Dairy Structural Adjustment Program Scheme 2000

made under the

*Dairy Produce Act 1986*

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taking into account amendments up to *Dairy Structural
Adjustment Program Scheme Amendment 2000 (No. 11)*

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Part 1 Preliminary

Section 1

Part 1 Preliminary

1 Name of Scheme [see Note 1]

This Scheme is the Dairy Structural Adjustment Program Scheme 2000, also known as the DSAP scheme.

2 Commencement

The scheme commences on gazettal.

3 Definitions

In the scheme, unless the contrary intention appears:


anomalous circumstances payment right means a payment right under section 11.

approved form means a form approved by the DAA.

base year means the financial year beginning on 1 July 1998.

eligible dairy leasing arrangement has the meaning given by section 5.

eligible dairy sharefarming arrangement has the meaning given by section 4.

exceptional event, in relation to a dairy farm enterprise, means a drought, storm, flood or other natural event, or disease suffered by livestock.

exceptional events supplementary payment right means a payment right under section 10.

former statutory authority means a body that:

(a) was, but is no longer, a statutory authority; and
(b) carries out substantially the same functions as it carried out as a statutory authority.

initial payment day has the meaning given by section 41.

milk means market milk or manufacturing milk.

milk revenue means the gross proceeds from the sale of milk.

owner of a unit means the entity whose ownership of the unit is entered on the register.

owner of land means:

(a) a person who is taken to be the legal owner of the land under the law of the State or Territory where the land is located; or

(b) if the legal owner of the land under the law of the State or Territory where the land is located is the Crown, a statutory authority or a former statutory authority — a person who leases the land from the Crown, the authority or the former authority.
public officer of a corporation means any of the following:
(a) a director or a secretary of the corporation;
(b) a person acting under a power of attorney from the corporation;
(c) the public officer of the corporation for the purposes of the *Income Tax Assessment Act 1936* section 252;
(d) an officer of the corporation authorised by the corporation to do the act concerned.

*quota* means a right under a law of a State or Territory to deliver a specific quantity of market milk.

*register* means the register kept under section 33.

*scheme* means the DSAP scheme.

*standard payment right* means a payment right under section 9.

*support or adjustment payment* means each of the following:
(a) a payment under the *Farm Help Re-establishment Grant Scheme 1997* under the *Farm Household Support Act 1992*;
(b) a re-establishment grant under an agreement subject to the *Rural Adjustment Act 1992*.

*Note* The following terms used in the scheme are defined in the *Act*:
- business day
- claim
- DAA
dairy cattle
- dairy exit payment
- dairy farm enterprise
dairy-type grant (Act).
- DEP scheme
deliver
- DSAP payment
deliver
- DSAP scheme
- DSAP claim period
- eligible interest in a dairy enterprise
- DSAP payment start day
- farm enterprise
- industry services body
- manufacturing milk
- market milk
- non-premium component
- overall enterprise amount
- payment right
- premium component
- premium component unit.
- quarter

### 4 Meaning of eligible dairy sharefarming arrangement

(1) An eligible dairy sharefarming arrangement is an arrangement between 2 or more entities:

(a) under which each entity is entitled to:
   (i) a fixed percentage share of the milk revenue of a dairy farm enterprise; or
   (ii) a fixed percentage share of the milk revenue of a dairy farm enterprise in relation to the sale of each type or amount of milk produced by the enterprise; and

(b) where at least 1 of those entities has no proprietary interest in:
   (i) the land on which a milking shed used by the enterprise is situated; and
   (ii) quota under which the enterprise delivers market milk.
(2) A dairy farm enterprise is subject to an eligible dairy sharefarming arrangement if the milk revenue of the enterprise is shared under the arrangement.

(3) An entity is a party to an eligible dairy sharefarming arrangement if the entity is entitled to a share of the enterprise’s milk revenue under the arrangement.

5 Meaning of eligible dairy leasing arrangement

(1) A dairy farm enterprise is subject to an eligible dairy leasing arrangement:
   (a) if quota was required for the delivery of market milk by the enterprise in the base year, and the owner of quota used by the enterprise leases some or all of the quota used by the enterprise to 1 or more other entities for the purpose of delivering milk produced by the enterprise; or
   (b) if quota was not required for the delivery of market milk by the enterprise in the base year, and the owner of land on which a milking shed used by the enterprise is situated leases the land to 1 or more other entities for the purpose of producing milk.

(2) An entity is a party to an eligible dairy leasing arrangement if the entity is the lessor or lessee of quota or land mentioned in this section.

(3) If a dairy farm enterprise is subject to an eligible dairy leasing arrangement under paragraph (1) (a) and a lessee mentioned in that paragraph sub-leases some or all of the quota mentioned in that paragraph to another entity (the *sub-lessee*) for the purpose of producing milk:
   (a) the sub-lessee is taken, for subsection (2), to be the lessee of the quota subject to the sub-lease; and
   (b) the lessee is taken, for subsection (2), not to be the lessee of the quota subject to the sub-lease.

(4) If an dairy farm enterprise is subject to an eligible dairy leasing arrangement under paragraph (1) (b) and a lessee mentioned in that paragraph sub-leases some or all of the land mentioned in that paragraph to another entity (the *sub-lessee*) for the purpose of producing milk:
   (a) the sub-lessee is taken, for subsection (2), to be the lessee of the land subject to the sub-lease; and
   (b) the lessee is taken, for subsection (2), not to be the lessee of the land subject to the sub-lease.

6 Identifying the essential capital contribution

(1) If a dairy farm enterprise is subject to an eligible dairy sharefarming arrangement or an eligible dairy leasing arrangement, the entity that provides the essential capital contribution for the enterprise can be identified in accordance with this section.

(2) The following entities are taken to have provided the essential capital contribution required to achieve access to the market milk premium for a
dairy farm enterprise that is subject to an eligible dairy sharefarming arrangement or an eligible dairy leasing arrangement:

(a) if all the market milk delivered by the dairy farm enterprise in the base year was delivered against a quota — the entity or entities that owned the quota;

(b) if paragraph (a) does not apply but at least some market milk delivered by the dairy farm enterprise in the base year was delivered against a quota — each of the following:
   (i) the entity or entities that owned the quota;
   (ii) the entity or entities that owned the land on which the enterprise is predominantly carried on;
   (iii) the entity or entities that owned at least 25% of the number of livestock used in, or for purposes incidental to, the carrying on of the enterprise;

(c) if neither paragraph (a) nor paragraph (b) applies — each of the following:
   (i) the entity or entities that owned the land on which the enterprise is predominantly carried on;
   (ii) the entity or entities that owned at least 25% of the number of livestock used in, or for purposes incidental to, the carrying on of the enterprise.

(4) For subparagraphs (2) (b) (iii) and (2) (c) (ii), the proportion of livestock owned by a partner in a partnership is taken to be the same as the proportion of the livestock owned by the partnership.
Part 2  Eligibility for payment rights

7 Types of payment rights
There are 3 types of payment rights under the scheme, as follows:
(a)  standard payment rights;
(b)  exceptional events supplementary payment rights;
(c)  anomalous circumstances payment rights.

8 Basic eligibility criteria
An entity’s eligibility for a payment right as set out in this Part is subject to any restrictions on the entity’s eligibility set out in the Act or scheme.

9 Who is eligible for a standard payment right
An entity is eligible to be granted a standard payment right in respect of a dairy farm enterprise if:
(a)  the entity held an eligible interest in the enterprise at 6.30 pm on 28 September 1999; and
(b)  the enterprise delivered milk during the base year.

10 Who is eligible for an exceptional events supplementary payment right
(1) An entity is eligible for an exceptional events supplementary payment right in respect of a dairy farm enterprise if:
(a)  the entity has been granted a standard payment right in respect of the enterprise; and
(b)  the DAA is satisfied that:
   (i)  the enterprise was affected by 1 or more exceptional events; and
   (ii)  as a result of 1 or more of those events, the volume of market milk and manufacturing milk delivered by the enterprise in the base year was less than 70% of the average annual volume of market milk and manufacturing milk delivered by the enterprise in the 1997–1998, 1996–1997 and 1995–1996 financial years.

(2) An entity may be eligible for an exceptional events supplementary payment right in respect of a dairy farm enterprise even if it has already been granted 1 or more exceptional events supplementary payment rights in respect of the enterprise, but the combined face value of the payment rights granted to the entity must not exceed the amount worked out under section 25.

