



DAIRY INDUSTRY ACT 1992

No. 77 of 1992

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ANNO QUADRAGESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1992

No. 77 of 1992

An Act to regulate the dairy industry; to establish the Dairy Authority of South Australia; to repeal the Dairy Industry Act 1928 and the Metropolitan Milk Supply Act 1946; and for other purposes.

[Assented to 3 December 1992]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Dairy Industry Act 1992*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

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

“**Authority**” means the *Dairy Authority of South Australia*;

“**dairy farm**” means any place at which animals are kept or milked for the purpose of producing dairy produce for sale;

“**dairy farmer**” means a person who keeps or milks animals for the purpose of producing dairy produce for sale;

“**dairy produce**” means—

(a) milk;

(b) reconstituted milk;

or

(c) a product of which at least one half the total mass consists of milk, reconstituted milk or milk solids;

“farm gate price”, in relation to milk that is to be used for the manufacture of market milk, means a price determined by the Minister on the recommendation of the Authority as the farm gate price for milk under section 25(3);

“inspector” means a person authorized in writing by the Minister to exercise the powers of an inspector under this Act;

“market milk” means milk that has been processed for sale, but does not include any class of such milk excluded by regulation from the ambit of this definition;

“milk” means the milk of any animal;

“processor” means a person who carries on a business in which milk or a derivative of milk is processed to produce dairy produce for sale;

“raw milk” means unprocessed milk;

“vendor” means any person who carries on a business involving the sale of dairy produce, but does not include a dairy farmer, a processor or a person who sells dairy produce only from retail shop premises.

Note: For definition of divisional penalties see Appendix.

PART 2
THE DAIRY AUTHORITY OF SOUTH AUSTRALIA
DIVISION 1—ESTABLISHMENT OF THE AUTHORITY

Establishment of the Authority

4. (1) The *Dairy Authority of South Australia* is established.

(2) The Authority is a body corporate.

(3) The Authority is an instrumentality of the Crown and holds its property on behalf of the Crown.

Ministerial control

5. The Authority is subject to control and direction by the Minister.

DIVISION 2—THE AUTHORITY'S MEMBERSHIP

Composition of the Authority

6. (1) The Authority consists of three members appointed by the Governor.

(2) The Authority's membership must include at least one person with wide experience in the dairy industry.

(3) One member of the Authority will be appointed by the Governor to chair meetings of the Authority.

(4) The Authority may appoint a person to be the deputy of a member of the Authority, and a person so appointed may act as a member of the Authority in the absence of that member.

Conditions of membership

7. (1) A member of the Authority will be appointed for a term, not exceeding three years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.

(2) The Governor may remove a member of the Authority from office for—

(a) misconduct;

or

(b) failure or incapacity to carry out the duties of his or her office satisfactorily.

(3) The office of a member of the Authority becomes vacant if the member—

(a) dies;

(b) completes a term of office and is not reappointed;

(c) resigns by written notice to the Minister;

(d) is convicted of an indictable offence;

or

(e) is removed from office under subsection (2).

Remuneration

8. A member of the Authority is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

Disclosure of interest

9. (1) A member who has a direct or indirect private interest in a matter under consideration by the Authority—

(a) must disclose the nature of the interest to the Authority;

and

(b) must not take part in any deliberations or decision of the Authority in relation to that matter.

Penalty: Division 5 fine or division 5 imprisonment.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(3) A disclosure under this section must be recorded in the minutes of the Authority.

(4) If a member discloses an interest in a contract or proposed contract under this section and takes no part in any deliberations or decision of the Authority on the contract—

(a) the contract is not liable to be avoided by the Authority;

and

(b) the member is not liable to account for profits derived from the contract.

Members' duties of honesty, care and diligence

10. (1) A member of the Authority must at all times act honestly in the performance of his or her official functions.

Penalty—

(a) if an intention to deceive or defraud is proved—division 4 fine or division 4 imprisonment or both;

(b) in any other case—division 6 fine.

(2) A member of the Authority must at all times exercise a reasonable degree of care and diligence in the performance of his or her official functions.

Penalty: Division 6 fine.

(3) A member of the Authority must not make improper use of his or her official position to gain a personal advantage for himself, herself or another or to cause detriment to the Authority.

