE</b>   |
|--|---|
| <p>The Committee did not recommend that the additional assistance should be based on the DAAS nor be an extension of DAAS.</p> <p>The Committee's recommendation was that compensation be paid not that adjustment be augmented and that the assessment mechanism, not the principles, of DAAS would have provided a convenient forum.<sup>17</sup></p>  | <p>Is an extension of the DAAS only which in itself was not designed to provide full compensation.</p>  |
| <p>Compensation should be paid on that part of the former vendor's business that was represented by the trade in milk and milk products.</p> <p>The Committee has noted that the capital value of a business was necessarily influenced by the value of non licensed trade. Whilst the Committee has noted that non licensed trade did not fall within the scope of DAAS,<sup>18</sup> the Committee did not intend that the comment be taken as a restriction on further assistance. The Committee has repeatedly recommended compensation in the context of the capital value of the business ("business" meaning licensed and non licensed product).<sup>19</sup></p> | <p>Provides additional assistance in respect of the licensed product only, and excludes non-licensed product from the calculation of further assistance.</p>  |
| <p>Compensation should reflect the capital value of the vendor's former business prior to deregulation.</p>  | <p>Does not reflect the capital value of the vendor's former business. All that it does is to extend the daily per unit margin that a vendor received for household and shop deliveries and does so by the same multiple.</p> |

### 3.2 The offer of additional assistance has had the following effects:

- 3.2.1 Capital valuations of shop rounds, expressed as a ratio of the capital value of household rounds, is established as 2.5:1 in both the ACIL Report<sup>20</sup> and DAAS. The offer, as a result of adopting a figure based on the per unit margin and a standard multiple of 2, rather than focusing on the capital

<sup>17</sup> Sixth Report section 7.

<sup>18</sup> Sixth Report paragraph 3.5.

<sup>19</sup> For example, in its Sixth Report the Committee repeatedly refers to capital value and annual gross margin in the context of the vendor's "business", not the vendors "licensed product"- Sixth Report paragraphs 2.1.1, 2.1.2, 3.2, & 3.5.

<sup>20</sup> Supra footnote 14.

value has resulted in a reversal of this relativity and it produces a ratio of 1:2.5.

3.2.2 Since most vendor's businesses comprised a majority of shop deliveries this has had the effect of grossly unbalancing the amount of compensation that is enabled by the additional assistance scheme to the extent that some vendors will be significantly under-compensated while others will be over-compensated in respect of the licensed product.

3.2.3 The exclusion of non licensed products results in under-compensation for the capital value of the business.

## 4 Findings

4.1 The offer of additional assistance has failed to reflect the Committee's recommendations as reported to the Legislative Council in its Third and Sixth Reports.

4.2 It was the Committee's intention that the amount of compensation that should be paid would, at least, restore the former vendors to the same financial position that they were in prior to deregulation. The offer of additional assistance falls substantially short of this objective.

4.3 In particular the offer differs from the recommendations in the following respects:

4.3.1 The Committee recognised that DAAS did not provide compensation and was specifically an adjustment mechanism. The Committee recommended that full compensation should be paid so that the former vendor's financial position should be restored to that which existed prior to deregulation.

In contrast the offer of additional assistance does not provide full compensation in the sense intended by the Committee.

4.3.2 The Committee did not recommend that the additional assistance should be based on the DAAS nor be an extension of DAAS, although it did recommend that DAAS payments should be taken into account in the final determination of the compensation which remains payable. The Committee's recommendation was that compensation be paid, not that adjustment be augmented, and that the assessment mechanism, not the principles, of DAAS would have provided a convenient forum.

In contrast the offer of additional assistance is an extension of DAAS only, which in itself was not designed to provide full compensation.

4.3.3 The Committee recommended that compensation should be paid on that part of the former vendor's business that was represented by the trade in milk and milk products, that is both the licensed and non licensed products.

In contrast the offer of additional assistance is only in respect of the licensed product and excludes non-licensed product from the calculation of further assistance.

- 4.3.4 The Committee recommended that compensation should reflect the capital value of the vendor's former business prior to deregulation.

In contrast the offer of additional assistance is not calculated to reflect the capital value of the vendor's former business. All that it does is to extend the daily per unit margin that a vendor received for household and shop deliveries and does so by the same multiple.

