



# Dairy Produce Act 1986

No. 54 of 1986

## TABLE OF PROVISIONS

### PART I PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation
4. Act to bind Crown

### PART II THE AUSTRALIAN DAIRY CORPORATION

*Division 1—Constitution, objective and functions of Corporation*

5. Australian Dairy Corporation
6. Objective
7. Functions of the Corporation
8. Directions to Corporation

*Division 2—Powers and duties of Corporation*

9. Powers of the Corporation
10. Dealing in dairy produce
11. Subsidiary companies, &c.
12. Asia Dairy Industries
13. Power of Corporation to lend money
14. Corporation may consult industry representatives
15. Committees
16. Report to Conference

## TABLE OF PROVISIONS—*continued*

### *Division 3—Corporate plans and annual operational plans*

#### Section

- 17. Corporation to prepare corporate plans
- 18. Agreement to corporate plans
- 19. Variation of corporate plans by Corporation
- 20. Variation of corporate plans at request of Minister
- 21. Date of effect of variations
- 22. Notice of variation of corporate plans
- 23. Corporation to prepare annual operational plans
- 24. Agreement to annual operational plans
- 25. Variation of annual operational plans
- 26. Notice of variation of annual operational plan
- 27. Consultation with executive council

## PART III MEMBERSHIP AND MEETINGS OF CORPORATION

### *Division 1—Nominations for membership of Corporation*

- 28. Selection Committee
- 29. Minister may request nominations
- 30. Selection of nominees
- 31. Nominations
- 32. Minister may reject nomination

### *Division 2—Provisions relating to membership and meetings of Corporation*

- 33. Membership of Corporation
- 34. Deputies of Chairperson and government member
- 35. Disclosure of interests
- 36. Remuneration and allowances
- 37. Leave of absence of appointed members
- 38. Termination, &c., of appointments
- 39. Meetings of Corporation
- 40. Resolutions without formal meetings

### *Division 3—Provisions relating to membership and meetings of Selection Committee*

- 41. Membership of Selection Committee
- 42. Remuneration
- 43. Termination of appointments
- 44. Meetings of Selection Committee
- 45. Staff and consultants
- 46. Applied provisions

## PART IV—STAFF

- 47. Managing Director
- 48. Acting Managing Director
- 49. Duties of Managing Director
- 50. Other staff and consultants

## PART V EXPORT CONTROL

- 51. Interpretation
- 52. Regulations relating to exports
- 53. Corporation may issue directions
- 54. Prohibition of export of controlled dairy exports
- 55. Applications for licences
- 56. Grant of licence
- 57. Duration of licence
- 58. Renewal of licences
- 59. Cancellation of licences
- 60. Operation of other laws

## TABLE OF PROVISIONS—*continued*

### PART VI—COLLECTION OF LEVIES

#### *Division 1—Collection of milk fat levies*

#### Section

- 61. Time for payment of milk fat levies
- 62. Liability of purchaser from producer
- 63. Penalty for non-payment of milk fat levy
- 64. Recovery of milk fat levy
- 65. Refund of milk fat levy

#### *Division 2—Collection of dairy products levies*

- 66. Time for payment of dairy products levies
- 67. Penalty for non-payment of dairy products levy
- 68. Recovery of dairy products levy
- 69. Refund of dairy products levy
- 70. Benefit of refund of dairy products levy to be passed on to exporter

### PART VII—FINANCE

#### *Division 1—Preliminary*

- 71. Money to be paid to Corporation
- 72. Proper accounts to be kept
- 73. Bank accounts
- 74. Application of money of Corporation
- 75. Raising of money by Corporation
- 76. Guarantee of borrowings by Corporation
- 77. Borrowings not otherwise permitted
- 78. Corporation may give security
- 79. Futures contracts
- 80. Surplus or deficit in respect of certain activities of Corporation
- 81. Audit
- 82. Appointment of company auditors
- 83. Liability to taxation
- 84. Money standing to the credit of each relevant Fund to be kept in separate bank account
- 85. Investment of money standing to credit of a relevant fund

#### *Division 2—Industry Fund*

- 86. Industry Fund
- 87. Payments into Industry Fund
- 88. Application of Industry Fund

#### *Division 3—Promotion Fund*

- 89. Dairy Produce Promotion Fund
- 90. Payments into Promotion Fund
- 91. Application of the Promotion Fund

#### *Division 4—Market Support Fund and market support payments*

- 92. Market Support Fund
- 93. Payments into Market Support Fund
- 94. Market support payments
- 95. Rate of market support payments in relation to prescribed dairy produce
- 96. Rate of market support payments in relation to dairy produce other than prescribed dairy produce
- 97. Special rates of market support payments
- 98. Special rates of market support payments for underwritten dairy produce
- 99. Corporation may guarantee rate of market support payments

## TABLE OF PROVISIONS—*continued*

### Section

- 100. Applications for market support payments
- 101. Application of the Market Support Fund
- 102. Winding-up of Market Support Fund

### *Division 5—Supplementary Fund and supplementary market support payments*

- 103. Supplementary Fund
- 104. Payments into Supplementary Fund
- 105. Supplementary market support payments
- 106. Amount of supplementary market support payments
- 107. Application of Supplementary Fund
- 108. Winding up of Supplementary Market Support Fund

## PART VIII—MISCELLANEOUS

- 109. Liability of Corporation for subsidiary companies
- 110. Exporters other than manufacturers to furnish details of exports
- 111. Power to call for returns
- 112. Offences in relation to applications for payments under this Act
- 113. Offences in relation to returns, &c.
- 114. Court may order refunds
- 115. Overpayments
- 116. Access to premises
- 117. Indictable offences
- 118. Reconsideration and review of decisions
- 119. Secrecy
- 120. Appointment of authorised persons
- 121. Validity of contracts
- 122. Corporation to keep Minister informed
- 123. Annual reports
- 124. Liability of members of Corporation
- 125. Delegation by Corporation and Managing Director
- 126. Regulations



# Dairy Produce Act 1986

No. 54 of 1986

---

**An Act relating to the Australian Dairy Corporation, the marketing and export of dairy produce and the collection of certain levies imposed in connection with the dairy industry, and for related purposes**

*[Assented to 24 June 1986]*

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

## **PART I—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Dairy Produce Act 1986*.

### **Commencement**

2. (1) Except as provided by sub-sections (2) and (3), this Act shall come into operation on 1 July 1986.

(2) Sections 1 to 4 (inclusive), 28 to 32 (inclusive), 41 to 46 (inclusive) and 92 to 108, inclusive, shall come into operation on the day on which this Act receives the Royal Assent.

(3) Sub-sections 10 (3) to (8), inclusive, and 53 (3) shall come into operation on 1 October 1986.

### **Interpretation**

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

“acting Managing Director” means a person appointed as an acting Managing Director under section 48;

“annual operational plan” means a plan in force for the time being under section 24;

“appointed member” means a member other than the Managing Director;

“approved bank” means the Reserve Bank of Australia, a trading bank as defined in sub-section 5 (1) of the *Banking Act 1959* or another bank approved by the Treasurer, or by a person authorised by the Treasurer to give approvals for the purposes of this definition, to be an approved bank;

“authorised person” means a person appointed as an authorised person under section 120;

“Chairperson” means a person appointed as Chairperson of the Corporation under section 33;

“Conference” means the association by the name of the Australian Dairy Industry Conference Inc. that was incorporated under the *Associations Incorporation Act 1981* of the State of Victoria;

“corporate plan”, in relation to the Corporation, means a plan in force under section 18 and in relation to any other body corporate, means a like plan in force under this Act in relation to the body;

“Corporation” means the Australian Dairy Corporation continued in existence by this Act;

“Corporation auditor” means—

(a) where an appointment of a company auditor under sub-section 82 (6) as the auditor of the Corporation is in effect—that company auditor; and

(b) where paragraph (a) does not apply—the Auditor-General;

“corporation levy” means the levy of that name imposed by the first Levy Act and includes amounts of penalty (if any) payable under this Act in relation to that penalty;

“dairy industry” means industry in Australia that is concerned with the production, processing, manufacture, distribution and sale (whether for export or otherwise) of dairy produce;

“dairy produce” means—

(a) milk;

(b) cream; and

(c) such other products made from or containing milk or a constituent part of milk as are declared by the Corporation

*Dairy Produce No. 54, 1986*

- by notice published in the *Gazette* to be dairy produce for the purposes of this Act;
- “dairy products levy” means the levy imposed by section 9 of the first Levy Act or section 5 or 8 of the second Levy Act and includes amounts of penalty (if any) payable under section 67 of this Act;
- “Deputy Chairperson” means the deputy of the Chairperson of the Corporation;
- “executive council” means the executive council of the Conference;
- “first levy Act” means the *Dairy Produce Levy (No. 1) Act 1986*;
- “futures contract” means a currency futures contract or a financial futures contract;
- “futures market” means a market, exchange or other place at which futures contracts are regularly made or traded;
- “Industry Fund” means the Dairy Industry Fund established by section 86;
- “Managing Director” means the person appointed as Managing Director of the Corporation under section 47;
- “Market Support Fund” means the Dairy Produce Market Support Fund established by section 92;
- “market support levy” means the levy of that name imposed by the first Levy Act and includes amounts of penalty (if any) payable under this Act in relation to that levy;
- “market support payment” means a payment made under section 94 out of the Market Support Fund;
- “member” means a member of the Corporation and includes the Chairperson and a deputy of the Chairperson or of a member;
- “milk” means the lacteal fluid product of the dairy cow;
- “milk fat levy” means the corporation levy, the market support levy, the promotion levy or the research levy;
- “money of the Corporation” does not include money standing to the credit of the Dairy Produce Stabilization Trust Fund established by the *Dairy Industry Stabilization Act 1977* or to the credit of a relevant fund;
- “Promotion Fund” means the Dairy Produce Promotion Fund established by section 89;
- “promotion levy” means the levy of that name imposed by the first Levy Act and includes amounts of penalty (if any) payable under this Act in relation to that levy;
- “research levy” means the levy of that name imposed by the first Levy Act and includes amounts of penalty (if any) payable under this Act in relation to that levy;
- “relevant fund” means the Market Support Fund, the Industry Fund, Supplementary Fund or the Promotion Fund;
- “second Levy Act” means the *Dairy Produce Levy (No. 2) Act 1986*;

“Selection Committee” means the Australian Dairy Corporation Selection Committee established by section 28;

“Supplementary Fund” means the Dairy Produce Supplementary Market Support Fund established by section 103;

“supplementary market support payment” means a payment made under section 105 out of the Supplementary Fund.

(2) For the purposes of this Act—

- (a) where the Chairperson is a man, he may be referred to as the Chairman; and
- (b) where the Chairperson is a woman, she may be referred to as the Chairwoman.

(3) Subject to this Act, words and expressions used in this Act have the same meaning as they have for the purposes of the first Levy Act.

#### **Act to bind Crown**

4. (1) This Act binds the Crown in right of the Commonwealth and of each of the States and Territories.

(2) Nothing in this Act renders the Crown in right of the Commonwealth or of a State or Territory liable to be prosecuted for an offence against, or arising under, this Act.

## **PART II—THE AUSTRALIAN DAIRY CORPORATION**

### ***Division 1—Constitution, objective and functions of Corporation***

#### **Australian Dairy Corporation**

5. (1) The body corporate that was, immediately before the day on which this section comes into operation, in existence by virtue of section 4 of the *Dairy Produce Act 1924* under the name of the Australian Dairy Corporation continues in existence by force of this sub-section as a body corporate, under and subject to this Act, under the same name.

(2) The Corporation—

- (a) is a body corporate with perpetual succession;
- (b) shall have a seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Corporation appearing on a document and shall presume that the document was duly sealed.

#### **Objective**

6. The objective of the Corporation is to enhance the profitable production and marketing of Australian dairy produce.



### **Functions of the Corporation**

7. The functions of the Corporation are—

- (a) to improve the marketability of Australian dairy produce;
- (b) to promote the consumption of Australian dairy produce, both in Australia and in foreign countries;
- (c) to assist in the marketing of Australian dairy produce for export and for trade and commerce among the States, between States and Territories and within the Territories;
- (d) to control the export from Australia of dairy produce;
- (e) to control the marketing of dairy produce that has been exported from Australia;
- (f) to advise the Minister on matters relating to the marketing of dairy produce including matters related to the export from Australia of dairy produce;
- (g) to provide assistance by way of loans to manufacturers of dairy produce in Australia;
- (h) to deal in dairy produce; and
- (j) such other functions as are conferred on the Corporation by or under an Act.

### **Directions to Corporation**

8. (1) Subject to this section, where the Minister is satisfied that, because of the existence of exceptional circumstances, it is necessary to give a direction to the Corporation in order to ensure that the performance of the functions, or the exercise of the powers, of the Corporation does not conflict with major government policies, the Minister may, by notice in writing, give the direction to the Corporation.

(2) The Minister shall not give a direction under sub-section (1) unless and until the Minister has given the Chairperson an adequate opportunity to discuss with the Minister the need for the proposed direction.

(3) The Corporation shall comply with any direction given under sub-section (1).

(4) Where the Minister gives a direction to the Corporation under sub-section (1)—

- (a) the Minister shall cause a notice setting out particulars of the direction to be published in the *Gazette* as soon as practicable after giving the direction;
- (b) the Minister shall cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of the House after giving the direction;
- (c) particulars of the direction shall be included in the annual report of the Corporation for the year in which the direction was given; and

- (d) that report shall include particulars of the impact of that direction on the operations of the Corporation.
- (5) Sub-section (4) does not apply where—
  - (a) the Minister, on the recommendation of the Corporation, determines, in writing, that compliance with the sub-section would, or would be likely to, prejudice the commercial activities of the Corporation; or
  - (b) the Minister determines, in writing, that compliance with the sub-section is undesirable because compliance would, or would be likely to, be prejudicial to the national interest of Australia.

***Division 2—Powers and duties of Corporation***

**Powers of the Corporation**

9. (1) Subject to this Act, the Corporation may do all things that are necessary or convenient to be done in connection with the performance of its functions.

(2) To the extent that it is practicable to do so, the Corporation shall ensure that its powers, at any time, are exercised consistently with, and so as to give effect to, the corporate plan and the annual operational plan in force at that time.

**Dealing in dairy produce**

10. (1) Subject to this Act, the Corporation may—

- (a) buy Australian dairy produce for the purposes of export and sale; and
- (b) act as agent in connection with the sale outside Australia of Australian dairy produce.

(2) The Corporation shall not buy dairy produce for the purpose of sale in Australia.

(3) The Corporation shall not buy or sell dairy produce, whether in Australia or elsewhere, unless the sale is approved, or is included in a class of sales that is approved, by the executive council.

(4) Where—

- (a) the Corporation has, under an approval given under sub-section (3), bought, or entered into a contract to buy, dairy produce; and
- (b) the approval is revoked,

the Corporation may, notwithstanding the revocation, sell the dairy produce, either in Australia or elsewhere, or complete the contract and then sell the dairy produce, whether in Australia or elsewhere, as the case may be.

(5) Where—

- (a) the Corporation proposes to enter into a contract to buy dairy produce; and
- (b) before the contract is entered into it appears to the Corporation that the Corporation is likely to sustain a loss arising from the purchase and sale of the produce,

the Corporation shall not enter into the contract unless it has obtained the approval, in writing, of the executive council and the Minister to its entry into that contract.

