

# DAIRY INDUSTRY AND HERD IMPROVEMENT LEGISLATION REPEAL BILL 2000

## EXPLANATORY MEMORANDUM

The purpose of the Bill is to effect the withdrawal of direct government involvement in the dairy industry in Western Australia, following representations from the dairy industry in conjunction with its counterparts in the eastern states.

At the present time, two pieces of State legislation have a direct impact on the structure of the industry. These are the:

- *Dairy Industry Act 1973*; and the
- *Herd Improvement Service Act 1984*.

The Dairy Industry Act regulates the activities of milk and milk product producers in the State by vesting all milk, on production, in the Dairy Industry Authority. The Authority 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.

Following an approach by the national dairy industry of Australia, the Federal Government has agreed to assist a transition to a fully de-regulated market if all states decide to make the required legislative changes from 1 July 2000, the date nominated by the industry.

Along with the de-regulation of milk supplies, the dairy industry in Western Australia requested the hand-over of management of the Herd Improvement Service which has, since 1984, provided a statutorily managed scheme based upon the initial provision by government of necessary facilities and other infrastructure. The Act established a corporate body charged with responsibility for:

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

The Herd Improvement Service has the statutory powers deemed necessary for it to carry out its responsibilities and can draw upon government agencies for assistance.

The Bill responds to the industry requests outlined above. It provides mechanisms to transfer the net assets of the Dairy Industry Authority of Western Australia and the Herd Improvement Service of Western Australia to two new industry owned and managed companies, in a transitional and stable manner. Furthermore, it permits the transfer process to commence on different days with respect to the two Authorities, in view of the likely outcome that one of these will be ready to commence the process before the other.

## **PART 1**

### **Preliminary**

**Clause 1:** Short title and citation:  
*Dairy Industry and Herd Improvement Legislation Repeal Act 2000*

**Clause 2: Commencement:**

Subclause 2(1) provides that Parts 1 and 5 of the Bill come into operation on receipt of Royal Assent.

Part 1 deals with the preliminary matters that will enable the dairy industry to plan its transition to the proposed new structure with confidence. The clause 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 each statute, have been done.

Part 5 provides that, after proclamation of all Parts, the Act continues in operation only until the Minister has certified to the Governor, and the Governor has so ordered by publishing an order in the *Gazette*, that the Minister is satisfied that the business of the Dairy Industry Authority and the Herd Improvement Service have been transferred to the new legal entities established for this purpose.

Subclause 2(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.

Subclause 2(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.

Subclause 2(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 Part 4 of the Bill. As it is likely that the provision of the necessary 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 first completed.

**Clause 3: Arrangements for commencement of Part 2**

Part 2 deals with the transfer of the business of the Dairy Industry Authority to the new organisation.

Before Part 2 may 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).

Paragraph (a) requires that a public company shall be registered under the Corporations Law, by the name "Dairy Western Australia Limited". In accordance with its proposed constitution it will permit the passage of the net assets of the Dairy Industry Authority 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 the Company.

Paragraph (b) requires the Minister to be satisfied that the constitution of the Company is adequately worded to enable it to handle the transfer of the business of the Dairy Industry Authority, in terms of its net assets, to the new Company, the purpose of which is detailed in clause 10 to 16. These matters are included in those being addressed by a Transition Advisory Group, established to provide a basis on which to establish the constitution. This Group also will be examining the business prospects for Dairy Western Australia Limited, within but not restricted to the following general areas.

- Industry research and development.
- Education and training.
- Market development, efficiency and promotion.
- Financial management and investment attraction.
- Delivery of information to the industry.

Paragraph (c) provides that the initial administration of the Company shall advise the Minister that the effect of the provisions of clauses 10 to 16, so far as they affect it, are satisfactory. This will ensure that:

- the Company is fully aware of the outcome and method of implementation of the transfer process;
- this will meet the foreseen objectives; and that
- it accepts the terms of transfer of the Authority's business to the Company.

Paragraph (d) deals with the transfer of all existing staff of the Dairy Industry Authority in a manner that maintains opportunity of employment or exit on terms that are in accordance with the *Public Sector Management Act 1984*. These matters are one of the most important issues of the transfer process.

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 of the Dairy Industry Authority to the new company. This will ensure that there is no opportunity for a new issue - one not previously foreseen - to arise, and to cause steps to be taken to deal with it.

