

DAIRY INDUSTRY ACT

No. 39 of 1989

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FIRST SCHEDULE

SECOND SCHEDULE

Queensland



ANNO TRICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 39 of 1989

**An Act to consolidate and amend the law relating to dairy
produce and to the supply of milk and to promote the
good order, management, welfare and development of
the dairy industry and for related purposes**

[ASSENTED TO 5TH MAY, 1989]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short Title. This Act may be cited as the *Dairy Industry Act 1989*.

2. Commencement. (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act shall commence on a day to be appointed by Proclamation.

The day so appointed is, in this Act, referred to as the commencement of this Act.

3. Objectives. The objectives of this Act are:—

- (a) to provide a structure for the efficient management and operation of the dairy industry in Queensland;
- (b) to ensure the provision of high quality dairy produce in sufficient quantity to meet demand therefor;
- (c) to facilitate and co-ordinate marketing programmes with a view to increasing demand for dairy produce;
- (d) to provide for a pricing structure, such that the dairy industry may operate on a viable and efficient basis;
- (e) to provide for supervision of the methods of production or other manufacture, transportation, processing, storage, and distribution of dairy produce.

4. Repeals. The enactments specified in the First Schedule are repealed as indicated in that schedule and in section 5 are referred to as the repealed Acts.

5. Savings. (1) Notwithstanding the repeal of the repealed Acts—

- (a) every entitlement, liability, obligation or status arising from any of the repealed Acts, or from anything done under or for the purposes of any of the repealed Acts, and subsisting immediately before the commencement of this Act, shall continue to subsist until it expires by effluxion of the time for which it was granted, imposed, or created, or is discharged, revoked, cancelled, suspended, or surrendered under this Act, and for this purpose shall be deemed to have arisen from this Act or from a corresponding thing done under or for the purposes of this Act;
- (b) every agreement, contract, or arrangement entered into under or for the purposes of any of the repealed Acts and subsisting and enforceable immediately before the commencement of this Act shall be deemed to be entered into under or for

the purposes of this Act and may be performed by and enforced by or against any party thereto according to its terms;

- (c) every licence, permit, certificate, or other authority granted under any of the repealed Acts and subsisting immediately before the commencement of this Act shall be deemed to be granted under this Act and shall continue in force as a licence, permit, certificate, or other authority of the same kind granted under this Act until it expires by effluxion of the time for which it was granted or is otherwise terminated pursuant to this Act;
- (d) every legal proceedings commenced before the commencement of this Act with respect to any matter arising from any of the repealed Acts, or from anything done under or for the purposes of any of the repealed Acts, but not completed at the commencement of this Act may be carried on and completed as if section 4 had not been enacted;
- (e) every fee prescribed by or under any of the repealed Acts and every levy struck for the purposes of any of the repealed Acts shall be deemed to be prescribed by or under this Act or, as the case may be, to be struck for the purposes of this Act and shall be payable from time to time as prescribed by the Act by or under which the fee was prescribed or for the purposes for which the levy was struck until it is replaced by a fee or levy prescribed or authorised by or under this Act or until the obligation to pay the fee or levy is revoked under this Act, whichever may occur;
- (f) a person who, at the commencement of this Act holds an office or position to which he was appointed under or for the purposes of any of the repealed Acts, if that office or position, or a corresponding office or position, exists for the purposes of this Act, shall continue to hold that office or position or, as the case may be, the corresponding office or position, for the purposes of this Act until he vacates it or is lawfully removed therefrom and, if immediately before the commencement of this Act he holds the office or position subject to the *Public Service Management and Employment Act 1987*, he shall hold the office or position, or the corresponding office or position, subject to that Act.

(2) The provisions of subsection (1) do not prejudice the operation of Section 20 of the *Acts Interpretation Act 1954-1985*.

6. Crown prerogative restricted. (1) Part V binds the Crown in right of Queensland.

(2) Neither the Authority nor any other body constituted under this Act shall be taken to be part of or to represent the Crown.

7. Application of Act. (1) This Act does not prejudice or affect the operation of the *Food Act 1981-1984*.

(2) This Act does not apply to dairy produce that is produced at premises, other than premises that are a resort or an institution, and that is intended for consumption on those premises by the occupier thereof and his employees and persons ordinarily residing on those premises and that is not subsequently sold or disposed of for consumption otherwise.

(3) The Governor in Council may, by Order in Council, exempt from the operation of this Act, or of the provisions thereof specified in the order, subject to such conditions as are specified in the order -

- any area of the State;
- any place or class of place;
- any person or class of person;
- milk from any particular species.

For as long as the Order in Council remains in force, and all conditions specified therein are complied with, this Act or, as the case may be, the provisions thereof specified in the order shall not apply in or in relation to the area, place (or class thereof), person (or class of person), or milk specified in the order.

(4) Subject to subsections (2) and (3), this Act applies, according to its terms, in relation to dairy produce throughout Queensland.

PART II—INTERPRETATION

8. Interpretation. In this Act, except where a contrary intention appears—

“analyst” means a person employed as such by the Authority for the purposes of this Act, or whose services as such are engaged by the Authority for the purposes of this Act;

“approved” means approved by the Authority;

“Authority” means the Queensland Dairy Industry Authority constituted under Part III;

“Butter-fat” means the fat of milk;

“carrier” means a person, other than a vendor, who carries dairy produce on or in a vehicle or vessel;

“dairy” means any land or premises used for the production of milk;

“dairy produce” means—

anhydrous milk-fat (butter oil);

baker’s powder, butter, butter concentrate, buttermilk, buttermilk powder;

casein, caseinate, cheese, concentrated buttermilk, concentrated milk, concentrated skim milk, concentrated whey, cream, cultured milk;

dairy blend;

evaporated milk;

ghee (clarified butter);

ice cream;

- market milk, milk, milk sugar;
- skim milk powder, sterilized milk;
- thickened cream;
- ultra heat treated (UHT) skim milk, ultra heat treated (UHT) flavoured modified milk, ultra heat treated (UHT) flavoured skim milk;
- whey, whey cream, whey powder, whole milk powder;
- yoghurt;
- any substance declared, for the time being, by Order in Council to be dairy produce for the purposes of this Act or any Part of this Act as specified in the order;
- “dairy produce premises” means a dairy, dairy produce store, depot, factory, laboratory, milkshop, vendor’s cold room, or other premises at, in or to which dairy produce is deposited, held, stored, manufactured, treated, dealt with, sold or supplied;
- “dairy produce store” means premises used for examining, grading, marking, weighing, or storing dairy produce that does not require the use of a refrigerated room for its storage;
- “depot” means premises used for examining, grading, measuring, sampling, testing, or chilling, dairy produce that requires the use of a refrigerated room for its storage held for or on sale by wholesale, but is not otherwise treated;
- “disease” means, in relation to stock, a disease prescribed by this Act;
- “distributor” means the owner of premises at which dairy produce is stored for distribution, but does not include a producer, vendor, carrier, or milkseller;
- “entitlement” means a market milk entitlement granted under this Act or deemed to be granted under this Act;
- “factory” means premises used for the manufacture of dairy produce, but does not include a dairy where raw milk is packaged, or any premises exempted in writing by the Authority from the description “factory”;
- “grade” means—
 - (a) as a verb, to classify dairy produce in the manner prescribed according to its quality;
 - (b) as a noun, the classification assigned to dairy produce in the prescribed manner according to its quality;
- “homogenise” means to reduce by means of treatment the size of milk fat globules to an index of homogenisation not exceeding 10, as determined by the test provided for in Standard AS 2300.2.1-1980 of the Standards Association of Australia, as amended and in force for the time being;
- “inspector” means a person employed as such by the Authority for the purposes of this Act, or whose services as such are engaged by the Authority for the purposes of this Act and includes a person performing for the time being the duties

of an inspector, and a person acting under the direction or in aid of an inspector;

“institution” means any church, college, hospital, organization formed for any public or social purpose, prison, school, society, or university, or any organization declared by Order in Council to be an institution for the purposes of this Act, or an organization of a class of organization declared by Order in Council to be an institution for the purposes of this Act;

“laboratory” means premises or an entity approved by the Authority for carrying out analyses, examinations, procedures, or tests (in any case, specified in the approval) in relation to dairy produce;

“licence” means a licence granted or deemed (pursuant to section 5) to be granted under this Act and in force, and includes a renewed licence and every endorsement on or attached to a licence, and every condition to which a licence is subject;

“manufacture” includes, in relation to dairy produce, prepare, process, produce, and treat;

“mark” includes any brand, label, stamp or tag;

“market-milk” means milk used or intended for use for consumption by humans, and includes flavoured milk, modified milk, flavoured modified milk, pasteurised milk, homogenised pasteurised milk, skim milk, flavoured skim milk, standardised milk, ultra heat treated (UHT) milk, flavoured ultra heat treated (UHT) milk, and any other dairy produce declared by Order in Council to be market milk, but does not include milk used or intended for use for the manufacture of butter, cheese, concentrated milk, condensed milk, evaporated milk, skim milk powder, whole milk powder, yoghurt, or casein;

“milk” means the lacteal fluid product of a bovine, or of any other mammal, if, in the latter case, it is declared by Order in Council to be milk for the purposes of this Act or any Part of this Act as specified in the order;

“milk seller” means a person who sells dairy produce from a milkshop;

“milkshop” means premises used for the sale or supply by retail of dairy produce, and includes a dairy, or part thereof, and any stall (fixed or mobile) that in either case, is so used, but does not include a vehicle used by a vendor for delivery of dairy produce to customers on a milk run;