(6) Where—

- (a) the Corporation proposes to enter into 2 or more related contracts to buy dairy produce; and
- (b) before the first of those contracts is entered into it appears to the Corporation that the Corporation is likely to sustain a net loss arising from the purchase and sale of all of the dairy produce to which the contracts relate,

the Corporation shall not enter into any of those contracts unless it has obtained the approval, in writing, of the executive council and of the Minister to its entry into all the related contracts.

(7) The Minister's approval for the purposes of sub-section (5) or (6) may be given subject to such conditions as are specified in the instrument of approval.

(8) Contracts to buy dairy produce shall not be taken, for the purposes of sub-section (6), to be related unless—

- (a) the contracts—
  - (i) are all contracts for the purchase of dairy produce of a single kind or of similar kinds; and
  - (ii) are all contracts entered into with a view to the sale of the dairy produce to which they relate on a single market; or
- (b) the executive council has agreed to the contracts being regarded as related.

#### **Subsidiary companies, &c.**

11. (1) In this section, "prescribed business" means a business relating to any matter that is within the functions or duties of the Corporation or with respect to which the Corporation may exercise powers.

(2) The Corporation may, with the approval, in writing, of the Minister—

- (a) form, or participate with other persons in the formation of, a company;
- (b) acquire, hold or dispose of shares or stock in the capital of, or debentures or other securities of, a company; or
- (c) enter into a partnership, or arrange for the sharing of profits, with a company.

(3) The approval may be subject to such conditions as the Minister thinks fit.

(4) Except in the case of a disposal of the kind referred to in paragraph (2) (b), the Minister shall not give an approval referred to in sub-section (2) if the company to which the approval relates is carrying on a business

other than a prescribed business or it is proposed that the company carry on a business other than a prescribed business.

(5) An agreement or arrangement between the Corporation and a company shall include a term empowering the Corporation to terminate the agreement or arrangement if the company ceases to carry on a prescribed business or commences to carry on a business that is not a prescribed business.

(6) Where—

- (a) the Corporation has an interest in, or is a party to an agreement or arrangement with, a company; and
- (b) the company does not carry on a prescribed business or is carrying on a business that is not a prescribed business,

the Minister may give to the Corporation such directions, in writing, as the Minister thinks appropriate with respect to—

- (c) the disposal of the interest of the Corporation in the company; or
- (d) the termination of the agreement or arrangement between the Corporation and the company,

as the case may be.

(7) This section does not authorise a company to carry on a prescribed business otherwise than in accordance with the relevant law.

### **Asia Dairy Industries**

**12. (1)** The Corporation shall ensure that Asia Dairy Industries (H.K.) Limited, a company incorporated in Hong Kong, undertakes only the following activities:

- (a) buying dairy produce and dairy livestock, whether produced in Australia or elsewhere, and selling them outside Australia, with the objective of maintaining and expanding existing markets, or securing new markets, outside Australia, for Australian dairy produce and Australian dairy livestock;
- (b) providing services related to the production, distribution, sale or promotion of dairy produce or the provision of dairy livestock;
- (c) an activity related to an activity referred to in paragraph (a) or (b);
- (d) any other activity in which the Corporation may engage.

**(2)** The Corporation shall take steps to ensure that Asia Dairy Industries (H.K.) Limited (in this sub-section referred to as “the company”)—

- (a) complies with the directions of the Minister and of the Corporation;
- (b) does not, except with the approval, in writing, of the Minister—
  - (i) form, or participate with other persons in the formation of, a company;
  - (ii) acquire, hold or dispose of shares or stock in the capital of, or shares or other securities of, a company; or

*Dairy Produce No. 54, 1986*

- (iii) enter into a partnership, or arrange for the sharing of profits, with a company;
- (c) prepares and submits to the Corporation corporate plans and annual operational plans relating to the activities of the company, being plans of the kind that the Corporation is, under this Act, required to submit to the Minister;
- (d) does not raise money (whether by borrowing or otherwise), except in the course of obtaining normal commercial credit, otherwise than in accordance with guidelines approved by the Minister;
- (e) prepares and submits to the Corporation annual reports in the form, and at the times, specified by the Corporation;
- (f) permits the Corporation auditor to satisfy himself or herself that there has been compliance with the requirements of sub-section (1) and, for that purpose, allows the Corporation auditor full and free access to all documents and other information concerning the affairs of the company held by, or under the control of, the company; and
- (g) does not, without the approval of the Minister, employ staff on terms more favourable than those applicable to the Managing Director of the Corporation.

(3) An approval given by the Minister under paragraph (2) (b) may be subject to such conditions as the Minister thinks fit.

(4) Except in the case of a disposal of the kind referred to in sub-paragraph (2) (b) (ii), the Minister shall not give an approval referred to in paragraph (2) (b) if the company to which the approval relates is carrying on a business other than a relevant business or it is proposed that the company carry on a business other than a relevant business.

(5) An agreement or arrangement between Asia Dairy Industries (H.K.) Limited and a company shall include a term empowering Asia Dairy Industries (H.K.) limited to terminate the agreement or arrangement if the company ceases to carry on relevant business or commences to carry on a business that is not a relevant business.

(6) Where—

- (a) Asia Dairy Industries (H.K.) Limited has an interest in, or is a party to an agreement or arrangement with, a company; and
- (b) the company does not carry on a prescribed business or is carrying on a business that is not a relevant business,

the Minister may give to the Corporation or to Asia Dairy Industries (H.K.) Limited such directions, in writing, as the Minister thinks appropriate with respect to—

- (c) the disposal of the interest of Asia Dairy Industries (H.K.) Limited in the company; or
- (d) the termination of the agreement or arrangement between the Corporation and the company,

as the case may be.

(7) This section does not authorise a company to carry on a relevant business otherwise than in accordance with the relevant law.

(8) If the name of Asia Dairy Industries (H.K.) Limited, a company incorporated in Hong Kong, is changed, this Act continues to apply in relation to the company as it would have continued to apply if the name had not been changed.

(9) Sub-sections (1) to (8), inclusive, do not apply if the Corporation is not in a position to control the operations of Asia Dairy Industries (H.K.) Limited.

(10) In this section, "relevant business" means a business relating to any matter that is within the functions or duties of Asia Dairy Industries (H.K.) Limited or with respect to which that company may exercise powers.

#### **Power of Corporation to lend money**

13. (1) Subject to this section, the Corporation may lend money to a manufacturer of dairy produce who is holding dairy produce that has been manufactured by that manufacturer in store (whether at the manufacturer's own premises or at other premises) to assist the manufacturer in the stock-holding of that dairy produce pending its sale.

(2) A loan made by the Corporation under this section in respect of particular dairy produce shall be—

- (a) secured to the satisfaction of the Corporation; and
- (b) made on terms that require the repayment of the loan at a time that is not later than the time of sale of the dairy produce to which the loan relates.

#### **Corporation may consult industry representatives**

14. (1) The Corporation may, for the purpose of considering any matter relating to the performance of its functions, make arrangements for consulting the executive council and persons and bodies representative of different sectors of the dairy industry.

(2) Arrangements entered into by the Corporation under sub-section (1) may include the Corporation's agreeing to meet the costs and expenses reasonably incurred in connection with that consultation.

#### **Committees**

15. (1) The Corporation may appoint a committee to assist the Corporation in relation to a matter.

(2) A committee appointed under this section shall consist of such persons, whether members of the Corporation or not, as the Corporation thinks fit.

(3) The Corporation shall, in the instrument appointing a committee, make provision in relation to the procedure to be followed in relation to

meetings of the committee, including the number of members of the committee that forms the quorum for such meetings.

### **Report to Conference**

**16.** At the first meeting of the Conference after each annual report of the Corporation has been laid before each House of the Parliament under sub-section 123 (4), the Chairperson shall—

- (a) present the annual report to the Conference;
- (b) report to the Conference on the activities of the Corporation during the period to which the annual report relates; and
- (c) make himself or herself available to answer questions arising out of the reports referred to in paragraphs (a) and (b).

### ***Division 3—Corporate plans and annual operational plans***

#### **Corporation to prepare corporate plans**

**17. (1)** The Corporation shall, in accordance with this section, prepare, in writing, for the purpose of the more effective performance by the Corporation of its functions, a plan—

- (a) defining what, in the opinion of the Corporation, should be the principal goals of the Corporation;
- (b) giving a broad outline of the strategies that should, in the opinion of the Corporation, be pursued in achieving those goals;
- (c) setting out the Corporation's assessment, for the period to which the plan relates, of the market outlook and the economic outlook for the dairy industry;
- (d) setting out the circumstances, if any, in which licensees will be required, in consultations under section 53, to disclose particulars of specific future export transactions;
- (e) stating the basis on which the Corporation will estimate average export prices for the purposes of sub-section 95 (9);
- (f) stating the basis on which the Corporation will determine rates of supplementary market support payments for the purpose of sub-section 106 (3); and
- (g) stating the criteria that will be applied by the Corporation in determining, from time to time, whether the exercise by the Corporation of the power conferred on it by section 3 to declare products to be dairy produce for the purposes of this Act, and the powers conferred on it by sub-sections 13 (1) and 95 (1) and by sections 97 and 99, would further the objective of the Corporation.

**(2)** The first corporate plan shall relate to such period, being a period commencing on 1 July 1987 or such later day as the Minister approves and ending on 30 June 1990, 30 June 1991 or 30 June 1992, as the Corporation determines.

(3) Each subsequent corporate plan shall relate to such period, being a period of 3, 4 or 5 years commencing on the 1 July next following the start of the period to which the previous plan related, as the Corporation determines.

**Agreement to corporate plans**

18. (1) The Corporation shall cause a copy of a corporate plan prepared under section 17 to be given to the Minister at least 3 months before the commencement of the period to which the plan relates.

(2) Where a copy of a corporate plan is given to the Minister, the Minister may, by notice in writing given to the Corporation—

- (a) agree to a plan; or
- (b) if the Minister is of the opinion that, in the interests of the dairy industry, the plan should be revised in some respect—request the Corporation to revise the plan appropriately.

(3) The Minister shall include in the notice of request under paragraph (2) (b) a statement setting out the Minister's reasons for making the request.

(4) Where the Corporation receives a request under paragraph (2) (b), the Corporation shall consider the request and statement of reasons, make such revision of the corporate plan as it considers appropriate and re-submit the revised plan to the Minister for the Minister's agreement.

(5) A corporate plan comes into force—

- (a) at the commencement of the period to which the plan relates; or
- (b) on the day on which the Corporation receives notice of the Minister's agreement,

whichever is the later.

(6) Upon the coming into force of a corporate plan under sub-section (5), any corporate plan that is already in force ceases to be in force.

**Variation of corporate plans by Corporation**

19. (1) Subject to sub-section (4), the Corporation shall not vary a corporate plan of its own motion except with the agreement of the Minister.

(2) Where the Corporation wishes to vary a corporate plan, the Corporation shall prepare written proposals for the variations and give a copy of the proposals to the Minister together with a statement setting out the Corporation's reasons for making the proposals.

(3) The Minister may, after considering proposals for the variations of a corporate plan submitted under sub-section (2) and the reasons for making those proposals, by notice in writing given to the Corporation, agree to or reject the proposals.

(4) Nothing in this section prevents the Corporation making variations of a minor nature to a corporate plan without the approval of the Minister



but the Corporation shall, as soon as practicable after making such a variation, inform the Minister of the variation.

#### **Variation of corporate plans at request of Minister**

**20. (1)** The Minister may, by notice in writing given to the Corporation, request the Corporation to vary a corporate plan in the manner set out in the notice of request.

**(2)** Where the Minister makes a request under sub-section (1), the Minister shall include in the notice of request a statement setting out the Minister's reasons for making the request.

**(3)** Where the Corporation receives a request under sub-section (1), the Corporation shall consider the request and statement of reasons, prepare written proposals for such variations of the plan as the Corporation considers appropriate and submit those proposals to the Minister for the Minister's agreement.

**(4)** The Minister may, after considering proposals for the variations of a corporate plan submitted under sub-section (3), by notice in writing given to the Corporation, agree to or reject the proposals.

#### **Date of effect of variations**

**21. Where—**

- (a)** a corporate plan has come into force; and
- (b)** a variation to the plan is agreed to by the Minister under section 19 or 20 or the Corporation makes a variation of a minor nature to the plan,

the plan shall continue in force on and after the day on which the Corporation receives notice of the Minister's agreement or the day on which the Corporation makes the variation of a minor nature, as the case may be, as if the Minister had originally agreed to the plan as so varied.

#### **Notice of variation of corporate plans**

**22.** Where a variation of a corporate plan is agreed to by the Minister in accordance with section 19 or 20, particulars of the variation shall be included in the annual report of the Corporation for the year in which the variation was made.

#### **Corporation to prepare annual operational plans**

**23.** The Corporation shall, in relation to the first financial year of a period to which each corporate plan relates or to which each intended corporate plan will relate, prepare, in writing, an annual operational plan setting out particulars of the action that the Corporation intends to take in order to give effect to or further, during that year, the matters set out in that corporate plan.

**Agreement to annual operational plans**

24. (1) The Corporation shall cause a copy of an annual operational plan prepared under section 23 to be given to the Minister at least 2 months before the commencement of the period to which the plan relates.

(2) Where a copy of an annual operational plan is given to the Minister, the Minister may, by notice in writing given to the Corporation—

(a) agree to the plan; or

(b) if the Minister is of the opinion that the plan is inconsistent with the provisions of the corporate plan that relates, or the intended corporate plan that will relate, to a period that includes, or will include, the period to which the first-mentioned plan will relate— request the Corporation to revise the first-mentioned plan appropriately.

(3) The Minister shall include in the notice of a request under paragraph (2) (b) a statement setting out the Minister's reasons for making the request.

(4) Where the Corporation receives a request under paragraph (2) (b), the Corporation shall consider the request and statement of reasons, make such revision of the annual operational plan as it considers appropriate and re-submit the revised plan to the Minister for the Minister's agreement.

(5) An annual operational plan comes into force—

(a) at the commencement of the period to which the plan relates; or

(b) on the day on which the Corporation receives notice of the Minister's agreement,

whichever is the later.

**Variation of annual operational plans**

25. (1) Sections 19, 20 and 21 apply to annual operational plans in the same manner as those sections apply to corporate plans.

(2) Where, if a proposed variation of a corporate plan were to be agreed to by the Minister, a relevant annual operational plan would not be consistent with the provisions of the corporate plan, the Corporation shall, at the time of submitting to the Minister for agreement proposals for variation to the corporate plan, also submit to the Minister proposals for appropriate variations of that annual operational plan.

**Notice of variation of annual operational plan**

26. Where a variation of an annual operational plan is agreed to by the Minister in accordance with section 25, particulars of the variation shall be included in the annual report of the Corporation for the year in which the variation was made.

**Consultation with executive council**

27. The Corporation shall consult the executive council in the preparation of any Corporate plan, annual operational plan or variation of any such plan.

**PART III—MEMBERSHIP AND MEETINGS OF CORPORATION**

***Division 1—Nominations for membership of Corporation***

**Selection Committee**

**28. (1)** There is established by this section a committee by the name of the Australian Dairy Corporation Selection Committee.

**(2)** The function of the Selection Committee is to select persons, and nominate them to the Minister for appointment, as members of the Corporation.

**(3)** The Selection Committee has power to do all things that are necessary or convenient to be done in connection with the performance of its functions.

**Minister may request nominations**

**29.** The Minister shall—

- (a)** for the purpose of appointing the members referred to in paragraph 33 (1) (d); and
- (b)** for the purpose of filling a vacancy caused by the resignation of, or termination of the appointment of, any of the members so referred to,

by notice in writing given to the Selection Committee, request the Committee to give to the Minister, within the period specified in the notice, the names of persons, or the name of a person, as the case requires, considered by the Committee to be suitable for appointment.