- 4.4 The Committee reiterates its recommendations that compensation should be paid in respect of non-licensed product as the forced removal of the licence right also removed the former vendor's capacity to trade in non-licensed product and thus compounded the damage that was caused to the former vendors by deregulation.

The Committee notes that since deregulation dairy companies have been refusing to supply the former vendors with milk product at a distributor price. Although that action may be a contributing factor to a former vendor's loss the Committee believes that the primary loss was due to the legislative removal of the licence right which enabled the trade in the first instance.

- 4.5 Compiling figures supplied by the Minister to Parliament<sup>21</sup> the Committee notes that as at 30 June 1998 the DIA has recouped \$5,052,678 from the one cent per litre levy established by the industry for this purpose and distributed \$3,114,530, although the amount distributed does not include offers of additional assistance which have been made to former milk vendors but not yet accepted. The Committee also noted an undistributed surplus at paragraph 6.1 of the Sixth Report.

The Committee reiterates the possible complications noted at paragraph 2.1.4 of this report in relation to the Minister's legal ability to utilise any undistributed DAAS funds for compensation. If it is legally possible the Committee considers that any undistributed excess in the DAAS fund be used to fund compensation as recommended by the Committee.

- 4.6 The Committee finds that the failure of the offer has arisen as a result of:

4.6.1 The mistaken belief by Mr Negus that it was the Committee's intention to simply extend the adjustment mechanism which was facilitated by DAAS rather than to create a compensation mechanism.

4.6.2 The Committee's choice of words in item 3.6 of the Sixth Report which could be misinterpreted as being the Committee's prescription for the

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<sup>21</sup>

Hansard 1998, Volume 7, Question without Notice No.432, p2880.

compensatory mechanism rather than a clarification of the term “gross margin” as was intended.

- 4.6.3 The mistaken interpretation of the Sixth Report by the DIA that the former vendors be compensated only to the extent of the capital value of the licensed trade.
- 4.6.4 The application of the same multiple to shop and household rounds by the DIA. To some extent the Committee’s choice of words in paragraphs 3.6 and 3.8 of the Sixth Report was not clear, however, the Committee did note that the multiple of 4 indicated in the ACIL Report was in the context of shop trade only (Sixth Report paragraph 3.8).

The Committee believes that it is open for the arbitrator to apply a different multiple to shop and household rounds to ensure that equitable compensation is paid. There is nothing in paragraph 3.6 of the Sixth Report requiring that a multiple of two or any other specific figure be applied to both shop and household trade.

The Committee points out that the daily unit margin is just one of the components used to determine the capital value of a business. The other component is the quantum of the multiple. Both need to be correct to ensure that the capital value of the business is reflected. In paragraph 2.1.2 and 3.2 of the Sixth Report, the Committee has recognised and reinforced a discretion as to the multiple to be applied in each case. This is reiterated at paragraph 3.8 of the Sixth Report where the Committee stated:

*“... it is inappropriate for the Committee to conclusively determine and recommend a mandatory figure, by which to multiply the gross margin, to obtain the base figure. The precise multiple should be determined in the arbitration process but, in the case of metropolitan businesses, should be a figure of no less than 2 which was the basis of market valuation prior to deregulation, and no more than 4 which is the highest figure indicated in the ACIL report, prior to deregulation for the shop trade.”*

- 4.6.5 The Minister’s instruction, based on his legal advice, that non-licensed product should not form a part of the compensation mechanism.
- 4.7 The Committee finds that the effect of the failure of the offer has been<sup>22</sup>:
- 4.7.1 To result in an offer to former vendors for additional assistance for the loss of household delivery rights which is valued at \$188.34 per daily litre. This is more than three times the value at which such rights were traded on the market prior to deregulation;

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Calculated from the Average Gross Margin cited in the letter dated 21 October 1998 from the DIA to Mr & Mrs W. Hindricks, being the Average Gross Margin X 365 (to achieve an annual figure) X 2 (being the multiple applied by the DIA).