Note  Even if an entity is eligible for an exceptional events supplementary payment right, the DAA has a discretion whether or not to grant the payment right: see subsection 18 (9).
11 Who is eligible for an anomalous circumstances payment right

(1) An entity is eligible for an anomalous circumstances payment right if:
   (a) the entity did not pass the standard DSAP test; and
   (b) the entity held an eligible interest in a dairy farm enterprise during the whole or a part of the base year; and
   (c) the entity is taken under subsection (1A) to have been affected by anomalous circumstances.

(1A) An entity is taken to have been affected by anomalous circumstances if the entity held an eligible interest in a dairy farm enterprise at 6.30 pm on 28 September 1999 but that enterprise did not deliver milk during the base year.

(1B) For the purposes of this section, an entity passes the standard DSAP test if, and only if:
   (a) the entity held an eligible interest in a dairy farm enterprise at 6.30 pm on 28 September 1999; and
   (b) either or both of the following conditions are satisfied:
       (i) during the base year, the dairy farm enterprise delivered market milk;
       (ii) during the base year, the dairy farm enterprise delivered manufacturing milk.

(2) An entity may be eligible for an anomalous circumstances payment right even if it has already been granted 1 or more anomalous circumstances payment rights, but the combined face value of the payment rights granted to the entity must not exceed the amount worked out under section 26.

Note Even if an entity is eligible for an anomalous circumstances payment right, the DAA has a discretion whether or not to grant the payment right: see subsection 18 (9).

12 Deceased estates

(1) This section applies to an individual who had an eligible interest in a dairy farm enterprise at 6.30 pm on 28 September 1999 (the relevant time) and who:
   (a) dies after the relevant time, but before making a claim for a payment right; or
   (b) dies after making a claim for a payment right, but before the claim for the payment right is determined.

(2) For an individual to whom paragraph 1 (a) applies, this scheme has effect as if his or her legal personal representative had held the eligible interest at the relevant time, and everything the individual did that affects his or her eligibility for a payment right is taken to have been done by his or her legal personal representative.
(3) For an individual to whom paragraph 1 (b) applies, for the purposes of this scheme:
   (a) the individual’s legal personal representative is taken to have made the claim; and
   (b) everything the individual did that affects his or her eligibility for a payment right is taken to have been done by his or her legal personal representative.

12A Restriction on eligibility where support or adjustment payments

Despite the other provisions of this Part, an entity is not eligible for the grant of a payment right in respect of a dairy farm enterprise if:
   (a) the entity has received, after 6:30 pm on 28 September 1999, a support or adjustment payment and has not paid an equal amount to the Commonwealth by way of repayment; or
   (b) the entity has applied for a support or adjustment payment and the application for the support or adjustment payment has not been rejected or withdrawn.
Part 3  Claiming payment rights

13  Gathering information
The DAA must obtain and record as much information as is practicable that:
(a) is likely to assist entities in making claims for payment rights; or
(b) is likely to assist the DAA in determining claims for payment rights; or
(c) is likely to assist the DAA to make DSAP payments.

14  Invitations to make claims for payment rights
(1) The DAA must conduct a public information program about the scheme.

(2) The public information program must include advertisements in at least 1 national newspaper, and local and regional newspapers circulating in all areas containing a significant dairy industry, after the beginning of the DSAP claim period, telling entities:
(a) how they may qualify for payment rights under the scheme; and
(b) how they can make a claim for a payment right.

(3) The DAA must make all reasonable efforts to give an entity a formal invitation to make a claim for a payment right if:
(a) the DAA has reasonable grounds to believe, on the basis of information obtained under section 13, that it may be in the interests of the entity for the entity to make a claim for a payment right; and
(b) there would be enough time for the claim to be made before the end of the DSAP claim period if the DAA were to give the entity a formal invitation to make the claim.

(4) However, a failure by the DAA to comply with subsection (3) does not invalidate any action taken that is otherwise in accordance with the scheme.

15  Claim for payment
(1) A payment right in respect of a dairy farm enterprise must not be granted to an entity unless the entity, or a person acting on behalf of the entity, makes a claim for the payment right during the DSAP claim period or a further period after the end of the DSAP claim period allowed by the DAA for the claim to be made.

(2) The DAA may allow a further period after the end of the DSAP claim period for a claim to be made only if 1 or more units in another payment right relating to the enterprise are cancelled under section 35 or 36.

(3) An entity may make a claim under subsection (1) even if it has not received a formal invitation to make a claim.
Section 16

(4) For this section:
   (a) a claim must be made in writing, and state the type of payment right being claimed; and
   (b) a claim must contain sufficient information to enable the DAA to determine the eligibility of the entity for the type of payment right claimed and the face value of that payment right; and
   (c) a claim must be signed:
      (i) if the entity is a company — by the company’s public officer;
      (ii) if the entity is an individual under the age of 18 — by a parent or guardian of the entity;
      (iii) otherwise — by or on behalf of the entity; and
   (d) a claim must be sent by post, or delivered by hand, to the DAA; and
   (e) if an entity posts a claim to the DAA, the claim is taken to be made on the day that it is posted.

16 Amending claims and providing further information

(1) If an entity makes a claim under section 15, the entity may amend the claim before the end of the period allowed for making the claim under subsection 15 (1).

(2) If a claim does not satisfy the requirements of subsection 15 (4), the DAA may ask the entity to amend the claim to satisfy those requirements.

(3) If the DAA asks an entity to amend a claim under subsection (2), a payment right in respect of the claim cannot be granted until after the end of the extended period, unless, within the extended period, the entity, or a person acting on behalf of the entity:
   (a) amends the claim; or
   (b) notifies the DAA that the claimant does not want to amend the claim.

(4) If a claim does not satisfy the requirements of paragraph 15 (4) (b), the DAA may:
   (a) ask the entity to provide further information; and
   (b) ask the entity to verify any information contained in the claim, or any further information, by statutory declaration.

(5) If the DAA asks an entity to provide further information, or to verify information, under subsection (4), a payment right in respect of the claim cannot be granted unless:
   (a) within the extended period, the entity, or a person acting on behalf of the entity, complies with the request; or
   (b) the DAA is satisfied that the entity cannot comply with the request; or
   (c) the DAA considers, after the end of the extended period, in the circumstances, that the right should be granted.

(6) If a request under this section is sent by post, the entity is taken to have received the request 4 working days after the DAA posted it.
Section 17

(7) In this section:

extended period, in relation to a claim, means the period ending at the later of:
(a) the end of the period for making the claim under subsection 15(1); and
(b) the end of a period of 28 days after the entity receives the request under subsection (3) or (5) (whichever is relevant) or, if that period is extended under subsection (8), the period as so extended.

(8) If the DAA makes a request under subsection (2) or (4), the following apply:
(a) the DAA may, on application by the entity making the claim, extend the period of 28 days mentioned in paragraph (7) (b);
(b) the application to extend the period must be made within the 28 days;
(c) in determining the application, the DAA must have regard to (among other things) the effect that the extension will have on claims by other entities.

17 Farm business assessment

(1) An entity is not eligible for the grant of a payment right in respect of a dairy farm enterprise unless:
(a) a qualified financial adviser has carried out a farm business assessment for the dairy farm enterprise that complies with the rules in subsection (2) and signed a certificate, in the approved form, declaring that it has done so; or
(b) the entity has carried out a farm business assessment for the dairy farm enterprise and a qualified financial adviser has signed a certificate, in the approved form, declaring that the assessment complies with the rules in subsection (2); or
(c) the entity is an exempt entity.

(2) The rules are:
(a) a farm business assessment in relation to a dairy farm enterprise must be carried out by the entity or by a qualified financial adviser; and
(b) whether a farm business assessment is carried out by the entity or a qualified financial adviser, the assessment must be in writing and set out at least each of the following in relation to the dairy farm enterprise:
   (i) a summary of forecast annual income and expenditure of the enterprise for 1999/2000 and 2000/2001 using a range of milk projections; and
   (ii) a summary of forecast assets and liabilities (balance sheet) of the enterprise as at 30 June 2000 and 30 June 2001; and
(c) a certificate by a qualified financial adviser, in the approved form, declaring that a farm business assessment has been carried out (see paragraph (1) (a) or (b)) is received by the DAA.
Section 18

(2A) An entity that is required to comply with the rules in subsection (2) to be eligible for the grant of a payment right is not prevented from making a claim for the grant of a payment right at a time when the entity has not complied with those rules, so long as those rules are complied with before the end of 12 months after the end of the DSAP claim period.

