

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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Presented and read a first time, 21 September 1983

(*Minister for Primary Industry*)

## A BILL

FOR

### **An Act relating to the marketing of certain dairy products**

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**

- 5     **1.** This Act may be cited as the *Dairy Industry Legislation Amendment Act 1983*.

##### **Commencement**

- 2.** This Act shall come into operation on the day on which it receives the Royal Assent.

#### **10     PART II—AMENDMENTS OF THE DAIRY PRODUCE ACT 1924**

##### **Principal Act**

- 3.** The *Dairy Produce Act 1924*<sup>1</sup> is in this Part referred to as the Principal Act.

4. Section 19 of the Principal Act is repealed and the following section is substituted:

**Conditions relating to contracts for shipment of dairy produce**

“19. (1) The Corporation may, from time to time, by writing under its common seal, approve conditions relating to contracts for the carriage of dairy produce by sea to a place beyond Australia. 5

“(2) Where the Corporation approves conditions under sub-section (1)—

- (a) the Corporation shall send by post to each licensee a notice informing him of the conditions so approved; and
- (b) a contract for the carriage of dairy produce by sea to a place beyond Australia shall not be made by a licensee except in conformity with the conditions so approved that are applicable to the contract. 10

“(3) The making by a licensee of a contract otherwise than in accordance with paragraph (b) of sub-section (2) shall be taken, for the purposes of sub-section (3) of section 14, to be a contravention by the licensee of the regulations made for the purposes of paragraph (b) of sub-section (1) of that section. 15

“(4) A contract for the carriage of dairy produce by sea to a place beyond Australia is not unenforceable, voidable or void by reason only of its having been made in contravention of paragraph (b) of sub-section (2). 20

“(5) In this section, ‘licensee’ means the holder of a licence granted pursuant to section 14, being a licence that is in force.”.

**Pools for returns on export sales of dairy products**

5. Section 20AB of the Principal Act is amended—

- (a) by inserting after sub-section (4) the following sub-sections: 25

“(4AA) Where the Minister fixes an assessed export price under sub-section (4), he shall notify the Corporation accordingly.

“(4AB) The Corporation shall, as soon as practicable after—

- (a) the Corporation has fixed a minimum export price under sub-section (3); or 30
- (b) the Minister has notified the Corporation that the Minister has fixed an assessed export price under sub-section (4),

send by post to each person who is or becomes a party to an arrangement with the Corporation entered into under sub-section (7), being an arrangement to which the fixing of that price is relevant, a notice informing him of the minimum export price or the assessed export price, as the case may be.”; 35

- (b) by adding at the end of paragraph (5) (a) “and”;
- (c) by omitting paragraph (5) (b);
- (d) by omitting from sub-section (5) “the excess referred to in paragraph (c)” and substituting “that excess”; and 40

- (e) by omitting sub-sections (7) and (8) and substituting the following sub-sections:

“(7) The Corporation may enter into an arrangement with a person for the export by the person of dairy products.

5 “(8) Without limiting the provisions that may be included in an arrangement entered into under sub-section (7) between the Corporation and another person (in this sub-section referred to as the ‘exporter’), such an arrangement shall provide that—

10 (a) the exporter shall, before the expiration of the period of 14 days after the last day of the month in which an export sale by him or on his behalf of any dairy products to which the arrangement relates occurred, furnish the Corporation with particulars, in writing, of the sale;

15 (b) where the minimum return in relation to those dairy products exceeds the assessed return in relation to those dairy products, the exporter shall pay to the Corporation, for crediting to the appropriate pool, the amount of that excess; and

20 (c) where the assessed return in relation to those dairy products exceeds the minimum return in relation to those dairy products—the Corporation shall debit to the appropriate pool the amount of that excess and shall pay to the exporter an amount equal to the amount of that debit.

25 “(8A) Where a person who is a party to an arrangement with the Corporation entered into under sub-section (7) does not pay to the Corporation an amount that he is, by virtue of the arrangement, required to pay to the Corporation within the period within which he is, under the arrangement, required to pay the amount, the amount shall be deemed to be a debt due and payable to the Corporation.”

