



Dairy Produce (Dairy Service Levy Poll) Instrument 2016

I, Barnaby Joyce, Deputy Prime Minister and Minister for Agriculture and Water Resources,
make the following instrument.

Dated 15 December 2016

Barnaby Joyce
Deputy Prime Minister and Minister for Agriculture and Water Resources

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Part 1—Preliminary

1 Name

This instrument is the *Dairy Produce (Dairy Service Levy Poll) Instrument 2016*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

3 Authority

This instrument is made under section 9 of the *Dairy Produce Act 1986*.

4 Definitions

In this instrument:

Act means the *Dairy Produce Act 1986*.

business day has the meaning given by section 2B of the *Acts Interpretation Act 1901*.

Chair of the ISB means the Chair of the Board within the meaning of the constitution of the company that is the ISB.

Chair of the LPAC: see section 8.

cut-off day, for a levy poll, means the day that the ISB determines, under section 21, to be the cut-off day for the levy poll.

Disputes Panel, in relation to a levy poll, means the Disputes Panel established under section 42.

eligible voter, for a levy poll, means:

- (a) an entity that the ISB determines, under section 23, to be eligible to vote in the levy poll; and
- (b) a trustee of the estate of a deceased entity that the ISB determines, under section 23, to be eligible to vote in the levy poll.

entity means:

- (a) an individual; or
- (b) a corporation (within the meaning of section 57A of the *Corporations Act 2001*); or
- (c) a partnership; or
- (d) a trustee, in relation to a particular trust.

first levy review cycle: see subsection 6(1).

general meeting of the ISB means a ‘general meeting’ within the meaning of the constitution of the company that is the ISB.

Group A member of the ISB means a ‘Group A member’ within the meaning of the constitution of the company that is the ISB.

Group B member of the ISB means a ‘Group B member’ within the meaning of the constitution of the company that is the ISB.

IMRB (for *industry manufacturing representative body*) means the body corporate that:

- (a) is a Group B member of the ISB; and
- (b) represents the interests of dairy product manufacturers and traders.

Note: The IMRB at the time when this instrument commences is Australian Dairy Products Federation Inc (ABN 72 577 831 587).

information memorandum: see section 33.

IRB (for *industry representative body*) means the body corporate that:

- (a) is a Group B member of the ISB; and
- (b) represents the interests of Australian dairy farmers.

Note: The IRB at the time when this instrument commences is Australian Dairy Farmers' Ltd (ACN 060 549 653).

ISB (for *industry services body*) means the body declared as the industry services body under section 7 of the Act.

Note: The ISB at the time when this instrument commences is Dairy Australia Limited (ACN 105 227 987).

levy option: see section 5.

levy poll means a poll mentioned in section 9 of the Act.

levy review cycle: see subsection 6(2).

levy year, for a levy poll, means the financial year ending immediately before the start of the poll year.

LPAC means a Levy Poll Advisory Committee established under section 7(1).

petition day, for a petition for the request of a levy poll lodged with the ISB for the purpose of section 16, means the day on which the petition is lodged.

petition requirements: see subsection 16(1).

poll procedure document: see section 30.

poll year, for a levy poll, means the financial year in which the levy poll is conducted under this instrument.

pre-poll consultations: see section 18.

prescribed milk fat rate means the milk fat rate that is prescribed in relation to the dairy service levy under the *Primary Industries (Excise) Levies Act 1999*.

prescribed protein rate means the protein rate that is prescribed in relation to the dairy service levy under the *Primary Industries (Excise) Levies Act 1999*.

President of the IRB means the President within the meaning of the constitution of the company that is the IRB.

Register of eligible voters means the register provided for in section 28.

registered entity means an entity the name and address of which is recorded on the Register of eligible voters.

return day, for a levy poll, means the day that the ISB determines, under Division 5.1, to be the return day for the levy poll.

returning officer, for a levy poll, means the person appointed under section 36 to be the returning officer for the levy poll.

voting entitlement, in relation to an eligible voter, is the entitlement of the voter worked out under section 25 and recorded on the Register of eligible voters.

voting instructions: see section 32.

Note: Other words and expressions used in this instrument have the meaning given by the Act. These terms include, for example:

dairy service levy

funding contract

Levies and Charges Collection Act

5 Levy options

A levy option is:

- (a) a proposal for:
 - (i) a specified increase or decrease, or no change, in the prescribed milk fat rate; and
 - (ii) a specified increase or decrease, or no change, in the prescribed protein rate; or
- (b) a proposal for:
 - (i) a specified increase or decrease, or no change, in the prescribed milk fat rate; and
 - (ii) a specified increase or decrease, or no change, in the prescribed protein rate; from a specified future date or during a specified future period; or
- (c) a set of proposals of the kind referred to in paragraph (b), each of which relates to a different period of time;

in a form that allows the proposal or set of proposals to be presented as a choice in a levy poll conducted under this instrument.