For example, under the existing legislation, the Dairy Industry Authority has responsibility for the maintenance of product quality in the marketplace. On the demise of the Authority it will be necessary for this function to be assumed by another agency, which will be the Health Department, in conjunction with which the present regulatory duties are carried out.

#### **Clause 4: Arrangements for commencement of Part 3**

Part 3 deals with the transfer of the business of the Herd Improvement Service of Western Australia to a new legal entity.

Before Part 3 may 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 Dairy Industry Authority.

Paragraph (a) requires that a public company shall be registered under the Corporations law, by the name "Farmwest Services Limited". This form of entity is considered to be the most appropriate. In accordance with its proposed constitution it will permit the passage of the net assets of the Herd Improvement Service to customers of the Herd Improvement Service of Western Australia, in the form of shares. These will be allocated in a manner determined by the Minister after consultation with the Company.

Paragraph (b) requires the Minister to be satisfied that the constitution of the Company is adequately worded to enable it to handle the transfer of the business of the Herd Improvement Service, in terms of its net assets, to the new Company, detailed in clause 25 to 31. These matters are included in those being addressed by a Steering Committee, established to provide a basis on which to establish the constitution. This Committee will be examining the prospects for Farmwest Services Limited, within but not restricted to the following general areas.

- Stock testing and improvement services.
- Semen collection and sales.
- Information services.
- Laboratory services.
- Any other commercial activities that relate to the shareholder base.

Paragraph (c) provides that the initial administration of the Company shall advise the Minister that the effect of the provisions of clause 25 to 31, so far as they affect it, are satisfactory. This will ensure that:

- the Company is fully aware of the outcome and method of implementation of the transfer process;
- this will meet the foreseen objectives; and that
- it accepts the terms of transfer of the Service's business to the Company.

Paragraph (d) deals with the transfer of all existing staff of the Herd Improvement Service in a manner that maintains opportunity of employment or exit on terms that are in accordance with the *Public Sector Management Act 1984*. These matters are one of the most important issues of the transfer process.

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 of the Herd Improvement Service to the new company. This will ensure that there is no opportunity for a new issue - one not previously foreseen - to arise, and to cause steps to be taken to deal with it.

**Clause 5: Definitions**

This clause links definitions of "Dairy Industry Authority of Western Australia" (as "DIA") and "Herd Improvement Service of Western Australia" (as "HISWA"), used in the proposed Act, to those of the respective legislation to be repealed.

Other definitions used in the proposed legislation are included in clauses provided with respect to particular matters.

**Clause 6: Day to be fixed for purposes of section 22**

The transfer of the business of HISWA to the new company requires special attention, in view of the absence of a statutory specific interest-based definition of HISWA clientele in the Act to be repealed. In contrast, DIA clientele can be characterised by the requirement to hold a license under section 52 of the *Dairy Industry Act 1973*. Under this Act a person is not permitted to carry on the business of milk production or processing unless he is licensed to do so.

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

Subclause 6(1) provides that the definition of "HISWA customers" will not come into operation until a day fixed by the Minister. This clause must be read and interpreted in conjunction with clause 22, 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 3 year period before the day fixed by the Minister.

To prevent the purchase of 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 in Parliament, it is intended that the day fixed will be the day on which the Bill receives a second reading.

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 users, in terms of a share of the net assets of HISWA. The *Gazette* notice may be dated after the actual day fixed.

## PART 2

### Repeal of Dairy Industry Act 1973 and related provisions

#### Division 1 - Interpretation

##### Clause 7: Definitions

This clause provides definitions for terms and expressions used in the Bill with respect to the repeal of the *Dairy Industry Act 1973*.

"appointed day" is the day that the Governor proclaims this Part of the Bill, after being advised by certificate that the Minister is satisfied that all the preliminary necessities have been completed in accordance with clause 2(2) and detailed in clause 3. On this day the new company takes over the business of the DIA.

"Company" means "Dairy Western Australia Limited", the new entity to be established to become the owner and manager of the net assets of the Dairy Industry Authority.

"dairy producer" means a person who carried on business as a producer of milk at a dairy, pursuant to a licence issued under section 52 of the *Dairy Industry Act 1973*, immediately before the initiation of the net asset transfer process. That is, the person was a legitimate user of the facilities and assets of the Authority.

