

Queensland



# **DAIRY INDUSTRY AMENDMENT ACT 1998**

**Act No. 49 of 1998**



# Queensland



## DAIRY INDUSTRY AMENDMENT ACT 1998

### TABLE OF PROVISIONS

Section	Page
1	Short title . . . . . 4
2	Commencement . . . . . 4
3	Act amended . . . . . 4
4	Amendment of s 3 (Definitions) . . . . . 4
5	Amendment of s 12 (Functions of the authority) . . . . . 5
6	Amendment of s 13 (General powers of the authority) . . . . . 5
7	Replacement of ss 16A–16J . . . . . 6
16A	Authority is statutory body under the Financial Administration and Audit Act 1977 . . . . . 6
16B	Authority is statutory body under the Statutory Bodies Financial Arrangements Act 1982 . . . . . 6
8	Amendment of s 28 (Price fixing) . . . . . 6
9	Insertion of new s 28A . . . . . 7
28A	Specific authorisation for making pricing orders and imposing pricing conditions . . . . . 7
10	Amendment of s 29 (Obligation to comply with order) . . . . . 7
11	Insertion of new ss 29A and 29B . . . . . 8
29A	Specific authorisation for things done because of pricing orders . . . 8
29B	Expiry of div 1 . . . . . 9
12	Amendment of s 38 (Classes of licences) . . . . . 9
13	Insertion of new s 40A . . . . . 9
40A	Specific authorisation of non-competitive conditions . . . . . 9
14	Omission of s 42 (Special trading rights for processors' licences) . . . . . 10

---

15	Amendment of s 45 (Offences related to licences) . . . . .	10
16	Omission of s 46 (Expiry of licensing provisions) . . . . .	10
17	Omission of pt 3, div 5 (Restructuring of distribution) . . . . .	10
18	Omission of s 48 (Application of this division) . . . . .	10
19	Amendment of s 49 (Market milk entitlements) . . . . .	10
20	Amendment of s 50 (Transactions affecting entitlement) . . . . .	10
21	Amendment of s 52 (Supply management schemes and market milk access) . . . . .	11
22	Replacement of s 53 (Annual review of market milk consumption) . . . . .	11
	53 Amount of each class of market milk supplied . . . . .	11
	53A Determination of monthly adjustments of market milk sales . . . . .	12
	53B Specific authorisation for monthly adjustments of market milk sales . . . . .	14
23	Amendment of s 56 (Gazettal of entitlements etc.) . . . . .	14
24	Insertion of new s 56A . . . . .	14
	56A Expiry of div 6 . . . . .	14
25	Amendment of s 61 (Testing and analysis) . . . . .	14
26	Amendment of s 106 (Appeals to the tribunal) . . . . .	14
27	Amendment of s 107A (Stay of operation of order etc.) . . . . .	15
28	Amendment of s 107B (Powers of tribunal on appeal) . . . . .	15
29	Insertion of new s 115 . . . . .	15
	115 Numbering and renumbering of Act . . . . .	15
30	Replacement of s 116 (Sections 16D and 16E subject to order under s 47) . . . . .	15
	116 Grant of new market milk entitlements . . . . .	16
	117 Gazettal of all market milk entitlements . . . . .	17
31	Insertion of new s 120 . . . . .	17
	120 Expiry of pt 8 . . . . .	17

Queensland



## **Dairy Industry Amendment Act 1998**

**Act No. 49 of 1998**

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**An Act to amend the *Dairy Industry Act 1993***

*[Assented to 27 November 1998]*

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

1. This Act may be cited as the *Dairy Industry Amendment Act 1998*.

**Commencement**

- 2.(1) Sections 3, 4(2), 7 and 30 commence on assent.
- (2) The remaining provisions of this Act commence on 1 January 1999.

**Act amended**

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

**Amendment of s 3 (Definitions)**

4.(1) Section 3, definitions “**carrier**”, “**farmgate price**”, “**lease**”, “**milk run**”, “**rent**” and “**vendor**”—

*omit.*

- (2) Section 3, definitions “**financial arrangements**” and “**revenue**”—

*omit.*

- (3) Section 3—

*insert—*

‘**“competition legislation”** means the *Trade Practices Act 1974* (Cwlth), section 51(1)(b),<sup>1</sup> or section 51<sup>2</sup> of the Competition Code of Queensland.<sup>3</sup>

**“pricing order”** see section 28(1).’

(4) Section 3, definition **“processor”**, from ‘but does’—  
*omit.*

### **Amendment of s 12 (Functions of the authority)**

**5.(1)** Section 12(c), ‘system’—

*omit, insert—*

‘scheme’.

