



# Dairy Produce Amendment Act 1995

No. 45 of 1995

---

## An Act to amend the *Dairy Produce Act 1986*

[Assented to 21 June 1995]

The Parliament of Australia enacts:

### Short title

1. This Act may be cited as the *Dairy Produce Amendment Act 1995*.

### Commencement

2. This Act commences on 1 July 1995.

### Amendments

3. The *Dairy Produce Act 1986* is amended as indicated in the Schedule.
-

**SCHEDULE**

**Section 3**

**1. Subsection 3(1) (definition of “relevant fund”):**

Insert “the Domestic Fund,” after “Market Support Fund,”.

**2. Subsection 3(1) (definition of “dairy products levy”):**

Omit the definition, substitute:

“ ‘dairy products levy’ means the levy imposed by:

(a) section 9 of the first Levy Act; or

(b) section 5 or 8 of the second Levy Act;

as in force on 30 June 1995 and includes amounts of penalty (if any) payable under the Levies and Charges Collection Act in relation to the levy;”.

**3. Subsection 3(1):**

Insert the following definitions:

“ ‘Domestic Fund’ means the Domestic Market Support Fund;

‘relevant dairy produce’ has the same meaning as in the *Dairy Produce Levy (No. 1) Act 1986*;”.

**4. Part VI:**

Repeal the Part.

**5. After paragraph 74(1)(ca):**

Insert:

“(cb) in making payments for which money of the Domestic Fund may be expended but is not available because of a deficit in the Domestic Fund;”.

**6. Paragraph 74(1)(e):**

Omit “or in a provision of the *Dairy Industry Stabilization Act 1977*”.

**7. Subsection 80(2):**

Omit “Market Support Fund”, substitute “Domestic Fund”.

**8. Subsection 80(3):**

Omit “Market Support Fund”, substitute “Domestic Fund”.

**9. Subsection 80(4):**

Omit “Market Support Fund”, substitute “Domestic Fund”.

**10. After paragraph 88(1)(h):**

Insert:

“(i) in making payments under subsection 108G(5);”.

**SCHEDULE—continued**

**11. Section 91:**

At the end of each of paragraphs (a), (aaa), (aa), (b) and (c), add “and”.

**12. After paragraph 91(d):**

Insert:

“(da) in making payments under subsection 108G(5); and”.

**13. Section 98:**

Repeal the section.

**14. Section 102:**

Repeal the section, substitute:

**Winding-up of Market Support Fund**

“102.(1) As soon as practicable after 1 July 1995, the Market Support Fund is to be wound up.

“(2) When the Corporation is satisfied that there is no reasonable likelihood that it will incur any further liabilities in relation to matters specified in section 101, the Corporation must determine the total amount of the liabilities of the Corporation in relation to which Fund money may be expended.

“(3) If the amount of Fund money exceeds the amount determined under subsection (2), the Corporation must credit the excess to the Domestic Fund.

“(4) If the amount determined under subsection (2) exceeds the amount of Fund money, the Corporation may expend money standing to the credit of the Domestic Fund, to the extent of the excess, for any of the purposes specified in section 101.

“(5) If, when the Corporation makes a determination under subsection (2), there are any investments held for the purposes of the Market Support Fund, those investments are to be taken, after the making of the determination, to be investments of money standing to the credit of the Domestic Fund.

“(6) If:

- (a) an amount is paid by the Commonwealth to the Corporation; and
- (b) but for this subsection, the Corporation would be required by a provision of this Act (**‘the relevant provision’**) to credit the amount to the Market Support Fund; and
- (c) the amount is paid to the Corporation after the Market Support Fund has been wound up;

**SCHEDULE—continued**

the relevant provision is to be taken to require the money to be credited to the Domestic Fund.

“(7) In this section, **‘Fund money’** means money standing to the credit of the Market Support Fund when the Corporation makes a determination under subsection (2).”.