6 Levy review cycles

- (1) The **first levy review cycle** is the period that begins on the commencement of this instrument and ends:
 - (a) if the LPAC for the first levy review cycle requests a levy poll—on the day when the ISB makes recommendations to the Minister under subsection 9(3) of the Act, following the levy poll; or
 - (b) if a petition for the request of a levy poll in the first levy review cycle is put, in the form of a resolution, to a vote at a general meeting of the ISB under section 16, and the resolution is not passed—on the day of the vote or, if a poll is demanded to decide the resolution under the constitution of the company that is the ISB, on the day when the poll is taken; or

Note: Under the constitution of Dairy Australia Limited, a poll may be demanded to decide a resolution that has been put to a vote at a general meeting of the company. A poll of this kind is not a levy poll.

- (c) if no petition that meets the petition requirements is lodged under section 16 for the request of a levy poll in the first levy review cycle—on the last day on which such a petition could be lodged.

Note: The first levy review cycle includes the day mentioned in whichever of paragraphs (a), (b) and (c) applies: see subsection 36(1) of the *Acts Interpretation Act 1901* and paragraph 13(1)(a) of *Legislation Act 2003*.

- (2) A *levy review cycle* is:
- (a) the first levy review cycle; or
 - (b) a period that begins at the end of another levy review cycle and ends:
 - (i) if the LPAC for the levy review cycle requests a levy poll—on the day when the ISB makes recommendations to the Minister under subsection 9(3) of the Act, following the levy poll; or
 - (ii) if a petition for the request of a levy poll in the levy review cycle is put, in the form of a resolution, to a vote at a general meeting of the ISB under section 16, and the resolution is not passed—on the day of the vote or, if a poll is demanded to decide the resolution under the constitution of the company that is the ISB, on the day when the poll is taken; or
 - Note: Under the constitution of Dairy Australia Limited, a poll may be demanded to decide a resolution that has been put to a vote at a general meeting of the company. A poll of this kind is not a levy poll.
 - (iii) if no petition that meets the petition requirements is lodged under section 16 for the request of a levy poll in the levy review cycle—on the last day on which such a petition could be lodged.
 - Note: The levy review cycle includes the day mentioned in whichever of subparagraphs (i), (ii) or (iii) applies: see subsection 36(1) of the *Acts Interpretation Act 1901* and paragraph 13(1)(a) of *Legislation Act 2003*.
- (3) The ISB and the LPAC for a levy review cycle must each endeavour to ensure that the period of the levy review cycle does not exceed 5 years.

Part 2—Levy Poll Advisory Committee

7 Establishment and functions

- (1) The ISB must establish a Levy Poll Advisory Committee (*LPAC*) for each levy review cycle.
- (2) The functions of the LPAC are:
 - (a) to make decisions about the request of a levy poll, and to request a levy poll if it is required to do so, under Part 3; and
 - (b) if it requests a levy poll:
 - (i) to provide input to the ISB on the preparation of a plan for pre-poll consultations under Part 4; and
 - (ii) to endorse any proposed electronic voting facility as complying with the requirements of subsection 30(2); and
 - (iii) to examine and endorse as appropriate, under section 35, the draft ballot paper, voting instructions and information memorandum.

8 Membership

- (1) The LPAC for a levy review cycle consists of the following members:
 - (a) the initial members appointed under subsection (2); and
 - (b) any additional members appointed under subsection (13).

Initial members

- (2) The ISB must appoint the following initial members of the LPAC:
 - (a) a chair (the *Chair of the LPAC*);
 - (b) 2 representatives of the IRB;
 - (c) 2 representatives of the ISB;
 - (d) a representative of the IMRB.
- (3) The Chair of the LPAC must be recommended jointly by the President of the IRB and the Chair of the ISB for the position.
- (4) The Chair of the LPAC must not be:
 - (a) an employee; or
 - (b) a member; or
 - (c) a member of the board or other body having the management;of the IRB, the ISB or the IMRB, or of a member of the IRB, the ISB or the IMRB.
- (5) The Chair of the LPAC must be the first member appointed. Once appointed, the Chair of the LPAC must invite the IRB, the ISB and the IMRB, in writing, to recommend their representatives for the purpose of subsection (2).
- (6) If an initial member of the LPAC ceases to be a member, another initial member of the same kind must be appointed by the same process as was followed to appoint the former member.

Note: An initial member of the LPAC may cease to be a member through resignation, removal or death. An initial member may be removed by the same process as was followed to appoint the member: see subsection 33(4) of the *Acts Interpretation Act 1901* and paragraph 13(1)(a) of *Legislation Act 2003*.

Deputy chair

- (7) The ISB must appoint one of the initial members mentioned in paragraphs (2)(b) and (c) to also be the ***Deputy Chair of the LPAC***.
- (8) The Deputy Chair of the LPAC must be recommended jointly by the President of the IRB and the Chair of the ISB for the position.
- (9) If the Chair of the LPAC is unavailable for a meeting, the Deputy Chair of the LPAC may perform the functions of the Chair of the LPAC at the meeting.
- (10) If the Deputy Chair of the LPAC ceases to be a member, another Deputy Chair must be appointed by the process in subsections (7) and (8).

Substitute initial members other than Chair

- (11) If:
 - (a) an initial member, other than the Chair of the LPAC, is unavailable for a specified meeting or meetings of the LPAC; and
 - (b) the body of which the initial member is a representative nominates, by written notice to the ISB, a substitute to perform the functions of the initial member at the meeting or meetings;then the ISB must appoint the substitute.