(3) If an entity is in a partnership in relation to a dairy farm enterprise, the entity is taken to have complied with the rules in subsection (2) in relation to the enterprise if 1 or more of the other partners complies with those rules in relation to the enterprise.

(3A) To avoid doubt, for an entity who complies with the rules in subsection (2) before the commencement of the Dairy Structural Adjustment Program Scheme Amendment 2000 (No. 8), the time by which those rules must be complied with is and is taken always to have been the time at which it complied with those rules.

(4) In this section:

exempt entity, in relation to a dairy farm enterprise, means:
(a) a trustee of the estate of an entity who had an eligible interest in the enterprise at 6.30 pm on 28 September 1999; or
(b) an entity who:
   (i) acquired its eligible interest in the enterprise as a beneficiary of the estate of an entity who held the interest at 6.30 pm on 28 September 1999; and
   (ii) does not continue to hold an interest in the enterprise; or
(c) an entity which gives the DAA a statement, signed by the entity (or, if the entity is a company, by the company's public officer), that the entity has exited the dairy industry after 6.30 pm on 28 September 1999.

qualified financial adviser means a person who is:
(a) a member of 1 or more of the following associations:
   (i) CPA Australia;
   (ii) Institute of Chartered Accountants in Australia;
   (iii) National Institute of Accountants;
   (iv) Australian Association of Agricultural Consultants;
   (v) Rural Financial Counselling Service;
   (vi) the Queensland Rural Adjustment Authority; or
(b) a person approved by the DAA as being otherwise appropriately qualified.

18 Grants of payment rights

(1) The DAA must decide, for each claim for a standard payment right received from an entity in accordance with section 15:
(a) whether the entity is eligible for a standard payment right; and
(b) if it is eligible — the face value of the right.
(2) If, at the time the decision is made, the entity is required to comply with the rules in subsection 17 (2) but has not complied with those rules, a decision that the entity is eligible for a standard payment right is taken to be a decision that the entity is eligible for a standard payment right subject to its complying with the rules in subsection 17 (2).

(3) A decision under subsection (1) may be made subject to the condition that the entity concerned give the DAA a declaration, signed by a person mentioned in paragraph 15 (4) (c), to the effect that the entity does not have a current, undetermined application for a support or adjustment payment and, if it has received a support or adjustment payment after 6.30 pm on 28 September 1999, it has paid an equal amount to the Commonwealth by way of repayment.

(4) A decision under subsection (1) may be made before the end of 30 days after the end of the DSAP claim period but, if it is not, it must be made as soon as practicable after the end of the 30 days.

(5) If the decision under subsection (1) is that the entity is eligible for a standard payment right, the DAA must, at the same time but subject to the Act and the rest of this scheme, decide that the entity will be granted a standard payment right at the time and of the face value ascertained in accordance with subsections (6) and (7).

(6) The time at which a standard payment right is granted is:
   (a) as soon as possible after the end of the reconsideration request period in respect of the claim concerned, consistently with the other paragraphs in this subsection; but
   (b) if the decision under subsection (1) is that the entity is eligible for a standard payment right subject to its complying with the rules in subsection 17 (2) — not before those rules are complied with (but see subsection (8)); and
   (c) if the decision under subsection (1) is subject to the condition mentioned in subsection (3) — not before the declaration mentioned in that subsection is received by the DAA; and
   (d) if, by the end of the reconsideration request period, the DAA has received a request that requires it to reconsider the decision — not before the DAA makes a decision as a result of the reconsideration, the effect of which is that the entity is eligible for a standard payment right.

Note 1 If the DAA receives a request to reconsider a decision but does not confirm, revoke or vary the decision within 60 days, section 49 (5) says that the DAA is taken to have confirmed the decision.

Note 2 If the decision is reviewed by the Administrative Appeals Tribunal (see section 49), any decision the Tribunal makes in substitution for the DAA’s decision is taken to be the DAA’s decision and, unless the Tribunal otherwise orders, is deemed to have had effect on and from the day on which the DAA’s decision had effect: see Administrative Appeals Tribunal Act 1975 section 43 (6).

(7) The face value of a standard payment right granted under this section is:
   (a) the face value specified in the decision under subsection (1); or
Section 18

(b) if the DAA makes a decision as a result of the reconsideration of a decision, the effect of which is that the entity is eligible for a standard payment right — the face value determined on the reconsideration.

(8) If the decision under subsection (1) is that the entity is eligible for a standard payment right subject to its complying with the rules in subsection 17 (2), but those rules have not been complied with by the end of 12 months after the end of the DSAP claim period, the DAA’s decision under subsection (5) is taken to be, and always to have been, a decision that the entity is not to be granted a standard payment right.

(8A) If a decision under subsection (1) is that the entity is eligible for a standard payment right subject to the condition mentioned in subsection (3), but the declaration mentioned in subsection (3) is not given to the DAA within 60 days after the decision comes to the entity's attention for the purposes of subsection 49 (1) or by 31 July 2002, whichever is later, the decision under subsection (5) is taken to be, and always to have been, a decision that the entity is not to be granted a standard payment right.

(8B) The DAA may, on application by the entity or of its own motion, extend the period fixed by subsection (8A), either before or after the period has ended.

(9) The DAA may decide, for each claim for an exceptional events supplementary payment right or an anomalous circumstances payment right received from an entity in accordance with section 15:

(a) whether the entity is eligible for the right claimed; and

(b) if it is eligible:

(i) whether to grant the right; and

(ii) if it decides to grant the right — the face value of the right and the time at which the right is granted.

(10) The DAA may grant more than one exceptional events supplementary payment right or anomalous circumstances payment right to an entity who is eligible for it in respect of the entity's claim made under section 15.

(11) The DAA must record in the register details of payment rights granted under this section.

(12) In this section:

*reconsideration request period*, in relation to a decision by the DAA under this scheme, means the period of 28 days after the day the decision first comes to the attention of the entity who made the claim concerned.

19 Notice of decision

(1) If the DAA makes a decision under section 18 about a claim for a payment right, it must give an entity who is affected by the decision a notice setting out the decision.
(2) The notice must state that, if the entity is dissatisfied with the decision, it may:

(a) within 28 days after receiving notice of the decision, ask the DAA to reconsider the decision; and

(b) subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision of the DAA made on the reconsideration confirming or varying the decision, apply to the Administrative Appeals Tribunal for review of the decision as confirmed or varied.
Part 4  
Face value of payment rights

Division 4.1  
General

20  
Application of Division

This Division applies subject to any limitation that applies, or adjustment that is made, under Division 4.2.

21  
Standard payment right — enterprises that are not subject to sharefarming arrangements or leasing arrangements

(1) This section applies to a dairy farm enterprise that is not subject to an eligible dairy sharefarming arrangement or an eligible dairy leasing arrangement.

(2) If an entity is the only entity who had an eligible interest in the dairy farm enterprise at 6.30 pm on 28 September 1999, the face value of the entity’s standard payment right is equal to the overall enterprise amount.

(3) If there are 2 or more entities who had an eligible interest in the dairy farm enterprise at 6.30 pm on 28 September 1999, the face value of each entity’s standard payment right is:

(a) the proportion of the overall enterprise amount that is the same as the proportion of the milk revenue of the enterprise to which the entity was entitled at 6.30 pm on 28 September 1999; but

(b) if the entities do not agree on the proportion of the milk revenue of the enterprise to which each of them was entitled at 6.30 pm on 28 September 1999, or that proportion is uncertain — the proportion of the overall enterprise amount that corresponds most closely with the way the milk revenue of the enterprise was shared at 6.30 pm on 28 September 1999.

22  
Standard payment right — enterprises that are subject to both sharefarming and leasing arrangements

(1) This section applies to:

(a) a dairy farm enterprise that is subject to both:

(i) an eligible dairy sharefarming arrangement; and

(ii) an eligible dairy leasing arrangement; and

(b) an entity who is a party to either of those arrangements.

(1A) First, so much of the premium component of the overall enterprise amount as relates to market milk delivered by the enterprise in the base year against a particular quota is allocated to the entities who owned that quota.
(2) Then, the face value of the payment right of the lessor of the land on which the enterprise is predominantly carried on is worked out in accordance with section 24 as if:
   (a) the enterprise were not subject to the sharefarming arrangement; and
   (b) references in section 24 to the overall enterprise amount were references to the overall enterprise amount less the amounts allocated under subsection (1A) of this section.

(3) However, for subsection (2), any essential capital contribution that was provided for the enterprise by an entity who is a party to the sharefarming arrangement but not the leasing arrangement is taken to have been provided by the lessee.