**15. Part VII:**

Add at the end:

***“Division 5—Domestic Market Support Fund***

**Definitions**

“103. In this Division:

**‘acquisition offset levy’** means acquisition offset levy imposed by the first Levy Act, as in force on and after 1 July 1995;

**‘import offset levy’** means import offset levy imposed by section 9 of the second Levy Act, as in force on and after 1 July 1995;

**‘manufacturer’** means a person who carries on a business that consists of, or includes, the manufacture of dairy produce;

**‘manufacturing milk’** means:

(a) relevant dairy produce delivered by the producer to a manufacturer during a month ending before 1 July 2000; or

(b) relevant dairy produce produced by a manufacturer and used by the manufacturer, during a month ending before 1 July 2000, in the manufacture of dairy produce;

other than relevant dairy produce processed as liquid milk for human consumption and sold or distributed in Australia as liquid milk for human consumption;

**‘manufacturing milk levy’** means manufacturing milk levy imposed by the first Levy Act, as in force on and after 1 July 1995, and includes amounts of penalty (if any) payable under the Levies and Charges Collection Act in relation to that levy;

**‘market milk levy’** means market milk levy imposed by the first Levy Act, as in force on and after 1 July 1995, and includes amounts of penalty (if any) payable under the Levies and Charges Collection Act in relation to that levy;

**‘milk fat rate’**, in relation to a month, means the milk fat rate prescribed, under the *Dairy Produce Levy (No. 1) Act 1986*, in relation to the manufacturing milk levy for that month;

**‘month’** means any of the 12 months of the calendar year;

**SCHEDULE—continued**

**‘protein rate’**, in relation to a month, means the protein rate prescribed, under the *Dairy Produce Levy (No. 1) Act 1986*, in relation to the manufacturing milk levy for that month.

**Establishment of Domestic Market Support Fund**

“104.(1) A fund to be known as the Domestic Market Support Fund is established.

“(2) The Domestic Fund is vested in, and is to be administered by, the Corporation.

**Money to be paid into Domestic Fund**

“105. The following money is to be credited to the Domestic Fund:

- (a) money paid to the Corporation under section 107;
- (b) money credited to the Domestic Fund under subsection 102(3);
- (c) money received by the Corporation as interest from the investment of money standing to the credit of the Domestic Fund;
- (d) amounts payable under section 7 of the Levies and Charges Collection Act in relation to the market milk levy or the manufacturing milk levy that are received by the Commonwealth;
- (e) amounts ordered to be repaid to the Corporation under subsection 114(1), or repaid to or recovered by the Corporation under section 115, in respect of payments under this Division;
- (f) money paid by a person other than the Commonwealth to the Corporation for the purposes of the Domestic Fund;
- (g) money made available by the Corporation, whether by way of advance or otherwise, for the purposes of the Domestic Fund;
- (h) money lent to the Domestic Fund out of another relevant fund under section 85;
- (i) money repaid to the Domestic Fund, being money that was lent out of the Domestic Fund to the Corporation under subsection 75(2) or that was lent to another relevant fund under section 85, and interest on money so lent;
- (j) the amount of any surplus resulting from a sale or sales by or on behalf of the Corporation of dairy produce where the surplus is ascertained after the day on which the Corporation is satisfied of the matter referred to in subsection 102(2).

**Application of Domestic Market Support Fund**

“106. Money standing to the credit of the Domestic Fund may be expended:

**SCHEDULE—continued**

- (a) in making domestic market support payments under section 108A; and
- (b) in making payments under section 108D; and
- (c) in paying manufacturing milk levy rebates under section 108E; and
- (d) in making payments under section 108F; and
- (e) in payment to the Commonwealth of the expenses incurred by the Commonwealth in relation to:
  - (i) the collection and recovery of amounts referred to in section 107; and
  - (ii) the administration of subsection 107(1);
- (f) in meeting the expenses of the Corporation incurred in administering the Domestic Fund;
- (g) in making loans to the Corporation under subsection 75(2) or to another relevant fund under section 85;
- (h) in repaying money that was lent to the Domestic Fund by the Corporation under paragraph 74(2)(b) or that was lent to the Domestic Fund out of another relevant fund under section 85, and in paying interest on money so lent;
- (i) in making payments to the Corporation in respect of any deficit resulting from a sale or sales by or on behalf of the Corporation of dairy produce where the deficit is ascertained after the day on which the Corporation is satisfied of the matter referred to in subsection 102(2).

**Payment of market milk and manufacturing milk levies to Corporation**

“107.(1) The Commonwealth must pay to the Corporation an amount equal to each amount received by the Commonwealth by way of market milk levy or manufacturing milk levy.

“(2) The Commonwealth must pay to the Corporation an amount equal to each amount received by the Commonwealth by way of:

- (a) acquisition offset levy; or
- (b) levy imposed by section 8 or 9 of the *Dairy Produce Levy (No. 2) Act 1986*; or
- (c) penalty payable under the Levies and Charges Collection Act in relation to levy referred to in paragraph (a) or (b).

