

Dairying Industry Equalization

No. 45 of 1970

An Act to establish a Dairy Produce Equalization Trust Account and to provide for the payment out of that Account of Equalization payments, and certain other payments, in connexion with certain Dairy Produce and certain Products produced from Dairy Produce.

[Assented to 24 June 1970]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title.

1. This Act may be cited as the *Dairying Industry Equalization Act* 1970.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by Proclamation.

Definitions.

3. In this Act, unless the contrary intention appears—

“ authorized person ” means—

(a) a person appointed by the Minister, by instrument in writing, to be an authorized person for the purposes of the provision in which the expression occurs; or

(b) a person included in a class of persons appointed by the Minister, by instrument in writing, to be authorized persons for the purposes of the provision in which the expression occurs;

“ butter ”, “ butteroil ”, “ casein ”, “ cheese ”, “ dairy produce ”, “ levy ” and “ the levy ” have the same respective meanings as in the Levy Act;

“ equalization payment ” means an equalization payment payable under this Act;

“ production period ” means a production period for the purposes of the Levy Act;

“ provisional levy ” has the same meaning as in the Levy Collection Act;

“ the Audit Act ” means the *Audit Act* 1901–1969;

“ the Board ” means the Australian Dairy Produce Board constituted under the *Dairy Produce Export Control Act* 1924–1966;

“ the butter account ” means the separate account kept in the Equalization Account in accordance with section 6 of this Act in

respect of moneys paid into that Account in respect of butter and butteroil;

“the casein account” means the separate account kept in the Equalization Account in accordance with section 6 of this Act in respect of moneys paid into that Account in respect of casein;

“the cheese account” means the separate account kept in the Equalization Account in accordance with section 6 of this Act in respect of moneys paid into that Account in respect of cheese;

“the Company” means the company incorporated under the law of the State of New South Wales under the name “Commonwealth Dairy Produce Equalisation Committee Limited”;

“the Council” means the organization known as the Australian Dairy Industry Council;

“the Equalization Account” means the Dairy Produce Equalization Trust Account established by section 4 of this Act;

“the Levy Act” means the *Dairying Industry Levy Act 1970*;

“the Levy Collection Act” means the *Dairying Industry Levy Collection Act 1970*;

“the separate accounts” means the separate accounts kept in the Equalization Account in accordance with this Act or the regulations.

4.—(1.) An account is hereby established to be known as the Dairy Produce Equalization Trust Account.

Dairy Produce
Equalization
Trust Account.

(2.) The Equalization Account is a Trust Account for the purposes of section 62A of the Audit Act.

5.—(1.) There shall be paid into the Equalization Account out of the Consolidated Revenue Fund, which is appropriated accordingly, amounts equal to the amounts from time to time received by the Commonwealth as levy and provisional levy and penalties under section 13 of the Levy Collection Act.

Moneys to be
paid into
Equalization
Account.

(2.) There shall be paid into the Equalization Account—

(a) moneys paid by any person to the Commonwealth for the purposes of the Equalization Account; and

(b) interest from the investment of moneys standing to the credit of the Equalization Account.

(3.) The power of the Treasurer under section 62B of the Audit Act to invest moneys standing to the credit of the Equalization Account includes a power to invest those moneys by way of loan to a corporation, being a corporation declared by the Reserve Bank of Australia, for the purposes of regulations in force under the *Banking Act 1959–1967*, to be an authorized dealer in the short-term money market, upon the security of securities of the Commonwealth.

Separate
accounts to
be kept in
Equalization
Account.

6.—(1.) A separate account shall be kept in the Equalization Account in respect of each of the following kinds of moneys paid into that account:—

- (a) moneys so paid in respect of butter and butteroil;
- (b) moneys so paid in respect of cheese; and
- (c) moneys so paid in respect of casein.

(2.) Where a product is prescribed for the purposes of paragraph (b) of the definition of “dairy produce” in sub-section (1.) of section 4 of the Levy Act, the regulations shall provide either—

- (a) that a separate account is to be kept in the Equalization Account in respect of moneys paid into that Account under sub-section (1.) of the last preceding section in respect of that product; or
- (b) that those moneys are to be credited to such one or more of the separate accounts as the regulations specify for the purpose.

(3.) Where moneys referred to in paragraph (a) of sub-section (2.) of the last preceding section are paid into the Equalization Account, the Minister shall, having regard to the purposes for which the moneys were paid to the Commonwealth, direct the allocation of the moneys to one or more of the separate accounts.