Penalty: Division 4 fine or division 4 imprisonment or both.

(4) A member or former member of the Authority must not make improper use of information acquired through his or her official position to gain directly or indirectly a personal advantage for himself, herself or another, or to cause detriment to the Authority.

Penalty: Division 4 fine or division 4 imprisonment or both.

(5) This section—

(a) operates both inside and outside the State;

and

(b) is in addition to, and does not derogate from, other laws.

DIVISION 3—THE AUTHORITY'S PROCEDURES

Proceedings

11. (1) The member appointed to chair meetings of the Authority will preside at meetings of the Authority or, in the absence of that member, a member chosen by those present will preside.

(2) Subject to subsection (3), the Authority may act despite a vacancy in its membership or a defect in the appointment of a member.

(3) Two members of the Authority constitute a quorum of the Authority and no business may be transacted at a meeting of the Authority unless a quorum is present.

(4) Each member present at a meeting of the Authority has one vote on any question arising for decision.

(5) A decision carried by a majority of the votes cast by members at a meeting is a decision of the Authority.

(6) A telephone or video conference between members of the Authority will, for the purposes of this section, be taken to be a meeting of the Authority at which the participating members are present.

(7) A proposed resolution of the Authority—

(a) of which notice is given to all members of the Authority in accordance with procedures determined by the Authority;

and

(b) in which all members of the Authority express their concurrence in writing,

is a decision of the Authority.

(8) The Authority must cause accurate minutes to be kept of its proceedings.

(9) Subject to this Act, the Authority may determine its own procedures.

PART 3
FUNCTIONS AND POWERS OF THE AUTHORITY

DIVISION 1—FUNCTIONS AND POWERS

Functions of the Authority

12. The Authority's functions are—

- (a) to recommend the imposition, variation or removal of price control in respect of dairy produce under this Act;
- (b) to determine the conditions and the fees for licences to be issued under this Act;
- (c) to approve, provide, or arrange for the provision of, training programs for implementing appropriate standards and codes of practice for the dairy industry;
- (d) to grant, or arrange for the granting of, certificates to persons who successfully complete training programs approved by the Authority;
- (e) to monitor the extent of compliance by the dairy industry with appropriate standards and codes of practice;
- (f) to carry out any other functions assigned to the Authority by or under this Act or by the Minister.

Powers of the Authority

13. (1) The Authority has the powers necessary or incidental to the performance of its functions.

(2) The Authority may, for example—

- (a) enter into any form of contract or arrangement;
- (b) employ staff or make use of the services of staff employed in the public or private sector;
- (c) engage consultants or other contractors;
- (d) delegate any of its powers to any person or body of persons.

(3) A delegation of powers by the Authority is revocable at will and does not derogate from the power of the Authority to act itself in any matter.

(4) Subject to the transitional provisions, an employee of the Authority is not a member of the Public Service, but the terms and conditions of employment of any such employee must be as approved by the Minister.

DIVISION 2—FINANCIAL PROVISIONS

The Dairy Authority Administration Fund

14. (1) There is to be a fund called the *Dairy Authority Administration Fund*.

(2) The Fund will consist of—

- (a) all fees and charges recovered under this Act;
 - (b) all penalties recovered for offences against this Act;
- and
- (c) any other money appropriated by Parliament for the purposes of the Fund.
- (3) The fund is to be applied towards the costs of administering this Act.

Accounts and audit

15. (1) The Authority must keep proper accounting records of its receipts and expenditures, and must, at the conclusion of each financial year, prepare accounts for that financial year.

(2) The Auditor-General may audit the accounts of the Authority at any time and must audit the accounts for each financial year.

(3) The Authority must arrange for the audit of any money collected and paid under section 23 (3) and ensure that the farm gate price is paid under a price equalisation scheme.

DIVISION 3—ANNUAL REPORT

Annual Report

16. (1) The Authority must, on or before 31 October in every year, forward to the Minister a report on the administration of this Act during the year that ended on the preceding 30 June.

(2) The report must include the audited accounts of the Authority for the relevant financial year.

(3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

PART 4
REGULATION OF THE DAIRY INDUSTRY

DIVISION 1—LICENCES

Licences

17. (1) Licences will be of the following classes:

- (a) dairy farmer's licence;
- (b) processor's licence;
- (c) vendor's licence.