“Minister” includes any Minister of the Crown for the time being performing the duties of the Minister;

“owner” includes in relation to any premises, vehicle, or vessel—

- (a) any registered proprietor or other owner thereof,
- (b) any lessee, sublessee, or licensee thereof,
- (c) any occupier or manager thereof,
- (d) any person for the time being in charge thereof,
and
- (e) any person who receives profit on account of the use thereof;

“pasteurise” means, to treat dairy produce by treatment, known as pasteurisation, that involves heating and cooling the produce by means of the prescribed method and the prescribed equipment;

“place” means any land, whether vacant or improved, and any premises, vehicle, or vessel;

“premises” includes—

- (a) any building or structure of any kind, whether wholly or partially completed;
- (b) a room or other confined area in any building or structure of any kind;

and the land on which such building or structure is situated;

“processor” means—

- (a) the owner of premises at which dairy produce is treated;
- (b) a primary producers’ co-operative association registered under the *Primary Producers’ Co-operative Associations Act 1923-1988* that has one or both of the following purposes in its purposes for registration—
 - (i) the sale and disposal of the primary produce (being dairy produce) of its members in the most profitable manner;
 - (ii) arranging for carriage to market or otherwise of such primary produce;
- (c) any person or persons (whether incorporated or not) declared by Order in Council to be a processor for the purposes of this Act,

but does not include the owner of a dairy;

“producer” means a person who supplies milk or cream from a dairy to a processor or vendor;

“resort” means premises frequented by members of the public, primarily for the purposes of holidays, tourism, or recreation, and includes premises, or premises of a class, declared by Order in Council to be a resort for the purposes of this Act;

“sell” means—

- (a) to sell by wholesale or retail, including by way of barter or exchange;
- (b) to supply for consideration of any kind or promise of advantage;
- (c) to expose, or have in possession, for sale;
- (d) to send, forward, or deliver for sale;
- (e) to dispose of, or offer to dispose of, under a lease, hire purchase, or other agreement; and includes—
- (f) to attempt, cause, or permit to sell; and
- (g) in relation to dairy produce intended for consumption by humans—
 - (i) to supply or give away, or to cause or permit to be supplied or given away as a means of advertisement;
 - (ii) to supply, or give away for consumption elsewhere than at the dairy where the dairy produce was produced;

“stock” means stock within the meaning of the *Stock Act 1915-1987* or any other Act or law relating to diseases in stock;

“treat” means examine, grade, homogenise, pack, pasteurise, refrigerate, separate, or perform any other act or carry out any other procedure declared by Order in Council to be treatment of dairy produce for the purposes of this Act;

“vehicle” means a conveyance of any kind other than a vessel;

“vendor” means a person who sells dairy produce from a vehicle or vessel;

“vendor’s cold room” means premises, vehicle, or vessel used by a vendor exclusively for his own use for the refrigerated storage of dairy produce and the supply of refrigerated dairy produce;

“vessel” includes any boat, hovercraft or ship, or any vehicle capable of use in or on water.

PART III—QUEENSLAND DAIRY INDUSTRY AUTHORITY

Division I—Constitution and Membership

9. Establishment of Authority. (1) There shall be constituted from time to time as prescribed a body with the name and style Queensland Dairy Industry Authority.

(2) The Authority, by the name and style prescribed by subsection (1), shall be a body corporate having perpetual succession and a common seal.

(3) The Authority shall have and may exercise such powers and authorities and shall discharge such functions and duties as are conferred

or imposed on it by this Act and for the purpose of exercising its powers and authorities and discharging its functions and duties the Authority may acquire, hold, lease, let, hire and dispose of property of whatever description, real and personal, may sue and be sued, and may do and suffer all such other acts and things as bodies corporate may in law do and suffer.

10. Judicial Notice of Authority's seal. All courts and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume it to have been duly affixed until the contrary be shown.

11. Members of Authority. (1) The Authority shall consist of 12 members appointed by the Governor in Council, by notification published in the Gazette, of whom—

- (a) one shall be appointed as chairman;
- (b) one shall be appointed as deputy chairman;
- (c) two shall be persons deemed to be representatives of co-operative processors;
- (d) one shall be a person deemed to be representative of proprietary processors;
- (e) three shall be persons deemed to be representatives of producers;
- (f) two shall be persons having specialist qualifications in areas of the dairy industry, including (but not limited to) the areas of finance, marketing and quality of dairy produce;
- (g) one shall be a person deemed to be representative of vendors or retailers of market milk;
- (h) one shall be a person deemed to be representative of consumers of dairy produce.

(2) All persons proposed for appointment as members of the Authority shall be nominated by the Minister who—

- (a) in nominating persons referred to at (a), (b), (f) and (h) of subsection (1), may exercise his discretion at large; and
- (b) in nominating persons referred to at (c), (d), (e), and (g) of subsection (1), shall nominate persons whose names are included in a panel of names furnished to the Minister in accordance with the regulations by the class of which the appointees are to be representative, or where a panel of names has not been so furnished by a particular such class, a person or persons, as the case requires, selected by him as representative of such class.

12. First constitution of Authority. (1) The Authority shall be first constituted on the day on which the first appointment of the whole number of its members takes effect.

(2) Upon the first constitution of the Authority, the Queensland Milk Board and the Milk Entitlements Committee and the Milk Sales

Promotion Advisory Committee, each constituted under the *Milk Supply Act 1977*, shall each cease to exist and the appointment then current of each member of that board or committee shall terminate.

(3) Upon the first constitution of the Authority—

(a) the assets of the board, or a committee, referred to in subsection (2) shall vest in the Authority;
and

(b) the Authority shall assume and discharge the liabilities of such board or, as the case may be, committee.

(4) Where the title to any asset vested in the Authority by subsection (3) is recorded in a register established under law, a person charged with keeping such register is authorised, on request made by the Authority and lodged with him, to record in the register the vesting prescribed by subsection (3).

Stamp duty or other charges under a law of the State shall not be payable on or in respect of such request.

(5) All rights had by any person in connexion with a liability assumed by the Authority under subsection (3) may be exercised and enforced against the Authority.

Proceedings commenced by or against the board, or a committee, referred to in subsection (2) and not completed at the commencement of this Act may be completed by or against the Authority in its name and style.

13. Term of appointment. (1) A member of the Authority shall be appointed for a term of three years from the day on which his appointment takes effect, but, if on the expiry of that term the appointment of his successor has not taken effect, he shall continue in the appointment until his successor's appointment does take effect.

(2) If he is otherwise qualified as prescribed, a member of the Authority is eligible to be re-appointed.

(3) The Governor in Council may at any time remove a member of the Authority from office as a member, by notification published in the Gazette.

14. Disqualification from membership of Authority. A person is not qualified to be a member of the Authority if—

(a) he is bankrupt or otherwise takes advantage of the laws for the time being relating to bankrupt or insolvent debtors;

(b) he has been convicted in Queensland of an indictable offence or elsewhere than in Queensland in respect of an act or omission that, if it occurred in Queensland, would constitute an indictable offence;

(c) he is a patient within the meaning of the *Mental Health Services Act 1974-1988*.

15. Vacating office as member. The office of a member of the Authority becomes vacant if the member—

- (a) dies;
- (b) ceases to be, or is not, qualified to be a member;
- (c) resigns his office in writing signed by him and given to the Minister;
- (d) is absent, without prior leave of absence granted by the Authority, from three consecutive meetings of the Authority of which due notice has been given to him;
- (e) he is removed from office as a member by the Governor in Council.

16. Casual vacancies. (1) When a vacancy occurs in the office of a member of the Authority during the term of office of members then constituting the Authority a person may be appointed in accordance with section 11 to fill that vacancy.

(2) A person appointed to fill a vacancy referred to in subsection (1) shall be appointed for the balance of the term of his predecessor and, if he is otherwise qualified as prescribed, is eligible to be re-appointed.

(3) A person appointed to fill a vacancy in the office of chairman or deputy chairman of the Authority shall be chairman or, as the case may be, deputy chairman while he holds the appointment.

Division 2—Functions and Powers

17. Functions. The functions of the Authority are—

- (a) to take all steps and do all things that, in the Authority's opinion, are necessary to ensure that an adequate supply of dairy produce of high quality is available in sufficient quantities to meet all reasonable demands, throughout the State or within prescribed areas of the State;
- (b) to administer and secure compliance with the quality assurance provisions of this Act (Part V);
- (c) to regulate the collection, manufacture, carriage, supply, delivery, storage, distribution and sale of dairy produce for use in the State or elsewhere;
- (d) to promote and encourage the use of dairy produce and related produce by such means as the Authority thinks fit;
- (e) to conduct or support research or educational programmes directed to achieving the objectives of this Act;
- (f) to regulate access by processors to markets for market milk;
- (g) to ensure proper administration of entitlements and, where necessary, to review and adjust entitlements.

18. General powers. (1) The Authority has and may exercise such powers and authorities as are necessary or desirable for the performance of its functions or for the attainment of the objectives of this Act.

(2) Without limiting the Authority's powers, the Authority may—

- (a) for the purposes of this Act, operate commercial enterprises, itself or jointly with others;
- (b) make such agreements and contracts as in its opinion are conducive to the effectual administration of this Act;
- (c) require producers, processors, or other persons involved in or associated with the dairy industry to furnish to it such returns or particulars as in its opinion are necessary or desirable for the effectual administration of this Act;
- (d) make such determinations, issue such orders, directions, and notices, and impose such prohibitions and requirements as are necessary or desirable for the effectual administration of this Act.

