

# Dairying Industry Levy Collection

No. 44 of 1970

An Act relating to the Collection of Dairying Industry Levy.

[Assented to 24 June 1970]

**B**E it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Dairying Industry Levy Collection Act 1970*. Short title.

2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement.

3.—(1.) In this Act, unless the contrary intention appears— Interpretation.

“maturation period”, in relation to any cheese, means the period, if any, after the cheese is produced at a factory during which the cheese is kept, by or on behalf of the proprietor of the factory, at the factory, or at some other place approved by an authorized person for the purposes of this definition, for the purpose of the controlled ageing of the cheese;

“month” means one of the twelve months of the year;

“provisional levy” means an amount of the provisional levy;

“the Company” means the company incorporated under the law of the State of New South Wales under the name “Commonwealth Dairy Produce Equalisation Committee Limited”;

“ the Levy Act ” means the *Dairying Industry Levy Act 1970*;

“ the provisional levy ” means the provisional levy imposed by the Levy Act.

(2.) Where the Minister considers that, for the purposes of this Act, it is reasonable that the maturation period in relation to particular cheese should be deemed to be terminated, the Minister may, by notice in writing served on the proprietor of the factory at which the cheese was produced, direct that the maturation period in relation to the cheese be deemed to be terminated on a date specified in the notice, being a date on or after the date on which the notice is served on the proprietor of the factory.

(3.) Where cheese kept for a maturation period weighs less at the end of that period than it did at the beginning, the weight of the cheese shall, for the purpose of calculating provisional levy and levy in respect of the cheese, be deemed to be the weight of the cheese at the end of the maturation period.

Provisional  
levy.

4.—(1.) This section applies only so long as the provisional levy is imposed.

(2.) The rate of the provisional levy on any dairy produce is the rate of provisional levy applicable in accordance with the next succeeding sub-section, and provisional levy is payable by the person by whom levy in respect of the dairy produce is payable.

(3.) The regulations may fix a rate of provisional levy (not being a rate greater than the appropriate maximum rate referred to in sub-section (5.) of section 7 of the Levy Act) in respect of dairy produce of a specified kind produced on or after a specified date, not being a date earlier than the date of notification in the *Gazette* of the regulation by which the rate is fixed, and the rate so fixed is the rate of provisional levy applicable to dairy produce of the specified kind produced on or after the specified date and before the date specified in a later regulation in accordance with this sub-section in respect of dairy produce of the specified kind.

(4.) Provisional levy on any dairy produce becomes due and payable at the expiration of fifteen days after the end of the month next succeeding the month that is the relevant month in accordance with the next three succeeding sub-sections.

(5.) Subject to the next succeeding sub-section, the relevant month is—

- (a) except where the next succeeding paragraph applies, the month in which the dairy produce is sold by the person by whom the provisional levy is payable; or
- (b) where the dairy produce has not been so sold before the expiration of the sixth month after the month in which it was produced, that sixth month.

(6.) Where, at the expiration of the month that would, but for this sub-section, be the relevant month, it has not become clear that the dairy produce is not exempt from the levy by virtue of sub-section (1.) of section 9 of the Levy Act, the relevant month is the month in which it becomes clear that the dairy produce is not so exempt.

(7.) The reference in paragraph (b) of sub-section (5.) of this section to the month in which dairy produce was produced shall, in relation to cheese kept for a maturation period, be read as a reference to the month in which the maturation period of the cheese ended.

(8.) Unpaid provisional levy on any dairy produce ceases to be payable when levy on the dairy produce becomes due and payable.

5.—(1.) Where—

- (a) levy becomes due and payable on dairy produce; and
- (b) the person liable to pay that levy has paid provisional levy on the dairy produce that exceeds that levy,

Adjustment of  
provisional  
levy.

that levy shall be deemed to have been paid and the excess shall be refunded to the person.

(2.) Where—

- (a) levy becomes due and payable on dairy produce; and
- (b) the person liable to pay that levy has paid provisional levy on the dairy produce that is equal to, or less than, that levy,

that levy shall be deemed to have been paid to the extent of that provisional levy.