6. After section 24 of the Principal Act the following section is inserted:

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

“24A. (1) In this section—

‘export sale’ has the same meaning as it has in section 20AB;

‘pool’ has the same meaning as it has in section 20AB;

35 ‘production period’ means a production period within the meaning of the *Dairy Industry Stabilization Act 1977*.

40 “(2) Where, on 30 June in any year, there is a surplus resulting from an export sale, or export sales, by or on behalf of the Corporation of dairy products produced during a particular production period, being dairy products of a kind in relation to which a pool is maintained under sub-section (2) of section 20AB, the Corporation shall, subject to sub-section (4), apply the surplus in making a payment to the credit of the pool.

“(3) Where, on 30 June in any year, there is a deficit resulting from an export sale, or export sales, by or on behalf of the Corporation of dairy products produced during a particular production period, being dairy products

of a kind in relation to which a pool is maintained under sub-section (2) of section 20AB, the Corporation shall, subject to sub-section (4), debit to the pool an amount equal to the amount of the deficit.

“(4) The Minister may, where he considers that it would not be appropriate for an amount to be credited or debited to a particular pool as mentioned in sub-section (2) or (3), direct the Corporation to credit or debit, as the case may be, the whole or a part of the amount to such pool or pools as is or are specified in the direction, and the Corporation shall comply with any such direction.

“(5) Where an amount is debited to a pool under sub-section (3) or in accordance with a direction of the Minister under sub-section (4), the Corporation shall pay to the credit of an account referred to in section 22 an amount equal to the amount so debited.

“(6) The Corporation, in ascertaining the amount of a surplus referred to in sub-section (2) or a deficit referred to in sub-section (3), shall regard the amounts (if any) credited to a pool under sub-section (5) of section 20AB in respect of the export sale, or export sales, concerned as expenses incurred by the Corporation in connection with the sale or sales.

“(7) The Corporation, after consultation with the Advisory Committee, may make recommendations to the Minister with respect to the giving of a direction by the Minister under sub-section (4).”.

### **Penalties**

7. The Principal Act is amended as set out in Schedule 1.

## **PART III—AMENDMENTS OF THE DAIRY INDUSTRY STABILIZATION ACT 1977**

### **Principal Act**

8. The *Dairy Industry Stabilization Act 1977*<sup>2</sup> is in this Part referred to as the Principal Act.

9. After section 8 of the Principal Act the following section is inserted in Part II:

### **Benefit of refund to be passed on to exporter**

“8A. (1) Where—

(a) an amount of levy is refunded under sub-section 6 (3) of the 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; and

(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 the time when those dairy products or mixed products were exported,

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

- 5 “(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.”

#### Access to premises

10 **10.** Section 21 of the Principal Act is amended—

- (a) by inserting after sub-section (3) the following sub-section:

“(3A) A warrant under sub-section (3) shall specify a date after which the warrant ceases to have effect.”; and

- (b) by omitting sub-section (5).

#### Review of decisions

15 **11.** Section 24A of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:

“(1) An application may be made to the Administrative Appeals Tribunal for a review of—

- (a) a quota determined under section 11A;  
 (b) a variation of such a quota; or  
 20 (c) a decision made under sub-section 6 (2).”; and

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

25 “(3) Where the Corporation forwards to a proprietor of a factory a notice in writing of a quota or a variation of a quota determined by the Minister under section 11A, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision of the Minister by or on behalf of any person whose interests are affected by the decision.

30 “(4) Where the Minister or an authorized person makes a decision under sub-section 6 (2) and gives to the person whose interests are affected by the decision notice in writing of the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision by or on behalf of any person whose interests are affected by the decision.

35 “(5) Any failure to comply with the requirements of sub-section (3) or (4) in relation to a decision does not affect the validity of the decision.”

