

Queensland



DAIRY INDUSTRY ACT 1993

Reprinted as in force on 2 February 1999
(includes amendments up to Act No. 49 of 1998)

Reprint No. 4

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Information about this reprint

This Act is reprinted as at 2 February 1999. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 37)
- number and renumber provisions and references (s 43).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including table of renumbered provisions**
- **editorial changes made in earlier reprints.**

Queensland



DAIRY INDUSTRY ACT 1993

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	7
2	Objectives	7
3	Definitions	8
4	Extent to which State is bound	10
PART 2—POLICY AND ADMINISTRATION		
<i>Division 1—Ministerial advisory bodies</i>		
5	Minister may establish advisory bodies	10
<i>Division 2—The Queensland Dairy Authority</i>		
6	Establishment of authority	10
<i>Division 3—Functions and powers of the authority</i>		
7	Functions of the authority	11
8	General powers of the authority	11
9	Delegation	12
10	Ministerial direction	12
<i>Division 4—Financial arrangements of authority</i>		
11	Authority is statutory body under the Financial Administration and Audit Act 1977	13
12	Authority is statutory body under the Statutory Bodies Financial Arrangements Act 1982	13
<i>Division 5—Membership of the authority</i>		
13	Composition of the authority	13
14	Term of office	14
15	Fees and allowances	14

Division 6—Proceedings of the authority

16	Time and place of meetings	15
17	Procedures governing transaction of business	15
18	Disclosure of interest	16
19	Minutes	17

Division 7—Committees

20	Committees	17
----	----------------------	----

Division 8—Staff of the authority

21	Staff of the authority	17
22	Superannuation schemes	17

PART 3—INDUSTRY REGULATION***Division 1—Price regulation***

23	Price fixing	18
24	Specific authorisation for making pricing orders and imposing pricing conditions	19
25	Obligation to comply with pricing order	19
26	Specific authorisation for things done because of pricing orders	19
27	Expiry of div 1	20

Division 2—Licensing

28	Classes of licences	20
29	Application for and grant of licence	20
30	Conditions of licence	21
31	Specific authorisation of non-competitive conditions	21
32	Transactions affecting licences	22
33	Licensee's records	22
34	Variation, suspension or cancellation of licence	22
35	Offences related to licences	23

Division 3—Supply management

36	Market milk entitlements	23
37	Transactions affecting entitlement	24
38	Diversion of supply by entitlement holders	24
39	Supply management scheme and market milk access	24
40	Amount of each class of market milk supplied	25

41	Determination of monthly adjustments of market milk sales	25
42	Specific authorisation for monthly adjustments of market milk sales	27
43	Consequential variation of market milk entitlements	27
44	General power of variation and cancellation	27
45	Gazettal of entitlements etc.	28
46	Expiry of div 3	28
	PART 4—INDUSTRY STANDARDS	
	<i>Division 1—Power to make standards</i>	
47	Making of standards	29
	<i>Division 2—Standard of premises, plant and equipment</i>	
48	Standards for premises, vehicles etc.	30
	<i>Division 3—Standards for dairy produce</i>	
49	Standards with which dairy produce must comply	30
50	Unlawful adulteration or blending of dairy produce	30
	<i>Division 4—Testing and analysis of dairy produce</i>	
51	Testing and analysis	31
	<i>Division 5—Power to enforce compliance with standards</i>	
52	Power to enforce standards as to premises and equipment etc.	31
53	Power to require cleaning of premises etc.	32
54	Power to condemn dairy produce etc.	32
55	Power to require segregation of person suffering from infectious disease	33
	PART 5—GENERAL POWERS OF ENFORCEMENT	
	<i>Division 1—Administration</i>	
56	Appointment of authorised persons	33
57	Terms of appointment of authorised persons	34
58	Powers of authorised persons	34
59	Identity cards	34
60	Proof of authority	35
61	Protection from liability	35
	<i>Division 2—Powers of authorised persons</i>	
62	Entry and search—monitoring compliance	35
63	Entry and search—evidence of offences	36

Dairy Industry Act 1993

64	Power to stop and search vehicles etc.	37
65	General powers in relation to places and vehicles	38
66	Power to require name and address	39
67	Power to require answers to questions	40
68	Power to require production of licences etc.	40
69	Authorised person to give notice of seizure or damage	40
70	Compensation	41

Division 3—Warrants

71	Monitoring warrants	42
72	Offence related warrants	42
73	Magistrate may require further information before issuing warrant	42
74	Contents of warrants	42
75	Warrants may be issued by various forms of communication	43

Division 4—Offences

76	Failure of authorised person to return identity card	45
77	Failure to comply with signal	45
78	Failure to comply with requirements relating to vehicles	46
79	Failure to assist authorised person	46
80	Failure to provide name and address	47
81	Failure to answer question	47
82	Failure to produce document	48
83	False or misleading documents	48
84	False or misleading information	48
85	Obstruction of authorised persons	49
86	Impersonation of authorised persons	49

PART 6—ADMINISTRATIVE APPEALS***Division 1—The Dairy Industry Tribunal***

87	Establishment of tribunal	49
88	Composition of the tribunal	49
89	Remuneration of members of the tribunal	50
90	Secretary and staff	51
91	Costs associated with the tribunal	51

Division 2—Proceedings of the tribunal

92	Time and place of proceedings	51
93	Decisions of the tribunal	51
94	Evidence and procedure	51
95	Powers as to witnesses etc.	52

Division 3—Jurisdiction of the tribunal

96	Appeals to the tribunal	53
97	How to start an appeal	54
98	Stay of operation of order etc.	54
99	Powers of tribunal on appeal	55

PART 7—MISCELLANEOUS

100	Duty relating to analysis of dairy produce	55
101	Securities over licences	56
102	Conduct of executive officers, employees and agents	56
103	Appropriation of penalties	57
104	Injunction against persistent offenders	57
105	Evidentiary provision	58
106	Regulations	58

ENDNOTES

1	Index to endnotes	59
2	Date to which amendments incorporated	59
3	Key	59
4	Table of earlier reprints	60
5	Tables in earlier reprints	60
6	List of legislation	60
7	List of annotations	61
8	Table of renumbered provisions	66

DAIRY INDUSTRY ACT 1993

[as amended by all amendments that commenced on or before 2 February 1999]

An Act to provide for the restructuring of the dairy industry and for other purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Dairy Industry Act 1993*.

Objectives

2. The principal objectives of this Act are—
 - (a) to provide for the restructuring of the dairy industry, in accordance with proposals originating from the industry itself, in order to—
 - (i) establish a proper basis for the efficient management and operation of the industry; and
 - (ii) ensure the provision of high quality dairy produce in sufficient quantities to meet public demand; and
 - (b) to establish the Queensland Dairy Authority to administer the industry; and
 - (c) to provide for the partial deregulation of the dairy industry without, however, prejudicing the maintenance of proper quality standards.

Definitions

3. In this Act—

“**authorised person**” means a person appointed by the authority to be an authorised person under part 5 (General powers of enforcement).

“**authority**” means the Queensland Dairy Authority.

“**competition legislation**” means the *Trade Practices Act 1974* (Cwlth), section 51(1)(b),¹ or section 51² of the Competition Code of Queensland.³

“**dairy**” means buildings and structures (together with associated land) used for the production of milk.

“**dairy produce**” means—

- (a) milk; or
- (b) a product consisting substantially of milk or milk solids and classified by regulation as a form of dairy produce.

“**former Act**” means the *Dairy Industry Act 1989*.

“**market milk**” means dairy produce intended for sale for human consumption as milk, and includes any kind of dairy produce classified by regulation as market milk.

“**market milk access**” has the meaning given by section 39.

“**market milk entitlement**” means an entitlement to supply milk as market milk under section 36.

“**milk**” means the milk of a bovine animal or of any other animal prescribed by regulation for the purposes of this definition.

¹ *Trade Practices Act 1974* (Cwlth), section 51 (Exceptions)

² Section 51 states that in deciding whether a person has contravened the Competition Code, Part IV, certain things must be disregarded. Section 51 of the Code provides that the following must be disregarded—

- (a) ...
- (b) anything done in a State, if the thing is specified in, and specifically authorised by:
 - (i) an Act passed by the Parliament of that State.

³ The Code applies as a law of Queensland under the *Competition Policy Reform (Queensland) Act 1996*, part 2.

Dairy Industry Act 1993

“**owner**” of any place or vehicle includes a person in occupation or possession of the place or vehicle, or in charge of the place or vehicle.

“**pasteurised cream**” includes any kind of dairy produce classified by regulation as pasteurised cream.

“**pasteurised milk**” includes any kind of dairy produce classified by regulation as pasteurised milk.

“**place**” includes any land, building or structure.

“**pricing order**” see section 23(1).

“**process**”, in relation to dairy produce, means any treatment or manufacturing process to which dairy produce is subjected (other than a treatment or process of a kind excluded by regulation from the ambit of this definition).

“**processor**” means any person who carries on the business of processing dairy produce, and includes—

- (a) a cooperative registered under the *Cooperatives Act 1997* that arranges the sale or transportation of dairy produce produced by its members; and
- (b) a person declared by regulation to be a processor.

“**producer**” means a person who carries on the business of producing dairy produce from a dairy.

“**sale**” includes barter and exchange.

“**sell**” includes—

- (a) offer or expose for sale; and
- (b) give away as a way of promotion or advertisement.

“**tribunal**” means the Dairy Industry Tribunal.

“**vehicle**” includes a vessel.

“**vessel**” includes a ship, boat, hovercraft or other means of transportation on water.