19. Powers to fix and declare prices. (1) The Authority, of its own motion or at the request of any person, after such enquiries as it considers appropriate, and with the Minister's approval, may by its order fix and declare—

- (a) the maximum and minimum prices to be paid to a producer or processor for any dairy produce;
- (b) the maximum and minimum prices at which any dairy produce (and its container, if any) shall be sold.

(2) The authority to fix and declare a price to be paid to a producer or processor for any dairy produce includes authority to fix and declare such price for milk that is intended to be used as market milk, whether in Queensland or elsewhere.

(3) When the Minister has approved of the Authority's order made under subsection (1) notification of the order shall be published in the Gazette and shall take effect on and from the date specified in the notification for its commencement.

(4) An order made and published under this section may be revoked or amended by an order subsequently duly made and published under this section.

20. Factors to be regarded in fixing prices. (1) In fixing and declaring a price to be paid to a producer the Authority shall have regard to the costs of production of the dairy produce and to such other factors as the Authority considers relevant.

(2) In fixing and declaring a price, other than one to be paid to a producer, the Authority shall have regard to all factors that it considers relevant, including the cost of the dairy produce to the processor or vendor, and the effect on consumption of the dairy produce of any variation in price.

21. Particular instances of fixing prices. (1) The authority to fix and declare a price under section 19 includes authority to fix and declare—

- (a) different maximum or minimum prices, whether wholesale or retail, according to—
 - (i) differences in quality, grade, class or description of the dairy produce;
 - (ii) differences in the quantity of the dairy produce sold;
 - (iii) differences in conditions of collection, treatment, delivery, storage or sale of the dairy produce;
 - (iv) differences in localities in which the dairy produce is produced, delivered, distributed or sold;
 - (v) differences in the use to be made of the dairy produce;
- (b) the price or prices to be paid to or charged by a person for the collection, treatment, storage, distribution or delivery of the dairy produce;
- (c) the price or prices to be paid by vendors or other persons for dairy produce purchased wholesale for resale, including a specific price or specific prices to be paid by a particular vendor or other person if the Authority is of opinion that special circumstances exist after considering—
 - (i) the frequency of deliveries made by that vendor or other person;
 - and
 - (ii) such other matters as the Authority considers relevant;
- (d) maximum and minimum prices in such circumstances, according to such principles and on such conditions as the Authority thinks fit.

(2) Where the Authority fixes and declares a specific price or specific prices to be paid by a particular vendor or other person, as referred to in subsection 1(c), the Authority shall give the processor who supplies that vendor or person with dairy produce written notice of—

- (a) the specific price or prices fixed and declared to be paid for dairy produce by that vendor or person;
- and
- (b) the price or prices that would have been payable by that vendor or person for dairy produce had the Authority not fixed and declared such price or prices.

(3) Where a processor has received a written notice under subsection (2), he shall pay to the Authority, as soon as is practicable, all moneys received by him, in respect of sales of dairy produce to the vendor or person in question, in excess of the amount that would have been received by the processor in respect of such sales had the Authority not fixed and declared such specific price or prices.

(4) All moneys received by the Authority under subsection (3) shall be paid into and form part of the Authority's funds, to be applied to the use of the Authority for the purposes of this Act.

22. Vesting of milk in Authority. (1) On the recommendation of the Authority, the Governor in Council may, by Order in Council, declare that all or any part of milk produced in a locality of the State specified in the order shall vest in and be the property of the Authority.

(2) On and from the date specified for the purpose in an order made under subsection (1) and while the order remains in force, all milk to which the order relates shall vest in and be the property of the Authority.

(3) An order made under subsection (1)—

- (a) may provide that the vesting of milk in the Authority is subject to conditions or requirements specified in the order;
- (b) may exempt from the order and the operation of subsection (2) such milk or description of milk specified in the order;
- (c) may provide for such other relevant matters as the Governor in Council considers appropriate.

23. Delivery and acceptance of milk to and by Authority. (1) All milk vested in the Authority pursuant to an order made under section 22 (1) shall be delivered to the Authority in accordance with this section.

(2) The Authority shall determine—

- (a) places at which milk vested in it shall be delivered and accepted by the Authority;
- (b) times at or during which milk vested in it may be so delivered and accepted;
- (c) such other matters as are prescribed for the purposes of this section.

(3) Milk delivered to and accepted by the Authority under this section may be disposed of by the Authority to such persons in such manner and upon such conditions as the Authority determines.

(4) Milk delivered to the Authority under this section shall be delivered in the name of the producer by whom the milk was produced except where milk is delivered by a processor in such manner as to render impossible identification of that milk or part thereof as the property of a particular producer in which case the milk shall be delivered in the name of that processor.

A person who contravenes or fails to comply with this subsection commits an offence against this Act.

(5) The Authority shall, in respect of all milk delivered to it under this section, pay each producer and processor in whose name the milk is delivered an amount calculated according to the minimum or, as the case may be, maximum price fixed and declared for that milk by the Authority under this Act.

(6) The Authority shall, out of the proceeds of all milk disposed of by it under this section, after making the payments provided for in subsection (5)—

(a) make provision for—

- (i) expenses incurred by the Authority in the carriage, treatment, storage, distribution and sale of the milk;
- (ii) costs, charges and expenses of the administration of this section by the Authority;
- (iii) reduction or liquidation of amounts necessary to repay advances and to provide a sinking fund in respect of any loan or loans raised by the Authority for the purpose of enabling the Authority to exercise and discharge its powers, authorities, functions and duties under this section and to provide for payment of the interest payable in respect of such advances and loans;

(b) make the payments to each producer and processor provided for in subsection (7).

(7) Where in respect of a period determined by it, the Authority, out of the proceeds of the sale of milk delivered by producers and processors under this section—

- (a) has made the payments specified in subsection (5);
- (b) has made such provision for the matters specified in subsection (6) as the Authority thinks reasonable in respect of the milk so delivered,

the Authority shall distribute among such producers and processors, subject to advances made to or arranged for them in accordance with subsection (10), in proportion to the quantity of milk so delivered by each of them to the Authority during such period, so much of the balance, if any, of such proceeds as the Authority determines to be available for distribution.

(8) For the purpose of ascertaining the price to be paid to a producer or processor for milk delivered to the Authority, the decision of the Authority as to—

- (a) the class, grade, quality or description of the milk;
- (b) the quantity of the milk delivered;
- (c) the conditions of production, collection, treatment, delivery or storage of the milk; or
- (d) the purpose for which the milk is used,

shall be final and conclusive.

(9) Where milk produced under a share-farming agreement or partnership agreement is delivered to the Authority under this section, the Authority, in its discretion, may make payments to each of the parties to the agreement in accordance with their respective interests in the milk delivered.

(10) The Authority may make or arrange advances on account of milk delivered to it under this subsection to producers and processors in whose names the milk is delivered.

Such advances may be made at any time in such manner and shall be subject to such conditions as the Authority determines.

24. Offence to defeat s. 23. (1) A person shall not purport to sell, or otherwise dispose of, supply or deliver, to any person other than the Authority, milk that is vested in and the property of the Authority pursuant to an order made under section 22 (1).

(2) A person shall not—

purport to buy or otherwise acquire;

or

accept,

milk that is vested in and the property of the Authority pursuant to an order made under section 22 (1), except from the Authority.

25. Voidance of contracts. (1) To the extent that a contract for the sale and purchase of milk that is vested in and the property of the Authority pursuant to an order made under section 22 (1) is inconsistent with the vesting of the milk in the Authority the contract is void.

(2) Subsection (1) does not affect the operation of the contract in respect of rights acquired or liabilities incurred on account of the supply of milk under the contract at any time before milk to which the contract relates became vested in and the property of the Authority but, subject thereto, contracts rendered void by subsection (1) include contracts made before the making of the order under section 22 (1) pursuant to which the milk to which the contract relates is vested in the Authority.

(3) A contract or transaction relating to milk, which contract or transaction is dependent on a contract to any extent rendered void by subsection (1), is void to a like extent as the contract on which it is dependent, and moneys paid under the first mentioned contract or transaction shall, to the extent to which that contract or transaction is void, be repaid to or at the direction of the person by whom they were paid.

26. Limitation of proceedings against Authority. (1) Subject to this section, proceedings shall not be brought against the Authority, or any person acting under its authority, by any person—

(a) claiming to be entitled under a bill of sale, charge, lien or encumbrance of any kind on or over milk vested in the Authority pursuant to an order made under section 22 (1);
or

(b) claiming to be the true owner of such milk as against the producer or processor who delivered the milk to the Authority.

(2) A person who but for subsection (1) might have brought proceedings may adopt delivery of milk to the Authority as delivery by him and, subject to subsection (3), may claim accordingly for an account of the payments due in respect thereof and may recover the amount

due in a court of competent jurisdiction as a debt due to him and unpaid by the Authority.

(3) Notwithstanding any other Act or law, a person referred to in subsection (2)—

- (a) is not entitled to claim an account until he has given to the Authority written notice of particulars of the bill of sale, charge, lien, or other encumbrance, or claim of ownership;
- (b) is not entitled to recover any part of the amount found due on the taking of the account, which part has already been paid to another person at the time of receipt by the Authority of the notice referred to in paragraph (a).

(4) A producer or processor who is required to deliver to the Authority, or to a person acting under its authority, milk vested in the Authority, which milk is subject to a bill of sale, charge, lien or other encumbrance, or in respect of which he has made a contract that affects his title to the milk, shall give to the Authority, before making delivery of the milk, written notice of the particulars of every such bill of sale, charge, lien, other encumbrance or contract.