"repealed Act" in this context, means the *Dairy Industry Act 1973*.

#### Division 2 - Repeal and transitional provision

##### Clause 8: Dairy Industry Act 1973 repealed

This very succinct clause, with its counterpart in clause 23, lies at the heart of the proposed legislation. On the day that the Governor proclaims Part 2 of the new Act, the then existing *Dairy Industry Act 1973* is immediately repealed. There is no period of hiatus during which preliminary things that have not been done, can be done. It is for this reason that the Minister must be satisfied that all of the preliminary arrangements have been completed before he so advises the Governor by certificate, and activates the repeal.

Repeal of the *Dairy Industry Act 1973* causes de-regulation of the dairy industry in Western Australia. In conjunction with this, it makes available the federal dairy industry support package.

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**

This clause 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 its full status. The manner in which the Bill provides for the DIA to continue in existence for specific purposes is detailed in subclause 9(1) and 9(3). The general procedures are detailed in the following clauses.

Subclause 9(1) requires the following action, as soon as practicable after the repeal of the *Dairy Industry Act 1973*.

- (a) The DIA must be advised by notice with respect to the net asset value of the DIA and the nominal value of its shares, as determined by the Minister in accordance with clause 12. It would be expected that this determination would be completed as soon as possible after the repeal of the Dairy Industry Act. This is likely to take several weeks, in order to be undertaken with due diligence.
- (b) To ensure that the industry is aware of the nature of the assets and liabilities taken over by the new company, clause 15 requires that the DIA must prepare a statement describing them, together with their value as determined by the Minister under clause 12(1). The DIA must also deliver all its records to the Company, subject to its requirement to have access to these records for the purpose of preparing an annual report for the period from the preceding 1 July to the day on which the Dairy Industry Act is repealed, required by the provisions of clause 41.
- (c) The demise of the Dairy Industry Authority as a statutory authority mid-way through a financial year is not intended to relieve it of its responsibility to meet its obligations under the *Financial Administration and Audit Act 1985*. For this reason the DIA must report on its activities for the period of its operation as if it were a full year.

Subclause 9(2) provides that the accountable authority of the DIA, as established by the *Financial Administration and Audit Act 1985*, continues to exist for the purpose of reporting on the period of operation of the DIA up to the day of repeal of the *Dairy Industry Act 1973*.

Subclause 9(3) authorises the Minister to appoint a single person (corporate or natural) to, in effect, be the DIA for the purpose of:

- receiving the notice of asset and liability value from the Minister;
- preparing the statement of description of the assets and liabilities as determined by the Minister and causing it to be published in the *Gazette*;
- delivering all the DIA's records to the new company; and
- reporting on the DIA's activities under the *Financial Administration and Audit Act 1985*.

Subclause 9(4) gives the Minister power to impose conditions on the person he appoints to be the DIA, and to change or terminate the appointment if he so wishes. These conditions are intended to potentially affect matters such as remuneration and performance target dates. They will not fetter the role of the appointee with respect to the intended outcomes.

Subclause 9(5) is a housekeeping clause to ensure that the person appointed by the Minister has legal power to carry out the duties required by clause 9, indicated at the dot points immediately above.

Subclause 9(6) ensures that the person appointed by the Minister to be the DIA for transitional purposes has sufficient assistance to enable him, her or it to carry out the required duties in accordance with the provisions of subclause 9(1).

### **Division 3 - Transfer of DIA's business to the Company**

#### **Clause 10: Purposes of this Division**

This clause serves to clearly state that the purpose of the principal Act is to cause the transfer of the net assets of the DIA to the Company by way of a sale of the Authority's business. To give effect to this, the Minister, on behalf of the State of Western Australia, will receive shares equal to the value of the Authority's net assets from the Company. A cost base related to the net assets of the corporation is created on the transfer of these shares by the Minister to milk producers, without their having to give consideration for the transfer.

These purposes are stated in subclauses (1) and (2).

Subclause 10(1) separates the purpose of this division of the Bill into three components:

- the transfer of the net assets of the DIA to Dairy Western Australia Limited by way of sale;
- the issue by the new company Dairy Western Australia Limited of its shares to the Minister; and
- the transfer of those shares by the Minister to dairy producers.