Extent to which State is bound

4.(1) This Act binds the State.

(2) However, the State or an agency, instrumentality or representative of the State may be exempted by regulation from the application of specified provisions of this Act.

(3) Nothing in this Act makes the State liable to be prosecuted for an offence.

(4) However, subsection (3) does not prevent an officer, employee or agent of the State from being prosecuted for an offence.

(5) Neither the authority nor any other body constituted under this Act is an agency, instrumentality or representative of the State.

PART 2—POLICY AND ADMINISTRATION*Division 1—Ministerial advisory bodies***Minister may establish advisory bodies**

5. The Minister may establish an advisory committee or other body to assist the Minister in the administration of this Act.

*Division 2—The Queensland Dairy Authority***Establishment of authority**

6.(1) The Queensland Dairy Authority is established.

(2) The authority—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

(3) Judicial notice must be taken of the imprint of the authority's seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

Division 3—Functions and powers of the authority

Functions of the authority

7. The functions of the authority are—

- (a) to administer this Act subject to the Minister's overriding power of direction and, in particular, to supervise and facilitate the restructuring of the dairy industry for which this Act provides; and
- (b) to take any action necessary to ensure that an adequate supply of dairy produce of high quality is available to meet all reasonable requirements throughout the State; and
- (c) to administer a supply management scheme in relation to market milk; and
- (d) to establish, and ensure compliance with, appropriate standards for the dairy industry and for dairy produce; and
- (e) to regulate the production, processing, transportation and sale of dairy produce to the extent contemplated by this Act; and
- (f) to promote and encourage the use of dairy produce; and
- (g) to conduct or support research or educational programs relevant to the objects of this Act; and
- (h) to carry out the other functions assigned to the authority under this Act.

General powers of the authority

8.(1) The authority has, for or in connection with the performance of its functions, all the powers of a natural person, and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property; and

- (c) appoint agents and attorneys; and
- (d) make charges for services provided by it.

(2) The authority may, by written notice, require a person who carries on a business in or associated with the dairy industry to provide specified returns or information that the authority reasonably requires for the administration or enforcement of the Act.

(3) Without limiting subsection (2), the authority may, under the subsection, require a processor to give it a certificate by an independent auditor verifying the processor's returns about market milk sales.

(4) A person must not fail, without reasonable excuse, to comply with a requirement under subsection (2).

Maximum penalty—40 penalty units.

(5) It is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement may tend to incriminate the person.

Delegation

9.(1) The authority may delegate any of its powers to—

- (a) a committee formed by the authority; or
- (b) a member of the authority; or
- (c) a member of the authority's staff.

(2) The authority may only delegate powers if satisfied that the committee to which, or the person to whom, the delegation is proposed has the expertise and experience necessary for the proper exercise of the powers.

Ministerial direction

10.(1) The Minister may direct the authority in relation to the performance of its statutory functions and the exercise of its statutory powers.

(2) If the Minister gives a direction to the authority—

- (a) the direction must be given in writing and must state the date on which it is to take effect; and
- (b) the direction must be published in the gazette as soon as practicable after it is given; and
- (c) the direction must be tabled in the Legislative Assembly within 14 sitting days after it is given; and
- (d) the text of the direction is to be included in the annual report for the year in which the direction is given.

Division 4—Financial arrangements of authority

Authority is statutory body under the Financial Administration and Audit Act 1977

11. To remove any doubt, it is declared that the authority is a statutory body under the *Financial Administration and Audit Act 1977*.

Authority is statutory body under the Statutory Bodies Financial Arrangements Act 1982

12.(1) Under the *Statutory Bodies Financial Arrangements Act 1982*, the authority is a statutory body.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B⁴ sets out the way in which the authority's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

Division 5—Membership of the authority

Composition of the authority

13.(1) The authority is to consist of the following members—

- (a) the chairperson;

⁴ *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts)

- (b) 3 persons with experience in milk production, processing or distribution;
- (c) 3 persons with experience in public administration, business, finance, marketing, quality assurance or industrial relations.

(2) The chairperson and other members of the authority are to be appointed by the Governor in Council.

(3) The Governor in Council may appoint a person to act as a member of the authority during any period, or all periods, when the member is absent or unable for any reason to perform the duties of the office.

Term of office

14.(1) A member of the authority is to be appointed for a term of not more than 3 years.

(2) The office of a member of the authority becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is absent, without leave of the authority, from 3 consecutive meetings of the authority; or
- (e) becomes bankrupt; or
- (f) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (g) is removed from office by the Governor in Council.

Fees and allowances

15. The members of the authority are entitled to the fees and allowances that may be determined by the Governor in Council.

Division 6—Proceedings of the authority**Time and place of meetings**

16.(1) Meetings of the authority are to be held at the times and places that the authority determines.

(2) However, the chairperson—

- (a) may at any time convene a meeting; and
- (b) must convene a meeting when requested by at least 3 members of the authority.

Procedures governing transaction of business

17.(1) The chairperson or, in the absence of the chairperson, a member chosen to preside by the members present, is to preside at a meeting of the authority.

(2) At a meeting of the authority—

- (a) 4 members constitute a quorum; and
- (b) a question is to be decided by a majority of votes of members present and voting; and
- (c) each member present has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting has a casting vote.

(3) The authority may regulate its proceedings as it considers appropriate.

(4) The authority may permit members to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.

(5) A member who participates in a meeting of the authority by permission under subsection (4) is taken to be present at that meeting.

(6) If—

Dairy Industry Act 1993

- (a) all members of the authority agree in writing to a proposed resolution of the authority; and
- (b) notice of the proposed resolution was given in accordance with procedures approved by the authority;

the resolution is a valid resolution of the authority, even though it was not passed at a meeting of the authority.

(7) The authority may invite a person to attend a meeting of the authority for the purpose of advising or informing it on any matter.

Disclosure of interest

18.(1) If—

- (a) a member of the authority has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the authority; and
- (b) the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter;

the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to a meeting of the authority.

(2) A disclosure under subsection (1) must be recorded in the authority's minutes and, unless the authority otherwise determines, the member must not—

- (a) be present during any deliberations of the authority in relation to the matter; or
- (b) take part in any decision of the authority in relation to the matter.

(3) A member who has a direct or indirect pecuniary interest in the matter to which a disclosure under subsection (1) relates must not—

- (a) be present at any deliberation by the authority for the purpose of making a determination under subsection (2); or
- (b) take part in the making by the authority of a determination under subsection (2).

Minutes

19. The authority must keep minutes of its proceedings.

Division 7—Committees**Committees**

20.(1) The authority may appoint committees for the purpose of advising the authority on a particular subject or subjects.

(2) Regulations may be made governing the constitution, and regulating the proceedings, of a committee.

(3) A member of a committee is entitled to the fees and allowances that may be determined by the authority.

Division 8—Staff of the authority**Staff of the authority**

21.(1) The authority may employ, or engage the services of, such staff, consultants and contractors as are necessary for the administration and enforcement of this Act.

(2) The authority must employ a general manager and a secretary (and those positions may be held in conjunction by the same person if the authority considers appropriate).

(3) Subject to any relevant award or industrial agreement, the terms and conditions on which staff are employed are to be determined by the authority.

Superannuation schemes

22.(1) The authority may—

- (a) establish or amend superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or
- (c) take part in superannuation schemes.

(2) The auditor-general may audit the schemes.

(3) Subsection (2) is subject to the *Financial Administration and Audit Act 1977*, part 6.⁵

PART 3—INDUSTRY REGULATION

Division 1—Price regulation

Price fixing

23.(1) If the Minister approves, the authority may, by written order (a “**pricing order**”), fix the minimum price to be paid by a processor for the purchase of milk from a producer or another processor for processing as market milk.

(2) A pricing order may—

- (a) apply generally to all transactions involving the purchase of milk or to a class of the transactions stated in the order; or
- (b) fix different prices that vary according to the composition, grade or quality of milk; or
- (c) apply generally irrespective of the circumstances in which the transactions take place, or be limited to circumstances described in the order.

(3) A pricing order may be made on condition that a specified proportion of the minimum price fixed under the order, be paid by a processor to the authority to be applied towards—

- (a) the costs of the administration of this Act; or
- (b) the reimbursement, to an extent prescribed by regulation, of expenses incurred by a processor in transporting milk under the supply management scheme under division 3 (Supply

⁵ *Financial Administration and Audit Act 1977*, part 6 (Audit of public accounts and public sector entities)

management); or

(c) another purpose determined by the authority.

(4) An amount to which the authority becomes entitled under a condition mentioned in subsection (3) is a debt due to the authority.

(5) A pricing order is subordinate legislation.

Specific authorisation for making pricing orders and imposing pricing conditions

24. The following things are specifically authorised for the competition legislation—

- (a) the making of a pricing order;
- (b) the imposition of a condition under section 23(3)(a) on the making of a pricing order.

Obligation to comply with pricing order

25.(1) A producer or processor must not receive or pay a price for milk, for processing as market milk, that is less than the price fixed under a pricing order.

Maximum penalty—180 penalty units.

(2) A processor must not process milk in the State for sale as market milk if the milk was purchased from a producer (within or outside the State) for a price that is less than the minimum price fixed under a pricing order.

Maximum penalty—180 penalty units.

(3) A person must not sell market milk if the milk used to produce the market milk was purchased from a producer (within or outside the State) for a price that is less than the minimum price fixed under a pricing order.

Maximum penalty—180 penalty units.

