

Queensland



DAIRY INDUSTRY AMENDMENT ACT 1994

Act No. 41 of 1994

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Dairy Industry Amendment Act 1994

Act No. 41 of 1994

An Act to amend the *Dairy Industry Act 1993*

[Assented to 14 September 1994]

The Parliament of Queensland enacts—**Short title**

1. This Act may be cited as the *Dairy Industry Amendment Act 1994*.

Act amended

2. This Act amends the *Dairy Industry Act 1993*.

Amendment of s 3 (Definitions)

3. Section 3—

insert—

- ‘ **“financial arrangements”** means arrangements providing for, about or directed towards any of the following—
- (a) borrowing money, raising money, or obtaining any form of financial accommodation, in Australia or elsewhere, including, for example, by issuing debentures, bonds, inscribed stock and other securities;
 - (b) lending money;
 - (c) entering into and performing deferred payment arrangements as debtor or creditor;
 - (d) entering into leases of any term for land, buildings, plant, machinery, equipment or other property, whether as lessee, lessor, owner or tenant;
 - (e) entering into partnerships and ventures and forming companies;
 - (f) acquiring, holding, dealing with and disposing of—
 - (i) shares in any corporation, company debentures, bonds, stock or other securities, including debentures, bonds, inscribed stock and other securities issued by the Authority itself; and

- (ii) land, buildings, plant, machinery, equipment or other property and any interest or charge in or over them; and
- (iii) foreign currency;
and incurring and performing obligations about foreign currency;
- (g) taking land;
- (h) accepting money on deposit;
- (i) entering into covenants, undertakings, arrangements, promises, guarantees or indemnities to meet liabilities incurred by or to anyone, whether or not the person is a party;
- (j) entering into arrangements directed at granting financial accommodation by or to anyone, whether or not the person is a party;
- (k) entering into liabilities as seller or buyer of any output or other product;
- (l) investing money;
- (m) issuing, drawing, accepting, endorsing or discounting bills of exchange, promissory notes, payment orders or other negotiable instruments;
- (n) forming or establishing, taking part in forming or establishing or taking part in a business undertaking;
- (o) underwriting issues of shares in, or debentures or other securities of, a business undertaking.

“**revenue**” of the Authority includes income.’.

Amendment of s 8 (Meetings of the Council)

4. Section 8(3)—

omit.

Insertion of new Pt 2, Div 3A

5. After section 16—

insert—

‘Division 3A—Financial arrangements of Authority

‘Division does not limit Authority’s general powers

‘16A. This Division does not limit section 13(1) (General powers of the Authority).

‘Power to enter into financial arrangements

‘16B. In performing its functions, the Authority may enter into financial arrangements with anyone else.

‘Power to mortgage property etc. for financial arrangement

‘16C.(1) For financial arrangements under section 16B, the Authority may—

- (a) mortgage any of its property; and
- (b) execute any agreement, including, for example, a sale agreement, purchase agreement, lease and management and operating agreement (a **“security agreement”**); and
- (c) mortgage any of its revenue.

‘(2) A mortgage or security agreement may not prevent the Authority from dealing with its property in the ordinary course of performing its functions.

‘Priority of Authority’s debentures, bonds and inscribed stock

‘16D. If the Authority enters into financial arrangements by issuing debentures, bonds or inscribed stock (**“instruments”**) that are unsecured or are secured over the Authority’s revenue, the instruments rank equally with each other, and without priority over each other, unless a priority is specified in the arrangements.

‘Priority of charge over revenue

‘16E.(1) This section applies if the Authority enters into financial

arrangements providing for a charge over its revenue, other than by issuing debentures, bonds or inscribed stock.

‘(2) The charge ranks equally with, and without priority over, other charges created by the Authority over its revenue unless the charge provides that it has a different priority from the Authority’s other charges.

‘**Notice of default**

‘**16F.(1)** This section applies if the Authority does not pay principal or interest when it becomes payable to a person (the “**creditor**”) under the Authority’s debentures, bonds or inscribed stock (the “**default**”).

‘(2) The creditor may not exercise a remedy under this Division for the default unless the creditor gives the Authority written notice of the default (the “**default notice**”) and the default continues for 14 days after the notice is given.

‘**Remedies**

‘**16G.(1)** If the default continues for 14 days after the default notice is given, the creditor may—

- (a) apply to the Supreme Court for the appointment of a receiver for the Authority; or
- (b) recover the amount payable by the Authority to the creditor as a debt by a proceeding in a court of competent jurisdiction.