Additional members

- (12) The Chair of the LPAC must invite registered entities to nominate individuals for appointment as additional members of the LPAC. The invitation may be issued in any manner that the Chair of the LPAC chooses.
- (13) The initial members, meeting as the LPAC, must appoint additional members from among the individuals nominated in response to the invitation given under subsection (12).

Note: Subject to subsection (10), additional members of the LPAC may be appointed at any time.

- (14) The number of additional members of the LPAC at any time must not be less than 5 or more than 10.

Note: An additional member of the LPAC may cease to be a member through resignation, removal or death. An additional member may be removed by the same process as was followed to appoint the member: see subsection 33(4) of the *Acts Interpretation Act 1901* and paragraph 13(1)(a) of *Legislation Act 2003*.

- (15) In appointing additional members, the initial members must seek to ensure that the membership of the LPAC includes a broad representation of dairy service levy payers.

Members may serve for more than one levy review cycle

- (16) An individual may serve as a member of more than one LPAC, including the LPACs for 2 consecutive levy review cycles. However, the selection processes for the membership of a LPAC, as set out in this section, must be followed for each levy review cycle.

9 Meetings

- (1) The Chair of the LPAC may convene such meetings of the LPAC as are necessary to perform the functions of the LPAC.
- (2) The quorum for a meeting of the LPAC convened to appoint additional members is:

- (a) the Chair of the LPAC; and
 - (b) one initial member who is a representative of the IRB; and
 - (c) one initial member who is a representative of the ISB; and
 - (d) the initial member who is a representative of the IMRB.
- (3) No other decisions may be made by the LPAC at a meeting convened to appoint additional members.
- Note: The meeting may consider other matters, but not decide those matters that require a formal decision of the LPAC. If it is necessary to make such a decision, the meeting may be closed and a new meeting convened immediately with the same individuals, to which subsection (4) will then apply.
- (4) The quorum for any other meeting of the LPAC is:
- (a) the initial members referred to in subsection (2); and
 - (b) half of the additional members (rounded up to a whole number).
- (5) Minutes must be kept of the meetings.
- (6) Subject to subsection (7):
- (a) decisions of the LPAC must be made at meetings of the LPAC and recorded in the minutes; and
 - (b) each decision must be agreed by a majority of the members present.
- Note: The LPAC may permit a member to participate in a meeting of the LPAC by telephone, closed-circuit television or other means of communication. If permitted to do so, a member who participates by such means is taken to be present at the meeting and to form part of any quorum: see section 33B of the *Acts Interpretation Act 1901*.
- (7) The LPAC may make a decision without holding a meeting if the Chair of the LPAC circulates a document containing the proposed decision, or copies of such a document, to the other members of the LPAC and a majority of the members indicate in writing their agreement with the decision.
- (8) Subject to this section, the LPAC may determine the procedure to be followed at a meeting of the LPAC.

Part 3—Requests for levy polls

Division 3.1—Who may request levy polls etc

10 Who may request levy polls

Any request for a levy poll must be made by a LPAC.

11 Form of a request

Any request for a levy poll must:

- (a) be made to the ISB in writing; and
- (b) set out levy options to be presented in the levy poll; and
- (c) be accompanied by a statement prepared by the LPAC as to which levy option it recommends to eligible voters (or, if the request for a levy poll sets out only one levy option, whether the LPAC recommends that levy option or that there be no change in the prescribed milk fat rate and the prescribed protein rate), and the reasons for the recommendation.

Note: See section 29 for how the levy options are to be presented on the ballot paper.

Division 3.2—When levy poll may or must be requested

12 Levy poll to be requested only in accordance with this Part

In each levy review cycle, the LPAC:

- (a) may request a levy poll under subsection 14; and
- (b) must request a levy poll if it is required to do so under section 17; and
- (c) may not otherwise request a levy poll.

13 Recommendations of the IRB and the ISB

- (1) Subject to subsection (2), the ISB and the IRB must jointly make a recommendation to the LPAC in each levy review cycle about whether there should be a change in the prescribed milk fat rate or the prescribed protein rate or both and, if so, the nature of the change.
- (2) If the IRB and the ISB are unable to agree on a recommendation to be made jointly in accordance with subsection (1), they must each make such a recommendation to the LPAC.
- (3) A recommendation under subsection (1) or (2) must be:
 - (a) made in writing no later than the date specified in writing by the Chair of the LPAC; and
 - (b) accompanied by a statement of reasons.
- (4) In deciding what recommendations to make, the IRB and the ISB:
 - (a) must take into account:
 - (i) how the ISB spends payments made to it by the Commonwealth under the funding contract between the ISB and the Commonwealth; and
 - (ii) the plans of the ISB for spending those payments in the future; and

- (iii) how those plans would be affected by any change that the IRB or the ISB (as relevant) may recommend in the prescribed milk fat rate or the prescribed protein rate or both; and
- (b) may take into account any other matters that they consider relevant.

