



# **Dairy Industry Adjustment Act 2000**

**No. 22, 2000**



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**An Act to amend the *Dairy Produce Act 1986*, and  
for other purposes**

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## **An Act to amend the *Dairy Produce Act 1986*, and for other purposes**

[Assented to 3 April 2000]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Dairy Industry Adjustment Act 2000*.

### **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Dairy Produce Act 1986**

### **Part 1—Amendments**

#### **1 Title**

Omit “related purposes”, substitute “other purposes”.

#### **2 Subsection 3(1) (definition of *authorised person*)**

Before “means”, insert “(except in Schedule 2)”.

#### **3 Subsection 3(1)**

Insert:

*Dairy Structural Adjustment Fund* means the Dairy Structural Adjustment Fund established by clause 77 of Schedule 2.

#### **4 Subsection 3(1) (definition of *money of the Corporation*)**

Omit “or to the credit of a relevant fund”, substitute “, to the credit of a relevant fund or to the credit of the Dairy Structural Adjustment Fund”.

#### **5 Subsections 3(1A) and (1B)**

Omit “the Schedule”, substitute “Schedule 1”.

#### **6 At the end of paragraph 74(1)(a)**

Add “(other than Schedule 2)”.

#### **7 At the end of section 111**

Add:

(2) In this section:

*this Act* does not include Schedule 2.

#### **8 Subsection 112(2)**

Repeal the subsection, substitute:

(2) In this section:

*payment* means a market support payment.

*this Act* does not include Schedule 2.

**9 Before subsection 113(1)**

Insert:

(1A) This section does not apply to:

- (a) Schedule 2; or
- (b) regulations made for the purposes of Schedule 2.

**10 At the end of section 114**

Add:

(8) In this section:

*this Act* does not include Schedule 2.

**11 At the end of section 115**

Add:

(2) In this section:

*this Act* does not include Schedule 2.

**12 At the end of paragraph 116(3)(b)**

Add “(other than Schedule 2)”.

**13 After subsection 119(2)**

Insert:

(2A) Paragraph (2)(a) does not apply to protected information within the meaning of clause 42 of Schedule 2.

(2B) Subsection (2) does not apply to the recording or disclosure of information, or the production of a document, for a purpose in connection with the administration of:

- (a) the DSAP scheme (within the meaning of Schedule 2); or
- (b) Schedule 2, or
- (c) the DEP scheme (within the meaning of the *Farm Household Support Act 1992*); or



- (d) a provision of the *Farm Household Support Act 1992* in so far as that provision relates to the DEP scheme (within the meaning of that Act).

**14 At the end of section 120**

Add:

- (2) In this section:

*this Act* does not include Schedule 2.

**15 After section 125**

Insert:

**125A Dairy industry adjustment program**

Schedule 2 has effect.

**16 Schedule (heading)**

Repeal the heading, substitute:

**Schedule 1—Definitions related to sections  
50A and 50B**

**17 At the end of the Act**

Add:

**Schedule 2—Dairy industry adjustment  
program**

Note: See section 125A.

**Part 1—Introduction**

**1 Simplified outline**

The following is a simplified outline of this Schedule and Part 9C of the *Farm Household Support Act 1992*:

- This Schedule and Part 9C of the *Farm Household Support Act 1992* provide a framework for the implementation of the Dairy Industry Adjustment Program.
- The main object of the Dairy Industry Adjustment Program is to help the dairy industry adjust to deregulation by providing for 2 types of grants, as follows:
  - (a) DSAP payments (made under this Schedule);
  - (b) dairy exit payments (made under Part 9C of the *Farm Household Support Act 1992*).
- Generally, DSAP payments are calculated by reference to 1998-1999 milk deliveries at a rate of 46.23 cents per litre for market milk and a national average rate of 8.96 cents per litre for manufacturing milk.
- Dairy exit payments are available for farmers who choose to leave agriculture.
- The Dairy Adjustment Authority will administer DSAP payment rights.
- The Dairy Industry Adjustment Program will be funded by a dairy adjustment levy on milk products.
- The levy will be paid into a Dairy Structural Adjustment Fund, and DSAP payments and dairy exit payments will be paid out of that Fund.

## **2 Definitions**

In this Schedule, unless the contrary intention appears:

***annual*** means per financial year.

***business day*** means a day that is not a Saturday, a Sunday, or a public holiday in the Australian Capital Territory.

***claim*** means a claim for a payment right.

**DAA** means the Dairy Adjustment Authority established by this Schedule.

**DAA Chair** means the Chair of the DAA.

Note: Section 18B of the *Acts Interpretation Act 1901* deals with how chairs may be referred to.

**DAA member** means a member of the DAA.

**dairy cattle** means cattle held for use for the production of milk, or for purposes incidental to the production of milk, and includes:

- (a) dairy cows; and
- (b) dairy heifers; and
- (c) calves that are the progeny of dairy cows; and
- (d) bulls used, or held for use, for the purpose of fertilising dairy cows or dairy heifers.

**dairy exit payment** has the same meaning as in the *Farm Household Support Act 1992*.

**dairy farm enterprise** has the meaning given by clause 6.

**deliver** means:

- (a) in relation to market milk—supply as mentioned in whichever of the following is applicable:
  - (i) paragraph 5(1)(a) of the repealed *Dairy Produce Levy (No. 1) Act 1986*;
  - (ii) paragraph 6(1)(a) of Schedule 6 to the *Primary Industries (Excise) Levies Act 1999*; and
- (b) in relation to manufacturing milk covered by paragraph (a) of the definition of **manufacturing milk** in section 103—deliver as mentioned in that paragraph; and
- (c) in relation to manufacturing milk covered by paragraph (b) of the definition of **manufacturing milk** in section 103—use as mentioned in that paragraph.

**DEP scheme** has the same meaning as in the *Farm Household Support Act 1992*.

**DSAP claim period** has the meaning given by clause 4.

**DSAP payment** means a payment under the DSAP payment scheme.

***DSAP payment start day*** has the meaning given by clause 3.

***DSAP scheme*** means the scheme referred to in clause 10.

***eligible interest in a dairy farm enterprise*** has the meaning given by clause 7.

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

***entity*** has the meaning given by clause 5.

***manufacturing milk*** means manufacturing milk (within the meaning of section 103) in respect of which a domestic market support payment has been paid under section 108A.

***market milk*** means milk on which levy was imposed by whichever of the following is applicable:

- (a) paragraph 5(1)(a) of the repealed *Dairy Produce Levy (No. 1) Act 1986*;
- (b) paragraph 6(1)(a) of Schedule 6 to the *Primary Industries (Excise) Levies Act 1999*.

***non-premium component***, in relation to the overall enterprise amount of a dairy farm enterprise, means so much of the overall enterprise amount as does not consist of the premium component of the overall enterprise amount.

***ordinary DAA member*** means a DAA member other than the Secretary.

***overall enterprise amount***, in relation to a dairy farm enterprise, means the sum of:

- (a) the amount calculated at the rate of 46.23 cents per litre of market milk delivered by the enterprise in the 1998-1999 financial year; and
- (b) the amount calculated at the rate of 76.03 cents per kilogram of the milk fat content of manufacturing milk delivered by the enterprise in the 1998-1999 financial year; and
- (c) the amount calculated at the rate of 178.77 cents per kilogram of the protein content of manufacturing milk delivered by the enterprise in the 1998-1999 financial year.

Note 1: It is expected that the result of applying the rates mentioned in paragraphs (b) and (c) will be a national average rate of 8.96 cents per litre of manufacturing milk.

Note 2: See also clause 30 (which deals with the transfer of the whole or part of market milk delivery rights).

Note 3: See also clause 31 (which deals with abnormal market milk pool distributions).

**payment right** means a payment right under the DSAP scheme.

**premium component**, in relation to the overall enterprise amount of a dairy farm enterprise, means so much of the overall enterprise amount as is attributable to 37.27 cents per litre of market milk delivered by the enterprise in the 1998-1999 financial year.

Note 1: See also clause 30 (which deals with the transfer of the whole or part of market milk delivery rights).

Note 2: See also clause 31 (which deals with abnormal market milk pool distributions).

**quarter** means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October of any year.

**Secretary** means the Secretary of the Department.

**trustee** includes an executor and an administrator.

**unit** means a unit in a payment right.

### **3 DSAP payment start day**

- (1) For the purposes of this Schedule, the **DSAP payment start day** means a day to be fixed by Proclamation for the purposes of this subclause.
- (2) The DSAP payment start day must not be earlier than 1 July 2000.
- (3) If the DSAP payment start day is not fixed by a Proclamation published in the *Gazette* within the period of 6 months beginning on the day on which the *Dairy Industry Adjustment Act 2000* receives the Royal Assent, Part 2 of this Schedule is repealed on the first day after the end of that period.
- (4) To avoid doubt, if:
  - (a) Part 2 of this Schedule is repealed as a result of the operation of subclause (3); and

(b) an entity was granted a payment right before the repeal;  
that payment right is taken never to have come into existence.

#### 4 DSAP claim period

- (1) The Minister may, by notice published in the *Gazette*, declare that a 3-month period specified in the notice is the **DSAP claim period** for the purposes of this Schedule.
- (2) The declaration has effect accordingly.

#### 5 Entity

- (1) For the purposes of this Schedule, each of the following is an **entity**:
  - (a) an individual;
  - (b) a body corporate;
  - (c) a body politic;
  - (d) a trustee of a particular trust estate.
- (2) A person can have a number of different capacities in which the person does things. In each of those capacities, the person is taken to be a different **entity**.

Note: For example, take the case of a person who, in addition to his or her personal capacity, is a trustee of 2 trusts. In his or her personal capacity, he or she is one entity. As a trustee of each trust, he or she is a different entity.

#### 6 Dairy farm enterprise

- (1) For the purposes of this Schedule, a **dairy farm enterprise** is a business in Australia that delivers market milk and/or manufacturing milk.

##### *Eligible dairy sharefarming arrangements*

- (2) For the purposes of this clause, if:
  - (a) under the DSAP scheme, an arrangement is taken to be an eligible dairy sharefarming arrangement; and
  - (b) apart from this subclause, that arrangement involves 2 or more businesses;those businesses are to be treated as a single business.

*Eligible dairy leasing arrangements*

- (3) For the purposes of this clause, if:
- (a) under the DSAP scheme, an arrangement is taken to be an eligible dairy leasing arrangement; and
  - (b) apart from this subclause, that arrangement involves 2 or more businesses;
- those businesses are to be treated as a single business.

*Continuity of a business or dairy farm enterprise*

- (4) For the purposes of this Schedule, the continuity of a business or a dairy farm enterprise is not affected by:
- (a) any change in the identity of the entity or entities who carry on the business or enterprise; or
  - (b) any change in the ownership of the business or enterprise.

**7 Eligible interest in a dairy farm enterprise**

- (1) For the purposes of this Schedule, an entity has an *eligible interest* in a dairy farm enterprise if:
- (a) both:
    - (i) under the DSAP scheme, the enterprise is not taken to be subject to an eligible dairy sharefarming arrangement or an eligible leasing arrangement; and
    - (ii) the entity carries on the enterprise (whether alone or together with one or more other entities); or
  - (b) both:
    - (i) under the DSAP scheme, the enterprise is taken to be subject to an eligible dairy sharefarming arrangement; and
    - (ii) under the DSAP scheme, the entity is taken to be a party to that arrangement; or
  - (c) both:
    - (i) under the DSAP scheme, the enterprise is taken to be subject to an eligible dairy leasing arrangement; and
    - (ii) under the DSAP scheme, the entity is taken to be a party to that arrangement.
- (2) For the purposes of this Schedule, if:

- (a) an individual had an eligible interest in a dairy farm enterprise at 6.30 pm on 28 September 1999; and
- (b) the individual dies after that time, but before making a claim for a payment right;

this Schedule has effect as if the trustee of the deceased individual's estate had held that interest at that time.

## **8 Application to things happening before commencement**

The use of the present tense in a provision of this Part does not imply that the provision does not apply to things happening before the commencement of this Schedule.

## **Part 2—DSAP payments**

### **Division 1—DSAP scheme**

#### **9 Simplified outline**

The following is a simplified outline of this Division:

- This Division provides a framework for the making of DSAP payments.
- The Minister is required to formulate a scheme (the *DSAP scheme*) for the grant of payment rights to entities who held an eligible interest in a dairy farm enterprise on 28 September 1999.
- The DSAP scheme will provide for 3 types of payment rights, as follows:
  - (a) standard payment rights;
  - (b) exceptional events supplementary payment rights.
  - (c) anomalous circumstances payment rights.
- Standard payment rights will be based on milk deliveries in 1998-1999, and will be worked out by reference to a rate of



46.23 cents per litre for market milk and a national average rate of 8.96 cents per litre for manufacturing milk.

- Exceptional events supplementary payment rights may be granted in cases where, because of exceptional events, the volume of milk deliveries in 1998-1999 is less than 70% of the average milk deliveries in the 3 previous financial years.
- Anomalous circumstances payment rights may be granted to entities who have been affected by anomalous circumstances.
- Entities who wish to obtain a payment right under the DSAP scheme must undertake a farm business assessment.
- The total value of the payment rights granted to an entity must not exceed \$350,000 unless more than 70% of the entity's total gross income consists of dairy income.
- Payment rights will be divided into units, where each unit has a face value of \$32.
- A registered owner of a unit will be entitled to a quarterly payment of \$1 for each of the 32 quarters in the 8-year period beginning on 1 July 2000.

## 10 DSAP scheme

Within 14 days after the commencement of this Schedule, the Minister must, by writing, formulate a scheme (the *DSAP scheme*) for:

- (a) the grant of payment rights to entities who:
  - (i) held an eligible interest in a dairy farm enterprise at 6.30 pm on 28 September 1999; and
  - (ii) satisfy such other conditions as are set out in the scheme; and
- (b) the division of payment rights into units; and
- (c) the registration of units; and
- (d) the making of payments by the Corporation to registered owners of units.

## 11 General policy objectives for the DSAP scheme

The DSAP scheme must be directed towards ensuring the achievement of the policy objectives set out in clauses 12 to 23.

## 12 Types of payment rights

- (1) This clause sets out a policy objective for the DSAP scheme.
- (2) The objective is that there are to be 3 types of payment rights, as follows:
  - (a) the first type of payment rights are to be known as *standard payment rights*;
  - (b) the second type of payment rights are to be known as *exceptional events supplementary payment rights*;
  - (c) the third type of payment rights are to be known as *anomalous circumstances payment rights*.

## 13 Standard payment right

- (1) This clause sets out policy objectives for the DSAP scheme.

### *Basic eligibility criteria*

- (2) The first objective is that an entity is not eligible to be granted a standard payment right unless:
  - (a) the entity held an eligible interest in a dairy farm enterprise at 6.30 pm on 28 September 1999; and
  - (b) either or both of the following conditions are satisfied:
    - (i) during the 1998-1999 financial year, the dairy farm enterprise delivered market milk;
    - (ii) during the 1998-1999 financial year, the dairy farm enterprise delivered manufacturing milk.