(4) The face value of the payment rights of the entities who are parties to the sharefarming arrangement is worked out next by allocating:
   (a) the premium component of the overall enterprise amount as follows:
      (i) allocate to each party to the sharefarming arrangement the amount of the premium component of the overall enterprise amount calculated as if subsections 23 (3), (3B), (3D) and (3E) applied and as if the reference in subsection 23 (3E) to the owner of the enterprise were a reference to a lessee of the land on which the enterprise is predominantly carried on;
      (ii) allocate so much of the premium component as is not allocated under subparagraph (i) (if any) to the lessor of the land on which the enterprise is predominantly carried on; and
   (b) the non-premium component of the overall enterprise amount among all the entities who are parties to the eligible dairy sharefarming arrangement in the same proportions as the shares of the milk revenue of the enterprise to which each entity was entitled at 6.30 pm on 28 September 1999.

(5) The references in subsection (4) to the overall enterprise amount are references to the overall enterprise amount less the amounts allocated under subsections (1A) and (2).

23 Standard payment right — enterprises that are subject to sharefarming arrangements

(1) This section applies to:
   (a) a dairy farm enterprise that is subject to an eligible dairy sharefarming arrangement, but is not subject to an eligible dairy leasing arrangement; and
   (b) an entity who is a party to the eligible dairy sharefarming arrangement.

(2) The face value of each entity’s standard payment right is the total of the amounts allocated to the entity under the following provisions of this section.
(3) So much of the premium component of the overall enterprise amount as relates to market milk delivered by the enterprise in the base year against a particular quota is allocated to the entities who owned that quota.

(3A) If an amount is to be allocated to more than 1 entity under subsection (3), each of those entities is allocated the proportion of the amount to be allocated that is equal to its share of the quota.

(3B) The rest of the premium component of the overall enterprise amount is allocated to the entities who are taken to have provided the essential capital contribution required to achieve access to the market milk premium for a dairy farm enterprise because it or they:

(a) owned the land on which the enterprise is predominantly carried on; or
(b) owned at least 25% of the number of livestock used in, or for purposes incidental to, the carrying on of the enterprise.

Note In cases where no market milk was delivered by a dairy farming enterprise in the base year against a quota, subsection (3B) will apply to the whole of the premium component of the overall enterprise amount.

(3C) For subparagraph (3B) (b), the proportion of livestock owned by a partner in a partnership is taken to be the same as the proportion of the livestock owned by the partnership.

(3D) If the premium component of the overall enterprise amount is to be allocated to 1 or more sharefarmers under subsection (3B), each of those sharefarmers is allocated the proportion of the amount to be allocated that is equal to the proportion of the milk revenue of the enterprise to which the sharefarmer was entitled at 6.30 pm on 28 September 1999.

(3E) The remainder of the premium component of the overall enterprise amount after the application of subsections (3B) and (3D) is allocated to the owner of the enterprise, so long as the owner is a person who is taken to have provided the essential capital contribution required to achieve access to the market milk premium for the dairy farm enterprise.

(4) The non-premium component of the overall enterprise amount is allocated to all the entities who are parties to the eligible dairy sharefarming arrangement in the same proportions as the shares of the milk revenue of the enterprise to which each entity was entitled at 6.30 pm on 28 September 1999.

24 Standard payment right — enterprises that are subject to leasing arrangements

(1) This section applies to:

(a) a dairy farm enterprise that is subject to an eligible dairy leasing arrangement, but is not subject to an eligible dairy sharefarming arrangement; and

(b) an entity who is a party to the eligible dairy leasing arrangement.
(2) The face value of each entity’s standard payment right is the total of the amounts allocated to the entity under the following provisions of this section.

(3) So much of the premium component of the overall enterprise amount as relates to market milk delivered by the enterprise in the base year against a particular quota is allocated to the entity or entities who owned that quota.

(4) The rest of the premium component of the overall enterprise amount is allocated to the entity or entities who are taken to have provided the essential capital contribution required to achieve access to the market milk premium for a dairy farm enterprise because it or they:

(a) owned the land on which the enterprise is predominantly carried on; or

(b) owned at least 25% of the number of livestock used in, or for purposes incidental to, the carrying on of the enterprise.

Note In cases where no market milk was delivered by a dairy farming enterprise in the base year against a quota, subsection (4) will apply to the whole of the premium component of the overall enterprise amount.

(4A) If an amount is to be allocated to more than 1 entity under subsection (4), each of those entities is allocated the proportion of the amount to be allocated in the same proportions as the derived milk revenue shares of the entities.

(5) The non-premium component of the overall enterprise amount is divided among the entities who are lessees under the eligible dairy leasing arrangement in the same proportions as the milk revenue shares of those entities.

(6) In this section:

*derived milk revenue share* means:

(a) unless paragraph (aa) or (b) applies:

(i) for a lessor of the land on which the eligible dairy farm enterprise is carried on — the proportion of the milk revenue of the enterprise for the base year represented by the annualised value of the lease at 6.30 pm on 28 September 1999; or

(ii) for a lessee of the land on which the eligible dairy farm enterprise is carried on — the proportion of the milk revenue of the enterprise for the base year represented by the total milk revenue of the enterprise for the base year less the annualised value of the lease at 6.30 pm on 28 September 1999; but

(aa) if the dairy farm enterprise did not come into existence until after the start of the base year and unless paragraph (b) applies:

(i) for a lessor of the land on which the eligible dairy farm enterprise is carried on — the proportion of the milk revenue of the enterprise for the base year represented by the value of the lease attributable to that part of the base year applicable to the lease at 6.30 pm on 28 September 1999; or

(ii) for a lessee of the land on which the eligible dairy farm enterprise is carried on — the proportion of the milk revenue of the
enterprise for the base year represented by the total milk revenue of the enterprise for the base year less the value of the lease attributable to that part of the base year applicable to the lease at 6.30 pm on 28 September 1999;

(b) if the lessor and lessee do not agree on the value of any non-cash component of the annualised value of the lease (see paragraph (a)) or the value of the lease attributable to that part of the base year (see paragraph (aa)) at 6.30 pm on 28 September 1999, or that value is uncertain — the share determined by the DAA based on the amount the DAA determines as the most reasonable value of that component.

(7) If the proportion of the milk revenue of a dairy farm enterprise worked out as mentioned in subparagraph (aa) (i) of the definition of derived milk revenue share in subsection (6) (the proportion allocated to the lessor) is more than 1, it is taken to be 1.

25 Exceptional events supplementary payment rights

If an entity is granted an exceptional events supplementary payment right in respect of a dairy farm enterprise, the total face value of the payment, any other exceptional events supplementary payment right granted to the entity in respect of the enterprise and the standard payment right granted to the entity in respect of the enterprise must not be more than the amount that would have been the face value of the entity’s standard payment right if:

(a) the volume of market milk delivered by the enterprise during the base year had been the same as the average annual volume of market milk delivered by the enterprise in the previous 3 financial years; and

(b) the volume of manufacturing milk delivered by the enterprise during the base year had been the same as the average annual volume of manufacturing milk delivered by the enterprise in the previous 3 financial years.

26 Anomalous circumstances payment right

(1) If an entity is eligible for the grant of an anomalous circumstances payment right, the total face value of the payment and any other anomalous circumstances payment right granted to the entity must not be more than the amount worked out under subsection (2).

(2) The amount is the amount that would have been the face value of the entity's standard payment right in respect of the enterprise or enterprises if the enterprise or enterprises in which the entity held an eligible interest at 6.30 pm on 28 September 1999 had delivered during the base year (or, if the entity held an eligible interest in the enterprise or enterprises for a part only of the base year, during that part of the base year) the milk that was actually delivered by the enterprise, or the enterprises, in which the entity held an eligible interest during the base year (or, if the entity held an eligible interest in the enterprise or enterprises for a part only of the base year, during that part of the base year).
Dairy Structural Adjustment Program Scheme 2000

27 Determining face value of exceptional events supplementary payment rights and anomalous circumstances payment rights

(1) The DAA must not grant an exceptional events supplementary payment right or anomalous circumstances payment right to an entity in respect of a dairy farm enterprise unless satisfied that the face value of the right proposed to be granted, together with the face value of all other exceptional events supplementary payment rights and anomalous circumstances payments granted or proposed to be granted by the DAA is less than or equal to the money available for payments for exceptional events supplementary payment rights and anomalous circumstances payment rights.

Note The total face value of these rights cannot exceed the amounts worked out under section 25 or 26, whichever is relevant.

