

DAIRY PRODUCE AMENDMENT ACT 1977

No. 53 of 1977

An Act to amend the *Dairy Produce Act 1924*.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

Short title,
&c.

1. (1) This Act may be cited as the *Dairy Produce Amendment Act 1977*.¹

(2) The *Dairy Produce Act 1924*² is in this Act referred to as the Principal Act.

Commence-
ment.

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.¹

(2) Section 5 shall come into operation on 1 July 1977.

Interpret-
ation.

3. Section 3 of the Principal Act is amended—

(a) by inserting before the definition of “approved bank” the following definition:—

“ ‘Advisory Committee’ means the Australian Dairy Industry Advisory Committee established by section 25D; ”; and

(b) by inserting after the definition of “dairy produce” the following definition:—

“ ‘dairy products’ has the same meaning as in the *Dairy Industry Stabilization Levy Act 1977*; ”.

Corporation
may accept
control of
dairy
produce or
dairy
products.

4. Section 17 of the Principal Act is amended—

(a) by inserting after the word “produce” the words “or any dairy products”; and

(b) by adding at the end thereof the following sub-section:—

“(2) Where the Corporation accepts control of any dairy produce or any dairy products under sub-section (1), the Corporation may make advances to the owners of that dairy produce or those dairy products on the security of that dairy produce or those dairy products.”.

5. After section 20 of the Principal Act the following sections are inserted:—

“20AA. (1) A person, other than the Corporation, shall not export, or cause to be exported, dairy products from Australia unless the person is a party to an arrangement with the Corporation entered into under sub-section 20AB (7) that relates to those dairy products.

Penalty: \$1,000.

Export of dairy products prohibited unless exporter party to arrangement.

“(2) The regulations may provide that this section does not apply in relation to dairy products of a prescribed class.

“20AB. (1) In this section—

‘assessed return’, in relation to dairy products to which this section applies, means the amount of the proceeds that would have been received for the dairy products from the export sale if the export sale had been at the assessed export price in force with respect to the dairy products under sub-section (4) at the time of the export sale;

Pools for returns on export sales of dairy products.

‘dairy products to which this section applies’ means dairy products that—

- (a) having been sold in Australia for delivery to a place outside Australia or for delivery to a ship or aircraft for export from Australia, have been exported from Australia in accordance with the terms of the contract of sale; or
- (b) having been exported from Australia for the purpose of sale outside Australia, have been sold by or on behalf of the exporter at a place outside Australia,

being dairy products in relation to which a pool is maintained, at the time of the sale, under sub-section (2);

‘export sale’, in relation to dairy products to which this section applies, means the sale by reason of which the dairy products are dairy products to which this section applies;

‘minimum return’, in relation to dairy products to which this section applies, means the amount of the proceeds that would have been received for the dairy products from the export sale if the export sale had been at the minimum export price in force with respect to the dairy products under sub-section (3) at the time of the export sale;

‘pool’ means a separate account set up and maintained by the Corporation in respect of dairy products of a particular kind produced during a particular production period, being a production period within the meaning of the *Dairy Industry Stabilization Act 1977*.

“(2) The Corporation shall set up and maintain pools as prescribed.

“(3) The Corporation may, from time to time, for the purposes of this section, fix a minimum export price for dairy products included in a specified class of dairy products.

“(4) The Minister may, for the purposes of this section, fix an assessed export price for the dairy products in respect of which a pool is maintained by the Corporation under sub-section (2), being a price that the Minister considers will be the average export price for those dairy products.

“(5) Where—

- (a) the export sale of dairy products to which this section applies is a sale by or on behalf of the Corporation;
- (b) the amount of the proceeds received from the export sale is not less than the minimum return in relation to those dairy products; and
- (c) the minimum return in relation to those dairy products exceeds the assessed return in relation to those dairy products,

the Corporation shall credit to the appropriate pool the amount of the excess referred to in paragraph (c).

“(6) Where—

- (a) the export sale of dairy products to which this section applies is a sale by or on behalf of the Corporation; and
- (b) the assessed return in relation to those dairy products exceeds the minimum return in relation to those dairy products,

the Corporation shall debit to the appropriate pool the amount of that excess.

“(7) The Corporation may enter into an arrangement with a person under which the person agrees to authorize the Corporation to receive, on his behalf, the proceeds of the export sale by or on his behalf of any dairy products to which this section applies.