A producer or processor who knowingly contravenes or fails to comply with this subsection commits an offence against this Act.

(5) Where the Authority has, in good faith and without negligence, made payment—

- (a) to a producer or processor who has delivered, or caused to be delivered, milk to it or to a person acting under its authority;
- (b) to a person entitled or claiming to be entitled through a producer or processor;
- or
- (c) to a person on the order of a producer or processor or a person referred to in paragraph (b),

the Authority shall not be liable to any other person for payment for the milk or any part thereof or on any claim for damages or otherwise.

(6) Where, before receiving notice of a claim in respect of milk vested in the Authority and delivered to it, the Authority has in good faith and without negligence settled with the producer or processor or other person who has made a claim under subsection (2) for moneys payable in respect of such milk, the Authority shall not bear any liability to any person who subsequently claims to be the true owner of such milk or to any person claiming through, under or in trust for him, except in respect of moneys remaining in its hands at the time of receiving notice of such subsequent claim, or thereafter coming to its hands in respect of the milk the subject of such subsequent claim.

(7) This section does not affect rights between parties claiming adversely to one another to be entitled to milk vested in the Authority or to payment in respect thereof or any part thereof.

27. Authority's intervention where supply etc., insufficient. (1) If the Minister is satisfied from evidence furnished to him by the Authority that the supply or distribution of milk (or milk of an adequate quality) to or within any area is, or is likely to be, insufficient to meet the reasonable demands from that area, the Minister may cause to be given to the processor or vendor who is licensed to operate in the area written notice calling on him to show cause, at the place and at or within the time specified in the notice, why approval should not be given to the Authority to exercise and discharge the powers and functions conferred on it by this section.

(2) At the place and time specified in the notice or at a place and time to which the matter may be adjourned, the Minister shall give the processor or, as the case may be, vendor the opportunity of being heard, and—

- (a) if the processor or vendor appears and fails to show cause, sufficient in the Minister's opinion, the Minister may approve that the Authority exercise and discharge all or any of the powers and functions conferred on it by subsection (3);
or
- (b) if the processor or vendor fails to appear, the Minister may determine the matter in his absence, and approve as prescribed by paragraph (a).

(3) Subject to the Minister's approval under subsection (2), it shall be a function of the Authority to establish, maintain, manage and operate the business of a processor or a vendor of dairy produce.

For the purpose of discharging such function, the Authority may—

- (a) purchase and sell, or otherwise dispose of dairy produce;
- (b) manufacture, distribute and sell, or otherwise dispose of dairy produce and related produce;
- (c) separate cream from milk and sell, or otherwise dispose of, the separated cream;
- (d) sell or otherwise dispose of any substance resulting from the separation of cream from milk or from the manufacture of dairy produce;
- (e) enter into contracts or arrangements with respect to the purchase and sale, or other disposal, by the Authority of dairy produce, and related produce;
- (f) manage and control all matters in connexion with the collection, treatment, carriage, handling, storage, distribution and sale of dairy produce and related produce purchased and sold, or otherwise disposed of by the Authority.

28. Power of delegation. (1) The Authority may, by instrument in writing, delegate—

- to the chairman of the Authority;
- to an employee of the Authority;

to the holder for the time being of any office within the Authority, all or any of its powers, authorities, functions and duties, except this power of delegation.

(2) A delegation may be made subject to such terms and limitations as the Authority thinks fit.

(3) More than one delegation may be made in relation to the same power, authority, function or duty.

(4) A power, authority, function or duty, if exercised or discharged by a duly authorised delegate, shall be exercised or discharged in accordance with the instrument of delegation and shall be deemed to be exercised or discharged by the Authority in accordance with this Act.

(5) A delegation is revocable, by instrument in writing, at the will of the Authority, and does not prevent the exercise or discharge of the power, authority, function or duty by the Authority.

29. Ministerial control of administration. (1) In the discharge of functions and the exercise of powers conferred by this Act the Authority and any delegate of the Authority is subject to—

(a) the general direction and control of the Minister;
and

(b) any specific written direction given by the Minister in relation to a matter or class of matter specified in the direction, which direction expressly identifies this section as the source of authority under which it is given.

(2) Where a written direction referred to in subsection (1) (b) has been given—

(a) the Authority may cause the direction to be published in the Gazette;

(b) the Authority shall publish the direction in its annual report.

Where the Authority has caused a direction to be published in the Gazette, it is sufficient compliance with paragraph (b) if the date and page of the Gazette bearing such publication is specified in the relevant annual report.

(3) Any action or determination taken or made by the Authority, or its delegate, in conformity with a direction referred to in subsection (1) (b) shall be deemed to be that of the Minister (and not that of the Authority or its delegate) but to take effect as if it were the action or determination of the Authority.

(4) The Minister may, on the recommendation of the chairman of the Authority, establish such committees, composed of members of the Authority, as the Minister thinks fit, to discharge such functions as the Minister specifies.

Each such committee shall from time to time report in writing to the Authority on the discharge of the committee's functions and, where

a committee has made a decision in relation to any matter in the discharge of its functions, the decision shall be referred to the Authority for its ratification or rejection.

Division 3—Management of Authority's Affairs

30. Meetings of Authority. (1) The Authority shall meet as often as is necessary for the proper exercise of its powers and authorities and the proper discharge of its functions and duties, as determined by the chairman or, in his absence, by the deputy chairman.

(2) A quorum at any meeting of the Authority shall consist of a majority of the number of members for the time being constituting the Authority, one of whom shall be the chairman or deputy chairman.

(3) The chairman or, in his absence, the deputy chairman shall preside at a meeting of the Authority, and while so presiding shall have a deliberative vote and, in the event of an equality of votes on any question, a casting vote.

31. Absence from meetings. A member of the Authority shall be deemed not to have been absent from a meeting of the Authority unless—

- (a) he has been given reasonable notice of the date, time and place appointed for the meeting;
- (b) a meeting of the Authority at which a quorum is present is actually held at the place and on the date appointed, either at the time appointed or at a later time on that date, and in the latter case the member has been given reasonable notice of the later time for the meeting.

32. Meeting of dispersed members. (1) Notwithstanding any provision of this Act, the chairman may refer any question requiring consideration by the Authority to all the members of the Authority in writing and a decision made by the members in writing shall be deemed to be a decision of the Authority taken at a duly constituted meeting thereof.

(2) For the purposes of this section—

- (a) a reference by telegram, telex, facsimile, or similar transmission to members is a sufficient reference in writing; and
- (b) a reply by telegram, telex, facsimile, or similar transmission to a reference is a sufficient decision in writing, if, within 30 days following receipt of the reply by the chairman, the member whose reply it purports to be confirms the reply by writing bearing his original signature.

33. Decision according to majority vote. A decision of the Authority on any question shall be according to the majority of the votes cast on the question.

34. General procedure at meetings. Subject to the provisions of this Division, the procedure at meetings of the Authority shall be as the Authority determines from time to time.

35. Custody of seal; Authentication of documents. (1) The common seal of the Authority shall be in the custody of the secretary of the Authority or, in the event of a temporary vacancy in that office, of the chairman.

The common seal shall be affixed to a document only in pursuance of the Authority's resolution by the person having custody in accordance with this section, and, where that person is the secretary, in the presence of the chairman.

(2) A document made or issued by the Authority for the purposes of this Act shall be sufficiently authenticated if—

- (a) being of a class of document that requires the Authority's seal, it is under the common seal, duly affixed;
- (b) being any other document, it is made or signed by the chairman or, in his absence, the deputy chairman or the general manager at the direction of the chairman or, in his absence, the deputy chairman.

36. Validity of proceedings. Any act, proceeding, decision, or determination of the Authority is not invalid by reason only of any defect in the qualification, appointment, or membership of any member or any vacancy in the membership of the Authority at the time the act, proceeding, decision or determination is done or taken.

37. Remuneration of members. (1) Members of the Authority shall be paid such salary, fees or allowances, and expenses in respect of the performance of their duties as members as the Minister approves from time to time.

(2) Salary, fees, allowances or expenses payable under this section may differ as between the members of the Authority.

(3) No salary or fees are payable to officers of the public service of Queensland in respect of their performing duties as members of the Authority.

If required by the Minister so to do, the Authority shall reimburse the Crown for the amount of expenses incurred by the Crown in respect of any such officer for performing duties as a member of the Authority.

38. Pecuniary interests to be declared. (1) Subject to this section, a member of the Authority who has an interest, direct or indirect, in a contract or proposed contract with the Authority shall, as soon as is practicable after the relevant facts have come to his knowledge, declare the nature of that interest at a meeting of the Authority.

A general declaration made at the first meeting after the member becomes aware of the interest is sufficient compliance with this subsection.

(2) Subsection (1) does not apply to an interest had by a member by reason of his being a member or creditor of a company that has an interest in a contract or proposed contract with the Authority, if the member's interest may properly be regarded as not being a material interest.

(3) A member of the Authority who holds any office or has an interest in any property whereby, whether directly or indirectly, duties or interests may arise in conflict with duties or interests as a member of the Authority shall, as soon as is practicable after he becomes aware of the possibility of conflict, declare at a meeting of the Authority the fact, nature and extent of the possibility of conflict.

(4) The chairman of a meeting at which a declaration is made under this section shall cause a record of the declaration to be made in the minutes of the meeting.

(5) A member of the Authority shall not make improper use of information acquired by virtue of holding office as such member to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the Authority.

39. Participation in superannuation scheme. (1) In this section the expression "superannuation scheme" means a provident scheme or arrangement, or a scheme or arrangement that secures superannuation benefits for employees.