(2) If it is not enough, the DAA must determine the face value of the exceptional events supplementary payment right or anomalous circumstances payment right having regard to:

(a) the amount of money available for payments for exceptional events supplementary payment rights and anomalous circumstances payment rights; and

(b) the number of claims and anticipated claims for such rights; and

(c) the operation of sections 25 and 26; and

(d) such other matters as the DAA considers relevant.

(3) In this section:

money available for payments for exceptional events supplementary payment rights and anomalous circumstances payments rights means the amount of money in the Dairy Structural Adjustment Fund, or expected to be credited to the Dairy Structural Adjustment Fund under clause 78 of Schedule 2 to the Act, that would have been required to cover the standard payment rights that would be granted under the scheme if:

(a) every standard payment right for which an entity is eligible were claimed under section 15; and

(b) the cap mentioned in section 28 did not apply to any entity; and

(c) no units were cancelled under section 38;

plus the total value of milk delivered by dairy farming enterprises that would have been taken into account in working out the face values of standard payment rights of entities that would have been eligible to be granted a standard payment right (see section 9) if they had held eligible interests in the dairy farming enterprise enterprises at 6.30 pm on 28 September 1999, less the amount actually required to cover the standard payment rights that:

(d) are granted under section 18; or

(e) are claimed under section 15 and will be granted under section 18 if the entity complies with the rules in subsection 17 (2) before the end of 12 months after the end of the DSAP claim period.
Division 4.2  Adjustment of face value

28  $350 000 cap

(1) The total face value of payment rights granted to an entity in respect of a particular dairy farm enterprise must not be more than $350 000 unless a qualified financial adviser certifies in writing that, to the best of the adviser’s knowledge and belief:

(a) the entity has given the adviser full access to the entity’s accounts and records; and

(b) the entity passes the 70% dairy income test.

(2) For this section, an entity passes the 70% dairy income test if, and only if:

(a) more than 70% of the total gross income derived by the entity in the base year consisted of eligible dairy income; or

(b) more than 70% of the total gross income derived by the entity in the period from 1 July 1996 to 30 June 1999 (both inclusive) consisted of eligible dairy income.

(3) A certification under subsection (1) must be in an approved form.

(4) In this section:

eligible dairy company means:

(a) Alba Cheese Manufacturing Pty Ltd; or
(b) Alba Gelati Pty Ltd; or
(c) Alice’s Sorbet & Ice Cream Pty Ltd; or
(d) Ashgrove Farms Pty Ltd; or
(e) B-d Farm Paris Creek Pty Ltd; or
(f) Borello Cheese Pty Ltd; or
(g) Cadbury Schweppes Pty Ltd; or
(h) Casa Dairy Products P/L; or
(i) Caveland Country Pty Ltd; or
(j) De Cicco Industries P/L; or
(k) Donnybrook Farmhouse Cheese; or
(l) Elgaar Farm (Gretschmann); or
(m) European Cakes and Gelati; or
(n) Farmhouse Cheeses of Kangaroo Island; or
(o) Ferraro Dairy Foods; or
(p) Floridia Cheese (T & A Montällt); or
(q) Fonti Dairy Foods P/L; or
(r) Fresh Cheese Supply Group; or
(s) Harvey Fresh Dairies; or
(t) Healey’s Pyengana Cheese Factory; or
(u) Heidi Farm Cheese (Marchand F & E); or
(v) Hillwood Cheeses; or
(w) Jalna Dairy Foods Pty Ltd; or
(x) Jindi Cheese; or
(y) Kimberley Milk; or
(z) King Island Dairies Pty Ltd; or
(aa) King Island Fresh Milk Products; or
(ab) King Island Milk Supply; or
(ac) Kraft Foods Ltd; or
(ad) Lacrum Cheese P/L; or
(ae) Lactos P/L; or
(af) Lemnos Cheese Pty Ltd; or
(ag) Malanda Dairyfoods Limited; or
(ah) McCain Foods (Aust) Pty Ltd; or
(ai) Moura Dairy Supplies; or
(aj) Mundella Dairy; or
(ak) National Foods Pty Ltd; or
(al) Native Valley Farmgate Produce; or
(am) Nestle Australia Ltd; or
(an) Northchoice Foods P/L - Darwin NT; or
(ao) P B Foods (Peters and Browns); or
(ap) Pantalica Cheese Company; or
(aq) Parmalat Australia P/L; or
(ar) Pauls Ltd; or
(as) Perfection Dairies; or
(at) Peters Foods; or
(au) Pine Heights P/L; or
(av) Rose Valley Cheese Co P/L; or
(aw) Rowlands Corporation Ltd NT; or
(ax) Snowy Mountains Organic Dairy Products; or
(ay) Sudano Cheese Co; or
(az) Swan Valley Cheese Company; or
(ba) Tamar Valley Dairy; or
(bb) Tarago River Cheese Co P/L; or
(bc) Timboon Farmhouse Cheese Pty; or
(bd) Top Paddock Cheeses; or
(be) Treven Vale Proprietors; or
(bf) Tsantis Bros; or
(bg) Victorian Food and Beverages Pty Ltd; or
(bh) Wesmilk; or
(bi) Westernport Dairy Farm; or
(bj) Westhaven Dairy; or
(bk) a company that received the majority of its income during the base year from the sale of milk or other dairy products, or from the sale or lease of dairy cattle.

**eligible dairy cooperative** means:
(a) Bega Co-operative Society Ltd; or
(b) Bonlac Foods Ltd; or
(c) Dairy Farmers Group; or
(d) Hastings Co-op; or
(e) Murray-Goulburn Co-op Company Ltd; or
(f) Norco Co-operative Society Ltd; or
(g) Tas Quality Milk Co-op Society Limited; or
(h) Tatura Milk Industries Ltd; or
(i) United Milk Tasmania Ltd; or
(j) Warrnambool Cheese & Butter Factory Co. Ltd; or
(k) Wesfarmers Ltd.

**eligible dairy income** includes only:
(a) proceeds from the sale of milk; and
(b) proceeds from the sale or lease of dairy cattle; and
(c) dividends payable in respect of shares in eligible dairy cooperatives; and
(d) dividends payable in respect of shares in eligible dairy companies; and
(e) the income test value of bonus shares issued by eligible dairy cooperatives; and
(f) the income test value of bonus shares issued by eligible dairy companies.

**income test value**, in relation to bonus shares issued by a company or cooperative, means the paid-up value of the shares to the extent to which the paid-up value represents a capitalisation of the profits of the company or cooperative.

**qualified financial adviser** means a person who is a member of 1 or more of the following associations:
(a) CPA Australia;
(b) Institute of Chartered Accountants in Australia;
(c) National Institute of Accountants.

**total gross income** means total gross income worked out in accordance with generally accepted accounting principles.

*Note* Under subclause 16 (6) of Schedule 2 to the Act, if a share in an eligible dairy cooperative or an eligible dairy company is issued to a shareholder in the cooperative or company in lieu of a payment for the sale of milk, the shareholder is taken to have received the payment as proceeds from the sale of milk.
29 Transfer of market milk delivery rights

(1) This section applies to an entity with an eligible interest in a dairy farm enterprise if, between 1 July 1998 and 28 September 1999 (inclusive) (the relevant dates), the entity:
   (a) transferred quota to another entity; or
   (b) surrendered quota; or
   (c) acquired quota by transfer from another entity; or
   (d) received a grant of quota from the dairy industry authority (however described) of a State or Territory.

(2) If this section applies, the enterprise is taken to have delivered, using quota provided by the entity, during the base year:
   (a) an amount of market milk equal to the amount the enterprise actually delivered using quota provided by the entity, plus any adjusted net change in the entity’s delivery rights between the relevant dates; and
   (b) an amount of manufacturing milk equal to the amount the enterprise actually delivered, less any adjusted net change in the entity’s delivery rights between the relevant dates.

(3) In subsection (2):

adjusted net change in the entity’s delivery rights means an amount worked out in accordance with the following formula:

\[
\text{ANC\(\text{DR} \) = \frac{\text{Total deliveries}}{\text{Total rights}} \times (A + R - T - S)}
\]

where:

\(A\) means the volume of quota the entity acquired by transfer from another entity.

\(\text{ANC\(\text{DR}\)\) means the adjusted net change in the entity’s delivery rights.

\(R\) means the volume of quota granted to the entity between the relevant dates.

\(S\) means the volume of quota the entity surrendered between the relevant dates.