(2) Section 12(e), ‘, distribution’—

*omit.*

### **Amendment of s 13 (General powers of the authority)**

**6.** Section 13—

*insert—*

‘(2A) Without limiting subsection (2), the authority may, under the subsection, require a processor to give it a certificate by an independent auditor verifying the processor’s returns about market milk sales.’

<sup>1</sup> *Trade Practices Act 1974* (Cwlth), section 51 (Exceptions)

<sup>2</sup> Section 51 states that in deciding whether a person has contravened the Competition Code, Part IV, certain things must be disregarded. Section 51 of the Code provides that the following must be disregarded—

(a) ...

(b) anything done in a State, if the thing is specified in, and specifically authorised by:

(i) an Act passed by the Parliament of that State.

<sup>3</sup> The Code applies as a law of Queensland under the *Competition Policy Reform (Queensland) Act 1996*, part 2.

**Replacement of ss 16A–16J****7. Sections 16A to 16J—**

*omit, insert—*

**‘Authority is statutory body under the Financial Administration and Audit Act 1977**

‘**16A.** To remove any doubt, it is declared that the authority is a statutory body under the *Financial Administration and Audit Act 1977*.’

**‘Authority is statutory body under the Statutory Bodies Financial Arrangements Act 1982**

‘**16B.(1)** Under the *Statutory Bodies Financial Arrangements Act 1982*, the authority is a statutory body.

‘**(2)** The *Statutory Bodies Financial Arrangements Act 1982*, part 2B<sup>4</sup> sets out the way in which the authority’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.’

**Amendment of s 28 (Price fixing)****8.(1) Section 28(1)—**

*omit, insert—*

‘**28.(1)** If the Minister approves, the authority may, by written order (a “**pricing order**”), fix the minimum price to be paid by a processor for the purchase of milk from a producer or another processor for processing as market milk.’

**(2) Section 28(2) and (3)—**

*omit, insert—*

**‘(2) A pricing order may—**

- (a) apply generally to all transactions involving the purchase of milk or to a class of the transactions stated in the order; or

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<sup>4</sup> *Statutory Bodies Financial Arrangements Act 1982*, part 2B (Powers under this Act and relationship with other Acts)

- (b) fix different prices that vary according to the composition, grade or quality of milk; or
- (c) apply generally irrespective of the circumstances in which the transactions take place, or be limited to circumstances described in the order.’.

(3) Section 28(4), from ‘An’ to ‘to the authority’—

*omit, insert—*

‘A pricing order may be made on condition that a specified proportion of the minimum price fixed under the order, be paid by a processor to the authority’.

(4) Section 28(4)(b), from ‘market milk’ to ‘a supply’—

*omit, insert—*

‘milk under the supply’.

(5) Section 28(6) to (8)—

*omit, insert—*

‘(6) A pricing order is subordinate legislation.’.

### **Insertion of new s 28A**

9. After section 28—

*insert—*

#### **‘Specific authorisation for making pricing orders and imposing pricing conditions**

‘28A. The following things are specifically authorised for the competition legislation—

- (a) the making of a pricing order;
- (b) the imposition of a condition under section 28(4)(a) on the making of a pricing order.’.

### **Amendment of s 29 (Obligation to comply with order)**

10.(1) Section 29, heading—

*omit, insert—*

**‘Obligation to comply with pricing order’.**

(2) Section 29(1)—

*omit, insert—*

**‘29.(1)** A producer or processor must not receive or pay a price for milk, for processing as market milk, that is less than the price fixed under a pricing order.

Maximum penalty—180 penalty units.’.

(3) Section 29(2) and (3), ‘farmgate’ to ‘division’—

*omit, insert—*

‘minimum price fixed under a pricing order’.

(4) Section 29(3), after ‘the milk’—

*insert—*

‘used to produce the market milk’.

**Insertion of new ss 29A and 29B**

11. After section 29—

*insert—*

**‘Specific authorisation for things done because of pricing orders**

**‘29A.** The following things are specifically authorised for the competition legislation—

- (a) the payment by a processor to a producer or another processor of the minimum price fixed for market milk under a pricing order;
- (b) the receipt by a producer from a processor of the minimum price fixed for market milk under a pricing order;
- (c) the receipt by a processor from another processor of the minimum price fixed for market milk under a pricing order.

**‘Expiry of div 1**

**‘29B.** This division expires on 31 December 2003.’.

**Amendment of s 38 (Classes of licences)**

**12.** Section 38(1)(c) and (d)—

*omit.*

**Insertion of new s 40A**

**13.** After section 40—

*insert—*

**‘Specific authorisation of non-competitive conditions**

**‘40A.(1)** The non-competitive conditions subject to which the authority has granted or grants a producer’s or a processor’s licence are specifically authorised for the competition legislation.

