



New South Wales

Dairy Industry Act 2000 No 54

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New South Wales

Dairy Industry Act 2000 No 54

Act No 54, 2000

An Act to constitute the New South Wales Dairy Industry Conference; to confer certain functions on Safe Food Production NSW with respect to the dairy industry; to repeal the *Dairy Industry Act 1979* in connection with the deregulation of the dairy industry; to make related amendments to other Acts; and for other purposes.
[Assented to 30 June 2000]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Dairy Industry Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

Conference means the New South Wales Dairy Industry Conference constituted by this Act.

dairy product has the same meaning as it has in the *Food Production (Safety) Act 1998*.

exercise a function includes perform a duty.

function includes a power, authority or duty.

milk has the same meaning as it has in the *Food Production (Safety) Act 1998*.

Safe Food means Safe Food Production NSW constituted by the *Food Production (Safety) Act 1998*.

treatment of milk includes the examination, cleansing, pasteurisation, processing by means of an ultra heat treatment method, modification, homogenisation, separation, sterilisation, alteration or manufacture into another form of milk or into a dairy product, packaging, testing, analysing, grading, cooling, refrigerating, bottling and packing of the milk.

Part 2 The New South Wales Dairy Industry Conference

4 Constitution of Conference

- (1) There is constituted by this Act a body corporate with the corporate name of the New South Wales Dairy Industry Conference.
- (2) The Conference is not, and does not represent, the Crown.

5 Functions of Conference

- (1) The Conference has such functions as are conferred or imposed on it by or under this or any other Act.
- (2) In particular, the Conference has the following functions:
 - (a) to carry out investigations or inquiries into the general policies of Safe Food with respect to the dairy industry and any other aspect of the dairy industry that it thinks fit,
 - (b) to report to and advise the Minister on any matter referred to in paragraph (a),
 - (c) to consult with Safe Food on food safety schemes relating to the dairy industry under the *Food Production (Safety) Act 1998*.

6 Minister must consider reports and advice

- (1) The Minister must consider any reports or advice furnished by the Conference under section 5 and take such action (if any) in the matter as the Minister considers appropriate.
- (2) Without affecting the generality of subsection (1), the Minister may, in relation to any report or advice concerning the general policies of Safe Food with respect to the dairy industry:
 - (a) forward the report or advice to Safe Food for consideration, or
 - (b) pursuant to section 10 of the *Food Production (Safety) Act 1998*, give such directions to Safe Food in respect of the matter as the Minister considers appropriate.

7 Members of Conference

- (1) The Conference is to consist of the following persons:
 - (a) the persons elected or appointed pursuant to the regulations under section 8,

- (b) one person appointed by the Minister, being a person who is nominated by the Minister for Fair Trading to represent consumers of milk and dairy products,
 - (c) one person appointed by the Minister, being a person who is nominated by the Minister for Fair Trading to represent employees in the dairy industry,
 - (d) the General Manager of the Dairy Division of Safe Food.
- (2) The General Manager of the Dairy Division of Safe Food is to be an ex officio member and may not vote at a meeting of the Conference.

8 Constitution and procedure of Conference

Except as otherwise provided by this Act, the regulations may make provision for or with respect to the following:

- (a) the number of members of the Conference,
- (b) the method of, and qualification for, election or appointment of those members,
- (c) the terms of office of those members,
- (d) the Chairperson and Deputy Chairperson of the Conference,
- (e) the procedure for the calling of meetings of the Conference and for the conduct of business at those meetings,
- (f) any other matter relating to the constitution or procedure of the Conference.

9 Staff of Conference

- (1) The Conference may employ such staff as may be necessary to assist it in the exercise of its functions.
- (2) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of any such staff.
- (3) The Conference may engage such consultants and contractors as may be necessary or convenient to exercise any of the functions of the Conference.
- (4) The Conference may not employ or engage more persons than the number of persons for the time being approved by the Minister for the purposes of this section.