(2) The Authority is authorised—

- (a) to contribute to and participate in the superannuation scheme to and in which the Queensland Milk Board constituted under the *Milk Supply Act 1977* was lawfully contributing and participating immediately before the commencement of this Act;
- (b) with the approval of the Governor in Council first obtained, to contribute to and participate in the superannuation scheme referred to in paragraph (a) as varied from time to time;
- (c) with the approval of the Governor in Council first obtained, to establish or join in, and to contribute to and participate in a superannuation scheme other than that referred to in paragraph (a) or (b).

(3) The approval of the Governor in Council, if granted, may be subject to such conditions as he thinks fit, including a condition that the provisions of the scheme include provision authorising the Auditor-General or a person authorised by him for the purpose to audit the accounts and records of the financial transactions of the Authority in respect of the scheme.

When the Auditor-General is so authorised he shall have with respect to the audit all the powers and authorities conferred on him by the *Financial Administration and Audit Act 1977-1988*.

40. Records to be kept. The Authority shall keep such records and registers as are necessary for the proper discharge of its functions and duties.

41. Winding-up of Authority. In the event of the Authority being wound-up, any surplus remaining, after discharging the liabilities of the Authority and paying the costs of the winding-up, shall be distributed in such manner among such participants in the dairy industry as approved by the Governor in Council.

Division 4—Employees and Agents of Authority and their Powers

42. General manager and secretary. (1) The Authority shall appoint and at all times employ a general manager and a secretary.

(2) A person may be appointed and employed as both general manager and secretary.

43. Staff of Authority. (1) The Authority may appoint and employ such administrative, marketing, and technical officers, clerks, and other employees as are necessary for the purposes of this Act.

(2) Employment of persons appointed by the Authority shall be in accordance with the relevant award, industrial agreement, or other agreement registered with the industrial registrar or, if there be no such award or agreement or to the extent that the provisions of the relevant award or agreement do not make any provision, on conditions fixed by the Authority.

44. Consultants, inspectors, analysts etc. (1) The Authority may engage the services of and may appoint such consultants, inspectors, analysts, or other agents as it thinks fit for the purposes of this Act.

(2) A member or employee of the Authority shall not be engaged as a consultant.

45. Inspectors and analysts. (1) Persons who discharge duties on behalf of the Authority as inspectors or analysts may be employees of the Authority, officers of the public service of Queensland, or other person whose services the Authority thinks fit to engage.

(2) Utilisation of the services of any person or class of person as an inspector or analyst for the purposes of this Act may be subject to such conditions and restrictions as the Authority thinks fit.

(3) A person's services may be utilised as both an inspector and analyst.

46. Powers of inspectors. (1) For the purposes of this Act an inspector—

- (a) may, subject to subsection (2), enter any place;
- (b) may make with respect to any place such investigation and

enquiry as is necessary to ascertain whether the provisions of this Act are being complied with;

- (c) may inspect any dairy produce premises or other place that he believes on reasonable grounds is being or is likely to be used for the receipt, storage, manufacture, grading, testing, carriage or sale of dairy produce;
- (d) may examine any plant, machinery, equipment, apparatus, utensils, appliances, ingredients or materials (including water), stock or any water supplied to stock found in any dairy produce premises or other place inspected pursuant to subparagraph (c);
- (e) may stop, detain and search any vehicle or vessel used, or that he believes on reasonable grounds is being or is likely to be used, for the carriage of dairy produce or ingredients or materials (including water) used in the manufacture of dairy produce;
- (f) may seize and detain dairy produce, machinery, equipment, apparatus, utensils, appliances, ingredients, materials (including water), vessels or vehicles found in or on any dairy produce premises or other place inspected by him;
- (g) may remove or require the removal of dairy produce or other thing seized by him under this Act from the place where it is seized to such place as he determines or may allow that dairy produce or other thing to remain at the place of seizure and in the latter case may make such arrangements as he considers necessary to protect it;
- (h) may open or order to be opened any place or any container used for the carriage of goods, package, tank or vat found in or on dairy produce premises or other place that contains or that he believes on reasonable grounds contains dairy produce or ingredients or materials (including water) used in the manufacture of dairy produce;
- (i) may seize and take in the prescribed manner and without payment, for examination, grading, testing or analysis, any sample of or any package containing dairy produce or ingredients or materials (including water) used in or in connexion with the manufacture of dairy produce, or water used for stock;
- (j) may question a person found by him at any place to ascertain whether this Act is being complied with and require a person so found to answer the questions put;
- (k) may require a person found by him committing an offence against this Act, or who he believes on reasonable grounds has committed an offence against this Act or whose name and address are in his opinion required for the purposes of this Act to state his full name and the address of his usual place of residence and, if he suspects on reasonable grounds

that a name or address so stated is false, may require evidence of the correctness thereof;

- (l) may require a person to produce to him any licence, permit, certificate or authority under this Act granted and issued to that person or alleged by that person to have been granted and issued to him or any books, accounts, records or documents relating to matters to which this Act is relevant and may inspect, examine and make copies of or extracts from any licence, permit, certificate or authority or any book, account, record or document so produced;
- (m) may, in a case where he is obstructed or has reasonable grounds to believe that he will be obstructed in the exercise of his powers or authorities or the discharge of his functions or duties, call to his aid—
 - (i) a person employed by the Authority;
 - (ii) a member of the police force of Queensland,whereupon it shall be the duty of a person or member so called to assist him as required and in accordance with this Act;
- (n) may use such reasonable force as is necessary in the exercise of the powers and authorities or the discharge of the functions and duties conferred or imposed on him by this Act;
- (o) may, by order in writing, require a person who has failed to comply with this Act to take within such time as is specified, such steps as are specified and to remedy those matters in respect of which non-compliance has occurred; but such order shall not prejudice or affect in any way any proceedings or action that has been or may be taken for such non-compliance except that the person to whom the order is given is not liable for a continuance of the failure to comply during the time specified in the order;
- (p) may exercise such other powers and authorities and discharge such other functions and duties as are prescribed;
- (q) may exercise the powers and authorities and discharge the functions and duties of an inspector under the *Stock Act 1915-1987*.

(2) Before an inspector enters a dwelling-house he shall, unless he has permission of the occupier of the dwelling-house to his entry, obtain from a stipendiary magistrate a warrant to enter therein.

The term "dwelling-house" includes any part of premises, which part is being used exclusively for the purpose of residence, and does not include the curtilage of any premises.

(3) If a stipendiary magistrate to whom application for a warrant under subsection (2) is made is satisfied that the inspector suspects on reasonable grounds that—

- (a) in the dwelling-house to which the application relates an offence against this Act is being or has been committed;

or

- (b) in the dwelling-house to which the application relates there is anything with respect to which an offence against this Act is being or has been committed, or with respect to which the inspector may exercise a power conferred on him by this Act,

he may, subject to subsection (6), issue his warrant directed to the inspector to enter the dwelling-house specified in the warrant for the purpose of exercising therein the powers conferred on an inspector by this Act.

(4) A warrant shall remain in force for a period of one month from the date of its issue and is lawful authority for the inspector to whom it is directed, and all persons acting in aid of him—

- (a) to enter the dwelling-house specified in the warrant;
and
- (b) to exercise therein the powers conferred on an inspector by this Act.

(5) An inspector executing a warrant shall produce the warrant for inspection by the occupier of the dwelling-house concerned, if requested by the occupier so to do.

(6) A stipendiary magistrate shall not issue a warrant under subsection (2) unless—

- (a) the application therefor is made on oath or affirmation, or under other sanction authorized by law (except where it is made under section 47) and sets out the grounds on which the inspector's suspicion is based;
- (b) the stipendiary magistrate has been furnished (by the inspector or other person) with such further information relating to those grounds as he requires, such information being given on oath or affirmation, or under other sanction authorized by law;
and
- (c) the stipendiary magistrate is satisfied that the issue of the warrant is justified.

(7) A stipendiary magistrate who issues a warrant under subsection (2) shall cause to be made (on the warrant or otherwise) a record of the matters of fact on which he has relied to justify the issue of the warrant.

47. Application for warrant by remote means. (1) Where it appears to an inspector that, because of distance, urgency, or other circumstance affecting a particular case, it is impracticable for him to make application for a warrant under section 46 (2) in accordance with that section, he may make the application by means of telephone, radio, telex, or other facility for distance communication.

(2) Where application is made under subsection (1) the provisions of this subsection shall be complied with in addition to the provisions of section 46—

- (a) the stipendiary magistrate shall not issue the warrant unless he informs the applicant of the matters of fact on which he relies to justify the issue of the warrant, and obtains from the applicant an undertaking that he will furnish to the stipendiary magistrate, as directed by him, as soon as is practicable a written statement made on oath or affirmation, or under other sanction authorized by law verifying those matters of fact;
- (b) if the stipendiary magistrate issues the warrant, he shall inform the applicant that he has done so and the terms thereof, and shall send the warrant to the Minister within 7 days following the date of its issue;
- (c) as soon as is practicable after the issue of the warrant the applicant shall furnish to the stipendiary magistrate, as directed by him, a written statement in compliance with the undertaking obtained from the applicant under paragraph (a).

(3) Where a warrant is issued under this section, a form of warrant completed by the applicant therefor substantially in the terms of the warrant issued, of which he has been informed under subsection (2) (b), and stating—

the date on which and place at which the warrant was issued;
and

the name of the stipendiary magistrate who issued the warrant,
shall for all purposes be deemed to be the warrant issued and shall be of force and effect accordingly.