Subclause 10(2) states as a matter of principal that the Minister will determine the manner in which the shares will be transferred to dairy producers, after consultation with Dairy Western Australia Limited.

#### **Clause 11: Transfer of DIA's business to the Company**

On the day on which Part 2 of the amending Act come into force (defined as the "appointed day"), the net assets of the DIA are transferred to the company as a statutory sale.

This procedure provides a transparent process that is simple and appropriate to the dispersion of what are in effect government assets.

Subclause 11(1) transfers all the assets and rights of the DIA to Dairy Western Australia Limited by way of sale, without the need for any form of contract. This occurs on the appointed day, simultaneously with the repeal of the *Dairy Industry Act 1973*.

Subclause 11(2) provides for the transfer of the liabilities of the DIA to the Company on the same day that the assets and rights are transferred.



**Clause 12: Determination of amount of consideration for sale**

Subclause 12(1) requires the Minister to determine the value of the net assets of the DIA on the day that the principal Act is repealed (the appointed day), after consulting with the Company.

Subclause 12(2) defines the net asset value of the DIA's business. To ensure that there can be no doubt that an appropriate value has been ascribed to the assets, rights and liabilities, the Bill requires that the valuation be made in a market sense, at the appointed day.

Subclause 12(3) requires the Minister to notify the Company after he has determined the net value of the assets of the DIA. This subclause also requires the Minister to determine the nominal value of the shares to be issued to him by the Company.

Subclause 12(4) requires the Minister to advise the DIA with respect to the net asset value of the DIA and the nominal value of the shares issued, so that final reporting on the performance and activities of the DIA can be accurately carried out by the transitional Authority.

**Clause 13: Consideration to be satisfied by allotment of shares**

Subclause 13(1) requires the new company to transfer all fully paid shares to the Minister on behalf of the State of Western Australia. The shares must have a total value equal to the net asset value determined by the Minister and specified in the notice given to the Company.

Subclause 13(2) simply reinforces the fact that the shares are to have the nominal value determined by the Minister. Again, this will ensure that true market value of the business is maintained throughout the course of the transfer process.

Subclause 13(3) requires the Company to allot and issue its shares to the Minister in the shortest reasonable time, taking into consideration the need for recognition of the manner in which the Minister has determined that the allotment and issue shall be carried out.

**Clause 14: Minister to transfer shares**

Subclause 14 is included to ensure that the share transfer process is completed as soon as practicable after determination of the DIA's net assets and the Company has been so advised. The transfer of shares by the Minister to dairy farmers will be carried out in a manner determined by the Minister, after consultation with the Company.

**Clause 15: DIA to prepare statement**

This clause provides the statutory requirement for many of the duties that have to be performed immediately after the appointed day by the transitional DIA, appointed by the Minister under subclause 9(3). This is required to be done in the public interest and for transparency purposes.

Subclause 15(1) requires the DIA to prepare a description of assets, rights and liabilities of the DIA at the appointed day.

Subclause 15(2) demands that the statement specifies the value of each asset and liability, or each category of liability, as determined by the Minister. The alternative procedure is provided to give the transitional DIA an opportunity to group or bundle a number of essentially similar liabilities for valuation purposes.

Subclause 15(3) provides a statutory requirement that the statement of description and value of assets and liabilities shall be published in the *Gazette* for public information.

**Clause 16: Values etc. may be estimated if necessary**

The nature of the assets and liabilities of the corporation is such that a firm value is not always able to be placed upon some of them as at the appointed day. For example, the Company may wish to take over a number of assets which have not been traded in recent times, the value of which cannot be determined. While a sale price cannot be attached to such assets, it is reasonable and possible to assign them an estimated value, that is unlikely to be significantly wide of their true value.

This clause requires only that, where it is not reasonably practicable for a definite value to be assigned to an asset, right, liability or category of liability to be determined as at the appointed day, then it is sufficient for an estimate of value to be made.

**Division 4 - Consequential amendments to other Acts**

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 Dairy Industry Authority. The Acts to be consequentially amended are dealt with in clauses 17 to 21.

**Clause 17:** Deletes reference to the Dairy Industry Authority in the *Constitution Acts Amendment Act 1899*.

**Clause 18:** Deletes reference to the Dairy Industry Authority in the *Financial Administration and Audit Act 1985*.

**Clause 19:** Deletes reference to the Dairy Industry Authority in the *Government Employees Superannuation Act 1987*.

**Clause 20:** Deletes reference to the Dairy Industry Authority at item 6 of Schedule 2 of the *Public Sector Management Act 1994*.