10 Financial provisions

- (1) Safe Food may, out of its funds, make grants to the Conference for the purposes of paying:
 - (a) the remuneration of staff of the Conference or consultants or contractors engaged by the Conference, and
 - (b) the fees for the Chairperson of the Conference for attending meetings.
- (2) The Conference may enter into arrangements with persons or bodies engaged in, or representing persons engaged in, the dairy industry for contributions to the other costs and expenses of the Conference.

Part 3 Dairy industry functions of Safe Food

11 General services relating to dairy industry

- (1) Safe Food may:
 - (a) establish and maintain laboratories and carry out research and make investigations into matters relating to milk and dairy products (including chemical, physical, bacteriological and economic research and investigations), and
 - (b) carry out examinations, tests or analyses of milk or dairy products, and
 - (c) publish reports, information and advice concerning the production, collection, treatment, carriage, storage, distribution, delivery, supply, use or sale of milk or dairy products, and
 - (d) promote and encourage the production, supply, use, sale or consumption of milk or dairy products.
- (2) Without limiting subsection (1), Safe Food may provide services relating to the quality of milk or dairy products.

12 Promotional activities

- (1) Safe Food has, and is taken always to have had, power to enter into agreements for the use, within the State or elsewhere, of any trade mark of which it is, or is entitled to be, registered as proprietor.
- (2) Safe Food may, with the approval of the Minister, establish a committee to furnish advice with respect to the promotion and encouragement of the production, supply, use, sale or consumption of milk and dairy products.
- (3) A committee established under this section is to consist of such persons as are approved by the Minister.
- (4) Safe Food may, from the funds of Safe Food, pay a member of the committee such fees for attending meetings of the committee, and such expenses and allowances, as the Minister from time to time determines in respect of that member.
- (5) A committee established under this section must, at such times as Safe Food may direct, report to the Conference on its work and activities.

13 Fees

- (1) A charge or fee for the supply of a service, product or commodity, or the furnishing of information, by Safe Food may be fixed by regulation, or if there is no charge or fee so fixed, by order of Safe Food, subject to the maximum (if any) fixed by the regulations.
- (2) In the regulations or in any such order provision may be made requiring a deposit or prepayment in respect of any such charge or fee.
- (3) Different charges or fees may be fixed according to such circumstances or factors as are specified in the regulation or order.
- (4) The charge or fee must be paid to Safe Food by the person to whom or at whose request the service, product, commodity or information is supplied or furnished.

Part 4 Provisions relating to deregulation of dairy industry

14 No compensation for deregulation

- (1) The purpose of this section is to exclude the payment of compensation for deregulation of the dairy industry by or on behalf of the Crown.
- (2) Compensation for deregulation is:
 - (a) compensation because of the enactment or operation of this Act, including the repeal of provisions of the *Dairy Industry Act 1979*, or for any consequence of that enactment or operation, or
 - (b) compensation because of the implementation, operation, cancellation or variation of any scheme under section 9 (1) (g) of the *Dairy Industry Act 1979* or for any consequence of that implementation, operation, cancellation or variation, or
 - (c) compensation because of any statement or conduct relating to a matter referred to in paragraph (a) or (b) or to the deregulation of the dairy industry in connection with any such matter.
- (3) Compensation for deregulation is not payable by or on behalf of the Crown.
- (4) This section applies to or in respect of any event, act, omission, statement or conduct whether occurring before or after the commencement of this section.
- (5) In this section:

compensation includes damages or any other form of monetary compensation.

conduct includes a representation of any kind:

 - (a) whether made verbally or in writing, and
 - (b) whether negligent, false, misleading or otherwise.

private subsidiary corporation has the same meaning as it has in the *Food Production (Safety) Act 1998*, and includes a private subsidiary corporation within the meaning of the *Dairy Industry Act 1979*.

the Crown means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes:

- (a) Safe Food, the Conference or a private subsidiary corporation,
- (b) the Chief Executive Officer or a member of the Conference,
- (c) an officer, employee or agent of the Crown, Safe Food, the Conference or any such subsidiary corporation.

