

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

DAIRY LEGISLATION AMENDMENT BILL 1985

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1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 9 May 1985

(Minister for Primary Industry)

A BILL

FOR

An Act relating to the dairy industry

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Dairy Legislation Amendment Act 1985*.

Commencement

2. This Act shall come into operation on 1 July 1985.

PART II—AMENDMENTS OF DAIRY PRODUCE ACT 1924

Principal Act

- 10 3. The *Dairy Produce Act 1924*¹ is in this Part referred to as the Principal Act.

Interpretation**4. (1) Section 3 of the Principal Act is amended—**

- (a) by omitting the definition of “approved bank” and substituting the following definition:

“ ‘approved bank’ means the Reserve Bank of Australia, a trading bank as defined in sub-section 5 (1) of the *Banking Act 1959* or another bank approved by the Treasurer, or by a person authorized by the Treasurer to give approvals for the purposes of this definition, to be an approved bank;”;

- (b) by omitting the definitions of “dairy industry”, “dairy produce” and “dairy products” and substituting the following definitions:

“ ‘dairy industry’ means industry in Australia that is concerned with the production, processing, manufacture, distribution and sale (whether for export or otherwise) of dairy produce;

‘dairy produce’ means—

(a) milk; and

(b) such products made from or containing milk or a constituent part of milk—

(i) as are declared by the regulations to be dairy produce for the purposes of this Act; or

(ii) as are determined by the Corporation to be dairy produce for the purposes of this Act;”;

- (c) by inserting after the definition of “deputy member” the following definitions:

“ ‘futures contract’ means a currency futures contract or a financial futures contract;

‘futures market’ means a market, exchange or other place at which futures contracts are regularly made or traded;”;

- (d) by adding at the end the following definitions:

“ ‘milk’ means the lacteal fluid product of the dairy cow;

‘relevant Fund’ means—

(a) the Dairy Produce Market Support Trust Fund established by section 16 of the *Dairy Produce Market Support Act 1985*;

(b) the Dairy Produce Supplementary Market Support Trust Fund established by section 28 of the *Dairy Produce Market Support Act 1985*; or

(c) the Dairy Produce Sales Promotion Fund established by section 18 of the *Dairy Produce Sales Promotion Act 1958*.”.

(2) Notwithstanding the amendments made by sub-section (1) to the definitions of “dairy produce” and “dairy industry”, a member of the Corporation referred to in paragraph 5 (1) (c), (d) or (f) of the Principal Act who was appointed before the commencement of this Act and would hold office

after 30 June 1985 if this Act had not been enacted holds office after that date, subject to the Principal Act as amended by this Act, as if the member had been appointed for the purposes of that paragraph of the Principal Act as amended by this Act.

5 **Constitution of Corporation**

5. Section 5 of the Principal Act is amended by omitting from sub-section (7) "Commission" and substituting "Corporation".

Remuneration

6. Section 12A of the Principal Act is amended—

- 10 (a) by omitting from sub-section (1) all the words after "Remuneration" and substituting "Tribunal"; and
- (b) by omitting from sub-section (4) "1973-1974" and substituting "1973".

Functions of Corporation

15 7. Section 13 of the Principal Act is amended—

- (a) by omitting from paragraph (e) "and" (last occurring);
- (b) by inserting after paragraph (e) the following paragraphs:
- "(ea) to provide assistance by way of loans to manufacturers of dairy produce;
- (eb) to deal in dairy produce on the Australian market; and"; and
- (c) by adding at the end the following sub-section:
- "(2) Without limiting the generality of sub-section (1), the functions of the Corporation may be performed in the capacity of, and to the extent that they are appropriate to be performed by, a trading corporation formed within the limits of the Commonwealth."
- 25

Powers of Corporation

8. Section 13A of the Principal Act is amended—

- (a) by omitting from paragraph (c) "and"; and
- (b) by adding at the end the following word and paragraph:
- 30 " ; and (e) act as an agent for manufacturers of dairy produce in respect of export sales of their dairy produce."

Repeal of section 13B

9. Section 13B of the Principal Act is repealed.

Power to make regulations controlling export of dairy produce

35 10. Section 14 of the Principal Act is amended—

- (a) by omitting from sub-section (1) all the words after "export" (third occurring) and substituting "from Australia of dairy produce except in accordance with such conditions and restrictions as are prescribed.";

- (b) by inserting after sub-section (1) the following sub-section:

“(1A) Before making regulations for the purposes of sub-section (1) relating to the conditions and restrictions applying in respect of dairy produce that is exported from Australia, the Governor-General shall take into account the recommendations, if any, that are made to the Minister by the Corporation in relation to such conditions and restrictions.”;

- (c) by omitting from sub-section (2) “paragraph (b) of”; and

- (d) by inserting in sub-section (2) “of a kind that is prescribed for the purposes of this sub-section” after “produce” (first occurring).