#### 40 Penalties

**12.** The Principal Act is amended as set out in Schedule 2.

**PART IV—AMENDMENTS OF THE DAIRYING INDUSTRY RESEARCH AND PROMOTION LEVY COLLECTION ACT 1972**

**Principal Act**

13. The *Dairying Industry Research and Promotion Levy Collection Act 1972*<sup>3</sup> is in this Part referred to as the Principal Act.

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**Penalty for non-payment**

14. Section 7 of the Principal Act is amended by omitting from sub-section (4) “Ten dollars” and substituting “\$100”.

**Access to premises**

15. Section 10 of the Principal Act is amended—

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- (a) by inserting in sub-section (3) “or affirmation” after “oath”;
- (b) by inserting after sub-section (3) the following sub-section:

“(3A) A warrant under sub-section (3) shall specify a date after which the warrant ceases to have effect.”;

- (c) by omitting from sub-section (4) “the last preceding sub-section” and substituting “sub-section (3)”; and
- (d) by omitting sub-section (5).

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16. After section 10 of the Principal Act the following section is inserted:

**Review of decisions**

“10A. (1) An application may be made to the Administrative Appeals Tribunal for a review of a decision made under sub-section 7 (3).

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“(2) Where the Minister or an authorized person makes a decision under sub-section 7 (3) and gives to the person whose interests are affected by the decision notice in writing of the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision by or on behalf of any person whose interests are affected by the decision.

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“(3) Any failure to comply with the requirements of sub-section (2) in relation to a decision does not affect the validity of the decision.”.

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**Penalties**

17. The Principal Act is amended as set out in Schedule 3.



**SCHEDULE 1**

Section 7

**AMENDMENTS OF THE DAIRY PRODUCE ACT 1924 RELATING TO PENALTIES**

Provision	Amendment
Sub-section 14 (3)	Omit "Two hundred dollars", substitute "\$2,000 or imprisonment for 12 months, or both".
Sub-section 20AA (1)	Omit "\$1,000", substitute "\$2,000 or imprisonment for 12 months, or both".
Sub-section 25B (7)	Omit "\$200", substitute "\$2,000 or imprisonment for a period not exceeding 12 months, or both".
Sub-section 26 (2)	Omit "Two hundred dollars", substitute "\$2,000 or imprisonment for 12 months, or both".
Section 30	Omit "One hundred dollars", substitute "\$1,000".

**SCHEDULE 2**

Section 12

**AMENDMENTS OF THE DAIRY INDUSTRY STABILIZATION ACT 1977 RELATING TO PENALTIES**

Provision	Amendment
Section 22	Omit "\$1,000", substitute "\$2,000 or imprisonment for 12 months, or both".
Paragraph 25 (e)	Omit "\$500", substitute "\$1,000".

**SCHEDULE 3**

Section 17

**AMENDMENTS OF THE DAIRY INDUSTRY RESEARCH AND PROMOTION LEVY COLLECTION ACT 1972 RELATING TO PENALTIES**

Provision	Amendment
Sub-section 9 (1)	Omit "Two hundred dollars", substitute "\$2,000 or imprisonment for 12 months, or both".
Paragraph 11 (d)	Omit "Two hundred dollars", substitute "\$1,000".

**NOTES**

1. No. 38, 1924, as amended. For previous amendments, see No. 45, 1934; No. 70, 1935; No. 26, 1936; No. 20, 1937; No. 18, 1938; No. 24, 1942; No. 53, 1947 (as amended by No. 80, 1950); No. 37, 1953; No. 17, 1954; No. 74, 1958; No. 49, 1962; No. 79, 1963; No. 43, 1965; No. 93, 1966; No. 3, 1972; No. 216, 1973 (as amended by No. 20, 1974); No. 82, 1975; No. 79, 1976; No. 53, 1977; Nos. 36 and 96, 1978; and No. 48, 1982.
2. No. 51, 1977, as amended. For previous amendments, see No. 94, 1978 (as amended by No. 39, 1983); No. 80, 1982; and No. 39, 1983.
3. No. 32, 1972, as amended. For previous amendments, see No. 216, 1973 (as amended by No. 20, 1974); No. 79, 1976; No. 80, 1982; and No. 39, 1983.

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