**Selection of nominees**

**30. (1)** A person is not entitled to be nominated by the Selection Committee unless the person has qualifications relevant to, or has experience in, one or more of the following fields of activity:

- (a)** milk production;
- (b)** the production, sale or export of dairy produce;
- (c)** the operation of dairy factories or factories producing other food stuffs;
- (d)** product promotion;
- (e)** finance;
- (f)** international marketing;
- (g)** business management;
- (h)** law;
- (j)** industrial relations.

**(2)** In selecting persons for nomination, the Selection Committee shall choose from the available candidates such persons as will best ensure that the members of the Corporation collectively possess qualifications and experience in the fields of activity referred to in paragraphs (1) (a) to (j), inclusive.

(3) A person who is or has been a member of the Selection Committee is not entitled to be nominated by the Selection Committee until a period of one year has elapsed after the person ceased or last ceased to be a member.

(4) A person is entitled to be nominated by the Selection Committee notwithstanding that a proposal for his or her nomination has been rejected at a previous meeting of the Committee or that a nomination for his or her appointment to the Corporation has previously been rejected by the Minister.

### **Nominations**

31. (1) The Selection Committee shall, by the day specified by the Minister in a notice requesting the nomination of a person or persons for appointment to the Corporation, give to the Minister a notice in writing setting out the name or names of the person or persons whom it considers suitable for appointment.

(2) Subject to sub-section 32 (1), the Selection Committee shall make only one nomination in respect of each appointment to be made by the Minister.

(3) The notice shall include—

(a) a statement containing, in respect of the person, or of each of the persons, nominated—

(i) details of the person's qualifications and experience;

(ii) such other information relating to the person as the Committee thinks appropriate to include to help the Minister to determine whether to appoint the person; and

(b) a statement specifying how, in the opinion of the Committee, the nomination or nominations will best ensure that the members of the Corporation collectively possess qualifications and experience in the fields of activity referred to in sub-section 30 (1).

(4) If the Minister considers the information contained in the statement to be inadequate, the Minister may, by notice in writing, require the Committee, by such day as is specified in the notice, to provide the Minister with such further information of the kind referred to in the paragraph of sub-section (3) that relates to that statement as the Minister specifies.

### **Minister may reject nomination**

32. (1) If the Minister is not satisfied as to the suitability of a person nominated for appointment, the Minister may, by notice in writing given to the Committee, reject the nomination and may, in that notice, ask for a further nomination.

(2) For the purposes of this Act, that further request shall be taken to be a request under section 29.

***Division 2—Provisions relating to membership and meetings of Corporation***

**Membership of Corporation**

**33. (1)** The Corporation shall consist of 11 members, namely—

- (a) a Chairperson;
- (b) the Managing Director;
- (c) a government member; and
- (d) 8 other members.

(2) A member other than the Managing Director shall be appointed by the Minister with effect from such day as the Minister specifies in the instrument of appointment of that member.

(3) The members referred to in paragraph (1) (d) shall be appointed from persons nominated by the Selection Committee in accordance with Division 1.

(4) Appointed members shall hold office as part-time members.

(5) An appointed member, other than the government member, holds office, subject to this Act, for such period, not exceeding 3 years, as the Minister specifies in the instrument of appointment of the member, but is eligible for re-appointment.

(6) The government member holds office, subject to this Act, during the Minister's pleasure.

(7) A person who has attained the age of 65 years shall not be appointed as a member.

(8) A person shall not be appointed as a member, other than the government member, for a period that extends beyond the day on which the person will attain the age of 65 years.

(9) A person holding office as the government member ceases to hold office on the day on which the person attains the age of 65 years.

(10) The Minister may, by instrument in writing, extend the appointment of a person as an appointed member of the Corporation for a period that extends beyond the time when the person attains the age of 65 years if the Minister is satisfied that there are exceptional circumstances that justify the extension of the appointment.

(11) Appointed members hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined, in writing, by the Minister.

(12) An appointed member may resign the office of member by writing signed by the member and delivered to the Minister, but the resignation is not effective until it is accepted by the Minister.

(13) The exercise of a power or the performance of a function of the Corporation is not affected by a vacancy or vacancies in the membership of the Corporation.

**Deputies of Chairperson and government member**

**34. (1) The Minister—**

- (a) shall appoint an appointed member to be the deputy of the Chairperson; and
- (b) may appoint a person to be the deputy of the government member.

(2) Subject to sub-section (3), a person appointed under sub-section (1) holds office as the deputy of the Chairperson or of the government member, as the case may be, until the Minister terminates the appointment or, in the case of the deputy of the Chairperson, the person ceases to be a member, whichever first happens.

(3) A person appointed under sub-section (1) may resign the office to which he or she has been so appointed by writing signed by the person and delivered to the Minister, but the resignation is not effective until it is accepted by the Minister.

(4) The deputy of the Chairperson has and shall exercise all the powers, and shall perform all the functions, of the Chairperson—

- (a) during any vacancy in the office of the Chairperson; and
- (b) during any period when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of Chairperson.

(5) The deputy of the government member has and shall exercise all the powers, and shall perform all the functions, of the government member—

- (a) during any vacancy in the office of the government member; and
- (b) during any period when the government member is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of government member.

(6) Anything done by or in relation to a person purporting to act under sub-section (1) is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

**Disclosure of interests**

**35. (1)** A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Corporation shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Corporation.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Corporation and the member shall not, unless the Corporation or the Minister otherwise determines—

- (a) be present during any deliberation of the Corporation with respect to that matter; or
- (b) take part in any decision of the Corporation with respect to that matter.

(3) For the purpose of the making of a determination under sub-section (2) in relation to a member who has made a disclosure under sub-section (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Corporation for the purpose of making the determination; or
- (b) take part in the making by the Corporation of the determination.

(4) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Corporation in accordance with section 40 otherwise than at a meeting of the Corporation, being an interest that could conflict with the proper performance of his or her functions in relation to the consideration of the matter shall not sign a document in accordance with that section.

(5) A member who is a dairy farmer or manufacturer of dairy produce shall not be taken to have a pecuniary interest in a matter being considered or about to be considered by the Corporation by reason only that the person is a dairy farmer or manufacturer of dairy produce, as the case may be.

### **Remuneration and allowances**

**36. (1)** Appointed members shall be paid—

- (a) such remuneration as is determined by the Remuneration Tribunal; and
- (b) such allowances as are prescribed.

**(2)** If—

- (a) a person who is a member of the Corporation is also a member of, or a candidate for election to, the Parliament of a State; and
- (b) under the law of that State, the person would not be eligible to remain, or to be elected as, a member of that Parliament if he or she were entitled to remuneration under this Act,

the person shall not be paid remuneration or allowances under this Act but shall be reimbursed such expenses as the person reasonably incurs by reason of the person's performing the functions of a member.

- (3) If a person who is a member of the Corporation is also—
- (a) a member of the Parliament of a State (other than a State to the laws of which paragraph (b) of sub-section (2) refers); or
  - (b) in the service or employment of a State or an authority of a State or a person who holds or performs the duties of an office or position established by or under a law of a State, on a full-time basis,
- it is a condition of the person's holding the office of member that the person pay to the State, within one month of receiving an amount of remuneration under this Act, an amount equal to that first-mentioned amount, and the person—
- (c) shall not be paid allowances under this Act; and
  - (d) shall be reimbursed such expenses as the person reasonable incurs by reason of the person's performing the functions of a member.
- (4) An amount payable to a State by a person under sub-section (3) is a debt due to the State, and the State may recover that amount by action against the person in a court of competent jurisdiction.
- (5) In this section—
- “Parliament”, in relation to the Northern Territory, means the Legislative Assembly of the Northern Territory;
  - “State” includes the Northern Territory.
- (6) This section has effect subject to the *Remuneration Tribunals Act 1973*.

#### **Leave of absence of appointed members**

37. (1) The Minister may grant leave of absence to the Chairperson or the government member on such terms and conditions as the Minister determines.

(2) The Chairperson may grant leave of absence to any other appointed member on such terms and conditions as the Chairperson determines.

#### **Termination, &c., of appointments**

38. (1) The Minister may, after receiving a notice in writing, under the seal of the Conference, that the Corporation does not have the confidence of the executive council, terminate the appointments of one or more of the appointed members of the Corporation.

(2) The Minister may terminate the appointment of an appointed member for misbehaviour or for physical or mental incapacity.

(3) If an appointed member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) is absent, except with the leave provided for in section 37, from 3 consecutive meetings of the Corporation; or



(c) fails, without reasonable excuse, to comply with an obligation imposed by section 35,  
the Minister shall terminate the appointment of the member.

### **Meetings of Corporation**

**39. (1)** Subject to this section, meetings of the Corporation shall be held at such times and at such places within Australia as the Corporation determines.

(2) The Chairperson may, and at the request of 3 or more members, shall, convene a special meeting of the Corporation.

(3) At a meeting of the Corporation, 6 members constitute a quorum.

(4) The Chairperson shall preside at all meetings of the Corporation at which he or she is present.

(5) If the Chairperson is absent from a meeting of the Corporation, the deputy of the Chairperson, if present, shall preside at the meeting.

(6) If neither the Chairperson nor the deputy of the Chairperson is present at a meeting of the Corporation, the members present shall appoint one of their number to preside at the meeting.

(7) A question arising at a meeting of the Corporation shall be determined by a majority of the votes of the members present and voting.

(8) The member presiding at a meeting of the Corporation has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) The Corporation shall keep a record of its proceedings.

(10) The procedure of the Corporation shall be as determined by the Corporation.

### **Resolutions without formal meetings**

**40. (1)** If a majority of the members of the Corporation (being members who, if they were present at a meeting of the Corporation, would constitute a quorum) sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a duly constituted meeting of the Corporation on the day on which the document was signed, or, if the members signed the document on different days, on the day on which the document was last signed by a member.

(2) For the purposes of sub-section (1), 2 or more separate documents containing statements in identical terms each of which is signed by one or more members shall together be deemed to constitute one document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents.

***Division 3—Provisions relating to membership and meetings of Selection Committee***

**Membership of Selection Committee**

**41. (1)** The Selection Committee shall consist of the Presiding Member, and 4 other members, of that Committee.

**(2)** The Presiding Member of the Selection Committee shall be appointed by the Minister.

**(3)** The other members of the Selection Committee shall be appointed by the Minister on the nomination of the executive council.

**(4)** The Minister may, if he or she is not satisfied as to the suitability of a person who has been nominated by the executive council, reject the nomination and ask the executive council to make a further nomination.

**Remuneration**

**42.** A member of the Selection Committee shall be paid—

**(a)** such remuneration as is determined by the Remuneration Tribunal but if no determination of that Tribunal is in force, such remuneration as is prescribed; and

**(b)** such allowances as are prescribed.

**Termination of appointments**

**43.** If the executive council so requests, the Minister shall terminate the appointment of a member, not being the Presiding Member, of the Selection Committee.

**Meetings of Selection Committee**

**44. (1)** The Presiding Member of the Selection Committee may convene such meetings of the Selection Committee as he or she considers necessary for the efficient performance of its function.

**(2)** Meetings of the Committee shall be held at such places and at such times as the Presiding Member determines.

**(3)** At a meeting of the Selection Committee, 3 members constitute a quorum.

**(4)** The Presiding Member of the Selection Committee shall preside at all meetings of the Selection Committee at which he or she is present.

**(5)** If the Presiding Member of the Selection Committee is absent from a meeting of the Selection Committee, the members present shall elect one of their number to preside at the meeting.

**(6)** At a meeting of the Selection Committee—

**(a)** a question to be determined shall be decided by a majority of the votes of the members present and voting;

- (b) in the case of a meeting that is presided over by the Presiding Member of the Selection Committee—the Presiding Member shall have a deliberative vote and, in the event of an equality of votes, also has a casting vote; and
  - (c) in any other case—the member presiding shall have a deliberative vote but not a casting vote.
- (7) The Committee shall keep a record of its proceedings.

### **Staff and consultants**

**45. (1)** The Presiding Member may, on behalf of the Committee, engage persons to perform administrative and clerical services in connection with the performance of its function.

**(2)** The Presiding Member may, on behalf of the Committee, engage persons having suitable qualifications and experience as consultants to the Committee to assist the Committee in identifying persons suitable for nomination to the Minister.

**(3)** The terms and conditions of engagement of persons engaged under sub-section (1) or (2) shall be such as are determined by the Committee.

### **Applied provisions**

**46.** Subject to this Division, sub-sections 33 (4), (5), (11), (12) and (13), section 35, sub-sections 36 (2) to (6), inclusive, section 37, sub-sections 38 (2) and (3) and section 40 apply in relation to the Selection Committee, the Presiding Member of the Selection Committee and members of the Selection Committee as if references in those provisions to the Corporation, the Chairperson of the Corporation or the appointed members of the Corporation were references to the Selection Committee, the Presiding Member of the Selection Committee or members of the Selection Committee, as the case requires.

## **PART IV—STAFF**

### **Managing Director**

**47. (1)** There shall be a Managing Director of the Corporation who shall be appointed by the Corporation.

**(2)** The Corporation may—

- (a) determine, subject to the approval of the Minister, the terms and conditions of service of the Managing Director in respect of matters not provided for by this Act, including terms and conditions relating to remuneration and allowances; and
- (b) at any time terminate such an appointment.

**(3)** The Corporation may terminate the appointment of the Managing Director for misbehaviour, or physical or mental incapacity.

(4) If the Managing Director—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) except with the approval of the Corporation, engages in paid employment outside the duties of his or her office;
- (c) is absent from duty, except on leave of absence granted in accordance with the terms and conditions determined under sub-section (2), for 14 consecutive days or for 28 days in any 12 months; or
- (d) fails, without reasonable excuse, to comply with his or her obligations under section 35,

the Corporation shall terminate the appointment of the Managing Director.

(5) Sub-sections (3) and (4) shall not be taken to limit, by implication, the grounds upon which the appointment of the Managing Director may otherwise be terminated.

(6) The office of the Managing Director is not a public office within the meaning of the *Remuneration Tribunals Act 1973*.

#### **Acting Managing Director**

**48. (1)** The Corporation may appoint a person to act as Managing Director—

- (a) during a vacancy in the office of Managing Director, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason unable to perform the functions of his or her office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Corporation may—

- (a) determine the terms and conditions, including remuneration and allowances, if any, on which a person is to act under this section; and
- (b) terminate an appointment under this section at any time.

(4) Where a person is acting as Managing Director in accordance with paragraph (1) (b) and the office in which the person is acting becomes vacant while that person is so acting, that person may continue so to act until the Corporation otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first occurs.

(5) The appointment of a person to act as Managing Director ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Corporation.

(6) While a person is acting as Managing Director, the person may exercise all the powers, and shall perform all the functions, of the Managing Director.

(7) Anything done by or in relation to a person purporting to act under sub-section (1) is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

### **Duties of Managing Director**

49. (1) The affairs of the Corporation, to the extent determined by the Corporation, shall be managed by the Managing Director.

(2) The Managing Director shall, in managing any of the affairs of the Corporation, act in accordance with the policy of, and any directions given by, the Corporation.

### **Other staff and consultants**

50. (1) The Corporation may employ such persons as it thinks appropriate to assist the Corporation in the exercise of its powers and the performance of its functions.