### *Calculation of face value*

- (3) The second objective is that the calculation of the face value of an entity's standard payment right must be consistent with the following examples:
  - (a) if the entity is the only entity who had an eligible interest in the dairy farm enterprise at 6.30 pm on 28 September 1999—

the face value of the entity's standard payment right equals the overall enterprise amount;

(b) if:

- (i) there are 2 or more entities who had an eligible interest in the dairy farm enterprise at 6.30 pm on 28 September 1999; and
- (ii) under the scheme, the enterprise is not taken to be subject to an eligible dairy sharefarming arrangement or an eligible dairy leasing arrangement;

the face value of the first-mentioned entity's standard payment right is that entity's share of the overall enterprise amount, worked out on a basis that corresponds to the basis on which milk revenues were shared between the entities as at 6.30 pm on 28 September 1999;

(c) if:

- (i) there are 2 entities who had an eligible interest in the dairy farm enterprise at 6.30 pm on 28 September 1999; and
- (ii) under the scheme, the enterprise is taken to be subject to an eligible dairy sharefarming arrangement and those entities are taken to be parties to that arrangement; and
- (iii) the first-mentioned entity is an entity who, under the scheme, is taken to have provided the essential capital contribution required to achieve access to the market milk premium;

the face value of the first-mentioned entity's standard payment right is the sum of:

- (iv) the premium component of the overall enterprise amount; and
- (v) that entity's share of the non-premium component of the overall enterprise amount, worked out on a basis that corresponds to the basis on which milk revenues were shared between the entities as at 6.30 pm on 28 September 1999;

(d) if:

- (i) there are 2 entities who had an eligible interest in the dairy farm enterprise at 6.30 pm on 28 September 1999; and

- (ii) under the scheme, the enterprise is taken to be subject to an eligible dairy sharefarming arrangement and those entities are taken to be parties to that arrangement; and
- (iii) the first-mentioned entity is not an entity who, under the scheme, is taken to have provided the essential capital contribution required to achieve access to the market milk premium;

the face value of the first-mentioned entity's standard payment right is that entity's share of the non-premium component of the overall enterprise amount, worked out on a basis that corresponds to the basis on which milk revenues were shared between the entities as at 6.30 pm on 28 September 1999;

(e) if:

- (i) there are 2 entities who had an eligible interest in the dairy farm enterprise at 6.30 pm on 28 September 1999; and
- (ii) under the scheme, the enterprise is taken to be subject to an eligible dairy leasing arrangement and those entities are taken to be parties to that arrangement; and
- (iii) the first-mentioned entity is an entity who, under the scheme, is taken to have provided the essential capital contribution required to achieve access to the market milk premium;

the face value of the first-mentioned entity's standard payment right is the premium component of the overall enterprise amount;

(f) if:

- (i) there are 2 entities who had an eligible interest in the dairy farm enterprise at 6.30 pm on 28 September 1999; and
- (ii) under the scheme, the enterprise is taken to be subject to an eligible dairy leasing arrangement and those entities are taken to be parties to that arrangement; and
- (iii) the first-mentioned entity is not an entity who, under the scheme, is taken to have provided the essential capital contribution required to achieve access to the market milk premium;

the face value of the first-mentioned entity's standard payment right is the non-premium component of the overall enterprise amount.

- (4) Paragraphs (3)(c), (d), (e) and (f) deal with common types of arrangements that involve 2 parties. Those paragraphs do not, by implication, limit the capacity of the DSAP scheme to deal with less common types of arrangements that involve 3 or more parties—see clause 34.

*Essential capital contribution*

- (5) In formulating a provision of the DSAP scheme under which an entity is taken to have provided the essential capital contribution required to achieve access to the market milk premium, the Minister must not have regard to any matters other than the following:
- (a) whether the entity is the owner of a quota relating to the delivery of market milk;
  - (b) whether the entity is the owner of the land on which the eligible dairy farm enterprise is carried on;
  - (c) whether the entity is the owner of a significant proportion of the livestock used in, or for purposes incidental to, the carrying on of the eligible dairy farm enterprise.
- (6) For the purposes of paragraph (5)(c), the proportion of livestock owned by a partner in a partnership is taken to be the same as the proportion of the livestock owned by the partnership.
- (7) For the purposes of paragraph (5)(c), a proportion of less than 25% is taken not to be a significant proportion.

**14 Exceptional events supplementary payment right**

- (1) This clause sets out policy objectives for the DSAP scheme.

*Basic eligibility criteria*

- (2) The first objective is that an exceptional events supplementary payment right must not be granted to an entity in respect of a particular dairy farm enterprise unless:
- (a) the entity has already been granted a standard payment right in respect of the enterprise; and

- (b) the entity satisfies the DAA that, as a result of one or more events that, under the scheme, are taken to be recognised exceptional events, the volume of market milk and manufacturing milk delivered by the enterprise during the 1998-1999 financial year is less than 70% of the average annual volume of market milk and manufacturing milk delivered by the enterprise in the following 3 financial years:
  - (i) the 1997-1998 financial year;
  - (ii) the 1996-1997 financial year;
  - (iii) the 1995-1996 financial year.

*Total face value of payment rights*

- (3) The second objective is that the sum of:
  - (a) the face value of a standard payment right granted to an entity in respect of a particular dairy farm enterprise; and
  - (b) the total face value of the exceptional events supplementary payment rights granted to the entity in respect of the enterprise;must not exceed the amount that would have been the total face value of the standard payment right if:
  - (c) the volume of market milk delivered by the dairy farm enterprise during the 1998-1999 financial year had equalled the average annual volume of market milk delivered by the enterprise in the following 3 financial years:
    - (i) the 1997-1998 financial year;
    - (ii) the 1996-1997 financial year;
    - (iii) the 1995-1996 financial year; and
  - (d) the volume of manufacturing milk delivered by the dairy farm enterprise during the 1998-1999 financial year had equalled the average annual volume of manufacturing milk delivered by the enterprise in the following 3 financial years:
    - (i) the 1997-1998 financial year;
    - (ii) the 1996-1997 financial year;
    - (iii) the 1995-1996 financial year.

*Discretionary grant*

- (4) The third objective is that the grant of an exceptional events payment right is to be at the discretion of the DAA.

## **15 Anomalous circumstances payment right**

- (1) This clause sets out policy objectives for the DSAP scheme.

### *Basic eligibility criteria*

- (2) The first objective is that an entity is not eligible for the grant of an anomalous circumstances payment right unless:
- (a) the entity did not pass the standard DSAP test; and
  - (b) the entity held an eligible interest in a dairy farm enterprise during the whole or a part of the 1998-1999 financial year; and
  - (c) under the scheme, the entity is taken to have been affected by anomalous circumstances.

### *Standard DSAP test*

- (3) For the purposes of this clause, an entity *passes the standard DSAP test* if, and only if:
- (a) the entity held an eligible interest in a dairy farm enterprise at 6.30 pm on 28 September 1999; and
  - (b) either or both of the following conditions are satisfied:
    - (i) during the 1998-1999 financial year, the dairy farm enterprise delivered market milk;
    - (ii) during the 1998-1999 financial year, the dairy farm enterprise delivered manufacturing milk.

### *Discretionary grant*

- (4) The second objective is that the grant of an anomalous circumstances payment right is to be at the discretion of the DAA.

## **16 \$350,000 cap**

- (1) This clause sets out a policy objective for the DSAP scheme.
- (2) The objective is that the total face value of payment rights granted to an entity in respect of a particular dairy farm enterprise must not exceed \$350,000 unless a person who, under the scheme, is taken to be a qualified financial adviser certifies in writing that, to the best of the adviser's knowledge and belief:

- (a) the entity has given the adviser full access to the entity's accounts and financial records; and
- (b) the entity passes the 70% dairy income test.

*70% dairy income test*

- (3) For the purposes of this clause, an entity ***passes the 70% dairy income test*** if, and only if:
  - (a) more than 70% of the total gross income derived by the entity in the 1998-1999 financial year consisted of eligible dairy income; or
  - (b) more than 70% of the total gross income derived by the entity in the period comprising:
    - (i) the 1998-1999 financial year; and
    - (ii) the 1997-1998 financial year; and
    - (iii) the 1996-1997 financial year;consisted of eligible dairy income.

*Gross income*

- (4) For the purposes of subclause (3), the gross income derived by an entity is to be worked out in accordance with:
  - (a) generally accepted accounting principles; or
  - (b) if, under the scheme, the generally accepted accounting principles are taken to be modified for the purposes of the scheme—those principles as so modified.

*Eligible dairy income*

- (5) For the purposes of this clause, ***eligible dairy income*** means:
  - (a) proceeds from the sale of market milk; and
  - (b) proceeds from the sale of manufacturing milk; and
  - (c) proceeds from the sale or lease of dairy cattle; and
  - (d) dividends payable in respect of shares in bodies that, under the scheme, are taken to be eligible dairy cooperatives; and
  - (e) dividends payable in respect of shares in companies that, under the scheme, are taken to be eligible dairy companies;
  - (f) an amount that, under the scheme, is taken to be the income test value of a bonus share issued by a company that, under the scheme, is an eligible dairy cooperative;



- (g) an amount that, under the scheme, is taken to be the income test value of a bonus share issued by a company that, under the scheme, is an eligible dairy company.

*Shares issued in lieu of payment for the sale of milk*

- (6) For the purposes of this clause, if a share in a body or company that, under the scheme, is taken to be:
  - (a) an eligible dairy cooperative; or
  - (b) an eligible dairy company;is issued to a shareholder in the cooperative or company in lieu of a particular payment for the sale of market milk or manufacturing milk:
  - (c) the shareholder is taken to have derived an amount, by way of proceeds from the sale of that milk, equal to the amount of that payment; and
  - (d) those proceeds are taken to be gross income according to generally accepted accounting principles.

*Bonus shares*

- (7) For the purposes of this clause, if a bonus share in a body or company that, under the scheme, is taken to be:
  - (a) an eligible dairy cooperative; or
  - (b) an eligible dairy company;is issued to a shareholder in the cooperative or company:
  - (c) the shareholder is taken to have derived an amount of income equal to the amount that, under the scheme, is the income test value of the bonus share; and
  - (d) that amount of income is taken to be gross income according to generally accepted accounting principles.

*False or misleading statements in certificates*

- (8) For the purposes of clause 50, a statement made in a certificate of a kind referred to in subclause (2) of this clause is taken to be made to a person who was exercising powers, or performing functions, under or in connection with the DSAP scheme.

Note: Clause 50 deals with false or misleading statements.

- (9) For the purposes of clause 134, a statement made in a certificate of a kind referred to in subclause (2) of this clause is taken to be a statement made in connection with a claim for a payment right.

Note: Clause 134 deals with false or misleading statements.

## **17 Farm business assessment**

- (1) This clause sets out policy objectives for the DSAP scheme.
- (2) The first objective is that an entity is not eligible for the grant of a payment right unless:
- (a) the entity has complied with such rules as are set out in the scheme in relation to the carrying out of a farm business assessment by a person who, under the scheme, is taken to be a qualified financial adviser; or
  - (b) a person who, under the scheme, is taken to be a qualified financial adviser has certified in writing that the entity has complied with such rules as are set out in the scheme in relation to the carrying out by the entity of a farm business assessment; or
  - (c) under the scheme, the entity is exempt from carrying out a farm business assessment.

Note: For example, the DSAP scheme may provide that an entity who has exited the dairy industry is exempt from carrying out a farm business assessment.

### *Compliance after making claim*

- (3) The second objective is that an entity is not to be prevented from making a claim for the grant of a payment right at a time when the entity has not complied with requirements mentioned in subclause (2), so long as those requirements are complied with before the time ascertained in accordance with the scheme.

### *False or misleading statements in certificates*

- (4) For the purposes of clause 50, a statement made in a certificate of a kind referred to in paragraph (2)(b) of this clause is taken to be made to a person who was exercising powers, or performing functions, under or in connection with the DSAP scheme.

Note: Clause 50 deals with false or misleading statements.

- (5) For the purposes of clause 134, a statement made in a certificate of a kind referred to in paragraph (2)(b) of this clause is taken to be a statement made in connection with a claim for a payment right.

Note: Clause 134 deals with false or misleading statements.

## **18 Units in payment rights**

- (1) This clause sets out policy objectives for the DSAP scheme.
- (2) The first objective is that each payment right is to be divided into units, where each unit has a face value of \$32.
- (3) The second objective is that the number of units into which a payment right is divided is to be worked out as follows:
- (a) divide the number of dollars in the face value of the payment right by 32;
  - (b) if the result of the division is a whole number—that number is the number of units in the payment right;
  - (c) if the result of the division is less than 1—there is 1 unit in the payment right;
  - (d) if the result of the division is greater than 1, but is not a whole number:
    - (i) round the result of the division up or down to the nearest whole number (rounding up in the case exactly half-way between 2 whole numbers); and
    - (ii) the rounded number is the number of units in the payment right.

## **19 Cancellation of units**

- (1) This clause sets out a policy objective for the DSAP scheme.
- (2) The objective is that a payment right is to be granted subject to the powers of cancellation conferred on the DAA under the authority of clauses 50, 51, 52 and 53.

Note 1: Clause 50 deals with cancellation of units because of the making of a false statement.

Note 2: Clause 51 deals with cancellation of units because of an error made by the DAA.

Note 3: Clause 52 deals with cancellation of units because of a breach of an undertaking to dispose of the units.

Note 4: Clause 53 deals with cancellation of units when a dairy exit payment becomes payable.

## **20 Duration of scheme**

- (1) This clause sets out policy objectives for the DSAP scheme.
- (2) The first objective is that a payment right relating to a particular dairy farm enterprise must not be granted to an entity unless the entity, or a person acting on behalf of the entity, makes a claim for the payment right:
  - (a) during the DSAP claim period; or
  - (b) if:
    - (i) one or more units in another payment right were cancelled as authorised under clause 50 or 51; and
    - (ii) the other payment right relates to the enterprise; and
    - (iii) the DAA allows the claim for the first-mentioned payment right to be made within a particular period after the end of the DSAP claim period;  
within that particular period.
- (3) The second objective is that DSAP payments are not to be made before the DSAP payment start day.
- (4) The third objective is that DSAP payments are not to be made in respect of a quarter that is later than the quarter ending on 30 June 2008.
- (5) Subclause (2) does not prevent the DSAP scheme from making provision for the amendment of claims.

## **21 Register of units etc.**

- (1) This clause sets out policy objectives for the DSAP scheme.  
  
*Register*
- (2) The first objective is that the DAA is to keep a register in which the DAA includes particulars of units.

*Registration of ownership*

- (3) The second objective is that an entity's ownership of a unit is not to be counted for the purposes of the scheme unless that ownership is entered on the register.
- (4) The third objective is that the transfer of the ownership of a unit is not to be registered unless:
  - (a) the transferee is an eligible entity; or
  - (b) the transferee gives the DAA a written undertaking to assign the unit to an eligible entity within 60 days after the transfer is registered.

Note: For enforcement of the undertaking, see clause 52.

*Registration of charges*

- (5) The fourth objective is that the scheme may provide for the registration of charges over units.

*Inspection of register*

- (6) The fifth objective is that an entry on the register relating to a unit is to be open for inspection in the following circumstances:
  - (a) the owner of the unit consents to the entry being open for inspection;
  - (b) such circumstances as are set out in the scheme.

*Form of register*

- (7) The sixth objective is that the DAA may keep the register in electronic form or otherwise.

*No declaration of trust in respect of unit*

- (8) The seventh objective is that:
  - (a) the owner of a unit must not dispose of a unit by way of declaration of trust; and
  - (b) if a purported disposal contravenes the rule in paragraph (a), it is of no effect.

*Beneficial interest in unit must not be transferred independently of legal interest*

- (9) The eighth objective is that:
- (a) a beneficial interest in a unit must not be transferred independently of the legal interest in the unit; and
  - (b) if a purported transfer contravenes the rule in paragraph (a), it is of no effect.

*Definition*

- (10) In this clause:
- eligible entity* means an entity included in a class of entities declared by the DSAP scheme to be entities who are eligible to become transferees of units.

## **22 Invitations to make claims for payment rights etc.**

- (1) This clause sets out policy objectives for the DSAP scheme.

*Public information program*

- (2) The first objective is that the DAA is to conduct a public information program about the scheme.

*DAA to obtain and record information*

- (3) The second objective is that the DAA is to obtain and record information that:
- (a) is likely to assist entities in making claims for payment rights; or
  - (b) is likely to assist the DAA in determining claims for payment rights.