14 LPAC may request levy poll after receiving recommendation

- (1) The LPAC may request a levy poll after receiving recommendations from the IRB and the ISB under section 13.
- (2) The LPAC must decide whether to request a levy poll under subsection (1), and inform the ISB of the decision in writing.
- (3) The ISB must inform the Minister in writing of the decision of the LPAC.
- (4) In making the decision, the LPAC:
 - (a) must take into account the recommendations of the IRB and the ISB; and
 - (b) may take into account any other matters that it considers relevant.
- (5) The LPAC must not request a levy poll under subsection (1) if the LPAC considers that there should be no change in the prescribed milk fat rate and the prescribed protein rate.
- (6) A request for a levy poll under subsection (1):
 - (a) may set out a levy option that reflects the recommendation of the IRB or the ISB (or both); and
 - (b) may set out other levy options.

15 Notification of the LPAC's decision to registered entities

The ISB must notify registered entities of the LPAC's decision whether to request a levy poll under section 14 in writing within 14 business days after the ISB is informed of the decision.

16 Petition for request of levy poll

Petition requirements

- (1) The *petition requirements* for a petition for the request of a levy poll are that:
 - (a) the petition proposes a levy option other than a proposal for no change in the prescribed milk fat rate and the prescribed protein rate; and
 - (b) the petition is supported by the signatures of Group A members of the ISB that, taken together, produced dairy produce in relation to which the amount of dairy service levy that was paid to the Commonwealth, before the petition day, for the immediately preceding financial year is not less than 15% of the total amount of dairy service levy that was paid to the Commonwealth, before the petition day, for that year; and
 - (c) the petition is lodged with the ISB in writing within 75 days after the ISB writes to registered entities to notify them of the LPAC's decision whether to request a levy poll under section 14.

Consideration of a petition by the ISB

- (2) If:
 - (a) the LPAC decides not to request a levy poll under section 14; and
 - (b) Group A members of the ISB lodge a petition for the request of a levy poll; and

(c) the petition meets the petition requirements;

the ISB must arrange for the petition to be put, in the form of a resolution, to a vote at a general meeting of the ISB.

Presentation of the petition to the LPAC

- (3) If a resolution under subsection (2) is passed, the ISB must present:
- (a) the petition; and
 - (b) the results of the vote at the general meeting of the ISB;
- to the LPAC within 14 business days after the resolution is passed.

Notification to the Minister

- (4) The ISB must notify the Minister:
- (a) of the lodgement of a petition to which subsection (2) applies; and
 - (b) if no petition to which subsection (2) applies has been lodged within the period of 75 days mentioned in paragraph (1)(c)—of that fact.

17 LPAC must request levy poll after being presented with petition

- (1) After being presented with a petition by the ISB under section 16, the LPAC must request a levy poll as soon as reasonably practicable.
- (2) A request for a levy poll under subsection (1):
- (a) must set out the levy option proposed by the petition; and
 - (b) may set out other levy options.

Part 4—Pre-poll consultations

18 ISB must plan and conduct pre-poll consultations in accordance with this Part

Before the ISB conducts a levy poll, consultations (*pre-poll consultations*) must be planned and conducted with registered entities, in accordance with this Part, about the levy options set out in the request for the levy poll. The purpose of the pre-poll consultations is to ensure that registered entities are provided with the opportunity to become aware of, and understand, the levy options.

19 Preparation of consultation plan

- (1) The ISB must, in consultation with the IRB, prepare a written plan for the pre-poll consultations.
- (2) Before finalising the plan, the ISB must submit a draft of the plan to the LPAC and the Department for review and comment.
- (3) In finalising the plan, the ISB must take into account any comments provided on the draft of the plan by the LPAC or the Department.

20 Conduct of pre-poll consultations

The ISB must conduct the pre-poll consultations in accordance with the plan prepared under section 19.

Part 5—Conduct of levy polls

Division 5.1—Cut-off and return days

21 Cut-off and return days for levy polls

- (1) Before conducting a levy poll, the ISB must determine, for the levy poll:
 - (a) a day (the *cut-off day*) by which the ISB must determine:
 - (i) which entities are entitled to vote in the poll; and
 - (ii) the voting entitlement of each eligible voter; and
 - (b) a day (the *return day*) by which ballot papers for the levy poll must be received by the returning officer.
- (2) The ISB must ensure that the cut-off day for a levy poll is a day that is:
 - (a) at least 2 calendar months after the end of the levy year for the levy poll; and
 - (b) at least 3 calendar months before the return day.

22 Changing return days

- (1) This section applies if it becomes apparent that one or more eligible voters for a levy poll will be unable to send their ballot papers to the returning officer, so that they are received by the return day for the levy poll, because of circumstances that:
 - (a) were not foreseen when the return day was determined under paragraph 21(1)(b); and
 - (b) are outside the control of the eligible voter or eligible voters.
- (2) The ISB may determine another day to be the return day for the levy poll to allow a reasonable amount of time for all eligible voters to send their ballot papers to the returning officer, so that they are received by the return day.
- (3) If the ISB makes a determination under subsection (2) for a levy poll, the ISB must:
 - (a) send to every eligible voter that has not, by the day the determination is made, already returned its ballot paper written notice about the new return day for the levy poll; or
 - (b) publish at least one notice, stating the new return day for the levy poll:
 - (i) in at least one national newspaper that is circulated in all States and Territories; and
 - (ii) in any other publications circulated in rural areas that are of significant interest to producers of dairy produce.