(2) The Corporation may engage such persons as it thinks appropriate as consultants to advise the Corporation in respect of the exercise of its powers and the performance of its functions.

(3) Subject to sub-section (4), the terms and conditions on which persons are employed under sub-section (1) or engaged under sub-section (2) are as determined by the Corporation.

(4) The Corporation shall not determine, in relation to a person employed under sub-section (1), terms and conditions more favourable than those applicable to the Managing Director without the approval of the Minister.

## **PART V—EXPORT CONTROL**

### **Interpretation**

51. (1) In this Part—

“export licence” means a licence grant under section 56;

“licensee” means the holder of an export licence;

“prescribed offence” means—

- (a) an offence against or arising under this Act;

- (b) an offence against or arising under any other law of the Commonwealth, or against or arising under a law of a State or Territory, that is punishable, in the case of a person who has not been previously convicted of the offence, by imprisonment for a period of 12 months or more; or
- (c) any other offence against or arising under a law of the Commonwealth, or of a State or Territory, that is prescribed for the purposes of this paragraph.

(2) A reference in this Part to the export of controlled dairy exports is a reference to the export from Australia of dairy produce, being an export that is declared by regulations made for the purposes of sub-section 52 (2) to be prohibited.

#### **Regulations relating to exports**

**52. (1)** The regulations may prescribe conditions to be complied with in relation to the export from Australia of controlled dairy exports.

(2) The regulations may declare that the export from Australia of dairy produce of a specified kind, or of a specified quantity of dairy produce of a specified kind, is prohibited.

(3) The specification of a quantity for the purposes of regulations made for the purposes of sub-section (2) may be by reference to the quantity of dairy produce that is exported within a specified period.

#### **Corporation may issue directions**

**53. (1)** The Corporation may give directions in writing to a licensee requiring the licensee to consult the Corporation, as specified in the direction, in connection with—

- (a) the intentions of the licensee in relation to the export of controlled dairy exports; or
  - (b) the export performance of the licensee,
- and a licensee shall comply with such a direction that is given to the licensee.

(2) The Corporation may give directions in writing to licensees, being directions not inconsistent with this Act or the regulations—

- (a) requiring that dairy produce of a kind specified in the direction exported by each licensee comply with quality standards specified in the direction in relation to dairy produce of that kind;
- (b) prohibiting the export of controlled dairy exports specified in the direction to a place specified in the direction;
- (c) prohibiting the export of controlled dairy exports specified in the direction except with the consent of the Corporation and in accordance with such conditions as may be specified in the instrument of consent; or
- (d) in respect of such other matters, if any, as are prescribed.

(3) The Corporation shall not issue a direction of the kind mentioned in paragraph (2) (a), (b) or (c) or in respect of a matter prescribed for the purposes of paragraph (2) (d), being a matter declared by the regulations to be a matter to which this sub-section applies, unless—

- (a) it has, not less than 14 days before doing so, given notice in writing to all licensees that it proposes to give the direction; and
- (b) the executive council agrees.

#### **Prohibition of export of controlled dairy exports**

**54. (1)** A person other than the Corporation shall not export controlled dairy exports from Australia unless the person is a licensee.

(2) A person shall not export controlled dairy exports from Australia in contravention of regulations made for the purposes of sub-section 52 (1).

Penalty:

- (a) in the case of a natural person—a fine of \$5,000 or imprisonment for 2 years, or both; or
- (b) in the case of a body corporate—a fine of \$25,000.

#### **Applications for licences**

**55. (1)** An application for an export licence shall be made to the Corporation as prescribed.

(2) Where a person has furnished information (whether in writing or not) about a matter to the Corporation in connection with an application for an export licence and, before the application is granted or refused—

(a) the information ceases to be correct; or

(b) the person becomes aware that the information is not correct, the person shall, within 7 days after the occurrence of the change or becoming so aware, as the case may be, give to the Corporation, in writing, correct information in relation to the matter.

(3) A person who fails, without reasonable excuse, to comply with sub-section (2) is guilty of an offence punishable, on summary conviction, by—

- (a) in the case of a natural person— a fine of \$2,000 or imprisonment for 12 months or both; or
- (b) in the case of a body corporate—a fine of \$10,000.

#### **Grant of licence**

**56. (1)** Subject to the succeeding provisions of this section, the Corporation shall, upon receiving an application, made as prescribed, for an export licence, grant an export licence to the applicant.

(2) Where the applicant is a body corporate, the Corporation shall not grant an export licence to the applicant if, within 10 years before the application was made—

- (a) the applicant; or

- (b) a person who is in a position to control the operations of the applicant,

has been convicted of a prescribed offence.

(3) Where the applicant is a natural person, the Corporation shall not grant an export licence to the applicant if, within 10 years before the application was made—

- (a) the applicant; or  
(b) a body corporate the operations of which, at the relevant time, the applicant was in a position to control,

has been convicted of a prescribed offence.

(4) The Corporation may refuse to grant an export licence to an applicant if a licence granted to the applicant, or a licence granted to the applicant under the *Dairy Produce Act 1924*, has been cancelled.

(5) Where the Corporation refuses to grant an export licence to an applicant, it shall give notice in writing to the applicant of the refusal.

(6) Where an application for an export licence has not been determined within 2 months after it was made, the Corporation shall, for the purposes of enabling an application to the Administrative Appeals Tribunal to be made, be deemed to have refused the application on the last day of that period.

#### **Duration of licence**

57. An export licence—

- (a) comes into force on the date specified in the licence or, if no date is so specified, the date on which it is granted; and  
(b) subject to this Part, remains in force for the period specified in the licence.

#### **Renewal of licences**

58. (1) Subject to this section, the Corporation shall, upon receiving an application from a licensee made as prescribed, renew the licence of the licensee.

(2) The application shall be made not earlier than 3 months and not later than 1 month before the expiration of the licence, but the Corporation may, notwithstanding that the period for making such applications has expired, permit such an application to be made.

(3) Subject to this Part, a renewed export licence continues in force for the period specified in the instrument by which the licence is renewed, but may be further renewed in accordance with this section.

(4) A renewal of an export licence shall not take effect if the licence is cancelled on or before the day on which it would, but for the renewal, expire.



(5) Where an export licence has been suspended, this section applies as if the licence had not been suspended, but the renewal is of no effect until the licence ceases to be suspended.

### **Cancellation of licences**

**59. (1)** The Corporation shall, at the request of a licensee, cancel the export licence of the licensee.

(2) The Corporation may, by notice in writing given to a licensee, cancel or suspend, for the period specified in the notice, the export licence of the licensee if—

- (a) the licensee has been charged with, or convicted of, a prescribed offence or has failed to comply with a direction given under section 53; or
- (b) the Corporation has reasonable grounds to believe that the licensee—
  - (i) has become insolvent;
  - (ii) has knowingly furnished to the Corporation, in connection with the application for the licence or for a renewal of the licence, information that is false or misleading; or
  - (iii) has acted in a way that is seriously prejudicial to the interests of the dairy industry.

(3) In determining whether it is satisfied as mentioned in sub-paragraph (2) (b) (iii), the matters that the Corporation may take into account include—

- (a) activities of the person that could reasonably be regarded as damaging the reputation for quality of Australian dairy produce; and
- (b) activities of the person that could reasonably be regarded as damaging Australia's reputation as a reliable supplier of dairy produce.

### **Operation of other laws**

**60.** Neither this Part nor a direction under this Part affects the operation of the *Customs Act 1901*, the *Commerce (Trade Descriptions) Act 1905* or the *Export Control Act 1982*, or of regulations made under any of those Acts.

## **PART VI—COLLECTION OF LEVIES**

### ***Division 1—Collection of milk fat levies***

#### **Time for payment of milk fat levies**

**61. (1)** Each milk fat levy becomes due and payable on the expiration of the relevant period in respect of that levy after the last day of the month in which the relevant dairy produce upon the milk fat content of which the levy is imposed is sold by the producer of that relevant dairy produce.

(2) In sub-section (1), the reference to the relevant period, in respect of a milk fat levy, is a reference to—

- (a) in the case of a milk fat levy (other than the market support levy that is payable in circumstances to which regulations in force for the purposes of paragraph (b) apply)—the period of 28 days; and
- (b) in the case of the market support levy that is payable upon the milk fat content of particular relevant dairy produce that is prescribed in the regulations—the period, being a period in excess of 28 days, that is prescribed in relation to the market support levy that is so payable.

(3) In this section, a reference to a milk fat levy or a market support levy does not include an amount of penalty (if any) payable under section 63 in respect of that levy.

#### **Liability of purchaser from producer**

62. (1) For the better securing of the payment of a milk fat levy, a person who purchases relevant dairy produce from the producer of the relevant dairy produce is liable to pay to the Commonwealth an amount equal to any of that levy on the relevant dairy produce that has become payable by the producer but has not been paid to the Commonwealth by or on behalf of the producer or recovered from the producer by the Commonwealth.

(2) A person who purchases relevant dairy produce from the producer of the relevant dairy produce may, on behalf of the producer, pay to the Commonwealth any milk fat levy payable in respect of the relevant dairy produce.

(3) A person may, notwithstanding any law of a State or Territory or any contract entered into before or after the commencement of this Act to the contrary, refuse to purchase relevant dairy produce from the producer of the relevant dairy produce unless the producer first provides the person with the funds necessary for the due payment, on behalf of the producer, of each milk fat levy in respect of the relevant dairy produce.

(4) Where—

- (a) any milk fat levy payable by the producer of relevant dairy produce has been paid to the Commonwealth on behalf of the producer by another person; or
- (b) an amount in respect of any milk fat levy so payable has been recovered by the Commonwealth from a person by virtue of sub-section (1),

the producer is liable to pay to the other person an amount equal to the amount so recovered or paid, less, in the case of the person referred to in paragraph (b), any amount already paid by the producer to the other person in respect of that levy.

(5) Subject to sub-section (6), where, at any time, the producer of relevant dairy produce who has sold the relevant dairy produce to another person pays to the other person an amount in respect of a milk fat levy in respect of the relevant dairy produce, the producer is discharged from

liability to pay that levy to the extent of the amount so paid as if the payment had been made by the producer at that time to the Commonwealth, but the discharge does not affect the liability of the other person under sub-section (1).

(6) Sub-section (5) does not apply where, before the payment of an amount in respect of a milk fat levy is made to the person who purchased the relevant dairy produce, the producer has been notified in writing, by or on behalf of the Minister, that the Minister requires the producer to pay directly to the Commonwealth any of that levy that is payable by the producer.

(7) Where, under this section, a milk fat levy is paid on behalf of the producer of relevant dairy produce by, or an amount in respect of a milk fat levy payable by the producer of the relevant dairy produce is recovered by the Commonwealth from, another person, the producer is, to the extent of the amount so paid or recovered, discharged from so much of the liability of the producer to the Commonwealth to pay that levy as has not previously been discharged by virtue of sub-section (5).

(8) Where the Minister is satisfied that it would, by reason of special circumstances, be unreasonable to require a person to pay, in full or in part, an amount payable by the person under sub-section (1), the Minister may release that person from that liability to the extent determined by the Minister, but such a release does not affect the liability of any other person.

#### **Penalty for non-payment of milk fat levy**

63. (1) Subject to this section, where the liability of a person to pay a milk fat levy is not discharged on or before the day when the levy is due and payable, there is payable by that person to the Commonwealth, by way of penalty, in addition to that levy, an amount calculated at the rate of 20% per annum upon that levy, or upon such part of that levy as from time to time remains unpaid, to be computed from the time when the levy became due and payable.

(2) Where—

- (a) a person has received from the producer of relevant dairy produce an amount of a milk fat levy payable by the producer; and
- (b) that levy is due and payable but has not been paid in full to the Commonwealth,

there is payable by the person to the Commonwealth by way of penalty, in addition to the amount of that levy, an amount calculated at the rate of 20% per annum upon the amount so received by the person, less any part of that levy paid by the person on behalf of the producer, to be computed from the time when that levy became due and payable or the time when the person received that amount, whichever is the later.

(3) The Minister or, subject to sub-section (4), an authorised person may, in a particular case, for reasons that the Minister or the authorised

person, as the case may be, in his or her discretion thinks sufficient, remit the whole or a part of an amount payable under this section.

(4) The power under sub-section (3) to remit the whole or a part of an amount payable under this section shall not be exercised by an authorised person in a case where the amount, before remission, exceeds \$1,500.

(5) In this section, a reference to a milk fat levy does not include an amount of penalty (if any) payable under this section in respect of that levy.

#### **Recovery of milk fat levy**

64. An amount that is payable under this Division, being either an amount of a milk fat levy or an amount that is payable under sub-section 62 (1), shall be deemed to be a debt due to the Commonwealth.

#### **Refund of milk fat levy**

65. (1) Where an amount of a milk fat levy or an amount paid under sub-section 62 (1) has been overpaid, the amount overpaid shall be refunded by the Commonwealth.

(2) Where—

- (a) an amount of a milk fat levy or an amount paid under sub-section 62 (1) that relates to a milk fat levy has been refunded by the Commonwealth in accordance with sub-section (1); and
- (b) any part of the amount so refunded has been taken into account in making a payment to the Corporation itself, to the Promotion Fund or to the Market Support Fund,

the Corporation shall pay to the Commonwealth an amount equal to the amount so taken into account from the money of the Corporation, the money standing to the credit of the Promotion Fund, or the money standing to the credit of the Market Support Fund, as the case requires.

(3) Where—

- (a) an amount of research levy or an amount paid under sub-section 62 (1) that relates to research levy has been refunded by the Commonwealth in accordance with sub-section (1); and
- (b) any part of the amount so refunded has been taken into account in making a payment to the Dairy Research Trust Fund established under the *Rural Industries Research Act 1985*,

an amount equal to the amount so refunded shall be paid to the Commonwealth from the money standing to the credit of the Dairy Research Trust Fund.

### ***Division 2—Collection of dairy products levies***

#### **Time for payment of dairy products levies**

66. (1) Each dairy products levy becomes due and payable on the expiration of 14 days after the last day of the month immediately following

the month in which the dairy products upon which the levy was imposed were sold by or on behalf of the person by whom the levy is payable.

(2) Where dairy products on which a dairy products levy is imposed are used by the person by whom the levy is payable in the production of other products, levy on the dairy products so used becomes due and payable on the expiration of 14 days after the last day of the month immediately following the month in which the dairy products were so used.

(3) For the purposes of this Part, where dairy products that are owned by a person are not sold by that person but become vested in another person by operation of law, the dairy products shall be deemed to have been sold by the first-mentioned person to that other person at the time when the dairy products so vest, and that other person shall be deemed to have purchased the dairy products from the first-mentioned person at that time.

(4) In this section, "dairy products levy" does not include an amount of penalty (if any) payable under section 67.

#### **Penalty for non-payment of dairy products levy**

67. (1) Subject to this section, where the liability of a person to pay a dairy products levy is not discharged on or before the day when that levy is due and payable, there is payable by that person to the Commonwealth, by way of penalty, in addition to that levy, an amount calculated at the rate of 20% per annum upon that levy, or upon such part of that levy as from time to time remains unpaid, to be computed from the time when that levy became due and payable.

(2) The Minister or, subject to sub-section (3), an authorised person may, in a particular case, for reasons that the Minister or the authorised person, as the case may be, in his or her discretion thinks sufficient, remit the whole or a part of an amount payable under this section.

(3) The power under sub-section (2) to remit the whole or a part of an amount payable under this section shall not be exercised by an authorised person in a case where the amount, before remission, exceeds \$1,500.