(4) If an applicant for a warrant fails to honour the undertaking obtained from him under subsection 2 (a) within 7 days following the date of the warrant's issue, the warrant issued under this section shall be deemed to be cancelled upon expiry of that period.

48. Incidental provisions concerning warrants. (1) Any justice is authorized to administer any oath or affirmation or take any declaration necessary for making an application for a warrant under section 46 or for furnishing any information or statement for the purposes of that section or section 47.

(2) The failure of a stipendiary magistrate to send a warrant to the Minister as required by section 47 (2) (b) shall not affect the validity, force or effect of the warrant.

49. Incidental provision affecting exercise of inspector's powers. (1) For the purpose of gaining entry to a place, an inspector may call to his aid such persons as he thinks necessary and those persons, while acting in aid of an inspector in the lawful exercise by him of his power of entry, shall have a like power of entry.

(2) An inspector who takes a sample in the exercise of a power conferred by section 46 (1) (i) shall, before submitting it for examination, grading, testing or analysis, deal with the sample in the prescribed manner.

(3) A person is not obliged under this Act to answer any question or give any information or evidence tending to incriminate him.

50. Powers of inspector as to dairy produce premises etc. (1) Where, after inspection made pursuant to this Act, an inspector believes on reasonable grounds that—

- (a) the area within the boundary fences of the land constituting a dairy is less than one hectare;
 - (b) any dairy produce premises are, or vehicle or vessel is, in an unclean or unwholesome condition or otherwise unfit for the purposes for which they are or it is being used;
 - (c) any plant, machinery, equipment, apparatus, utensil, appliance, material or thing on any dairy produce premises, vehicle, or vessel is in an unclean or unwholesome condition or otherwise unfit for the purpose for which it is used;
 - (d) any stock in or on a dairy is affected with a disease;
 - (e) any person employed in connexion with any dairy produce premises, vehicle, or vessel is affected with a prescribed disease or prescribed condition;
 - (f) the water supply from which water is obtained and used in connexion with the manufacture of dairy produce on any dairy produce premises is impure or unwholesome;
- or
- (g) ingredients or materials found on any dairy produce premises are prohibited ingredients or materials or otherwise unfit to be used in the manufacture of dairy produce,

he may, by notice in writing, require the owner of the dairy produce premises, vehicle, or vessel to comply, within the time specified therein, with every direction or order contained in the notice.

(2) An inspector, by a notice pursuant to subsection (1), may direct that—

- (a) in the case of a dairy to which subsection (1) (a) refers, the dairy be closed;
- (b) the dairy produce premises, vehicle, vessel or any plant, machinery, equipment, apparatus, utensils, appliances, materials or things be cleaned, disinfected and rendered wholesome to the satisfaction of the inspector;
- (c) the dairy produce premises, vehicle, vessel, plant, machinery, equipment, apparatus, utensils, appliances, materials or things be not used in connexion with dairy produce during the

period specified in the notice or until the inspector is satisfied that it is or, as the case may be, they are fit for such use;

- (d) the supply of water be discontinued and a supply of water of a standard approved by the Authority be obtained and used in its stead;
- (e) the use of any ingredients or materials referred to in subsection (1) (g) be discontinued;
- (f) any person affected with a prescribed disease or prescribed condition be effectively segregated;
- (g) any diseased stock be dealt with in the manner authorized by the *Stock Act 1915-1987*;
- (h) dairy produce be not removed from the dairy produce premises during a period specified in the notice.

(3) An inspector may give a direction referred to in subsection (2) (f) if he believes on reasonable grounds that the person to whom the direction is to relate is or may be affected with a prescribed disease or prescribed condition.

A direction referred to in subsection (2) (f) that is duly given shall continue in force until the person to whom the direction relates produces to an inspector a certificate of a legally qualified medical practitioner that the person is free from any prescribed disease or prescribed condition.

51. Power of inspector to seize, detain or remove dairy produce or certain other things. (1) Where after inspection made pursuant to this Act an inspector believes on reasonable grounds that—

- (a) a vehicle or vessel is being or has been used for the storage, carriage, removal or supply of dairy produce contrary to this Act;
- (b) machinery, equipment, apparatus or any utensil or appliance is being or has been used for the manufacture, storage, carriage or supply of dairy produce contrary to this Act;
- (c) dairy produce—
 - (i) is being or has been manufactured, stored, held, removed, sold, supplied or carried contrary to this Act;
 - or
 - (ii) does not comply with the prescribed standards;
- (d) a preserving, colouring, or disinfecting agent or other material, used or intended to be used in connexion with the manufacture or holding of dairy produce does not comply with this Act or the prescribed standard or by reason of its composition is unsuitable for that use,

he may by his order seize and detain the vehicle, vessel, machinery, equipment, apparatus, utensil, appliance, dairy produce, agent, or other material.

(2) Any vehicle, vessel, machinery, equipment, apparatus, utensil, or appliance seized under this Act may be detained for a period of 12 months unless—

- (a) it is sooner established to the satisfaction of the Authority that, at the time of seizure and detention, no offence against this Act in relation to the vehicle, vessel, machinery, equipment, apparatus, utensil, or appliance had been committed in which case the vehicle, vessel, machinery, equipment, apparatus, utensil, or appliance shall be returned to the person from whom it was taken;

or

- (b) a person sooner makes a written application to the Authority for the return of the vehicle, vessel, machinery, equipment, apparatus, utensil, or appliance seized, detained or removed and on receipt of that application the Authority, after investigating the circumstances relating to the seizure, detention or removal, determines that the vehicle, vessel, machinery, equipment, apparatus, utensil, or appliance should be returned to the person from whom it was seized on such conditions as the Authority determines in which case it shall be so returned, and the person to whom it is returned shall comply with every condition so determined;

or

- (c) within that period proceedings for an offence against this Act have been instituted in which the vehicle, vessel, machinery, equipment, apparatus, utensil, or appliance seized may be used as evidence, in which case the vehicle, vessel, machinery, equipment, apparatus, utensil, or appliance seized may be detained until the final determination of those proceedings, if that period exceeds 12 months.

(3) Where anything detained under this section—

- (a) has not been duly condemned by an inspector under this Act;

and

- (b) has not been forfeited to the Authority by order of a court following conviction of any person of an offence against this Act committed in relation to that thing,

upon expiry of the period of 12 months referred to in subsection (2) or, in a case to which paragraph (c) of that subsection applies, upon expiry of the longer period permitted by that paragraph, the thing shall be returned to a person who appears to the Authority to be lawfully entitled thereto.

(4) Where any dairy produce, agent, or other material is detained pursuant to this section, the Authority may permit the owner thereof—

- (a) to treat the dairy produce, agent or other material, during such time as the Authority determines, in such manner as will bring it into compliance with the prescribed standard;

or

- (b) to take such other action in relation to the dairy produce, agent, or other material as will ensure compliance with this Act.

Where the dairy produce, agent, or other material is, by such treatment or other action, made to comply with the prescribed standard or, as the case may be, this Act to the satisfaction of the Authority it shall, if the Authority so directs, be returned to the person from whom it was seized.

(5) No person is entitled to claim compensation or damages on account of a seizure, detention, dealing with, or disposal of any dairy produce or other thing seized and detained under this Act.

52. Power of inspector to condemn. (1) Where an inspector believes on reasonable grounds that—

- (a) dairy produce inspected by him is unfit for consumption by humans;
- (b) any thing (other than premises or a vehicle or vessel) used in connexion with dairy produce is faulty or does not comply with the prescribed standard;

he may by his order condemn that dairy produce or thing.

(2) Dairy produce or any thing condemned under this section shall thereupon become the property of the Authority and shall be disposed of as the Authority directs.

53. Inspector's duty upon making orders. As soon as is practicable after he makes an order under this Act an inspector shall furnish to the Authority full particulars of the order and the circumstances of its making.

54. Power of inspector to require assistance and information. (1) Upon demand made of him by an inspector, an owner of any dairy produce premises, vehicle or vessel, a vendor or a carrier—

- (a) shall furnish to the inspector a list of the names of persons—
 - (i) who supply to that owner, vendor, or carrier, dairy produce;
 - (ii) to whom that owner, vendor, or carrier, supplies or intends to supply dairy produce;
- (b) shall render to the inspector such assistance and furnish to him such information as he is able with a view to aiding the inspector in determining the cause of any defect or deterioration in dairy produce or any source of contamination, infection or disease to which stock or dairy produce may be exposed.

(2) The Authority, or an inspector, or an employee of the Authority authorized in that behalf, may require the owner of any dairy produce premises, vehicle, or vessel in, to or on which dairy produce is treated, carried or held to furnish to him information specifying the sources of

supply of dairy produce received or sold by that owner and the names of persons to whom dairy produce is or will be sold or supplied by that owner.

55. Duty of analyst. (1) An analyst shall, as soon as is practicable after receipt by him of a sample taken by an inspector in the exercise of a power conferred on the inspector by this Act, analyse the sample and give to the inspector a certificate in the prescribed form of the results of the analysis, signed by the analyst.

(2) An analyst who, for the purposes of this Act carries out an analysis on any dairy produce, ingredient or material (including water) used in connexion with the manufacture of dairy produce shall, where a method of analysis has been prescribed in any particular case, follow that method and certify accordingly in the certificate of analysis given by him.

(3) Upon application made to him, an analyst who carries out an analysis of any dairy produce, ingredient or material (including water) shall give to the person from whom the sample was taken a copy of the result of that analysis.

(4) A person shall not use for trade purposes or as an advertisement—

(a) a copy of the results of an analysis made for the purposes of this Act;

(b) a communication received from an analyst.