*Formal invitations to make claims*

- (4) The third objective is that:
- (a) if the DAA has reasonable grounds to believe, on the basis of the information referred to in subclause (4), that it may be in the interests of an entity for the entity to make a claim for a payment right; and

- (b) if the DAA were to give the entity a formal invitation to make such a claim, there would be sufficient time for the claim to be made before the end of the DSAP claim period; the DAA must make all reasonable efforts to give the entity a formal invitation to make such a claim.
- (5) The fourth objective is that an entity who does not receive a formal invitation is not to be prevented from making a claim for a payment right.

### **23 Making of DSAP payments**

- (1) This clause sets out policy objectives for the DSAP scheme.

*Payment rights not to be granted within 30 days after the end of the DSAP claim period*

- (2) The first objective is that a payment right must not be granted before the end of the 30-day period beginning at the end of the DSAP claim period.

*Initial payment day*

- (3) The second objective is that there is to be an **initial payment day** for each payment right, worked out as follows:
  - (a) if, during the 28-day period beginning at the end of the 30-day period mentioned in subclause (2), the DAA does not receive a request to reconsider its decision to grant the payment right:
    - (i) the initial payment day is the first day after the end of that 28-day period; or
    - (ii) if that first day is earlier than the DSAP payment start day, the initial payment day is the DSAP payment start day;
  - (b) if, during the 28-day period beginning at the end of the 30-day period mentioned in subclause (2), the DAA receives a request to reconsider its decision to grant the payment right:
    - (i) the initial payment day is the day ascertained in accordance with the scheme; or
    - (ii) if that day is earlier than the DSAP payment start day, the initial payment day is the DSAP payment start day.

*DSAP payments in respect of early quarters*

- (4) The third objective is that, if an entity is the registered owner of a unit in a payment right on the initial payment day for the payment right, the entity is entitled to be paid by the Corporation, out of the Dairy Structural Adjustment Fund, in relation to that unit, the sum of:
- (a) \$1 in respect of the quarter in which the initial payment day occurred; and
  - (b) if there is an earlier quarter in the period:
    - (i) beginning on 1 July 2000; and
    - (ii) ending on 30 June 2008;\$1 in respect of that earlier quarter.

*DSAP payments in respect of later quarters*

- (5) The fourth objective is that, if:
- (a) an entity is the registered owner of a unit in a payment right on the first day of a quarter in the period:
    - (i) beginning on the DSAP payment start day; and
    - (ii) ending on 30 June 2008; and
  - (b) that quarter is later than the quarter in which the initial payment day for the right occurred;
- the entity is entitled to be paid by the Corporation, out of the Dairy Structural Adjustment Fund, in relation to that unit, \$1 in respect of that quarter.

*When a DSAP payment becomes due to be paid*

- (6) The fifth objective is that, if an entity is entitled to be paid a DSAP payment, the day on which that payment is due to be paid:
- (a) is to be ascertained in accordance with the scheme; and
  - (b) must not be later than the end of the 10th business day after:
    - (i) if subclause (4) applies—the initial payment day concerned; or
    - (ii) if subclause (5) applies—the first day of the quarter concerned.



*DSAP payments are debts*

- (7) The sixth objective is that, if a DSAP payment is due to be paid to an entity, the payment may be recovered, as a debt due to the entity, by action in a court of competent jurisdiction.

*Death of recipient of DSAP payment*

- (8) The seventh objective is that, if an individual is entitled to receive a DSAP payment and the payment has not been made at the date of the death of the individual, the amount of that payment is payable to the legal personal representative of the individual.

**24 Scheme may confer administrative powers on the DAA**

The DSAP scheme may make provision with respect to a matter by conferring on the DAA a power to make a decision of an administrative character.

**25 Reconsideration and review of decisions**

- (1) The DSAP scheme must contain provisions under which:
- (a) an entity who is affected by a decision of the DAA under the scheme may, if dissatisfied with the decision, by notice given to the DAA within such period as is ascertained in accordance with the scheme, request the DAA to reconsider the decision; and
  - (b) the DAA is required to reconsider the decision and is empowered to confirm or revoke the decision or to vary the decision in such manner as the DAA thinks fit; and
  - (c) applications may be made to the Administrative Appeals Tribunal for review of decisions of the DAA that have been confirmed or varied as mentioned in paragraph (b).
- (2) The period mentioned in paragraph (1)(a) must be 28 days after the day on which the decision first comes to the attention of the entity concerned.
- (3) The DSAP scheme must provide that the reasons for making a request mentioned in paragraph (1)(a) must be set out in the request.

- (4) If a request is made as mentioned in paragraph (1)(a) in respect of a decision, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of that decision.
- (5) The DSAP scheme must provide that, if the DAA does not confirm, revoke or vary a decision before the end of the period of 60 days after the day on which the DAA received the request to reconsider the decision, the DAA is taken, at the end of that period, to have confirmed the decision.
- (6) The DSAP scheme must provide that, if the DAA confirms, revokes or varies the decision before the end of the period referred to in subclause (5), the DAA must, by notice given to the applicant, inform the applicant of the result of the reconsideration of the decision and the reasons for confirming, revoking or varying the decision, as the case may be.
- (7) If, because of the operation of a provision covered by subclause (5), a decision is taken to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the decision were the period:
  - (a) commencing on the day on which the decision is taken to have been confirmed; and
  - (b) ending on the 28th day after that day.

## **26 Statement to accompany notification of decisions**

- (1) The DSAP scheme must provide that, if:
  - (a) written notice is given to an entity affected by a decision of the DAA under the scheme; and
  - (b) that notice is to the effect that the decision has been made; that notice must include a statement to the effect that:
    - (c) the entity may, if dissatisfied with the decision, seek a reconsideration of the decision by the DAA; and
    - (d) the entity may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the DAA upon that reconsideration confirming or varying the first-mentioned decision, make application to the

Administrative Appeals Tribunal for review of the decision so confirmed or varied.

- (2) The DSAP scheme must provide that, if:
  - (a) the DAA confirms or varies a decision as mentioned in paragraph 25(1)(b); and
  - (b) gives to the entity written notice of the confirmation or variation of the decision;that notice must include a statement to the effect that the entity may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so confirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.
- (3) A failure to include a statement in a notice as mentioned in subclause (1) or (2) does not affect the validity of a decision.

## **27 Fees**

- (1) The DSAP scheme may provide for fees.
- (2) The amount of a fee under the DSAP scheme must not be such as to amount to taxation.

## **28 Statutory declarations**

The DSAP scheme may provide for statements in claims to be verified by statutory declaration.

## **29 Methods by which DSAP payments may be made**

- (1) The DSAP scheme may make provision for the methods by which DSAP payments may be made.
- (2) The DSAP scheme may require that DSAP payments be made using an electronic funds transfer system.
- (3) Subclause (2) does not limit subclause (1).

**30 Adjustment of eligibility for payment rights—transfer of milk delivery rights**

- (1) The DSAP scheme may make provision for and in relation to the adjustment of eligibility for payment rights in relation to the transfer of the whole or part of market milk delivery rights.
- (2) Those provisions may include (but are not limited to):
  - (a) treating the transferor's dairy farm enterprise, for the purposes of this Part and the scheme, as if the enterprise had delivered a particular volume of manufacturing milk during a particular financial year instead of a particular volume of market milk; and
  - (b) treating the transferee's dairy farm enterprise, for the purposes of this Part and the scheme, as if the enterprise had delivered a particular volume of market milk during a particular financial year.
- (3) In this clause:

*this Part* includes:

  - (a) the definition of *overall enterprise amount* in clause 2; and
  - (b) the definition of *premium component* in clause 2.

**31 Adjustment of eligibility for payment rights—abnormal market milk pool distributions**

- (1) The DSAP scheme may make provision for and in relation to the adjustment of eligibility for payment rights in relation to a distribution that, under the scheme, is taken to be an abnormal market milk pool distribution.
- (2) Those provisions may include (but are not limited to):
  - (a) treating a particular dairy farm enterprise, for the purposes of this Part and the scheme, as if the enterprise had delivered a particular volume of market milk during a particular financial year instead of a particular volume of manufacturing milk; and
  - (b) treating a particular dairy farm enterprise, for the purposes of this Part and the scheme, as if the enterprise had delivered a particular volume of manufacturing milk during a particular financial year instead of a particular volume of market milk.

(3) In this clause:

*this Part* includes:

- (a) the definition of *overall enterprise amount* in clause 2; and
- (b) the definition of *premium component* in clause 2.

### **32 Adjustment of eligibility for payment rights—death**

- (1) The DSAP scheme may make provision for and in relation to the adjustment of eligibility for payment rights in relation to the death of an individual who held an eligible interest in a dairy farm enterprise at 6.30 pm on 28 September 1999.
- (2) Those provisions may include (but are not limited to) treating the trustee of the deceased individual's estate, for the purposes of this Part and the scheme, as if the trustee had done particular things.
- (3) In this clause:

*this Part* includes:

- (a) the definition of *overall enterprise amount* in clause 2; and
- (b) the definition of *premium component* in clause 2.

### **33 Ancillary or incidental provisions**

The DSAP scheme may contain such ancillary or incidental provisions as the Minister considers appropriate.

### **34 Scheme-making power not limited**

Clauses 11 to 33 (inclusive) do not, by implication, limit clause 10.

### **35 Variation of scheme**

- (1) The DSAP scheme may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) Subclause (1) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

- (3) To avoid doubt, the DSAP scheme may be varied after the end of the period of 14 days beginning on the commencement of this Schedule.

### **36 Scheme to be a disallowable instrument**

An instrument under clause 10 is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **37 Application to things happening before commencement**

The use of the present tense in a provision of this Division does not imply that the provision does not apply to things happening before the commencement of this Schedule.

## **Division 2—Information-gathering powers**

### **38 DAA may obtain information and documents**

- (1) This clause applies to a person if the DAA has reason to believe that the entity:
- (a) has information or a document that is relevant to the operation of the DSAP scheme; or
  - (b) is capable of giving evidence which the DAA has reason to believe is relevant to the operation of the DSAP scheme.
- (2) The DAA may, by written notice given to the person, require the person:
- (a) to give to the DAA, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the DAA, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the DAA, within the period and in the manner specified in the notice, those copies; or
  - (d) if the person is an individual—to appear before the DAA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
  - (e) if the person is a body corporate—to cause a competent officer of the body to appear before the DAA at a time and

place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

- (3) A period specified under paragraph (2)(a), (b) or (c) must not be shorter than 14 days after the notice is given.
- (4) A time specified under paragraph (2)(d) or (e) must be at least 14 days after the notice is given.
- (5) A person is guilty of an offence if:
  - (a) the person has been given a notice under subclause (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a requirement in the notice.

Penalty: 30 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (6) A notice under subclause (2) must set out the effect of the following provisions:
  - (a) subclause (5);
  - (b) clause 133;
  - (c) clause 134;
  - (d) clause 135;
  - (e) clause 136.

### **39 Copying documents—reasonable compensation**

A person is entitled to be paid reasonable compensation for complying with a requirement covered by paragraph 38(2)(c).

### **40 Self-incrimination**

- (1) An individual is not excused from giving information or evidence or producing a document or a copy of a document under this Division on the ground that the information or evidence or the production of the document or copy might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
  - (a) giving the information or evidence or producing the document or copy; or

- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence or producing the document or copy;  
is not admissible in evidence against the individual in criminal proceedings other than:
  - (c) proceedings for an offence against subclause 38(5) or clause 133; or
  - (d) proceedings for an offence against clause 134, 135 or 136 that relates to this Division.

#### **41 Copies of documents**

- (1) The DAA may inspect a document or copy produced under this Division and may make and retain copies of, or take and retain extracts from, such a document.
- (2) The DAA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 38(2)(c).

#### **42 DAA may retain documents**

- (1) The DAA may take, and retain for as long as is necessary, possession of a document produced under this Division.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the DAA to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the DAA must provide the person otherwise entitled to possession of the document, or a person authorised by that person, reasonable access to the document for the purposes of inspecting and making copies of, or taking extracts from, the document.



## **Division 3—Protection of confidentiality of information**

### **43 Protection of confidentiality of information**

(1) This clause restricts what a person (the *entrusted person*) may do with protected information, or protected documents, that the person has obtained in the course of official employment.

(2) The entrusted person:

- (a) must not make a record of protected information; and
- (b) must not disclose it to anyone else;

if the recording or disclosure is not in accordance with subclause (3).

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3) It is not an offence against subclause (2) if any of the following apply to the recording or disclosure:

- (a) the recording or disclosure is for the purposes of this Part or the DSAP scheme;
- (b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person's official employment;
- (c) the disclosure is not likely to enable the identification of a particular entity;
- (d) both:
  - (i) the disclosure is to an entity who had an eligible interest in a dairy farm enterprise at 6.30 pm on 28 September 1999; and
  - (ii) the information relates to that enterprise;
- (e) the recording or disclosure is in connection with the administration of:
  - (i) the DEP scheme; or
  - (ii) a provision of the *Farm Household Support Act 1992* in so far as that provision relates to the DEP scheme.

Note: A defendant bears an evidential burden in relation to a matter in paragraph (3)(a), (b) or (e)—see subsection 13.3(3) of the *Criminal Code*.

- (4) Despite subsection 13.3(3) of the *Criminal Code*, the defendant does not bear an evidential burden in relation to a matter in paragraph (3)(c) or (d) of this clause.
- (5) Unless it is necessary for the purposes of this Part or the DSAP scheme, the entrusted person is not to be required:
  - (a) to produce any protected document to a court; or
  - (b) to disclose protected information to a court.
- (6) In this clause:

***disclose*** means divulge or communicate.

***official employment*** means:

- (a) service as a DAA member; or
- (b) the performance of services for the DAA; or
- (c) the exercise of powers or performance of functions under a delegation by the DAA.

***protected document*** means any document made or given under, or for the purposes of, this Part or the DSAP scheme.

***protected information*** means information that meets all the following conditions:

- (a) it relates to the affairs of a person other than the entrusted person;
- (b) it was obtained by the entrusted person, or by any other person, in the course of official employment;
- (c) it was disclosed or obtained for the purposes of this Part or the DSAP scheme.

***this Part*** includes any other provision of this Schedule in so far as that other provision relates to this Part.

## **Division 4—Recovery of scheme debts**

### **44 Scheme debt**

For the purposes of this Division, a ***scheme debt*** is so much of an amount paid, or purportedly paid, to an entity by way of a DSAP payment as represents an overpayment.

#### **45 Scheme debts are debts due to the Corporation**

A scheme debt is a debt due to the Corporation.

#### **46 Recovery by legal proceedings**

- (1) A scheme debt may be recovered by the DAA, on behalf of the Corporation, by action in a court of competent jurisdiction.
- (2) An action under subclause (1) may be instituted by the DAA in its official name.

#### **47 Recovery by set-off**

If an entity is liable to pay a scheme debt, the scheme debt may be deducted from one or more DSAP payments that are payable to the entity, and if the scheme debt is so deducted, the DSAP payment is taken to have been paid in full to the entity.

#### **48 Corporation may collect money from a person who owes money to an entity**

*What this clause does*

- (1) This clause allows the Corporation to collect money from a person who owes money to an entity that has a scheme debt.

*The DAA may give direction*

- (2) The DAA may direct a person (the **third party**) who owes, or may later owe, money (the **available money**) to the entity to pay some or all of the available money to the Corporation in accordance with the direction. The DAA must give a copy of the direction to the entity.

*Limit on directions*

- (3) The direction cannot require an amount to be paid to the Corporation at a time before it becomes owing by the third party to the entity.

*Third party to comply*

- (4) The third party must comply with the direction.

Penalty: 20 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (5) The third party is not guilty of an offence against subclause (4) if the third party complies with the direction so far as the third party is able to do so.

Note: A defendant bears an evidential burden in relation to the matter in subclause (5). See subsection 13.3(3) of the *Criminal Code*.