Specific authorisation for things done because of pricing orders

26. The following things are specifically authorised for the competition

legislation—

- (a) the payment by a processor to a producer or another processor of the minimum price fixed for market milk under a pricing order;
- (b) the receipt by a producer from a processor of the minimum price fixed for market milk under a pricing order;
- (c) the receipt by a processor from another processor of the minimum price fixed for market milk under a pricing order.

Expiry of div 1

27. This division expires on 31 December 2003.

Division 2—Licensing

Classes of licences

28.(1) Licences are to be of the following types—

- (a) producers' licences;
- (b) processors' licences;
- (c) the other types of licences that are prescribed by regulation.

(2) Licences of each type may be divided into classes in accordance with the regulations.

Application for and grant of licence

29.(1) An application for a licence—

- (a) must be made to the authority in a form approved by the authority; and
- (b) must be accompanied by the information required by the authority.

(2) The authority may grant a licence unconditionally or subject to the applicant complying with specified conditions.

(3) The authority may grant a licence on a temporary basis pending its

final determination of the application.

(4) A temporary licence remains in force (subject to earlier revocation at the authority's discretion) for the period (not longer than 2 months) stated in the licence.

Conditions of licence

30.(1) A licence is to be granted for a term determined by the authority in relation to licences of the relevant type and class.

(2) A licence is to be granted on conditions determined by the authority.

(3) A licence condition may require the holder of the licence to make periodic or other payments to the authority.

Specific authorisation of non-competitive conditions

31.(1) The non-competitive conditions subject to which the authority has granted or grants a producer's or a processor's licence are specifically authorised for the competition legislation.

(2) This section expires on 31 December 2003.

(3) In this section—

“non-competitive condition” means—

- (a) for a producer's licence, a condition—
 - (i) prohibiting the transfer of dairy produce between dairies; or
 - (ii) specifying or restricting the source of acquisition of dairy produce obtained or sold by the holder of the licence; or
 - (iii) specifying or restricting the persons or places to whom or to which dairy produce may be supplied by the holder of the licence; or
- (b) for a processor's licence, a condition—
 - (i) specifying or restricting the source of acquisition of dairy produce obtained or sold by the holder of the licence; or
 - (ii) specifying or restricting the persons or places to whom or to

which dairy produce may be supplied by the holder of the licence.

Transactions affecting licences

32. The holder of a licence may, subject to conditions prescribed by regulation, transfer, deal with or dispose of the licence.

Licensee's records

33.(1) The holder of a licence must keep the records that may be required by regulation or by condition of the licence.

Maximum penalty—40 penalty units.

(2) The holder of a licence must, at the request of an authorised person, produce the records kept under this section for examination and allow the authorised person to take copies of the records.

Maximum penalty—40 penalty units.

Variation, suspension or cancellation of licence

34.(1) The authority may, by written notice to the holder of a licence—

- (a) vary, suspend or cancel the licence at the request of the holder of the licence; or
- (b) vary the licence to correct an error or omission in the licence; or
- (c) vary, suspend or cancel the licence for contravention of this Act or a term or condition of the licence.

(2) Before the authority varies, suspends or cancels a licence under subsection (1)(c), it must give the holder of the licence written notice of—

- (a) the proposed variation, suspension or cancellation; and
- (b) the ground on which the authority proposes to make the variation, suspension or cancellation;

and allow the holder of the licence a reasonable opportunity to make representations to the authority about the proposed variation, suspension or cancellation.

(3) If the authority cancels a licence, the person to whom the licence was granted must, as soon as practicable, return the licence to the authority.

Maximum penalty for subsection (3)—10 penalty units.

Offences related to licences

35.(1) A person must not carry on business as a producer unless the person holds a producer’s licence and carries on the business in accordance with the terms and conditions of the licence (but a producer who does not produce dairy produce that is ultimately to be sold as market milk is not required to hold a licence).

Maximum penalty—40 penalty units.

(2) A person must not carry on business as a processor of market milk unless the person holds a processor’s licence and carries on the business in accordance with the terms and conditions of the licence.

Maximum penalty—40 penalty units.

(3) A person must not carry on a business in the dairy industry for which a licence of a prescribed type is required by regulation unless the person holds a licence of the relevant type and carries on the business in accordance with the terms and conditions of the licence.

Maximum penalty—40 penalty units.

Division 3—Supply management

Market milk entitlements

36.(1) The authority may grant a person an entitlement (a “**market milk entitlement**”) to supply milk for processing as market milk.

(2) A market milk entitlement authorises the holder of the entitlement, or any other person who is entitled to use the land to which the entitlement relates for the production of milk, to supply milk produced on specified land, in specified quantities, to a specified processor.

(3) A market milk entitlement must be held in the name of the owner of the land to which the entitlement relates or some other person, approved by

the authority, who is entitled to use the land to which the entitlement relates for the production of milk.

Transactions affecting entitlement

37. The holder of a market milk entitlement may, subject to conditions prescribed by regulation, transfer, deal with or dispose of the entitlement or an interest in it.

Diversion of supply by entitlement holders

38. If—

- (a) the holder of a market milk entitlement gives the authority and the processor specified in the entitlement at least 28 days written notice of the proposed diversion of supply to another processor; and
- (b) the authority is satisfied that the supply of milk to the other processor has started;

the authority must vary the market milk entitlement by altering the name of the processor specified in the entitlement to that of the other processor.

Supply management scheme and market milk access

39.(1) The authority is to have a supply management scheme for the State.

(2) The supply management scheme is to deal with—

- (a) the right of a processor to supply milk to another processor or other processors and charge for it as market milk (the processor's "**market milk access**"); and
- (b) the costs of transporting milk between processors under the scheme.

(3) Each processor is to have the market milk access that the authority may determine.

(4) The authority may at any time vary the extent of a processor's market milk access.

(5) The authority may, by written notice to a processor, impose conditions on the processor's licence requiring the processor to participate in the supply management scheme and limiting the processor's market milk access to the extent determined by the authority under this section.

Amount of each class of market milk supplied

40.(1) For making a determination under section 41 for each month, the holder of a market milk entitlement is taken to have supplied the specified processor under the entitlement the quantity of milk for processing as each class of market milk that is calculated by using the following formula—

$$Q = \frac{(SQ \times TMMS)}{TMME}$$

where—

“**Q**” = the quantity of milk taken to have been supplied in the month for the class of market milk.

“**SQ**” = the daily quantity of milk specified in the entitlement for supply for processing as market milk.

“**TMME**” = the total daily quantities of milk specified in all market milk entitlements for supply for processing as market milk.

“**TMMS**” = the total quantity of all monthly market milk sales in the State of the class of market milk.

(2) Within 8 business days after the end of each month, the authority must give written notice to the specified processors informing them of the quantities in the factors TMME and TMMS in the formula.

(3) In this section—

“**class**”, of market milk, means a class of market milk for which a pricing order is in force.

Determination of monthly adjustments of market milk sales

41.(1) Within 8 business days after the end of each month, the authority must—

(a) determine whether each relevant processor's total market milk

Dairy Industry Act 1993

sales for the month is more or less than the relevant processor's total entitlement holder payments for the month; and

- (b) by written notice, to the processor—
- (i) inform the processor about the result of the determination, including whether the processor is a deficit or surplus processor and the amount of the processor's deficit or surplus; and
 - (ii) if the processor is a surplus processor—subject to subsection (4), direct the processor to pay the surplus, or a stated part of it, to the deficit processor or processors stated in the notice no later than 14 days after the end of the month.

(2) Also, the notice must state—

- (a) that the processor may appeal against the determination or direction to the tribunal within 28 days after the notice is given; and
- (b) how to start the appeal.

(3) The authority must not—

- (a) direct a surplus processor to pay more than the processor's surplus for the month; or
- (b) make a direction under which a deficit processor is entitled to receive more than the processor's deficit for the month.

(4) Subject to the decision of the tribunal on an appeal against the direction, an amount unpaid under a direction may be recovered by the deficit processor as a debt from the surplus processor.

(5) In this section—

“deficit”, for a processor, means the amount the processor's total market milk sales are, under a determination under subsection (1)(a), less than the processor's total entitlement holder payments.

“deficit processor” means a processor for whom a determination under subsection (1)(a) results in a deficit.

“relevant processor” means a processor who holds the class of processor's licence prescribed under a regulation for this section.

“specified processors”, for a relevant processor, means the processors whose market milk access relate to the relevant processor.

“surplus”, for a processor, means the amount the processor’s total market milk sales are, under a determination under subsection (1)(a), more than the processor’s total entitlement holder payments.

“surplus processor” means a processor for whom a determination under subsection (1)(a) results in a surplus.

“total entitlement holder payments”, for a relevant processor for a month, means the total amount payable to all holders of market milk entitlements by specified processors for the total of the quantities of all classes of market milk calculated under section 40 at the minimum prices fixed under the pricing order in force for the month.

“total market milk sales”, for a relevant processor for a month, means the amount calculated for all the processor’s market milk sales of all classes of market milk for the month (other than sales to processors) by applying the minimum prices fixed for milk under the pricing order in force for the month.

Specific authorisation for monthly adjustments of market milk sales

42. The giving of a direction under section 41(1)(b)(ii) is specifically authorised for the competition legislation.

Consequential variation of market milk entitlements

43. If a processor’s market milk access is varied, the authority may make consequential variations to market milk entitlements relating to the processor.

General power of variation and cancellation

44.(1) The authority may, by written notice to the holder of a market milk entitlement—

- (a) vary, suspend or cancel the entitlement at the request of the holder of the entitlement; or
- (b) vary the entitlement to correct an error or omission in the

entitlement; or

- (c) vary, suspend or cancel the entitlement—
 - (i) because the producer has failed to supply milk that complies with the appropriate standards; or
 - (ii) because the producer has failed to supply milk in accordance with the reasonable requirements of the processor specified in the entitlement; or
 - (iii) because the producer has contravened this Act or a term or condition of the entitlement.