Part 5 Financial matters

15 Funding of operations of Safe Food

Safe Food is to ensure, as far as is reasonably practicable, that money received by Safe Food:

- (a) under this Act, or
- (b) under section 70 of the *Dairy Industry Act 1979* before the commencement of this Act, or
- (c) from interests in private corporations acquired under the *Food Production (Safety) Act 1998* (whether those interests were acquired before or after that commencement),

is used for the purposes of the carrying out of its functions under this Act or in connection with any food safety scheme (within the meaning of the *Food Production (Safety) Act 1998*) relating to the dairy industry.

16 Fund to be established

All money received under this Act by Safe Food or its officers or employees, and all money appropriated by Parliament for the purposes of the functions of Safe Food, under this Act is to go to form a fund out of which may be paid:

- (a) the expenses of the Conference, and
- (b) all expenses of Safe Food in the carrying out of its functions under this Act.

17 Recovery of charges, fees and other money

Any charge, fee or money due to Safe Food under this Act is recoverable by Safe Food as a debt.

Part 6 Miscellaneous

18 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

19 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

20 Authority to take proceedings

- (1) Any information, complaint or other legal proceeding under this Act may be laid or taken in the name of Safe Food by the Chief Executive Officer or by any other officer authorised by Safe Food in that behalf either generally or in any particular case.
- (2) In any proceedings the production of a notification in the Gazette that any person has been so authorised is conclusive evidence of the authority and evidence that the authority to act remains in force.
- (3) The Chief Executive Officer or other officer of Safe Food must, out of the funds of Safe Food, be reimbursed all damages, costs, charges and expenses to or with which the Chief Executive Officer or other officer is put or becomes chargeable because of anything contained in subsection (1).

21 Service of proceedings on Safe Food

Any summons, writ or other proceeding to be served on Safe Food under this Act may be served by being served on the Chief Executive Officer.

22 Evidence

In any proceedings in any court or before any persons having by law or consent of parties authority to hear, receive and examine evidence, a certificate purporting to be signed by the Chief Executive Officer certifying that a person has been appointed as the delegate of Safe Food for the purposes of this Act and specifying what functions of Safe Food were delegated to the person and the period during which the person was a delegate is prima facie evidence of the facts stated in it.

23 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) the forms of instruments to be used for the purposes of this Act and the fees payable in connection with any such instrument,
 - (b) the functions of Safe Food with respect to the dairy industry.
- (3) The regulations may create offences punishable by a penalty not exceeding 5 penalty units.

24 Repeal of Dairy Industry Act 1979 No 208

The *Dairy Industry Act 1979* is repealed on and from 1 January 2001.

25 Amendment of Acts

The Acts specified in Schedule 1 are amended as set out in that Schedule.

26 Savings and transitional provisions

Schedule 2 has effect.

Schedule 1 Amendment of Acts

(Section 25)

1.1 Agricultural Tenancies Act 1990 No 64

Schedule 1 Improvements that a tenant may make as of right

Omit “*Dairy Industry Act 1979*” from item 10.

Insert instead “*Food Production (Safety) Act 1998*”.

1.2 Dairy Industry Act 1979 No 208

[1] Section 5A

Insert after section 5:

5A Provisions of Act to have no effect

- (1) A provision of this Act (other than this section) has no effect unless a proclamation is made by the Governor under this section.
- (2) The Governor may, by proclamation, declare that provisions of this Act have effect.
- (3) A proclamation made under this section may do any one or more of the following:
 - (a) declare that a provision or provisions of this Act have effect,
 - (b) modify the operation of any such provision.
- (4) A proclamation under this section may be amended or repealed by a further proclamation.
- (5) A provision of this Act that is given effect to by a proclamation under this section is to be read subject to the modifications, if any, set out in the proclamation.