*Court orders*

- (6) If a person is convicted of an offence in relation to a refusal or failure of the third party to comply with subclause (4), the court may (in addition to imposing a penalty on the convicted person) order the convicted person to pay to the Corporation an amount up to the amount involved in the refusal or failure of the third party.

*Indemnity*

- (7) Any payment made by the third party under this clause is taken to have been made with the authority of the entity and of all other persons concerned, and the third party is indemnified for the payment.

*Notice*

- (8) If the whole of the scheme debt of the entity is discharged before any payment is made by the third party, the DAA must immediately give notice to the third party of that fact.
- (9) If a part of the scheme debt of the entity is discharged before any payment is made by the third party, the DAA must:
- (a) immediately give notice to the third party of that fact; and
  - (b) make an appropriate variation to the direction; and
  - (c) give a copy of the varied direction to the entity.

*When third party is taken to owe money*

- (10) The third party is taken to owe money to the entity if:
- (a) money is due or accruing by the third party to the entity; or
  - (b) the third party holds money for or on account of the entity; or

(c) the third party holds money on account of some other person for payment to the entity; or

(d) the third party has authority from some other person to pay money to the entity;

whether or not the payment of the money to the entity is dependent on a pre-condition that has not been fulfilled.

#### **49 Penalty for unpaid scheme debts**

- (1) If an amount of a scheme debt that is payable by an entity remains unpaid after the day by which it must be paid, the entity is liable to a penalty at the rate of 16% per year on the unpaid amount.
- (2) The penalty is calculated from the day on which the amount becomes due to be paid.
- (3) The fact that a judgment is entered or given in a court for the payment of an amount of a scheme debt, or of a composite amount that includes an amount of a scheme debt, does not of itself cause the amount of a scheme debt to stop being unpaid for the purposes of this clause.
- (4) If the judgment debt bears interest, the penalty payable under this clause is reduced (but not beyond nil) by the following amount:

$$\text{Interest on judgment debt} \times \frac{\text{Scheme debt component}}{\text{Judgment debt}}$$

where:

*scheme debt component* means so much of the judgment debt as consists of a scheme debt.

- (5) For the purposes of this clause, the day on which a scheme debt is due to be paid is the day on which the DSAP payment concerned was paid.
- (6) This clause does not apply to a scheme debt that is attributable (in whole or in part) to an error made by the DAA or the Corporation, where the DSAP payment concerned was received in good faith.
- (7) The DSAP scheme must empower the DAA to remit the whole or a part of an amount of penalty payable under this clause.

- (8) A penalty payable under this clause may be recovered by the Commonwealth as a debt to the Commonwealth.
- (9) This clause has no effect to the extent (if any) to which it imposes taxation (within the meaning of section 55 of the Constitution).

## **Division 5—Cancellation of units**

### **50 Cancellation of units because of the making of a false statement**

- (1) If:
  - (a) before a payment right was granted, an entity made a false statement to a person who was exercising powers, or performing functions, under or in connection with this Part or the DSAP scheme; and
  - (b) either:
    - (i) the payment right was granted because of the making of the false statement; or
    - (ii) as a result of the making of the false statement, the face value of the payment right exceeds the proper amount of the face value;the DSAP scheme must authorise the DAA to:
  - (c) if subparagraph (b)(i) applies—cancel all of the units in the payment right; or
  - (d) if subparagraph (b)(ii) applies—cancel the number of units in the payment right worked out by:
    - (i) dividing the number of whole dollars in the amount of the excess by 32; and
    - (ii) if the result of the division is not a whole number—rounding down the result to the nearest whole number (treating zero as a whole number).
- (2) If a unit is cancelled as authorised under this clause, this Schedule and the DSAP scheme have, and are taken always to have had, effect as if the unit was never in existence.

Note: This may result in an overpayment. For recovery of overpayments, see Division 4.

- (3) In this clause:

**false statement** means a statement (whether made orally, in a document or in any other way) that:

- (a) is false or misleading in a material particular; or
- (b) omits any matter or thing without which the statement is misleading in a material particular.

## **51 Cancellation of units because of an error made by the DAA**

- (1) If:
  - (a) the DAA made an error in relation to the grant of a payment right; and
  - (b) clause 50 does not apply; and
  - (c) either:
    - (i) the payment right would not have been granted if the DAA had not made that error; or
    - (ii) the face value of the payment right exceeds the amount that would have been the amount of the face value if the DAA had not made that error;the DSAP scheme must authorise the DAA to:
  - (d) if subparagraph (c)(i) applies—cancel all of the units in the payment right; or
  - (e) if subparagraph (c)(ii) applies—cancel the number of units in the payment right worked out by:
    - (i) dividing the number of whole dollars in the amount of the excess by 32; and
    - (ii) if the result of the division is not a whole number—rounding down the result to the nearest whole number (treating zero as a whole number).
- (2) The DSAP scheme may provide that the DAA is not to cancel a unit as authorised under this clause if the DAA is satisfied that the entity, or each of the entities, who received a DSAP payment in respect of the unit acted in good faith.
- (3) If a unit is cancelled as authorised under this clause, this Schedule and the DSAP scheme have, and are taken always to have had, effect as if the unit was never in existence.

Note: This may result in an overpayment. For recovery of overpayments, see Division 4.

**52 Cancellation of unit because of a breach of an undertaking to assign the unit**

- (1) If:
- (a) an entity (the *first entity*) has given the DAA an undertaking to assign a unit to an eligible entity as mentioned in paragraph 21(4)(b); and
  - (b) the first entity breaches the undertaking; and
  - (c) the DAA gives the first entity a written notice directing the first entity to comply with the undertaking before the end of the period of 60 days beginning when the direction is given; and
  - (d) the first entity contravenes the direction;
- the DSAP scheme must authorise the DAA to cancel the unit.
- (2) The cancellation of a unit as authorised under this clause takes effect at the end of that 60-day period.
- (3) In this clause:
- eligible entity* has the same meaning as in clause 21.

**53 Cancellation of units when a dairy exit payment becomes payable**

- (1) If:
- (a) an entity has been granted a payment right in relation to a dairy farm enterprise; and
  - (b) a decision is made under the DEP scheme that the entity is qualified for a dairy exit payment in relation to the enterprise; and
  - (c) immediately before the decision is made, the entity is the registered owner of one or more unencumbered units in the payment right;
- the DSAP scheme must authorise the DAA to cancel those units.
- (2) The cancellation of a unit as authorised under this clause takes effect from the time when the decision is made under the DEP scheme.
- (3) A reference in this clause to an *unencumbered unit* is a reference to a unit in respect of which no charge is registered.



#### **54 Limit on cancellation or variation**

A payment right or a unit must not be cancelled or varied otherwise than as authorised under this Part.

### **Division 6—Dairy Adjustment Authority**

#### **55 Dairy Adjustment Authority**

The Dairy Adjustment Authority is established.

#### **56 Functions**

The DAA has the following functions:

- (a) such functions as are conferred on the DAA by or under:
  - (i) the DSAP scheme; or
  - (ii) this Schedule; or
  - (iii) any other law of the Commonwealth;
- (b) to do anything incidental to or conducive to the performance of any of the above functions.

#### **57 Powers**

- (1) The DAA has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of the DAA under this clause include (but are not limited to) the power to enter into contracts and agreements on behalf of the Commonwealth.

#### **58 Phasing-down of the DAA**

- (1) The Minister may, by notice published in the *Gazette*, declare that a specified time is the **first DAA phase-down time** for the purposes of this Division.

Note: The effect of the notice is to reduce the number of DAA members from 5 to 2—see clause 59.

- (2) The Minister may, by notice published in the *Gazette*, declare that a specified time is the **second DAA phase-down time** for the purposes of this Division. The specified time must be after the first DAA phase-down time.

Note: The effect of the notice is to reduce the number of DAA members from 2 to 1—see clause 59.

- (3) A declaration under subclause (1) or (2) has effect accordingly.

## **59 Membership of the DAA**

### *Before the first DAA phase-down time*

- (1) Before the first DAA phase-down time, the DAA consists of the following members:
- (a) a Chair;
  - (b) 2 industry members;
  - (c) a government member;
  - (d) one other member.

### *Between the first DAA phase-down time and the second DAA phase-down time*

- (2) During the period:
- (a) beginning at the first DAA phase-down time; and
  - (b) ending at the second DAA phase-down time;
- the DAA consists of the following members:
- (c) a Chair;
  - (d) one other member.
- (3) A person who held office as a DAA member immediately before the first DAA phase-down time is taken to vacate that office at that time. However, this subclause does not prevent the person from being re-appointed with effect from the first DAA phase-down time.

### *After the second DAA phase-down time*

- (4) After the second DAA phase-down time, the DAA consists of a single member.
- (5) If, after the second DAA phase-down time, there is no ordinary member of the DAA who holds office under subclause (4), the Secretary holds that office.
- (6) A person who held office as a DAA member immediately before the second DAA phase-down time is taken to vacate that office at

that time. However, this subclause does not prevent the person from being re-appointed with effect from the second DAA phase-down time.

## **60 Qualifications of DAA members**

- (1) A person is not to be appointed as:
  - (a) the DAA Chair; or
  - (b) the DAA member referred to in paragraph 59(1)(d);unless it appears to the Minister that the person has knowledge of, or experience in, one or more of the following fields:
  - (c) business management;
  - (d) finance;
  - (e) legal practice;
  - (f) actuarial practice.
- (2) A person is not to be appointed as an industry member unless it appears to the Minister that the person has knowledge of, or experience in, the production of dairy produce.
- (3) A person is not to be appointed as the government member unless it appears to the Minister that the person has knowledge of, or experience in, either or both of the following fields:
  - (a) the formulation of government policy;
  - (b) public administration.

## **61 Appointment of DAA members**

- (1) The ordinary DAA members are to be appointed by the Minister by written instrument.
- (2) An ordinary DAA member is to be appointed for the period specified in the instrument of appointment.
- (3) An ordinary DAA member holds office on a part-time basis.
- (4) The performance of the functions of the DAA is not affected only because of there being a vacancy or vacancies in the membership of the DAA.

- (5) The performance of the functions of the DAA is not affected only because of the reconstitution of the DAA at the first DAA phase-down time or the second DAA phase-down time.

## **62 Procedures**

- (1) The regulations may prescribe:
- (a) the manner in which the DAA is to perform its functions; and
  - (b) the procedure to be followed at or in relation to meetings of the DAA, including matters with respect to the following:
    - (i) the convening of meetings of the DAA;
    - (ii) the number of DAA members who are to constitute a quorum;
    - (iii) the selection of a DAA member to preside at meetings of the DAA in the absence of the DAA Chair; and
    - (iv) the manner in which questions arising at a meeting of the DAA are to be decided.
- (2) A resolution is taken to have been passed at a meeting of the DAA if:
- (a) without meeting, a majority of DAA members indicate agreement with the resolution in accordance with the method determined by the DAA under subclause (3); and
  - (b) all DAA members were informed of the proposed resolution, or reasonable efforts had been made to inform all DAA members of the proposed resolution.
- (3) Subclause (2) applies only if the DAA:
- (a) determines that it applies; and
  - (b) determines the method by which DAA members are to indicate agreement with resolutions.
- (4) This clause does not apply after the second DAA phase-down time.

## **63 Disclosure of interests before the second DAA phase-down time**

- (1) An ordinary DAA member who has a material personal interest in a matter being considered by the DAA must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the DAA.

- (2) The disclosure is to be recorded in the minutes of the meeting and unless the Minister or the DAA otherwise determines, the DAA member must not:
  - (a) be present during any deliberation by the DAA about that matter; or
  - (b) take part in any decision of the DAA relating to that matter.
- (3) For the purposes of the making of a determination by the DAA under subclause (2) in relation to a DAA member who has made a disclosure under subclause (1), a DAA member who has an interest in the matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the DAA for the purposes of making the determination; or
  - (b) take part in the making by the DAA of the determination.
- (4) This clause does not apply after the second DAA phase-down time.

#### **64 Disclosure of interests after the second DAA phase-down time**

*DAA to notify business interests to Minister*

- (1) The DAA must give written notice to the Minister of all material personal interests that the DAA has or acquires in any business, or in any body corporate carrying on a business.

*DAA to notify potential conflict of interest to Minister*

- (2) If the DAA has a material personal interest in a matter being considered or about to be considered by the DAA, the DAA must:
  - (a) give written notice to the Minister of that interest; and
  - (b) take no further action on the matter before:
    - (i) the end of 28 days after the date on which the Minister receives the notice; or
    - (ii) the date on which written advice of a decision of the Minister under subclause (4) is given in relation to the matter;whichever first occurs.

*Minister may direct DAA to delegate*

- (3) If:

- (a) the DAA has a material personal interest in a matter being considered or about to be considered by the DAA; and
- (b) the Minister considers that the interest could conflict with the proper performance of the DAA's functions in relation to that matter;

then:

- (c) the Minister must give the DAA a written notice directing the DAA:
  - (i) not to deal with the matter personally; and
  - (ii) to delegate the DAA's functions and powers in relation to that matter to a specified person under clause 73; and
  - (iii) not to delegate the DAA's functions and powers in relation to that matter to any other person; and
- (d) the DAA must comply with the direction.

*Minister may allow DAA to deal with matter personally*

- (4) If:
  - (a) the DAA has a material personal interest in a matter being considered or about to be considered by the DAA; and
  - (b) the Minister does not consider that the interest could conflict with the proper performance of the DAA's functions in relation to that matter;

the Minister may give the DAA a written notice stating that the Minister has no objection to the DAA dealing with the matter personally.

*Minister's direction to be given within 28 days of notification of DAA's interest*

- (5) If:
  - (a) the DAA has a material personal interest in a matter being considered or about to be considered by the DAA; and
  - (b) the Minister considers that the interest could conflict with the proper performance of the DAA's functions in relation to that matter; and

(c) the DAA gives written notice to the Minister of that interest under subclause (2);  
a direction under subclause (3) in relation to that matter has no effect unless it is given before the end of 28 days after the date on which the Minister receives the notice.

*Application*

- (6) This clause does not apply before the second DAA phase-down time.

**65 Remuneration and allowances**

- (1) An ordinary DAA member is to be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) If no determination of that remuneration is in operation, a DAA member is to be paid such remuneration as is prescribed.
- (3) An ordinary DAA member is to be paid such allowances as are prescribed.
- (4) This clause has effect subject to the *Remuneration Tribunal Act 1973*.

**66 Leave of absence**

- (1) The Minister or the DAA Chair may grant leave to an ordinary DAA member to be absent from a meeting or meetings of the DAA.
- (2) This clause does not apply after the second DAA phase-down time.

**67 Resignation**

An ordinary DAA member may resign by writing signed by the member and sent to the Minister.

**68 Termination of appointment**

- (1) The Minister may terminate an ordinary DAA member's appointment if the Minister is of the opinion that the member's performance has been unsatisfactory.

- (2) The Minister may terminate the appointments of all of the ordinary DAA members if the Minister is of the opinion that the DAA's performance has been unsatisfactory.
- (3) The Minister may terminate the appointment of an ordinary DAA member because of misbehaviour or physical or mental incapacity.
- (4) If:
  - (a) an ordinary DAA member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (b) an ordinary DAA member is absent, except on leave of absence, from 3 consecutive meetings of the DAA; or
  - (c) an ordinary DAA member fails, without reasonable excuse, to comply with clause 63 or 64;the Minister may terminate the appointment of the member.
- (5) The Minister may at any time terminate the appointment of the government member of the DAA.
- (6) The Minister may at any time terminate the appointment of an ordinary DAA member who holds office under subclause 59(4).

Note: Subclause 59(4) deals with the ordinary DAA member who holds office after the second DAA phase-down time.

## **69 Other terms and conditions**

An ordinary DAA member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister.