**Clause 21:** Deletes reference to the Dairy Industry Authority in section 30(2)(a)(i) of the *Stock (Identification and Movement) Act 1970*. This is a reference to a requirement to brand cattle, except for calves of an age less than two weeks that are taken for sale from premises that are licensed under the *Dairy Industry Act 1973*.

## PART 3

### Repeal of Herd Improvement Service Act 1984 and related provisions

#### Division 1 - Interpretation

##### Clause 22: Definitions

This clause provides definitions for terms and expressions used in the Bill with respect to the repeal of the principal Act.

"appointed day" is the day that the Governor proclaims this Part of the Bill, after being advised by certificate that the Minister is satisfied that all the preliminary necessities have been completed in accordance with clause 2(2) and detailed in clause 3. On this day the new company takes over the business of the Herd Improvement Service of Western Australia.

"Company" means "Farmwest Services Limited", the new entity to be established to become the owner of the net assets of the Herd Improvement Service of Western Australia.

"HISWA customers" means 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.

"repealed Act" in this context, means the *Dairy Industry Act 1973*.

#### Division 2 - Repeal and transitional provision

##### Clause 23: Herd Improvement Service Act 1984 repealed

This very succinct clause, with its counterpart in clause 8, lies at the heart of the proposed legislation. On the day that the Governor proclaims Part 3 of the new Act, the then existing *Herd Improvement Service Act 1984* is immediately repealed. There is no period of hiatus during which preliminary things that have not been done, can be done. It is for this reason that the Minister must be satisfied that all of the preliminary arrangements have been completed before he so advises the Governor by certificate, and activates the repeal process.

Repeal of the *Herd Improvement Service Act 1984* causes the demise of the Herd Improvement Service of Western Australia and transfers the roles of that service to be transferred to Farmwest Services Limited.

##### Clause 24: Performance of necessary transitional functions

This clause 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 its full status. The manner in which the Bill provides for HISWA to continue in existence for specific purposes is detailed in subclause 24(1) and 24(3). The general procedures are detailed in the following clauses.

Subclause 24(1) requires the following action, as soon as practicable after the repeal of the *Herd Improvement Service Act 1984*.

- (d) HISWA must be advised by notice with respect to the net asset value of HISWA and the nominal value of its shares, as determined by the Minister in accordance with clause 27(1). It would be expected that this determination would be completed as soon as possible after the repeal of the Herd Improvement Service Act. This is likely to take several weeks, in order that it may be undertaken with due diligence.
- (e) To ensure that the industry is aware of the nature of the assets and liabilities taken over by the new company, clause 30 requires that HISWA must prepare a statement describing them, together with their value as determined by the Minister under clause 27(1). The HISWA must also deliver all its records to the Company, subject to its requirement to have access to these records for the purpose of preparing an annual report for the period from the preceding 1 July to the day on which the Herd Improvement Service Act is repealed, required by the provisions of clause 41.
- (f) The demise of the Herd Improvement Service as a statutory authority mid-way through a financial year is not intended to relieve it of its responsibility to meet its obligations under the *Financial Administration and Audit Act 1985*. For this reason HISWA must report on its activities for the period of its operation as if it were a full year.

Subclause 24(2) provides that the accountable authority of the HISWA, as established by the *Financial Administration and Audit Act 1985*, continues to exist for the purpose of reporting on the period of operation of HISWA up to the day of repeal of the *Herd Improvement Service Act 1984*.

Subclause 24(3) authorises the Minister to appoint a single person (corporate or natural) to, in effect, be HISWA for the purpose of:

- receiving the notice of asset and liability value from the Minister;
- preparing the statement of description of the assets and liabilities as determined by the Minister and causing it to be published in the *Gazette*;
- delivering all HISWA's records to the new company; and
- reporting on HISWA's activities under the *Financial Administration and Audit Act 1985*.

Subclause 24(4) gives the Minister power to impose conditions on the person he appoints to be the transitional HISWA, and to change or terminate the appointment if he so wishes. These conditions are intended to potentially affect matters such as remuneration and performance target dates. They will not fetter the role of the appointee with respect to the intended outcomes.