56. Performance of work upon default of owner. (1) Where an owner of dairy produce premises fails to comply with an order or direction of an inspector that requires the performance of work in relation to the premises, a Magistrates Court constituted under the *Justices Act 1886-1988*, on the complaint of the inspector, or other person authorized in that behalf by the Authority, may, by its order, direct and authorize the performance, at the owner's expense, of the work that the owner was required to perform by the inspector's order or direction.

The inspector, or other person authorized in that behalf by the Authority, shall cause the work to be performed in compliance with the court's order.

(2) The Authority may recover by action in any court of competent jurisdiction, as a debt due to it and unpaid by the owner the amount of the expense involved in complying with the court's order made under subsection (1).

(3) Until the amount of the expense involved in complying with the court's order made under subsection (1) is paid to the Authority, it shall be a first charge on the dairy produce premises and on dairy produce supplied from those premises, notwithstanding any change in the ownership of those premises or that produce.

(4) Where the title to any property referred to in this section is recorded in a register established under law, a person charged with

keeping such register is authorized, on request made by the Authority and lodged with him—

- (a) to record in the register the existence of a charge prescribed by subsection (3);
and
- (b) to record in the register a release of the charge so recorded.

PART IV—LICENCES

57. Types of licences. On application therefor, the Authority may grant and issue a prescribed licence or a licence of a prescribed class of licence in respect of the following persons—

- (a) producers;
- (b) processors;
- (c) carriers;
- (d) vendors;
- (e) milksellers;
- (f) such other persons as are prescribed by Order in Council for the purposes of this Part.

58. Application for licence. (1) An application for a licence shall be made to the Authority in the approved form, furnish the approved particulars, and be accompanied by the approved fee (if any) for a licence of the description of licence applied for.

(2) Following its consideration of each application, the Authority may grant or refuse the licence applied for.

If the Authority grants a licence, it shall issue to the applicant the licence applied for subject to the applicant complying with such conditions as the Authority stipulates in respect of the licence in question.

If the Authority refuses a licence, it shall return to the applicant the amount of fee (if any) paid in respect of the application less such amount as the Authority thinks reasonable for the costs of its considering the application.

59. Incidents of licence. (1) A licence—

- (a) shall be in the approved form, and contain the approved particulars, for a licence of that description;
- (b) shall be in force for a period determined by the Authority for a licence of that description, unless it is sooner surrendered, cancelled or suspended;
- (c) shall be subject to such conditions or restrictions—
 - (i) as are prescribed, generally or in respect of licences of a particular description;
 - or
 - (ii) as are imposed by the Authority, in respect of a particular licence or in respect of licences of a particular description,

and communicated in writing by it to the holder of the licence;

- (d) shall be subject to the payment of such fees or charges and to such conditions as to payment thereof as the Authority determines;
- (e) shall authorize the holder thereof to do such acts as are prescribed in relation to a licence of that description;
- (f) may be issued subject to such requirements for fidelity bonds or payment of security as are prescribed;
- (g) may, in accordance with such conditions as the Authority requires in each case, be renewed, surrendered, transferred, or varied;
- (h) may be cancelled or suspended by the Authority.

(2) For the purposes of subsection (1), conditions and restrictions shall be sufficiently communicated in writing to the holder of a licence if they are endorsed on or attached to the licence.

60. Licence as security. (1) Where a licence is made security for the performance of any obligation the holder of the licence shall, within 30 days thereof or such longer period as the Authority may allow by writing in a particular case, register with the Authority the instrument whereby the licence has been made security, in the manner following—

- (a) the holder shall cause to be made, a true copy of the instrument;
- (b) by endorsement on the copy, he shall verify that it is a true copy of the instrument and shall date the endorsement;
- (c) he shall lodge the copy so endorsed with the Authority and shall pay the approved fee (if any) for such registration;
- (d) the Authority shall record in a register kept by it for the purpose the lodgment of the copy instrument.

(2) On payment of the approved fee (if any), any person may, at all reasonable times, search the register and inspect the particulars of any registered copy instrument whereby a licence has been made security, and may make a copy of or extract from the registered copy instrument.

(3) Failure by a holder of a licence to comply with a provision of this section does not affect the validity or effect of any instrument whereby his licence has been made security.

(4) A holder of a licence who fails to comply with a provision of this section commits an offence against this Act.

61. Permit pending licence. (1) Where application for a licence is made to the Authority, the chairman, or, if so authorized by the Authority, the general manager or secretary of the Authority may, in writing, grant and issue to the applicant a permit to do such acts as he would be authorized to do by a licence of a description sought by the application, pending the Authority's determination of the application.

(2) A permit issued—

- (a) shall be in the approved form;
- (b) shall be in force for such period as is determined by the chairman, general manager, or as the case may be, secretary and is specified therein, but not exceeding in any case 2 months from the date of its issue;
- (c) shall be subject to such conditions or restrictions as the chairman, general manager, or, as the case may be, secretary determines and endorses on or attaches to the permit.

62. Licensee's records. The holder of a licence shall keep such records as the Authority may require of him and, on request of the Authority, an inspector, or other person authorized by the Authority to examine records of licence holders, shall produce such records for examination.

PART V—QUALITY ASSURANCE

63. Certificate of competency. On application therefor, the Authority may grant and issue a certificate of competency that certifies the holder thereof as competent to—

- (a) pasteurise dairy produce at a dairy, depot, or factory;
- (b) test dairy produce in a laboratory;
- (c) grade milk at a dairy, depot, or factory.

64. Application for certificate. (1) An application for a certificate of competency shall be made to the Authority in the approved form and be accompanied by the approved fee (if any).

(2) Following its consideration of each application, the Authority may grant or refuse the certificate of competency applied for.

If the Authority grants a certificate it shall issue to the applicant the certificate of competency applied for.

If the Authority refuses a certificate, it shall return to the applicant the amount of fee (if any) paid in respect of the application less such amount as the Authority thinks reasonable for the costs of its considering the application.

65. Incidents of certificate. A certificate of competency—

- (a) may be issued to an applicant who has passed, or has been exempted by the Authority on reasonable grounds from taking, an approved examination and to no other person;
- (b) shall be in the approved form;
- (c) may be cancelled or suspended by the Authority at any time;
- (d) shall be in force until it is so cancelled or suspended.

66. Permit pending certificate of competency. (1) Where application

for a certificate of competency is made to the Authority, the chairman, or, if so authorized by the Authority, the general manager or secretary of the Authority may, in writing, grant and issue to the applicant a permit, pending the Authority's determination of the application.

(2) A permit issued—

- (a) shall be in the approved form;
- (b) shall be subject to such conditions or restrictions as the chairman, general manager, or, as the case may be, secretary determines and endorses on or attaches to the permit;
- (c) shall be in force for a period not exceeding 12 months from the date of its issue, unless it is sooner cancelled;
- (d) may be cancelled by the Authority at any time;
- (e) may be varied by the chairman, or by the general manager or secretary of the Authority, if so authorized by the Authority;
- (f) authorizes the holder thereof to do such acts as are approved for the holder of such a permit.

67. Testing of milk. (1) A processor who receives milk from a producer or another processor shall ensure that samples of the milk are taken at the prescribed frequency in the prescribed manner, and are tested and graded as prescribed.

(2) If a sample of milk tested and graded under subsection (1) fails to comply with standards prescribed for milk, the processor shall take such action as is prescribed.

68. Testing of other dairy produce. A person who manufactures dairy produce shall ensure that the produce is tested as prescribed, and shall take in respect of the test results such action as is prescribed.

69. Dairy produce premises, plant and equipment. (1) A person establishing, constructing, altering, or extending dairy produce premises shall cause those premises to be laid out, constructed, finished, and equipped in accordance with the prescribed requirements.

(2) The Authority may, by written notice, require the owner of dairy produce premises to instal, repair, clean, renew, or remove any equipment or to repair, alter, or clean the premises, so as to comply with the prescribed requirements, within the time specified in the notice.

70. Testing of unpasteurised milk for human consumption. A producer supplying milk for consumption as unpasteurised milk by humans shall cause that milk to be tested at the prescribed frequency and in the prescribed manner and shall take in respect of the test results such action as is prescribed.

71. Dairy produce to be manufactured etc. as prescribed. The owner of dairy produce premises shall manufacture and store dairy produce, and the owner of any vehicle or vessel in which dairy produce is carried

shall keep the produce carried, in such manner as is prescribed and under such conditions as are prescribed.

72. Minimum programmes of analysis etc. (1) The owner of dairy produce premises in respect of which it is prescribed that a minimum programme of analysis, examination, grading and testing of dairy produce be carried out shall ensure that such minimum programme is carried out as prescribed.

(2) Subsection (1) does not apply to an owner of dairy produce premises to the extent that he is exempted in writing by the Authority from the operation of that subsection.

(3) The Authority, of its own motion or on the application of an owner of dairy produce premises may, in writing, exempt an owner of dairy produce premises, wholly or partially, from the operation of subsection (1)—

- (a) for a period specified in the notice of exemption, or indefinitely;
- (b) subject to such conditions as the Authority thinks fit and specifies in the notice of exemption.

73. Sale of unsound dairy produce. (1) A person shall not sell—

- (a) dairy produce condemned or detained by an inspector;
- (b) dairy produce that is unfit for consumption by humans;
- (c) dairy produce that does not comply with prescribed standards;
- (d) any ingredient or other substance used in the manufacture of dairy produce, which ingredient or substance does not comply with prescribed standards;
- (e) dairy produce, if in the manufacture, carriage or distribution thereof a person affected with a prescribed disease or prescribed condition has participated;
- (f) milk that has been drawn from stock that is known or suspected by that person or by an inspector to be affected with a disease;
- (g) milk produced by stock while isolated or quarantined under the provisions of the *Stock Act 1915-1987*,

unless, in any of such cases, he has first been authorized in writing by the Authority so to do.