Power of Corporation to purchase dairy produce, &c.

11. Section 15 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Subject to any directions of the Minister, the” and substituting “The”;

- (b) by omitting paragraphs (1) (a) and (b) and substituting the following paragraphs:

“(a) purchase particular dairy produce, or dairy produce of a particular kind, being dairy produce, or dairy produce of a kind, the purchase of which is approved by the Minister;

(b) sell on the Australian market, in circumstances approved by the Minister, dairy produce purchased by it;

(ba) sell on a market, other than the Australian market, dairy produce purchased by it; and”;

- (c) by omitting sub-section (2).

12. After section 15 of the Principal Act the following section is inserted:

Power of Corporation to lend money

“16. (1) Subject to this section, the Corporation may lend money to a manufacturer of dairy produce who is holding in store (whether at the manufacturer’s own premises or at other premises) prescribed dairy produce that has been manufactured by that manufacturer.

“(2) The maximum amount of money that the Corporation may lend to a manufacturer referred to in sub-section (1), for each unit of prescribed dairy produce of a particular kind that is held in store by that manufacturer, is—

- (a) in a case where an export target price has been determined in relation to prescribed dairy produce of that kind in respect of the marketing year in which the loan is made, an amount equal to the sum of—

(i) 9/13ths of that export target price per unit of dairy produce of that kind;

(ii) the amount of market support payment (if any) payable at the commencement of the marketing year per unit of dairy produce of that kind; and

(iii) the amount of supplementary market support payment (if any) payable at the commencement of the marketing year per unit of dairy produce of that kind; and

(b) in any other case—an amount equal to such amount as is determined by the Corporation in respect of the marketing year in which the loan is made, having regard to the maximum amounts per unit of prescribed dairy produce of kinds for which export target prices have been determined in respect of that year.

“(3) A loan made by the Corporation under this section shall be—

(a) secured by—

(i) a charge over assets of the manufacturer; or

(ii) a guarantee given by a bank within the meaning of the *Banking Act 1959* or a bank established by a law of a State; and

(b) made on terms that require the repayment of the loan at a time that is not later than—

(i) the time at which the dairy produce in respect of which the loan is made is removed by the manufacturer from the premises at which it is stored; or

(ii) the time at which payment is received by the manufacturer in respect of that dairy produce,

whichever first occurs.

“(4) In this section—

‘marketing year’ means a marketing year within the meaning of the *Dairy Produce Market Support Act 1985*;

‘prescribed dairy produce’ means dairy produce prescribed for the purposes of this section;

‘unit’, in relation to dairy produce, has the same meaning as in the *Dairy Produce Market Support Act 1985*.”.

Repeal

13. Sections 17, 19, 20, 20AA and 20AB of the Principal Act are repealed.

14. Section 23 of the Principal Act is repealed and the following sections are substituted:

Raising of money by Corporation

“23. (1) The Corporation may, either in Australia or elsewhere, with the approval of the Minister—

(a) borrow money otherwise than—

(i) by dealing with securities; or

(ii) from a relevant Fund;

(b) borrow money, or otherwise raise money, by dealing with securities; or

(c) borrow money from a relevant Fund,

being money that is from time to time necessary for the purposes of the Corporation, whether purposes authorized by this Act or another Act.

“(2) A borrowing of money pursuant to paragraph (1) (a) may be subject to such terms and conditions as the Minister approves.

“(3) An approval under sub-section (1) in relation to borrowing money pursuant to paragraph (1) (a) may be given in relation to particular borrowings or in relation to a specified class, or specified classes, of borrowings. 5

“(4) An approval under sub-section (1) in relation to dealing with securities pursuant to paragraph (1) (b) may be given in relation to dealing with a specified class, or specified classes, of securities. 10

“(5) The Minister shall not approve a borrowing from a relevant Fund pursuant to paragraph (1) (c) unless the Minister is satisfied—

- (a) as to the adequacy of the reason for the loan;
- (b) as to the appropriateness of the source of funds for the loan;
- (c) that the amount of money proposed to be borrowed is an appropriate amount in all the circumstances; and 15
- (d) as to the terms and conditions on which the loan will be made.