## **70 Corporation must provide assistance to DAA**

- (1) The Corporation must, if requested to do so by the DAA, make available to the DAA reasonable resources and facilities (including secretariat services, clerical assistance and computer resources) for the purposes of enabling the DAA to perform its functions.
- (2) If the services of an employee of the Corporation are made available to the DAA under subclause (1), the employee is not subject to the direction of the Corporation or of the Managing Director in relation to the provision of those services.



- (3) Subclause (1) does not, by implication, prevent the DAA from obtaining resources and facilities otherwise than from the Corporation.

**71 Consultants etc.**

- (1) The DAA may, on behalf of the Commonwealth, engage persons to give advice to, and perform services for, the DAA.
- (2) The terms and conditions of engagement are as determined by the DAA.

**72 Delegation by DAA—before second DAA phase-down time**

- (1) The DAA may, by resolution, delegate to:
- (a) a DAA member; or
  - (b) a senior employee of the Corporation;
- all or any of the DAA's functions and powers.
- (2) A delegation of a function or power under this clause:
- (a) may be revoked by resolution of the DAA (whether or not constituted by the persons constituting the DAA at the time when the function or power was delegated); and
  - (b) continues in force notwithstanding a change in the membership of the DAA.
- (3) Section 34A of the *Acts Interpretation Act 1901* applies in relation to a delegation under this clause as if the DAA were a person.
- (4) A certificate signed by the DAA Chair stating any matter with respect to a delegation of a function or power under this clause is prima facie evidence of that matter.
- (5) A document purporting to be a certificate mentioned in subclause (4) is, unless the contrary is established, taken to be such a certificate and to have been duly given.
- (6) A delegate under this clause is, in the exercise of a function or power delegated under this clause, subject to any directions given by the DAA.
- (7) A reference in this clause to a *senior employee of the Corporation* is a reference to a person who:

- (a) is an employee of the Corporation; and
- (b) holds or performs the duties of a position of General Manager.

(8) This clause does not apply after the second DAA phase-down time.

**73 Delegation by DAA—after second DAA phase-down time**

- (1) The DAA may, by writing, delegate to an SES employee or acting SES employee all or any of the DAA's functions and powers.
- (2) A delegate under this clause is, in the exercise of a function or power delegated under this clause, subject to any directions given by the DAA.
- (3) This clause does not apply before the second DAA phase-down time.

**74 Annual report**

- (1) The DAA must, as soon as practicable after the end of each financial year:
  - (a) prepare a report on its operations during that financial year; and
  - (b) give the report to the Minister.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sittings days of that House after the day on which the Minister receives the report.
- (3) This clause does not apply in relation to a financial year if:
  - (a) the financial year is earlier than the 2000-2001 financial year; or
  - (b) the Secretary was the sole member of the DAA throughout the financial year.

## **Division 7—Miscellaneous**

### **75 DSAP payments taken to be subsidies for the purposes of section 15-10 of the *Income Tax Assessment Act 1997***

To avoid doubt, for the purposes of section 15-10 of the *Income Tax Assessment Act 1997*, a DSAP payment received by an entity is taken to be a subsidy received by the entity in relation to carrying on a business.

Note: Section 15-10 of the *Income Tax Assessment Act 1997* provides that an entity's assessable income includes a subsidy received in relation to carrying on a business.

### **76 Review in 2002-2003**

- (1) During the 2002-2003 financial year, the DAA must conduct a review of, and make recommendations to the Minister about, the adequacy of collections of dairy adjustment levy to fund DSAP payments and dairy exit payments.
- (2) The DAA must prepare a report of a review and recommendations under subclause (1), and give the report to the Minister.
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sittings days of that House after the completion of the preparation of the report.
- (4) In this clause:

*dairy adjustment levy* means levy within the meaning of Part 4.

## **Part 3—Dairy Structural Adjustment Fund**

### **77 Establishment of the Dairy Structural Adjustment Fund**

- (1) A fund to be known as the Dairy Structural Adjustment Fund is established.
- (2) The Dairy Structural Adjustment Fund is vested in, and is to be administered by, the Corporation.

- (3) The *Commonwealth Authorities and Companies Act 1997* applies to the Dairy Structural Adjustment Fund as though the Fund were money of the Corporation.

### **78 Money to be paid into the Dairy Structural Adjustment Fund**

The following money is to be credited to the Dairy Structural Adjustment Fund:

- (a) money paid to the Corporation under clause 83 (which deals with dairy adjustment levy);
- (b) money paid to the Corporation under clause 84 (which deals with fees under the DSAP scheme);
- (c) money paid to the Corporation under clause 85 (which deals with civil penalties relating to the DSAP scheme);
- (d) money paid to the Corporation by way of the recovery of a scheme debt (within the meaning of clause 44);
- (e) money paid to the Corporation under clause 48 (which deals with the collection of money from a person who owes money to an entity that has a scheme debt);
- (f) money paid to the Corporation under subsection 56(3) of the *Farm Household Support Act 1992* (which deals with the recovery of overpaid dairy exit payments);
- (g) money received by the Corporation as interest from the investment of money standing to the credit of the Dairy Structural Adjustment Fund;
- (h) money borrowed by the Corporation under section 75 for the purpose of making payments for which money of the Dairy Structural Adjustment Fund may be expended;
- (i) money paid to the Corporation for the purposes of the Dairy Structural Adjustment Fund.

### **79 Application of the Dairy Structural Adjustment Fund**

Money standing to the credit of the Dairy Structural Adjustment Fund is to be expended:

- (a) in making DSAP payments; and
- (b) in making dairy exit payments; and
- (c) in reimbursing or meeting the expenses of the Commonwealth or the Corporation incurred (whether before or after the commencement of this clause) in relation to the

- development and implementation of the measures known as the Dairy Industry Adjustment Package (including expenses in relation to the Dairy Adjustment Panel); and
- (d) in reimbursing an expense incurred by the Council (whether before or after the commencement of this clause) in relation to consultation connected with the development and implementation of the measures known as the Dairy Industry Adjustment Package, where the Minister consents to the reimbursement; and
  - (e) in meeting the expenses of the Commonwealth incurred in relation to:
    - (i) the collection and recovery of amounts referred to in clause 83 (which deals with dairy adjustment levy); or
    - (ii) the administration of clause 83; and
  - (f) in payment of any remuneration and allowances of ordinary DAA members; and
  - (g) in meeting the expenses of the Corporation incurred in making available to the DAA resources and facilities as mentioned in subclause 70(1); and
  - (h) in meeting the expenses incurred by the Commonwealth in relation to the engagement of persons under clause 71 (which deals with consultants to the DAA); and
  - (i) in meeting any other expenses incurred by the Commonwealth in relation to:
    - (i) the administration of this Schedule or the DSAP scheme; or
    - (ii) the performance of the functions, or the exercise of the powers, of the DAA; and
  - (j) in meeting the expenses incurred by the Commonwealth in relation to:
    - (i) the administration of the DEP scheme; or
    - (ii) the administration of the provisions of the *Farm Household Support Act 1992* in so far as those provisions relate to the DEP scheme; and
  - (k) in paying \$500,000 to the Commonwealth in respect of compliance by the Australian Competition and Consumer Commission with a direction that:
    - (i) is given under section 27A of the *Prices Surveillance Act 1983* before 8 July 2000; and

- (ii) deals with the monitoring of prices, costs and profits in relation to the sale of leviable milk products (within the meaning of Part 4); and
- (l) in meeting the expenses of the Corporation incurred in administering the Dairy Structural Adjustment Fund; and
- (m) in repaying money borrowed by the Corporation for the purpose of making payments for which money of the Dairy Structural Adjustment Fund may be expended; and
- (n) in meeting the expenses of the Corporation incurred in borrowing money for the purpose of making payments for which money of the Dairy Structural Adjustment Fund may be expended; and
- (o) in reimbursing the Commonwealth for amounts that are refunded under clause 124 (which deals with dairy adjustment levy); and
- (p) in reimbursing the Commonwealth for amounts that are refunded under regulations made for the purposes of clause 125 (which deals with dairy adjustment levy); and
- (q) in making payments under the Dairy Regional Assistance Programme; and
- (r) in meeting the expenses of the Commonwealth incurred in relation to the administration of the Dairy Regional Assistance Programme.

Note: For the Dairy Regional Assistance Programme, see clause 86.

## **80 Solvency of the Dairy Structural Adjustment Fund**

The Corporation and the Minister must take all reasonable steps to ensure that there is sufficient money in the Dairy Structural Adjustment Fund to:

- (a) make DSAP payments and dairy exit payments as those payments fall due; and
- (b) meet any other calls on that Fund as those calls fall due.

## **81 Borrowing for the purposes of the Dairy Structural Adjustment Fund**

- (1) To avoid doubt, the Corporation may borrow money under section 75 for the purpose of making payments for which money of the Dairy Structural Adjustment Fund may be expended.

- (2) The rule in subclause (1) applies even if the borrowing takes place before the DSAP payment start day.

**82 Investment of money standing to credit of the Dairy Structural Adjustment Fund**

Money standing to the credit of the Dairy Structural Adjustment Fund may be invested under section 19 of the *Commonwealth Authorities and Companies Act 1997*.

**83 Payment of dairy adjustment levy to the Corporation**

- (1) The Commonwealth must pay to the Corporation an amount equal to each amount received by the Commonwealth by way of:
- (a) dairy adjustment levy; or
  - (b) penalty payable under clause 107.
- (2) The Commonwealth must pay to the Corporation an amount equal to each amount of dairy adjustment levy notionally received by the Commonwealth under clause 131.
- (3) The Consolidated Revenue Fund is appropriated for the purposes of subclauses (1) and (2).
- (4) In this clause:

*dairy adjustment levy* means levy within the meaning of Part 4.

**84 Payment of DSAP scheme fees to the Corporation**

- (1) The Commonwealth must pay to the Corporation an amount equal to each amount received by the Commonwealth by way of a fee under the DSAP scheme.
- (2) The Consolidated Revenue Fund is appropriated for the purposes of subclause (1).

**85 Payment of penalties under the DSAP scheme to the Corporation**

- (1) The Commonwealth must pay to the Corporation an amount equal to each amount received by the Commonwealth by way of a penalty under clause 49.

- (2) The Consolidated Revenue Fund is appropriated for the purposes of subclause (1).

### **86 Dairy Regional Assistance Programme**

- (1) For the purposes of this Part, the *Dairy Regional Assistance Programme* is a part of the Regional Assistance Programme, being the part known as the Dairy Regional Assistance Programme.
- (2) To avoid doubt, the Department of Employment, Workplace Relations and Small Business is responsible for administering the Dairy Regional Assistance Programme. This includes (but is not limited to) responsibility for determining:
- (a) the recipients of payments; and
  - (b) the amounts of payments; and
  - (c) the timing of payments; and
  - (d) the terms and conditions of payments.
- (3) Payments under the Dairy Regional Assistance Programme may only be made during the 3-year period beginning on 1 July 2000.
- (4) The total amount paid out of the Dairy Structural Adjustment Fund:
- (a) in making payments under the Dairy Regional Assistance Programme; and
  - (b) in meeting the expenses of the Commonwealth incurred in relation to the administration of the Dairy Regional Assistance Programme;
- must not exceed \$45 million.
- (5) The total amount paid out of the Dairy Structural Adjustment Fund in a particular financial year:
- (a) in making payments under the Dairy Regional Assistance Programme; and
  - (b) in meeting the expenses of the Commonwealth incurred in relation to the administration of the Dairy Regional Assistance Programme;
- must not exceed \$15 million.
- (6) In this clause:



**Regional Assistance Programme** means the Programme administered by the Commonwealth and known as the Regional Assistance Programme.

## **Part 4—Collection of dairy adjustment levy**

### **Division 1—Introduction**

#### **87 Simplified outline**

The following is a simplified outline of this Part:

- The principal levy base for dairy adjustment levy is the sale of a leviable milk product to a person who purchases for the purposes of resale in Australia, where the resale is a retail sale.
- Dairy adjustment levy is imposed by the separate Dairy Adjustment Levy Acts, and the rate of levy is set out in those Acts.
- Levy may be collected by collection agents and collection sub-agents.

#### **88 Definitions**

In this Part, unless the contrary intention appears:

**authorised person** means an APS employee who has been authorised by the Secretary under clause 127 for the purposes of the provision in which the expression occurs.

**collecting organisation** means an organisation that is a party to an agreement under clause 103.

**collection agent** means a person who, under clause 97, is an agent of the Commonwealth for the purposes of the collection of levy.

**collection sub-agent** means a person who, under clause 98 or 99, is a sub-agent of the Commonwealth for the purposes of the collection of levy.

**dairy product** means:

- (a) milk; or
- (b) any other product made from, or containing, milk or a constituent part of milk.

**designated small levy-payer** has the meaning given by clause 123.

**designated small remitter** has the meaning given by clause 122.

**examinable documents** means any documents relevant to the operation of this Part.

**late payment penalty** means penalty payable under clause 107.

**leviable milk product** means a dairy product that is:

- (a) marketed principally as:
  - (i) a beverage for human consumption; or
  - (ii) an ingredient for use in making a beverage for human consumption; or
- (b) for use principally as:
  - (i) a beverage for human consumption; or
  - (ii) an ingredient for use in making a beverage for human consumption;

but does not include a product declared by the regulations to be exempt from levy.

**levy** means levy that is payable under Division 2 and imposed as dairy adjustment levy by any of the following:

- (a) the *Dairy Adjustment Levy (Excise) Act 2000*;
- (b) the *Dairy Adjustment Levy (Customs) Act 2000*;
- (c) the *Dairy Adjustment Levy (General) Act 2000*.

**organisation** includes an unincorporated body of persons.

**premises** includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises of the kind referred to in paragraph (a) or (b)).

**process**, in relation to a leviable milk product, means:

- (a) the production of the product; or

- (b) the importation into Australia of the product; or
- (c) the performance of any other operation in relation to the product;

but does not include:

- (d) the chilling of the product; or
- (e) the performance of any operation specified in the regulations.

***relevant application to own use***, in relation to a leviable milk product, means:

- (a) giving the product away; or
- (b) transferring property in the product under a contract that is not a contract of sale; or
- (c) using the product as an ingredient in making a beverage or other product, where:
  - (i) the beverage or other product is for supply directly to a consumer; or
  - (ii) the beverage or other product is to be given away; or
  - (iii) property in the beverage or other product is to be transferred under a contract that is not a contract of sale.

***State*** includes the Australian Capital Territory and the Northern Territory.

## **Division 2—Liability for levy**

### **89 When levy is payable**

- (1) Levy is payable on each of the following:
  - (a) the sale of a leviable milk product to a person who purchases for the purposes of resale in Australia, where the resale is a retail sale;
  - (b) the retail sale of a leviable milk product;
  - (c) the sale of a leviable milk product to a person who purchases for the purpose of relevantly applying the product to the person's own use in Australia;
  - (d) the relevant application to a person's own use of a leviable milk product.

- (2) Paragraph (1)(d) does not apply to the relevant application to a person's own use of a leviable milk product if the product is consumed at the site on which it was produced.
- (3) Levy is not payable under this Division unless it is imposed as dairy adjustment levy by another Act.

### **90 Commencement of levy**

- (1) Levy is not payable under paragraph 89(1)(a), (b) or (c) on the sale of a leviable milk product if the sale occurs before 8 July 2000.
- (2) Levy is not payable under paragraph 89(1)(d) on the relevant application to a person's own use of a leviable milk product if the relevant application occurs before 8 July 2000.

### **91 No double levy**

Levy is not payable in respect of a leviable milk product if levy has previously been imposed in respect of that product.

### **92 Exemptions from levy**

The regulations may make provision for exemptions from levy.

### **93 Who pays the levy**

- (1) Levy payable under paragraph 89(1)(a) is payable by the person who purchased the leviable milk product for the purposes of resale.
- (2) Levy payable under paragraph 89(1)(b) is payable by the person who is the retail seller of the leviable milk product.
- (3) Levy payable under paragraph 89(1)(c) is payable by the person who purchased the leviable milk product for the purpose of relevantly applying the product to the person's own use.
- (4) Levy payable under paragraph 89(1)(d) is payable by the person who relevantly applied the leviable milk product to the person's own use.