(4) In this section, "dairy products levy" does not include an amount of penalty (if any) payable under this section.

#### **Recovery of dairy products levy**

68. An amount that is payable under this Division shall be deemed to be a debt due to the Commonwealth.

#### **Refund of dairy products levy**

69. (1) Where an amount of a dairy products levy has been overpaid, the amount overpaid shall be refunded by the Commonwealth.

**(2) Where—**

- (a) an amount of a dairy products levy has been refunded by the Commonwealth in accordance with sub-section 9 (2) of the first Levy Act or sub-section (1) of this section; and
  - (b) the amount so refunded has been taken into account in making a payment under sub-section 104 (1) into the Supplementary Fund,
- the Corporation shall pay to the Commonwealth an amount equal to the amount so refunded.

**Benefit of refund of dairy products levy to be passed on to exporter**

**70. (1) Where—**

- (a) an amount of a dairy products levy is refunded under sub-section 9 (2) of the first Levy Act in respect of—
  - (i) dairy products that have been exported from Australia; or
  - (ii) dairy products that have been used in the production of other products (in this sub-section referred to as the “mixed products”) that have been exported from Australia;
- (b) the person (in this sub-section referred to as the “producer”) to whom the refund is made was not the owner of the dairy products or the mixed products, as the case may be, immediately before those dairy products or those mixed products were exported; and
- (c) an amount equal to the amount of dairy products levy so refunded has not already been paid by the producer to the person who was the owner of those dairy products or those mixed products immediately before they were so exported or set off by that last-mentioned person against money payable by that last-mentioned person to the producer,

the producer shall pay to the person who was the owner of those dairy products or those mixed products immediately before they were so exported an amount equal to the amount of dairy products levy so refunded.

(2) A person to whom an amount is payable by another person under sub-section (1) may recover that amount from that other person as a debt due to the first-mentioned person from that other person.

**PART VII—FINANCE**

***Division 1—Preliminary***

**Money to be paid to Corporation**

**71. (1)** There shall be paid to the Corporation, from time to time, amounts equal to the amounts received by the Commonwealth—

- (a) as Corporation levy; or
- (b) in discharge of the liability of a person under sub-section 62 (1) in respect of amounts of Corporation levy.

(2) The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of sub-section (1).

**Proper accounts to be kept**

72. The Corporation shall cause to be kept proper accounts and records of the transactions and affairs of the Corporation in accordance with the accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments by the Corporation are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Corporation and over the incurring of liabilities by the Corporation.

**Bank account**

73. (1) The Corporation may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

(2) The Corporation shall pay all money of the Corporation into an account referred to in this section.

**Application of money of Corporation**

74. (1) The money of the Corporation shall be applied only—

- (a) in payment of any remuneration and allowances, or reimbursement of expenses, payable under this Act;
- (b) in payment of remuneration and allowances of members of the staff of the Corporation;
- (c) in meeting costs and expenses incurred in connection with the discharge of the function of the Selection Committee;
- (d) in making payments to the Commonwealth under sub-section 65 (2); and
- (e) in payment of any other expenses, charges, obligations or liabilities incurred or undertaken by the Corporation in connection with the performance of its functions, not being a payment in respect of which express provision is made in another provision of this Act or in a provision of the *Dairy Industry Stabilization Act 1977*.

(2) Money of the Corporation not immediately required for the purposes of the Corporation—

- (a) may be invested—
  - (i) on interest-bearing deposit with an approved bank;
  - (ii) in any securities of, or guaranteed by, the Commonwealth or a State;
  - (iii) by way of loan to a corporation, being a corporation declared by the Reserve Bank for the purposes of regulations in force under the *Banking Act 1959* to be an authorised dealer in the short-term money market, upon the security of securities of the Commonwealth; or
  - (iv) in any other manner approved by the Treasurer; or
- (b) may be lent to a relevant fund.

(3) Money of the Corporation shall not be lent to a relevant fund except for the purpose of meeting a temporary deficit in the fund.

**Raising of money by Corporation**

75. (1) The Corporation may, with the approval of the Minister—

- (a) borrow money otherwise than from a relevant fund; or
- (b) raise money otherwise than by borrowing,

on terms and conditions that are specified in, or consistent with, the approval.

(2) The Corporation may, for the purpose only of meeting a temporary deficit in the money of the Corporation, borrow money standing to the credit of a relevant fund.

(3) Without limiting the generality of sub-section (1), the Corporation may, under that sub-section, borrow money, or raise money otherwise than by borrowing, by dealing with securities.

(4) A borrowing of money or a raising of money otherwise than by borrowing, under sub-section (1) may be made, in whole or in part, in a currency other than Australian currency.

(5) An approval may be given under sub-section (1) in relation to a particular transaction or in relation to transactions included in a class of transactions.

(6) An approval under sub-section (1) shall be in writing.

(7) In this section, “securities” includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents.

(8) A reference in this section to dealing with securities includes a reference to—

- (a) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or re-selling securities;
- (b) creating, selling, purchasing or re-selling rights or bonds in respect of securities; and
- (c) entering into agreements or other arrangements relating to securities.

(9) For the purposes of this section—

- (a) the issue by the Corporation of an instrument acknowledging a debt in consideration of—
  - (i) the payment or deposit of money; or
  - (ii) the provision of credit,

otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Corporation shall be deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the amount of the



money paid or deposited or the value of the credit provided, as the case may be; and

- (b) the obtaining of credit by the Corporation otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the Corporation shall be deemed to be a raising by the Corporation, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.

#### **Guarantee of borrowings by Corporation**

**76. (1)** The Treasurer may, on behalf of the Commonwealth, enter into a contract—

- (a) guaranteeing the repayment by the Corporation of money borrowed under paragraph 75 (1) (a) and the payment by the Corporation of interest (including any interest on that interest) on money so borrowed; or
- (b) guaranteeing the payment by the Corporation of such amounts (which may be interest) that the Corporation is liable to pay with respect to money raised under paragraph 75 (1) (b) as are specified in the contract.

**(2)** The Treasurer may, in writing, determine—

- (a) that the repayment by the Corporation of money borrowed under paragraph 75 (1) (a), and the payment by the Corporation of interest (including any interest on that interest) on money so borrowed, are guaranteed by the Commonwealth; or
- (b) that the payment by the Corporation of such money (which may be interest) that the Corporation is liable to pay with respect to money raised under paragraph 75 (1) (b) as is specified in the determination is guaranteed by the Commonwealth,

and, where the Treasurer makes such a determination, the repayment of that money and the payment of that interest are, or the payment of that money is, by force of this sub-section, guaranteed by the Commonwealth.

**(3)** A contract may be entered into under sub-section (1), and a determination may be made under sub-section (2), in relation to a particular transaction or in relation to transactions included in a class of transactions.

**(4)** A contract entered into under sub-section (1) may include either or both of the following provisions:

- (a) a provision agreeing, on behalf of the Commonwealth, that proceedings under the contract may be taken in the courts, or a specified court, of a country other than Australia;
- (b) a provision waiving, on behalf of the Commonwealth, the immunity of the Commonwealth from suit in the courts, or a specified court, of a country other than Australia in relation to any proceedings that may be taken under the contract.

**Borrowings not otherwise permitted**

77. The Corporation shall not borrow money, or raise money otherwise than by borrowing, except in accordance with section 75.

**Corporation may give security**

78. The Corporation may give security over the whole or any part of its land or other assets for—

- (a) the repayment by the Corporation of money borrowed by the Corporation under paragraph 75 (1) (a) and the payment by the Corporation of interest (including any interest on that interest) on money so borrowed;
- (b) the payment by the Corporation of amounts (including any interest) that the Corporation is liable to pay with respect to money raised by the Corporation under paragraph 75 (1) (b); or
- (c) the payment to the Commonwealth of amounts equal to any amounts that the Commonwealth may become liable to pay under a contract entered into under sub-section 76 (1) or a determination made under sub-section 76 (2).

**Futures contracts**

79. (1) Subject to sub-section (4), the Corporation may, for the purpose of the performance of its functions or the exercise of its powers under this Act in relation to—

- (a) the sale or proposed sale of dairy produce by the Corporation; or
- (b) a borrowing or raising of money by the Corporation or a proposed borrowing or raising of money by the Corporation (including a borrowing or raising of money by the Corporation by dealing with securities),

enter into and deal with futures contracts for hedging purposes at a futures market (whether at a place in or outside Australia).

(2) Subject to sub-section (4), the Corporation may for the purpose of the performance of any of its other functions or the exercise of any of its other powers, with the approval in writing of the Minister, enter into and deal with futures contracts for hedging purposes at a futures market (whether in Australia or outside Australia).

- (3) The Minister may, by determination in writing—
  - (a) set guidelines for the purpose of the exercise by the Corporation of its powers under sub-sections (1) and (2); and
  - (b) revoke or vary guidelines set for that purpose or set new guidelines for that purpose,

and shall give to the Corporation a copy of each determination made under this sub-section.

(4) The Corporation shall not enter into or deal with futures contracts otherwise than in accordance with any guidelines having effect from time to time under sub-section (3).

(5) A futures contract shall be taken to be entered into or dealt with for hedging purposes if, and only if, the contract is entered into or dealt with—

- (a) for the purpose of minimising the risks of variations in the return for dairy produce under a contract for the sale of dairy produce that has been, or is to be, entered into by the Corporation; or
- (b) for the purpose of minimising the risks of variations in the costs of a borrowing or raising of money by the Corporation or a proposed borrowing or raising of money by the Corporation (including a borrowing or raising of money or a proposed borrowing or raising of money by dealing with securities).

(6) In this section, a reference to securities or to a dealing with securities has the same meaning as that reference has for the purposes of section 75.

#### **Surplus or deficit in respect of certain activities of Corporation**

**80. (1)** In this section, “dairy produce to which this section applies” means dairy produce that—

- (a) was produced on or after 1 July 1986; and
- (b) has been purchased by the Corporation.

(2) Where, from time to time, there is a surplus resulting from a sale, or sales, by or on behalf of the Corporation, of dairy produce to which this section applies, the Corporation shall pay an amount equal to that surplus to the Market Support Fund.

(3) Where, from time to time, there is a deficit resulting from a sale, or sales, by or on behalf of the Corporation, of dairy produce to which this section applies, the Corporation shall debit the Market Support Fund with an amount equal to the amount of the deficit.

(4) Where an amount is debited to the Market Support Fund under sub-section (3), the Corporation shall pay to the account referred to in section 73 from which the Corporation draws money for purposes associated with the sale, by or on behalf of the Corporation, of dairy produce to which this section applies an amount equal to the amount so debited.

(5) In determining whether a surplus or a deficit has resulted from a sale of dairy produce to which this section applies, the Corporation shall take into account—

- (a) money spent on the transport, storage, handling, promotion and insurance of that dairy produce;
- (b) amounts determined by the Corporation to be reasonably attributable to the overhead costs incurred by the Corporation in respect of the export or sale of that dairy produce; and

- (c) money spent on any other matter connected with the export or sale of that dairy produce.

### **Audit**

**81. (1)** The Corporation auditor shall inspect and audit the accounts and records of financial transactions of the Corporation and the records relating to assets of, or in the custody of, the Corporation, and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Corporation auditor, is of sufficient importance to justify so doing.

(2) The Corporation auditor may dispense with all or a part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Corporation auditor shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Corporation auditor or a person authorised by the Corporation auditor is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Corporation relating directly or indirectly to the receipt or payment of moneys, or to the acquisition, receipt, custody or disposal of assets, by the Corporation.

(5) The Corporation auditor or a person authorised by the Corporation auditor may make copies of, or take extracts from, such accounts, records, documents or papers.

(6) The Corporation auditor or a person authorised by the Corporation auditor may require a person to furnish such information in the possession of the person, or to which the person has access, as the Corporation auditor or authorised person considers necessary for the purposes of the functions of the Corporation auditor under this Act, and the person shall comply with the requirement.

Penalty for an offence against sub-section (6):

- (a) in the case of a natural person—a fine of \$1,000; or
- (b) in the case of a body corporate—a fine of \$5,000.

### **Appointment of company auditors**

**82. (1)** The Corporation may, after consultation with the executive council, ask the Minister, in writing, to appoint a company auditor specified in the request to be the auditor of the Corporation.

(2) Where the Minister receives a request under sub-section (1), the Minister shall cause particulars of the request to be given to the Auditor-General.

(3) Where particulars of a request under sub-section (1) are given to the Auditor-General under sub-section (2), the Auditor-General shall consider whether or not the company auditor referred to in the request is suitable to

be the auditor of the Corporation and shall inform the Minister, in writing, of the Auditor-General's decision and of the reasons for that decision.

(4) Where the Auditor-General has informed the Minister that the Auditor-General is satisfied that a company auditor is suitable to be the auditor of the Corporation, the Minister shall cause to be given to the Chairman of the Joint Committee on Public Accounts particulars of the request and of the Auditor-General's advice.

(5) The Joint Committee on Public Accounts shall consider the advice given by the Auditor-General and shall inform the Minister, in writing, whether or not that Committee agrees to the appointment of the company auditor as the auditor of the Corporation.

(6) If the Joint Committee on Public Accounts informs the Minister that it agrees to the appointment of the company auditor as the auditor of the Corporation, the Minister may, in writing, appoint that auditor accordingly.

(7) Where an appointment has been made under sub-section (6), the Minister may, by writing, revoke that appointment.

(8) Where the Minister makes an appointment under sub-section (6), the Minister shall inform the Corporation, in writing, of the making of the appointment.

(9) Where—

(a) the Auditor-General decides that a particular company auditor is not suitable to be the auditor of the Corporation;

(b) the Minister refuses to make an appointment under sub-section (6);  
or

(c) the Minister revokes an appointment made under sub-section (6),

the Minister shall inform the Corporation, in writing, of the decision and of the reasons for the decision.

(10) Where the Joint Committee of Public Accounts informs the Minister that that Committee does not agree to the appointment of a particular company auditor as the auditor of the Corporation, the Minister shall inform the Corporation, in writing, of the decision.

(11) In this section, "company auditor" means a person carrying on the business of auditing accounts.

### **Liability to taxation**

**83. (1)** The Corporation is subject to taxation (other than income tax) under the laws of the Commonwealth.

(2) Subject to sub-section (3), the Corporation is not subject to taxation under a law of a State or Territory.

(3) The regulations may provide that sub-section (2) does not apply in relation to taxation under a specified law of a State or Territory.

**Money standing to the credit of each relevant Fund to be kept in separate bank account**

**84.** The Corporation shall open and maintain a separate bank account in accordance with section 73 for the purposes of each relevant fund and shall pay into that bank account all money received by the Corporation that is to be credited to that relevant fund and shall draw from that bank account all money that is to be expended from that relevant fund.

**Investment of money standing to credit of a relevant fund**

**85.** Money standing to the credit of a relevant fund—

- (a) may be invested—
  - (i) in interest-bearing deposits with an approved bank;
  - (ii) in any securities of, or guaranteed by, the Commonwealth or a State;
  - (iii) by way of loan to a corporation, being a corporation declared by the Reserve Bank for the purposes of regulations in force under the *Banking Act 1959* to be an authorised dealer in the short-term money market, upon the security of securities of the Commonwealth; or
  - (iv) in any other manner approved by the Treasurer; or
- (b) may be invested by way of a loan to another relevant fund for the purpose of meeting a temporary deficit in that fund.