Division 5.2—Eligibility to vote and voting entitlement

23 Determination of eligibility and voting entitlement

- (1) The ISB must determine, as at the cut-off day for a levy poll:
 - (a) if an entity is eligible to vote in the levy poll; and
 - (b) the voting entitlement of each eligible entity.
- (2) If, before the cut-off day, an entity dies, the ISB must determine whether a trustee of the entity's estate is eligible to vote in the poll.

24 Determining eligibility to vote

- (1) The ISB must determine that an entity is eligible to vote in the levy poll, if:
 - (a) dairy service levy is payable for the levy year for the levy poll in relation to dairy produce produced by the entity; and
 - (b) before the cut-off day:
 - (i) the entity paid an amount of dairy service levy to the Commonwealth, for the levy year; or
 - (ii) an intermediary who purchased dairy produce from the entity during the levy year paid an amount of dairy service levy to the Commonwealth, for the levy year, on behalf of the entity, under subsection 7(1) of the Levies and Charges Collection Act.
- (2) The ISB must determine that a trustee of the estate of an entity who dies before the cut-off day for a levy poll is eligible to vote in the levy poll, if:
 - (a) dairy service levy is payable for the levy year for the levy poll in relation to dairy produce produced by the entity; and
 - (b) before the cut-off day:
 - (i) the entity, or the estate, paid an amount of dairy service levy to the Commonwealth, for the levy year; or
 - (ii) an intermediary who purchased dairy produce from the entity, or the estate, during the levy year paid an amount of dairy service levy to the Commonwealth, for the levy year, on behalf of the entity, or the estate, under subsection 7(1) of the Levies and Charges Collection Act.

25 Determining voting entitlement

- (1) The ISB must determine, for the levy poll, the voting entitlement of each eligible voter in accordance with subsection (2) or (3).
- (2) If the eligible voter is an entity, the ISB must allocate to the entity, as at the cut-off day for the levy poll, one vote for:
 - (a) each whole dollar of dairy service levy (if any) that the entity paid to the Commonwealth before the cut-off day, for the levy year; and
 - (b) each whole dollar of dairy service levy (if any) that one or more intermediaries paid to the Commonwealth, on the entity's behalf, before the cut-off day, for the levy year.
- (3) If the eligible voter is a trustee of the estate of an entity, the ISB must allocate to the trustee one vote for:
 - (a) each whole dollar of dairy service levy (if any) that the entity paid to the Commonwealth before the cut-off day, for the levy year; and
 - (b) each whole dollar of dairy service levy (if any) that the estate paid to the Commonwealth before the cut-off day, for the levy year; and
 - (c) each whole dollar of dairy service levy (if any) that one or more intermediaries paid to the Commonwealth, on the behalf of the entity or the estate, before the cut-off day, for the levy year.

26 Information to be used for making determinations

- (1) The ISB may use any information available to it to make a determination under section 24 or 25, including:
 - (a) information from any register it maintains, including its register of members; and

- (b) any other information provided to the ISB under subsection 27(3A) of the Levies and Charges Collection Act; and
 - (c) information provided by any entity, or trustee of the estate of an entity who dies, that claims to be eligible to vote in the levy poll.
- (2) The ISB may invite:
- (a) each entity that might be eligible to vote in the levy poll to provide information to the ISB about the amount of dairy service levy (if any) that:
 - (i) the entity paid to the Commonwealth, before the cut-off day, for the levy year; or
 - (ii) one or more intermediaries paid to the Commonwealth on behalf of the entity, before the cut-off day, for the levy year; and
 - (b) each trustee of the estate of an entity who died before the cut-off day, that might be eligible to vote in the levy poll, to provide information to the ISB about the amount of dairy service levy (if any) that:
 - (i) the entity paid to the Commonwealth, before the cut-off day, for the levy year; or
 - (ii) the estate paid to the Commonwealth, before the cut-off day, for the levy year; or
 - (iii) one or more intermediaries paid to the Commonwealth on behalf of the entity, or the estate, before the cut-off day, for the levy year.
- (3) The ISB may issue the invitation in any manner that it chooses, including by publishing a notice in one or more newspapers.
- (4) If the ISB issues the invitation:
- (a) there must be sufficient time between the issuing of the invitation and the cut-off day to allow a reasonable amount of time for the information to be provided; and
 - (b) the ISB must take into account any information received before the end of the cut-off day.

27 Notice about voting entitlement

- (1) Within 15 business days after the cut-off day for a levy poll, the ISB must send each eligible voter a notice that states:
- (a) the eligible voter's voting entitlement; and
 - (b) that the eligible voter may apply to the ISB for reconsideration of its determination of the eligible voter's voting entitlement; and
 - (c) that an application for reconsideration:
 - (i) must be in writing; and
 - (ii) must state the reasons why the applicant seeks reconsideration of the determination; and
 - (iii) must be received by the ISB within 14 days after the day specified in the notice for the purpose of this subparagraph; and
 - (iv) may be accompanied by documents supporting the applicant's application.
- (2) The notice must also state that, if the eligible voter's voting entitlement is reconsidered by the ISB and the voter remains dissatisfied with the reconsidered decision, the eligible voter may apply to the Dispute Panel for the levy poll, for review of the reconsidered decision.