**‘(2)** This section expires on 31 December 2003.

**‘(3)** In this section—

**“non-competitive condition”** means—

- (a) for a producer’s licence, a condition—
  - (i) prohibiting the transfer of dairy produce between dairies; or
  - (ii) specifying or restricting the source of acquisition of dairy produce obtained or sold by the holder of the licence; or
  - (iii) specifying or restricting the persons or places to whom or to which dairy produce may be supplied by the holder of the licence; or
- (b) for a processor’s licence, a condition—
  - (i) specifying or restricting the source of acquisition of dairy produce obtained or sold by the holder of the licence; or
  - (ii) specifying or restricting the persons or places to whom or to which dairy produce may be supplied by the holder of the licence.’.

**Omission of s 42 (Special trading rights for processors' licences)**

14. Section 42—

*omit.*

**Amendment of s 45 (Offences related to licences)**

15. Section 45(3) and (4)—

*omit.*

**Omission of s 46 (Expiry of licensing provisions)**

16. Section 46—

*omit.*

**Omission of pt 3, div 5 (Restructuring of distribution)**

17. Part 3, division 5—

*omit.*

**Omission of s 48 (Application of this division)**

18. Section 48—

*omit.*

**Amendment of s 49 (Market milk entitlements)**

19. Section 49(1)—

*omit, insert—*

‘**49.(1)** The authority may grant a person an entitlement (a “**market milk entitlement**”) to supply milk for processing as market milk.’.

**Amendment of s 50 (Transactions affecting entitlement)**

20. Section 50, after ‘the entitlement’—

*insert—*

‘or an interest in it’.

### **Amendment of s 52 (Supply management schemes and market milk access)**

**21.(1)** Section 52, heading, ‘**schemes**’—

*omit, insert—*

‘**scheme**’.

**(2)** Section 52(1), ‘each supply management region’—

*omit, insert—*

‘the State’.

**(3)** Section 52(2), ‘A’—

*omit, insert—*

‘The’.

**(4)** Section 52(5), ‘a supply’—

*omit, insert—*

‘the supply’.

### **Replacement of s 53 (Annual review of market milk consumption)**

**22.** Section 53—

*omit, insert—*

#### **‘Amount of each class of market milk supplied**

‘**53.(1)** For making a determination under section 53A for each month, the holder of a market milk entitlement is taken to have supplied the specified processor under the entitlement the quantity of milk for processing as each class of market milk that is calculated by using the following formula—

$$Q = \frac{(SQ \times TMMS)}{TMME}$$

where—

“**Q**” = the quantity of milk taken to have been supplied in the month for the class of market milk.

“**SQ**” = the daily quantity of milk specified in the entitlement for supply for processing as market milk.

“**TMME**” = the total daily quantities of milk specified in all market milk entitlements for supply for processing as market milk.

“**TMMS**” = the total quantity of all monthly market milk sales in the State of the class of market milk.

‘(2) Within 8 business days after the end of each month, the authority must give written notice to the specified processors informing them of the quantities in the factors TMME and TMMS in the formula.

‘(3) In this section—

“**class**”, of market milk, means a class of market milk for which a pricing order is in force.

### **‘Determination of monthly adjustments of market milk sales**

‘**53A.(1)** Within 8 business days after the end of each month, the authority must—

- (a) determine whether each relevant processor’s total market milk sales for the month is more or less than the relevant processor’s total entitlement holder payments for the month; and
- (b) by written notice, to the processor—
  - (i) inform the processor about the result of the determination, including whether the processor is a deficit or surplus processor and the amount of the processor’s deficit or surplus; and
  - (ii) if the processor is a surplus processor—subject to subsection (4), direct the processor to pay the surplus, or a stated part of it, to the deficit processor or processors stated in the notice no later than 14 days after the end of the month.

‘(2) Also, the notice must state—

(a) that the processor may appeal against the determination or direction to the tribunal within 28 days after the notice is given; and

(b) how to start the appeal.

‘(3) The authority must not—

(a) direct a surplus processor to pay more than the processor’s surplus for the month; or

(b) make a direction under which a deficit processor is entitled to receive more than the processor’s deficit for the month.

‘(4) Subject to the decision of the tribunal on an appeal against the direction, an amount unpaid under a direction may be recovered by the deficit processor as a debt from the surplus processor.

‘(5) In this section—

“**deficit**”, for a processor, means the amount the processor’s total market milk sales are, under a determination under subsection (1)(a), less than the processor’s total entitlement holder payments.

“**deficit processor**” means a processor for whom a determination under subsection (1)(a) results in a deficit.

“**relevant processor**” means a processor who holds the class of processor’s licence prescribed under a regulation for this section.