‘(2) The Supreme Court has jurisdiction to appoint a receiver for the general revenue or a specific revenue of the Authority.

‘(3) This section does not limit the Supreme Court’s jurisdiction in relation to the Authority.

‘**Receiver’s remuneration**

‘**16H.(1)** A receiver appointed for the Authority is entitled to the remuneration, by way of commission, fees or otherwise, the Supreme Court orders.

‘(2) The remuneration is payable out of the Authority’s revenue for which the receiver is appointed.

‘Powers and duties of receiver

‘16I.(1) The receiver may collect all the Authority’s revenue for which the receiver has been appointed.

‘(2) In exercising powers as a receiver, the receiver is taken to be the Authority and may exercise all its powers.

‘(3) The receiver must pay all amounts received during the receivership as follows—

- (a) firstly, in payment of the costs of collection and the receiver’s remuneration;
- (b) secondly, in payment to the creditor and other persons, in the order of priority decided by the Supreme Court;
- (c) thirdly, in payment of any balance to the Authority.

‘Alternative remedies

‘16J.(1) Sections 16F to 16I do not apply to a financial arrangement between the Authority and anyone else if the arrangement provides for remedies to be available under this section.

‘(2) The arrangement may provide remedies against the Authority or anyone else (a “**defaulting party**”) who defaults under the arrangement.

‘(3) A remedy provided in the arrangement against a defaulting party may be the appointment of a receiver to the defaulting party and the arrangement may make provision about the receiver’s functions, powers and remuneration.

‘(4) The arrangement may also provide that, if a receiver is appointed to the defaulting party, the receiver—

- (a) is taken to be the defaulting party; and
- (b) may exercise all or stated powers of the defaulting party.’.

Amendment of s 106 (Appeals to the Tribunal)

6. After section 106(3)—

insert—

‘(4) In this section, a reference to an order, direction or decision includes a reference to a failure to make an order or a decision or give a direction.’.

Replacement of s 107 (Powers of Tribunal on appeal)

7. Section 107—

omit, insert—

‘How to start an appeal

‘**107.(1)** An appeal is started by filing a written notice of appeal with the Tribunal in the form approved by the Tribunal.

‘(2) The Tribunal must give a copy of the notice to the Authority or the authorised person whose order, direction or decision is being appealed against.

‘(3) The notice of appeal must be filed within 28 days after the appellant receives notice of the order, direction or decision appealed against.

‘(4) The Tribunal may at any time extend the period for filing the notice of appeal.

‘(5) The notice of appeal must state the grounds of the appeal.

‘Stay of operation of order etc.

‘**107A.(1)** In this section—

“**decision**” includes an order or direction.

‘(2) The Tribunal may stay a decision appealed against to secure the effectiveness of the appeal.

‘(3) A stay—

- (a) may be given on conditions the Tribunal considers appropriate; and
- (b) operates for the period stated by the Tribunal; and

(c) may be revoked or amended by the Tribunal.

‘(4) The period of a stay stated by the Tribunal must not extend past the time when the Tribunal decides the appeal.

‘(5) The starting of an appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

‘Powers of Tribunal on appeal

‘107B.(1) In this section—

“**decision**” includes an order or direction.

‘(2) In deciding an appeal, the Tribunal may—

- (a) confirm the decision appealed against; or
- (b) set the decision aside and substitute another decision; or
- (c) set the decision aside and return the matter to the Authority or authorised person with directions the Tribunal considers appropriate.

‘(3) In substituting another decision, the Tribunal has the same powers as the Authority or authorised person.

Example—

The Tribunal may decide that an unsuccessful applicant for a producer’s licence be issued the licence and decide conditions for it.

‘(4) If the Tribunal substitutes another decision, the substituted decision is taken, for the purposes of this Act, to be the decision of the Authority or authorised person.’.

Insertion of new ss 115 and 116

8. After section 114, in Part 8—

insert—

‘Declaration about Authority’s powers to enter into financial arrangements

‘115.(1) To remove doubt, it is declared that the Authority has always had power to enter into financial arrangements mentioned in section 16B

with anyone else, and to do everything else provided for in Part 2, Division 3A.

‘(2) This section expires 6 months after it commences.

‘(3) Section 20A of the *Acts Interpretation Act 1954* applies to this section.

‘Sections 16D and 16E subject to order under s 47

‘**116.(1)** Sections 16D and 16E are subject to an order under section 47 made before the commencement of this section providing for a priority for a mortgage or charge over the Authority’s property.

‘(2) This section expires on 31 December 1998.

‘(3) Section 20A of the *Acts Interpretation Act 1954* applies to this section.’.