“(3) Amounts payable under subsection (1) or (2) are payable out of the Consolidated Revenue Fund which is appropriated accordingly.

**SCHEDULE—continued**

**Returns to Corporation by manufacturers**

“108.(1) This section does not apply to relevant dairy produce processed by a manufacturer as liquid milk for human consumption and sold or distributed in Australia as liquid milk for human consumption.

“(2) Within 10 days after the end of each month ending before 1 July 2000, a manufacturer must give the Corporation a return relating to:

- (a) relevant dairy produce delivered, during the month, by producers to the manufacturer; and
- (b) relevant dairy produce produced by the manufacturer and used by the manufacturer, during the month, in the manufacture of dairy produce.

“(3) The return must be in accordance with a form approved by the Corporation.

**Domestic market support payments**

“108A. A domestic market support payment is payable by the Corporation in respect of all manufacturing milk produced in Australia by a person in a month that ends before 1 July 2000.

**Rate of domestic market support payments**

“108B.(1) The amount of a domestic market support payment in respect of manufacturing milk is to be calculated at the rate determined by the Corporation to be the rate applicable to the month in which the manufacturing milk was produced.

“(2) For the purpose of making determinations under subsection (1), the Corporation must have regard to the need, as far as possible, to ensure that the amount standing to the credit of the Domestic Fund on 1 July 2000 is sufficient, but not significantly more than sufficient, to meet all liabilities of the Corporation for the discharge of which money of the Domestic Fund is available under section 106.

“(3) Before making a determination under subsection (1), the Corporation must consult with the executive in relation to the proposed determination.

**Recipients of domestic market support payments**

“108C. A domestic market support payment is payable to the producer of the manufacturing milk to which the payment relates.

**Negative levy payments**

“108D.(1) A manufacturer has a negative levy entitlement in respect of a month if:

**SCHEDULE—continued**

- (a) manufacturing milk levy is imposed on relevant dairy produce delivered to, or used by, the manufacturer during that month; and
- (b) but for the operation of subsection 7(5) of the first Levy Act, the amount of the manufacturing milk levy so imposed would be a negative amount.

“(2) The amount of the negative levy entitlement is the amount calculated by multiplying the negative amount by  $-1$ .

“(3) If a manufacturer has a negative levy entitlement in respect of a month, the Secretary of the Department must give the Corporation a written notice stating:

- (a) the name and postal address of the manufacturer; and
- (b) the amount of the entitlement.

“(4) As soon as practicable after receiving a notice under subsection (1), the Corporation must pay to the manufacturer specified in the notice the amount specified in the notice.

“(5) For the purposes of subsections (3) and (4), a notice given to the Corporation by an authorised person is to be taken to have been given by the Secretary of the Department.

**Levy rebates to downstream manufacturers**

“108E.(1) A person is entitled to be paid by the Corporation a manufacturing milk levy rebate in respect of a month if:

- (a) the person has exported dairy produce; and
- (b) relevant dairy produce used, whether by that person or by another person, in the manufacture of the exported dairy produce has been taken into account in the calculation of manufacturing milk levy; and
- (c) the export of the dairy produce has not been taken into account under paragraphs 7(2)(c) and (d) of the first Levy Act.

“(2) The amount of a manufacturing milk levy rebate is an amount equal to the total of:

- (a) an amount calculated at the milk fat rate for the month to which the rebate relates on the milk fat content of the dairy produce referred to in paragraph (1)(a); and
- (b) an amount calculated at the protein rate for the month to which the rebate relates on the protein content of the dairy produce referred to in paragraph (1)(a).

“(3) A manufacturing milk levy rebate may not be paid unless:

- (a) a written application has been submitted to the Corporation within 21 days after the end of the month to which the application relates; and



**SCHEDULE—continued**

- (b) the application is in accordance with a form approved by the Corporation; and
- (c) the application contains such information relating to the dairy produce exported as is specified in the approved form.

“(4) The Corporation may include in the approved form of application a requirement that the whole or a part of the information contained in an application be verified by statutory declaration.

“(5) As soon as practicable after it receives an application for a manufacturing milk levy rebate, the Corporation must:

- (a) if the Corporation decides that the applicant is entitled to the rebate—inform the applicant, by written notice, of its decision and of the amount of the rebate to which the applicant is entitled; or
- (b) if the Corporation decides that the applicant is not entitled to the rebate—inform the applicant, by written notice, of its decision.