(2) A person must not carry on business as a dairy farmer unless that person holds a dairy farmer's licence.

Penalty: Division 5 fine.

(3) A person must not carry on business as a processor of dairy produce unless that person holds a processor's licence.

Penalty: Division 5 fine.

(4) A person must not carry on business as a vendor of dairy produce unless that person holds a vendor's licence.

Penalty: Division 5 fine.

Issue of licences

18. (1) An application for a licence—

- (a) must be made in writing to the Authority;
- (b) must be accompanied by any information and documents required by the regulations.

(2) The Authority may, on receipt of an application for a licence, issue a licence.

Licence fee

19. (1) A person who holds a licence must pay periodic licence fees in accordance with the regulations.

(2) If a periodic fee payable by the holder of the licence is in arrears for more than three months, the Authority may, by written notice given to the holder of the licence, cancel the licence.

Conditions of licence

20. (1) A licence may be issued on such conditions as the Authority thinks fit.

(2) The Authority may, by written notice to the holder of a licence, add to the conditions of the licence or vary or revoke a condition of the licence.

(3) A person who holds a licence must not contravene or fail to comply with a condition of a licence.

Penalty: Division 5 fine.

Transfer of licence

21. A licence may be transferred with the consent of the Authority.

Revocation of licence

22. The Authority may revoke a licence if—

(a) the holder of the licence ceases to carry on the business in respect of which the licence was issued;

or

(b) the holder of the licence contravenes or fails to comply with a condition of the licence.

DIVISION 2—PRICE CONTROL

Price control

23. (1) The Minister may, on the recommendation of the Authority, by order published in the *Gazette*, fix a price for the sale of dairy produce of a specified class.

(2) An order under this section—

(a) may apply generally throughout the State or be limited, in its application, to a particular part of the State;

(b) may apply generally to the sale of dairy produce of the relevant class or may be limited to sale by retail or by wholesale or to sale by licensees of a particular class or by reference to any other factor.

(3) An order under this section fixing a price to be paid to processors for market milk may be subject to a condition, stated in the order, requiring that a specified proportion of the price paid for the milk be paid into a fund to be established by the processors and applied by them, as directed by the Minister, towards enabling them to pay the farm gate price for milk to dairy farmers who would not otherwise receive that price for such milk.

(4) The Minister may, by order published in the *Gazette*, vary or revoke an order under this section.

(5) Any amount payable under a condition imposed under subsection (3) may be recovered from a person who has paid, or is liable to pay, the price for the dairy produce fixed in the order as a debt.

Non-compliance with price-fixing order

24. (1) A person who carries on a business involving the sale of dairy produce must not sell dairy produce to which the order applies for a price that differs from the price fixed in the order.

Penalty: Division 5 fine.

(2) For the purposes of determining the price for which dairy produce is sold, any contractual arrangement which provides in effect for a remission of price or a premium on the price, will be taken into consideration.

Guarantee of adequate farm gate price

25. (1) A person must not process milk in the State for the purpose of manufacturing market milk unless the raw milk was purchased from a dairy farmer (either within or outside the State) at or above a price determined by the Minister on the recommendation of the Authority as the farm gate price for milk.

Penalty: Division 1 fine.

(2) A person must not sell market milk unless the market milk was produced from raw milk purchased from a dairy farmer (either within or outside the State) at or above a price determined by the Minister on the recommendation of the Authority as the farm gate price for milk.

Penalty: Division 1 fine.

(3) The Minister may, on the recommendation of the Authority, by notice in the *Gazette*—

(a) determine a farm gate price for milk to be used for the purpose of manufacturing market milk;

or

(b) vary or revoke a previous determination under this subsection.

(4) If there is a general consensus throughout Australia on what an appropriate farm gate price for milk should be, the Authority's recommended farm gate price should reflect that consensus.

(5) This section does not apply in relation to raw milk sold under a contract that was in existence at the commencement of this Act unless the Minister, by notice published in the *Gazette*, otherwise determines.

DIVISION 3—EQUALISATION SCHEMES

Equalisation schemes

26. (1) The Minister may, on the recommendation of the Authority, establish a price equalisation scheme.