**94 Termination of levy when core funding obligations are met**

- (1) The Minister may, by notice published in the *Gazette*, declare that the 28th day after the day of the publication of the notice is the *levy termination day* for the purposes of this clause.
- (2) The Minister must not make a declaration under subclause (1) unless the Minister is satisfied that there is no reasonable likelihood of money being paid out of the Dairy Structural Adjustment Fund, at any time after that 28th day, for any of the following purposes:
  - (a) making DSAP payments;
  - (b) making dairy exit payments;
  - (c) repaying money borrowed by the Corporation for the purpose of making payments for which money in the Dairy Structural Adjustment Fund may be expanded;
  - (d) meeting the expenses of the Corporation incurred in borrowing money for the purposes of making payments for which money in the Dairy Structural Adjustment Fund may be expanded.
- (3) Levy is not payable under paragraph 89(1)(a), (b) or (c) on the sale of a leviable milk product if the sale occurs after the levy termination day.
- (4) Levy is not payable under paragraph 89(1)(d) on the relevant application to a person's own use of a leviable milk product if the relevant application occurs after the levy termination day.

**95 Termination of levy if DSAP payment start day does not occur within 6 months after the Dairy Industry Adjustment Act 2000 receives Royal Assent**

- (1) This clause applies if the DSAP payment start day is not fixed by a Proclamation published in the *Gazette* within the period of 6 months beginning on the day on which the *Dairy Industry Adjustment Act 2000* receives the Royal Assent.
- (2) Levy is not payable under paragraph 89(1)(a), (b) or (c) on the sale of a leviable milk product if the sale occurs after the end of that period.

- (3) Levy is not payable under paragraph 89(1)(d) on the relevant application to a person's own use of a leviable milk product if the relevant application occurs after the end of that period.

### **Division 3—When levy due for payment**

#### **96 When levy due for payment**

- (1) Levy payable under paragraph 89(1)(a) or (c) on the sale of a leviable milk product is due and payable on whichever is the earlier of the following days:
- (a) the first day on which any part of the consideration for the sale is due;
  - (b) the 90th day after the day on which the sale occurred.
- (2) Levy payable by a person under paragraph 89(1)(b) on the retail sale of a leviable milk product is due and payable on:
- (a) if the person is a designated small levy-payer in relation to the financial year in which the retail sale occurred—the 28th day after the end of the financial year; or
  - (b) in any other case—the 28th day after the end of the month in which the retail sale occurred.
- (3) Levy payable by a person under paragraph 89(1)(d) on the relevant application to the person's own use of a leviable milk product is due and payable on:
- (a) if the person is a designated small levy-payer in relation to the financial year in which the relevant application occurred—the 28th day after the end of the financial year; or
  - (b) in any other case—the 28th day after the end of the month in which the relevant application occurred.

### **Division 4—Collection agents, collection sub-agents and collecting organisations**

#### **97 Collection agents**

- (1) This clause applies to levy if:
- (a) the levy is payable under paragraph 89(1)(a) or (c) on the sale of a leviable milk product to a person (the *purchaser*); and

- (b) there is not in force an agreement under clause 103 that relates to the payment of levy by the purchaser.
- (2) For better securing the payment of the levy:
  - (a) the person who performed the last process in relation to the product before the sale occurred is, by force of this clause, the agent of the Commonwealth for the purposes of the collection of the levy; and
  - (b) if the collection agent supplied the product directly to the purchaser—payment of the levy is to be made to the collection agent on behalf of the Commonwealth at or before the time when the levy becomes due to be paid.
- (3) If the purchaser pays an amount of levy under paragraph (2)(b), the purchaser is, to the extent of the amount so paid, discharged from liability to pay the levy to the Commonwealth.

*Remission of levy by agent*

- (4) If the collection agent receives an amount of levy under paragraph (2)(b) during a particular month, the agent must remit the levy to the Commonwealth within:
  - (a) if the agent is a designated small remitter in relation to the financial year in which the month occurred—28 days after the end of the financial year; or
  - (b) in any other case—28 days after the end of the month.
- (5) A person is guilty of an offence if:
  - (a) the person is subject to a requirement to remit levy under subclause (4); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 230 penalty units or imprisonment for 12 months, or both.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

*Information about levy*

- (6) If the collection agent supplied the product directly to the purchaser, the collection agent must, before the levy becomes due

to be paid, inform the purchaser, either on the invoice for the product or in some other way:

- (a) that levy is payable on the sale of the product; and
  - (b) of the amount of levy payable.
- (7) A person is guilty of an offence if:
- (a) the person is subject to a requirement to inform another person under subclause (6); and
  - (b) the first-mentioned person engages in conduct; and
  - (c) the first-mentioned person's conduct contravenes the requirement.

Penalty for contravention of this subclause: 50 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **98 Collection sub-agents—simple supply chain**

- (1) This clause applies to levy if:
- (a) the levy is payable under paragraph 89(1)(a) or (c) on the sale of a leviable milk product to a person (the *purchaser*); and
  - (b) the collection agent for the levy supplied the product to the purchaser indirectly, through a single interposed person; and
  - (c) there is not in force an agreement under clause 103 that relates to the payment of levy by the purchaser.

Note: For example, if the collection agent (A) sells the product to a wholesaler (W), who in turn sells the product to the purchaser, then W is the interposed person.

### *Payment of levy by the purchaser*

- (2) For better securing the payment of the levy:
- (a) the interposed person is, by force of this clause, the sub-agent of the Commonwealth for the purposes of the collection of the levy; and
  - (b) payment of the levy is to be made to the collection sub-agent on behalf of the Commonwealth at or before the time when the levy becomes due to be paid.



- (3) If the purchaser pays an amount of levy under paragraph (2)(b), the purchaser is, to the extent of the amount so paid, discharged from liability to pay the levy to the Commonwealth.

*Remission of levy by sub-agent and agent*

- (4) If the collection sub-agent receives an amount of levy under paragraph (2)(b), the sub-agent must remit the levy to the collection agent by such time as is ascertained in accordance with the regulations.
- (5) If the collection agent receives an amount of levy under subclause (4) during a particular month, the agent must remit the levy to the Commonwealth within:
- (a) if the agent is a designated small remitter in relation to the financial year in which the month occurred—28 days after the end of the financial year; or
  - (b) in any other case—28 days after the end of the month.
- (6) A person is guilty of an offence if:
- (a) the person is subject to a requirement to remit levy under subclause (4) or (5); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 230 penalty units or imprisonment for 12 months, or both.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

*Information about levy*

- (7) The collection agent must, before the levy becomes due to be paid, inform the collection sub-agent, either on the invoice for the product or in some other way:
- (a) that levy is payable on the sale of the product to the purchaser; and
  - (b) of the amount of levy payable.
- (8) The collection sub-agent must, before the levy becomes due to be paid, inform the purchaser, either on the invoice for the product or in some other way:

- (a) that levy is payable on the sale of the product to the purchaser; and
  - (b) of the amount of levy payable.
- (9) A person is guilty of an offence if:
- (a) the person is subject to a requirement to inform another person under subclause (7) or (8); and
  - (b) the first-mentioned person engages in conduct; and
  - (c) the first-mentioned person's conduct contravenes the requirement.

Penalty for contravention of this subclause: 50 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **99 Collection sub-agents—complex supply chain**

- (1) This clause applies to levy if:
- (a) the levy is payable under paragraph 89(1)(a) or (c) on the sale of a leviable milk product to a person (the ***purchaser***); and
  - (b) the collection agent for the levy supplied the product to the purchaser indirectly, through 2 or more interposed persons; and
  - (c) there is not in force an agreement under clause 103 that relates to the payment of levy by the purchaser.

### *Supply chain*

- (2) For the purposes of this clause, the interposed persons are taken to form a ***supply chain***, and are to be ranked in an order that corresponds to the order of those persons in the supply chain, with:
- (a) the person who acquired the product from the collection agent being ranked highest; and
  - (b) the person who sold the product to the purchaser being ranked lowest.

Note: For example, if the collection agent (A) sells the product to a wholesaler (W) and W sells the product to a distributor (D), who in turn sells the product to the purchaser, then W is the highest-ranking interposed person and D is the lowest-ranking interposed person.

*Payment of levy by the purchaser*

- (3) For better securing the payment of the levy:
  - (a) each interposed person is, by force of this clause, a sub-agent of the Commonwealth for the purposes of the collection of the levy; and
  - (b) payment of the levy is to be made to the lowest-ranking collection sub-agent on behalf of the Commonwealth at or before the time when the levy becomes due to be paid.
- (4) If the purchaser pays an amount of levy under paragraph (3)(b), the purchaser is, to the extent of the amount so paid, discharged from liability to pay the levy to the Commonwealth.

*Remission of levy by sub-agent and agent*

- (5) If the lowest-ranking collection sub-agent receives an amount of levy under paragraph (3)(b), the sub-agent must remit the levy to the next highest ranking sub-agent in the supply chain by such time as is ascertained in accordance with the regulations.
- (6) If a collection sub-agent (other than the highest-ranking sub-agent) receives an amount of levy under subclause (5) or this subclause, the sub-agent must remit the levy to the next highest ranking sub-agent in the supply chain by such time as is ascertained in accordance with the regulations.
- (7) If the highest-ranking collection sub-agent receives an amount of levy under subclause (5) or (6), the sub-agent must remit the levy to the collection agent by such time as is ascertained in accordance with the regulations.
- (8) If the collection agent receives an amount of levy under subclause (7) during a particular month, the agent must remit the levy to the Commonwealth within:
  - (a) if the agent is a designated small remitter in relation to the financial year in which the month occurred—28 days after the end of the financial year; or
  - (b) in any other case—28 days after the end of the month.
- (9) A person is guilty of an offence if:
  - (a) the person is subject to a requirement to remit levy under subclause (5), (6), (7) or (8); and

- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the requirement.

Penalty: 230 penalty units or imprisonment for 12 months, or both.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

*Information about levy*

- (10) The collection agent must, before the levy becomes due to be paid, inform the highest-ranking collection sub-agent, either on the invoice for the product or in some other way:
  - (a) that levy is payable on the sale of the product to the purchaser; and
  - (b) of the amount of levy payable.
- (11) A collection sub-agent (other than the lowest-ranking sub-agent) must, before the levy becomes due to be paid, inform the next lowest-ranking collection sub-agent, either on the invoice for the product or in some other way:
  - (a) that levy is payable on the sale of the product to the purchaser; and
  - (b) of the amount of levy payable.
- (12) The lowest-ranking collection sub-agent must, before the levy becomes due to be paid, inform the purchaser, either on the invoice for the product or in some other way:
  - (a) that levy is payable on the sale of the product to the purchaser; and
  - (b) of the amount of levy payable.
- (13) A person is guilty of an offence if:
  - (a) the person is subject to a requirement to inform another person under subclause (10), (11) or (12); and
  - (b) the first-mentioned person engages in conduct; and
  - (c) the first-mentioned person's conduct contravenes the requirement.

Penalty for contravention of this subclause: 50 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**100 Collection agents and collection sub-agents to notify unpaid levy**

- (1) If:
- (a) an amount of levy is required to be paid to a collection agent or a collection sub-agent under paragraph 97(2)(b), 98(2)(b) or 99(3)(b) at or before a particular time in a particular month; and
  - (b) the levy is not paid at or before that time;
- the collection agent or collection sub-agent must, within 28 days after the end of the month, give an authorised person a notice about the unpaid levy.
- (2) A notice under subclause (1) must set out such information as is specified in the regulations.
- (3) A person is guilty of an offence if:
- (a) the person is subject to a requirement to give an authorised person a notice under subclause (1); and
  - (b) the first-mentioned person engages in conduct; and
  - (c) the first-mentioned person's conduct contravenes the requirement.

Penalty for contravention of this subclause: 50 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**101 Collection agents and collection sub-agents to notify unremitted levy**

- (1) If:
- (a) an amount of levy is required by subclause 98(4) or 99(5), (6) or (7) to be remitted to a collection agent or a collection sub-agent by a particular time in a particular month; and
  - (b) the levy is not remitted by that time;
- the collection agent or collection sub-agent must, within 28 days after the end of the month, give an authorised person a notice about the unremitted levy.
- (2) A notice under subclause (1) must set out such information as is specified in the regulations.
- (3) A person is guilty of an offence if:

- (a) the person is subject to a requirement to give an authorised person a notice under subclause (1); and
- (b) the first-mentioned person engages in conduct; and
- (c) the first-mentioned person's conduct contravenes the requirement.

Penalty for contravention of this subclause: 50 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **102 Collection agents and collection sub-agents to issue receipts for levy**

- (1) If a collection agent receives an amount of levy from another person under paragraph 97(2)(b) or subclause 98(4) or 99(7), the agent must give the other person a receipt for the levy within 14 days after receiving the levy.
- (2) If a collection sub-agent receives an amount of levy from another person under paragraph 98(2)(b) or 99(3)(b) or subclause 99(5) or (6), the sub-agent must give the other person a receipt for the levy within 14 days after receiving the levy.
- (3) The regulations may make provision for exemptions from subclause (1) or (2).
- (4) A receipt given under this clause must contain such information as is specified in the regulations.
- (5) A person is guilty of an offence if:
  - (a) the person is subject to a requirement to give a receipt to another person under subclause (1) or (2); and
  - (b) the first-mentioned person engages in conduct; and
  - (c) the first-mentioned person's conduct contravenes the requirement.

Penalty: 50 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (6) For the purposes of this clause, a **receipt** means an acknowledgment of having received levy, whether that acknowledgment is given:

- (a) in writing; or
  - (b) by way of electronic transmission; or
  - (c) in any other form;
- but does not include a verbal acknowledgment.

### **103 Collecting organisations**

- (1) This clause applies to levy payable under paragraph 89(1)(a) or (c) on the sale of a leviable milk product.
- (2) The Secretary may enter into an agreement with an organisation with respect to the collection, on behalf of the Commonwealth, of levy by that organisation.
- (3) The matters that may be provided for in an agreement entered into with a collecting organisation include (but are not limited to):
  - (a) the State or region in which amounts of levy are to be collected by the organisation; and
  - (b) the persons from whom amounts of levy are to be collected by the organisation; and
  - (c) the keeping by the organisation of accounts and records in relation to amounts of levy collected by the organisation; and
  - (d) the remission by the organisation to the Commonwealth of amounts of levy collected by the organisation; and
  - (e) the giving by the organisation to the Secretary of information about:
    - (i) amounts of levy collected by the organisation; and
    - (ii) amounts of levy remitted by the organisation to the Commonwealth; and
    - (iii) leviable milk products in respect of which levy is payable; and
  - (f) the inspection and audit of accounts and records kept by the organisation for the purposes of paragraph (c).
- (4) If an agreement entered into under subclause (1) with a collecting organisation is in force in relation to the payment of levy by a particular person, payment of levy payable by that person is to be made to that organisation, on behalf of the Commonwealth, in accordance with the terms of the agreement.

- (5) If a person pays an amount of levy in accordance with subclause (4), the person is, to the extent of the amount so paid, discharged from liability to pay the levy to the Commonwealth.
- (6) Before making an agreement under subclause (1), the Secretary must consult the Council.
- (7) The Secretary must give notice in the *Gazette* of the making of an agreement under subclause (1) within 21 days after the making of the agreement.
- (8) A failure to comply with subclause (6) or (7) does not invalidate the agreement.
- (9) The Commonwealth must not, in exercising its powers under this clause:
  - (a) discriminate between States or parts of States within the meaning of subparagraph 51(ii) of the Constitution; or
  - (b) give preference to one State or any part thereof within the meaning of section 99 of the Constitution.

