

DAIRY INDUSTRY ASSISTANCE ACT 1977

No. 54 of 1977

An Act providing for the collection of Levy imposed by the *Dairy Industry Assistance Levy Act 1977* and for the granting of Financial Assistance to the States in connexion with the Dairy Industry.

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

PART I—PRELIMINARY

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| Short title. | 1. This Act may be cited as the <i>Dairy Industry Assistance Act 1977</i> . ¹ |
| Commence-
ment. | 2. This Act shall come into operation on a date to be fixed by Proclamation. |
| Interpret-
ation. | 3. In this Act, unless the contrary intention appears—
“Account” means the Dairy Industry Trust Account established by section 11;
“authorized person” means a person who is, by virtue of an appointment under section 16, an authorized person for the purposes of the provision in which the expression occurs;
“levy” includes a penalty under section 8;
“Levy Act” means the <i>Dairy Industry Assistance Levy Act 1977</i> ;
“month” means a month of the year;
“State Milk Authority”, in relation to a State, means—
(a) the authority constituted by or under a State Act of that State that exercises powers and functions under that Act in relation to the marketing of milk; or
(b) if there is more than one such authority for the State—such one of those authorities as is approved by the Minister for the purposes of this Act. |

PART II—COLLECTION OF LEVY

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| Time for
payment of
levy. | 4. (1) Subject to sub-section (2), levy on any fresh milk products is due and payable on the expiration of 14 days after the last day of the month immediately following the month in which the products were sold by or on behalf of the person by whom the levy is payable.

(2) If fresh milk products on which levy is imposed are still in the ownership of the person by whom the levy is payable at the expiration of the prescribed period after the end of the month in which they were |
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produced at a plant or factory, the levy on those fresh milk products becomes due and payable on the expiration of 14 days after the last day of that prescribed period.

(3) In this section—

“levy” does not include a penalty under section 8;

“prescribed period” means—

- (a) in relation to fresh milk products of a class in respect of which a period is prescribed for the purposes of this definition (whether that period is prescribed in respect of fresh milk products generally or a prescribed class or prescribed classes of fresh milk products)—the period so prescribed; or
- (b) in relation to fresh milk products of a class in respect of which a period is not prescribed for the purposes of this definition—6 months.

5. (1) For better securing the payment of levy, the Commonwealth may enter into an arrangement with a State with respect to the collection of levy in that State, on behalf of the Commonwealth, by the State Milk Authority for that State.

Arrangements for collection of levy by State Milk Authorities.

(2) Without prejudice to the generality of sub-section (1), an arrangement under that sub-section with a State may provide for—

- (a) the payment by the State Milk Authority to the Commonwealth of levy collected by the Authority;
- (b) the keeping by the State Milk Authority of accounts and records in relation to levy collected by the Authority;
- (c) the inspection and audit of the accounts and records referred to in paragraph (b); and
- (d) the furnishing by the State Milk Authority to the Minister of information with respect to—
 - (i) levy collected by the Authority; and
 - (ii) the amounts paid by the Authority to the Commonwealth in accordance with the arrangement.

6. (1) While an arrangement under section 5 is in force, payment of levy may be made to a State Milk Authority.

Collection of levy by a State Milk Authority.

(2) Where, under sub-section (1), a person pays levy to a State Milk Authority, the person is, to the extent of the amount so paid, discharged from his liability to pay that levy to the Commonwealth.

(3) Money collected by a State Milk Authority under this section shall, until it is paid to the Commonwealth in accordance with an arrangement under section 5, be deemed to be money held in trust for the Commonwealth.

Audit Act
does not
apply to levy
collected by
a State
Milk
Authority.

7. (1) The *Audit Act* 1901 does not apply in relation to amounts of levy collected by a State Milk Authority.

(2) Sub-section (1) shall not be construed as affecting the operation of the *Audit Act* 1901 in relation to moneys paid by a State Milk Authority to the Commonwealth.

Penalty for
non-
payment.

8. (1) Subject to this section, where the liability of a person to pay levy is not discharged at or before the time when that levy becomes due and payable, there is payable by that person to the Commonwealth, by way of penalty, in addition to that levy, an amount calculated at the rate of 10 per centum per annum upon that levy, or upon that part of that levy from time to time remaining unpaid, to be computed from the time when that levy became due and payable.

(2) The Minister or, subject to sub-section (3), an authorized person may, in a particular case, for reasons that the Minister or the authorized person, as the case may be, in his discretion thinks sufficient, remit the whole or a part of an amount payable under this section.

