
HERD IMPROVEMENT AMENDMENT ACT 1988

No. 66 of 1988

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AMENDMENT OF REFERENCES IN
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HERD IMPROVEMENT AMENDMENT ACT 1988

No. 66 of 1988

AN ACT to provide for the dissolution of the Herd Improvement Board of Tasmania and the administration of the Herd Improvement Act 1977 by the Tasmanian Dairy Industry Authority.

[Royal Assent 22 December 1988]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Herd Improvement Amendment Act 1988*. Short title.

2—(1) This Act, except sections 13 and 15, shall commence Commencement. on 1st January 1989.

(2) Sections 13 and 15 shall commence on a day to be fixed by proclamation.

3—In this Act, the *Herd Improvement Act 1977** is referred Principal Act. to as the Principal Act.

* No. 4 of 1977. For this Act, as amended to 30th June 1981, see the continuing Reprint of Statutes. Subsequently amended by No. 10 of 1982 and No. 29 of 1984.

Amendment of section 2 of Principal Act (Repeals and application of *Stock Act 1932*).

4—Section 2 of the Principal Act is amended by omitting subsections (2) and (3).

Substitution of section 3 and repeal of sections 4 to 9 of Principal Act.

5—Sections 3 to 9 (both inclusive) of the Principal Act are repealed and the following section is substituted:—

Interpretation.

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

“the Authority” means the Tasmanian Dairy Industry Authority;

“the Board” means the Herd Improvement Advisory Board established under section 10B (1);

“the commencement day” means 1st January 1989;

“court” includes a tribunal or authority which is empowered by, or under, law to determine any matter judicially;

“the Crown” means the Crown in right of Tasmania;

“the former board” means the Herd Improvement Board of Tasmania as formerly constituted under this Act;

“functions” includes duties;

“legal proceedings” includes an arbitration;

“obligations” includes duties and liabilities;

“owner”, in relation to stock, includes a joint owner;

“property” means any legal or equitable estate or interest, whether present or future and whether vested or contingent, or real or personal property of any description, and includes entitlements, powers, and privileges;

“the regulations” means regulations made and in force under this Act;

“semen” includes ova;

“stock” has the same meaning as in the *Stock Act 1932*.

Insertion of new sections 10A to 10F in Principal Act.

6—After section 10 of the Principal Act, the following sections are inserted:—

10A—(1) Notwithstanding anything contained in this Act, the Authority in the exercise of its powers or the performance of its functions under this Act is subject to the control of the Minister and if, after consultation with the Authority, any action or proceeding by the Authority is not approved by the Minister he may, by notice in writing addressed to, and served on, the chairman of the Authority, prohibit the action or proceeding either absolutely or subject to such conditions as he thinks fit, and effect shall be given by the Authority to the notice.

Authority subject to control of the Minister.

(2) In the exercise of his powers under this section the Minister shall have regard to the provisions of this Act.

10B—(1) There shall be established an advisory board, to be known as the Herd Improvement Advisory Board.

Herd Improvement Advisory Board.

(2) The Board shall—

- (a) keep under review the administration of this Act and shall advise and make recommendations to the Authority and the Minister on such matters in relation to that administration as it thinks fit; and
- (b) consider, as soon as practicable, any matter related to the administration of this Act that is referred to it by the Authority or the Minister and make a report on that matter to the Authority or the Minister, as the case may be, with such recommendations as it may consider appropriate in the circumstances.

10C—(1) The Board shall consist of 4 persons appointed by the Minister in accordance with this section, of whom—

Members of Board.

- (a) two shall be selected from a panel of names supplied by the Dairy Council of the Tasmanian Farmers and Graziers Association;
- (b) one shall be selected from a panel of names supplied by the Meat Council of the Tasmanian Farmers and Graziers Association; and
- (c) one shall be a person who, in the opinion of the Minister, has a special knowledge of herd improvement and related dairy industry matters.

(2) The Chairman of the Board shall be appointed by the Minister from one of the persons referred to in subsection (1) (a).

(3) The Chairman may call a meeting of the Board at any time he considers it desirable and shall do so if he is so requested in writing by 2 members of the Board.

(4) Subject to subsection (5), a member of the Board, unless he sooner resigns or is removed from his office or otherwise ceases to hold office, continues in office for a period of 3 years from the date on which he was last appointed as a member of the Board.

(5) Where a member of the Board dies or ceases to hold office otherwise than by reason of effluxion of time, the member appointed to fill the vacancy ceases to hold office at the expiration of the unexpired term of office of the member in whose place he is appointed.