Subclause 24(5) is a housekeeping clause to ensure that the person appointed by the Minister has legal power to carry out the duties required by clause 24(1), indicated at the dot points above.

Subclause 24(6) ensures that the person appointed by the Minister to be the HISWA for transitional purposes has sufficient assistance to enable him, her or it to carry out the required duties in accordance with the provisions of

subclause 24(1). It is likely that the facilities of the department known as Agriculture Western Australia will provide any necessary assistance, but this is not mandatory.

### **Division 3 - Transfer of HISWA's business to the Company**

#### **Clause 25: Purposes of this Division**

This clause serves to clearly state that the purpose of the principal Act is to cause the transfer of the net assets of HISWA to the Company by way of a sale of HISWA's business. To give effect to this, the Minister, on behalf of the State of Western Australia, will receive shares equal to the value of HISWA's net assets from the Company. A cost base related to the net assets of the corporation is created on the transfer of these shares by the Minister to HISWA customers, without their having to give consideration for the transfer.

These purposes are stated in subclauses (1) and (2), below.

Subclause 25(1) separates the purpose of this division of the Bill into three components:

- the transfer of the net assets of HISWA to Farmwest Services Limited by way of sale;
- the issue by the new company of its shares to the Minister; and
- the transfer of those shares by the Minister to HISWA customers.

Subclause 25(2) states as a matter of principal that the Minister will determine the manner in which the shares will be transferred to HISWA customers, after consultation with Farmwest Services Limited. Without limiting the scope of consideration, factors that may be considered by the Minister in making the determination could include:

- the place of residence of particular clients;
- the legal framework of the business structure of particular clients, such as corporate, partnership or family arrangements; and
- the extent of business done with HISWA.

The Bill provides that there shall be no consideration (need to pay) for the transfer of shares by the Minister to HISWA customers.

#### **Clause 26: Transfer of HISWA's business to the Company**

On the day on which Part 3 of the amending Act comes into force (defined as the "appointed day"), the net assets of the HISWA are transferred to the company as a statutory sale.

This procedure provides a transparent process that is simple and appropriate to the dispersion of what are in effect government assets..

Subclause 26(1) transfers all the assets and rights of the HISWA to Farmwest Services Limited by way of sale, without the need for any form of contract. That is, the transfer occurs by statutory action. This occurs on the appointed day, simultaneously with the repeal of the *Herd Improvement Service Act 1984*.

Subclause 26(2) provides for the transfer of the liabilities of HISWA to the Company on the same day that the assets and rights are transferred.

**Clause 27: Determination of amount of consideration for sale**

Subclause 27(1) requires the Minister to determine the value of the net assets of HISWA on the day that the principal Act is repealed (the appointed day), after consulting with the Company.

Subclause 27(2) defines the net asset value of HISWA's business. To ensure that there can be no doubt that an appropriate value has been ascribed to the assets, rights and liabilities, the Bill requires that the valuation be made in a market sense, at the appointed day.

Subclause 27(3) requires the Minister to notify the Company after he has determined the net value of the assets of HISWA. This subclause also requires the Minister to determine the nominal value of the shares to be issued to him by the Company.

Subclause 27(4) requires the Minister to advise HISWA with respect to the net asset value of the HISWA and the nominal value of the shares issued, so that final reporting on the performance and activities of HISWA can be accurately carried out by the transitional Authority.

**Clause 28: Consideration to be satisfied by allotment of shares**

Subclause 28(1) requires the new company to transfer all fully paid shares to the Minister on behalf of the State of Western Australia. The shares must have a total value equal to the net asset value determined by the Minister and specified in the notice given to the Company.

Subclause 28(2) simply reinforces the fact that the shares are to have the nominal value determined by the Minister. Again, this will ensure that true market value of the business is maintained throughout the course of the transfer process.

Subclause 28(3) requires the Company to allot and issue its shares to the Minister in the shortest reasonable time, taking into consideration the need for recognition of the manner in which the Minister has determined that the allotment and issue shall be carried out.

**Clause 29: Minister to transfer shares**

Clause 29 is included to ensure that the share transfer process is completed as soon as practicable after determination of HISWA's net assets and the Company has been so advised. The transfer of shares by the Minister to HISWA customers will be carried out in a manner determined by the Minister, after consultation with the Company.