***Division 2—Industry Fund***

**Industry Fund**

**86. (1)** A fund is hereby established to be known as the Dairy Industry Fund.

**(2)** The Industry Fund is vested in the Corporation.

**Payments into Industry Fund**

**87.** There shall be credited to the Industry Fund—

- (a) money paid by any person to the Corporation for the purposes of the Fund;
- (b) money received by the Corporation in respect of its interest in a company, whether by way of a dividend paid by that company or the proceeds of the sale of the whole or a part of its interest in that company;
- (c) money lent to the Industry Fund by the Corporation under paragraph 74 (2) (b) or out of any other relevant fund under section 85;
- (d) money repaid to the Industry Fund, being money that was lent out of the Industry Fund to the Corporation under sub-section 75 (2) or to any other relevant fund under section 85; and
- (e) interest received by the Corporation from the investment of money standing to the credit of the Fund.

**Application of Industry Fund**

**88. (1)** Subject to this Act, money standing to the credit of the Industry Fund may be expended—

- (a) in meeting the expenditure of the Corporation—
  - (i) in connection with the formation of, the acquisition of an interest in, or the making of a loan or a grant to, a body corporate;
  - (ii) in entering into a partnership, or in making a loan or a grant to a partnership; or
  - (iii) relating to a body corporate in which the Corporation has an interest or a partnership of which the Corporation is a member, including, in the case of a body corporate, the payment of calls on shares in the capital of the body corporate,

where the formation of that body corporate, the acquisition of that interest, the making of that loan or the entry into that partnership is likely to be of direct benefit to the Australian dairy industry;

- (b) in meeting expenses incurred in the provision of services to the Conference in connection with the operation of this Act;
- (c) in making payments to the International Dairy Federation on behalf of the Australian National Committee of the International Dairy Federation;
- (d) in making payments to the Dairy Research Fund established under the *Rural Industries Research Act 1985*;
- (e) in making payments in support of education services in relation to the dairy industry;
- (f) in making payments to the Corporation itself or to another relevant fund in order to assist the Corporation to discharge its functions;
- (g) in making loans to the Corporation under sub-section 75 (2), or to another relevant fund under section 85;
- (h) in making loans to the Corporation, or to another relevant fund, otherwise than for the purposes of meeting a temporary deficit of the Corporation or of that other relevant fund.
- (j) in making payments on money that was lent to the Industry Fund by the Corporation under paragraph 74 (2) (b) or that was lent out of another relevant fund under section 85, and in making payments of interest on money so lent;
- (k) in making payments to members of the executive council of the Conference for the purpose of meeting their expenses in respect of work done for the purposes of this Act;
- (m) in payment of an annual honorarium to the Chairman of the Conference;
- (n) in payment of the costs to the Corporation of administering the Industry Fund; and

- (o) in meeting any expenditure of the Corporation upon a purpose incidental to a purpose referred to in a preceding paragraph of this sub-section.

(2) The Corporation shall not expend an amount standing to the credit of the Industry Fund for any purpose other than a purpose specified in paragraph (1) (g), (j) or (n) unless the Corporation has obtained the approval, in writing, of the executive council to the expenditure of that amount for that purpose.

### ***Division 3—Promotion Fund***

#### **Dairy Produce Promotion Fund**

89. (1) A fund is hereby established to be known as the Dairy Produce Promotion Fund.

- (2) The Promotion Fund is vested in the Corporation.

#### **Payments into Promotion Fund**

90. (1) There shall be paid to the Corporation, to be credited to the Promotion Fund, out of the Consolidated Revenue Fund, which is appropriated accordingly, amounts equal to the sum of the amounts of promotion levy and of amounts payable under sub-section 62 (1) that are related to the promotion levy that are received by the Commonwealth from time to time.

- (2) There shall be credited to the Promotion Fund—
  - (a) money (other than amounts referred to in sub-section (1)) paid by the Commonwealth to the Corporation for the purposes of the Fund;
  - (b) money paid by any person other than the Commonwealth to the Corporation for the purposes of the Fund;
  - (c) money received by the Corporation from the sale of any goods bought or produced, or in respect of any work paid for, out of money paid out of the Fund;
  - (d) money lent to the Promotion Fund by the Corporation under paragraph 74 (2) (b) or out of another relevant fund under section 85;
  - (e) money repaid to the Promotion Fund, being money that was lent out of the Promotion Fund to the Corporation under sub-section 75 (2) or to another relevant fund under section 85; and
  - (f) interest received by the Corporation from the investment of money standing to the credit of the Fund.

#### **Application of the Promotion Fund**

91. Money standing to the credit of the Promotion Fund may be expended—

- (a) in meeting the expenses of the Corporation in promoting the consumption of Australian dairy produce;



- (b) in making payments to the Commonwealth under sub-section 65 (2);
- (c) in making loans out of the Promotion Fund to the Corporation under sub-section 75 (2) or to another relevant fund under section 85;
- (d) in making repayments of money that was lent to the Promotion Fund by the Corporation under paragraph 74 (2) (b) or that was lent out of another relevant fund under section 85, and in making payments of interest on money so lent; and
- (e) in meeting any expenditure of the Corporation upon a purpose incidental to a purpose referred to in a preceding paragraph of this section.

***Division 4—Market Support Fund and market support payments***

**Market Support Fund**

**92. (1)** A fund is hereby established to be known as the Dairy Produce Market Support Fund.

- (2) The Market Support Fund is vested in the Corporation.

**Payments into Market Support Fund**

**93. (1)** There shall be paid to the Corporation, to be credited to the Market Support Fund, out of the Consolidated Revenue Fund, which is appropriated accordingly, amounts equal to the sum of the amounts of market support levy, of the amounts of the dairy products levy imposed by section 8 of the second Levy Act and of amounts payable under sub-section 62 (1) that are related to the market support levy, that are received by the Commonwealth from time to time.

- (2) There shall be credited to the Market Support Fund—
  - (a) money (other than amounts referred to in sub-section (1)) paid by the Commonwealth to the Corporation for the purposes of the Market Support Fund;
  - (b) money paid by any person other than the Commonwealth to the Corporation for the purposes of the Market Support Fund;
  - (c) money made available by the Corporation, whether by way of advance or otherwise, for the purposes of the Market Support Fund;
  - (d) money lent to the Market Support Fund out of another relevant Fund under section 85;
  - (e) money repaid to the Market Support Fund, being money that was lent out of the Market Support Fund to the Corporation under sub-section 75 (2) or that was lent to another relevant Fund under section 85, and interest on money so lent;
  - (f) interest received by the Corporation from the investment of money standing to the credit of the Market Support Fund;

- (g) the amount of any surplus resulting from a sale or sales by or on behalf of the Corporation of dairy produce produced on or after 1 July 1986;
- (h) amounts ordered to be repaid to the Corporation under sub-section 114 (1), or repaid to or recovered by the Corporation under section 115, in respect of market support payments; and
- (j) the amount (if any) required to be paid to the Market Support Fund under section 108 upon the winding-up of the Supplementary Fund.

**Market support payments**

**94. (1)** Subject to this Act, a market support payment is payable in respect of dairy produce that—

- (a) is produced in Australia on or after 1 July 1986; and
- (b) is exported from Australia, in accordance with such conditions or restrictions, if any, relating to the export of dairy produce as are prescribed, before 1 July 1992,

to the manufacturer of that dairy produce.

(2) The Corporation may, in any case where money is due and payable by a manufacturer of dairy produce to the Corporation, set off that amount against any market support payment that would otherwise be payable to the manufacturer under this section.

**Rate of market support payments in relation to prescribed dairy produce**

**95. (1)** The Corporation may declare in writing dairy produce of a particular kind to be prescribed dairy produce for the purposes of this section.

(2) Where the Corporation makes such a declaration, it shall also determine in writing the rate at which market support payments are payable in respect of dairy produce of that kind.

(3) The rate of market support payments mentioned in sub-section (2) is an amount per unit of that dairy produce ascertained in accordance with the formula  $A \times B$  where—

- A** is the relevant percentage in force at the time when that dairy produce is so exported in relation to dairy produce of that kind; and
- B** is the estimated average export price in force at the time when that dairy produce is so exported in relation to each unit of dairy produce of that kind.

(4) For the purposes of sub-section (3), the relevant percentage in force at a particular time in relation to dairy produce of a particular kind that is declared under sub-section (1) to be prescribed dairy produce is—

- (a) if no determination under sub-section (6) is in force in relation to dairy produce of that kind at that time—30%; or

*Dairy Produce No. 54, 1986*

(b) if a determination under sub-section (6) is in force in relation to dairy produce of that kind at that time—the percentage that is specified in that determination to be the relevant percentage in relation to dairy produce of that kind.

(5) For the purposes of sub-section (3), the estimated average export price in force at a particular time in relation to a unit of dairy produce of a particular kind that is declared under sub-section (1) to be prescribed dairy product is the price that is, in a determination in force under sub-section (9) at that time, specified as the estimated average export price in relation to a unit of dairy produce of that kind.

(6) Subject to sub-sections (7) and (8), the Corporation may, at any time, for such reasons as it considers appropriate, determine, in writing, with effect from a day specified in the determination, the relevant percentage in relation to dairy produce of a particular kind to be a specified percentage that is less than 30% and, where the Corporation makes such a determination, the determination shall have effect, according to its tenor, from that day until it is revoked or until a later determination comes into effect under this sub-section in respect of dairy produce of that kind.

(7) Without otherwise limiting, by implication, the generality of sub-section (6), the Corporation shall exercise its power under that sub-section to determine the relevant percentage in relation to dairy produce of a particular kind with effect from a particular day in any case where the Corporation is satisfied that the sum of the amount likely to be standing to the credit of the Market Support Fund on that particular day and the amounts likely to be paid into the Market Support Fund during the period of 12 months after that day is less than the total amount that would, but for the making of the determination, be likely to be paid out of the Market Support Fund by way of market support payments in respect of all dairy produce that is exported during that period.

(8) The Corporation shall not, in the making of a determination in the exercise of its powers under sub-section (6), take into account any reason other than a reason of the kind referred to in sub-section (7) unless it has informed the executive council, in writing, of that reason and the executive council has agreed that that reason should be taken into account in the making of the determination.

(9) The Corporation may, at any time, determine, in writing, with effect from a day specified in the determination, a price to be the estimated average export price in relation to a unit of dairy produce of a particular kind, and, where the Corporation makes such a determination, the determination shall have effect, according to its tenor, from that day—

- (a) unless paragraph (b) applies—for a period of 12 months; or
- (b) if it is revoked, or a later determination comes into effect under this sub-section, within that period of 12 months—until that revocation or until that later determination comes into effect.

(10) Without otherwise limiting, by implication, the generality of sub-section (9), the Corporation shall, in exercising its powers under that sub-section in relation to dairy produce of a particular kind—

- (a) if that dairy produce is declared under sub-section (1) to be prescribed dairy produce with effect from 1 July 1986—make its first determination in respect of dairy produce of that kind with effect from that day; and
- (b) if that dairy produce is declared under sub-section (1) to be prescribed dairy produce with effect from a later day—make its first determination in respect of dairy produce of that kind with effect from that later day,

and shall make subsequent determinations, in relation to that dairy produce, to take effect at intervals of not more than 12 months after the day with effect from which the preceding determination took effect.

**Rate of market support payments in relation to dairy produce other than prescribed dairy produce**

96. (1) Where dairy produce that is exported from Australia is not, at the time when it is so exported, dairy produce of a kind that is declared under sub-section 95 (1) to be prescribed dairy produce, the rate at which market support payments are payable in respect of that dairy produce is the amount per unit of that dairy produce that is, in a determination in force under sub-section (2) at that time, specified to be the appropriate amount per unit of that dairy produce.

(2) The Corporation may, at any time, after having regard to the rates of market support payments that are applicable to dairy produce of kinds that are declared under sub-section 95 (1) to be prescribed dairy produce and to such other matters as it considers to be relevant, determine, in writing, with effect from a day specified in the determination, an amount per unit of dairy produce of a particular kind that is not declared under sub-section 95 (1) to be prescribed dairy produce to be the rate to which market support payments are to be paid in respect of each unit of dairy produce of that kind and, where the Corporation makes such a determination, the determination shall have effect, according to its tenor, from that day until it is revoked or until a later determination comes into effect under this sub-section.

(3) Without otherwise limiting, by implication, the generality of sub-section (2), the Corporation shall, in exercising its powers under that sub-section in relation to dairy produce of a particular kind, being dairy produce that is not declared under sub-section 95 (1) to be prescribed dairy produce—

- (a) if dairy produce of that kind is dairy produce on 1 July 1986—make its first determination in respect of dairy produce of that kind with effect from that day; and
- (b) if dairy produce of that kind becomes dairy produce on a later day—make its first determination in respect of dairy produce of that kind with effect from that later day.

**Special rates of market support payments**

**97. (1) Where—**

(a) a foreign country has imposed restrictions on the quantity of dairy produce, or of dairy produce of a particular kind, that may be exported from Australia to that country; or

(b) a foreign country is prescribed for the purposes of this section, the Corporation may, by determination in writing, specify a special rate at which market support payment is payable, in lieu of the rate at which market support payment would be payable by virtue of section 95 or 96, in respect of each unit of dairy produce, or of dairy produce of that kind, as the case may be, that is exported to that country while those restrictions are in force or specify that no market support payment is so payable and may, from time to time, by determination in writing, vary any determination so made.

(2) The Corporation may, by determination in writing, in relation to dairy produce that is—

(a) produced in Australia during the year commencing on 1 July 1986; and

(b) exported from Australia pursuant to an agreement entered into before 25 February 1986,

specify a special rate at which market support payment is payable, in lieu of the rate at which market support payment would be payable by virtue of section 95 or 96, in respect of each unit of that dairy produce so exported.

(3) A determination made under sub-section (2) may specify a rate of market support payment that is payable in respect of dairy produce exported pursuant to an agreement specified in the determination or pursuant to an agreement included within a class of agreements specified in the determination.

(4) The Corporation may, in a case where dairy produce of a particular kind has been manufactured from ingredients that include imported dairy produce, by determination in writing, specify a special rate at which market support payment is payable in respect of each unit of dairy produce of that kind, in lieu of the rate of market support payment that would be payable, by virtue of section 95 or 96, or sub-section (1) of this section, in respect of each such unit of that dairy produce and the Corporation may, from time to time, by determination in writing, vary any determination so made.

**Special rates of market support payments for underwritten dairy produce**

**98. (1)** The regulations may declare dairy produce of a kind that is declared by the Corporation to be prescribed dairy produce to be underwritten dairy produce with effect from 1 July 1986 or 1 July of any subsequent year and, where the regulations so declare, that dairy produce shall be taken, for the purposes of this section, to be underwritten dairy produce in respect of the financial year commencing on that day and in respect of each subsequent financial year.

(2) The Bureau of Agricultural Economics or such other Commonwealth instrumentality as is, from time to time, prescribed for the purpose, shall, in relation to the financial year commencing on 1 July 1986 and each subsequent financial year, ascertain, in a manner prescribed by the regulations, before the commencement of each such financial year, a price per unit in respect of each unit of dairy produce of a particular kind that is underwritten dairy produce in respect of that financial year to be known as the trend price per unit of dairy produce of that kind for that financial year.

(3) Where—

- (a) dairy produce of a kind that is underwritten dairy produce is exported from Australia during a financial year; and
- (b) the estimated average export price per unit of that dairy produce at the time of export is less than 85% of the trend price per unit of dairy produce of that kind for that financial year,

the rate at which market support payments are payable in respect of that dairy produce is, in lieu of the rate at which a market support payment would be payable by virtue of section 95, an amount per unit of that dairy produce equal to the difference between the specified percentage of the trend price per unit of dairy produce of that kind for that financial year and the estimated average export price per unit of dairy produce of that kind.