(2) Before the authority varies, suspends or cancels a market milk entitlement under subsection (1)(c), it must give the holder of the entitlement written notice of—

- (a) the proposed variation, suspension or cancellation; and
- (b) the ground on which the authority proposes to make the variation, suspension or cancellation;

and allow the holder of the entitlement a reasonable opportunity to make representations to the authority about the proposed variation, suspension or cancellation.

(3) The cancellation of a market milk entitlement operates also to cancel any producer's licence relating to the same land as the entitlement, and the holder of a producer's licence must, as soon as practicable, return the licence to the authority.

Maximum penalty for subsection (3)—10 penalty units.

Gazettal of entitlements etc.

45. Within 3 months after the end of each financial year, the authority must publish in the gazette a list of market milk entitlements and the quantities of milk to which each relates as at the end of the financial year.

Expiry of div 3

46. This division expires on 31 December 2003.

PART 4—INDUSTRY STANDARDS

Division 1—Power to make standards

Making of standards

47.(1) The authority may make standards with respect to—

- (a) any premises or vehicle used for the production, processing or storage of dairy produce; and
- (b) any plant or equipment used for the production, processing or storage of dairy produce; and
- (c) the quality, grading and classification of dairy produce; and
- (d) the packaging, labelling and marking of dairy produce; and
- (e) the standardisation of milk for sale as pasteurised or homogenised milk; and
- (f) the blending or mixing of dairy produce with other substances; and
- (g) the testing and analysis of dairy produce; and
- (h) the carriage and storage of dairy produce; and
- (i) sanitation, hygiene and the prevention of disease; and
- (j) any other matter relevant to the standards of the dairy industry, the quality of dairy produce or any incidental matter.

(2) A standard may provide that contravention of the standard is an offence and prescribe a maximum penalty of 40 penalty units, for the offence.

(3) A standard under this section is subordinate legislation.

Division 2—Standard of premises, plant and equipment**Standards for premises, vehicles etc.**

48.(1) Any premises, vehicle, plant or equipment used for the production, processing or storage of dairy produce for sale must comply with the authority's standards.

(2) If any premises, vehicle, plant or equipment that does not comply with the authority's standards is used for the production, processing or storage of dairy produce for sale, the owner commits an offence.

Maximum penalty—40 penalty units.

Division 3—Standards for dairy produce**Standards with which dairy produce must comply**

49.(1) Dairy produce intended for sale for human consumption must comply with the authority's standards.

(2) A person must not, without the authority's consent and without reasonable excuse, sell dairy produce that does not comply with the standards applicable to the dairy produce.

Maximum penalty—40 penalty units.

Unlawful adulteration or blending of dairy produce

50.(1) A person must not mix or blend an extraneous substance with dairy produce that is intended for sale unless—

- (a) the substance is approved under the *Food Act 1981*; and
- (b) the mixing or blending of that substance with the dairy produce is not contrary to the authority's standards.

Maximum penalty—100 penalty units.

(2) A producer must not blend or mix milk or cream produced at the producer's dairy with milk or cream produced at some other dairy.

Maximum penalty—100 penalty units.

Division 4—Testing and analysis of dairy produce**Testing and analysis**

51.(1) A person who carries on a business involving the production, processing or storage of dairy produce must comply with any requirements imposed by the authority's standards for the testing and analysis of dairy produce or imposed by the authority by written notice given to the person.

Maximum penalty—40 penalty units.

(2) A person who carries on a business involving the production, processing or storage of dairy produce must, at the request of an authorised person, allow the authorised person to take samples of dairy produce for analysis.

Maximum penalty—40 penalty units.

(3) The authority may recover the cost of taking, and analysing, the samples of dairy produce as a debt from the person carrying on the business.

(4) A certificate signed by the secretary of the authority certifying the cost of taking and analysing a sample of dairy produce is admissible in legal proceedings as evidence of the cost.

Division 5—Power to enforce compliance with standards**Power to enforce standards as to premises and equipment etc.**

52.(1) If any premises, vehicle or equipment used for the production, processing or storage of dairy produce for sale does not comply with the authority's standards, the authority may, by written notice to the owner, require the owner to take specified action within a specified period to bring the premises, vehicle or equipment into conformity with the standards.

(2) The notice may also include a prohibition against the use of the premises, vehicle or equipment for the production, processing or storage of dairy produce intended for sale until it has been brought into conformity with the relevant standards.

(3) If any premises, vehicle or equipment used for the production,

processing or storage of dairy produce for sale is, in the authority's opinion, unfit for the purpose, the authority may, by written notice to the owner, prohibit the use of the premises, vehicle or equipment for the purpose.

(4) If a notice under this section is not complied with, the owner commits an offence.

Maximum penalty—40 penalty units.

Power to require cleaning of premises etc.

53.(1) If any premises, vehicle or equipment used for the production, processing or storage of dairy produce for sale is not in a clean and wholesome condition, an authorised person may, by written notice to the owner—

- (a) require the owner to clean and disinfect the premises, vehicle or equipment to the authorised person's reasonable satisfaction; and
- (b) prohibit the use of the premises, vehicle or equipment until the authorised person is satisfied that it is fit for use.

(2) If the notice is not complied with, the owner commits an offence.

Maximum penalty—40 penalty units.

Power to condemn dairy produce etc.

54.(1) If an authorised person believes on reasonable grounds that dairy produce examined by the authorised person is unfit for human consumption, or does not comply with the authority's standards, the authorised person may, by order, condemn the dairy produce.

(2) If any dairy produce is condemned under subsection (1), it becomes the property of the authority and must be disposed of as the authority directs.

(3) If, in an authorised person's opinion, an analysis should be carried out in order to determine whether an order should be made under subsection (1) in relation to dairy produce, the authorised person may direct that the dairy produce be detained at a specified place until the analysis is carried out.

(4) A person who removes, or permits the removal of, dairy produce

contrary to a direction under subsection (3) commits an offence.

Maximum penalty—40 penalty units.

Power to require segregation of person suffering from infectious disease

55.(1) If an authorised person believes on reasonable grounds that a person employed or engaged in the production, processing or handling of dairy produce intended for human consumption is affected by a disease prescribed by regulation for the purposes of this section, the authorised person may order the effective segregation of the person from operations that might result in the transmission of the disease to consumers of the dairy produce.

(2) The order must be served on the person in charge of the operations in which the person affected by the disease is employed or engaged.

(3) If an order under this section is not complied with, the person in charge of the operations in which the person affected by the disease is employed or engaged commits an offence.

Maximum penalty—40 penalty units.

PART 5—GENERAL POWERS OF ENFORCEMENT

Division 1—Administration

Appointment of authorised persons

56.(1) The authority may appoint members of its staff and other persons to be authorised persons.

(2) The authority may appoint a person to be an authorised person only if—

- (a) in the authority's opinion, the person has the necessary expertise or experience to be an authorised person; or

- (b) the person has satisfactorily completed a course of training approved by the Minister.

Terms of appointment of authorised persons

57.(1) An authorised person holds office subject to the conditions specified in the instrument of appointment.

(2) An authorised person—

- (a) is appointed for the term specified in the instrument of appointment; and
- (b) may resign by signed notice given to the authority; and
- (c) if the conditions of appointment so provide—ceases to hold office as an authorised person on ceasing to hold some other office specified in the conditions of appointment.

Powers of authorised persons

58.(1) An authorised person has the powers given under this or another Act.

(2) A regulation may limit the powers of authorised persons of a specified class.

(3) If a regulation is in force under this section, an authorised person to whom it relates may exercise powers only in accordance with the regulation.

Identity cards

59.(1) The authority must issue an identity card to each authorised person.

(2) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be in a form approved by the Minister; and
- (c) be signed by the authorised person.

Proof of authority

60.(1) An authorised person may exercise a power in relation to a person only if the authorised person first produces his or her identity card for inspection by the person.

(2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

Protection from liability

61.(1) This section applies to—

- (a) an authorised person; and
- (b) a person acting under the direction of an authorised person.

(2) The person does not incur civil liability for an act or omission done honestly and without negligence under this Act.

(3) A liability that would, apart from this section, attach to the person attaches instead to the authority.

Division 2—Powers of authorised persons**Entry and search—monitoring compliance**

62.(1) For the purpose of finding out whether this Act is being complied with, an authorised person may—

- (a) enter a place at any reasonable time of the day or night; and
- (b) exercise the powers mentioned in section 65.

(2) An authorised person may enter a place only if—

- (a) the occupier of the place consents to the entry; or
- (b) a warrant under section 71 authorises the entry; or
- (c) if the place is a public place—the entry is made when—
 - (i) members of the public attend; or
 - (ii) the place is open for admission by the public; or

- (d) if the place is a place in relation to which a licence or entitlement is in force under this Act—the entry is made when the place—
 - (i) is open for conduct of business; or
 - (ii) is otherwise open for entry.

Entry and search—evidence of offences

63.(1) If an authorised person has reasonable grounds for suspecting that there is in a place a particular thing (the “**evidence**”) that may afford evidence of the commission of an offence against this Act, the authorised person may—

- (a) enter the place; and
- (b) exercise the powers mentioned in section 65.

(2) If the authorised person enters the place and finds the evidence—

- (a) the authorised person may—
 - (i) seize the evidence; and
 - (ii) keep the evidence in accordance with subsection (4); and
- (b) if the evidence is a document—while the authorised person has possession of the document, the authorised person—
 - (i) may take extracts from, and make copies of, the document; and
 - (ii) must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the authorised person’s possession.

