

Queensland



DAIRY INDUSTRY ACT 1993

Act No. 24 of 1993

Queensland



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Queensland



Dairy Industry Act 1993

Act No. 24 of 1993

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

[Assented to 2 June 1993]

The Parliament of Queensland enacts—

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 establish the Queensland Dairy Industry Policy Council as a representative body to advise on policy issues; and
 - (d) 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;

“carrier” means a person, other than a producer, processor or vendor, who carries on a business involving transporting dairy produce from place to place;

“Council” means the Queensland Dairy Industry Policy Council;

“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;

“farmgate price” for market milk means a minimum price for the purchase, by wholesale, of market milk from producers, fixed by order under section 28, and designated by the order as the farmgate price for market milk;

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

“lease”, in relation to a milk run, means an agreement (that may be incorporated in a vendor’s licence as conditions of the licence) under which—

- (a) the holder of a vendor’s licence is licensed to operate the milk run and, in consideration of the right to operate the milk run, pays to the Authority periodic or other payments in the nature of rent; and
- (b) the right to operate the milk run reverts to the Authority on termination or expiry of the agreement;

“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 52;

“market milk entitlement” means an entitlement to supply milk as market milk under section 49;

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

“milk run” means the delivery run in respect of which a vendor’s licence is

issued and may consist of or include—

- (a) a list of retail outlets to which the vendor is authorised by the licence to sell milk; and
- (b) a list of streets in which the vendor is authorised by the licence to sell milk to householders;

“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;

“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 primary producers’ co-operative association registered under the *Primary Producers’ Co-operative Associations Act 1923* that arranges the sale or transportation of dairy produce produced by its members; and
- (b) a person declared by regulation to be a processor;

but does not include a producer who only processes dairy produce produced at the producer’s own dairy;

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

“rent”, in relation to a milk run, means the periodic payments under a lease of the milk run;

“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;

“**vendor**” means a person who carries on the business of selling dairy produce and delivering it to the places of residence or business of the purchasers;

“**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—The Queensland Dairy Industry Policy Council

Establishment of the Council

5. The Queensland Dairy Industry Policy Council is established.

Functions of the Council

6. The functions of the Council are—

- (a) to address, and advise on, the long-term strategic issues facing the dairy industry and to develop appropriate responses; and
- (b) to assess and determine the characteristics of a sustainable dairy industry in Queensland for the medium and long term, and to formulate appropriate strategies for developing those characteristics; and
- (c) to negotiate and encourage the developments required for the maintenance of a sustainable dairy industry in Queensland; and
- (d) to report and make recommendations to the Minister and the Authority on issues concerning the dairy industry, either on the Council's own initiative or at the request of the Minister or the Authority; and
- (e) to report and make recommendations to the Minister on the implementation and operation of this Act, and on progress towards achieving its objectives, and to review and monitor the Authority's strategic plan; and
- (f) to determine, and convey to the Minister, industry views on price fixing, the vesting of milk, market milk access and the terms and conditions of processors' licences; and
- (g) to carry out the other functions assigned to the Council under this Act.

Composition of the Council

7.(1) The Council is to consist of—

- (a) the Minister or the Minister's nominee (who is to be chairperson of the Council); and
- (b) the other persons that the Minister considers necessary and appropriate to represent adequately all sectors of the dairy industry and appoints to membership of the Council.

(2) The conditions on which members of the Council hold office are to be as determined by the Minister.

Meetings of the Council

8.(1) The Council is to meet as necessary for the transaction of its business.

(2) The Minister may call the Council together to consider matters that the Minister desires to place before it.

(3) The Council is to operate under a constitution approved by the Minister.

The Council's secretariat

9. The Council is to have a secretary and the other staff that are necessary to enable it to carry out its statutory responsibilities properly.

Committees

10.(1) The Council may appoint committees for the purpose of inquiring into, and advising the Council on, a particular subject or subjects.

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

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

11.(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**

12. 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 system 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, distribution 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

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

Maximum penalty—40 penalty units.

(4) 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

14.(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.

Duty of consultation

15. The Authority must consult with the Council about the exercise of powers and functions that raise questions of industry policy.

Ministerial direction

16.(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—Membership of the Authority

Composition of the Authority

17.(1) The Authority is to consist of the following members—

- (a) the chairperson;
- (b) 3 persons with experience in milk production, processing or distribution, nominated for appointment by a selection committee;
- (c) 3 persons with experience in public administration, business, finance, marketing, quality assurance or industrial relations, nominated for appointment by a selection committee.

(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.

Selection of appointed members

18.(1) Before appointments of members (other than the chairperson) of the Authority are made, the Minister must establish a selection committee to nominate those members.

(2) The selection committee is to consist of 7 members appointed by the Minister, comprising—

- (a) 1 (the chairperson) who is, in the opinion of the Minister, suited by temperament and experience to act as an independent chairperson of the selection committee; and

- (b) 2 representatives of producers chosen by the Minister from nominations submitted, at the Minister's invitation, by organisations that are, in the Minister's opinion, representative of producers; and
- (c) 2 representatives of processors chosen by the Minister from nominations submitted, at the Minister's invitation, by organisations that are, in the Minister's opinion, representative of processors; and
- (d) 2 representatives of distributors chosen by the Minister from nominations submitted, at the Minister's invitation, by organisations that are, in the Minister's opinion, representative of distributors.

(3) The Minister may give the selection committee written directions about the procedures and criteria to be adopted or applied in selecting nominees for appointment to the Authority, and the time within which the nominations are to be made.

(4) A direction may not require the committee to nominate a specified person for appointment as a member of the Authority.

(5) A member of the Council, a member of the selection committee, or a person who is chairperson, deputy chairperson or chief executive officer of an organisation established to represent producers, processors or distributors is not eligible to be nominated for appointment as a member of the Authority.

(6) If the selection committee fails to make a nomination or to follow the procedures or apply the criteria of selection directed by the Minister, the Minister may nominate a person for appointment.

(7) A nomination made by the Minister under subsection (6) is taken to have been made by the selection committee.

(8) The chairperson of the selection committee is to be paid the fees and allowances that the Governor in Council may determine.

Term of office

19.(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 a patient within the meaning of the *Mental Health Act 1974*; or
- (g) is removed from office by the Governor in Council.

Fees and allowances

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

Division 5—Proceedings of the Authority

Time and place of meetings

21.(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

22.(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—

- (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

23.(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

24. The Authority must keep minutes of its proceedings.

Division 6—Committees

Committees

25.(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 7—Staff of the Authority

Staff of the Authority

26.(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

27.(1) The Authority may contribute to, and participate in, a superannuation arrangement or scheme, approved by the Governor in Council, for the benefit of employees and former employees of the Authority and their dependants.

(2) An approval under subsection (1) may be absolute or conditional.

(3) The conditions of an approval under subsection (1) may, for example, authorise the Auditor-General to audit accounts and records relating to the approved arrangement or scheme.

PART 3—INDUSTRY REGULATION

Division 1—Price regulation

Price fixing

28.(1) The Authority must, if the Council recommends and the Minister approves a proposal under subsection (2), make an order—

- (a) fixing the price, or a maximum or minimum price (or both), to be paid for market milk; or
- (b) fixing the price, or a maximum or minimum price, to be paid for the collection, treatment, storage, distribution or delivery of market milk; or
- (c) amending or repealing an order previously made under this section.

(2) Any proposal by the Authority to make, amend or repeal an order under this section must be submitted to the Council, and the Authority must exercise its powers in accordance with the proposal if the Council recommends the proposal to the Minister and the Minister approves it.

(3) An order fixing the price, or a maximum or minimum price (or both), for market milk—

- (a) may apply generally to all transactions involving sale of market milk or to a class of such transactions specified in the order; and
- (b) may designate a minimum price fixed for the purchase, by wholesale, of market milk from producers as the farmgate price; and
- (c) may fix differential prices that vary according to the composition, grade or quality of the market milk; and
- (d) may apply generally irrespective of the circumstances in which transactions take place, or be limited to circumstances described in the order; and
- (e) may provide for retail prices to be rounded up or down in accordance with principles stated in the order.

(4) If there is a general consensus throughout Australia on what an appropriate farmgate price for market milk should be, a farmgate price fixed under this section should reflect that general consensus.

(5) An order fixing the price to be paid by or to a person for market milk may be made on condition that the person pay a specified proportion of the price 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 market milk under a supply management scheme under Division 6 (Supply management); or

(c) another purpose determined by the Authority.

(6) An amount to which the Authority becomes entitled under a condition mentioned in subsection (5) is a debt due to the Authority.

(7) An order under this section is subordinate legislation.

(8) An order cannot be made under this section after 31 December 1998, and an order then in force expires.

(9) Subsection (8) does not apply to an order fixing the price, or a minimum price, for the purchase, by wholesale, of market milk from producers.

Obligation to comply with order

29.(1) A person must not pay or receive a price for market milk, or for the collection, treatment, storage, distribution or delivery of market milk, if the price is inconsistent with an order under this Division.

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 farmgate price for market milk fixed under this Division.

Maximum penalty—180 penalty units.

(3) A person must not sell market milk if the milk was purchased from a producer (within or outside the State) for a price that is less than the farmgate price for market milk fixed under this Division.

Maximum penalty—180 penalty units.

Division 2—Vesting of milk

Vesting of Milk

30.(1) The Governor in Council may, by regulation, vest milk produced in a part of the State defined by the regulation in the Authority.

(2) A regulation vesting milk in the Authority may only be made on the joint recommendation of the Council, the Authority and the Minister.

(3) The milk to which the regulation relates vests in the Authority subject to conditions, requirements and exemptions prescribed by the regulation.

Delivery of vested milk

31.(1) The Authority may, by order—

- (a) determine delivery requirements to be complied with by the producer or processor of vested milk; or
- (b) vary or revoke an order previously made under this section.

(2) The requirements may, for example, determine—

- (a) the places at which vested milk is to be delivered to the Authority; or
- (b) the times for delivery of vested milk; or
- (c) the conditions on which vested milk will be accepted by the Authority on delivery.

(3) An order under this section is subordinate legislation.

(4) A producer or processor who fails to deliver vested milk to the Authority in accordance with the Authority's delivery requirements commits an offence.

Maximum penalty for subsection (4)—40 penalty units.

Sale of milk and distribution of proceeds

32.(1) The Authority may sell and dispose of milk delivered to, and accepted by, the Authority under this Division as it considers appropriate.

(2) The Authority is to pay the following amounts out of the proceeds of the sale or disposal of the milk—

- (a) the costs incurred by the Authority in receiving, storing, transporting, processing, selling and delivering the milk;

- (b) any other recurrent costs incurred by the Authority in administering the vesting scheme;
- (c) an appropriate amount towards amortising capital costs incurred by the Authority for the purpose of the vesting scheme.

(3) After the payment of the amounts mentioned in subsection (2), the balance of the proceeds of the sale or disposal of the milk is to be divided among producers or processors on a basis determined by the Authority having regard to the following factors—

- (a) the quantity of milk delivered;
- (b) the class, grade, quality or description of the milk;
- (c) the conditions of production, collection, treatment, delivery or storage of the milk;
- (d) the purpose for which the milk is to be used.

(4) The Authority may make advances to producers on account of future entitlements under this section on the conditions that the Authority considers appropriate.

Payment in good faith

33.(1) If—

- (a) the Authority makes, in good faith, a payment in respect of milk delivered to the Authority—
 - (i) to a person apparently entitled to the payment; or
 - (ii) in accordance with instructions given by a person apparently entitled to give the instructions; and
- (b) the Authority has not received written notice of any other claim to the payment;

the payment discharges the Authority from its liability in relation to the milk.

(2) If a question arises about entitlement to payment for vested milk, the Authority or any other interested person may apply to a Magistrates Court to resolve the question.

(3) On an application under subsection (2), the Magistrates Court may

determine the question at issue and make consequential orders and directions.

Transactions contrary to this Division

34.(1) A person must not, without the Authority's consent, sell or purport to sell milk vested in the Authority under this Division.

Maximum penalty—40 penalty units.

(2) A person must not, without the Authority's consent, buy or purport to buy (except from the Authority) milk vested in the Authority under this Division.

Maximum penalty—40 penalty units.

(3) A contract entered into in contravention of this section is void.

Expiry of this Division

35. This Division expires on 31 December 1998.

Division 3—Authority's power to intervene in the dairy industry

Authority's intervention in market etc.

36.(1) The Authority may, with the Minister's approval, carry on business in a part of the State defined in the approval as a processor, distributor or vendor of dairy produce.

(2) The Minister may grant an approval under this section only if, after allowing the processors, distributors or vendors licensed to operate in the relevant part of the State a reasonable opportunity to make representations on the subject, the Minister is of the opinion that the Authority's intervention is necessary in the public interest.

Expiry of this Division

37. This Division expires on 31 December 1998.

Division 4—Licensing

Classes of licences

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

- (a) producers' licences;
- (b) processors' licences;
- (c) carriers' licences;
- (d) vendors' licences;
- (e) 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

39.(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

40.(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.

Transactions affecting licences

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

Special trading rights for processors' licences

42.(1) The Authority must, if the Council recommends and the Minister approves the recommendation, grant a processor's licence on terms conferring on the holder of the licence an exclusive right to sell pasteurised milk and pasteurised cream to a segment of the wholesale market (which may be defined by reference to a particular locality) allocated to the processor under the terms of the licence.

(2) Notice of the terms in which an exclusive right is conferred under this section must be published in the Gazette.

(3) A person must not sell pasteurised milk or pasteurised cream to a segment of the market allocated to some other person by the terms of a processor's licence conferring an exclusive right under this section.

Maximum penalty—200 penalty units.

(4) An exclusive right may not be conferred under this section after 31 December 1998 and any exclusive right in force immediately before that date then lapses.

Licensee's records

43.(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

44.(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

45.(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 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 business as a carrier unless the person holds a carrier's licence and carries on the business in accordance with the

terms and conditions of the licence.

Maximum penalty—40 penalty units.

(4) A person must not carry on business as a vendor unless the person holds a vendor's licence and carries on the business in accordance with the terms and conditions of the licence.

Maximum penalty—40 penalty units.

(5) 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.

Expiry of licensing provisions

46.(1) On 31 December 1998, any licence in force under this Division, other than a producer's licence, a processor's licence or a licence of a type prescribed by regulation for the purposes of this exception, lapses.

(2) After 31 December 1998, no licence, other than a producer's licence, a processor's licence, or a licence of a type prescribed by regulation for the purposes of this exception, may be granted under this Division.

(3) After 31 December 1998, no licence is to confer exclusive trading rights or to restrict competition between licensees in any other way, but this subsection does not prevent the imposition of conditions requiring compliance with quality standards.

Division 5—Restructuring of distribution

Scheme for restructuring distribution

47.(1) The Authority may, by order—

- (a) establish a scheme for restructuring the distribution of dairy produce by the holders of vendors' licences; or
- (b) vary the scheme.

(2) The scheme may—

- (a) authorise the Authority to acquire from vendors who have agreed to participate in the scheme the rights to their milk runs or to parts of their milk runs for a consideration determined by the Authority and to make consequential cancellations of, or variations to, the licences of the vendors from whom the rights are acquired; and
- (b) provide for the restructuring, by amalgamation or division, of the milk runs and parts of milk runs in relation to which rights are acquired under the scheme into the milk runs that the Authority considers appropriate; and
- (c) authorise the Authority to lease the restructured milk runs and, at its discretion, to set the rentals and other consideration to be paid for the leases of the restructured milk runs by competitive bidding or to deal with or dispose of the restructured milk runs in other ways; and
- (d) provide for the reclassification of vendors' licences, and the cancellation and re-issue of vendors' licences, (whether or not the holders of the licences have agreed to participate in the scheme); and
- (e) provide for financing the scheme; and
- (f) provide for any incidental or related matter.

(3) An order under this section is subordinate legislation.

(4) The Authority must ensure that its income from the scheme is sufficient to meet its obligations to financial institutions from which money is borrowed to finance the scheme.

(5) No money is to be appropriated from the Consolidated Fund for the purpose of financing the scheme.

(6) The scheme is to terminate on 31 December 1998, but the termination of the scheme does not prevent the recovery of liabilities incurred under the scheme before that date and, if the scheme has an excess of assets over liabilities as at the date of its termination, the excess is to be distributed as prescribed by regulation.

Division 6—Supply management

Application of this Division

48.(1) There are to be the supply management regions that are constituted by regulation.

(2) The whole or any part of the State may be constituted, by regulation, as a supply management region.

(3) This Division applies to a supply management region.

Market milk entitlements

49.(1) The Authority may grant to a producer whose dairy is situated in a supply management region an entitlement (a **“market milk entitlement”**) to supply milk 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

50. The holder of a market milk entitlement may, subject to conditions prescribed by regulation, transfer, deal with or dispose of the entitlement.

Diversion of supply by entitlement holders

51. 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 schemes and market milk access

52.(1) The Authority is to have a supply management scheme for each supply management region.

(2) A 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 a supply management scheme and limiting the processor's market milk access to the extent determined by the Authority under this section.

Annual review of market milk consumption

53.(1) After the conclusion of each financial year, the Authority must—

- (a)** determine the extent (if any) to which consumption of market milk increased during the financial year in a supply management region; and
- (b)** if an increase in the consumption of market milk is found to have taken place—determine whether to distribute the whole or part of the increase in accordance with this section; and
- (c)** if the Authority determines to distribute the whole or part of the increase in accordance with this section—determine the quantity to be distributed.

(2) The quantity to be distributed is to be apportioned among processors

in the following way—

- (a) the Authority is first to determine the quantity by which each processor increased the volume of sales of market milk during the financial year and a proportion of the quantity is to be attributed to each processor (the “**retained component**”) on a basis proposed by the Authority, recommended to the Minister by the Council, and approved by the Minister;
- (b) the Authority is then to apportion the remainder of the increase between processors in accordance with a formula based on the difference between the total quantity of milk received by each processor and a percentage prescribed by regulation of the quantity of milk processed by the processor as market milk (the “**apportioned component**”);
- (c) the retained component and the apportioned component for each processor are to be aggregated;
- (d) the extent of each processor’s market milk access is to be increased by the amount of the aggregate.

Consequential variation of market milk entitlements

54. 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

55.(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.

56. 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 market milk to which each relates as at the end of the financial year.

PART 4—INDUSTRY STANDARDS

Division 1—Power to make standards

Making of standards

57.(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.**

58.(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**

59.(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

60.(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**

61.(1) A person who carries on a business involving the production, processing, storage or distribution 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, storage or distribution 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.**

62.(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.

63.(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.

64.(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

65.(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

66.(1) The Authority may appoint members of its staff and other person 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

67.(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

68.(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

69.(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

70.(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

71.(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

72.(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 75.

(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 81 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

73.(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 75.
- (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 82 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 82, 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.

74.(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
- (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 75.

(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 73(2)(a) applies to the thing and, if the thing is a document, section 73(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 73(2)(a) applies to the vehicle.

General powers in relation to places and vehicles

75.(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;
- (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 76 (Power to require name and address);
 - (ii) section 77 (Power to require answers to questions);
 - (iii) section 78(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

76.(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

77.(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.

78.(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

79.(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

80.(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

81.(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

82.(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

83. If, in relation to an application for a warrant under section 81 or 82, 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

84.(1) A warrant under section 81 or 82 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 75(1)(a) to (f); and
 - (iii) in the case of a warrant under section 82—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 81 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 82 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

85.(1) An authorised person may, under this section, apply by telephone, facsimile, radio or another form of communication for a warrant under section 81 or 82 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 81(2) or 82(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
- (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 81 or 82, 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
- (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 81 or 82.

(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**

86. 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

87.(1) A person must not, without reasonable excuse, disobey a signal under section 74(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

88. A person who is required under section 74(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

89.(1) A person who is required under section 75(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

90.(1) A person who is required under section 76 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 76 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 76 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

91.(1) A person who is required by an authorised person under section 77 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 77 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

92. A person who is required under section 78 to produce a document must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty—40 penalty units.

False or misleading documents

93.(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

94.(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

95. 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

96. 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

97. The Dairy Industry Tribunal is established.

Composition of the Tribunal

98.(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
- (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

99.(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

100. 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

101. 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

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

Decisions of the Tribunal

103.(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

104.(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.

105.(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

106.(1) A person aggrieved by an order, direction or decision of the Authority or an authorised person may appeal against the order, 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 price, or maximum or 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) a decision by the Authority to grant a processor's licence on terms conferring an exclusive right to sell pasteurised milk and pasteurised cream to a particular segment of the market;
- (d) an order, 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, direction or decision is not in accordance with this Act;
- (b) that the order, direction or decision is manifestly unfair to the appellant;
- (c) that the order, direction or decision will cause severe and unjustified financial hardship to the appellant.

Powers of the Tribunal on appeal

107.(1) The Tribunal may exercise any 1 or more of the following powers on appeal—

- (a) the Tribunal may confirm, vary or reverse the order, direction or decision subject to the appeal;
- (b) the Tribunal may set aside the order, direction or decision subject to the appeal and, if the Tribunal considers it appropriate, the Tribunal substitute its own order, direction or decision for that of the Authority or the authorised person;
- (c) the Tribunal may remit the subject matter of the appeal to the Authority or the authorised person for further consideration or for reconsideration.

(2) Effect is to be given to any order, direction or decision of the Tribunal as if it were an order, direction or decision of the Authority or the authorised person, as the case requires.

PART 7—MISCELLANEOUS

Duty relating to analysis of dairy produce

108.(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

109.(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

110.(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

111. 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

112.(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

113.(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

114.(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.

PART 8—TRANSITIONAL PROVISIONS

Continuation of former Authority

115.(1) Until a date fixed by regulation (the “**transfer day**”), the Queensland Dairy Industry Authority constituted under the former Act is to continue in existence and is to exercise the powers and functions of the Authority under this Act (and references in this Act to the “**Authority**” are, where the context admits, to be interpreted accordingly).

(2) On the transfer day, the Queensland Dairy Industry Authority is dissolved and all its assets, rights and liabilities vest in the Authority constituted under this Act.

(3) This section expires at the end of the transfer day.

Legal proceedings

116.(1) Any legal proceeding by or against the Queensland Dairy Industry Authority that had not been completed before its dissolution may be continued and completed by or against the Authority constituted under this Act.

(2) This section expires at the end of the transfer day.

Existing staff

117.(1) Any person who held an office on the staff of the Queensland Dairy Industry Authority immediately before the transfer day is, on that day, transferred to a corresponding office on the staff of the Authority without prejudice to existing and accruing rights in respect of employment.

(2) This section expires at the end of the transfer day.

Superannuation arrangements and schemes

118.(1) A superannuation arrangement or scheme to which the Queensland Dairy Industry Authority was contributing at the commencement of this Act is taken to be an approved arrangement or scheme for the purposes of section 27.

(2) This section expires at the end of the transfer day.

Existing licences, permits and entitlements

119.(1) A licence in force under the former Act immediately before the commencement of this Act (other than a milkseller's licence) continues in force subject to this Act as if this Act had been in force when it was granted and it had been granted under this Act.

(2) A permit in force under section 61 of the former Act immediately before the commencement of this Act continues in force under this Act as if it were a licence granted on a temporary basis under section 39(3).

(3) An entitlement in force under section 77 of the former Act immediately before the commencement of this Act continues in force subject to this Act as if it were an entitlement under section 49.

(4) If the holder of a processor's licence held an authorisation under section 90 of the former Act immediately before the commencement of this Act, the processor's licence continues in force, subject to suspension or cancellation under this Act, until 31 December 1995 as if it were a licence conferring exclusive trading rights under section 42 in the same terms as the authorisation and then, subject to subsection (5), lapses.

(5) The Authority may, on the recommendation of the Council and with the approval of the Minister, renew a licence mentioned in subsection (4) from time to time on an annual basis from 31 December 1995.

(6) The terms and conditions of the licence, on its renewal, are to be as proposed by the Authority, recommended by the Council and approved by the Minister.

(7) Subsections (1) to (3) and this subsection expire at the end of the transfer day.

Existing orders etc.

120.(1) An order, direction or decision of the Queensland Dairy Industry Authority or of an inspector under the former Act is, if its effect is not exhausted at the commencement of this Act, subject to appeal under this Act in the same way as if it were an order, direction or decision of the Authority or an authorised person under this Act.

(2) This section expires at the end of the transfer day.

Existing regulations

121.(1) The regulations in force under the former Act immediately before the commencement of this Act remain in force, subject to amendment or repeal by a regulation under this Act, for the purposes of this Act and are to be read subject to the modifications that are necessary to make them consistent with this Act and adapt their operation to the provisions of this Act.

(2) The regulations mentioned in subsection (1) expire 6 months after the commencement of this Act unless earlier repealed.

(3) This section expires 6 months after the commencement of this Act.

PART 9—REPEAL

Repeal

122. The *Dairy Industry Act 1989* is repealed.