- [2] Section 6, Part 1A, Division 2 of Part 2, Divisions 1, 1A and 2 of Part 4, sections 54 (1) (b), (d), (d1) and (e) and (2) (b) and 60D, Parts 6 and 7, Division 2A of Part 8, section 97 and Schedule 5.**

Omit the provisions.

- [3] Section 54 Price for milk to be fixed by Safe Food:**

Omit “, different maximum retail prices, different minimum and maximum retail prices or different fixed retail prices under subsection (1) (c), (d), (d1) or (e) respectively” from section 54 (2) (c).

Insert instead “under subsection (1) (c)”.

- [4] Section 103 Regulations**

Omit section 103 (1) (a), (b), (c), (i), (o), (s), (t) and (u).

- [5] Section 103 (5)**

Omit the subsection.

1.3 Fair Trading Act 1987 No 68

- [1] Schedule 1 Paramount legislation**

Omit “*Dairy Industry Act 1979*”.

Insert instead “*Dairy Industry Act 2000*”.

- [2] Schedule 2 Acts prohibiting or regulating the supply of goods**

Omit “*Dairy Industry Act 1979*”.

1.4 Food Production (Safety) Act 1998 No 128

- [1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

dairy product means any food, not being milk, in the production of which:

- (a) milk is used, or
- (b) any substance produced from milk is used.

milk includes:

- (a) any liquid, and
- (b) any liquid of a class,

for the time being described in Schedule 2.

private corporation means a corporation within the meaning of the *Corporations Law*.

private subsidiary corporation means a private corporation in which either Safe Food or the New South Wales Dairy Industry Conference has a controlling interest.

[2] Section 3A

Insert after section 3:

3A Amendment of Schedule 2 (meaning of milk)

The Governor may, from time to time, by regulation, amend Schedule 2 by adding or removing the description of any liquid, or any class of liquids, specified in the regulation.

[3] Section 5 Application of Act to retail premises and primary produce or seafood not intended for sale

Omit the definitions of *dairy products* and *milk* from section 5 (4).

[4] Sections 15A, 15B and 15C

Insert after section 15:

15A Private corporations

- (1) Safe Food may, subject to subsection (2):
 - (a) form, or participate in the formation of, private corporations, and
 - (b) acquire interests in private corporations, and

- (c) sell or otherwise dispose of interests in private corporations,

whether or not the activities or proposed activities of any such private corporation are related to food safety.

- (2) Safe Food must not, without the approval of the Minister:
 - (a) form or participate in the formation of, a private subsidiary corporation, or
 - (b) acquire an interest in a private corporation so that, as a result of the acquisition, the corporation becomes a private subsidiary corporation, or
 - (c) sell or otherwise dispose of any interest in a private subsidiary corporation so that, as a result of the sale or disposal, it ceases to be a private subsidiary corporation.
- (3) The New South Wales Dairy Industry Conference also has the functions conferred on Safe Food by this section. Those functions may be exercised jointly with Safe Food.
- (4) A private subsidiary corporation is not, and does not represent, the Crown.

15B Funding of private subsidiary corporations

- (1) Safe Food may, out of its funds:
 - (a) pay for the formation of a private corporation, or for other costs incurred, under section 15A, and
 - (b) with the approval of the Minister, make grants of money to a private subsidiary corporation for use in the exercise of its functions.
- (2) Safe Food may, with the approval of the Minister, transfer any of its assets to a private subsidiary corporation.
- (3) Safe Food may provide a private subsidiary corporation with information in relation to milk or dairy products or other products given confidentially to Safe Food.
- (4) A private subsidiary corporation provided with information under this section, and the directors and employees of the corporation, are each subject to the same requirements as Safe Food in relation to the confidentiality of the information.

- (5) A private subsidiary corporation which, or a director or employee who, is guilty of a breach of the confidentiality imposed by this section is guilty of an offence against this Act.