(6) The members of the Board are not, as such, subject to the *Tasmanian State Service Act 1984*, but an employee within the meaning of that Act may hold office as a member of the Board in conjunction with his position in the State Service.

(7) The Chairman of the Board, or, if he is absent or there is no Chairman, such one of the other members present as they may choose, shall preside at each meeting of the Board.

(8) The Chairman or other person presiding at a meeting of the Board has a deliberative vote only and, in the event of an equality of votes on any matter before a meeting of the Board, that matter stands adjourned to the next meeting of the Board.

(9) Three members of the Board shall constitute a quorum at a meeting of the Board.

(10) Subject to this Act, the Board may regulate its own proceedings.

(11) The members of the Board shall be paid such fees and allowances, if any, as the Minister may determine.

(12) No fees or allowances shall be paid pursuant to subsection (11) to a member of the Board who is an employee within the meaning of the *Tasmanian State Service Act 1984*, except with the approval of the Head of the Agency in which the employee is employed.

10D—(1) The Board may establish such committees as it may from time to time consider necessary.

(2) Subject to any direction given to it by the Board, a committee established under this section shall regulate its own procedure.

10E—(1) The Minister may remove any member of the Board from office if he is satisfied that that member— Removal of members of the Board.

- (a) has become, in the opinion of the Minister, permanently incapable of carrying out the duties of his office;
- (b) has misconducted himself in the performance of the duties of his office;
- (c) has, by reason of a change of occupation or otherwise, ceased to be a person suitable to represent the interests of the classes or persons that he was appointed to represent;
- (d) without leave of the Board, has been absent from 3 or more consecutive meetings of the Board;
- (e) has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors; or
- (f) has been convicted (whether in this State or elsewhere) of an offence of such a nature that, in the opinion of the Minister, renders it improper for him to continue to hold his office.

(2) Without limiting the generality of subsection (1) (b), a member of the Board shall be deemed to have misconducted himself in the performance of the duties of his office if—

- (a) he votes on any matter before the Board in which he knows that he has a direct pecuniary interest; or
- (b) he takes part in, or is present at, the discussion of any such matter before the Board without disclosing a pecuniary interest of which he is then aware to the members of the Board present.

(3) In the case of married persons living together a pecuniary interest of one spouse shall, if known to the other, be deemed for the purposes of this section to be also a pecuniary interest of the other spouse.

(4) The Minister shall not remove a member of the Board otherwise than under this section.

Administrative support for Board.

10F—The Authority may provide the Board with such administrative facilities as may be necessary in order to perform its functions under this Act.

Amendment of section 12 of Principal Act (Herd Improvement Account).

7—(1) Section 12 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) (b) “Revenue” and substituting “Fund”;

(b) by omitting from subsection (2) “in the Commonwealth Trading Bank of Australia to be known as the Herd Improvement Board of Tasmania Account” and substituting “to be known as the Herd Improvement Account to be kept at a bank approved by the Minister”;

(c) by omitting paragraphs (a) and (b) of subsection (3) and substituting the following paragraphs:—

(a) fees and allowances payable to members of the Board;

(b) salaries, wages, and allowances payable to other persons appointed or employed under this Act;

(2) Section 12 of the Principal Act is further amended by omitting subsection (4) and substituting the following subsection:—

(4) All money that, immediately before the commencement day, was standing to the credit of the Herd Improvement Board of Tasmania Account, as formerly established under this section, shall be transferred to the Account.

Amendment of section 13 of Principal Act (Loans for capital expenditure).

8—Section 13 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “(including the completion of any works commenced before the commencement of this Act by the Artificial Breeding Board established under the *Artificial Breeding Act 1964*)”;

(b) by omitting from subsection (2) “Loan” and substituting “Consolidated”.

Amendment of section 14 of Principal Act (Working capital).

9—Section 14 (2) of the Principal Act is amended by omitting “Loan” and substituting “Consolidated”.

10—Section 16 of the Principal Act is amended by omitting “approve.” and substituting “approve and shall keep separate books of account in respect of its administration of this Act”.

Amendment of section 16 of Principal Act (Accounts to be kept by Authority).

11—Section 21 (2) of the Principal Act is amended as follows:—

Amendment of section 21 of Principal Act (Regulations).

- (a) by omitting paragraphs (a) and (b);
- (b) by omitting from paragraph (g) “and”;
- (c) by omitting from paragraph (h) “programmes.” and substituting “programmes; and”;
- (d) by inserting after paragraph (h) the following paragraph:—
 - (i) matters of a savings or transitional nature consequential on the dissolution of the former board or the winding up of the administration of this Act by the Authority;

12—After section 21 of the Principal Act, the following sections are inserted:—

Insertion of new sections 22 and 23 in Principal Act.