Note: Part 6 deals with reconsideration of determinations about voting entitlement and review of decisions made on reconsideration.

28 Register

- (1) The ISB must maintain an electronic register to be known as the Register of eligible voters.
- (2) The Register must contain:
 - (a) the name and address of each eligible voter; and
 - (b) the voting entitlement of each eligible voter.
- (3) The ISB must ensure that the information set out in subsection (2) is recorded on the Register within 15 business days after the cut-off day for a levy poll.
- (4) If, at any time, the ISB becomes aware that the information recorded on the Register is not up to date at that time, the ISB must update the Register as soon as practicable after that time.
- (5) If, at any time, the ISB becomes aware that there is an error in the information recorded on the Register, the ISB must alter the Register to rectify the error as soon as practicable after that time.

Division 5.3—Form of the levy poll

29 Form of the levy poll

- (1) The levy poll must be designed to determine which levy option set out in the request for the levy poll is preferred by eligible voters (or, if the request for the levy poll sets out only one levy option, whether that levy option is preferred by eligible voters over there being no change in the prescribed milk fat rate and the prescribed protein rate), taking into account their voting entitlements.
- (2) Subject to subsection (3), the levy poll must use a preferential ballot.
- (3) If the request for the levy poll sets out only one levy option, the levy poll must instead use a single option ballot.
- (4) For this section, a **preferential ballot** is one in which:
 - (a) the ballot paper presents 2 or more levy options; and
 - (b) eligible voters must use ‘1’ to indicate their first preference; and
 - (c) eligible voters may use further numbers to indicate their further preferences; and
 - (d) the preferred levy option is determined by counting the votes using a single transferable vote system.
- (5) For this section, a **single option ballot** is one in which:
 - (a) the ballot paper presents a single levy option; and
 - (b) eligible voters must vote either ‘yes’ or ‘no’ to the levy option presented; and
 - (c) the voting instructions state that a ‘no’ vote will be treated as a vote for no change in the prescribed milk fat rate and the prescribed protein rate.

30 Poll procedure

- (1) The ISB must set out in a document (**poll procedure document**) the procedure that will be used to conduct the levy poll and count the votes.

Electronic voting

- (2) The procedure must not include electronic voting unless the LPAC has endorsed the proposed electronic voting facility as complying with the following requirements:
 - (a) if properly used, it will give the same result in the levy poll as would be obtained if the levy poll were conducted without electronic voting;
 - (b) it will allow an eligible voter to indicate preferences in accordance with the voting instructions;
 - (c) it will give an eligible voter an opportunity to correct mistakes before processing the eligible voter's vote;
 - (d) it will allow ballot papers to be securely stored and (if necessary) votes to be recounted;
 - (e) it will not allow an eligible voter to vote more than once in a levy poll;
 - (f) it is secure from interference.
- (3) In performing its function under subsection (2), the LPAC may rely on advice from one or more individuals with relevant expertise, including the returning officer or an assistant returning officer.
- (4) The electronic form of the ballot paper may include changes to the ballot paper that has been approved in draft under section 35, to facilitate the display and completion of the electronic form.

Other requirements

- (5) The procedure must satisfy the following:
 - (a) each eligible voter has a single ballot paper and makes a single choice or set of choices that applies to all the votes of the eligible voter's voting entitlement;
 - (b) a vote is not valid unless received by the returning officer before the end of the return day;
 - (c) a vote may be sent to the returning officer by faxing the whole of the completed ballot paper, including the details mentioned in subsection 31(2);
 - (d) if the returning officer receives more than one apparently valid ballot paper from the same eligible voter, only the first received is to be counted.

Note: For example, if the first ballot paper is received by fax and the later one through the post, the faxed ballot paper is to be counted (whether or not the 2 ballot papers indicate the same preferences).

31 Ballot paper

- (1) The ISB must prepare a ballot paper for use in the ballot, consistent with section 29 and the poll procedure document.

Note: The ballot paper must be approved by the Minister before being used: see section 35.

- (2) The ballot paper sent to an eligible voter must include:
 - (a) the name of the eligible voter; and
 - (b) the eligible voter's voting entitlement.

32 Voting instructions

The ISB must set out in a document (*voting instructions*) an explanation for voters of how the poll will be conducted, how votes will be counted, and what the voter must do to cast a valid vote.

Note: The voting instructions must be approved by the Minister before being used: see section 35.

33 Information memorandum

The ISB must set out in a document (*information memorandum*) the following matters:

- (a) the results of the most recent performance review of the ISB; and
- (b) an analysis of how the ISB spends payments made to it by the Commonwealth under the funding contract between the ISB and the Commonwealth; and
- (c) the plans of the ISB for spending those payments in the future; and
- (d) for each levy option presented on the ballot paper for the levy poll:
 - (i) an analysis of how the levy option, if implemented, would affect the amounts of future payments made to the ISB by the Commonwealth under the funding contract between the ISB and the Commonwealth; and
 - (ii) an analysis of how the levy option, if implemented, would affect the plans of the ISB for spending those payments in the future; and
- (e) if the levy poll was requested by the LPAC after the presentation of a petition by the ISB under section 16—which levy option was proposed by the petition; and
- (f) which levy option is recommended by the LPAC (or, if the ballot paper presents a single levy option, whether the LPAC recommends that levy option or that there be no change in the prescribed milk fat rate and the prescribed protein rate) and the reasons for the recommendation; and
- (g) any other information that the ISB considers appropriate.