“**specified processors**”, for a relevant processor, means the processors whose market milk access relate to the relevant processor.

“**surplus**”, for a processor, means the amount the processor’s total market milk sales are, under a determination under subsection (1)(a), more than the processor’s total entitlement holder payments.

“**surplus processor**” means a processor for whom a determination under subsection (1)(a) results in a surplus.

“**total entitlement holder payments**”, for a relevant processor for a month, means the total amount payable to all holders of market milk entitlements by specified processors for the total of the quantities of all classes of market milk calculated under section 53 at the minimum prices fixed under the pricing order in force for the month.

“**total market milk sales**”, for a relevant processor for a month, means the

amount calculated for all the processor's market milk sales of all classes of market milk for the month (other than sales to processors) by applying the minimum prices fixed for milk under the pricing order in force for the month.

**'Specific authorisation for monthly adjustments of market milk sales**

**'53B.** The giving of a direction under section 53A(1)(b)(ii) is specifically authorised for the competition legislation.'

**Amendment of s 56 (Gazettal of entitlements etc.)**

**23.** Section 56, 'quantities of market milk'—

*omit, insert—*

'quantities of milk'.

**Insertion of new s 56A**

**24.** After section 56—

*insert—*

**'Expiry of div 6**

**'56A.** This division expires on 31 December 2003.'

**Amendment of s 61 (Testing and analysis)**

**25.** Section 61, ', storage or distribution'—

*omit, insert—*

'or storage'.

**Amendment of s 106 (Appeals to the tribunal)**

**26.(1)** Section 106, after 'order,'—

*insert—*

'determination,'.

(2) Section 106(2)(a), ‘price, or maximum or’—  
*omit.*

(3) Section 106(2)(c)—  
*omit.*

(4) Section 106(4), after ‘make an order’—  
*insert—*  
‘, determination’.

#### **Amendment of s 107A (Stay of operation of order etc.)**

27. Section 107A(1), after ‘order’—  
*insert—*  
‘, determination’.

#### **Amendment of s 107B (Powers of tribunal on appeal)**

28. Section 107B(1), after ‘order’—  
*insert—*  
‘, determination’.

#### **Insertion of new s 115**

29. In part 7, after section 114—  
*insert—*

#### **‘Numbering and renumbering of Act**

‘115. In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.’

#### **Replacement of s 116 (Sections 16D and 16E subject to order under s 47)**

30. Section 116—

*omit, insert—*

**‘Grant of new market milk entitlements**

**‘116.(1)** This section applies if, on the commencement of this section, a producer who holds a Class A producer’s licence under the *Dairy Industry Regulation 1993*, is carrying on the business of producing dairy produce on a dairy situated outside the existing supply management region constituted under the regulation.

**‘(2)** Before 1 January 1999, the authority must, under section 49, grant a market milk entitlement to—

- (a) if the producer is the owner of the land on which the dairy is situated—the producer; or
- (b) if the producer is not the owner of the land on which the dairy is situated but is entitled to use the land—
  - (i) the producer; or
  - (ii) the owner of the land; or
  - (iii) the producer and owner of the land in the shares the authority decides.

**‘(3)** In deciding the market milk entitlement, the authority must take the following into account—

- (a) the total quantity of market milk purchased by processors in the financial year ending 30 June 1998 at the market milk price fixed under an order made under section 28;
- (b) the producer’s history of recent milk production and supply.

**‘(4)** In deciding to whom to grant the market milk entitlement, the authority must take the following into account—

- (a) the basis of the producer’s entitlement to use the land;
- (b) when the producer’s entitlement to use the land started;
- (c) when the producer’s entitlement to use the land ends;
- (d) the improvements made to the land by the producer.

**‘(5)** Subsections (3) and (4) do not limit the matters the authority may take into account in deciding the market milk entitlement or the grantee of the entitlement.

‘(6) The market milk entitlement is effective from 1 January 1999.

‘(7) The authority must give written notice of the grant of the market milk entitlement to the producer and, if the producer is not the owner of the land, the owner of the land.

‘(8) The notice must inform the recipient—

- (a) about the market milk entitlement; and
- (b) that the recipient may appeal, under section 106, against the decision to the tribunal within 28 days after the notice is given; and
- (c) how to start the appeal.

‘(9) In this section—

“owner”, of land that a producer is entitled to use, includes the person who granted the producer the entitlement to use the land.

### ‘Gazettal of all market milk entitlements

‘117. Before 1 February 1999, the authority must gazette a list of all market milk entitlements and the quantities of milk to which each relates at 1 January 1999.’.

### Insertion of new s 120

31. After section 119—

*insert—*

### ‘Expiry of pt 8

‘120. This part expires on 1 February 1999.’.