(3) The authorised person may enter the place only if—

- (a) the occupier of the place consents to the entry; or
- (b) a warrant under section 72 that was issued in relation to the evidence authorises the entry.

(4) The authorised person may keep evidence seized under subsection (2)(a)(i)—

- (a) for 6 months; or

- (b) if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is started within that period—until the completion of the proceeding for the offence and any appeal in relation to the proceeding.

(5) If, while searching the place under subsection (1) under a warrant under section 72, the authorised person finds a thing (the “**secondary evidence**”) that is not the evidence, then, subject to subsection (6), subsection (2) applies to the secondary evidence as if it were the evidence.

(6) Subsection (5) applies only if the authorised person believes on reasonable grounds that—

- (a) the secondary evidence may afford evidence of the commission of—
 - (i) the offence mentioned in subsection (1); or
 - (ii) another offence against this Act; and
- (b) it is necessary to seize the secondary evidence to prevent—
 - (i) its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating either of the offences.

Power to stop and search vehicles etc.

64.(1) In this section—

“**person in control**” of a vehicle includes—

- (a) the driver of the vehicle; and
- (b) the person in command of the vehicle; and
- (c) the person who appears to be in control or command of the vehicle.

(2) This section applies if an authorised person suspects on reasonable grounds that—

- (a) a vehicle is being, or has been, used in the commission of an offence against this Act; or

Dairy Industry Act 1993

(b) a vehicle, or a thing on or in a vehicle, may afford evidence of the commission of an offence against this Act.

(3) The authorised person may, with any assistance, and using any force, that is necessary and reasonable—

- (a) enter or board the vehicle; and
- (b) exercise the powers mentioned in section 65.

(4) If the vehicle is moving or about to move, the authorised person may signal the person in control of the vehicle—

- (a) to stop the vehicle; or
- (b) not to move the vehicle.

(5) The authorised person may require the person in control of the vehicle—

- (a) to give reasonable assistance to enable the vehicle to be entered or boarded under subsection (3); and
- (b) to bring the vehicle to a specified place, and to remain in control of the vehicle at the place for a reasonable time, to enable the authorised person to exercise the powers conferred on the authorised person in relation to the vehicle.

(6) If, while searching the vehicle, the authorised person finds a thing that the authorised person believes on reasonable grounds may afford evidence of the commission of an offence against this Act, section 63(2)(a) applies to the thing and, if the thing is a document, section 63(2)(b) also applies to it.

(7) If, after searching the vehicle, the authorised person believes on reasonable grounds that the vehicle may afford evidence of the commission of an offence against this Act, section 63(2)(a) applies to the vehicle.

General powers in relation to places and vehicles

65.(1) An authorised person who enters a place, or enters or boards a vehicle, under this part may exercise any of the following powers—

- (a) search any part of the place or vehicle;
- (b) inspect, examine, photograph or film anything in or on the place or vehicle;

Dairy Industry Act 1993

- (c) take extracts from, and make copies of, any documents in or on the place or vehicle;
- (d) take into or onto the place or vehicle any persons, equipment and materials that the authorised person reasonably requires for the purpose of exercising any powers in relation to the place or vehicle;
- (e) require—
 - (i) the occupier of the place; or
 - (ii) any person in or on the place or vehicle;to give the authorised person reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (d);
- (f) powers mentioned in the following provisions—
 - (i) section 66 (Power to require name and address);
 - (ii) section 67 (Power to require answers to questions);
 - (iii) section 68(1) (Power to require production of licences etc.).

(2) This section does not limit any power that an authorised person has apart from this section.

Power to require name and address

66.(1) This section applies if an authorised person—

- (a) finds a person committing an offence against this Act; or
- (b) finds a person whom the authorised person has reasonable grounds for suspecting of having committed an offence against this Act; or
- (c) believes on reasonable grounds that the name and address of a person is required for the purpose of the enforcement of this Act.

(2) The authorised person may—

- (a) require the person to state the person's name and address; and
- (b) if the authorised person believes on reasonable grounds that the name or address given by the person is false—require evidence of its correctness.

(3) If the authorised person makes a requirement under subsection (2), the authorised person must warn the person of whom the requirement is made that it is an offence against this Act to fail to comply with the requirement without reasonable excuse.

Power to require answers to questions

67.(1) If an authorised person believes on reasonable grounds that a person may be able to provide information relevant to the enforcement of this Act, the authorised person may require the person to answer a question relevant to the matter.

(2) If the authorised person makes a requirement under subsection (1), the authorised person must warn the person of whom the requirement is made that it is an offence against this Act to fail to comply with the requirement without reasonable excuse.

Power to require production of licences etc.

68.(1) An authorised person may—

- (a) require a person to produce to the authorised person—
 - (i) a licence, entitlement or other authority held by the person under this Act; or
 - (ii) a document required to be kept by the person under this Act; and
- (b) inspect, take extracts from, make copies of or keep a document produced to the authorised person under paragraph (a).

(2) An authorised person—

- (a) may keep a document under subsection (1)(b) only for the purpose of taking copies of the document; and
- (b) must, as soon as practicable after taking the copies, return the document to the person who produced it.

Authorised person to give notice of seizure or damage

69.(1) An authorised person who, in the exercise of a power under this

part, seizes or damages anything must immediately give written notice of the particulars of the seizure or damage.

(2) The notice must be given to—

- (a) for seizure—the person from whom the thing was seized; or
- (b) for damage—the person who appears to the authorised person to be the owner of the thing.

(3) If, for any reason, it is not practicable to comply with subsection (2), the authorised person must—

- (a) leave the notice at the place where the seizure or damage happened; and
- (b) ensure the notice is left—
 - (i) in a reasonably secure way; and
 - (ii) in a conspicuous position.

Compensation

70.(1) A person may claim compensation from the authority if the person incurs any loss or expense—

- (a) because of the exercise or purported exercise of a power under this part; or
- (b) in complying with a requirement made of the person under this part.

(2) A payment of compensation may be claimed and ordered—

- (a) in proceedings for compensation brought in a court of competent jurisdiction for the recovery of compensation; or
- (b) during a proceeding for an offence against this Act brought against the person by whom the claim is made.

(3) A court may order the payment of compensation for the loss or expense only if it is satisfied that it is just to make the order in the circumstances of the case.

Division 3—Warrants**Monitoring warrants**

71.(1) An authorised person may apply to a magistrate for a warrant under this section in relation to a particular place (other than premises, or the part of premises, used exclusively for residential purposes).

(2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is necessary and reasonable that the authorised person should have access to the place for the purpose of finding out whether this Act is being complied with.

Offence related warrants

72.(1) An authorised person may apply to a magistrate for a warrant under this section in relation to a particular place.

(2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 7 days, in or on the place a particular thing that may afford evidence of the commission of an offence against this Act.

Magistrate may require further information before issuing warrant

73. If, in relation to an application for a warrant under section 71 or 72, the magistrate requires further information about the grounds on which the issue of the warrant is being sought, the magistrate may issue the warrant only if the authorised person or another person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.

Contents of warrants

74.(1) A warrant under section 71 or 72 must—

- (a) authorise the authorised person, with any assistance, and using any force, that is necessary and reasonable—
 - (i) to enter the place; and

- (ii) to exercise the powers mentioned in section 65(1)(a) to (f); and
 - (iii) in the case of a warrant under section 72—to seize a specified thing; and
- (b) specify the day (not later than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (c) state the purpose for which the warrant is issued.
- (2) A warrant under section 71 must also state whether the entry is authorised to be made—
- (a) at any reasonable time of the day or night; or
 - (b) only during specified reasonable hours of the day or night.
- (3) A warrant under section 72 must also state whether the entry is authorised to be made—
- (a) at any time of the day or night; or
 - (b) only during specified hours of the day or night.

Warrants may be issued by various forms of communication

75.(1) An authorised person may, under this section, apply by telephone, facsimile, radio or another form of communication for a warrant under section 71 or 72 if the authorised person considers it necessary to make the application because of—

- (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the authorised person's remote location.
- (2) Before applying for the warrant, the authorised person must prepare an information of the kind mentioned in section 71(2) or 72(2) that sets out the grounds on which the issue of the warrant is sought.
- (3) The authorised person may, if necessary, apply for the warrant before the information has been sworn.
- (4) If the magistrate—
- (a) after having considered the terms of the information; and

Dairy Industry Act 1993

- (b) after having received any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought;

is satisfied that there are reasonable grounds for issuing the warrant, the magistrate may, under section 71 or 72, complete and sign the warrant that the magistrate would issue under the section if the application had been made under the section.

(5) If the magistrate completes and signs the warrant, the magistrate must—

- (a) immediately send a copy of the warrant to the authorised person by facsimile; or
- (b) if it is not practicable to do so—
 - (i) tell the authorised person what the terms of the warrant are; and
 - (ii) tell the authorised person the day and time when the warrant was signed; and
 - (iii) record on the warrant the reasons for granting the warrant.

(6) If the magistrate takes the action mentioned in subsection (5)(b), the authorised person must—

- (a) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
- (b) write on the form of the warrant—
 - (i) the name of the magistrate; and
 - (ii) the day and time when the magistrate signed the warrant.

(7) The authorised person must also send to the magistrate—

- (a) the information mentioned in subsection (2), which must have been properly sworn; and
- (b) if a form of warrant was completed by the authorised person under subsection (6)—the completed form of warrant.