\(T\) means the volume of quota the entity transferred to another entity between the relevant dates.

\(\text{Total deliveries},\ for a State or Territory, means the total volume of deliveries of market milk made by all entities in the State or Territory during the base year.

\(\text{Total rights},\ for a State or Territory, means the total volume of quota held by all entities in the State or Territory during the base year.
30 **Abnormal market milk pool distributions**

(1) This section applies if, in the base year, 1 or more dairy farm enterprises in a pooling jurisdiction did not receive payment at the market milk rate for the same proportion of their milk deliveries as other dairy farm enterprises in the jurisdiction.

(2) However, this section does not apply to:

(a) a dairy farm in South Australia that was not bound by the voluntary price equalisation scheme known as the South Australian Market Milk Equalisation Agreement approved under section 26 of the *Dairy Industry Act 1992* of South Australia; or

(b) a dairy farm enterprise in Victoria that does not deliver milk to an authorised agent within the meaning of section 49 of the *Dairy Industry Act 1992* of Victoria.

(3) If this section applies, the DAA must determine, for each dairy farm enterprise in relation to which 1 or more claims for payment rights have been received:

(a) the amount of market milk that the enterprise would have delivered if it had received payment at the market milk rate for the same proportion of its eligible milk deliveries during the base year as other dairy farm enterprises in the jurisdiction; and

(b) the amount of manufacturing milk that the enterprise would have delivered if it had received payment at the market milk rate for the same proportion of its eligible milk deliveries during the base year as other dairy farm enterprises in the jurisdiction.

(3A) For subsection (3), do not count the amount of milk deliveries of market milk that were not covered by State pooling arrangements embodied in, or that operated under:

(a) the voluntary price equalisation scheme known as the South Australian Market Milk Equalisation Agreement approved under section 26 of the *Dairy Industry Act 1992* of South Australia; or

(b) the *Dairy Industry Act 1992* of Victoria; or

(c) the *Dairy Industry Act 1994* of Tasmania.

*Note* Deliveries of market milk not covered by these State pooling arrangements are dealt with under other provisions of this scheme.

(4) The sum of the amount of market milk and manufacturing milk that the DAA determines an enterprise would have delivered during the base year, together with milk not counted because of subsection (3A), must be equal to the amount of milk that the enterprise actually delivered during the year.

(5) For the scheme, each enterprise is taken to have delivered, during the base year, the amount of market milk, and the amount of manufacturing milk, determined under subsection (3).
(6) In this section:

*eligible milk deliveries* means deliveries of milk that satisfies the requirements for market milk under the law of the State or Territory in which the milk is delivered.

*pooling jurisdiction* means a State or Territory in which enterprises were not required to hold quota to deliver market milk during the base year.
Part 5 Units in payment rights

Division 5.1 General

31 Number of units in a payment right

(1) Each payment right consists of a number of units worked out in accordance with the following procedure:
   (a) divide the face value of the payment right by 32;
   (b) if the result is a whole number of dollars, that number is the number of units in the payment right;
   (c) if the result is less than $1, there is 1 unit in the payment right;
   (d) if the result is more than $1, but is not a whole number of dollars:
      (i) round the result up or down to the nearest whole number (rounding up in the case of a number exactly half-way between 2 whole numbers); and
      (ii) the rounded number is the number of units in the payment right.

(2) However, the number of units in a payment right may be affected by action taken by the DAA under Division 5.2.

32 Transfer of units

(1) The owner of a unit may:
   (a) transfer ownership of the unit to another entity; or
   (b) grant a charge over the unit to another entity.

(2) However, the owner of a unit must not:
   (a) dispose of the unit by way of a declaration of trust; or
   (b) transfer a beneficial interest in the unit independently of the legal interest in the unit; or
   (c) transfer ownership of a unit over which a charge is registered.

(3) A purported disposal or transfer that contravenes subsection (2) is of no effect.

(4) If an individual who owns a unit dies, ownership of the unit is transferred to the individual’s estate.

(5) A transfer of ownership or grant of a charge is of no effect unless it is registered under section 33.

(6) To avoid doubt, subsections (2) and (5) apply in relation to a transfer to a person as beneficiary of the estate of a deceased holder of units.
33 Register of units

(1) The DAA must keep a register showing the following particulars of each unit:

(a) for the entity who owns the unit:
   (i) the entity’s name and address; and
   (ii) if the entity tells the DAA its Australian Business Number (within the meaning of the A New Tax System (Australian Business Number) Act 1999) — that number; and
   (iii) if the entity is a corporation, the entity’s Australian Company Number or Australian Registered Body Number (within the meaning of the Corporations Act 2001); and
   (iv) details of the account nominated by the entity to receive payments; and
   (v) the number of units owned by the entity; and
   (vi) whether the entity has applied for a dairy exit payment or a dairysize grant;

(b) for each charge over the unit:
   (i) the name and address of the entity in whose favour the charge is granted; and
   (ii) the amount of the charge;

(c) details of payments that have been made in relation to the unit;

(d) a register identification number.

(2) If an entity transfers ownership of a unit, or grants a charge over a unit, either party to the transaction may notify the DAA about the transaction.

(3) If a charge over a unit is discharged, the entity in whose favour the charge was granted may notify the DAA that the unit is no longer subject to the charge.

(4) A notice under subsection (2) or (3) must be in an approved form.

(4A) A notice under subsection (2) must include a declaration by the transferee or, if the transferee is a corporation, its public officer, certifying that the documents effecting the transfer or the grant of the charge have been stamped as required by a law of a State or Territory that relates to stamp duty.

(5) If the DAA receives notice of a transaction under subsection (2) or (3), it must amend the register to show the revised details of the unit, and the date of the transaction.

(6) However, a transfer of the ownership of a unit may only be registered if:

(a) the transferee:
   (i) is a primary producer; or
   (ii) acquires ownership of the unit as the beneficiary of a deceased estate; or
   (iii) is already the registered owner of 1 or more units, unless the transferee is a bank or other financial institution; or
(b) the transferee gives the DAA a written undertaking to transfer the unit to a primary producer within 60 days after the transfer is registered.

Note If the entity breaches this undertaking, the DAA may commence procedures leading to cancellation of the unit: see section 37.

(6A) Despite subsection (5), the DAA must not give effect to a direction, notice or request in respect of a matter specified in paragraph 33 (1) (a) from an entity who owns a unit that is subject to a registered charge unless:
(a) the chargee has joined in or agreed to the direction, notice or request; or
(b) the DAA has given at least 14 days written notice to the chargee.
This subsection does not affect the operation of section 46.

(7) The DAA may keep the register in electronic form.

(8) In this section:
primary producer has the same meaning as in section 157 of the Income Tax Assessment Act 1936.

34 Inspection of register
If the owner of a unit, or another person with the owner’s written consent, asks the DAA to do so, the DAA must:
(a) allow the owner or other person to inspect an entry in the register relating to the unit; or
(b) give the owner or other person a copy of an entry in the register relating to the unit.

Division 5.2 Cancellation of units

35 Cancellation of units — false statement
(1) Subsection (2) applies if:
(a) before a payment right is granted, an entity makes a false statement to a person exercising powers, or performing functions under or in connection with Part 2 of Schedule 2 to the Act or the scheme; and
(b) a payment right is granted because of the making of the false statement.

(2) If this subsection applies, the DAA may cancel all of the units in the payment right.

(3) Subsection (4) applies if:
(a) before a payment right is granted, an entity makes a false statement to a person exercising powers, or performing functions under or in connection with Part 2 of Schedule 2 to the Act or the scheme; and
(b) as a result of action taken relying on the false statement, the face value of the payment right exceeds the amount that would have been the face value if the false statement had not been made.
(4) If this subsection applies, the DAA may cancel the number of units in the payment right worked out by:
   (a) dividing the number of whole dollars in the amount of the excess by 32; and
   (b) if the result of the division is not a whole number — rounding down to the nearest whole number (treating zero as a whole number).

(5) In this section:

   false statement has the same meaning as in clause 50 of Schedule 2 to the Act.

Note If a unit is cancelled under this section, Schedule 2 to the Act and the scheme have effect as if the unit had never existed: see subclause 50 (2) of Schedule 2 to the Act.

36 Cancellation of units — error by the DAA

(1) Subsection (2) applies if:
   (a) the DAA makes an error in relation to the grant of a payment right; and
   (b) section 35 does not apply; and
   (c) the payment right would not have been granted if the DAA had not made the error.

(2) If this subsection applies, the DAA may cancel all of the units in the payment right.