- 4.7.2 To result in an offer to former vendors for compensation for the loss of shop delivery rights which is valued at \$79.86 per daily litre which is little more than half of the value at which such rights were traded on the market prior to deregulation; and
- 4.7.3 To further add to the distress that former vendors have suffered.
- 4.8 The Committee notes its disappointment that:
- 4.8.1 No action was taken by the DIA or the Minister's office to rectify the obvious flaws in the draft proposal despite the fact that the Chairman, Hon Kim Chance MLC, in his capacity as a private member, formally alerted both to the flaws prior to the offer being mailed to former vendors.<sup>23</sup>
- 4.8.2 No contact was made by the DIA or the Minister's office with the Committee in an effort to clarify the Committee's intent once it became obvious that the interpretation of the recommendations of the Sixth Report contained illogical outcomes including a massively inflated compensation figure for household rounds. Although, after the offer of additional assistance was made, the Minister did meet with the Chairman in his private capacity.
- 4.8.3 No commitment has been demonstrated by the DIA or the Minister to implement the Committee's most fundamental recommendation that the former vendors be fully compensated for the loss of the capital value of their business.

## 5 Recommendations

- 5.1 That the principles of the Committee's recommendations in the Third and Sixth Reports be endorsed.
- 5.2 In the absence of an appropriate response to the Committee's previous recommendations, the Committee repeats its recommendation that **compensation** should be paid to the former milk vendors to reflect the **capital value of the business** prior to deregulation.

In light of developments (in particular the legal advice received from the Minister and his decision based on that advice) which have occurred since the publication of the Third and Sixth Reports, the Committee considers that the most appropriate yardstick is that specified in the ACIL Report which provides<sup>24</sup>:

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<sup>23</sup> See paragraph 1.4 of this Report.

<sup>24</sup> Supra footnote 14, pp14 - 16, attached as Appendix 4.

### 5.2.1 For metropolitan rounds:

- Shop rounds, to be valued at \$128 per daily litre for all licensed milk and licensed milk products.
- Household rounds, to be valued at \$54 per daily litre for all licensed milk and licensed milk products.

These amounts should be the approximate outcome of calculating the annual gross margin of a business (both licensed and non-licensed products) by an appropriate multiple to determine the capital value of a business as it is then allocated to litres of licensed milk and licensed milk products distributed. This was the long established practice for determining the capital value of rounds prior to deregulation.

In respect of the amounts cited above the 1991 ACIL Report notes that:<sup>25</sup>

*“Prospective buyers and sellers of milk distribution businesses are requested to complete a notice of intention to acquire/sell milk distributor/vendor business. This form requests the retail and wholesale trade purchased in number of litres per day and the corresponding prices paid for this trade, exclusive of the costs of any vehicles.*

*As part of the study ACIL analysed data provided by the (DIA) to try and establish a trend in the capital value of milk distribution businesses over recent years. In interpreting the data care is needed because of two possible biases. The first bias relates to the requirement to pay stamp duty on the capital value transferred. This may act to dampen recorded prices paid for businesses.*

*The second bias is caused by the tendency for the full capital value of the business to be allocated to litres of licensed milk distributed. In fact the capital payment for the business is also influenced by the quantity of trade in non-licensed products such as other milk products and by products such as yoghurt and orange juices. This bias will tend to inflate the stated price in terms of litres per day of licensed product. This bias is also expected to have been increasing as the sales of other (non-licensed) products have been growing faster than sales of licensed products. The existence of these biases limits the usefulness of the data as measures of the capital value of milk distribution businesses.”*

### 5.2.2 For country rounds, the Committee’s recommendations in the Sixth Report remain unchanged.

These amounts should be reduced by any amounts received by a vendor which are referred to at paragraph 2.1.3 of the Sixth Report.

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Ibid

- 5.3 In the event that the administrative mechanism (not the principles) established for DAAS cannot be utilised to assess and distribute compensation, the Committee recommends that an independent arbitrator be appointed by the Minister to facilitate the assessment and payment of compensation as recommended by the Committee.
- 5.4 The Committee recommends that any undistributed balance in DAAS be utilised to meet the assessment and payment of claims for compensation as recommended by the Committee and that any shortfall in available funds should be met through continuation of the existing levy.
- 5.5 In the event that recommendation 5.4 is not legally possible the Committee recommends that the Minister:
- 5.5.1 consider amendment to the legislation and/or the DAAS guidelines to enable the funds to be so used; or
  - 5.5.2 supplement any payments received by the former vendors under DAAS and by way of further assistance with an *ex gratia* payment to result in vendors being compensated in accordance with the Committee's recommendation that the former vendors be compensated for the capital value of their business (both licensed and non licensed trade) prior to deregulation.