“(6) A notice under paragraph (5)(a) must set out the basis on which the Corporation has determined the amount of the rebate to which the applicant is entitled.

“(7) A notice under paragraph (5)(b) must set out the reasons for the decision to which the notice relates.

“(8) If the Corporation gives an applicant a notice under paragraph (5)(a), it must, at the same time, pay the applicant the rebate to which the notice relates.

**Refunds of levy for 1 July 2000 stocks of dairy products**

“108F.(1) In this section:

**‘eligible person’** means a person who carries on a relevant business;

**‘relevant business’** means a business that consists of or includes:

- (a) the business of manufacturing dairy produce; or
- (b) the business of exporting dairy produce; or
- (c) the business of selling dairy produce otherwise than by retail.

“(2) If:

- (a) on 1 July 2000, an eligible person is in possession of dairy produce; and
- (b) relevant dairy produce used in the manufacture of the first-mentioned dairy produce has been taken into account in the calculation of manufacturing milk levy;

the eligible person is entitled to be paid an amount equal to the total of:

**SCHEDULE—continued**

- (c) an amount calculated at the milk fat rate for the month ending on 30 June 2000 on the milk fat content of the relevant dairy produce referred to in paragraph (b); and
- (d) an amount calculated at the protein rate for the month ending on 30 June 2000 on the protein content of the relevant dairy produce referred to in paragraph (b).

“(3) An amount is not to be paid under subsection (2) unless:

- (a) a written application has been submitted to the Corporation on or before 31 October 2000; and
- (b) the application is in accordance with a form approved by the Corporation; and
- (c) the application contains such information relating to the dairy produce as is specified in the approved form.

“(4) The Corporation may include in the approved form of application a requirement that the whole or a part of the information contained in an application be verified by statutory declaration.

“(5) As soon as practicable after it receives an application for a payment under subsection (2), the Corporation must:

- (a) if the Corporation decides that the applicant is entitled to the payment—inform the applicant, by written notice, of its decision and of the amount of the payment to which the applicant is entitled; or
- (b) if the Corporation decides that the applicant is not entitled to the refund—inform the applicant, by written notice, of its decision.

“(6) A notice under paragraph (5)(a) must set out the basis on which the Corporation has determined the amount of the payment to which the applicant is entitled.

“(7) A notice under paragraph (5)(b) must set out the reasons for the decision to which the notice relates.

“(8) If the Corporation gives an applicant notice under paragraph (5)(a), it must, at the same time, pay the applicant the amount to which the notice relates.

**Winding-up of Domestic Market Support Fund**

“108G.(1) As soon as practicable after 1 July 2000, the Domestic Fund is to be wound up.

“(2) When the Corporation is satisfied that there is no reasonable likelihood that it will:

- (a) incur any further liabilities; or

**SCHEDULE—continued**

(b) receive any further applications or claims;  
in relation to matters specified in section 106, the Corporation must determine the total amount of the liabilities of the Corporation in relation to which Fund money may be expended.

“(3) If the amount of Fund money exceeds the amount determined under subsection (2), the Corporation must cause the balance of the Fund money to be paid into a bank account maintained by the Corporation under section 73.

“(4) Fund money paid into a bank account under subsection (3) must be applied by the Corporation for such purpose or purposes as the Corporation, after consultation with the executive, determines to be appropriate.

“(5) If the amount determined under subsection (2) exceeds the amount of Fund money, the Corporation may expend money standing to the credit of a relevant fund, to the extent of the excess, for any of the purposes specified in section 106.

“(6) If, when the Corporation makes a determination under subsection (2), there are any investments that represent money of the Domestic Fund, those investments are to be taken, on and after the day on which the determination is made, to be held for such purposes as the Corporation has determined under subsection (4).

“(7) In this section, ‘Fund money’ means money standing to the credit of the Domestic Fund when the Corporation makes a determination under subsection (2).”.

**16. After section 109:**

Insert:

**Reduction of acquisition offset and import offset levy amounts in certain circumstances**

“109A.(1) If:

- (a) a prescribed exporter is liable to pay acquisition offset levy and import offset levy in respect of the same financial year; and
- (b) the total amount so payable by the prescribed exporter would, but for this section, exceed the amount that, under the first Levy Act, is the maximum amount in relation to acquisition offset levy payable by the prescribed exporter in respect of that year;

the prescribed exporter is not liable to pay so much of each of those levies as exceeds the adjusted amount of that levy for that year.