Maximum penalty: 20 penalty units, or 6 months imprisonment, or both.

15C Delegation to private subsidiary corporations

The persons to whom Safe Food may delegate its functions under this or any other Act include private subsidiary corporations.

[5] Section 16 Establishment of Safe Food Production Advisory Committee

Omit section 16 (3) (i).

[6] Section 16 (3A)

Insert after section 16 (3):

- (3A) Of the members of the Advisory Committee, one must be a person who has expertise in the handling or selling of primary produce or seafood.

[7] Section 17 Functions of Advisory Committee

Insert after section 17 (c):

- (d) to consider, and make recommendations to the Minister about, the funding of Safe Food's functions under this or any other Act.

[8] Section 19 Regulations relating to establishment of food safety schemes

Insert after section 19 (2) (r):

- (ra) requiring the collection of licence fees and charges on behalf of Safe Food and the remission of any such fees or charges to Safe Food,
- (rb) the deduction of licence fees and other charges owed to Safe Food from amounts otherwise payable to the person liable for the fees or charges,

- (rc) the liability of persons with respect to amounts for licence fees or other charges collected on behalf of Safe Food,

[9] Section 19 (2A)

Insert after section 19 (2):

- (2A) Without limiting subsection (2) (g), the regulations may permit Safe Food to impose conditions of the following kinds on licences issued under a food safety scheme:
 - (a) a condition prohibiting the passing on of costs related to licences, or other fees charged under this Act, to another person subject to licence or other fees under this Act,
 - (b) a condition requiring a person licensed under this Act to collect on behalf of Safe Food licence fees or other charges payable by another person under this Act and to remit those fees or charges to Safe Food.

[10] Section 57 Industry levies

Insert after section 57 (3):

- (4) Nothing in this section prevents a cost of a kind referred to in this section from being covered by a licence fee charged under a food safety scheme.

[11] Section 70 Regulations

Omit section 70 (2) (c). Insert instead:

- (c) fees or charges for the purposes of a food safety scheme, including (but not limited to) licence fees and fees or charges for the provision of services to applicants for licences and licence holders,

[12] Section 70 (2A) and (2B)

Insert after section 70 (2):

- (2A) A regulation for or with respect to licence fees or other fees or charges charged for the purposes of a food safety scheme may enable Safe Food to determine a licence fee or other fee or charge or the basis on which a fee or charge is to be determined.
- (2B) Without limiting subsections (2) (c) and (2A), a licence fee established by or under a food safety scheme may cover the following matters:
 - (a) a fee for participation in the industry covered by the scheme,
 - (b) the costs of Safe Food in administering the food safety scheme and other related provisions of this Act.
- (2C) Without limiting subsections (2) (c) and (2A), a fee or charge (other than a licence fee) established by or under a food safety scheme may cover the following matters:
 - (a) the costs of the processing of applications for licences and for the grant or renewal of licences,
 - (b) other costs of providing services to applicants for licences and licence holders (whether or not the provision of the service is requested or agreed to),
 - (c) a commercially appropriate profit in relation to the provision of services by Safe Food.

[13] Section 71 Amendment of other Acts

Omit section 71 (1).

[14] Schedule 2

Omit the Schedule. Insert instead:

Schedule 2 Milk

(Section 3 (1))

Skim milk

Milk for separation into skim milk

Milk or skim milk that has been treated for the purpose of pasteurising or sterilising the milk or skim milk, whether or not the pasteurisation or sterilisation is complete

Milk that has been treated for the purpose of homogenising the milk, whether or not the homogenisation is complete

Ultra heat treated milk, or milk that has been treated by an ultra heat treatment method, whether or not the treatment is complete

Ultra heat treated skim milk, or skim milk that has been treated by an ultra heat treatment method, whether or not the treatment is complete

Any liquid fitting the description of modified milk as contained in clause (14) (a) Standard H1 of the Food Standards Code

Any liquid fitting the description of flavoured liquid milk products as contained in clause (15) (a) Standard H1 of the Food Standards Code

[15] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Dairy Industry Act 2000

1.5 Search Warrants Act 1985 No 37

Section 10 Definitions

Omit the matter relating to the *Dairy Industry Act 1979* from the definition of *search warrant*.