(3) Subsection (4) applies if:
   (a) the DAA makes an error in relation to the grant of a payment right; and
   (b) section 35 does not apply; and
   (c) as a result of the error, the face value of the payment right exceeds the amount that would have been the amount of the face value if the DAA had not made the error.

(4) If this subsection applies, the DAA may cancel the number of units in the payment right worked out by:
   (a) dividing the number of whole dollars in the amount of the excess by 32; and
   (b) if the result of the division is not a whole number — rounding down to the nearest whole number (treating zero as a whole number).

(5) However, the DAA must not cancel a unit in a payment right under this section if:
   (a) 1 or more DSAP payments in respect of the unit are made before the DAA becomes aware of the error; and
   (b) the DAA is satisfied that the entity, or each of the entities, that received the payment, or payments, acted in good faith.

Note If a unit is cancelled under this section, Schedule 2 to the Act and the scheme have effect as if the unit had never existed: see subclause 51 (3) of Schedule 2 to the Act.
Part 5 Units in payment rights
Division 5.2 Cancellation of units

Section 36A

(6) Subsection (5) does not apply in respect of a unit if each of the following agrees in writing to the cancellation of the unit:
   (a) the entity who is the registered owner of the unit;
   (b) if a charge is registered in respect of the unit — the entity in whose favour the charge has been granted.

The agreement may be on terms the DAA thinks proper.

36A Variation where unit entitlement less than proper amount

(1) If at any time the DAA becomes aware that the face value of a payment right as determined under another provision of this scheme is less than the proper amount:
   (a) it may, with or without an application to do so, vary the determination of the face value so that it is the proper amount; and
   (b) do whatever is necessary (including amending the register) to give effect to the variation.

(2) A variation takes effect from the day on which it is made or, if another day is specified for that purpose in the notice under section 39 in relation to the variation, that other day.

(3) Subsection (1) does not affect the operation of Division 4.1 or 4.2.

37 Cancellation of units — breach of undertaking to transfer the units

(1) Subsection (2) applies if:
   (a) an entity (the first entity) gives the DAA an undertaking under paragraph 33 (6) (b) to transfer a unit to a primary producer; and
   (b) the first entity breaches the undertaking.

(2) If this subsection applies, the DAA may give the first entity a notice directing it to comply with the undertaking before the end of a period of 60 days beginning when the direction is given.

(3) The DAA may cancel the unit if:
   (a) the DAA gives a notice under subsection (2) to an entity; and
   (b) the entity contravenes the direction.

Note If a unit is cancelled under this section, the cancellation takes effect from the end of the 60-day period: see subclause 52 (2) of Schedule 2 to the Act.

38 Cancellation of units — dairy exit payment becomes payable

(1) Subsection (2) applies if:
   (a) an entity has been granted a payment right in relation to a dairy farm enterprise; and
   (b) a decision is made:
       (i) under the DEP scheme that the entity is qualified for a dairy exit payment in relation to the enterprise; or
(ii) under the farm help re-establishment grant scheme (within the meaning of the *Farm Household Support Act 1992*) that the entity is qualified for a dairy-type grant; and

(c) immediately before the decision is made, the entity is the registered owner of 1 or more unencumbered units in the payment right.

(2) If this subsection applies, the DAA may cancel the unit or units.

(3) In this section:

*unencumbered unit* means a unit over which no charge is registered.

*Note* If a unit is cancelled under this section, the cancellation takes effect from the time when the decision is made under the DEP scheme: see subclause 53 (2) of Schedule 2 to the Act.

### 39 Notice of decision

(1) If the DAA cancels a unit under section 35, 36, 37 or 38 or varies a determination as mentioned in section 36A, the DAA must give the entity who owned the unit a notice:

(a) setting out the decision (the *initial decision*), and the reasons for it; and

(b) stating that:

   (i) the entity may, if dissatisfied with the initial decision, seek its reconsideration by the DAA; and

   (ii) the entity may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a reconsidered decision made by the DAA confirming or varying the initial decision, apply to the Administrative Appeals Tribunal for review of the reconsidered decision.

(2) If the DAA:

   (a) cancels a unit under section 36 with the consent of a chargee as mentioned in subsection 36 (6); or

   (b) varies a determination as mentioned in section 36A in respect of a payment right some or all of the units in which are subject to a registered charge;

   it must give a copy of the notice to the chargee at the same time as it gives the notice to the entity.
Part 6 Making payments

Section 40

Part 6 Making payments

40 General

(1) A DSAP payment must not be made before:
   (a) the DSAP payment start day; or
   (b) the end of the 30-day period beginning at the end of the DSAP claim period.

(2) A DSAP payment must not be made for a quarter that is later than the quarter ending on 30 June 2008.

(3) In this Part, a reference to a quarter is a reference to a quarter in the period beginning on 1 July 2000 and ending on 30 June 2008.

41 Initial payment day

(1) The initial payment day for each payment right is worked out in accordance with this section.

(2) If, during the 28-day period beginning at the end of the 30-day period mentioned in paragraph 40 (1) (b), the DAA does not receive a request that requires it to reconsider a decision in relation to the grant of the payment right, the initial payment day for the right is the first day after the end of that 28-day period.

(3) Subsection (4) applies if:
   (a) during the 28-day period beginning at the end of the 30-day period mentioned in paragraph 40 (1) (b), the DAA receives a request that requires it to reconsider a decision in relation to the grant of the payment right; and
   (b) on reconsideration, the DAA confirms its decision or varies it in a way that still involves the grant of the payment right; and
   (c) no application is made to the Administrative Appeals Tribunal for review of the decision within 28 days after:
      (i) the DAA gives notice of the reconsidered decision to an entity who is affected by the decision; or
      (ii) if the DAA is taken, under section 49 (5), to have confirmed the decision — the end of 60 days after the DAA received the request to reconsider the decision.

(4) If this subsection applies, the initial payment day for the right is the first day after the end of the 28-day period mentioned in paragraph (3) (c).

(5) Subsection (6) applies if:
   (a) during the 28-day period beginning at the end of the 30-day period mentioned in paragraph 40 (1) (b), the DAA receives a request that
Section 42

requires it to reconsider a decision in relation to the grant of the payment right; and

(b) on reconsideration, the DAA confirms or revokes its decision or varies it in any way; and

(c) within 28 days after:

(i) the DAA gives notice of the reconsidered decision to an entity who is affected by the decision; or

(ii) if the DAA is taken, under section 49 (5), to have confirmed the decision — the end of 60 days after the DAA received the request to reconsider the decision;

an application has been made to the Administrative Appeals Tribunal for review of the decision; and

(d) either:

(i) on review, the Administrative Appeals Tribunal confirms the decision, varies it in a way that still involves the grant of the payment right or dismisses the application for review (for whatever reason); or

(ii) the applicant withdraws the application for review.

(6) If this subsection applies, the initial payment day for the right is the first day after the Administrative Appeals Tribunal confirms or varies the decision or dismisses the application, or the application is withdrawn (whichever is relevant).

(6A) If it is not possible to work out, in accordance with the preceding provisions of this section, the initial payment day for a payment right, the initial payment day for the payment right is worked out by applying the preceding provisions of this section as if the references in them to the 28-day period beginning at the end of the 30-day period mentioned in paragraph 40 (1) (b) were references to the 28-day period beginning when the decision to which the payment right relates first came to the attention of the entity affected by it.

Note For example, it will not be possible to work out, in accordance with the preceding provisions of this section, the initial payment day for a payment right that is granted after the 28-day period beginning at the end of the 30-day period mentioned in paragraph 40 (1) (b).

(7) However, if the initial payment day worked out under subsection (2), (4), (6) or (6A) is earlier than the DSAP payment start day, the initial payment day is the DSAP payment start day.

42 Initial payment

(1) If an entity is the registered owner of a unit in a payment right on the initial payment day for the payment right, the industry services body must pay to the entity, out of the Dairy Structural Adjustment Fund, for each unit in the payment right, the sum of:

(a) $1 for the quarter in which the initial payment day occurs; and

(b) $1 for each earlier quarter (if any).
Section 43

(2) However, if a payment right is granted to an entity after the initial payment day for the payment right worked out in accordance with section 41, the industry services body must pay to the entity, out of the Dairy Structural Adjustment Fund, for each unit in the payment right, the sum of:
   (a) $1 for the quarter in which the payment right is granted; and
   (b) $1 for each earlier quarter (if any).