#### **104 Application of the *Financial Management and Accountability Act 1997***

- (1) The *Financial Management and Accountability Act 1997* does not apply in relation to levy collected by a collection agent, a collection sub-agent or a collecting organisation.
- (2) The operation of the *Financial Management and Accountability Act 1997* in relation to money remitted by a collection agent or a collecting organisation to the Commonwealth is not affected by subclause (1).

### **Division 5—Record-keeping requirements**

#### **105 Record-keeping requirements for levy payers**

- (1) If levy is payable under paragraph 89(1)(a) or (c) on the sale of a leviable milk product, the purchaser of the product must:
  - (a) keep a record of the sale; and
  - (b) retain that record for at least 5 years after the sale.



- (2) If levy is payable under paragraph 89(1)(b) on the retail sale of a leviable milk product, the retail seller must:
  - (a) keep a record of the sale; and
  - (b) retain that record for at least 5 years after the sale.
  
- (3) If levy is payable under paragraph 89(1)(d) on the relevant application to a person's own use of a leviable milk product, the person must:
  - (a) keep a record of that relevant application; and
  - (b) retain that record for at least 5 years after the completion of the relevant application.
  
- (4) A record kept under this clause must be:
  - (a) in English, or readily accessible and easily convertible into English; and
  - (b) such as to enable the person's liability for levy to be readily ascertained.
  
- (5) However, it is not necessary for a person to retain records under this clause if:
  - (a) the Secretary notifies the person that the person does not need to retain the records; or
  - (b) the person is a company that has been finally dissolved.
  
- (6) A person is guilty of an offence if:
  - (a) the person is subject to a requirement to keep or retain a record under this clause; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty for contravention of this subclause: 30 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **106 Record-keeping requirements for collection agents and collection sub-agents**

- (1) If a collection agent receives an amount of levy under paragraph 97(2)(b) or subclause 98(4) or 99(7), the agent must:
  - (a) keep a record of the receipt; and
  - (b) retain that record for at least 5 years after the receipt.

- (2) If a collection sub-agent receives an amount of levy under paragraph 98(2)(b) or 99(3)(b) or subclause 99(5) or (6), the sub-agent must:
  - (a) keep a record of the receipt; and
  - (b) retain that record for at least 5 years after the receipt.
- (3) A record kept under this clause must be:
  - (a) in English, or readily accessible and easily convertible into English; and
  - (b) such as to enable the agent's or sub-agent's liability to remit levy to be readily ascertained.
- (4) However, it is not necessary for a person to retain records under this clause if:
  - (a) the Secretary notifies the person that the person does not need to retain the records; or
  - (b) the person is a company that has been finally dissolved.
- (5) A person is guilty of an offence if:
  - (a) the person is subject to a requirement to keep or retain a record under this clause; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty for contravention of this subclause: 30 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Division 6—Late payment penalty**

### **107 Late payment penalty**

#### *Late payments by levy payer*

- (1) If an amount of levy that is payable by a person remains unpaid after the time when it became due for payment, there is payable by the person to the Commonwealth, by way of penalty accruing from the time the levy became due for payment until it is paid in full, an amount worked out as follows:

- (a) during the month in which the levy became due for payment, the amount of penalty accrues at the rate of 2% per month on the levy due;
- (b) during the next and each subsequent month, the amount of penalty consists of the sum of:
  - (i) each amount that accrued during a previous month; and
  - (ii) the amount accruing during that month at the rate of 2% per month on the sum of the amount of levy then payable and penalty payable at the end of the previous month.

*Late remission by collection agent or collection sub-agent*

- (2) If an amount of levy that is required by clause 97, 98 or 99 to be remitted by a collection agent or a collection sub-agent remains unremitted after the time when it was required to be remitted, there is payable by the agent or sub-agent to the Commonwealth, by way of penalty accruing from the time the levy was required to be remitted until it is remitted in full, an amount worked out as follows:
  - (a) during the month in which the levy was required to be remitted, the amount of penalty accrues at the rate of 2% per month on the unremitted levy;
  - (b) during the next and each subsequent month, the amount of penalty consists of the sum of:
    - (i) each amount that accrued during a previous month; and
    - (ii) the amount accruing during that month at the rate of 2% per month on the sum of the levy then unremitted and penalty payable at the end of the previous month.
- (3) The Secretary may extinguish a person's liability for the whole or a part of an amount of penalty payable under this clause.

## **Division 7—Recovery of levy debts**

### **108 Levy debts**

- (1) For the purposes of this Division, a *levy debt* is:
  - (a) an amount of levy that is due and payable by a person; or
  - (b) an amount of levy that is required by clause 97, 98 or 99 to be remitted to the Commonwealth by a collection agent and

- that remains unremitted after the time when it is required to be remitted; or
- (c) an amount of levy that is required by clause 98 or 99 to be remitted to a collection agent by a collection sub-agent and that remains unremitted after the time when it is required to be remitted; or
  - (d) an amount of levy that is required by clause 99 to be remitted to a collection sub-agent by another collection sub-agent and that remains unremitted after the time when it is required to be remitted; or
  - (e) an amount of levy that is required by an agreement under clause 103 to be remitted to the Commonwealth by a collecting organisation and that remains unremitted after the time when it is required to be remitted; or
  - (f) an amount of late payment penalty.
- (2) If an amount of levy that was required to be remitted is recovered by the Commonwealth under this Division:
- (a) the obligation to remit the amount of levy ceases from the time of the recovery; and
  - (b) subclause 108(2) has effect as if the amount of levy had been remitted at the time of the recovery.

### **109 Levy debts are debts due to the Commonwealth**

A levy debt is a debt due to the Commonwealth.

### **110 Recovery of levy debts**

A levy debt may be recovered by the Commonwealth by action in a court of competent jurisdiction.

**111 Commonwealth may collect money from a person who owes money to a person**

*What this clause does*

- (1) This clause allows the Commonwealth to collect money from a person who owes money to a person that has a levy debt.

*The Secretary may give direction*

- (2) The Secretary may direct a person (the *third party*) who owes, or may later owe, money (the *available money*) to the person to pay some or all of the available money to the Commonwealth in accordance with the direction. The Secretary must give a copy of the direction to the person.

*Limit on directions*

- (3) The direction cannot require an amount to be paid to the Commonwealth at a time before it becomes owing by the third party to the person.

*Third party to comply*

- (4) The third party must comply with the direction.

Penalty: 20 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (5) The third party is not guilty of an offence against subclause (4) if the third party complies with the direction so far as the third party is able to do so.

Note: A defendant bears an evidential burden in relation to the matter in subclause (5). See subsection 13.3(3) of the *Criminal Code*.

*Court orders*

- (6) If a person is convicted of an offence in relation to a refusal or failure of the third party to comply with subclause (4), the court may (in addition to imposing a penalty on the convicted person) order the convicted person to pay to the Commonwealth an amount up to the amount involved in the refusal or failure of the third party.

*Indemnity*

- (7) Any payment made by the third party under this clause is taken to have been made with the authority of the person and of all other persons concerned, and the third party is indemnified for the payment.

*Notice*

- (8) If the whole of the levy debt of the person is discharged before any payment is made by the third party, the Secretary must immediately give notice to the third party of that fact.
- (9) If a part of the levy debt of the person is discharged before any payment is made by the third party, the Secretary must:
- (a) immediately give notice to the third party of that fact; and
  - (b) make an appropriate variation to the direction; and
  - (c) give a copy of the varied direction to the person.

*When third party is taken to owe money*

- (10) The third party is taken to owe money to the person if:
- (a) money is due or accruing by the third party to the person; or
  - (b) the third party holds money for or on account of the person; or
  - (c) the third party holds money on account of some other person for payment to the person; or
  - (d) the third party has authority from some other person to pay money to the person;
- whether or not the payment of the money to the person is dependent on a pre-condition that has not been fulfilled.

## **Division 8—Information-gathering powers**

### **112 Power to call for returns or information**

- (1) An authorised person may, by notice in writing given to a person, require the person:
- (a) to give the authorised person, within such reasonable time as is specified in the notice, such return or information in relation to matters relevant to the operation of this Part as is specified in the notice; and

(b) to verify any such return or information by statutory declaration.

- (2) A person is guilty of an offence if:
- (a) the person has been given a notice under subclause (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a requirement in the notice.

Penalty: 60 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (3) If a person is convicted of an offence against subclause (2):
- (a) the court may direct the person to give the return or information that he or she is required to give; and
  - (b) on being so directed, the person must give the return or information to an authorised person within the time specified in the direction.

- (4) A person is guilty of an offence if:
- (a) the person has been given a direction under subclause (3); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a requirement in the direction.

Penalty for contravention of this subclause: 60 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### **113 Regulations may require the giving of returns or information**

- (1) The regulations may require any or all of the following persons to give returns or information for the purposes of this Part:
- (a) persons who are liable to pay, or who have paid, levy;
  - (b) collection agents;
  - (c) collection sub-agents;
  - (d) such other persons as are prescribed.
- (2) The regulations may prescribe penalties, not exceeding a fine of 50 penalty units, for offences against regulations made for the purposes of subclause (1).

- (3) If a person is convicted of an offence against regulations made for the purposes of this clause:
- (a) the court may direct the person to give the return or information that he or she is required to give; and
  - (b) on being so directed, the person must give the return or information to an authorised person within the time specified in the direction.
- (4) A person is guilty of an offence if:
- (a) the person has been given a direction under subclause (3); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a requirement in the direction.

Penalty for contravention of this subclause: 60 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

#### **114 Self-incrimination**

- (1) An individual is not excused from submitting a return or giving information under this Division on the ground that the return or information might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
- (a) submitting the return or giving the information; or
  - (b) any information, document or thing obtained as a direct or indirect consequence of submitting the return or giving the information;
- is not admissible in evidence against the individual in criminal proceedings other than:
- (c) proceedings for an offence against subclause 112(2) or (4) or 113(4); or
  - (d) proceedings for an offence against regulations made for the purposes of clause 113; or
  - (e) proceedings for an offence against clause 135 or 136 that relates to this Division.
- (3) In this clause:



*this Division* includes regulations made for the purposes of clause 113.

## **Division 9—Access to premises**

### **115 Powers of authorised person in relation to premises**

- (1) An authorised person may:
  - (a) with the consent of the occupier or person in charge of premises; or
  - (b) in accordance with a warrant issued under clause 118 in relation to premises;enter the premises for the purpose of ascertaining whether a person has contravened or is contravening a provision of this Part.
- (2) If an authorised person enters any premises under subclause (1), the authorised person may:
  - (a) search the premises for, examine and take stock of, any leviable milk products; and
  - (b) search the premises for, inspect, examine, take extracts from, and make copies of, any examinable documents.

### **116 Obstruction of authorised person acting under a warrant**

A person is guilty of an offence if:

- (a) the person obstructs or hinders an authorised person in the exercise of the authorised person's power under clause 115; and
- (b) the authorised person exercises that power in accordance with a warrant issued under clause 118.

Penalty: 30 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### **117 Persons to assist authorised persons acting under a warrant**

- (1) If an authorised person enters any premises under clause 115 in accordance with a warrant issued under clause 118, the occupier or the person in charge must, if requested to do so by the authorised person, provide reasonable assistance to the authorised person in

the exercise of his or her power under that clause in relation to those premises.

- (2) A person is guilty of an offence if:
- (a) the person is subject to a requirement to provide reasonable assistance to an authorised person under subclause (1); and
  - (b) the first-mentioned person engages in conduct; and
  - (c) the first-mentioned person's conduct contravenes the requirement.

Penalty for contravention of this subclause: 30 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### **118 Warrant to enter premises**

- (1) If a magistrate, on application by an authorised person, is satisfied, by information on oath:
- (a) that there are reasonable grounds for believing:
    - (i) that there are on particular premises any leviable milk products; or
    - (ii) that there are examinable documents on particular premises; and
  - (b) that the issue of the warrant is reasonably required for the purpose of ascertaining whether a person has contravened or is contravening a provision of this Part;
- the magistrate may issue a warrant authorising the authorised person to enter the premises:
- (c) with such assistance, and by such force, as is necessary and reasonable; and
  - (d) during such hours as the warrant specifies, or, if the warrant so specifies, at any time.
- (2) A warrant must specify:
- (a) the powers exercisable under subclause 115(2) by the authorised person to whom the warrant is issued; and
  - (b) the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect.

## **119 Identity cards**

- (1) The Secretary may cause an identity card to be issued to an authorised person.
- (2) An identity card must:
  - (a) contain a recent photograph of the authorised person to whom it is issued; and
  - (b) be in a form approved, in writing, by the Secretary.
- (3) A person is guilty of an offence if:
  - (a) the person has been issued with an identity card under subclause (1); and
  - (b) the person ceases to be an authorised person for the purposes of this Division; and
  - (c) the person does not immediately return the identity card to the Secretary.

Penalty: 1 penalty unit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (4) If an authorised person proposes to enter premises otherwise than in accordance with a warrant issued under clause 118:
  - (a) the authorised person must produce his or her identity card to the occupier or the person in charge of the premises for inspection; and
  - (b) if the authorised person fails to do so, the authorised person is not entitled to enter the premises under clause 115.

## **Division 10—Evidentiary certificates**

### **120 Evidentiary certificates**

- (1) The Secretary may issue a written certificate:
  - (a) stating that a person is liable to pay levy in respect of one or more sales of leviable milk products; and
  - (b) setting out particulars of those sales.
- (2) The Secretary may issue a written certificate:

- (a) stating that a person is liable to pay levy in respect of one or more relevant applications to the person's own use of leviable milk products; and
  - (b) setting out particulars of those relevant applications.
- (3) The Secretary may issue a written certificate:
- (a) stating that a specified person has contravened a levy remission provision; and
  - (b) setting out particulars of that contravention.
- (4) In this clause:
- levy remission provision*** means:
- (a) subclause 97(4); or
  - (b) subclause 98(4); or
  - (c) subclause 98(5); or
  - (d) subclause 99(5); or
  - (e) subclause 99(6); or
  - (f) subclause 99(7); or
  - (g) subclause 99(8).

### **121 Evidentiary effect of certificate**

- (1) In any civil proceedings under, or arising out of, this Part, a certificate under clause 120 is prima facie evidence of the matters in the certificate.
- (2) A document purporting to be a certificate under clause 120 must, unless the contrary is established, be taken to be such a certificate and to have been properly issued.
- (3) The Secretary may certify that a document is a copy of a certificate under clause 120.
- (4) This clause applies to the certified copy as if it were the original.

## **Division 11—Miscellaneous**

### **122 Designated small remitters**

- (1) The Secretary may, by written notice given to a person, declare that the person is a *designated small remitter* in relation to a specified financial year for the purposes of this Part.
- (2) The declaration has effect accordingly.
- (3) The Secretary must not make a declaration in relation to a person under subclause (1) unless the Secretary is satisfied that:
  - (a) the person has received, or is likely to receive, one or more amounts of levy in the capacity of collection agent during the financial year concerned; and
  - (b) the total of those amounts is, or is likely to be, less than \$1,000.

### **123 Designated small levy-payers**

- (1) The Secretary may, by written notice given to a person, declare that the person is a *designated small levy-payer* in relation to a specified financial year for the purposes of this Part.
- (2) The declaration has effect accordingly.
- (3) The Secretary must not make a declaration in relation to a person under subclause (1) unless the Secretary is satisfied that:
  - (a) the person is liable to pay, or is likely to be liable to pay either or both of the following:
    - (i) one or more amounts of levy under paragraph 89(1)(b) on retail sales that occurred, or are likely to occur, during that financial year;
    - (ii) one or more amounts of levy under paragraph 89(1)(d) on relevant applications that occurred, or are likely to occur, during the financial year concerned; and
  - (b) the total of those amounts is, or is likely to be, less than \$1,000.

### **124 Refund of overpayments**

If any of the following amounts has been overpaid, the amount overpaid must be refunded by the Commonwealth:

- (a) an amount of levy;
- (b) an amount of late payment penalty.