(3.) Where a person has paid provisional levy on dairy produce on which the levy has ceased to be imposed by virtue of a direction under section 10 of the Levy Act, any provisional levy so paid shall be refunded to the person.

6. The levy on any dairy produce becomes due and payable upon the expiration of forty-five days from the date of notification in the *Gazette* of a regulation fixing, in accordance with section 7 of the Levy Act, a rate of levy that is applicable in respect of that dairy produce.

Time for  
payment  
of levy.

7. Subject to this Act, levy and provisional levy shall be paid to the Secretary to the Department of Primary Industry, Canberra.

Manner of  
payment of  
levy, &c.

8.—(1.) For better securing the payment of levy, the Minister may, on behalf of the Commonwealth, enter into an arrangement with the Company with respect to—

Arrangement  
for collection  
of levy, &c., by  
the Company.

- (a) the collection of levy and provisional levy and of penalties under section 13 of this Act; and
- (b) the making of refunds under sections 5 and 14 of this Act,

by the Company on behalf of the Commonwealth.

(2.) Without prejudice to the generality of the last preceding sub-section, an arrangement under that sub-section may provide for—

- (a) the payment by the Company to the Commonwealth of levy or provisional levy or penalties under section 13 of this Act collected by the Company;
- (b) the keeping by the Company of accounts and records in relation to—
  - (i) levy and provisional levy and penalties under section 13 of this Act collected by the Company; and
  - (ii) refunds under sections 5 and 14 of this Act made by the Company on behalf of the Commonwealth;
- (c) the inspection and audit of the accounts and records referred to in the last preceding paragraph; and
- (d) the furnishing by the Company to the Minister of information with respect to—
  - (i) levy and provisional levy and penalties under section 13 of this Act collected by the Company; and
  - (ii) the amounts paid by the Company to the Commonwealth in accordance with the arrangement.

Collection of  
levy, &c., by  
the Company.

9.—(1.) While an arrangement under the last preceding section is in force, payment of levy or provisional levy may be made to the Company.

(2.) Where, under the last preceding sub-section, a person pays levy or provisional levy to the Company, the person is, to the extent of the amount so paid, discharged from his liability to pay the levy or the provisional levy to the Commonwealth.

(3.) Money collected by the Company under this section shall, until it is paid to the Commonwealth in accordance with an arrangement under the last preceding section, be deemed to be money held in trust for the Commonwealth.

Levy, &c.,  
may be  
deducted from  
equalization  
payments.

10.—(1.) The Commonwealth or, while an arrangement under section 8 of this Act is in force, the Company may—

- (a) deduct from any equalization payment payable to a person under the *Dairying Industry Equalization Act 1970* an amount not exceeding any levy or provisional levy that the person is liable to pay; and
- (b) appropriate the amount so deducted to the payment of that levy or provisional levy.

(2.) Where an amount is appropriated under the last preceding sub-section to the payment of levy or provisional levy, the person liable to pay that levy or that provisional levy is, to the extent of the amount so appropriated, discharged from that liability.

(3.) Where an amount is appropriated by the Company under sub-section (1.) of this section to the payment of levy or provisional levy, the

amount shall, for the purposes of this Act, be deemed to be levy or provisional levy, as the case may be, collected by the Company from the person liable to pay that levy or that provisional levy, as the case may be.

11.—(1.) The *Audit Act* 1901–1969 does not apply in relation to— Application of Audit Act.

(a) levy or provisional levy or penalties under section 13 of this Act collected by the Company; or

(b) refunds under section 5 or 14 of this Act made by the Company, in accordance with an arrangement entered into under section 8 of this Act.

(2.) The last preceding sub-section shall not be construed as affecting the operation of the *Audit Act* 1901–1969 in relation to moneys paid by the Company to the Commonwealth.

12. An amount of levy or provisional levy due and payable, an amount payable by way of penalty under the next succeeding section, or an amount payable to the Commonwealth by the Company under an arrangement entered into under section 8 of this Act is a debt due to the Commonwealth by the person liable to pay the amount and is recoverable by the Commonwealth in a court of competent jurisdiction. Levy, &c., a debt to the Commonwealth.