“(8) An arrangement under sub-section (7) shall provide that—

(a) where—

- (i) the amount of the proceeds received from the export sale of any dairy products to which the arrangement relates is not less than the minimum return in relation to those dairy products; and
- (ii) the minimum return in relation to those dairy products exceeds the assessed return in relation to those dairy products,

the Corporation shall credit to the appropriate pool the amount of the excess referred to in sub-paragraph (ii) and shall pay to the other party to the arrangement the remainder of those proceeds; or

- (b) where the assessed return in relation to any dairy products to which the arrangement relates exceeds the minimum return in relation to those dairy products—the Corporation shall debit to the appropriate pool the amount of that excess and shall pay to the other party to the arrangement the proceeds of the export

sale of those dairy products together with an amount equal to the amount of that debit.

“(9) The Commonwealth may pay to the Corporation an amount to be credited to a pool.

“(10) Where—

- (a) the Corporation has received an advance from the Reserve Bank under an arrangement made under section 23 and has credited the whole or a part of that advance to a separate account kept in the Dairy Products Stabilization Trust Fund; and
- (b) that separate account and a pool under this section are kept or maintained, as the case may be, in respect of the same class of dairy products,

any moneys standing to the credit of the pool may be used by the Corporation to repay that advance, or that part of that advance, as the case may be, to the Reserve Bank, and the Corporation may debit to the pool the amount of any such repayment accordingly.

“(11) The Corporation may make advances to proprietors of factories on account of final payments that may become payable to those proprietors from a pool under sub-section (12), being advances calculated at a rate fixed by the Minister from time to time.

“(12) Where the Corporation is satisfied that, apart from the succeeding provisions of this section, no more amounts will be credited or debited to a pool, the Corporation shall divide the amount standing to the credit of the pool among the proprietors of the factories at which dairy products of the kind in respect of which the pool is maintained were produced during the relevant production period (whether or not those dairy products subsequently became dairy products to which this section applies), being a division made on the basis of the quantity of such dairy products produced at each factory during that period, and the amount so ascertained in relation to each proprietor is the final payment payable to the proprietor from the pool.

“(13) A reference in sub-section (12) to dairy products shall be read as not including dairy products that were, by virtue of section 9 of the *Dairy Industry Stabilization Levy Act 1977*, exempt from levy.

“(14) Where—

- (a) a final payment is payable from a pool to a proprietor; and
- (b) the proprietor has not received any advance under sub-section (11) on account of that final payment,

the Corporation shall pay the amount of the final payment to the proprietor.

“(15) Where—

- (a) a final payment is payable from a pool to a proprietor;

- (b) the proprietor has received an advance or advances under sub-section (11) on account of that final payment; and
- (c) the final payment exceeds the advance, or the aggregate of the advances, referred to in paragraph (b),

the Corporation shall pay to the proprietor an amount equal to that excess.

“(16) Where—

- (a) a final payment is payable from a pool to a proprietor;
- (b) the proprietor has received an advance or advances under sub-section (11) on account of that final payment; and
- (c) the final payment is less than the advance, or the aggregate of the advances, referred to in paragraph (b),

an amount equal to that difference is repayable to the Corporation on demand in writing by the Corporation and, if not paid within 3 months after the demand, shall be deemed to be a debt due and payable to the Corporation.”.

Borrowing
by the
Corporation.

6. Section 23 of the Principal Act is amended by inserting in paragraph (a) of sub-section (1), after the word “Corporation” (second occurring), the words “, whether purposes authorized by this Act or another Act”.

7. After Part V of the Principal Act the following Part is inserted:—

**“PART VA—AUSTRALIAN DAIRY INDUSTRY ADVISORY
COMMITTEE**

Australian
Dairy
Industry
Advisory
Committee.

“25D. There shall be a Committee by the name of the Australian Dairy Industry Advisory Committee.

Functions of
Advisory
Committee.

“25E. The functions of the Advisory Committee are as follows:—

- (a) to assist the Corporation in the performance of its functions and the exercise of its powers under the *Dairy Industry Stabilization Levy Act 1977* and the *Dairy Industry Stabilization Act 1977* and, in particular, to make itself available for consultation with the Corporation with respect to any matter relevant to the performance of those functions or the exercise of those powers;
- (b) if so requested by the Corporation, to assist the Corporation in the performance of its functions and the exercise of its powers under any other Act (including this Act).

Membership
of Advisory
Committee.

“25F. (1) Members of the Advisory Committee shall be appointed by the Minister.