**Clause 30: HISWA to prepare statement**

This clause provides the statutory requirement for many of the duties that have to be performed immediately after the appointed day by the transitional HISWA, appointed by the Minister under subclause 24(3). This is required to be done in the public interest and for transparency purposes.

Subclause 30(1) requires HISWA to prepare a description of assets, rights and liabilities of HISWA at the appointed day.

Subclause 30(2) demands that the statement specifies the value of each asset and liability, or each category of liability, as determined by the Minister. The alternative procedure is provided to give the transitional HISWA an opportunity to group or bundle a number of essentially similar liabilities for valuation purposes.

Subclause 30(3) provides a statutory requirement that the statement of description and value of assets and liabilities shall be published in the *Gazette* for public information.

**Clause 31: Values etc. may be estimated if necessary**

The nature of the assets and liabilities of the corporation is such that a firm value is not always able to be placed upon some of them as at the appointed day. For example, the Company may wish to take over a number of assets which have not been traded in recent times, the value of which cannot be determined. While a sale price cannot be attached to such assets, it is reasonable and possible to assign them an estimated value, that is unlikely to be significantly wide of their true value.

This clause requires only that, where it is not reasonably practicable for a definite value to be assigned to an asset, right, liability or category of liability to be determined as at the appointed day, then it is sufficient for an estimate of value to be made.

**Division 4 - Consequential amendments to other Acts**

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 the Herd Improvement Service of Western Australia. The Acts to be consequentially amended are dealt with in clauses 32 to 34.

**Clause 32:** Deletes reference to the Herd Improvement Service of Western Australia in the *Financial Administration and Audit Act 1985*.

**Clause 33:** Deletes reference to the Herd Improvement Service of Western Australia in the *Government Employees Superannuation Act 1987*.

**Clause 34:** Deletes reference to the Herd Improvement Service of Western Australia at item 19 of Schedule 2 of the *Public Sector Management Act 1994*.

## PART 4

### Transitional provisions

Part 4 specifies matters that apply to both Parts 2 and 3. Part 4 of the Act 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) of clause 2 or, if the days so fixed are the same day, on that day.

#### **Clause 35: Definitions**

Three of the definitions need additional explanation to that previously given.

"asset" means all kinds of assets, in the widest sense of the word, including:

- any chose in action, which is a right eg. to recover a debt, that can be enforced by legal action;
- goodwill, an advantage arising from the reputation and trade connections of the DIA or HISWA; and
- a right of any kind

"liability" includes all kinds of liabilities, no matter in what form or stage of recovery, regardless of whether they are currently known, are contingent upon another action or event, or are prospective in the sense that they will become manifest at a future time without being reliant upon some other action.

"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.

The intent is describe and value all of the assets and liabilities of the DIA and HISWA, not to give consideration to those selected as having an important significance from one or another point of view. This approach follows the government's wish to fairly remove itself from those issues that are the subject of the legislation that is proposed to be repealed under the provisions of this Bill.

#### **Clause 36: Interpretation Act to apply**

This clause provides that the repeal of the *Dairy Industry Act 1973* and the *Herd Improvement Service Act 1984* will be subject to the savings provisions principally of section 37 of the *Interpretation Act 1984*. This section essentially provides that the repealing Act does not, unless clearly intended to the contrary:

- revive anything not in force at the time;
- affect the previous operation of the repealed Act;
- affect any right or similar claim in existence at the time of repeal;
- affect any duty or similar obligation existing prior to the repeal;
- in most cases, affect any penalty or similar thing incurred in respect of an offence against the Act before its repeal;
- affect any investigation or legal action underway at the time of the repeal.



**Clause 37: Members cease to hold office**

This clause serves to make it expressly clear that the members of the DIA and the 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, detailed in the Bill. This could happen on different days with respect to the DIA and HISWA.

This subclause ensures that there will be no carry-over of responsibility from the previously existing administrations, and thus confusion after the appointed day.

**Clause 38: References to former body in agreements and instruments**

This clause provides that there is to be a transfer of responsibilities with respect to rights and obligations included in any agreements and instruments executed by either the DIA or HISWA before the repeal of the principal Act on the appointed day, from these bodies to the new Company in each case.