(4) The reference in sub-section (3) to the specified percentage, in respect of dairy produce of a particular kind, is a reference to 110% or, if some other percentage is prescribed in respect of dairy produce of that kind, that other percentage.

#### **Corporation may guarantee rate of market support payments**

99. (1) A person may make application to the Corporation, in writing, in a form approved by the Corporation for the purposes of this section, requesting the Corporation to determine that the rate of market support payment that is in force at the time of the making of that application in respect of units of dairy produce of a particular kind will be paid in respect of dairy produce of that kind that is exported from Australia by that person during a period, or under a contract of sale (whether or not that contract has been entered into at the time of the application), that is specified by that person in that application.

(2) Upon receipt of an application by a person under sub-section (1), the Corporation may, in its discretion, determine in writing that the rate of market support payment that was in force on the day when the application was made in respect of the dairy produce to which the application relates shall be paid—

- (a) in respect of all of that dairy produce that is exported by that person during the period that is the subject of that application or during such part of that period as the Corporation specifies or in

respect of such part of that dairy produce as the Corporation specifies; or

- (b) in respect of all of that dairy produce that is exported by that person under that contract for sale that is the subject of the application or in respect of such part of that dairy produce as the Corporation specifies,

and, where the Corporation makes such a determination, market support payments shall be paid at that rate in respect of the dairy produce to which the determination relates, notwithstanding any other provision of this Act.

(3) Where the Corporation makes a determination under sub-section (2) fixing the rate at which market support payments will be made, that determination may be expressed to be subject to such conditions as are specified in the determination including a condition requiring the person to whom market support payment is made to give security, in a form satisfactory to the Corporation, for the performance of that person's obligations in relation to the export of the dairy produce in respect of which the payment is made.

#### **Applications for market support payments**

**100.** (1) A manufacturer of dairy produce who claims to be entitled to be paid a market support payment in respect of that dairy produce may, within a period of 21 days, or such longer period as the Corporation, in special circumstances, allows, after the end of the month in which that dairy produce was exported from Australia, make application to the Corporation to be paid a market support payment in respect of that dairy produce.

(2) An application made to the Corporation under sub-section (1) shall be in writing, in accordance with a form approved by the Corporation, and shall contain—

- (a) in a case where the applicant is the exporter of the dairy produce—such information relating to the production and export of the dairy produce as is specified in the application; and
- (b) in a case where the applicant is not the exporter of the dairy produce—such information relating to the production of the dairy produce as is specified in the application.

(3) The Corporation may, in approving the form of an application for the purposes of sub-section (2), make provision for the whole or a part of the information contained in the application be verified by a statutory declaration.

(4) As soon as practicable after receipt of an application under sub-section (1) in respect of dairy produce, the Corporation shall make an investigation of the application without regard to legal form and—

- (a) if it decides that the applicant has established an entitlement to a market support payment in respect of that dairy produce—inform the applicant, by notice in writing, of its decision and of the amount

of the market support payment to which it has decided that the applicant is entitled in respect of that dairy produce; or

- (b) if it decides that the applicant has not established an entitlement to a market support payment in respect of that dairy produce—inform the applicant, by notice in writing, of its decision.

(5) A notice under sub-section (4) shall set out the reasons for the decision to which that notice relates including, in the case of a notice given under paragraph (4) (a), the basis on which the Corporation has determined the amount of the market support payment to which the notice relates.

(6) Where the Corporation decides under paragraph (4) (a) that an applicant has established an entitlement to a market support payment in respect of dairy produce, it shall, when informing the applicant of its decision, also pay to the applicant that market support payment.

#### **Application of the Market Support Fund**

**101.** Money standing to the credit of the Market Support Fund may be expended—

- (a) in making market support payments;
- (b) in making repayments of advances made available by the Corporation for the purposes of the Market Support Fund;
- (c) in meeting the expenses of the Corporation in administering the Market Support Fund and the Supplementary Fund;
- (d) in making payments to the Commonwealth under sub-section 65 (2);
- (e) in making payments to the Commonwealth of amounts equal to the expenses incurred by the Commonwealth from time to time in and in relation to the collection of market support levy;
- (f) in making loans to the Corporation under sub-section 75 (2) or to another relevant fund under section 85;
- (g) in making repayments of money that was lent to the Market Support Fund, being money that was lent by the Corporation under paragraph 74 (2) (b) or that was lent out of another relevant fund under section 85, and in making payments of interest on money so lent;
- (h) in making payments to the Supplementary Fund for the purposes of the Supplementary Fund; and
- (j) in making payments to the Corporation in respect of any deficit resulting from a sale or sales by or on behalf of the Corporation of dairy produce produced on or after 1 July 1986.

#### **Winding-up of Market Support Fund**

**102. (1)** As soon as practicable after 30 June 1992, the Market Support Fund shall be wound up.

(2) Where the Corporation is satisfied that there is no reasonable likelihood that it will be required to expend money standing to the credit of



the Market Support Fund for any of the purposes specified in a paragraph of section 101, the Corporation shall cause the balance of the money (if any) standing to the credit of the Market Support Fund to be paid into a bank account maintained by the Corporation under section 73.

(3) Money that is, in accordance with sub-section (2), paid into a bank account maintained by the Corporation shall be applied by the Corporation for such purpose or purposes as the Corporation, after consultation with the executive council, determines to be appropriate.

(4) Where any investments are, at the time of winding-up of the Market Support Fund, held for the purposes of that Fund and the Corporation determines in writing that this sub-section applies in relation to those investments, those investments shall be taken to be held instead, with effect from the day upon which that determination is made, for such purpose or purposes as the Corporation has determined to be appropriate under sub-section (3).

***Division 5—Supplementary Fund and supplementary market support payments***

**Supplementary Fund**

**103. (1)** A fund is hereby established to be known as the Dairy Produce Supplementary Market Support Fund.

(2) The Supplementary Fund is vested in the Corporation.

**Payments into Supplementary Fund**

**104. (1)** There shall be paid to the Corporation to be credited to the Supplementary Fund, out of the Consolidated Revenue Fund, which is appropriated accordingly, amounts equal to the sum of the amounts of dairy products levy (other than levy imposed by section 8 of the second Levy Act) that are received by the Commonwealth from time to time.

(2) There shall be credited to the Supplementary Fund—

- (a) money (other than amounts referred to in sub-section (1)) paid by the Commonwealth to the Corporation for the purposes of the Supplementary Fund;
- (b) money paid by any person other than the Commonwealth to the Corporation for the purposes of the Supplementary Fund;
- (c) money made available by the Corporation, whether by way of advance or otherwise, for the purposes of the Supplementary Fund;
- (d) money lent to the Supplementary Fund out of another relevant fund under section 85;
- (e) money repaid to the Supplementary Fund, being money that was lent out of the Supplementary Fund to the Corporation under sub-section 75 (2) or that was lent to another relevant fund under section 85, and interest on money so lent;

- (f) money paid from the Market Support Fund to the Supplementary Fund for the purposes of the Supplementary Fund;
- (g) interest received by the Corporation from the investment of money standing to the credit of the Supplementary Fund; and
- (h) amounts ordered to be repaid to the Corporation under sub-section 114 (1), or repaid to, or recovered by, the Corporation under section 115, in respect of supplementary market support payments.

#### **Supplementary market support payments**

**105. (1)** Subject to this Act, a supplementary market support payment is payable in respect of dairy produce in respect of which a market support payment is payable.

**(2)** The Corporation shall, where it makes a decision under paragraph 100 (4) (a) that a person has established an entitlement to a market support payment in respect of dairy produce, pay to that person the supplementary market support payment to which the person is entitled when it informs the person, in writing, of its decision.

**(3)** The Corporation may, in any case where money is due and payable by a person to the Corporation, set off that amount against any supplementary market support payment that would otherwise be payable to the person under this section.

#### **Amount of supplementary market support payments**

**106. (1)** The Minister shall, on or before 1 July 1986, determine, in writing, that, with effect from that day, the rate at which supplementary market support payments are payable in respect of a unit of dairy produce of a particular kind, being dairy produce of a kind that is declared under sub-section 95 (1) to be prescribed dairy produce, shall be the rate specified in the determination.

**(2)** The Corporation shall, on or before 1 July 1986, determine, in writing, that, with effect from that day, the rate at which supplementary market support payments are payable in respect of a unit of dairy produce of a particular kind, not being dairy produce of a kind that is declared under sub-section 95 (1) to be prescribed dairy produce, shall be the rate specified in the determination.

**(3)** The Corporation may, at any time after 1 July 1986, determine, in writing, that, with effect from a day specified in the determination, being a day on or after the day on which that determination is made the rate at which supplementary market support payments are payable in respect of a unit of dairy produce of a particular kind, whether or not that dairy produce is dairy produce of a kind declared under sub-section 95 (1) to be prescribed dairy produce, shall be the rate specified in the determination.

**(4)** A determination under sub-section (1) or (2) has effect according to its tenor from 1 July until a determination under sub-section (3) comes into effect.

(5) A determination under sub-section (3) has effect, according to its tenor, from the day on which it is expressed to take effect until it is revoked or a later determination under that sub-section comes into effect.

(6) The Corporation shall review the rate at which supplementary market support payments are payable in respect of units of dairy produce of each respective kind, whether or not that dairy produce is dairy produce of a kind declared under sub-section 95 (1) to be prescribed dairy produce—

- (a) at any time when the Corporation is of the opinion that the money standing to the credit of the Supplementary Fund may not be sufficient to sustain supplementary market support payments at the rates in force at that time; and
- (b) on 1 July 1987 and at the end of each period of 6 months thereafter.

(7) In determining the rate, under sub-section (3), at which supplementary market support payments are payable in respect of a unit of dairy produce of a particular kind, whether that rate is so determined as a result of a review conducted under sub-section (6) or otherwise, the Corporation shall—

- (a) if the rate is to be determined in respect of a unit of dairy produce of a kind that has been declared under sub-section 95 (1) to be prescribed dairy produce—ensure that the rate so determined bears to each of the rates that is determined under sub-section (3) in relation to dairy produce of each other kind that has been so declared the same proportion as the estimated average export price in force at that time under sub-section 95 (5) in relation to a unit of dairy produce of that first-mentioned kind bears to the estimated average export price in force at that time under sub-section 95 (5) in relation to a unit of dairy produce of each other kind that has been so declared; and
- (b) if the rate is to be determined in respect of a unit of dairy produce of a kind that has not been declared under sub-section 95 (1) to be prescribed dairy produce—the Corporation shall have regard to the rates of supplementary market support payment that are applicable to dairy products that have been so declared and to such other matters as it considers to be relevant.

(8) Where market support payments that would be payable in respect of dairy produce that is exported from Australia are so payable in accordance with a special rate determined for the purpose by the Corporation under section 97, then, notwithstanding the other provisions of this section, the rate of supplementary market support payments in respect of each unit of that dairy produce is such special rate as is determined by the Corporation, in writing, to be appropriate in the particular circumstances.

#### **Application of Supplementary Fund**

107. Subject to this section, money standing to the credit of the Supplementary Fund may be expended—

- (a) in making supplementary market support payments;

- (b) in making repayments of advances made available by the Corporation for the purposes of the Supplementary Fund;
- (c) in making payments under sub-section 69 (2);
- (d) in making loans to the Corporation under sub-section 75 (2) or to another relevant fund under section 85;
- (e) in making repayments of money that was lent to the Supplementary Fund, being money that was lent by the Corporation under paragraph 74 (2) (b) or that was lent out of another relevant fund under section 85, and in making payments of interest on money so lent; and
- (f) in the circumstances specified in section 108, in making payments to the Market Support Fund of the balance of money standing to the credit of the Supplementary Fund for the purpose of winding up the Supplementary Fund.

#### **Winding-up of Supplementary Market Support Fund**

**108. (1)** When there ceases to be any rate prescribed for the purposes of section 10 of the first Levy Act, the Supplementary Fund shall be wound-up.

**(2)** For the purpose of winding up the Fund, the Corporation shall, as soon as practicable after the time referred to in sub-section (1)—

- (a) make any supplementary market support payments that are payable in respect of dairy produce that was exported from Australia at any time before the end of that period;
- (b) repay any advances made available by the Corporation for the purposes of the Supplementary Fund;
- (c) make any payments that it is liable to make under sub-section 69 (2);
- (d) make any repayments of money lent under paragraph 74 (2) (b) and make payments of interest on money so lent; and
- (e) pay the balance of the money (if any) standing to the credit of the Supplementary Fund, after making the payments referred to in paragraphs (a), (b), (c) and (d), into the Market Support Fund.

**(3)** Where any investments are, at the time of winding-up the Supplementary Fund, held for the purposes of that Fund and the Corporation determines in writing that this sub-section applies in relation to those investments, those investments shall be taken to be held instead, with effect from the day upon which that determination is made, for the purposes of the Market Support Fund.

### **PART VIII—MISCELLANEOUS**

#### **Liability of Corporation for subsidiary companies**

**109. (1)** A reference in this section to a subsidiary company is a reference to—

- (a) so long as the Corporation is in a position to control the operations of Asia Dairy Industries (H.K.) Limited, a company incorporated in Hong Kong—that company; and
- (b) any other company, whether incorporated in Australia or not, the operations of which the Corporation is in a position to control and which is prescribed for the purposes of this sub-section.

(2) Where—

- (a) a subsidiary company is wound-up; and
- (b) the liabilities of the subsidiary company payable on the winding-up are not able to be met in full from the assets of the subsidiary company,

the Corporation is liable to meet those liabilities, to the extent that they are not able to be met out of the assets of the subsidiary company, as if the liabilities had been incurred by the Corporation.

(3) Jurisdiction is conferred on the Federal Court and, subject to the Constitution, on the Supreme Courts of the Territories, and the Supreme Courts of the States are invested with federal jurisdiction, in respect of proceedings arising under sub-section (2).

(4) The jurisdiction with which a court of a State is invested by sub-section (3) is invested within the limits of the jurisdiction of that court, not being limits as to locality.

#### **Exporters other than manufacturers to furnish details of exports**

**110.** (1) Where dairy produce is exported from Australia by a person other than the manufacturer of that dairy produce, the person who exports that dairy produce shall, within a period of 14 days, or such longer period as the Corporation, in special circumstances, allows, after the end of the month in which the dairy produce was exported, furnish a return to the Corporation, in accordance with a form approved by the Corporation, containing such information in relation to the exportation of that dairy produce as is specified in the form.

(2) Where a person is required under sub-section (1) to submit a return to the Corporation in relation to the exportation of dairy produce, that person shall, at the time when that return is submitted to the Corporation, send to the manufacturer or to each manufacturer concerned in the production of the dairy produce or of a part of the dairy produce so exported a notice, in writing, in accordance with a form approved by the Corporation, containing such particulars of the export of the dairy produce so exported that was produced by that manufacturer as are specified in the notice.

(3) The Corporation may, in approving the form of a return for the purposes of sub-section (1), make provision for the whole or a part of the information contained in the return to be verified by statutory declaration.