(8) A document mentioned in subsection (7) must be sent—

- (a) not later than the day after the day of expiry or execution of the warrant (whichever is the earlier); or

Dairy Industry Act 1993

(b) if it is not practicable to comply with the time mentioned in paragraph (a)—as soon as practicable afterwards.

(9) When the magistrate receives the documents mentioned in subsection (7), the magistrate must—

(a) attach them to the warrant that the magistrate completed and signed; and

(b) deal with them in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 71 or 72.

(10) A facsimile copy of a warrant, or a form of warrant properly completed by the authorised person under subsection (6), is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.

(11) If—

(a) it is material for a court to be satisfied that an entry, search, seizure, or other exercise of power was authorised by this section; and

(b) the warrant completed and signed by the magistrate is not produced in evidence;

the court must assume that the exercise of power was not authorised by a warrant unless the contrary is proved.

Division 4—Offences

Failure of authorised person to return identity card

76. A person who ceases to be an authorised person must not, without reasonable excuse, fail to return the person's identity card to the authority as soon as practicable after ceasing to be an authorised person.

Maximum penalty—40 penalty units.

Failure to comply with signal

77.(1) A person must not, without reasonable excuse, disobey a signal

under section 64(4) to stop or not to move a vehicle.

Maximum penalty—40 penalty units.

(2) It is a reasonable excuse for the person to fail to stop or to move the vehicle if—

- (a) to obey immediately the signal would have endangered the person or another person; and
- (b) the person obeys the signal as soon as it is practicable to do so.

Failure to comply with requirements relating to vehicles

78. A person who is required under section 64(5)—

- (a) to give reasonable assistance to enable the entering or boarding of a vehicle; or
- (b) to take action in relation to a vehicle to enable the exercise of a power by an authorised person;

must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty—40 penalty units.

Failure to assist authorised person

79.(1) A person who is required under section 65(1)(e) to give reasonable assistance to an authorised person in relation to the exercise of a power must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty—40 penalty units.

(2) If the assistance is required to be given by a person by—

- (a) answering a question; or
- (b) producing a document (other than a document required to be kept by the person under this Act);

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

Failure to provide name and address

80.(1) A person who is required under section 66 to state the person's name or address must not—

- (a) without reasonable excuse, fail to comply with the requirement; or
- (b) state a false name or address.

Maximum penalty—40 penalty units.

(2) A person who is required under section 66 to give evidence of the correctness of a name or address must not—

- (a) without reasonable excuse, fail to give the evidence; or
- (b) give false evidence.

Maximum penalty—40 penalty units.

(3) If—

- (a) an authorised person makes a requirement of a person under section 66 on a suspicion of the person having committed an offence; and
- (b) the person is not proved to have committed the offence;

the person does not commit an offence against this section by failing to comply with the requirement.

Failure to answer question

81.(1) A person who is required by an authorised person under section 67 to answer a question must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty—40 penalty units.

(2) It is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person.

(3) If—

- (a) an authorised person requires under section 67 a person to answer a question on the basis of a reasonable belief about information; and

- (b) the information is not in fact relevant to the enforcement of this Act;

the person does not commit an offence against this section by failing to comply with the requirement.

Failure to produce document

82. A person who is required under section 68 to produce a document must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty—40 penalty units.

False or misleading documents

83.(1) A person must not give to an authorised person a document containing information that the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—40 penalty units.

(2) Subsection (1) does not apply to a person if, when the person gives the document to the authorised person, the person—

- (a) indicates to the authorised person that the document is false, misleading or incomplete; and
- (b) indicates the respect in which the document is false, misleading or incomplete; and
- (c) gives the correct information to the authorised person if the person has, or can reasonably obtain, the correct information.

False or misleading information

84.(1) A person must not—

- (a) make a statement to an authorised person that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an authorised person anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—40 penalty units.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the statement made was false or misleading to the person's knowledge.

Obstruction of authorised persons

85. A person must not, without reasonable excuse—

- (a) obstruct, hinder or resist; or
- (b) attempt to obstruct, hinder or resist;

an authorised person in the exercise of a power under this Act.

Maximum penalty—80 penalty units.

Impersonation of authorised persons

86. A person must not pretend to be an authorised person.

Maximum penalty—80 penalty units.

PART 6—ADMINISTRATIVE APPEALS

Division 1—The Dairy Industry Tribunal

Establishment of tribunal

87. The Dairy Industry Tribunal is established.

Composition of the tribunal

88.(1) The tribunal is to consist of 3 members appointed by the Governor in Council of whom—

- (a) 1 (the chairperson) is to be a judge, magistrate, barrister or solicitor; and

Dairy Industry Act 1993

- (b) at least 1 is to be a person with wide knowledge and experience of the dairy industry.

(2) A person is not eligible to be appointed as a member of the tribunal if the person—

- (a) is a member of the Legislative Assembly, or of any House of Parliament of the Commonwealth, another State or a Territory; or
- (b) is bankrupt; or
- (c) has been convicted of an indictable offence; or
- (d) is a patient within the meaning of the *Mental Health Act 1974*.

(3) The appointment of a member of the tribunal is to be for the term stated in the member's instrument of appointment.

(4) The office of a member of the tribunal becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is absent, without leave of the chairperson, from 3 consecutive sittings of the tribunal; or
- (e) becomes bankrupt; or
- (f) becomes a patient within the meaning of the *Mental Health Act 1974*; or
- (g) is removed from office by the Governor in Council.

(5) The Governor in Council may appoint a person to act as a member of the tribunal—

- (a) during a vacancy in the office of a member; or
- (b) during any period, or all periods, when the member is absent or unable for any reason to act in the office.

Remuneration of members of the tribunal

89.(1) A member of the tribunal is to be paid the salary, fees, allowances

and expenses that may be determined by the Governor in Council.

(2) No salary or fees are to be paid to an officer of the public service for performing duties as a member of the tribunal.

Secretary and staff

90. The tribunal is to have a secretary and the other staff that are necessary for the proper performance of its functions.

Costs associated with the tribunal

91. The authority must defray from its funds all costs (including salaries, fees, allowances and expenses) associated with the establishment and operation of the tribunal.

Division 2—Proceedings of the tribunal

Time and place of proceedings

92. The tribunal is to sit at the times and places that may be determined by the chairperson.

Decisions of the tribunal

93.(1) The tribunal may be constituted for the purpose of hearing an appeal by the chairperson and 1 or 2 other members.

(2) If the tribunal is constituted of 3 members, a decision in which a majority of the members agree is a decision of the tribunal and, if it is constituted of 2 members, the decision of the chairperson is, in the case of disagreement, to be the decision of the tribunal.

Evidence and procedure

94.(1) The tribunal is not bound by the rules of evidence and may inform itself in any way it considers appropriate.

(2) The tribunal may, subject to any procedural rules prescribed by

regulation, determine its own procedures.

(3) A party to an appeal may appear personally or by an agent before the tribunal but is not to be represented by counsel or a solicitor except by leave of the tribunal or the chairperson.

(4) The tribunal, constituted of the chairperson alone, may conduct a preliminary hearing of an appeal to determine interlocutory and other preliminary matters and in the course of such a hearing the tribunal may—

- (a) make orders relating to the conduct of the appeal; or
- (b) require the parties to make discovery or permit inspection of evidentiary material; or
- (c) require the parties to file pleadings; or
- (d) grant any party leave to be represented by counsel or a solicitor; or
- (e) strike out the appeal on the ground that it is frivolous or vexatious.

Powers as to witnesses etc.

95.(1) The chairperson, or a person authorised in writing by the chairperson, may summon a person to appear before the tribunal at a time and place specified in the summons to give evidence or to produce documents.

(2) The chairperson, or a person authorised by the chairperson, may administer an oath or affirmation to any person appearing as a witness before the tribunal.

(3) A person who, without reasonable excuse—

- (a) refuses or fails to attend or to produce documents as required by a summons under this section; or
- (b) refuses or fails to appear from time to time in the course of the proceedings as required by the chairperson; or
- (c) refuses or fails to be sworn or to make an affirmation; or
- (d) refuses or fails to answer a question that the person is required to answer by the chairperson;

commits an offence.

Maximum penalty—40 penalty units.

(4) It is a reasonable excuse for a person to fail to answer a question or to produce a document if answering the question or producing the document might tend to incriminate the person.

(5) A person summoned as a witness before the tribunal is entitled to witness fees at a rate prescribed by regulation or, if no rate is prescribed, at a rate determined by the chairperson.

Division 3—Jurisdiction of the tribunal

Appeals to the tribunal

96.(1) A person aggrieved by an order, determination, direction or decision of the authority or an authorised person may appeal against the order, determination, direction or decision to the tribunal.

(2) However, the following are not subject to appeal—

- (a) an order or decision of the authority in relation to the minimum price, of market milk;
- (b) an order of the authority that is subordinate legislation or a decision of the authority about making, amending or repealing subordinate legislation;
- (c) an order, determination, direction or decision of an authorised person that is, by regulation, subject to administrative review by the authority or an officer of the authority.

(3) An appeal may be based on 1 or more of the following grounds—

- (a) that the order, determination, direction or decision is not in accordance with this Act;
- (b) that the order, determination, direction or decision is manifestly unfair to the appellant;
- (c) that the order, determination, direction or decision will cause severe and unjustified financial hardship to the appellant.

(4) In this section, a reference to an order, determination, direction or

decision includes a reference to a failure to make an order, determination or a decision or give a direction.

How to start an appeal

97.(1) An appeal is started by filing a written notice of appeal with the tribunal in the form approved by the tribunal.