(4.) Interest paid into the Equalization Account in respect of the investment of moneys standing to the credit of one of the separate accounts shall be credited to that separate account.

Equalization
payments.

7.—(1.) Subject to this Act—

- (a) an equalization payment is payable on the export of dairy produce on which the levy has been imposed;
- (b) an equalization payment is payable on the export of such products produced from dairy produce on which the levy has been imposed (whether or not any other substance has been added) as are prescribed from time to time;
- (c) an equalization payment is payable on the production at a factory of ice-cream produced from dairy produce on which the levy has been imposed; and
- (d) an equalization payment is payable on the production at a factory of such products produced from dairy produce on which the levy has been imposed (whether or not any other substance has been added) as are prescribed from time to time.

(2.) The regulations may provide that an equalization payment is not payable on the production of ice-cream produced during a period specified in the regulations.

(3.) Where an equalization payment has become payable on the production of any goods, an equalization payment is not payable on the export of those goods.

8.—(1.) The rate of an equalization payment in respect of any product is the rate applicable under the regulations made in accordance with the next succeeding sub-section. Rates of equalization payments.

(2.) Where, under the last preceding section, equalization payments are payable in respect of the export or production of a product that—

- (a) in the case of a product that is dairy produce—has been produced during a particular production period; or
- (b) in any other case—has been produced from dairy produce produced during a particular production period,

the regulations shall, as soon as practicable after the end of that production period, fix a rate as the rate of those equalization payments.

(3.) Regulations for the purposes of the last preceding sub-section in relation to the export of a product may, in lieu of fixing a rate as the rate of the equalization payments, fix different rates as the rates of the equalization payments in relation to the export of the product to different countries.

(4.) The Minister may, from time to time, fix interim rates of equalization payments, and amounts on account of equalization payments may be paid at those interim rates.

(5.) The Minister shall not fix an interim rate except after receipt of a recommendation of the Council, and the rate shall not exceed the rate recommended by the Council.

(6.) The Council, in making recommendations with respect to interim rates of equalization payments, and the Minister, in fixing such interim rates, shall have regard to the moneys standing to the credit of the separate account or accounts from which the equalization payments are to be paid and the further amounts that appear likely to be credited to those accounts.

(7.) Where the amount, or the sum of the amounts, paid to a person on account of an equalization payment exceeds the amount of that equalization payment, the amount of the excess is repayable to the Commonwealth on demand in writing by an authorized person and, if not paid within three months after the demand, is recoverable in a court of competent jurisdiction as a debt due to the Commonwealth.

9.—(1.) An equalization payment payable on the export of a product is payable— To whom equalization payments payable.

- (a) where the product is exported by the Board—to the Board; or
- (b) in any other case—to the person who was the proprietor of the factory at which the product was produced at the time when it was produced.

(2.) An equalization payment payable on the production of a product is payable to the person who was the proprietor of the factory at which the product was produced at the time when it was produced.

Payment of equalization payments to the Company for distribution.

10.—(1.) The Minister may, on behalf of the Commonwealth, enter into an arrangement with the Company to perform the function of making equalization payments on behalf of the Commonwealth.

(2.) Without prejudice to the generality of the last preceding subsection, an arrangement under that sub-section may provide for—

- (a) the keeping by the Company of accounts and records in relation to equalization payments received and distributed by the Company;
- (b) the inspection and audit of the accounts and records referred to in the last preceding paragraph;
- (c) the furnishing by the Company to the Minister of information with respect to equalization payments distributed by the Company; and
- (d) the retention by the Company of an amount of equalization payment payable to a person for such time as is agreed to between the Company and the person.

(3.) An equalization payment to which an arrangement under this section relates may be paid to the Company for distribution in accordance with the arrangement.

(4.) The Audit Act does not apply in relation to amounts of equalization payments in the hands of the Company.

(5.) Money paid to the Company under this section shall, until it is distributed in accordance with the arrangement under which it is paid, be deemed to be money held in trust for the Commonwealth.

Equalization payments appropriated to be deemed to have been paid.

11. Where an amount, being the whole or a part of an equalization payment payable to a person, is appropriated in accordance with section 10 of the Levy Collection Act, the amount so appropriated shall, for the purposes of this Act, be deemed to have been paid to the person.

Application of the Equalization Account.