13.—(1.) Subject to this section, where the liability of a person to pay levy or provisional levy is not discharged at or before the time when that levy or that provisional levy becomes due and payable, there is payable by that person to the Commonwealth, by way of penalty, in addition to the amount of that levy or of that provisional levy, an amount calculated at the rate of ten per centum per annum upon that levy, or that provisional levy, as the case may be, from time to time remaining unpaid, to be computed from the time when that levy or that provisional levy, as the case may be, became due and payable. Penalty for non-payment.

(2.) The Minister or, subject to the next succeeding sub-section, a person authorized in writing by the Minister to grant remissions under this sub-section may, in a particular case, for reasons that the Minister or the person, as the case may be, in his discretion thinks sufficient, remit the whole or a part of an amount payable under this section.

(3.) A remission granted under the last preceding sub-section by a person other than the Minister shall not exceed Ten dollars.

14. Where any levy or provisional levy has been overpaid, the amount overpaid shall be refunded. Refund of levy, &c., overpaid.

Power to  
call for returns.

15. An authorized person may, by notice in writing, require a person to furnish to him, within the time specified in the notice, such return or information in relation to matters relevant to the operation of this Act or the Levy Act as is specified in the notice, including a return or information verified by statutory declaration.

Offences in  
relation to  
returns, &c.

16.—(1.) A person shall not fail or neglect duly to furnish a return or information that he is required under this Act or the regulations to furnish.

(2.) A person shall not present to an officer or other person doing duty in relation to this Act or the regulations an account, book or document, or make or furnish to such an officer or person a statement or return, that is false or misleading in a material particular.

Penalty: Two hundred dollars.

Access to  
premises.

17.—(1.) An authorized person may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an authorized person under this section.

(2.) Where an authorized person has reason to believe that—

(a) premises are premises in which dairy produce is produced; or

(b) books, documents or other papers relating to the production or sale of dairy produce are on premises,

the authorized person may make application to a Justice of the Peace for a warrant authorizing the authorized person to enter the premises for the purpose of exercising the functions of an authorized person under this section.

(3.) If, on an application under the last preceding sub-section, the Justice of the Peace is satisfied, by information on oath—

(a) that there is reasonable ground for believing that—

(i) the premises to which the application relates are premises on which dairy produce is produced; or

(ii) there are on those premises any books, documents or papers relating to the production or sale of dairy produce; and

(b) that the issue of the warrant is reasonably required for the purposes of this Act,

the Justice of the Peace may grant a warrant, in accordance with the prescribed form, authorizing the authorized person, with such assistance as he thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an authorized person under this section.

(4.) A warrant granted under the last preceding sub-section shall specify a date after which the warrant ceases to have effect.

(5.) Where an authorized person has entered any premises in pursuance of sub-section (1.) of this section or in pursuance of a warrant granted under sub-section (3.) of this section, he may exercise the functions of an authorized person under this section.

(6.) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting in pursuance of a warrant granted under sub-section (3.) of this section or in pursuance of the last preceding sub-section.

Penalty: Two hundred dollars.

(7.) The functions of an authorized person under this section are—

- (a) to search for, examine and take stock of any dairy produce; and
- (b) to search for, inspect, take extracts from and make copies of any books, documents or papers relating to the production or sale of dairy produce.

(8.) In this section, “ occupier ”, in relation to premises, includes the person in charge of the premises.

18.—(1.) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular—

Regulations.

- (a) providing for the manner of payment of levy and other moneys payable to the Commonwealth under this Act;
- (b) requiring proprietors of factories to keep records relating to the production of dairy produce in their factories (including records relating to cheese during a maturation period) and to the sale of such dairy produce by the proprietors and to produce the records so kept, upon demand, to such persons as are authorized by or under the regulations for the purpose;
- (c) requiring the proprietors of factories to furnish returns or information relating to the production of dairy produce in their factories (including returns or information relating to cheese during a maturation period) and to the sale of such dairy produce by the proprietors; and
- (d) prescribing penalties not exceeding a fine of Two hundred dollars for offences against the regulations.

(2.) Before making regulations for the purposes of sub-section (3.) of section 4 of this Act, the Governor-General shall take into consideration any recommendation with respect to the proposed regulations made to the Minister by the Council.