43 Subsequent payments

(1) If an entity is the registered owner of a unit in a payment right (granted on or before the initial payment day) on the first day of a quarter after the quarter in which the initial payment day occurs, the industry services body must pay to the entity, out of the Dairy Structural Adjustment Fund, for each unit in the payment right, $1 for that quarter.

(2) If an entity is the registered owner of a unit in a payment right (granted after the initial payment day) on the first day of a quarter after the quarter in which payment right was granted, the industry services body must pay to the entity, out of the Dairy Structural Adjustment Fund, for each unit in the payment right, $1 for that quarter.

44 When payment must be made

(1) Subject to section 46, if an entity is entitled to be paid a DSAP payment, the payment is due before the end of the 10th business day after:
   (a) if subsection 42 (1) applies — the initial payment day; or
   (b) if subsection 42 (2) applies — the day the payment right is granted; or
   (c) if section 43 applies — the first day of the quarter.

(2) If a DSAP payment is due to be paid to an entity, the payment may be recovered, as a debt due to the entity, by action in a court of competent jurisdiction.

(3) If an individual is entitled to receive a DSAP payment, and the payment has not been made at the date of the death of the individual, the amount of the payment is payable to the individual’s estate.

45 How payment must be made

If a DSAP payment is to be made, it must be paid by electronic funds transfer to an account held by the entity with a bank or other financial institution.

46 Withholding payments at request of entity

(1) This section applies if:
   (a) a payment right has been granted to an entity; and
   (b) the entity has applied for a dairy exit payment or a dairy-type grant.

(2) If this section applies, the entity may ask the DAA, in writing, to withhold further DSAP payments that become payable to the entity in respect of the
payment right until the application for the dairy exit payment or the dairy-type grant is determined.

(3) If the DAA receives a request under subsection (2), it must withhold DSAP payments that become due to the entity after the DAA receives the request until:

(a) the DAA receives notice that the entity’s application for a dairy exit payment or dairy-type grant has been rejected; or

(b) the entity tells the DAA, in writing, that it is no longer pursuing the dairy exit payment or dairy-type grant; or

(c) the DAA receives notice that the entity’s claim for the dairy exit payment or dairy-type grant has been determined; or

(d) if the notice related to an application for a dairy exit payment and the entity does not lodge a claim for a dairy exit payment before 1 October 2003 — 1 October 2003; or

(e) if the notice related to an application for a dairy-type grant and the entity does not lodge a claim for a dairy-type grant before 1 April 2005 — 1 April 2005.

(4) If the entity’s payment right is cancelled under section 38, the entity’s entitlement to the withheld payments is cancelled.

(5) If the entity’s application for a dairy exit payment or a dairy-type grant, or claim for the payment or grant, is rejected, or the entity tells the DAA, in writing, that it is no longer pursuing the dairy exit payment or dairy-type grant:

(a) the DSAP payments that have been withheld are due to be paid to the entity before the end of the 10th business day after the DAA receives the notice; and

(b) DSAP payments that become payable to the entity after the DAA receives the notice are payable in accordance with section 44.

(6) If paragraph (3) (d) applies:

(a) the DSAP payments that have been withheld are due to be paid to the entity before the end of the 10th business day after 30 September 2003; and

(b) DSAP payments that become payable to the entity after 30 September 2003 are payable in accordance with section 44.

(7) If paragraph (3) (e) applies:

(a) the DSAP payments that have been withheld are due to be paid to the entity before the end of the 10th business day after 1 April 2005; and

(b) DSAP payments that become payable to the entity after 1 April 2005 are payable in accordance with section 44.
Part 7 Miscellaneous

47 Fees

(1) The following fees are payable under the scheme:

(a) for registration of a transaction mentioned in subsection 33 (2) involving a unit in a payment right (subsection 33 (5)) — $50;

(b) for registration of the discharge of a charge over a unit (subsection 33 (5)) — $50;

(c) for inspection of an entry in the register, or issuing a copy of an entry in the register (section 34) — $50.

(2) However, the fee is not payable if the transaction, discharge inspection or issue takes place within 6 months after:

(a) the payment right containing the unit is granted; and

(b) the reconsideration and, if applicable, review periods for decisions in relation to the grant of the payment right have expired; and

(c) all requests for reconsideration of decisions in relation to the grant of the payment right have been dealt with; and

(d) any review by the Administrative Appeals Tribunal of a decision in relation to the grant of the payment right has been concluded.

(3) The fee mentioned in paragraph (1) (a) is payable by the transferor or entity granting the charge.

(4) The fee mentioned in paragraph (1) (b) is payable by the entity in whose favour the charge was granted.

(5) The fee mentioned in paragraph (1) (c) is payable by the entity inspecting the entry or receiving the copy.

(6) If an entity inspects an entry in the register, and asks for a copy of the same entry at the same time, the fee mentioned in paragraph (1) (c) is payable once only.

48 Remission of penalties

If an amount of penalty is payable under clause 49 of Schedule 2 to the Act, the DAA may remit the whole or a part of that amount.

49 Reconsideration and review of decisions

(1) An entity who is affected by a decision of the DAA under the scheme may, by notice given to the DAA within 28 days after the decision comes to its attention, ask the DAA to reconsider the decision.

(1A) A request under subsection (1) for reconsideration of a decision that involved or depended on the allocation of components of an overall enterprise amount is taken to be a request under that subsection for
reconsideration of all the decisions that involved or depended on the allocation of those components.

(2) For subsection (1), if the DAA sends a notice of decision to an entity by post, the notice is taken to have come to the entity's attention at the end of 4 working days after the DAA posts it.

(3) A request under subsection (1) must set out the reasons for making the request.

(4) If the DAA receives a request under subsection (1), it:
   (a) must reconsider each decision to which the request relates as soon as practicable after receiving the request; and
   (b) may:
      (i) confirm the decision; or
      (ii) revoke the decision; or
      (iii) vary the decision in whatever way the DAA thinks fit.

(5) If the DAA does not confirm, revoke or vary a decision within 60 days after the day on which it receives a request that requires it to reconsider the decision, the DAA is taken to have confirmed the decision at the end of that period.

(6) If the DAA, confirms, revokes or varies a decision before the end of the period mentioned in subsection (5), the DAA must give an entity who is affected by the decision a notice:
   (a) setting out the result of the reconsideration and the reasons for confirming, revoking or varying the decision, as the case may be; and
   (b) stating that the entity may, subject to the Administrative Appeals Tribunal Act 1975, if dissatisfied with the decision confirmed or varied, apply to the Administrative Appeals Tribunal for review of the decision.

(7) If the DAA confirms or varies a decision under subsection (4), an entity who is affected by the decision may apply to the Administrative Appeals Tribunal for review of the decision in accordance with the Administrative Appeals Tribunal Act 1975.

50 Certain things may be done electronically

(1) The provisions of Part 2 of the Electronic Transactions Act 1999 apply as provisions of this scheme and so apply as if the references in that Part to a law of the Commonwealth were references to this scheme.

(2) The DAA may, in approving a form for the purposes of this scheme or otherwise:
   (a) fix requirements as to particular kinds of electronic communication and as to methods of signature or identification; and
   (b) designate information systems.
(3) Subsection (1) does not:
   (a) apply a provision in respect of regulations under the *Electronic Transactions Act 1999*, a provision with respect to exemptions under that Act or a provision with respect to copyright; or
   (b) apply in relation to:
       (i) making a claim for a standard payment right;
       (ii) certification under section 17 (*relating to farm business assessments*);
       (iii) certification under section 28 (*relating to access to an entity’s accounts*);
       (iv) making a claim for an anomalous circumstances payment right;
       (v) making a claim for an exceptional events supplementary payment right;
       (vi) amending a claim for a payment right;
       (vii) any other matter specified in a written determination of the DAA.
Notes to the *Dairy Structural Adjustment Program Scheme 2000*

**Note 1**

The *Dairy Structural Adjustment Program Scheme 2000* (in force under clause 10 of Schedule 2 to the *Dairy Produce Act 1986*) as shown in this compilation is amended as indicated in the Tables below.

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(a) The *Dairy Structural Adjustment Program Scheme 2000* was amended by Schedule 1 of the *Dairy Structural Adjustment Program Scheme Amendment 2000 (No. 8)*, regulation 3 of which provides as follows:

3. A variation made by an item in Schedule 1 is taken to have commenced immediately after the earlier of:

   (a) the end of 15 sitting days of the Senate after the date set out opposite the item in the following table; and

   (b) the end of 15 sitting days of the House of Representatives after the date set out opposite the item in the following table.

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