(3) A remission granted under sub-section (2) by an authorized person shall not exceed \$500.

(4) In this section, "levy" does not include a penalty under this section.

Recovery of
levy.

9. An amount of levy that becomes due and payable shall be deemed to be a debt due to the Commonwealth.

Refund of
levy.

10. (1) Where any levy has been overpaid, the amount overpaid shall be refunded by the Commonwealth.

(2) Where—

(a) an amount is to be refunded by the Commonwealth in accordance with the Levy Act or with sub-section (1) of this section; and

(b) that amount has been taken into account in calculating an amount to be paid into the Account under paragraph 12 (a),

the amount of the refund shall be paid from the Account.

PART III—FINANCIAL ASSISTANCE

Dairy
Industry
Trust
Account.

11. (1) An account is hereby established to be known as the Dairy Industry Trust Account.

(2) The Account is a Trust Account for the purposes of section 62A of the *Audit Act* 1901.

12. There shall be paid into the Account out of the Consolidated Revenue Fund, which is appropriated accordingly—

Moneys to be paid into the Account.

- (a) amounts equal to the amounts of levy received by the Commonwealth from time to time;
- (b) moneys paid by any person to the Commonwealth for the purposes of the Account; and
- (c) interest from the investment of moneys standing to the credit of the Account.

13. Moneys standing to the credit of the Account may be expended in accordance with an approval of the Minister under section 14 or as required by sub-section 10 (2), but shall not be otherwise expended.

Application of the Account.

14. (1) The Minister may, from time to time, approve the payment to a State, out of moneys standing to the credit of the Account, by way of financial assistance, of such amount or amounts as he determines after taking into account any recommendations made to him by the Agricultural Council.

Financial Assistance to the States.

(2) Payment of an amount to a State in accordance with an approval given under this section is subject to the condition that the amount will be applied by the State for the assistance of the dairy industry and will be so applied in accordance with the directions (if any) of the Minister.

PART IV—MISCELLANEOUS

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 fresh milk products are produced or stored; or
- (b) there are on premises examinable documents,

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 sub-section (2), the Justice of the Peace is satisfied, by information on oath or affirmation—

- (a) that there is reasonable ground for believing that—
 - (i) the premises to which the application relates are premises in which fresh milk products are produced or stored; or
 - (ii) there are on those premises any examinable documents;
- 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 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) Where an authorized person has entered any premises in pursuance of sub-section (1) or in pursuance of a warrant granted under sub-section (3), he may exercise the functions of an authorized person under this section.

(5) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting in pursuance of sub-section (1) or in pursuance of a warrant granted under sub-section (3).

Penalty: \$1,000.

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

- (a) to search for, examine and take stock of any fresh milk products; and
- (b) to search for, inspect, take extracts from and make copies of any examinable documents.

(7) In this section, “examinable documents” means books, documents or papers relating to the purchase of milk, or a constituent part of milk, for the production of fresh milk products or the production, storage or sale of fresh milk products.

Appoint-
ment of
authorized
persons.

16. The Minister may, by writing signed by him, appoint a person, or persons included in a class of persons, to be an authorized person or authorized persons, as the case may be, for the purposes of a specified provision of this Act.

Power to call
for returns.

17. 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.

Offences in
relation to
returns, &c.

18. (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.

(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: \$1,000.

19. In proceedings for the recovery of a debt referred to in section 9, a statement or averment in the complaint, claim or declaration of the plaintiff is *prima facie* evidence of the matter so stated or averred. ^{Averments.}

20. (1) The Minister shall, as soon as practicable after each 30 June, prepare a report on the operation of this Act during the year ending on that date and cause the report to be laid before each House of the Parliament. ^{Annual report.}

(2) Each State Milk Authority shall furnish to the Minister such information as he requires for the purpose of preparing a report under subsection (1).

21. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act or for facilitating the collection or recovery of amounts of levy and, in particular— ^{Regulations.}

- (a) providing for the manner of payment of levy;
- (b) requiring proprietors of plants or factories to keep records relating to the production of fresh milk products in their plants or factories and to the storage and sale of such products;
- (c) requiring the proprietors of plants or factories to furnish returns for the purposes of this Act, including returns to a State Milk Authority; and
- (d) prescribing penalties not exceeding a fine of \$500 for offences against the regulations.

NOTE

1. Act No. 54, 1977; assented to 7 June 1977.