### **125 Refund of levy**

The regulations may make provision for refunds of levy.

### **126 Methods by which levy may be paid or remitted**

- (1) The regulations may make provision for the methods by which levy may be paid or remitted to the Commonwealth.
- (2) Regulations made for the purposes of this clause may make provision for levy to be paid or remitted using an electronic funds transfer system.
- (3) Subclause (2) does not limit subclause (1).

### **127 Authorised persons**

- (1) The Secretary may, by writing, authorise a specified APS employee to be an authorised person for the purposes of a specified provision or provisions of this Part.
- (2) The Secretary must not authorise an APS employee under subclause (1) unless the Secretary is of the opinion that the holder for the time being of the position held by the employee is reasonably likely to be suitably qualified (because of ability and experience) to be an authorised person for the purposes of the provision or provisions concerned.
- (3) The Secretary may, by writing, authorise a specified person employed by, or in the service of, a collecting organisation to be an authorised person for the purposes of clause 112.

Note: Clause 112 deals with the giving of returns or information.

### **128 Publication of information about levy**

- (1) An authorised person may publish:
-

- (a) the name and address of a person who has paid, or is liable to pay:
    - (i) levy; or
    - (ii) an amount of late payment penalty; or
  - (b) the name and address of a collection agent, a collection sub-agent or a collecting organisation; or
  - (c) information about amounts of levy received or receivable by the Commonwealth in any period (including such information relating to a particular State or region); or
  - (d) information about leviable milk products in respect of which levy is payable;
- to either of the following:
- (e) the Council;
  - (f) a person to whom the Secretary has granted access to such information.
- (2) Subclause (1) does not authorise the publication of information in a manner that enables:
    - (a) an amount of levy paid or payable to be identified with a person (including a deceased person); and
    - (b) an amount of late payment penalty paid or payable to be identified with a person (including a deceased person).
  - (3) The Secretary may, on behalf of the Commonwealth, charge a fee for publishing a name, address or information under subclause (1).
  - (4) The amount of a fee under subclause (3) must not be such as to amount to taxation.

### **129 Delegation by Secretary**

- (1) The Secretary may, by writing, delegate to a senior officer all or any of the Secretary's powers under this Part (other than clause 127).

Note: Clause 127 deals with authorised persons.
- (2) A delegate under this clause is, in the exercise of a function or power delegated under this clause, subject to any directions given by the Secretary.
- (3) In this clause:

*senior officer* means:

- (a) a person who holds or performs the duties of a Senior Executive Service office or position in the Department; or
- (b) a person who holds or performs the duties of a DPIE Band 3 office or position, or an equivalent office or position, in the Department.

### **130 Reconsideration and review of decisions**

- (1) A person affected by a relevant decision who is dissatisfied with the decision may, within:
  - (a) 28 days after the day on which the decision first comes to the notice of the person; or
  - (b) such further period as the Secretary (either before or after the end of the period), by written notice given to the person, allows;by written notice given to the Secretary, request the Secretary to reconsider the decision.
- (2) A request under subclause (1) must set out the reasons for making the request.
- (3) The Secretary must, within 45 days after receiving a request under subclause (2), reconsider the relevant decision and may make a decision:
  - (a) in substitution for the relevant decision, whether in the same terms as the relevant decision or not; or
  - (b) revoking the relevant decision.
- (4) If, as a result of a reconsideration under subclause (3), the Secretary makes a decision in substitution for or revoking a relevant decision, the Secretary must, by written notice given to the person who made the request under subclause (1) for the reconsideration, inform the person of the result of the reconsideration and give the reasons for his or her decision.
- (5) An application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary under subclause (3).



- (6) A person who makes a relevant decision must give to a person affected by the decision a written statement to the effect that a person affected by the decision:
- (a) may, if the person is dissatisfied with the decision, seek a reconsideration of the decision in accordance with this clause; and
  - (b) may, subject to the *Administrative Appeals Tribunal Act 1975*, if the person is dissatisfied with a decision made on that reconsideration, make application to the Administrative Appeals Tribunal for review of that decision.
- (7) If the Secretary makes a decision under subclause (3) and gives to a person affected by the decision notice in writing of the making of the decision, that notice must include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person affected by the decision.
- (8) A failure to comply with subclause (6) or (7) in relation to a decision does not affect the validity of the decision.
- (9) In this clause:
- relevant decision** means a decision to refuse to extinguish, under subclause 107(3), a person's liability for the whole or part of an amount of late payment penalty.

### **131 Commonwealth not liable to levy**

- (1) The Commonwealth is not liable to pay levy.
- (2) Even though the Commonwealth is not liable to pay levy, it is the intention of the Parliament that the Commonwealth and Commonwealth entities should be notionally liable for levy.
- (3) The Minister for Finance may give such written directions as are necessary or convenient to be given for carrying out or giving effect to subclause (2) and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth or a Commonwealth entity.

(4) Directions under subclause (3) have effect, and must be complied with, despite any other law of the Commonwealth.

(5) In this clause:

***Commonwealth entity*** means:

- (a) an Agency (within the meaning of the *Financial Management and Accountability Act 1997*); or
  - (b) a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*);
- that cannot be made liable to taxation by a Commonwealth law.

***Minister for Finance*** means the Minister administering the *Financial Management and Accountability Act 1997*.

## **Part 5—Offences**

### **132 Application of *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Schedule.

### **133 False or misleading evidence**

A person is guilty of an offence if:

- (a) the person gives evidence to another person; and
- (b) the person does so knowing that the evidence is false or misleading in a material particular; and
- (c) the evidence is given under clause 38.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### **134 False or misleading statements in claims**

*Knowledge*

(1) A person is guilty of an offence if:

- (a) the person makes a statement (whether orally, in a document or in any other way); and

- (b) the person does so knowing that the statement:
  - (i) is false or misleading; or
  - (ii) omits any matter or thing without which the statement is misleading; and
- (c) the statement is made in, or in connection with, a claim for a payment right.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) Subclause (1) does not apply as a result of subparagraph (1)(b)(i) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subclause (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subclause (1) does not apply as a result of subparagraph (1)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subclause (3). See subsection 13.3(3) of the *Criminal Code*.

*Recklessness*

- (4) A person is guilty of an offence if:
  - (a) the person makes a statement (whether orally, in a document or in any other way); and
  - (b) the person does so reckless as to whether the statement:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the statement is misleading; and
  - (c) the statement is made in, or in connection with a claim for a payment right.

Penalty: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (5) Subclause (4) does not apply as a result of subparagraph (4)(b)(i) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subclause (5). See subsection 13.3(3) of the *Criminal Code*.

- (6) Subclause (4) does not apply as a result of subparagraph (4)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subclause (6). See subsection 13.3(3) of the *Criminal Code*.

*Alternative verdicts*

- (7) If, in a prosecution for an offence against subclause (1), the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subclause (4), the trier of fact may find the defendant not guilty of the offence against subclause (1) but guilty of the offence against subclause (4), so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

**135 False or misleading information**

- (1) A person is guilty of an offence if:
- (a) the person gives information to another person; and
  - (b) the person does so knowing that the information:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the information is misleading; and
  - (c) either of the following subparagraphs applies:
    - (i) the information is given to a person who is exercising powers or performing functions under, or in connection with, the DSAP scheme or this Schedule;
    - (ii) the information is given in compliance or purported compliance with the DSAP scheme or this Schedule.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) Subclause (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subclause (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subclause (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subclause (3). See subsection 13.3(3) of the *Criminal Code*.

### **136 False or misleading documents**

- (1) A person is guilty of an offence if:
- (a) the person produces a document to another person; and
  - (b) the person does so knowing that the document is false or misleading; and
  - (c) the document is produced in compliance or purported compliance with the DSAP scheme or this Schedule.

Penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) Subclause (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subclause (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subclause (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in subclause (3). See subsection 13.3(3) of the *Criminal Code*.

## Part 2—Transitional provisions

### 18 Transitional—membership of the DAA

- (1) This item applies to the committee known as the Dairy Adjustment Panel that:
- (a) was established under the executive power of the Commonwealth; and
  - (b) was in existence immediately before the commencement of this item; and
  - (c) consisted of the following members:
    - (i) a Chair;
    - (ii) 2 industry members;
    - (iii) a government member;
    - (iv) one other member;
- where:
- (d) a person was not appointed as the Chair, or as the member referred to in subparagraph (c)(iv), unless it appeared to the Minister that the person had knowledge of, or experience in, one or more of the following fields:
    - (i) business management;
    - (ii) finance;
    - (iii) legal practice;
    - (iv) actuarial practice; and
  - (e) a person was not appointed as an industry member unless it appeared to the Minister that the person had knowledge of, or experience in, the production of dairy produce; and
  - (f) a person was not appointed as the government member unless it appeared to the Minister that the person had knowledge of, or experience in, either or both of the following fields:
    - (i) the formulation of government policy;
    - (ii) public administration.
- (2) The *Dairy Produce Act 1986* has effect as if:
- (a) the Minister had, by instrument (the ***notional instrument of appointment***), appointed the Chair of the Dairy Adjustment

- Panel to be the Chair of the Dairy Adjustment Authority immediately after the commencement of this item; and
- (b) the period of appointment specified in the notional instrument of appointment were the period:
- (i) beginning immediately after the commencement of this item; and
  - (ii) ending at the end of the period specified in the Chair's instrument of appointment to the Dairy Adjustment Panel.
- (3) The *Dairy Produce Act 1986* has effect as if:
- (a) the Minister had, by instrument (the ***notional instrument of appointment***), appointed each industry member of the Dairy Adjustment Panel to be an industry member of the Dairy Adjustment Authority immediately after the commencement of this item; and
  - (b) the period of appointment specified in the notional instrument of appointment were the period:
    - (i) beginning immediately after the commencement of this item; and
    - (ii) ending at the end of the period specified in the member's instrument of appointment to the Dairy Adjustment Panel.
- (4) The *Dairy Produce Act 1986* has effect as if:
- (a) the Minister had, by instrument (the ***notional instrument of appointment***), appointed the government member of the Dairy Adjustment Panel to be the government member of the Dairy Adjustment Authority immediately after the commencement of this item; and
  - (b) the period of appointment specified in the notional instrument of appointment were the period:
    - (i) beginning immediately after the commencement of this item; and
    - (ii) ending at the end of the period specified in the member's instrument of appointment to the Dairy Adjustment Panel.
- (5) The *Dairy Produce Act 1986* has effect as if:
- (a) the Minister had, by instrument (the ***notional instrument of appointment***), appointed the member of the Dairy
-

Adjustment Panel mentioned in subparagraph (1)(c)(iv) of this item to be the member of the Dairy Adjustment Authority mentioned in paragraph 58(1)(d) of Schedule 2 to the *Dairy Produce Act 1986*, and had done so immediately after the commencement of this item; and

- (b) the period of appointment specified in the notional instrument of appointment were the period:
- (i) beginning immediately after the commencement of this item; and
  - (ii) ending at the end of the period specified in the member's instrument of appointment to the Dairy Adjustment Panel.



## **Schedule 2—Amendment of other Acts**

### ***Bankruptcy Act 1966***

#### **1 After paragraph 116(2)(mca)**

Insert:

(mcb) amounts paid to the bankrupt as a dairy exit payment within the meaning of the *Farm Household Support Act 1992*;

#### **2 Subparagraph 116(2)(md)(i)**

Omit “or (mca)”, substitute “, (mca) or (mcb)”.

#### **3 Subsection 116(2D) (paragraph (c) of the definition of exempt money)**

After “(mca)”, insert “, (mcb)”.

### ***Farm Household Support Act 1992***

#### **4 Subsection 3(2)**

Insert:

*dairy exit payment* means a payment under the DEP scheme.

#### **5 Subsection 3(2)**

Insert:

*DEP scheme* means the scheme referred to in section 52C.

#### **6 Subsection 4(4) (paragraph (b) of the definition of relevant Secretary)**

After “in relation to”, insert “dairy exit payments,”.

#### **7 Paragraph 6(a)**

Omit “financial assistance and”, substitute “financial assistance and/or”.

#### **8 After Part 9B**

Insert:

## Part 9C—Dairy exit payments

### 52C DEP scheme

- (1) The Minister may, by written instrument:
  - (a) formulate a scheme for the provision of payments, to be made after the DSAP payment start day, by way of grant of financial assistance to people on the sale of dairy farm enterprises, or rights or interests in dairy farm enterprises; and
  - (b) provide for the implementation and regulation of the scheme.The scheme is to be known as the *DEP scheme* and a payment is to be known as a *dairy exit payment*.
- (2) Without limiting subsection (1), the scheme may deal with:
  - (a) the circumstances in which people are qualified to apply for dairy exit payments; and
  - (b) the procedure for applying for a payment; and
  - (c) the circumstances in which a payment is payable; and
  - (d) the amount of payment payable; and
  - (e) the method for paying a payment.
- (3) A dairy exit payment is not payable to a person:
  - (a) in respect of an application lodged after 30 June 2002; or
  - (b) in respect of any sale that is completed after 30 June 2003.
- (4) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) The DEP scheme may provide for the disclosure of DEP information:
  - (a) to the Dairy Adjustment Authority in connection with the administration of:
    - (i) the DSAP scheme (within the meaning of Schedule 2 to the *Dairy Produce Act 1986*); or
    - (ii) a provision of the *Dairy Produce Act 1986* in so far as that provision relates to that scheme; or
  - (b) to the Australian Dairy Corporation in connection with the administration of the Dairy Structural Adjustment Fund.

(6) Subsection (5) does not, by implication, limit subsection (1).

(7) In this section:

*dairy farm enterprise* has the same meaning as in Schedule 2 to the *Dairy Produce Act 1986*.

*DEP information* means information disclosed or obtained for the purposes of:

- (a) the DEP scheme; or
- (b) a provision of this Act, in so far as that provision relates to the DEP scheme.

*DSAP payment start day* has the same meaning as in Schedule 2 to the *Dairy Produce Act 1986*.

### **9 At the end of section 53**

Add:

(4) In this section:

*this Act* includes the DEP scheme.

### **10 At the end of section 53A**

Add:

(8) In this section:

*this Act* includes the DEP scheme.

### **11 At the end of subsection 54(1)**

Add:

- ; or (g) the question whether a person who has applied for a dairy exit payment is or was qualified for the payment; or
- (h) the question whether a dairy exit payment was payable to a person who has received it.

### **12 Section 55**

After “exceptional circumstances relief payment”, insert “, dairy exit payments”.

Note: The heading to section 55 is altered by inserting “, **dairy exit payments**” after “**exceptional circumstances relief payment**”.

**13 After subsection 56(2) (before the note)**

Insert:

(3) If:

- (a) an amount purporting to be an amount of dairy exit payment has been paid to a person; and
- (b) some or all of the amount was not payable to the person; the amount that was not payable may be recovered by the Commonwealth, on behalf of the Australian Dairy Corporation, as a debt due to the Australian Dairy Corporation.

**14 At the end of section 57**

Add:

- (5) Dairy exit payments are to be made out of the Dairy Structural Adjustment Fund.

***Income Tax Assessment Act 1997***

**15 At the end of subsection 118-37(1)**

Add:

- ; (e) a dairy exit payment within the meaning of the *Farm Household Support Act 1992*.

***Remuneration Tribunal Act 1973***

**16 After paragraph 7(9)(aa)**

Insert:

- (ab) in the case of remuneration or allowances payable to a person who holds an office as a member of the Dairy Adjustment Authority—be paid in accordance with the determination out of the Dairy Structural Adjustment Fund;

***Social Security Act 1991***

**17 Subsection 23(1)**

Insert:

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***Farm Household Support Act 1992*** includes the DEP scheme under that Act.

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[*Minister's second reading speech made in—  
House of Representatives on 16 February 2000  
Senate on 15 March 2000*]

(4/00)