“(6) The Treasurer may, on behalf of the Commonwealth, guarantee—

- (a) the repayment by the Corporation of money borrowed in accordance with this section and the payment of interest on money so borrowed; or 20
- (b) the payment of any money (including interest, if any) that the Corporation is liable to pay in respect of dealing with securities in accordance with this section.

“(7) Where the Corporation borrows money, or otherwise raises money, by dealing with securities, the Treasurer may determine that the repayment by the Corporation of the money so borrowed and the payment by the Corporation of interest on that money is, or the payment by the Corporation of any money (including interest, if any) that the Corporation is liable to pay in respect of dealing with securities is, by force of this sub-section, guaranteed by the Commonwealth. 25 30

“(8) The power of the Treasurer to make a determination for the purposes of sub-section (7) extends to the making of a determination in respect of—

- (a) a specified class, or specified classes, of securities; and
- (b) a specified class, or specified classes, of transactions.

“(9) The Corporation may give security over the whole or any part of its assets— 35

- (a) for the repayment of money borrowed in accordance with this section and the payment of money (including interest) that the Corporation is otherwise liable to pay in respect of that borrowing; and
- (b) for the payment of any money (including interest, if any) that the Corporation is liable to pay in respect of dealing with securities in accordance with this section. 40

“(10) The Corporation shall not borrow or otherwise raise money except in accordance with this section.

5 “(11) In this section, ‘securities’ includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents.

“(12) A reference in this section to dealing with securities includes a reference to—

- 10 (a) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or re-selling securities;
- (b) creating, selling, purchasing or re-selling rights or options in respect of securities; and
- (c) entering into agreements or other arrangements relating to securities.

Futures contracts

15 “23A. (1) Subject to sub-section (4), the Corporation may, for the purpose of the performance of its functions or the exercise of its powers under this Act, in relation to—

- (a) the sale or proposed sale of dairy produce by the Corporation; or
- 20 (b) a borrowing or raising of money by the Corporation or a proposed borrowing or raising of money by the Corporation (including a borrowing or raising of money by the Corporation by dealing with securities),

enter into and deal with futures contracts for hedging purposes at a futures market at a place in Australia.

25 “(2) Subject to sub-section (4), the Corporation may, for the purpose of the performance of its functions or the exercise of its powers under this Act in relation to—

- (a) the sale or proposed sale of dairy produce by the Corporation; or
- 30 (b) a borrowing or raising of money by the Corporation or a proposed borrowing or raising of money by the Corporation (including a borrowing or raising of money by the Corporation by dealing with securities),

enter into and deal with futures contracts for hedging purposes at a futures market at a place outside Australia.

35 “(3) The Minister may, by determination in writing—

- (a) set guidelines for the purpose of the exercise by the Corporation of its powers under sub-sections (1) and (2); and
- (b) revoke or vary guidelines set for that purpose or set new guidelines for that purpose,

40 and shall give to the Corporation a copy of each determination made under this sub-section.

“(4) The Corporation shall not enter into or deal with futures contracts otherwise than in accordance with any guidelines having effect from time to time under sub-section (3).

“(5) A futures contract shall be taken to be entered into or dealt with for hedging purposes if, and only if, the contract is entered into or dealt with— 5

(a) for the purpose of minimizing the risks of variations in the return for dairy produce under a contract for the sale of dairy produce that has been, or is to be, entered into by the Corporation; or

(b) for the purpose of minimizing the risks of variations in the costs of a borrowing or raising of money by the Corporation or a proposed borrowing or raising of money by the Corporation (including a borrowing or raising of money or a proposed borrowing or raising of money by dealing with securities).” 10

Application of moneys of Corporation

15. Section 24 of the Principal Act is amended— 15

(a) by omitting from paragraph (1) (a) all the words after “powers,” and substituting the following:

“under—

- (i) this Act;
- (ii) the *Dairy Produce Sales Promotion Act 1958*; or 20
- (iii) the *Dairy Produce Market Support Act 1985*;”;

(b) by omitting from paragraph (1) (b) all the words after “payable” and substituting the following:

“under—

- (i) this Act; 25
- (ii) the *Dairy Produce Sales Promotion Act 1958*; or
- (iii) the *Dairy Produce Market Support Act 1985*;”;

(c) by omitting sub-section (2) and substituting the following sub-section:

“(2) Money of the Corporation not immediately required for the purposes of the Corporation— 30

(a) may be invested—

- (i) on fixed deposit with an approved bank;
- (ii) in any securities of, or guaranteed by, the Commonwealth or a State;
- (iii) by way of loan to a corporation, being a corporation declared by the Reserve Bank for the purposes of regulations in force under the *Banking Act 1959* to be an authorized dealer in the short-term money market, upon the security of securities of the Commonwealth; or 35
- (iv) in any other manner approved by the Treasurer; or 40

(b) may, with the approval of the Minister, be lent to a relevant Fund.”.