“(2) The adjusted amount of a levy for a financial year is the amount worked out according to the formula:

**SCHEDULE—continued**

$$\text{Maximum amount} \times \frac{\text{Levy}}{\text{Total levies}}$$

where:

**‘Maximum amount’** means the amount that, under the first Levy Act, is the maximum amount in relation to acquisition offset levy payable by the prescribed exporter in respect of that year;

**‘Levy’** means the amount of the levy in respect of which the calculation is being made;

**‘Total levies’** means the total amount that, but for this subsection, would be payable by the prescribed exporter by way of acquisition offset levy and import offset levy in respect of the financial year.

“(3) In this section **‘acquisition offset levy’** and **‘import offset levy’** have the same meaning as in Division 5 of Part VII.

“(4) A reference in this section to the milk fat rate for a month or the protein rate for a month has the same meaning as in section 7 of the *Dairy Produce Levy (No. 1) Act 1986*.

**Reduction of levies to avoid double payment**

“109B.(1) This section has effect if:

- (a) dairy produce is acquired or imported by a body corporate (**‘the operative company’**) that is not a prescribed exporter; and
- (b) 2 or more other bodies corporate (**‘the levy-paying companies’**) would, but for this section, be liable to pay acquisition offset levy or import offset levy, as the case may be, in relation to the dairy produce referred to in paragraph (a) or dairy produce that includes that dairy produce.

“(2) In a case in which this section has effect because of the acquisition of dairy produce, the amount of acquisition offset levy that would, but for this section, be payable by each of the levy-paying companies is reduced to the amount that would be payable if:

- (a) the operative company had not acquired any of the dairy produce referred to in paragraph (1)(a); and
- (b) each levy-paying company had acquired a relevant part of that dairy produce.

“(3) In a case in which this section has effect because of the importation of dairy produce, the amount of import offset levy that would, but for this section, be payable by each of the levy-paying companies is reduced to the amount that would be payable if:

**SCHEDULE—continued**

- (a) the operative company had not imported any of the dairy produce referred to in paragraph (1)(a); and
- (b) each levy-paying company had imported a relevant part of that dairy produce.

“(4) The relevant part referred to in paragraph (2)(b) or (3)(b) is ascertained by dividing the quantity of the dairy produce by the number of levy-paying companies.

“(5) Section 109A has effect as if an amount of levy, as reduced by subsection (2) of this section, were the amount of that levy payable under the first or second Levy Act, as the case requires.

**Appointment of authorised persons**

“109C. The Secretary of the Department may, in writing:

- (a) appoint a person employed by, or in the service of, a collecting authority or collecting organisation within the meaning of the Levies and Charges Collection Act to be an authorised person for the purposes of section 108D; and
- (b) appoint an officer of the Australian Public Service to be an authorised person for the purposes of section 108D.”.

**17. After section 111:**

Insert:

**Determination of milk fat or protein content of dairy produce**

“111A.(1) If:

- (a) it is necessary to determine the milk fat content of dairy produce for the purposes of a provision of this Act or of the first or second Levy Act; and
- (b) it is not practicable to determine the milk fat content of the dairy produce;

the dairy produce is to be taken to have the prescribed milk fat content for dairy produce of that kind.

“(2) If:

- (a) it is necessary to determine the protein content of dairy produce for the purposes of a provision of this Act or of the first or second Levy Act; and
- (b) it is not practicable to determine the protein content of the dairy produce;

the dairy produce is to be taken to have the prescribed protein content for dairy produce of that kind.

**SCHEDULE—continued**

“(3) The prescribed milk fat content for dairy produce of a particular kind is:

- (a) the milk fat content prescribed in relation to that kind of dairy produce; or
- (b) the milk fat content prescribed in relation to a class of dairy produce that includes the particular kind.

“(4) The prescribed protein content for dairy produce of a particular kind is:

- (a) the protein content prescribed in relation to that kind of dairy produce; or
- (b) the protein content prescribed in relation to a class of dairy produce that includes the particular kind.”.

**18. Subsection 118(1) (definition of “relevant payment decision”):**

After “subsection 100(4)” insert “or section 108A, 108E or 108F”.

---

*[Minister's second reading speech made in—  
House of Representatives on 9 May 1995  
Senate on 30 May 1995]*