**HON KIM CHANCE MLC  
CHAIRMAN**

10 December 1998

# **APPENDIX 1**

### **Terms of Reference for the Standing Committee on Public Administration**

Schedule 1 of the Standing Orders establishes the Standing Committee on Public Administration. The Terms of Reference for the Standing Committee are:

- "1. A Standing Committee on Public Administration is established.
2. The Committee consists of 6 members.
3. The functions of the Committee are:
  - (1) to inquire into and report to the House on the means of establishing agencies, the roles, functions, efficiency, effectiveness, and accountability of agencies and, generally, the conduct of public administration by or through agencies, including the relevance and effectiveness of applicable law and administrative practises;
  - (2) to consider and report on any bill referred to it by the House providing for the creation, alteration or abolition of an agency, including abolition or alteration by reason of privatization; and
  - (3) except as provided in Standing Order 339(c), the Committee shall not proceed to an inquiry whose sole or principal object would involve consideration of matters that fall within the purview, or are a function, of another Committee.

4. In this order:

"Agency" means-

- (a) an agent or instrumentality of the State Government, established for the purpose of developing, implementing or administering any program or policy with a public purpose or any such program or policy that relies substantially for its development, implementation or administration on public monies or revenue;
- (b) any person empowered by a written law to make a decision enforceable at law whether by that person or otherwise,

and, where appropriate, includes any agency officer or employee acting, or having ostensible authority to act, as the agent or delegate of the agency, but does not include:

- (c) a House of the Parliament, or any Committee or member of either House, or any officer or employee of a department of the Parliament;

- (d) a court of law or a court of record, or a judge or other member of either court;
- (e) any person whose functions are solely of an advisory nature and the failure to obtain or act in accordance with advice given by that person does not invalidate or make voidable a decision made by another person;
- (f) a police officer or other person in the course of exercising a power conferred by a written law to arrest or charge a person with the commission of an offence, or to enter premises and seize or detain any object or thing;
- (g) a local government within the meaning of the Local Government Act 1995;

# **APPENDIX 2**



MINISTER FOR  
PRIMARY INDUSTRY AND FISHERIES  
WESTERN AUSTRALIA

24  
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INTERNET ADDRESS: <http://www.wa.gov.au/cabinet/house/index.html>

14 AUG 1998

Hon Kim Chance MLC  
Chairman  
Standing Committee on Public Administration  
Parliament House  
PERTH WA 6000

ATTENTION: MALCOLM PEACOCK

Dear Kim

RE: DISTRIBUTION ADJUSTMENT ASSISTANCE SCHEME (DAAS):  
GUIDELINES

I have considered the Standing Committee on Public Administration Report on the DAAS Guidelines tabled on 23 June and have agreed to implement a further assistance payment to former milk distributor/vendors covered by Schemes B & C of the DAAS.

I have recently requested the Dairy Industry Authority to write to each eligible milk distributor/vendor in Schemes B & C advising them of the details of a possible further assistance payment.

Yours sincerely

Monty House MLA  
MINISTER FOR PRIMARY INDUSTRY; FISHERIES

# **APPENDIX 3**

LEGISLATIVE COUNCIL



STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Our Ref: PBCR3501

24 November 1998

The Hon Monty House MLA  
Minister for Primary Industries: Fisheries  
20th Floor  
221 St Georges Terrace  
PERTH WA 6000

Dear Mr House

**DISTRIBUTION ADJUSTMENT ASSISTANCE SCHEME ("DAAS")**

The Committee understands that you, and/or your department, has received legal advice on the issues raised by the Committee's Third and Sixth Reports

Would you please inform the Committee of the following:

1. Have you and/or your department received legal advice on the issues raised by the Committee's Third and Sixth Reports?
2. If the answer to question 1 is "yes", does that advice address your ability (and/or that of your department) to pay compensation to the former milk vendors, under both DAAS and/or at general law, including, for example, *ex gratia* payments.
3. If the answer to 1 is "yes", would you please provide a copy of that advice to the Committee?
4. If the answer to 3 is "no":
  - (a) why won't you provide that advice; and
  - (b) would you please outline the substance of the advice including advice received in relation to the issues raised at question 2.