16. Section 24A of the Principal Act is repealed and the following sections are substituted:

Surplus or deficit in respect of certain activities of Corporation

“24A. (1) In this section—

5 ‘dairy produce to which this section applies’ means dairy produce that—

(a) was produced on or after 1 July 1985; and

(b) has been purchased by the Corporation;

‘Market Support Fund’ has the same meaning as in the *Dairy Produce Market Support Act 1985*;

10 ‘marketing year’ means a marketing year within the meaning of the *Dairy Produce Market Support Act 1985*.

“(2) Where, from time to time, there is a surplus resulting from a sale, or sales, by or on behalf of the Corporation, of dairy produce to which this section applies, the Corporation shall credit the surplus to the Market Support Fund.

15 “(3) Where, from time to time, there is a deficit resulting from a sale, or sales, by or on behalf of the Corporation, of dairy produce to which this section applies, the Corporation shall debit the Market Support Fund with an amount equal to the amount of the deficit.

20 “(4) Where an amount is debited to the Market Support Fund under sub-section (3), the Corporation shall pay to the credit of the account referred to in section 22 from which the Corporation draws money for purposes associated with the sale, by or on behalf of the Corporation, of dairy produce to which this section applies, an amount equal to the amount so debited.

25 “(5) In determining whether a surplus or a deficit has resulted from a sale of dairy produce to which this section applies, money spent by the Corporation on the transport, storage, handling and insurance of that dairy produce, or on any other matter connected with the export or sale of that dairy produce, shall be taken into account.

Corporation may arrange loans between Funds

30 “24B. (1) The Corporation may, with the approval of the Minister, arrange for money standing to the credit of a relevant Fund to be lent to another relevant Fund for the purposes of that other relevant Fund.

“(2) The Minister shall not approve an arrangement for a loan under sub-section (1) unless the Minister is satisfied—

35 (a) as to the adequacy of the reason for the loan;

(b) as to the appropriateness of the source of funds for the loan;

(c) that the amount of money proposed to be lent is an appropriate amount in all the circumstances; and

(d) as to terms and conditions on which the loan will be made.”

17. Section 25 of the Principal Act is repealed and the following section is substituted:

Power to purchase and dispose of assets

“25. The Corporation shall not, except with the approval of the Minister—

- (a) enter into a contract (not being a futures contract or a contract entered into pursuant to the *Dairy Produce Sales Promotion Act 1958*) in connection with the purchase or disposal of real or personal property (not being dairy produce) for an amount exceeding \$500,000, or, if a higher amount is prescribed, that higher amount; or 5
- (b) enter into a lease of land for a period exceeding 10 years.” 10

18. Section 25E of the Principal Act is repealed and the following section is substituted:

Functions of Advisory Committee

“25E. The Advisory Committee shall, if so requested by the Corporation, assist the Corporation in the performance of its functions and the exercise of its powers under this, or any other, Act.” 15

Membership of Advisory Committee

19. (1) Section 25F of the Principal Act is amended by omitting “products” (wherever occurring) and substituting “produce”.

(2) Notwithstanding the amendment made by sub-section (1), a member of the Advisory Committee referred to in paragraph 25F (2) (d) of the Principal Act who was appointed before the commencement of this Act and would hold office after 30 June 1985 if this Act had not been enacted holds office after that date, subject to the Principal Act as amended by this Act, as if the member had been appointed for the purposes of that paragraph of the Principal Act as amended by this Act. 20
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20. After section 26 of the Principal Act the following section is inserted:

Determinations by Corporation

“27. (1) A determination by the Corporation under sub-paragraph (b) (ii) of the definition of ‘dairy produce’ that a product is dairy produce for the purposes of this Act shall— 30

- (a) be in writing under the common seal of the Corporation;
- (b) specify the day (in this section referred to as ‘the day of issue’) on which the common seal was affixed; and
- (c) specify the day (in this section referred to as the ‘day of effect’), which may be a day before the day of issue, with effect from which the product is to be, or to be deemed to have been, dairy produce for the purposes of this Act. 35

“(2) As soon as practicable after the day of issue of a determination in relation to a product, the Corporation shall take such action as is necessary to notify manufacturers of dairy produce—

(a) that that determination has been made; and

5 (b) of the day of effect in relation to that product.

“(3) Sections 48, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to determinations referred to in sub-section (1) of this section as if, in those sections, references to regulations were references to determinations, references to a regulation were references to a determination and references to a repeal were references to a revocation.