(2) The tribunal must give a copy of the notice to the authority or the authorised person whose order, direction or decision is being appealed against.

(3) The notice of appeal must be filed within 28 days after the appellant receives notice of the order, direction or decision appealed against.

(4) The tribunal may at any time extend the period for filing the notice of appeal.

(5) The notice of appeal must state the grounds of the appeal.

Stay of operation of order etc.

98.(1) In this section—

“**decision**” includes an order, determination or direction.

(2) The tribunal may stay a decision appealed against to secure the effectiveness of the appeal.

(3) A stay—

(a) may be given on conditions the tribunal considers appropriate; and

(b) operates for the period stated by the tribunal; and

(c) may be revoked or amended by the tribunal.

(4) The period of a stay stated by the tribunal must not extend past the time when the tribunal decides the appeal.

(5) The starting of an appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

Powers of tribunal on appeal

99.(1) In this section—

“**decision**” includes an order, determination or direction.

(2) In deciding an appeal, the tribunal may—

- (a) confirm the decision appealed against; or
- (b) set the decision aside and substitute another decision; or
- (c) set the decision aside and return the matter to the authority or authorised person with directions the tribunal considers appropriate.

(3) In substituting another decision, the tribunal has the same powers as the authority or authorised person.

Example—

The tribunal may decide that an unsuccessful applicant for a producer’s licence be issued the licence and decide conditions for it.

(4) If the tribunal substitutes another decision, the substituted decision is taken, for the purposes of this Act, to be the decision of the authority or authorised person.

PART 7—MISCELLANEOUS

Duty relating to analysis of dairy produce

100.(1) If an authorised person takes a sample of dairy produce and submits it to an analyst for analysis, the authorised person must obtain from the analyst a certificate certifying the results of the analysis and give the person from whose dairy produce the sample was taken a copy of the certificate.

(2) If a particular method of analysis has been prescribed by regulation, the analyst must follow the method.

(3) A person must not use as an advertisement—

- (a) the results of an analysis made for the purposes of this Act; or

- (b) a communication received from an analyst in connection with an analysis made for the purposes of this Act.

Maximum penalty for subsection (3)—40 penalty units.

Securities over licences

101.(1) If the holder of a licence grants a security for the payment of a debt or the performance of any other obligation over the licence, the holder of the licence must, within 30 days of granting the security, lodge a copy of the instrument creating the security with the authority.

Maximum penalty—40 penalty units.

(2) The authority must keep a register of the securities lodged under this section.

(3) A person may inspect the register on payment of the reasonable fee fixed by the authority.

Conduct of executive officers, employees and agents

102.(1) If, in a proceeding for an offence, it is necessary to establish the state of mind of a corporation in relation to particular conduct, it is sufficient to show—

- (a) that the conduct was engaged in by an executive officer, employee or agent of the corporation within the scope of his or her actual or apparent authority; and
- (b) that the executive officer, employee or agent had the state of mind.

(2) Conduct engaged in on behalf of a corporation by an executive officer, employee or agent of the corporation within the scope of his or her actual or apparent authority is taken, in a proceeding for an offence, to have been engaged in also by the corporation unless the corporation establishes that it took reasonable precautions and exercised proper diligence to avoid the conduct.

(3) If, in a proceeding for an offence, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show—

- (a) that the conduct was engaged in by an employee or agent of the individual within the scope of his or her actual or apparent authority; and
- (b) that the employee or agent had the state of mind.

(4) Conduct engaged in on behalf of an individual by an employee or agent of the individual within the scope of his or her actual or apparent authority is taken, in a proceeding for an offence, to have been engaged in also by the individual unless the individual establishes that he or she took reasonable precautions and exercised proper diligence to avoid the conduct.

(5) If—

- (a) an individual is convicted of an offence; and
- (b) the individual would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the individual is not liable to be punished by imprisonment for the offence.

(6) In this section—

“**engaging**” in conduct includes failing to engage in conduct;

“**state of mind**” of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

Appropriation of penalties

103. All penalties, costs, fees and other money recovered under this Act are to be paid to the authority and are to be applied by the authority for the purposes of this Act.

Injunction against persistent offenders

104.(1) If a person has been convicted on at least 3 separate occasions of an offence against this Act, the Supreme Court may, on the application of the authority, grant an injunction against further contravention of this Act.

(2) If a person, against whom an injunction is in force under this section, again contravenes this Act, the person is liable, in addition to the penalty

otherwise applicable to the contravention to a further penalty of 100 penalty units.

Evidentiary provision

105.(1) A certificate signed by a member or the secretary of the authority to the effect that a person held or did not hold a licence of a particular class or an entitlement under this Act at a stated time or for a stated period is admissible in legal proceedings as evidence of that fact.

(2) The certificate of an analyst certifying the results of the analysis of a sample of dairy produce under this Act is admissible in legal proceedings as evidence of the results of the analysis.

Regulations

106.(1) The Governor in Council may make regulations for the purposes of this Act.

(2) Regulations may be made on any of the following subjects—

- (a) the qualifications required for authorised persons, analysts and other person engaged in the administration or enforcement of this Act;
- (b) the administration of the system of licences and entitlements under this Act;
- (c) the records to be kept and returns to be furnished by the holders of licences and entitlements under this Act;
- (d) the imposition of charges to be paid for the purposes of this Act;
- (e) offences for contravention of a regulation and the maximum penalties (which must not exceed 40 penalty units) for the offences.

ENDNOTES

1 Index to endnotes

		Page
2	Date to which amendments incorporated	59
3	Key	59
4	Table of earlier reprints	60
5	Tables in earlier reprints	60
6	List of legislation	60
7	List of annotations	61
8	Table of renumbered provisions	66

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 February 1999. Future amendments of the Dairy Industry Act 1993 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954		prev	=	previous
amd	=	amended		(prev)	=	previously
amdt	=	amendment		proc	=	proclamation
ch	=	chapter		prov	=	provision
def	=	definition		pt	=	part
div	=	division		pubd	=	published
exp	=	expires/expired		R[X]	=	Reprint No.[X]
gaz	=	gazette		RA	=	Reprints Act 1992
hdg	=	heading		reloc	=	relocated
ins	=	inserted		renum	=	renumbered
lap	=	lapsed		rep	=	repealed
notfd	=	notified		s	=	section
o in c	=	order in council		sch	=	schedule
om	=	omitted		sdiv	=	subdivision
p	=	page		SIA	=	Statutory Instruments Act 1992
para	=	paragraph		SL	=	subordinate legislation
prec	=	preceding		sub	=	substituted
pres	=	present		unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 76 of 1993	17 December 1993
2	to Act No. 41 of 1994	28 October 1994
2A	to Act No. 36 of 1995	19 July 1996
2B	to Act No. 59 of 1996	23 December 1996
2C	to Act No. 39 of 1997	3 October 1997
3	to Act No. 73 of 1997	23 June 1998
3A	to Act No. 49 of 1998	3 December 1998

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1

6 List of legislation

Dairy Industry Act 1993 No. 24

date of assent 2 June 1993

commenced on date of assent

Note—The transfer day is 11 February 1994 (see s 115(1) and 1993 SL No. 282 s 19 (as ins by 1994 SL No. 38 s 3))

as amended by—

Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 ss 1–3 sch 2

date of assent 14 December 1993

commenced on date of assent

Dairy Industry Amendment Act 1994 No. 41

date of assent 14 September 1994

commenced on date of assent

Statutory Authorities Superannuation Legislation Amendment Act 1995 No. 36 ss 1–2, 9 sch 2

date of assent 16 June 1995

commenced on date of assent

Primary Industries Legislation Amendment Act (No. 2) 1996 No. 59 pts 1, 4

date of assent 5 December 1996
 commenced on date of assent

Cooperatives Act 1997 No. 39 ss 1–2, 472 sch 7

date of assent 25 August 1997
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 September 1997 (1997 SL No. 286)

Primary Industries Legislation Amendment Act (No. 2) 1997 No. 73 pts 1–2

date of assent 1 December 1997
 ss 1–2 commenced on date of assent
 remaining provisions commenced 19 December 1997 (1997 SL No. 475)

Dairy Industry Amendment Act 1998 No. 49

date of assent 27 November 1998
 ss 1–3, 4(2), 7, 30 commenced on date of assent (see s 2(1))
 remaining provisions commenced 1 January 1999 (see s 2(2))

7 List of annotations

PART 1—PRELIMINARY**Objectives**

s 2 amd 1996 No. 59 s 15

Definitions

s 3 def “**carrier**” om 1998 No. 49 s 4(1)
 def “**competition legislation**” ins 1998 No. 49 s 4(3)
 def “**Council**” om 1996 No. 59 s 16
 def “**farmgate price**” om 1998 No. 49 s 4(1)
 def “**financial arrangements**” ins 1994 No. 41 s 3
 om 1998 No. 49 s 4(2)
 def “**lease**” om 1998 No. 49 s 4(1)
 def “**milk run**” om 1998 No. 49 s 4(1)
 def “**pricing order**” ins 1998 No. 49 s 4(3)
 def “**processor**” amd 1997 No. 39 s 472 sch 7; 1998 No. 49 s 4(4)
 def “**rent**” om 1998 No. 49 s 4(1)
 def “**revenue**” ins 1994 No. 41 s 3
 om 1998 No. 49 s 4(2)
 def “**vendor**” om 1998 No. 49 s 4(1)