Note: The information memorandum must be approved by the Minister before being used: see section 35.

Division 5.4—Conducting the levy poll

34 Material to be sent to eligible voters

Not later than 5 weeks before the return day for a levy poll, but after the cut-off day for the levy poll, the ISB must send to each eligible voter the following for the levy poll:

- (a) a ballot paper; and
- (b) a copy of the voting instructions; and
- (c) a copy of the information memorandum; and
- (d) a reply-paid envelope, addressed to the returning officer, in which the ballot paper may be sent to the returning officer.

35 Minister to approve ballot paper etc

- (1) Before the ballot paper, voting instructions and information memorandum for a levy poll may be used, the Minister must approve them in draft.
- (2) At least one calendar month before the cut-off day for the levy poll, the ISB must submit drafts of the following documents it proposes for the levy poll to the Minister for approval:
 - (a) the ballot paper;
 - (b) the voting instructions;
 - (c) the information memorandum.
- (3) The Minister may approve the draft documents only if:
 - (a) the Minister is satisfied that they meet, or when finalised will meet, the requirements of Division 5.3; and
 - (b) the LPAC has examined them and certified them as appropriate.

36 Appointment of returning officers

- (1) The ISB must appoint, for each levy poll, an individual with relevant expertise to be the returning officer for the levy poll.
- (2) The ISB may appoint assistant returning officers for each levy poll.
- (3) The ISB must not appoint, as the returning officer or an assistant returning officer for a levy poll, an individual who is:
 - (a) an employee of the ISB or the IMRB; or
 - (b) an eligible voter; or
 - (c) an associate of an eligible voter; or
 - (d) otherwise involved in the production or manufacture of dairy produce.
- (4) For paragraph (3)(c), an individual is an associate of an eligible voter if the individual is:
 - (a) a member of the eligible voter's family, if the eligible voter is an individual; or
 - (b) an employee of the eligible voter; or
 - (c) a director of an entity that is connected with the eligible voter or is an associate of the eligible voter (within the meaning of the *Corporations Act 2001*), if the eligible voter is a corporation; or
 - (d) a beneficiary under a trust administered by the eligible voter.

37 Conduct of levy poll and declaration of result

- (1) The returning officer must conduct the levy poll in accordance with this instrument and the poll procedure document.
- (2) When the returning officer is satisfied that the votes have been accurately counted and the preferred levy option determined in accordance with paragraph 29(4)(d) or paragraphs 29(5)(b) and (c), as applicable, he or she must declare that levy option to be the levy option that must be recommended to the Minister under subsection 9(3) of the Act.
- (3) As soon as practicable after making a declaration under subsection (2), the returning officer must report to the ISB on the conduct of the levy poll.

38 Preservation of ballot papers

- (1) The returning officer must keep all of the ballot papers, and any other documents relating to the levy poll, in a secure place until the second anniversary of the return day for the levy poll.
- (2) The returning officer must destroy the ballot papers and other documents as soon as practicable after the second anniversary.
- (3) However, subsection (4) applies if:
 - (a) before the second anniversary, a person makes an application for an order of review, in relation to the levy poll, under:
 - (i) section 5 of the *Administrative Decisions (Judicial Review) Act 1977*; or
 - (ii) section 39B of the *Judiciary Act 1903*; or
 - (iii) paragraph 75(v) of the Constitution; and
 - (b) the applicant gives the returning officer notice of the application before the second anniversary.

- (4) The returning officer must not destroy the ballot papers and other documents before the day when the application is finally determined, but must destroy the ballot papers and other documents as soon as practicable after that day.

Division 5.5—Results of levy polls

39 Summary of results of levy poll to be sent to eligible voters

Within 14 business days after the returning officer declares, under subsection 37(2), a levy option to be the levy option that must be recommended to the Minister under subsection 9(3) of the Act, the ISB must make available to each eligible voter a written summary of the results of the levy poll.

Part 6—Reconsideration and review of decisions

Division 6.1—Reconsideration of decisions

40 Application for reconsideration of determinations

- (1) If an eligible voter is sent a notice, under section 27, of a determination of the eligible voter's voting entitlement, the voter may apply to the ISB for reconsideration of its determination.
- (2) The application:
 - (a) must be in writing; and
 - (b) must state the reasons why the applicant seeks reconsideration of the determination; and
 - (c) must be received by the ISB within 14 days after the day specified in the notice; and
 - (d) may be accompanied by documents supporting the applicant's application.