“(4) Determinations referred to in sub-section (1) shall be deemed not to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to such determinations in like manner as they apply in relation to statutory rules.

15 “(5) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (4) of this section, the reference in that first-mentioned sub-section to the Minister of State for Administrative Services shall be read as a reference to the Minister administering this Act.”.

20 **Savings**

21. (1) Notwithstanding the repeal of sections 20AA and 20AB of the Principal Act, those sections and the regulations made under those sections, as in force immediately before the commencement of this Act, continue to apply to and in relation to any dairy products within the meaning of the Principal Act that were exported by a person, or caused by a person to be exported, pursuant to an arrangement with the Corporation entered into under sub-section 20AB (7), of the Principal Act, being dairy products that were produced before 1 July 1985, as if those sections had not been repealed.

30 (2) Notwithstanding the repeal of section 24A of the Principal Act, that section, as in force immediately before the commencement of this Act, continues to apply to and in relation to dairy products within the meaning of the Principal Act that were the subject of an export sale by or on behalf of the Corporation, being dairy products that were produced before 1 July 1985, as if that section had not been repealed.

35 (3) The amendments made by sections 7 and 12 of this Act for the purpose of enabling the Corporation to provide assistance by way of loans to manufacturers of dairy produce do not affect the validity or enforceability of any loan agreement entered into by the Corporation under the Principal Act pursuant to the function of the Corporation specified in regulation 4A of the Dairy Produce Regulations with a trading corporation within the meaning of that regulation.

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**PART III—AMENDMENTS OF DAIRY PRODUCE SALES
PROMOTION ACT 1958**

Principal Act

22. The *Dairy Produce Sales Promotion Act 1958*² is in this Part referred to as the Principal Act. 5

Interpretation

23. Section 4 of the Principal Act is amended by inserting after the definition of “Levy Collection Act” the following definition:

“ ‘relevant Fund’ means—

- (a) the Dairy Produce Market Support Trust Fund established by section 16 of the *Dairy Produce Market Support Act 1985*; or 10
- (b) the Dairy Produce Supplementary Market Support Trust Fund established by section 28 of the *Dairy Produce Market Support Act 1985*.”

Dairy Produce Sales Promotion Fund 15

24. Section 18 of the Principal Act is amended—

- (a) by omitting from paragraph 3 (c) “and”; and
- (b) by adding at the end of sub-section (3) the following paragraphs:
 - “(e) money lent to the Sales Promotion Fund by the Corporation under paragraph 24 (2) (b) of the *Dairy Produce Act 1924* or out of a relevant Fund under section 24B of that Act; and 20
 - “(f) money repaid to the Sales Promotion Fund, being money that was lent out of the Sales Promotion Fund to the Corporation under paragraph 23 (1) (c) of the *Dairy Produce Act 1924* or to a relevant Fund under section 24B of that Act, and interest on money so lent.”. 25

Debiting of money to Dairy Produce Sales Promotion Fund

25. Section 19 of the Principal Act is amended—

- (a) by omitting from paragraph (c) “and” (last occurring); and
- (b) by adding at the end the following paragraphs: 30
 - “(e) money lent out of the Sales Promotion Fund to the Corporation under paragraph 23 (1) (c) of the *Dairy Produce Act 1924* or to a relevant Fund under section 24B of that Act; and
 - “(f) money repaid by the Sales Promotion Fund, being money that was lent to the Sales Promotion Fund by the Corporation under paragraph 24 (2) (b) of the *Dairy Produce Act 1924* or out of a relevant Fund under section 24B of that Act, and interest on money so lent.”. 35

NOTES

1. No. 38, 1924, as amended. For previous amendments, see No. 45, 1934; No. 70, 1935; No. 26, 1936; No. 20, 1937; No. 18, 1938; No. 24, 1942; No. 53, 1947 (as amended by No. 80, 1950); No. 37, 1953; No. 17, 1954; No. 74, 1958; No. 49, 1962; No. 79, 1963; No. 43, 1965; No. 93, 1966; No. 3, 1972; No. 216, 1973 (as amended by No. 20, 1974); No. 82, 1975; No. 79, 1976; No. 53, 1977; Nos. 36 and 96, 1978; No. 48, 1982; and No. 64, 1983.
2. No. 73, 1958, as amended. For previous amendments, see No. 80, 1963; No. 41, 1964; No. 44, 1965; No. 33, 1972; No. 216, 1973; No. 83, 1975; No. 79, 1976; and No. 14, 1979.