**Power to call for returns**

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

**Offences in relation to applications for payments under this Act**

**112. (1)** A person shall not—

- (a) do an act or thing for the purpose of obtaining, or enabling another person to obtain, a payment that is not payable to that first-mentioned person or to that other person under this Act in respect of dairy produce or that exceeds the amount payable to that first-mentioned person or to that other person in respect of dairy produce;
- (b) with intent to defraud, forge or alter a declaration or other document required, intended to be used or capable of being used for the purpose of obtaining a payment under this Act;
- (c) sign a declaration or other document required, intended to be used or capable of being used for the purpose of obtaining a payment under this Act that, to the knowledge of that person, contains information or a statement that is false or misleading in a material particular; or
- (d) present to the Corporation a declaration or other document, whether signed by the person or not, for the purposes of obtaining a payment under this Act, or is required, intended to be used or capable of being used for that purpose, being a declaration or document that, to the knowledge of that person, contains information or a statement that is false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—\$5,000 or imprisonment for 2 years, or both; or
- (b) in the case of a body corporate—\$25,000.

(2) In this section, “payment” means either a market support payment or a supplementary market support payment.

**Offences in relation to returns, &c.**

**113. (1)** A person shall not, without reasonable excuse, refuse or fail to submit a return or provide information that is required by or under this Act or the regulations to be submitted or provided.

(2) A person is not excused from submitting a return or providing information that the person is required by or under this Act or the regulations to submit or provide on the ground that the return or information might tend to incriminate the person, but any return or information so submitted or provided is not admissible in evidence against the person in—

- (a) criminal proceedings other than proceedings for an offence against sub-section (1) or (3); or
- (b) proceedings for recovery of a penalty payable under section 63 or 67.

(3) A person shall not knowingly present a document, make a statement or submit a return, that is false or misleading in a material particular to a person performing duties in relation to this Act.

Penalty:

- (a) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—\$10,000.

### **Court may order refunds**

**114. (1)** Where a person is convicted of an offence against sub-section 112 (1), the court may, in addition to imposing a penalty, order the person to repay to the Corporation so much of a payment in respect of dairy produce as was paid to the person as a result of the offence.

(2) Where a court has ordered a person, under sub-section (1), to refund an amount to the Corporation, the Corporation may deduct that amount from any other money payable to that person under this Act.

(3) Where—

- (a) a court makes an order under sub-section (1) ordering a person to refund an amount to the Corporation; and
- (b) the court has civil jurisdiction to the extent of the amount,

the order is enforceable in all respects as a final judgment of the court in favour of the Corporation.

(4) Where—

- (a) a court makes an order under sub-section (1) ordering a person to refund to the Corporation the amount of a grant; and
- (b) the court—
  - (i) does not have civil jurisdiction; or
  - (ii) has civil jurisdiction, but does not have civil jurisdiction to the extent of the amount,

the proper officer of the court shall issue to the Corporation a certificate in the prescribed form containing the prescribed particulars.

(5) The certificate may, in the prescribed manner and subject to the prescribed conditions (if any), be registered in a court having civil jurisdiction to the extent of the amount ordered to be refunded to the Corporation.

(6) Upon registration under sub-section (5), the certificate is enforceable in all respects as a final judgment of the court in favour of the Corporation.

(7) The costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions (if any), be deemed to be payable under the certificate.

### **Overpayments**

**115.** Where the Corporation has made—

- (a) a payment in respect of dairy produce that was not payable under this Act, or was not payable under this Act to the person to whom it was paid; or
- (b) a payment in respect of dairy produce that exceeds the amount that was payable under this Act,

the amount of the payment, or of the excess, as the case may be, if not otherwise recovered, may be recovered by the Corporation from the person to whom it was paid, as a debt due to the Corporation, by action in a court of competent jurisdiction.

### **Access to premises**

**116. (1)** An authorised person may, with the consent of the occupier of any premises, enter the premises for the purpose of performing the functions of an authorised person under this section.

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

- (a) premises are premises in which dairy produce is produced or stored; or
- (b) there are on those premises any examinable documents,

the authorised person may make application to a Justice of the Peace for a warrant authorising the authorised person to enter the premises for the purpose of performing the functions of an authorised person under this section.

(3) If, on an application under sub-section (2), the Justice of the Peace is satisfied, by information on oath or affirmation—

- (a) that there is reasonable ground for believing that—
  - (i) the premises to which the application relates are premises in which dairy produce is produced or stored; or
  - (ii) there are on those premises any examinable documents; and
- (b) that the issue of the warrant is reasonably required for the purposes of this Act,

the Justice of the Peace may issue a warrant authorising the authorised person, with such assistance as the authorised person thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of performing the functions of an authorised person under this section.

(4) A warrant under sub-section (3) shall specify a day after which the warrant ceases to have effect.



*Dairy Produce No. 54, 1986*

(5) Where an authorised person has entered any premises pursuant to sub-section (1) or pursuant to a warrant issued under sub-section (3), the authorised person may perform the functions of an authorised person under this section.

- (6) The functions of an authorised person under this section are—
- (a) to search for, examine and take stock of any dairy produce; and
  - (b) to search for, inspect, take extracts from and make copies of any examinable documents.
- (7) In this section, “examinable documents” means—
- (a) any books, documents or papers relating to financial dealings between a manufacturer of dairy produce and persons who supply to the manufacturer the milk, cream or other substances from which that dairy produce is produced;
  - (b) any books, documents or papers relating to the financial dealings between a manufacturer of dairy produce and the exporter or exporters of that dairy produce; or
  - (c) any books, documents or papers relating to the production, storage, sale, purchase, import or export of dairy produce.

**Indictable offences**

**117. (1)** An offence against or arising under section 54 or 112 is an indictable offence.

(2) Notwithstanding that an offence referred to in sub-section (1) is an indictable offence, a Court of Summary Jurisdiction may hear and determine proceedings in respect of the offence if the Court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(3) Where a Court of Summary Jurisdiction convicts a person of an offence referred to in sub-section (1), the maximum penalty that the Court may impose is—

- (a) in the case of a natural person—a fine of \$2,000 or imprisonment for 12 months, or both; and
- (b) in the case of a body corporate—a fine of \$10,000.

**Reconsideration and review of decisions**

**118. (1)** In this section, unless the contrary intention appears—

“decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

“relevant decision” means—

- (a) a relevant licence decision;
- (b) a relevant payment decision; or
- (c) a relevant remission decision;

“relevant licence decision” means a decision of the Corporation under section 56 or 58 or sub-section 59 (2);

“relevant guarantee decision” means a decision of the corporation to refuse to make a determination applied for under section 99;

“relevant payment decision” means a decision of the Corporation under sub-section 100 (4);

“relevant remission decision” means a decision of an authorised person under sub-section 63 (3) or 67 (2);

“reviewable decision” means—

- (a) a decision of the Minister under sub-section 63 (3) or 67 (2);
- (b) a decision of the Minister under sub-section (7) of this section; or
- (c) a decision of the Corporation under sub-section (9) of this section.

(2) A person affected by a relevant licence decision who is dissatisfied with the decision may, within 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Corporation (either before or after the expiration of the period), by notice in writing served on the person allows, by notice in writing given to the Corporation, request the Corporation to reconsider the decision.

(3) A person affected by a relevant guarantee decision who is dissatisfied with the decision may, within 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Corporation (either before or after the expiration of the period), by notice in writing served on the person allows, by notice in writing given to the Corporation, request the Corporation to reconsider the decision.

(4) A person affected by a relevant remission decision who is dissatisfied with the decision may, within 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Minister (either before or after the expiration of that period), by notice in writing served on the person allows, by notice in writing given to the Minister, request the Minister to reconsider the decision.

(5) A person affected by a relevant payment decision who is dissatisfied with the decision may, within 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Corporation (either before or after the expiration of the period), by notice in writing served on the person allows, by notice in writing given to the Corporation, request the Corporation to reconsider the decision.

(6) There shall be set out in a request under sub-section (2), (3), (4) or (5) the reasons for making the request.

(7) The Minister shall, within 45 days after the receipt of a request under sub-section (4), reconsider the relevant remission decision and may make a decision—

- (a) in substitution for the relevant remission decision, whether in the same terms as the relevant remission decision or not; or

(b) revoking the relevant remission decision.

(8) Where, as a result of a reconsideration under sub-section (7), the Minister makes a decision in substitution for or revoking a relevant remission decision, the Minister shall, by notice in writing served, either personally or by post, on the person who made the request under sub-section (4) for the reconsideration, inform the person of the result of the reconsideration and give the reasons for his or her decision.

(9) The Corporation shall, within 45 days after receipt of a request under sub-section (2) in relation to a relevant licence decision, under sub-section (3) in relation to a relevant guarantee decision, or under sub-section (5) in relation to a relevant payment decision, reconsider the relevant licence decision, the relevant guarantee decision or the relevant payment decision, as the case may be, and make a decision—

- (a) in substitution for the relevant licence decision, the relevant guarantee decision, or the relevant payment decision, whether in the same terms as the relevant licence decision, the relevant guarantee decision, or the relevant payment decision or not; or
- (b) revoking the relevant licence decision, the relevant guarantee decision, or the relevant payment decision.

(10) Where, as a result of a reconsideration under sub-section (9), the Corporation makes a decision in substitution for, or revoking, a relevant licence decision, a relevant guarantee decision or a relevant payment decision, the Corporation shall, by notice in writing, served either personally or by post, on the person who made the request under sub-section (2), (3) or (5) for the reconsideration, inform the person of the result of the reconsideration and give the reasons for its decision.

(11) An application may be made to the Administrative Appeals Tribunal for a review of a reviewable decision.

(12) Where a relevant decision is made and the person who made the relevant decision gives to a person whose interests are affected by the decision notice in writing of the making of the decision, that notice shall include a 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 section; and
- (b) may, subject to the *Administrative Appeals Tribunal Act 1975*, if the person is dissatisfied with a decision made upon that reconsideration, make application to the Administrative Appeals Tribunal for review of that decision.

(13) Where the Minister or the Corporation makes a reviewable decision and gives to a person whose interests are affected by the decision, notice in writing of the making of the decision, that notice shall 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 whose interests are affected by the decision.

(14) Any failure to comply with the requirements of sub-section (12) or (13) in relation to a decision does not affect the validity of the decision.

### **Secrecy**

**119. (1)** This section applies to every person who is or has been a member of the Corporation or of the staff assisting the Corporation.

(2) Subject to this section, a person to whom this section applies shall not, either directly or indirectly, except for the purposes of this Act or as otherwise required by law—

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of a person acquired by that first-mentioned person by reason of that first-mentioned person's office as a member of the Corporation or as a member of the staff assisting the Corporation; or
- (b) produce to any person an application or other document given to the Corporation by a manufacturer of dairy produce for the purpose of obtaining a market support payment or a supplementary market support payment under this Act, an application or other document given to the Corporation by a person for the purposes of section 99 or a return furnished to the Corporation by an exporter of dairy produce pursuant to section 110.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(3) Sub-section (2) does not apply to the disclosure of information, or the production of a document, to the Minister, or to the Secretary to the Department or an officer of the Department designated by the Secretary.

(4) Sub-section (2) does not prevent the Corporation from making public at any time any information of a statistical nature.

(5) A person to whom information is communicated under sub-section (3) and an employee or other person under the control of that first-mentioned person are, in respect of that information, entitled to rights and privileges, and subject to obligations and liabilities, under sub-section (2) as if they were persons referred to in sub-section (1).

(6) An offence against sub-section (2) is punishable on summary conviction.

(7) In this section, "produce" includes permit access to.

### **Appointment of authorised persons**

**120.** The Minister may, by writing signed by the Minister, appoint a person, or a person included in a class of persons, to be an authorised person for the purposes of this Act or of a specified provision of this Act.

### **Validity of contracts**

**121.** Without prejudice to the duty of the Corporation to comply with this Act and to observe the limits of its powers under this Act, a contract or other agreement entered into, or a guarantee given, by the Corporation is not invalid because the Corporation did not comply with a provision of this Act, or because it was not within those limits.

### **Corporation to keep the Minister informed**

**122.** The Corporation shall—

- (a) from time to time inform the Minister concerning the general conduct of its activities; and
- (b) furnish to the Minister such information in relation to its activities as the Minister, from time to time, requires.

### **Annual reports**

**123. (1)** The Corporation shall, as soon as practicable after 30 June 1987 and each subsequent 30 June, prepare and furnish to the Minister a report of its operations under this Act and under any other Act during the year that ended on that day, together with financial statements in respect of that year in such form as the Minister for Finance approves.

**(2)** Before submitting financial statements to the Minister under sub-section (1), the Corporation shall submit them to the Corporation auditor, who shall report to the Minister—

- (a) whether, in the auditor's opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in the auditor's opinion, show fairly the financial transactions and the state of the affairs of the Corporation;
- (c) whether, in the auditor's opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Corporation during the year have been in accordance with this Act and any other Act relating to the functions of the Corporation; and
- (d) as to such other matters arising out of the statements as the auditor considers should be reported to the Minister.

**(3)** Without limiting, by implication, the generality of sub-section (1), the Corporation shall include in each annual report referred to in that sub-section—

- (a) a statement of the principal goals of the Corporation in the period since the last such report was given and of the strategies pursued by the Corporation to achieve those goals in that period;
- (b) an assessment to the extent to which the Corporation has achieved the goals referred to in paragraph (a); and
- (c) particulars of—
  - (i) significant capital works undertaken by the Corporation;

- (ii) significant property purchases made by the Corporation;
- (iii) the futures trading activities of the Corporation;
- (iv) the formation of companies and the acquisition and disposal of interests in companies; and
- (v) the entry by the Corporation into partnership agreements, during the period to which the report relates.

(4) The Minister shall cause the report and financial statements of the Corporation, together with the report of the Corporation auditor, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

#### **Liability of members of Corporation**

**124.** The members of the Corporation shall not be personally liable for any act or default of the Corporation done or omitted to be done in good faith in the course of the operations of the Corporation under this or any other Act.

#### **Delegation by Corporation and Managing Director**

**125. (1)** The Corporation may, either generally or as otherwise provided in the instrument of delegation, by writing, delegate all or any of its powers and functions under this Act, other than this power of delegation or its powers under section 47, 48, 49 or 59 to—

- (a) a member of the Corporation;
- (b) a committee appointed under section 15; or
- (c) a person employed by the Corporation.

(2) The Managing Director may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Managing Director, delegate to the Deputy Managing Director or a person employed by the Corporation all or any of the powers of the Managing Director under this Act other than this power of delegation or a power delegated to the Managing Director under sub-section (1).

(3) A power or function delegated under sub-section (1) or (2) shall, when exercised or performed by the delegate, be deemed to have been exercised or performed by the Corporation or the Managing Director, as the case may be.

(4) A delegation of a power or a function by the Corporation or the Managing Director, under this section does not prevent the exercise of that power or the performance of that function by the Corporation or the Managing Director, respectively.

#### **Regulations**

**126.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters—

- (a) required or permitted by this Act to be prescribed; or

*Dairy Produce No. 54, 1986*

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,  
and, in particular—
- (c) prescribing forms to be used, and fees to be paid, in connection with applications for export licences under Part V and renewals of those licences;
  - (d) facilitating the collection or recovery of amounts of the milk fat levies and the dairy products levies;
  - (e) providing for the manner of payment of each of those levies;
  - (f) requiring producers, manufacturers or purchasers of dairy produce to keep records relating to the production of dairy produce by them and to the storage, sale, purchase, import or export of such dairy produce; and
  - (g) requiring exporters of dairy produce to keep records relating to the export of dairy produce by them from Australia and to the storage, sale, production, import or export of such dairy produce.
- 

*[Minister's second reading speech made in—  
House of Representatives on 7 May 1986  
Senate on 28 May 1986]*