41 Reconsideration of determinations

- (1) If the ISB receives an application for reconsideration made in accordance with section 40, the ISB must consider the application and make a decision (a *reconsidered decision*), either:
 - (a) affirming its original determination under section 25; or
 - (b) varying its original determination and stating the reconsidered voting entitlement.
- (2) Within 14 business days after receiving the application, the ISB must:
 - (a) send to the applicant a notice about the reconsidered decision; and
 - (b) if the ISB has varied its original determination—update the Register of eligible voters to reflect the variation.
- (3) The notice must:
 - (a) state the reasons for the reconsidered decision; and
 - (b) state that, if the applicant is not satisfied with the decision, the applicant may apply to the Disputes Panel for the levy poll, for review of the decision on reconsideration; and
 - (c) state that an application for review:
 - (i) must be in writing; and
 - (ii) must state the reasons why the applicant seeks review of the reconsidered decision; and
 - (iii) must be received by the Disputes Panel within 14 days after the day specified in the notice for the purposes of this subparagraph; and
 - (iv) may be accompanied by documents supporting the applicant's application.

Division 6.2—Review of decisions by Disputes Panel

Subdivision 6.2.1—Disputes Panel

42 Disputes Panel

- (1) Within 14 business days after the cut-off day for a levy poll, the ISB must establish a Disputes Panel for the levy poll.
- (2) The functions of the Disputes Panel are:
 - (a) to receive and consider applications for review of reconsidered decisions made by the ISB under section ; and
 - (b) for each application—to finally determine the applicant’s entitlement for the levy poll.
- (3) The Disputes Panel must have at least 3 members.
- (4) The ISB must not appoint to the Disputes Panel for a levy poll an individual who is:
 - (a) an employee of the ISB; or
 - (b) an eligible voter; or
 - (c) an associate of an eligible voter; or
 - (d) the returning officer or an assistant returning officer for the levy poll.
- (5) For paragraph (4)(c), an individual is an associate of an eligible voter if the individual is:
 - (a) a member of the eligible voter’s family, if the eligible voter is an individual; or
 - (b) an employee of the eligible voter; or
 - (c) a director of an entity that is connected with the eligible voter or is an associate of the eligible voter (within the meaning of the *Corporations Act 2001*), if the eligible voter is a corporation; or
 - (d) a beneficiary under a trust administered by the eligible voter.

Subdivision 6.2.2—Review of reconsidered decisions

43 Application for review of reconsidered decisions

- (1) If an eligible voter receives a notice under paragraph 41(2)(a), the voter may apply to the Disputes Panel for review of the ISB’s reconsidered decision.
- (2) The application:
 - (a) must be in writing; and
 - (b) must state the reasons why the applicant seeks review of the reconsidered decision; and
 - (c) must be received by the Disputes Panel within 14 days after the day specified in the notice; and
 - (d) may be accompanied by documents supporting the applicant’s application.

44 Review of reconsidered decisions

- (1) If the Disputes Panel for a poll receives an application made in accordance with section 43, the Disputes Panel must consider the application and make a decision either:
 - (a) affirming the decision made on reconsideration; or
 - (b) varying that decision and stating the reconsidered voting entitlement.
- (2) Within 14 business days after receiving the application, the Disputes Panel must:

- (a) send to the applicant a notice about the decision on review; and
 - (b) send to the ISB a copy of the notice sent to the applicant.
- (3) The notice must state the reasons for the Disputes Panel's decision.

Note: If the ISB becomes aware that the information recorded on the Register of eligible voters is not current, it must update the Register as soon as practicable but before the return day: see subsection 28(4).

Part 7—Recommendations to the Minister

45 When the recommendations must be made

The recommendations that the ISB is to make to the Minister under subsection 9(3) of the Act, following a levy poll, must be made within 14 business days after the ISB makes available to each eligible voter a written summary of the results of the levy poll under section 39.

Note: Subsection 9(3) of the Act requires the ISB, if it conducts a levy poll, to make recommendations to the Minister about the amount of the dairy service levy, in accordance with the results of the levy poll. This section specifies the period within which the recommendations must be made.

46 Results of the poll to accompany the recommendations

The recommendations must be accompanied by:

- (a) a summary, signed by the returning officer, of the results of the levy poll; and
- (b) a statement as to how the recommendations are in accordance with the results of the levy poll.

Part 8—Transitional provisions

47 LPAC for the first levy review cycle

For the purposes of this instrument:

- (a) the committee established by the ISB before the commencement of this instrument, known as the Levy Poll Advisory Committee or the LPAC, is taken to be the LPAC for the first levy review cycle; and
- (b) the initial members appointed to that committee by the ISB before the commencement of this instrument are taken to be initial members of the LPAC for the first levy review cycle; and
- (c) the additional members appointed by the initial members, meeting as that committee, before the commencement of this instrument are taken to be additional members of the LPAC for the first levy review cycle.

48 Recommendations of the IRB and the ISB for the first levy review cycle

If, before the commencement of this instrument:

- (a) the IRB and the ISB made recommendations, whether separately or as a joint recommendation, about whether there should be a change in the prescribed milk fat rate or the prescribed protein rate or both and, if so, the nature of the change; and
- (b) the recommendations were made to the committee established by the ISB, known as the Levy Poll Advisory Committee or the LPAC;

then, for the purposes of this instrument, the recommendations are taken to have been made under section 13 to the LPAC for the first levy review cycle.