“(2) The Advisory Committee shall consist of 11 members, namely:—

- (a) a Chairman;

- (b) 3 members to represent manufacturers of butter, skim milk powder and casein;
- (c) 2 members to represent manufacturers of cheese;
- (d) 1 member to represent manufacturers of other dairy products; and
- (e) 4 members to represent dairy farmers, including a member to represent the market milk sector of the dairy farming industry.

“(3) The members referred to in paragraphs (2) (b), (c) and (d) shall be selected by the Minister from lists submitted to the Minister containing the names of persons nominated by such organizations of manufacturers of dairy products as the Minister considers appropriate.

“(4) In making an appointment of a member under sub-section (3), the Minister shall indicate in the instrument of appointment the class of manufacturers of dairy products that the member is to represent.

“(5) The members referred to in paragraph (2)(e) shall be appointed by the Minister from a list submitted to the Minister containing the names of persons nominated by the Australian Dairy Farmers’ Federation or by any other organization of dairy farmers approved by the Minister.

“(6) In making an appointment under sub-section (5) of the member who is to represent the market milk sector of the dairy farming industry, the Minister shall state in the instrument of appointment that the member is to represent that sector.

“(7) The members of the Advisory Committee shall be appointed as part-time members.

“25G. (1) Subject to this Act, a member holds office for a period of 3 years, but is eligible for re-appointment. Tenure of office.

“(2) Where the Minister appoints a person to fill a vacancy in the office of a member of the Advisory Committee, being a vacancy arising otherwise than by reason of the expiration of the period for which the member who held the office was appointed, the person so appointed holds office for the unexpired term of office of the member whose office became vacant.

“25H. A member of the Advisory Committee may resign his office by writing under his hand delivered to the Minister. Resignation of members of Advisory Committee.

“25J. The Minister may terminate the appointment of a member of the Advisory Committee by reason of the misbehaviour or mental or physical incapacity of the member. Termination of appointment of members of Advisory Committee.

Leave of absence of members of Advisory Committee.

“25K. The Minister may grant leave of absence to a member of the Advisory Committee.

Meetings of Advisory Committee.

“25L. (1) The Advisory Committee shall hold such meetings as are necessary for the performance of its functions.

“(2) The Chairman of the Advisory Committee may, with the approval of the Chairman of the Corporation, at any time convene a meeting of the Advisory Committee.

“(3) If the office of Chairman of the Advisory Committee is vacant or the Chairman of the Advisory Committee is unable, whether on account of illness or otherwise, to perform the duties of his office, the power conferred by sub-section (2) may be exercised by the Chairman of the Corporation.

“(4) The Chairman of the Advisory Committee or the Chairman of the Corporation shall, on receipt of a request in writing signed by not less than 5 members, convene a meeting of the Advisory Committee.

“(5) At a meeting, a quorum is constituted by a number of members equal to a majority of the members for the time being holding office.

“(6) The Chairman shall preside at all meetings at which he is present.

“(7) If the Chairman is not present at a meeting, the members present shall elect one of their number to preside at the meeting.

“(8) Questions arising at a meeting shall be determined by a majority of the votes of the members present and voting.

Remuneration and allowances of members of Advisory Committee.

“25M. (1) A member of the Advisory Committee shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

“(2) A member of the Advisory Committee shall be paid such fees and allowances as are prescribed.

“(3) Sub-sections (1) and (2) have effect subject to the *Remuneration Tribunals Act 1973*.

“(4) The remuneration, fees and allowances of members of the Advisory Committee shall be paid by the Corporation.

“(5) Where the Corporation considers that, having regard to the services performed by the Advisory Committee from time to time, it is appropriate that the whole or a part of payments made by the Corporation under this section should be met from the Dairy Products Stabilization Trust Fund, the Corporation may, by instrument in writing, direct

that the whole, or that part, of those payments shall be deemed to be an expense of the Corporation in administering that Fund.”.

8. Section 29 of the Principal Act is amended by omitting from sub-section (1) the words “under the *Dairy Produce Sales Promotion Act* 1958-1975” and substituting the words “any other Act”.

Annual
report.

NOTES

1. Act No. 53, 1977; assented to 7 June 1977.
2. Act No. 38, 1924, as amended. For previous amendments *see* Act No. 45, 1934; No. 70, 1935; No. 26, 1936; No. 20, 1937; No. 18, 1938; No. 24, 1942; No. 53, 1947; No. 37, 1953; No. 17, 1954; No. 74, 1958; No. 49, 1962; No. 79, 1963; No. 43, 1965; No. 93, 1966; No. 3, 1972; No. 216, 1973 (as amended by No. 20, 1974); No. 82, 1975; and Nos. 37 and 79, 1976.