The Committee would appreciate your response by Wednesday, 2 December 1998.

Yours sincerely

Hon Kim Chance MLC  
Chairman

G:\PBCR\3501\2201.P80



MINISTER FOR PRIMARY INDUSTRY AND FISHERIES  
WESTERN AUSTRALIA

1 DEC 1998

Hon Kim Chance MLC  
Chairman  
Standing Committee on Public Administration  
Legislative Council  
Parliament House  
PERTH WA 6000

Dear Kim

**DISTRIBUTION ADJUSTMENT ASSISTANCE SCHEME (DAAS)**

Thank you for your letter of 24 November regarding the Distribution Adjustment Assistance Scheme (DAAS).

In relation to the questions that you raise in your letter, my office has received advice from Crown Solicitor's Office advising that the wording of the three schemes, restricts assistance so as to relate only to sales of licensed product (white wholemilk and Hi-Lo reduced fat milk)".

The advice received from Crown Solicitor does not address the issue of ex gratia payments as this advice was not requested.

I trust this has clarified the matter for you.

Yours sincerely

Monty House MLA  
MINISTER FOR PRIMARY INDUSTRY; FISHERIES

# **APPENDIX 4**

Many people have pointed out that the 'official' view of the DIA seems to be at odds with the forms it asks prospective buyers and sellers of milk trade to complete. The DIA forms request buyers and sellers of milk distribution trade to nominate the price for the trade when they apply to the DIA to transfer licences. Requests for information about the value of particular milk distribution licences are not met by the DIA. The enquirer is told that the DIA has no involvement in the setting of the capital value of milk distribution.

### 2.2.2 Measuring the capital value of a business

Milk distributors typically quote capital values either as

- a multiple of weekly gross profit; or
- dollars per litre of milk per week.

The participants in the milk distribution sector tend to refer to the capital value of a business by reference to both a multiple of the number of weeks (or years) times the gross profit (the difference between the value of sales less purchases) and dollars per litre of milk delivered per day.

There were two sources of information used in the study to try and establish recent movements in the value of distribution businesses. The first source was aggregate data collected by the DIA when processing applications to transfer licences. The second was interviews with the Milk Vendors Association, individual distributors and related industry people.

### 2.2.3 Dairy Industry Authority data

The DIA collects information on capital values in terms of dollars per litre per week of licensed products.

Prospective buyers and sellers of milk distribution businesses are requested to complete a notice of intention to acquire/sell milk distributor/vendor business. This form requests the retail and wholesale trade purchased in number of litres per day and the corresponding prices paid for this trade, exclusive of the cost of any vehicles.

As part of the study ACIL analysed aggregate data provided by the Authority to try and establish a trend in the capital value of milk distribution businesses over recent years. In interpreting the data care is needed because of two possible biases. The first bias relates to the requirement to pay stamp duty on the capital value transferred. This may act to dampen recorded prices paid for businesses.

The second bias is caused by the tendency for the full capital value of the business to be allocated to litres of licenced milk distributed. In fact the capital payment for the business is also influenced by the quantity of trade in non-licenced products such as other milk products and by-products such as yogurts and orange juices. This bias will tend to inflate the stated price in terms of litres per day of licenced product. This bias is also expected to have been increasing as the sales of other (non licenced) products have been growing faster than sales of licenced products. The existence of these biases limits the usefulness of the data as measures of the capital value of milk distribution businesses.

*The data are probably better indicators of changes in, than of absolute, values.*

Table 3 shows the number of household licence transactions and volumes involved and Table 4 shows the average price paid for household (retail) business between 1986/87 and 1990/91.