The intent is to ensure that the business of the former bodies is taken over by the new companies without legal impediment. After the transfer, all agreements and instruments will be administered by the new companies and the parties will be subject to the terms and conditions of each.

**Clause 39: Proceedings and remedies**

Clause 39 ensures that the new companies assume responsibility for any actions or proceedings that are in force at the time of transfer of the business, and that any proceedings that could have been commenced against or by the former body may be commenced as if they involved the new companies.

The intent is to ensure that any potential action is not denied as a result of the repeal processes. It will therefore be necessary for the assessment of net assets, rights and liabilities of the DIA and of HISWA to take these matters into consideration.

**Clause 40: Other things in progress**

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.

The provision provides assurance for any aggrieved or potentially aggrieved persons 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.

It would be unreasonable to exclude these matters from continued action merely because the parliament had agreed that the former bodies should cease to have relevance, but had also agreed that a new body should be established in their place, albeit without legislative support.

**Clause 41: Records**

On completion of the transfer of information to the minister it would be expected that the former body would forward all materials to the Company as required by this section. Without this information it would be impossible for the Company to continue to carry-on the business of the former body under the new arrangements.

Subsection 41(1) ensures that the new company is provided with full information on the operations of the former bodies, there must be a full disclosure and transfer of records from the old to the new organisations.

Subsection 41(2) allows that the transfer of records may be delayed only for as much time as reasonably required and as much as is necessary to prepare an annual report for the part of the current financial year from 1 July to the appointed day.

**Clause 42: Stamp duty**

Subclause 42(1) provides that stamp duty is not chargeable on the transfer of the DIA's or HISWA's net assets to the respective company.

Subclause 42(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 intent is that the Minister may certify in writing to this effect and this certificate is to be taken as conclusive evidence of the transfer, or disproved in a court of law.

**Clause 43: Annual report for part of the year**

It is inevitable that the demise of the former body will occur during, not at the end, of a financial year. For this reason the Bill provides that the former body, as continued by a single person appointed by the Minister, continues to be the accountable authority under the *Financial Administration and Audit Act 1985*. Thus, the DIA and HISWA will 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 1 July and the date of their formal demise. The purpose is to ensure that the operation of each body for this period continues to be subject to public scrutiny.

**Clause 44: Completion of things commenced**

This clause provides power for the new companies in each case to continue to do things that have been commenced but not completed, provided that the doing of such things falls within the powers given under the constitution of the relevant new company. It would be unreasonable for this to be not possible, and it could incur litigation and other costs if matters not completed were terminated by legislative action.

**Clause 45: Further transitional provision may be made**

Subclause 45(1) allows the Minister to make provision, by order published in the *Gazette*, to create a legal power to enable the completion of the transfer processes to the new companies respectively if a particular and necessary power is found to be not given in the Bill as drafted.

Subclause 45(2) provides that an order made under the previous subclause may be made to be applicable from the appointed day, when the repeal process was initiated), notwithstanding that this may well introduce a degree of retrospectivity. An order cannot be made to have effect during the preparatory stage of the transfer process, detailed in Part 1 of the Bill.

Subclause 45(3) is included to make it clear that there can be no damage to the interests of anyone except the State, by the invocation of this power before the day of publication, if the order is made to have effect before it is published.

It is not envisaged that there will be a need for this power to be invoked but, because there is no true legislative precedent for the procedures and expected outcomes of this legislation, it is believed to be necessary to include a mechanism of this type.

**Clause 46: Saving**

This section applies to the former bodies' contractual arrangements, to prevent the abolition of the bodies being a trigger for a default clause in a contract in force at the time of repeal of the respective Act. In particular, it would prevent loans becoming immediately due on the demise of the DIA and HISWA.

## **Part 5**

### **Duration of Act**

#### **Clause 47: Duration of Act**

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

Subclause 47(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".

Subclause 47(2) specifies that the termination day will be fixed by the Governor by order published in the Gazette. This mechanism will provide sufficient public notice of the completion of all required actions.

Subclause 47(3) requires the Minister to certify to the Governor that he is satisfied that the transfer of:

- the DIA's business to Dairy Western Australia Limited; and
  - HISWA's business to Farmwest Services Limited
- has been completed. After this time there is no need for the enabling Act to remain on the Statute Book, and it will be virtually automatically removed when the order is published in the Gazette.
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