PART 2—POLICY AND ADMINISTRATION**Division 1—Ministerial advisory bodies**

div hdg sub 1996 No. 59 s 17

Minister may establish advisory bodies

s 5 sub 1996 No. 59 s 17

Establishment of authority

s 6 prev s 6 om 1996 No. 59 s 17

Functions of the authority

s 7 prev s 7 om 1996 No. 59 s 17
pres s 7 amd 1998 No. 49 s 5

General powers of the authority

s 8 prev s 8 amd 1994 No. 41 s 4
om 1996 No. 59 s 17
pres s 8 amd 1998 No. 49 s 6

Delegation

s 9 prev s 9 om 1996 No. 59 s 17

Ministerial direction

s 10 prev s 10 om 1996 No. 59 s 17

Division 4—Financial arrangements of authority

div hdg ins 1994 No. 41 s 5

Authority is statutory body under the Financial Administration and Audit Act 1977

s 11 ins 1994 No. 41 s 5
sub 1998 No. 49 s 7

Authority is statutory body under the Statutory Bodies Financial Arrangements Act 1982

s 12 ins 1994 No. 41 s 5
sub 1998 No. 49 s 7

Power to mortgage property etc. for financial arrangement

s 16C ins 1994 No. 41 s 5
om 1998 No. 49 s 7

Priority of authority's debentures, bonds and inscribed stock

s 16D ins 1994 No. 41 s 5
om 1998 No. 49 s 7

Priority of charge over revenue

s 16E ins 1994 No. 41 s 5
om 1998 No. 49 s 7

Notice of default

s 16F ins 1994 No. 41 s 5
om 1998 No. 49 s 7

Remedies

s 16G ins 1994 No. 41 s 5
om 1998 No. 49 s 7

Receiver's remuneration

s 16H ins 1994 No. 41 s 5
om 1998 No. 49 s 7

Powers and duties of receiver

s 16I ins 1994 No. 41 s 5
om 1998 No. 49 s 7

Alternative remedies

s 16J ins 1994 No. 41 s 5
om 1998 No. 49 s 7

Composition of the authority

s 13 amd 1996 No. 59 s 19

Term of office

s 14 amd 1996 No. 59 s 21

Fees and allowances

s 15 prev s 15 om 1996 No. 59 s 18

Disclosure of interest

s 18 prev s 18 om 1996 No. 59 s 20

Superannuation schemes

s 22 sub 1995 No. 36 s 9 sch 2

PART 3—INDUSTRY REGULATION**Division 1—Price regulation**

div hdg exp 31 December 2003 (see s 27)

Price fixing

s 23 amd 1996 No. 59 s 22; 1998 No. 49 s 8
exp 31 December 2003 (see s 27)

Specific authorisation for making pricing orders and imposing pricing conditions

s 24 ins 1998 No. 49 s 9
exp 31 December 2003 (see s 27)

Obligation to comply with pricing order

prov hdg sub 1998 No. 49 s 10(1)
s 25 amd 1998 No. 49 s 10(2)–(4)
exp 31 December 2003 (see s 27)

Specific authorisation for things done because of pricing orders

s 26 ins 1998 No. 49 s 11
exp 31 December 2003 (see s 27)

Expiry of div 1

s 27 ins 1998 No. 49 s 11
exp 31 December 2003 (see s 27)

Division 2—Licensing

div hdg prev div 2 hdg exp 31 December 1998 (see prev s 35)

Classes of licences

s 28 amd 1998 No. 49 s 12

Conditions of licence

s 30 prev s 30 amd 1996 No. 59 s 23
exp 31 December 1998 (see prev s 35)

Specific authorisation of non-competitive conditions

- s 31** prev s 31 exp 31 December 1998 (see prev s 35)
 pres s 31 ins 1998 No. 49 s 13
exp 31 December 2003 (see s 31(2))

Transactions affecting licences

- s 32** prev s 32 exp 31 December 1998 (see prev s 35)

Licensee's records

- s 33** prev s 33 exp 31 December 1998 (see prev s 35)

Variation, suspension or cancellation of licence

- s 34** prev s 34 exp 31 December 1998 (see prev s 35)

Offences related to licences

- s 35** prev s 35 exp 31 December 1998 (see prev s 35)
 pres s 35 amd 1997 No. 73 s 4; 1998 No. 49 s 15

Division 3—Supply management

- div hdg** prev div 3 hdg exp 31 December 1998 (see prev s 37)
 pres div 3 hdg exp 31 December 2003 (see s 46)

Market milk entitlements

- s 36** prev s 36 exp 31 December 1998 (see prev s 37)
 pres s 36 amd 1998 No. 49 s 19
exp 31 December 2003 (see s 46)

Transactions affecting entitlement

- s 37** prev s 37 exp 31 December 1998 (see prev s 37)
 pres s 37 amd 1998 No. 49 s 20
exp 31 December 2003 (see s 46)

Diversion of supply by entitlement holders

- s 38** exp 31 December 2003 (see s 46)

Supply management scheme and market milk access

- prov hdg** amd 1998 No. 49 s 21(1)
s 39 amd 1998 No. 49 s 21(2)–(4)
exp 31 December 2003 (see s 46)

Amount of each class of market milk supplied

- s 40** amd 1996 No. 59 s 25
 sub 1998 No. 49 s 22
exp 31 December 2003 (see s 46)

Determination of monthly adjustments of market milk sales

- s 41** ins 1998 No. 49 s 22
exp 31 December 2003 (see s 46)

Specific authorisation for monthly adjustments of market milk sales

- s 42** prev s 42 amd 1996 No. 59 s 24
 om 1998 No. 49 s 14
 pres s 42 ins 1998 No. 49 s 22
exp 31 December 2003 (see s 46)

Consequential variation of market milk entitlements

s 43 exp 31 December 2003 (see s 46)

General power of variation and cancellation

s 44 exp 31 December 2003 (see s 46)

Gazettal of entitlements etc.

s 45 amd 1998 No. 49 s 23
exp 31 December 2003 (see s 46)

Expiry of div 3

s 46 prev s 46 om 1998 No. 49 s 16
pres s 46 ins 1998 No. 49 s 24
exp 31 December 2003 (see s 46)

Division 5—Restructuring of distribution

div hdg om 1998 No. 49 s 17

PART 4—INDUSTRY STANDARDS**Making of standards**

s 47 prev s 47 om 1998 No. 49 s 17

Standards for premises, vehicles etc.

s 48 prev s 48 om 1998 No. 49 s 18

Testing and analysis

s 51 amd 1998 No. 49 s 25

Appeals to the tribunal

s 96 amd 1994 No. 41 s 6; 1998 No. 49 s 26

How to start an appeal

s 97 amd 1993 No. 76 s 3 sch 2
sub 1994 No. 41 s 7

Stay of operation of order etc.

s 98 ins 1994 No. 41 s 7
amd 1998 No. 49 s 27

Powers of tribunal on appeal

s 99 ins 1994 No. 41 s 7
amd 1998 No. 49 s 28

Numbering and renumbering of Act

s 115 orig s 115 exp at the end of 11 February 1994 (see prev s 115(3))
prev s 115 ins 1994 No. 41 s 8
exp 14 March 1995 (see pres s 115 (2))
AIA s 20A applies (see s 115(3))
new s 115 ins 1998 No. 49 s 29
om R4 (RA s 37)

PART 8—TRANSITIONAL PROVISIONS

pt hdg exp 1 February 1999 (see s 120)

Grant of new market milk entitlements

- s 116** prev s 116 exp at the end of 11 February 1994 (see prev s 116(2))
 pres s 116 ins 1994 No. 41 s 8
 sub 1998 No. 49 s 30
 exp 1 February 1999 (see s 120)

Gazettal of all market milk entitlements

- s 117** prev s 117 exp at the end of 11 February 1994 (see s 117(2))
 pres s 117 ins 1998 No. 49 s 30
 exp 1 February 1999 (see s 120)

Superannuation arrangements and schemes

- s 118** exp at the end of 11 February 1994 (see s 118(2))

Existing licences, permits and entitlements

- s 119** amd 1996 No. 59 s 26
 (1)–(3), (7) exp at the end of 11 February 1994 (see s 119(7))
 exp 1 February 1999 (see s 120)

Expiry of pt 8

- s 120** prev s 120 exp at the end of 11 February 1994 (see s 120(2))
 pres s 120 ins 1998 No. 49 s 31
 exp 1 February 1999 (see s 120)

Existing regulations

- s 121** exp 2 December 1993 (see s 121(3))

PART 9—REPEAL

- pt 9 (s 122)** om R1 (see RA s 40)

8 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS

under the Reprints Act 1992 s 43 as required by the Dairy Industry Act 1993 s 115

Previous	Renumbered as
11	6
12	7
13	8
13(2A)	8(3)
13(3)	8(4)
13(4)	8(5)
14	9
16	10
div 3A hdg	div 4 hdg
16A	11
16B	12
div 4 hdg	div 5 hdg
17	13

19	14
20	15
div 5 hdg	div 6 hdg
21	16
22	17
23	18
24	19
div 6 hdg	div 7 hdg
25	20
div 7 hdg	div 8 hdg
26	21
27	22
28	23
28(4)	23(3)
28(5)	23(4)
28(6)	23(5)
28A	24
29	25
29A	26
29B	27
div 4 hdg	div 2 hdg
38	28
38(1)(e)	28(1)(c)
39	29
40	30
40A	31
41	32
43	33
44	34
45	35
45(5)	35(3)
div 6 hdg	div 3 hdg
49	36
50	37
51	38
52	39
53	40
53A	41
53B	42
54	43
55	44
56	45
56A	46
57	47
58	48
59	49

60	50
61	51
62	52
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106(2)(d)	96(2)(c)
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107A	98
107B	99
108	100
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114	106