22—(1) The Herd Improvement Board of Tasmania, as formerly constituted under this Act, is dissolved.

Dissolution of Herd Improvement Board of Tasmania.

(2) The appointments of the chairman, the other members of the former board, and any deputy under section 5 (5) as in force immediately before the commencement day are cancelled.

(3) The savings and transitional provisions specified in Schedule 2 have effect.

23—The Authority may, with the approval of the Minister and to the intent that it may wind up its administration of this Act, enter into such contracts, agreements, and arrangements as it thinks fit for the sale or other disposal of all or any of its property to a person who, in the opinion of the Authority, will promote the artificial breeding or production recording of stock.

Further power of Authority to wind up administration of this Act.

13—After section 23 of the Principal Act, the following section is inserted:—

Insertion of new section 24 in Principal Act.

24—Schedule 3 has effect for the purpose of winding up the administration of this Act by the Authority.

Ancillary provisions on winding up.

Addition of
Schedule 2 to
Principal Act.

14—After Schedule 1 to the Principal Act, the following Schedule is added:—

SCHEDULE 2

Section 22 (3)

SAVINGS AND TRANSITIONAL PROVISIONS

Saving for
contracts, &c.,
of the former
board.

1—All contracts, agreements, arrangements, and undertakings which were entered into by the former board before, but which were not performed or discharged by, the commencement day are, except in relation to an obligation which was required to be performed before that day, discharged.

Transfer of
assets, &c., of
former board to
the Authority.

2—(1) On and from the commencement day—

- (a) all property that, immediately before that day, was vested in or belonged to the former board shall vest in and belong to the Authority and all responsibility for the management and control of that property shall become vested in the Authority;
- (b) all money, debts, and claims, liquidated or unliquidated, that, immediately before that day, was or were payable to, due to, or recoverable by, the former board shall be money, debts, or claims payable to, due to, or recoverable by, the Authority;
- (c) all money, debts, and claims, liquidated or unliquidated, that, immediately before that day, was or were payable by, due from, or recoverable against, the former board shall be money, debts, or claims payable by, due from, or recoverable against, the Authority;
- (d) the Authority may enforce and realize any security existing immediately before that day in favour of the former board and exercise any powers thereby conferred on that board as if the security were a security in favour of the Authority;
- (e) all legal proceedings pending immediately before that day which were instituted by the former board shall be deemed to be legal proceedings pending on that day which were instituted by the Authority;

- (f) all legal proceedings pending immediately before that day which were instituted by any person against the former board shall be deemed to be legal proceedings pending on that day which were instituted by that person against the Authority;
- (g) legal proceedings which could have been instituted by the former board to enforce an obligation that was required to be performed, or a right that has accrued, before that day may be instituted by the Authority;
- (h) legal proceedings which could have been instituted by a person against the former board to enforce an obligation that was required to be performed, or a right that had accrued, before that day may be instituted by that person against the Authority;
- (i) any judgment or order of a court obtained by the former board and not executed or satisfied before that day shall be deemed to be a judgment or order in favour of the Authority;
- (j) any judgment or order of a court obtained by a person against the former board and not executed or satisfied before that day shall be deemed to be a judgment or order against the Authority;
- (k) any document which was addressed to, and which purported to have been served on or notified to, the former board and which, whether by virtue of this Act or otherwise, had not ceased to have effect before that day shall be deemed to have been served on, or notified to, the Authority; and
- (l) any document which was addressed to, and which purported to have been served on or notified to, a person by or on behalf of the former board and which, whether by virtue of this Act or otherwise, had not ceased to have effect before that day shall be deemed to have been served on, or notified to, that person by the Authority.

(2) The rights, obligations, and exceptions conferred on, imposed on, or applicable to, the Crown under Part VI of the *Supreme Court Civil Procedure Act 1932* apply to and in respect of legal proceedings and claims referred to in subsection (1), notwithstanding that those rights, obligations, and exceptions or any of them were not conferred or imposed on, or applicable to, the former board in respect of legal proceedings or claims concerning the former board before the commencement day.

Addition of
Schedule 3 to
Principal Act.

15—After Schedule 2 to the Principal Act, the following Schedule is added:—

SCHEDULE 3

Section 24

WINDING UP PROVISIONS

Discharge of
contracts,
agreements, &c.