Table 5 shows the transaction numbers of shop licence transactions and volumes transferred and Table 6 shows the average price paid for shop (wholesale) trade between 1986/87 and 1990/91.

|             | Metropolitan area                             |                             | Country area                                  |                             | All areas                                    |
|-------------|---|-----------------------------|---|-----------------------------|--|
|             | Number of licence transactions <sup>(1)</sup> | Litres of trade transferred | Number of licence transactions <sup>(1)</sup> | Litres of trade transferred | No. of new household entrants <sup>(2)</sup> |
| 1986/87     | 73  | NA                          | 4   | NA                          | NA   |
| 1987/88     | 67  | 16,866                      | 8   | 3,406                       | 43   |
| 1988/89     | 83  | 20,287                      | 5   | 35                          | 48   |
| 1989/90     | 51  | 13,794                      | 6   | 1,810                       | 29   |
| (Jul - Oct) | 24  | 7,345                       | 4   | 615                         | 15   |
| (Nov - Feb) | 18  | 4,985                       | 2   | 1,195                       | 9  |
| (Mar - Jun) | 9   | 1,464                       | -   | -                           | 5  |
| 1990/91     |   |                             |   |                             |  |
| (Jul - Dec) | 16  | 5,296                       | 4   | 400                         | 12   |

Note: (1) The number of transactions includes combined vendor / distributor business  
 NA Not available  
 Source: Dairy Industry Authority

**Table 4: The average price paid for household milk delivery business in the metropolitan area**

|                     | Margin<br>(cents / litre) | \$ per litre<br>per day | No. of weeks<br>times gross margin |
|---------------------|---------------------------|-------------------------|------------------------------------|
| 1986/87             | 11.03                     | 48                      | 62                                 |
| 1987/88             | 11.60                     | 51                      | 63                                 |
| 1988/89             | 12.15                     | 60                      | 71                                 |
| 1989/90             | 12.59                     | 54                      | 61                                 |
| 1990/91 (Jul - Dec) | 12.94                     | 52                      | 57                                 |

Note: (1) No country area sales data available.

Source: DIA

**Table 5: Transactions of shop milk delivery business**

|             | Metropolitan area                    |                                   | Country area                         |                                   | All areas<br>No. of new<br>shop distribution<br>entrants |
|-------------|--------------------------------------|-----------------------------------|--------------------------------------|-----------------------------------|--|
|             | Number of<br>licence<br>transactions | Litres<br>of trade<br>transferred | Number of<br>licence<br>transactions | Litres<br>of trade<br>transferred |  |
| 1986/87     | 17                                   | NA                                | 2                                    | NA                                | NA   |
| 1987/88     | 15                                   | 19,070                            | 10                                   | 2,321                             | 13   |
| 1988/89 (1) | 24                                   | 30,568                            | 6                                    | 1,303                             | 14   |
| 1989/90     | 11                                   | 13,364                            | 3                                    | 6,900                             | 8  |
| 1989/90     |                                      |                                   |                                      |                                   |  |
| (Jul - Oct) | 8                                    | 8,318                             | 2                                    | 2,522                             | 4  |
| (Nov - Feb) | 2                                    | 3,637                             | -                                    | 366                               | 2  |
| (Mar - Jun) | 1                                    | 1,409                             | 1                                    | 4,012                             | 2  |
| 1990/91     |                                      |                                   |                                      |                                   |  |
| (Jul - Dec) | 2                                    | 1,795                             | 2                                    | 1,646                             | 2  |

Note: (1) Includes the transfer of 8,000 litres of shop trade to a consortium of licencees.

NA Not available

Source: DIA

**Table 6: The average price paid for shop milk delivery business**

|                      | Metropolitan area         |                         |                                | Country area            |
|----------------------|---------------------------|-------------------------|--------------------------------|-------------------------|
|                      | Margin<br>(cents / litre) | \$ per litre<br>per day | No. of weeks<br>X gross margin | \$ per litre<br>per day |
| 1986/87              | 7.41                      | 111                     | 214                            | NA                      |
| 1987/88              | 7.81                      | 119                     | 218                            | 57                      |
| 1988/89              | 8.19                      | 118                     | 206                            | 37                      |
| 1989/90              | 8.48                      | 128                     | 215                            | 64                      |
| 1990/91 (Jul - Dec)* | 8.72                      | 82                      | 134                            | NA                      |

Notes: (\*) Only two observations available. for metropolitan area

NA Not available

Source: DIA