Schedule 2 Savings and transitional provisions

(Section 26)

1 Definitions

In this Schedule:

former Act means the *Dairy Industry Act 1979*.

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

3 References to Act

A reference in any Act (other than this Act) or in any instrument made under any Act to the *Dairy Industry Act 1979* is to be read as a reference to or including this Act.

4 Members of Conference

- (1) A person who, immediately before the repeal of Part 1A of the former Act, held office as a member of the Conference ceases to hold office on that repeal.

- (2) A member who ceases to hold office because of this clause is not entitled to any remuneration or compensation because of so ceasing to hold office but is eligible (if otherwise qualified) to be reappointed as a member of the Conference.

5 Continuation of Dairy Industry Conference Regulation 1999

- (1) The *Dairy Industry Conference Regulation 1999*, as in force immediately before the repeal of Part 1A of the former Act, continues in force and is taken to be a regulation made under this Act.
- (2) The *Dairy Industry Conference Regulation 1999* may be amended and repealed in the same way as any other regulation made under this Act.

6 Assets, rights and liabilities of Conference

The assets, rights and liabilities of the Conference constituted under Part 1A of the former Act are, on and from the repeal of that Part, transferred to the Conference constituted under this Act.

7 Cancellation of milk quota schemes

Any scheme established under section 9 (1) (g) of the former Act is cancelled on and from 1 July 2000.

8 Registration certificates under former Act

- (1) A person who was, immediately before the commencement of this clause, the holder of a certificate of registration under the former Act as a dairy farmer or dairy produce merchant is taken to be the holder of a dairy farmer's licence or dairy produce merchant's licence under the *Food Production (Dairy Food Safety Scheme) Regulation 1999*.
- (2) A person who is taken to be the holder of a licence is liable to pay any licence fee or other charge under the *Food Production (Dairy Food Safety Scheme) Regulation 1999* that would be payable by a person issued any such licence under that regulation and in force from 1 July 2000.
- (3) The licence ceases to be in force on 1 July 2001 unless it is earlier cancelled under the *Food Production (Dairy Food Safety Scheme) Regulation 1999*.

9 Promotional activities

- (1) An agreement entered into under section 14 (1A) of the former Act, and having effect immediately before the repeal of that provision, is taken to be an agreement entered into under section 12.
- (2) A committee established under section 14 of the former Act continues in force and is taken to be a committee established under section 12.

10 Compensation provisions

Nothing in this Act affects the operation of section 35F of the former Act, as in force immediately before its repeal, and section 35F continues to apply to or in respect of liability for compensation as if it had not been so repealed.

11 Private and subsidiary corporations

- (1) A private corporation established, or an interest in a private corporation acquired, under section 91B of the former Act is taken to have been established or acquired under section 15A of the *Food Production (Safety) Act 1998*.
- (2) An approval given under section 91C (2) of the former Act, and in force immediately before the repeal of that provision, is taken to have been given under section 15B (2) of the *Food Production (Safety) Act 1998*.

12 Delegations to private subsidiary corporation

- (1) A delegation in force under section 91D of the former Act immediately before the repeal of that provision is taken to have been given under section 15C of the *Food Production (Safety) Act 1998* and continues to have effect as if it had been given under this Act.
- (2) Subclause (1) applies only to the extent to which a delegation relates to a function that is of the same kind as a function that Safe Food has under this Act.

[Minister's second reading speech made in—
Legislative Assembly on 1 June 2000
Legislative Council on 20 June 2000]

BY AUTHORITY