12.—(1.) Subject to this section, moneys standing to the credit of the Equalization Account may be expended—

- (a) in making payments under section 5 or section 14 of the Levy Collection Act;
- (b) in making equalization payments; and
- (c) in order to facilitate, maintain or encourage trade and commerce with other countries or among the States—
 - (i) in reimbursing the Company in respect of freight, cold-storage or other marketing or administration costs paid by the Company in respect of dairy produce on which levy has been imposed; or
 - (ii) in making any payment for any purpose in connexion with the dairying industry approved by the Minister in accordance with a recommendation of the Council.

(2.) An equalization payment, and any other payment out of the Equalization Account, in respect of butter, butteroil or ice-cream shall be paid from moneys standing to the credit of the butter account.

(3.) An equalization payment, and any other payment out of the Equalization Account, in respect of cheese shall be paid from moneys standing to the credit of the cheese account.

(4.) An equalization payment, and any other payment out of the Equalization Account, in respect of casein shall be paid from moneys standing to the credit of the casein account.

(5.) Where—

(a) a product is prescribed for the purposes of paragraph (b) of the definition of “dairy produce” in sub-section (1.) of section 4 of the Levy Act; or

(b) a product is prescribed for the purposes of paragraph (b) or (d) of sub-section (1.) of section 7 of this Act,

an equalization payment, or any other payment out of the Equalization Account, in respect of that product shall be paid, in accordance with the regulations, from moneys standing to the credit of such one or more of the separate accounts as the regulations specify for the purpose.

13. An authorized person may, by notice in writing, require a person to furnish to him, within the time specified in the notice, such return or information in relation to matters relevant to the operation of this Act as is specified in the notice, including a return or information verified by statutory declaration.

Power to call for returns.

14.—(1.) A person shall not fail or neglect duly to furnish a return or information that he is required under this Act or the regulations to furnish.

Offences in relation to returns, &c.

(2.) A person shall not present to an officer or other person doing duty in relation to this Act or the regulations an account, book or document, or make or furnish to such an officer or person a statement or return, that is false or misleading in a material particular.

Penalty: Two hundred dollars.

15.—(1.) An authorized person may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an authorized person under this section.

Access to premises.

(2.) Where an authorized person has reason to believe that—

(a) premises are premises in which is produced dairy produce or any other product in respect of which an equalization payment is, or may be, payable; or

(b) books, documents or papers relating to the production or export of any such dairy produce or other product are on premises,

the authorized person may make application to a Justice of the Peace for a warrant authorizing the authorized person to enter the premises for the purpose of exercising the functions of an authorized person under this section.

(3.) If, on an application under the last preceding sub-section, the Justice of the Peace is satisfied, by information on oath—

(a) that there is reasonable ground for believing that—

(i) the premises to which the application relates are premises on which dairy produce or any other product in respect of which an equalization payment is, or may be, payable is produced; or

(ii) there are on those premises any books, documents or papers relating to the production or export of any such dairy produce or other product; and

(b) that the issue of the warrant is reasonably required for the purposes of this Act,

the Justice of the Peace may grant a warrant, in accordance with the prescribed form, authorizing the authorized person, with such assistance as he thinks necessary, to enter the premises, during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an authorized person under this section.

(4.) A warrant granted under the last preceding sub-section shall specify a date after which the warrant ceases to have effect.

(5.) Where an authorized person has entered any premises in pursuance of sub-section (1.) of this section or in pursuance of a warrant granted under sub-section (3.) of this section, he may exercise the functions of an authorized person under this section.

(6.) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting in pursuance of a warrant granted under sub-section (3.) of this section or in pursuance of the last preceding sub-section.

Penalty: Two hundred dollars.

(7.) The functions of an authorized person under this section are—

(a) to search for, examine and take stock of any dairy produce or any other product in respect of which an equalization payment is, or may be, payable; and

(b) to search for, inspect, take extracts from and make copies of any books, documents or papers relating to the production or export of any such dairy produce or other product.

(8.) In this section, “occupier”, in relation to premises, includes the person in charge of the premises.

16. The Minister shall, as soon as practicable after each thirtieth day of June, prepare a report on the operation of this Act during the year ended on that date and cause the report to be laid before each House of the Parliament. Annual report.

17.—(1.) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular— Regulations.

- (a) requiring persons to furnish returns for the purposes of this Act;
- (b) providing that an equalization payment is not to be payable, or that payment of an equalization payment may be withheld, where a provision of the regulations has not been complied with; and
- (c) prescribing penalties, not exceeding a fine of One hundred dollars, for offences against the regulations.

(2.) Before making regulations for the purposes of section 6, 7 or 8 of this Act, the Governor-General shall take into consideration any recommendation with respect to the proposed regulations made to the Minister by the Council.