1—All contracts, agreements, arrangements, and undertakings which were entered into by the Authority in the administration of this Act before, but which were not performed or discharged by, the day fixed by proclamation under section 2 (2), are, except in relation to an obligation that was required to be performed before that day, discharged.

Transfer of
certain assets,
&c., of
Authority to the
Crown.

2—(1) Subject to this clause, on and from the day fixed by proclamation under section 2 (2)—

(a) all property that, immediately before that day, was vested in or belonged to the Authority in the administration of this Act shall vest in and belong to the Crown and all responsibility for the management and control of that property shall become vested in the Minister on behalf of the Crown;

(b) all money, debts, and claims, liquidated or unliquidated, that, immediately before that day, was or were payable to, due to, or recoverable, by the Authority in the administration of this Act shall be money, debts, or claims payable to, due to, or recoverable by, the Minister on behalf of the Crown;

- (c) all money, debts, and claims, liquidated or unliquidated, that, immediately before that day, was or were payable by, due from, or recoverable against, the Authority in the administration of this Act shall be money, debts, or claims payable by, due from, or recoverable against, the Minister on behalf of the Crown;
- (d) the Minister may, on behalf of the Crown, enforce and realize any security existing immediately before that day in favour of the Authority in the administration of this Act and exercise any powers thereby conferred on the Authority as if the security were a security in favour of the Crown;
- (e) all legal proceedings pending immediately before that day that were instituted by the Authority in the administration of this Act shall be deemed to be legal proceedings pending on that day that were instituted by the Minister on behalf of the Crown;
- (f) all legal proceedings pending immediately before that day that were instituted by any person against the Authority in the administration of this Act shall be deemed to be legal proceedings pending on that day which were instituted by that person against the Minister on behalf of the Crown;
- (g) legal proceedings that could have been instituted by the Authority in the administration of this Act to enforce an obligation that was required to be performed, or a right that has accrued, before that day may be instituted by the Minister on behalf of the Crown;
- (h) legal proceedings that could have been instituted by a person against the Authority in the administration of this Act to enforce an obligation that was required to be performed, or a right that had accrued, before that day may be instituted by that person against the Minister on behalf of the Crown;

- (i) any judgment or order of a court obtained by the Authority in the administration of this Act and not executed or satisfied before that day shall be deemed to be a judgment or order in favour of the Crown;
- (j) any judgment or order of a court obtained by a person against the Authority in the administration of this Act and not executed or satisfied before that day shall be deemed to be a judgment or order against the Crown;
- (k) any document which was addressed to, and which purported to have been served on or notified to, the Authority in the administration of this Act and which, whether by virtue of this Act or otherwise, had not ceased to have effect before that day shall be deemed to have been served on, or notified to, the Minister on behalf of the Crown; and
- (l) any document that was addressed to, and which purported to have been served on or notified to, a person by or on behalf of the Authority in the administration of this Act and which, whether by virtue of this Act or otherwise, had not ceased to have effect before that day shall be deemed to have been served on, or notified to, that person by the Minister on behalf of the Crown.

(2) The rights, obligations, and exceptions conferred on, imposed on, or applicable to, the Crown under Part VI of the *Supreme Court Civil Procedure Act 1932* apply to and in respect of legal proceedings and claims referred to in subclause (1), notwithstanding that those rights, obligations, and exceptions or any of them were not conferred or imposed on, or applicable to, the Authority in the administration of this Act in respect of legal proceedings or claims concerning the Authority before the day fixed by proclamation under section 2 (2).

(3) Where property that becomes vested in the Crown by virtue of subclause (1) (a) consists of money, that money shall, except in so far as the regulations otherwise provide, be paid into the Consolidated Fund.

(2) Section 20 of the Principal Act is amended as follows:—

(a) by omitting “Board” (first, second, and last occurring) and substituting “Authority or the Board”;

(b) by omitting “Board” (third occurring) and substituting “Authority”.

(3) Each of the provisions of the Principal Act specified in Column 1 of Schedule 1 is amended by omitting “Board”, as indicated in Column 2 of that Schedule, and substituting “Authority”.

SCHEDULE 1

Section 16 (3)

AMENDMENT OF REFERENCES IN PRINCIPAL ACT TO “BOARD”

COLUMN 1 Provision of Principal Act amended	COLUMN 2 Number of times word omitted occurs in provision
10	7
11	4
11A	4
12 (1), (2) and (3) (c), (d), (e), and (f)	14
13	8
14	5
15	12
16	1
17	2
18	1
19	2
21 (2) (c), (d), and (e) and (3)	5