(2) A price equalisation scheme will be binding on dairy farmers and wholesale purchasers of dairy produce of a class stated in the scheme.

(3) A price equalisation scheme cannot be established under this section if a voluntary price equalisation scheme is currently operating binding dairy farmers and wholesale purchasers of dairy produce throughout the State.

(4) A price equalisation scheme may impose a surcharge on licence fees, on a basis set out in the scheme, on licensees who are bound by the scheme.

(5) The terms of such a scheme are to be published in the *Gazette* and the scheme takes effect on publication in the *Gazette* or on such later date as may be specified in the scheme.

(6) The Minister may, on the recommendation of the Authority, by notice in the *Gazette*, amend or revoke a price equalisation scheme under this section.

(7) A price equalisation scheme under this section, or an amendment to such a scheme, must be laid before both Houses of Parliament and is subject to disallowance in the same way as a regulation.

Non-compliance with scheme

27. A person who sells or purchases dairy produce contrary to the terms of a price equalisation scheme that is binding on that person is guilty of an offence.

Penalty: Division 5 fine.

**PART 5
MISCELLANEOUS**

Advisory and consultative committees

28. The Minister may establish a committee or committees of representatives of the dairy industry to obtain advice from the industry, and facilitate consultation with the industry, on matters relating to the industry or the administration of this Act.

Powers of inspectors

29. (1) An inspector may enter and inspect any dairy farm or other premises in which dairy produce is produced, processed, stored or kept for sale in order to determine whether appropriate standards and codes of practice are being observed.

(2) An inspector may take samples of any such dairy produce in order to determine whether the dairy produce complies with standards in force under this Act.

(3) An inspector, or a person assisting an inspector, who while acting or purporting to act in the course of official duties—

(a) uses offensive language;

or

(b) hinders or obstructs, or uses or threatens to use force against, some other person knowing that he or she is not entitled to do so or without a belief on reasonable grounds that he or she is entitled to do so,

is guilty of an offence.

Penalty: Division 5 fine.

Hindering inspectors

30. A person must not hinder or obstruct an inspector in the exercise of powers conferred by this Act.

Penalty: Division 5 fine.

Protection of staff

31. An inspector or other person engaged in functions related to the administration or enforcement of this Act incurs no civil liability for an act or omission in the course of the performance or purported performance of those functions.

Review of Act

32. (1) The Minister must at the end of three years from the commencement of this Act review the operation of this Act.

(2) A report on the review must be prepared and laid before both Houses of Parliament.

Regulations

33. (1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may, for example—

- (a) require licensees generally or a particular class of licensees to comply with a code of practice prescribed or referred to in the regulations;
- (b) prescribe standards with which dairy produce must comply.

(3) A regulation requiring compliance with a particular code of practice or prescribing standards with which dairy produce must comply may only be made if the Minister is of the opinion that the dairy industry has not itself established, or is not effectively enforcing, the appropriate standards or codes of practice.

(4) A regulation may impose a fine not exceeding a division 6 fine for contravention of, or non-compliance with, the regulation.

SCHEDULE*Repeal and Transitional Provisions***Repeal of certain Acts**

1. (1) The *Dairy Industry Act 1928* is repealed.
- (2) The *Metropolitan Milk Supply Act 1946* is repealed.

Transitional provisions

2. (1) The balance standing to the credit of the *Dairy Industry Fund* under the repealed *Dairy Industry Act 1928* immediately before the commencement of this Act is to be applied by the Minister, after taking into account the advice of members of the dairy industry, for the benefit of the dairy industry.

(2) On the commencement of this Act, the *Metropolitan Milk Board* is dissolved and the Authority succeeds to all its rights and liabilities.

(3) The Authority must dispose of any herd testing equipment to which it becomes entitled under subsection (2) as directed by the Minister after appropriate consultation with associations representing the dairy industry.

(4) A person who was immediately before the commencement of this Act an employee of the *Metropolitan Milk Board* becomes, on the commencement of this Act, an employee of the Authority without interruption of his or her continuity of employment and on the same terms and conditions.

APPENDIX

Divisional Penalties

At the date of assent to this Act divisional penalties are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

Note: This appendix is provided for convenience of reference only.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor