

**DAIRY INDUSTRY AUTHORITY (AMENDMENT)
ACT, 1977**

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 1, 1977.

An Act to amend the Dairy Industry Authority Act, 1970, in relation to milk quotas and interstate milk; to reconstitute the Dairy Industry Prices Tribunal and appoint a Special Officer to investigate complaints by dairymen, and for certain other purposes. [Assented to, 10th March, 1977.]

BE

Dairy Industry Authority (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited as the "Dairy Industry Authority (Amendment) Act, 1977".

**Commence-
ment.** 2. (1) This section and sections 1, 3 and 4 shall commence on the date of assent to this Act.

(2) Section 5 shall, in its application to a provision of Schedules 1–6, commence on the day on which that provision commences.

(3) The several provisions of Schedules 1–6 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Section 6 shall commence on the day on which Schedule 5 commences.

**Principal
Act.** 3. The Dairy Industry Authority Act, 1970, is referred to in this Act as the Principal Act.

Schedules. 4. This Act contains the following Schedules :—

**SCHEDULE 1.—AMENDMENTS TO PART I OF THE
PRINCIPAL ACT.**

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 2.—AMENDMENTS TO PART III OF THE
PRINCIPAL ACT.

SCHEDULE 3.—REPEAL OF PART IV OF THE
PRINCIPAL ACT.

SCHEDULE 4.—INSERTION OF PART IVA INTO THE
PRINCIPAL ACT.

SCHEDULE 5.—AMENDMENTS TO PART V OF THE
PRINCIPAL ACT.

SCHEDULE 6.—AMENDMENTS TO PART IX OF THE
PRINCIPAL ACT.

5. The Principal Act is amended in the manner set forth
in Schedules 1–6.

Amendment
of Act No.
29, 1970.

6. (1) Any person holding office as a member, or as
the deputy of a member, of the Dairy Industry Prices Tribunal
constituted under Part V of the Principal Act immediately
before the commencement of Schedule 5 shall cease to hold
that office on that commencement.

Members of
Dairy
Industry
Prices
Tribunal—
cessation of
office.

(2) The termination of a person's term of office under
subsection (1) shall not be an expiration of that person's
term of office for the purposes of section 42 (5) of the
Principal Act, as amended by this Act.

SCHEDULE

Dairy Industry Authority (Amendment).

Sec. 5.

SCHEDULE 1.

AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

(1) (a) Section 2—

From the matter relating to Part III, Division 3,
omit “33, 34”, insert instead “33–34A”.

(b) Section 2—

Omit the matter relating to Part IV.

(c) Section 2—

Before the matter relating to Part V, insert :—

PART IVA.—INVESTIGATION OF COMPLAINTS
BY DAIRYMEN—ss. 41A–41G.

(2) Section 4 (1), definition of “treatment”—

After “testing”, insert “, analysing”.

Sec. 5.

SCHEDULE 2.

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

(1) (a) Section 18 (1) (d)—

Omit “prepare a scheme”, insert instead “prepare
and implement a scheme or schemes”.

(b) Section 18 (1) (d)—

Omit “vary any scheme prepared”, insert instead
“vary, replace or cancel any scheme prepared or
implemented”.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—
continued.

(c) Section 18 (1) (h1)—

After section 18 (1) (h), insert :—

(h1) where an examination, a test or an analysis carried out on milk in the possession of any person indicates that that milk is deleterious to health, unwholesome or impure, by notice in writing served on that person, direct that person—

(i) not to supply any milk for consumption or use until such time as the Authority, in the like manner, withdraws that direction; and

(ii) to deal with or dispose of milk that would, but for that notice, have been so supplied in such manner as may be specified in the notice;

(d) Section 18 (1A)—

After section 18 (1), insert :—

(1A) The Authority may exercise any of its powers under subsection (1) (h), (h1) and (l), whether the matter or thing in respect of which the power is exercised is or is not in or of New South Wales.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—
continued.

(e) Section 18 (2)—

After “(h)”, insert “, (h1)”.

(2) Section 18A—

After section 18, insert :—

Inspection
of vehicles.

18A. (1) In this section—

“officer” means—

(a) an officer of the Authority; or

(b) any person authorised by the Health Commission of New South Wales constituted under the Health Commission Act, 1972, to act as an officer for the purposes of the Pure Food Act, 1908,

authorised by the Authority to be an officer for the purposes of this section;

“place” includes road, whether public or otherwise.

(2) An officer may, at any place, display a traffic sign of a type prescribed in such a manner as to be clearly visible to the driver or person in charge of a vehicle approaching that place.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—
continued.

(3) The driver or person in charge of a vehicle approaching towards a sign referred to in subsection (2) shall stop or cause the vehicle to be stopped within a reasonable distance of the sign and keep the vehicle stationary for the purposes of enabling an officer to exercise the powers conferred upon him by or under this or any other Act.

(4) An officer may, upon production of the prescribed evidence of his authority, if demanded—

- (a) inspect any vehicle, any milk in or on any vehicle and examine any books, documents, papers, scales, measures, appliances, apparatus, containers or utensils, referring to or used in connection with milk in or on any vehicle;
- (b) take, without payment, samples of any milk in or on any vehicle;
- (c) take notes, copies or extracts of or from any books, documents or papers referred to in paragraph (a); and
- (d) open any part of any vehicle or anything in or on any vehicle or require the driver or person in charge of any vehicle to open any part of it or anything in or on it for the purposes of paragraph (a), (b) or (c).

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—
continued.

(5) Any person who—

- (a) being the driver or person in charge of any vehicle fails to comply with or observe the requirements of subsection (3); or
- (b) refuses or wilfully neglects to submit any vehicle, any part of a vehicle or anything in or on a vehicle to inspection by an officer in pursuance of this section, or who, being the driver or person in charge of a vehicle refuses or wilfully neglects to open any part of it or anything in or on it,

is guilty of an offence against this Act.

(6) In this section, “milk” includes milk that is not New South Wales milk.

(3) Section 19 (2)—

At the end of section 19, insert :—

(2) The Authority may exercise any of its powers under subsection (1) (other than the acquisition of undertakings in accordance with Division 2 of Part VI), whether the matter or thing in respect of which the power is exercised is or is not in or of New South Wales.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—
continued.

(4) (a) Section 33 (6) (b)—

Omit “and”.

(b) Section 33 (6) (c), (d), (e)—

Omit section 33 (6) (c), insert instead :—

- (c) conditions requiring the holder of the certificate to subject milk treated, deposited, stored, distributed, supplied or sold by him to such treatment as is specified in the certificate;
- (d) conditions requiring the holder of the certificate to permit the Authority or an officer within the meaning of section 18A to exercise, in relation to that holder's activities as a dairyman or milk vendor, any of the powers that the Authority or such an officer may exercise under section 18 (1) (b), 18 (1) (c) or 18A (4); and
- (e) such other conditions as the Authority deems necessary for the purpose of carrying out or giving effect to any of the provisions of this Act.

(5) (a) Section 34 (1) (a)—

Omit the paragraph, insert instead :—

- (a) if he has been convicted of two or more offences against any laws of any State or Territory of the Commonwealth, or of

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—
continued.

the Commonwealth, in relation to the production, treatment, storage, distribution, supply or sale of milk ;

(b) Section 34 (1A)—

After section 34 (1), insert :—

(1A) The Authority may cancel the certificate of registration issued to any person if that person fails to comply with any condition to which that certificate is subject.

(6) Section 34A—

Before the heading to Division 4 of Part III, insert :—

Interstate
milk
vendors.

34A. (1) A person carrying on the activity or a person who proposes to carry on the activity of—

- (a) pasteurising, sterilising or otherwise treating milk ; or
- (b) depositing, storing, distributing, supplying or selling milk,

for distribution, supply or sale in New South Wales in the course of trade, commerce or intercourse among the States (whether that distribution, supply or sale is by himself or by another person) may, notwithstanding that that activity—

- (c) is, or is to be, carried on outside New South Wales ; or

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—
continued.

- (d) is, or is to be, carried on in respect of milk
that is not New South Wales milk,

apply in the manner provided by section 33 (3) for
a certificate of registration.

(2) The Authority may determine an appli-
cation authorised by subsection (1) in respect of an
activity in the like manner as it may determine an
application made by a person carrying on or proposing
to carry on the same activity in New South Wales or
in respect of New South Wales milk, as the case may
be.

(3) In respect of an application referred to
in subsection (1), and a certificate of registration
issued as a result of such an application, section 34
shall be read as if—

- (a) the words “in the opinion of the Authority”,
wherever occurring, were omitted from
subsection (1);
- (b) the words “either of the grounds specified
in paragraph (a) or (b) of” were omitted
from subsection (2) and the words “the
ground specified in subsection (1A) or any
of the grounds specified in” were inserted
instead; and

Dairy Industry Authority (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—
continued.

- (c) subsections (3), (4) and (5) were omitted and the following subsections were inserted instead :—

(3) A person dissatisfied with the Authority's decision—

- (a) to issue him with a certificate of registration as a milk vendor that authorises him to carry on only such activities as a milk vendor as are specified in the certificate;
- (b) to issue him with a certificate of registration as a milk vendor subject to conditions; or
- (c) to vary the conditions to which his certificate of registration as a milk vendor is subject or to impose conditions or additional conditions to which that certificate is to be subject,

and a person—

- (d) notified pursuant to subsection (2); or
- (e) whose application for a certificate of registration as a milk vendor has been refused upon any of the grounds specified in subsection (1),

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—
continued.

may in the manner, and within a time prescribed, appeal against the decision, or the cancellation or refusal, to a court of petty sessions held before a stipendiary magistrate.

(4) Subject to subsection (5), a court of petty sessions to which an appeal is made under this section shall hear and determine the appeal.

(5) An appeal against a decision of a court of petty sessions under this section may be made to the Supreme Court.

(6) A court shall not allow an appeal made under this section if—

- (a) in the case of an appeal against a decision referred to in subsection (3) (a), (b) or (c), it was reasonably necessary in the interest of public health for that decision to be made; or
- (b) in the case of an appeal against the cancellation or refusal of a certificate of registration, that cancellation or refusal was reasonably necessary in the interest of public health.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO PART III OF THE PRINCIPAL ACT—
continued.

(7) (a) Section 35 (1)—

Omit “As on and from a day to be appointed by the Governor and notified by proclamation published in the Gazette (being a day after the day appointed and notified under subsection two of section one of this Act), any”, insert instead “Any”.

(b) Section 35 (1) (a)—

Omit “within the meaning of the Pure Food Act, 1908, and the regulations made under that Act”, insert instead “or sterilised”.

(c) Section 35 (1A), (1B)—

After section 35 (1), insert :—

(1A) As on and from a day to be appointed by the Governor and notified by proclamation published in the Gazette (being a day not earlier than the date of publication of the proclamation in the Gazette), any person who sells, otherwise than to a milk vendor or to a dairy produce factory within the meaning of the Dairy Industry Act, 1915, milk that has not been pasteurised or sterilised by the holder of a certificate of registration under this Part that authorises that holder to carry on the activity of pasteurising or sterilising, as the case may be, milk, is guilty of an offence against this Act.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—
continued.

(1B) As on and from a day to be appointed by the Governor and notified by proclamation published in the Gazette (being a day not earlier than the date of publication of the proclamation in the Gazette), any person who sells, otherwise than to a milk vendor or to a dairy produce factory within the meaning of the Dairy Industry Act, 1915, packaged or bottled milk that has not been packaged or bottled, as the case may be, by the holder of a certificate of registration under this Part that authorises that holder to carry on the activity of packaging or bottling, as the case may be, milk, is guilty of an offence against this Act.

(d) Section 35 (3)—

After section 35 (2), insert :—

(3) In this section, “milk” includes milk that is not New South Wales milk.

SCHEDULE 3.

Sec. 5.

REPEAL OF PART IV OF THE PRINCIPAL ACT.

Part IV—

Omit the Part.

SCHEDULE

Dairy Industry Authority (Amendment).

Sec. 5.

SCHEDULE 4.

INSERTION OF PART IVA INTO THE PRINCIPAL ACT.

Part IVA—

Before Part V, insert :—

PART IVA.

INVESTIGATION OF COMPLAINTS BY DAIRYMEN.

Interpre-
tation:
Pt. IVA.

41A. In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“conduct” means—

(a) any conduct; or

(b) any conduct of a class,

from time to time prescribed;

“investigation” means investigation by the Special Officer;

“Special Officer” means the Special Officer referred to in section 41B.

Special
Officer.

41B. (1) There shall be a Special Officer who shall have and may exercise and discharge the powers, authorities, duties and functions conferred or imposed upon him by or under this Part.

(2) The Special Officer shall be the person who is the Director-General of the Department of Agriculture for the purposes of the Public Service Act, 1902, or an officer of the Department of Agriculture from time to time nominated by him.

(3) The Special Officer shall not, as the Special Officer, be subject to the Public Service Act, 1902.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IVA INTO THE PRINCIPAL ACT—
continued.

41C. (1) Subject to this section, any dairyman may ^{Complain.} complain to the Minister about the conduct of the Authority in so far as that conduct affects that dairyman.

(2) A complaint under this section shall be in writing and shall provide details of the conduct complained of, the remedy or relief sought and the reasons why the remedy or relief should be granted or provided.

41D. (1) Where any dairyman has complained to the Minister pursuant to this Part, the Minister may ^{Action on} make ^{complaint.} that complaint the subject of an investigation.

(2) Where the Minister refuses to make a complaint the subject of an investigation, he shall inform the complainant in writing of the decision and the reasons for the decision.

(3) Where a complaint is made the subject of an investigation, the Minister shall give notice in writing of his decision—

- (a) to the complainant;
- (b) to the Special Officer; and
- (c) to the Authority.

(4) A notice under subsection (3) (b) or (c) shall contain a copy of the complaint.

(5) The Minister may, before deciding whether to make any conduct complained of the subject of an investigation, seek such information as he may require from the Authority or the complainant.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 4—*continued.*INSERTION OF PART IVA INTO THE PRINCIPAL ACT—
*continued.***Investi-
gation.**

41E. (1) Where the Special Officer receives a notice referred to in section 41D (3) concerning a complaint he shall carry out an investigation of the conduct the subject of the complaint.

(2) An investigation shall be made in the absence of the public.

(3) For the purposes of an investigation, the Special Officer may require the Authority—

- (a) to give him a statement of information;
- (b) to produce to him any document or other thing;
- (c) to give him a copy of any document; and
- (d) to answer any question.

(4) A requirement under subsection (3) shall be in writing and shall specify or describe the information, document or thing required, or the question to be answered, and shall fix a time for compliance.

(5) The Authority shall comply with a requirement of the Special Officer pursuant to subsection (3) unless the Minister, of his own motion or at the request of the Authority, sets aside that requirement.

(6) This Part does not enable the Special Officer to require the Authority—

- (a) to give any statement of information;
- (b) to produce any document or other thing;
- (c) to give a copy of any document; or

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 4—*continued.*

INSERTION OF PART IVA INTO THE PRINCIPAL ACT—
continued.

(d) to answer any question,
which relates to conduct of business at meetings of the
Authority or proceedings of cabinet or any committee of
cabinet.

(7) In an investigation, the Special Officer
shall, if requested by the Minister, consult him on the
conduct the subject of the investigation.

41F. Where, in an investigation, the Special Officer considers that there are grounds for adverse comment in respect of the Authority, or any member, officer or employee of the Authority, the Special Officer, before making any such comment in any report or recommendation to the Minister, shall, so far as is practicable—

Persons to
be heard.

- (a) inform the Authority or that person of the substance of the grounds for adverse comment;
and
- (b) give the Authority or that person an opportunity to make submissions.

41G. (1) After an investigation under this Part the Special Officer shall make a recommendation to the Minister.

Action
following
investi-
gation.

(2) Subject to the provisions of this Act, the Minister, after considering a recommendation of the Special Officer, may decide to take such action or direct that such action be taken as he thinks fit in respect of that recommendation.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 4—*continued.*INSERTION OF PART IV^A INTO THE PRINCIPAL ACT—
continued.

(3) Where the Minister has decided to take action or direct that action be taken that is inconsistent with the conduct the subject of a complaint, he shall notify the Authority of the grounds upon which he proposes to take, or direct the taking of, that action.

(4) The Authority, when notified pursuant to subsection (3) in respect of a complaint, may make submissions to the Minister.

(5) The Minister may vary a decision referred to in subsection (3) after considering any submissions made by the Authority in respect of that decision.

(6) Except as provided in subsection (7), the Minister shall advise a complainant in writing of his decision under subsection (2) and give effect to that decision.

(7) Where the Minister's decision is a decision referred to in subsection (3), he shall, after consideration of any submissions made by the Authority—

- (a) advise the complainant in writing of that decision, or of that decision as varied pursuant to subsection (5); and
- (b) give effect to that decision, or that decision as so varied.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 5.

Sec. 5.

AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

(1) (a) Section 42 (2), (3)—

Omit the subsections, insert instead :—

(2) After the commencement of Schedule 5 to the Dairy Industry Authority (Amendment) Act, 1977, the Tribunal shall consist of 3 members appointed by the Minister, of whom—

- (a) one shall be appointed as the Chairman of the Tribunal;
- (b) one shall be appointed to represent the Authority; and
- (c) one shall be appointed to represent consumers of milk.

(3) A member, officer or employee of the Authority shall not be appointed as a member of the Tribunal pursuant to subsection (2) (c), or as the deputy of a member of the Tribunal appointed pursuant to subsection (2) (c).

(b) Section 42 (4)—

Omit “an appointed”, insert instead “a”.

(c) Section 42 (5)—

Omit “an appointed”, insert instead “a”.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—
continued.

(d) Section 42 (6), (7), (7A)—

Omit the subsections, insert instead :—

(6) Where a vacancy occurs in the office of a member of the Tribunal, otherwise than by reason of the expiration of that member's term of office, that term of office shall be deemed to have expired.

(7) A person who is of or above the age of 70 years shall not be appointed as a member of the Tribunal.

(e) Section 42 (9)—

Omit the subsection.

(f) Section 42 (10)—

Omit the subsection, insert instead :—

(10) Each member of the Tribunal shall receive such fees for attending meetings of the Tribunal and such allowances as the Minister may from time to time determine in respect of him.

(g) Section 42 (11)—

Omit "An appointed", insert instead "A".

(h) Section 42 (11) (d)—

Omit the paragraph.

(i) Section 42 (11) (f), (f1)—

Omit the paragraphs, insert instead :—

(f) if he attains the age of 70 years; or

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 5—*continued.*

AMENDMENTS TO PART V OF THE PRINCIPAL ACT—
continued.

(j) Section 42 (12)—

Omit “appointed”.

(k) Section 42 (13)—

Omit “an appointed”, insert instead “a”.

(2) (a) Section 46 (3) (b)—

Omit “and”.

(b) Section 46 (3) (c), (d)—

Omit section 46 (3) (c), insert instead :—

(c) shall, if the Minister so directs, hold in the manner prescribed, a public inquiry and shall have regard to any information received during that inquiry; and

(d) may have regard to such other information as the Tribunal considers it necessary or desirable to have regard.

(c) Section 46 (4)—

After “investigation”, insert “or holding an inquiry”.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 5—*continued.*AMENDMENTS TO PART V OF THE PRINCIPAL ACT—
continued.

(3) Section 48A—

After section 48, insert :—

Prices not
to be fixed
under other
Acts, etc.

48A. (1) Notwithstanding the provisions of any other Act or of any regulations, rules or by-laws under any other Act, whether passed or made before or after the date of commencement of Schedule 5 to the Dairy Industry Authority (Amendment) Act, 1977, any price that may be fixed under this Part shall not be fixed otherwise than under this Part.

(2) Subsection (1) shall not, before a price is fixed in respect of a thing under this Act, affect any price fixed under any other Act or under any regulations, rules or by-laws under any other Act in respect of that thing.

(3) Any price fixed in respect of a thing under any other Act or under any regulations, rules or by-laws under any other Act shall, on the fixing of a price in respect of that thing under this Act, cease to have effect.

(4) Section 51—

Omit “the member of the Tribunal referred to in paragraph (c) of subsection two of section forty-two of this Act”, insert instead “members of the Tribunal”.

SCHEDULE

Dairy Industry Authority (Amendment).

SCHEDULE 6.

Sec. 5.

AMENDMENTS TO PART IX OF THE PRINCIPAL ACT.

(1) Section 89 (1) (e1)—

After section 89 (1) (e), insert :—

(e1) the treatment of milk by holders of certificates
of registration;

(2) Section 89 (3)—

After “(b)”, insert “, (e1)”.