(2) A person shall not use for manufacture of dairy produce, milk that does not comply with the prescribed standard unless he has first been authorized in writing by the Authority so to do.

74. Standardization of certain milk. (1) The Authority may, generally or in a particular case, approve of the standardization of milk for consumption as pasteurised or homogenised milk by humans.

(2) A person shall not—

- (a) prepare standardized milk for sale as pasteurised or homogenised milk for consumption by humans;

- or
- (b) sell standardized milk as pasteurised or homogenised milk for consumption by humans,
- unless, in either case—
- (c) the standardization is carried out—
 - (i) pursuant to an approval of the Authority;
 - and
 - (ii) by a method prescribed;
 - and
 - (d) the standardized milk conforms with the standards prescribed.
- Penalty: 100 penalty units.

75. Owner's records. The owner of dairy produce premises shall keep such records as the Authority may require of him and, on request of the Authority, an inspector, or other person authorized by the Authority to examine records of the owner of such premises, shall produce such records for examination.

PART VI—MANAGEMENT OF MARKET MILK SUPPLY

76. Application. The provisions of this Part apply in such areas of the State as are declared by Order in Council for the time being.

77. Entitlement. (1) The Authority may grant in accordance with this Part an entitlement to supply milk as market milk.

- (2) An entitlement—
 - (a) shall be held by the registered proprietor or lessee from the Crown of land used for the production of milk or by any other person who in the Authority's opinion is an appropriate person to hold an entitlement in the circumstances of the case;
 - (b) shall relate to land specified in the entitlement;
 - (c) shall specify a quantity of milk;
 - (d) shall relate to supply of milk as market milk to a processor specified in the entitlement.
- (3) The holder of an entitlement, or any person, other than the holder, who is entitled to utilize the land to which the entitlement relates, shall not supply milk as market milk under that entitlement—
 - (a) except milk produced on the land to which the entitlement relates;
 - (b) except to the processor specified in the entitlement or in conformity with section 79 (4).

78. Transactions affecting entitlements. The holder of an entitlement may dispose of or otherwise deal with it, wholly or partially, as prescribed.

79. Variation of entitlement. (1) The Authority is authorized to vary from time to time any entitlement.

Where this Act prescribes the manner in which a variation may be made, such variation may be made only as prescribed.

(2) Without limiting the circumstances in which an entitlement may be varied, the Authority may vary an entitlement—

- (a) upon failure of the producer to supply milk that complies with the prescribed standards;
- (b) upon failure of the producer to supply milk in accordance with the reasonable requirements of the processor specified in the entitlement;
- (c) in the event of any disposition or other dealing that affects the entitlement;
- (d) in the light of change in the demand for market milk;
- (e) in any other circumstance whereby the entitlement is affected.

(3) A variation made in any entitlement may be by way of increase or decrease in the quantity of milk specified in the entitlement.

(4) Where the holder of an entitlement has given to—

the Authority

the processor specified in his entitlement;

and

the new processor to whom it is intended to supply milk,

at least 28 days notice of the intention to divert the supply of milk to the new processor, and the Authority is satisfied that the supply of milk to the new processor has commenced, the Authority shall vary the entitlement by altering the name of the processor specified in the entitlement to that of the new processor.

80. Cancellation of entitlement. (1) The Authority is authorized to cancel an entitlement.

Where this Act prescribes the manner in which a cancellation may be effected, such cancellation may be effected only as prescribed.

(2) Without limiting the circumstances in which an entitlement may be cancelled, the Authority may cancel an entitlement—

- (a) in the event of the holder thereof applying to the Authority for cancellation thereof;
- (b) upon failure of the producer for the prescribed period to supply milk in accordance with the entitlement;
- (c) upon failure of the producer to supply milk that complies with the prescribed standards.

(3) Where the Authority cancels an entitlement it may, in its absolute discretion, distribute the benefits that flowed from the entitlement

before its cancellation among holders of entitlements that specify the same processor as that specified in the cancelled entitlement.

(4) Where an entitlement has been cancelled, the person who held it shall, on the request of the Authority, surrender any producer's licence held by him by means of which he supplies milk pursuant to that entitlement.

81. Procedure for certain variations or cancellations. (1) Before the Authority proceeds to—

(a) a variation of an entitlement on a ground specified in paragraph (a) or (b) of section 79 (2);

or

(b) a cancellation of an entitlement on a ground specified in paragraph (b) or (c) of section 80 (2),

it shall cause to be given to the holder thereof a written notice calling on him to show cause to the Authority within 30 days following the date of the notice why the entitlement should not be varied or, as the case may be, cancelled.

(2) If by the expiry of such period of 30 days or such longer period as the Authority allows at the request of the holder, such cause is not shown to the satisfaction of the Authority, it may proceed to vary or, as the case may be, cancel the entitlement, without further reference to the holder except as provided by subsection (3).

(3) Where the Authority has determined on a show cause procedure that an entitlement should be varied or cancelled, it may, instead of proceeding immediately to such variation or cancellation, allow the holder a period of time in which to dispose of the entitlement, wholly or partially.

82. Transitional provision. It is expressly declared that an entitlement granted under the *Milk Supply Act 1977*, or that Act as amended and in force for the time being, and subsisting at the commencement of this Act shall be deemed to be an entitlement granted under this Act and the details of such an entitlement at the commencement of this Act shall be the details of the entitlement for the purposes of this Act until they are varied in accordance with this Act.

83. Register of entitlements and details. (1) The Authority shall maintain a register of all entitlements, containing such details as it considers necessary for the proper administration of this Part.

(2) The holder of an entitlement may at any time, by written application to the Authority and upon payment of the approved fee (if any), request the Authority to decide upon and provide details in relation to the entitlement.

(3) The processor specified in an entitlement shall keep such record of matters affecting the entitlement as the Authority may require of him and shall, on request made by the Authority, generally or in a particular

case, provide the Authority with such details of the entitlement as the Authority requires.

(4) The holder of an entitlement may require the processor specified therein to provide details in relation to the entitlement.

84. Access to markets for market milk. (1) Each processor who is specified in an entitlement shall have such access to the market for market milk as the Authority determines for the time being.

The method of calculating the appropriate access of each such processor shall be that approved for the time being by the Authority.

(2) The Authority may at any time vary any such processor's access to the market for market milk.

85. Distribution of access upon increase in market. (1) After the 30th June in each year the Authority may, in its absolute discretion, determine the extent to which the market for market milk increased during the 12 month period ended on the 30th June last preceding.

(2) If the Authority finds that there has been an increase in the market for market milk during such period, it shall further determine the extent to which such increase is attributable to a particular processor or particular processors.

For the purpose of making that determination the Authority shall use a method approved by the Minister, who for the purpose of his approval may have regard, in respect of any processor, to—

- (a) capital investment;
- (b) product range;
- (c) product advertising;
- (d) marketing initiatives;
- (e) methods of transportation, storage, and distribution;
- (f) effort directed to stimulating greater consumption of market milk;
- (g) any factor that the Minister considers relevant.

(3) The part of an increase in the market for market milk found by the Authority to be attributable to a particular processor specified in an entitlement shall be added to that processor's access to the market.

(4) Subject to subsection (3), the increase in the market for market milk as determined by the Authority under subsection (1) shall be distributed by the Authority among all processors specified in entitlements having regard to the total milk production of each such processor over and above that processor's access to the market for market milk in excess of a prescribed percentage (if any) of that access.

The aggregate increase distributed among all such processors under this subsection shall not exceed the balance of the increase in the market for market milk, as so determined, remaining after giving effect to subsection (3).

(5) Consequent on the increase in a processor's access to the market for market milk awarded under this section the Authority may vary entitlements that specify that processor.

PART VII—SUPPLY OF PASTEURISED MILK

86. Milk Pasteurisation Tribunal. (1) There shall be constituted for the purposes of this Part a tribunal called the Milk Pasteurisation Tribunal.

(2) The tribunal shall consist of—

- (a) the chairman of the Authority, who shall be chairman of the tribunal;
- (b) the Director-General of the Department of Primary Industries or such nominee of the Director-General as the Minister approves in writing;
- (c) a medical officer of the Department of Health, nominated in writing by the Director-General of Health and Medical Services.

(3) In the absence of the chairman, the Minister may appoint a person to act temporarily as chairman of the tribunal, and while he so acts that person shall have the powers and duties of chairman of the tribunal.

87. Conduct of tribunal affairs. (1) The tribunal shall be convened from time to time by the chairman as the business of the tribunal requires.

(2) Hearings of the tribunal in respect of applications made to it shall be held in public.

(3) An applicant to the tribunal and an objector to an application are entitled to appear at hearings of the tribunal in person or by counsel, solicitor or agent.

(4) The Authority shall provide secretarial services to the tribunal as required.

88. Application for authority to sell pasteurised milk or cream. (1) A person who wishes to establish or maintain a pasteurisation plant for the treatment of milk or cream and to sell pasteurised milk or pasteurised cream may make application to the Milk Pasteurisation Tribunal for authorization so to do.

(2) An application—

- (a) shall be in a form approved by the chairman;
- (b) shall provide the particulars approved for the time being by the chairman;
- (c) shall be lodged with the chairman;
- (d) shall be accompanied by the prescribed fee.

89. Procedure on application. (1) The tribunal shall make a preliminary investigation into the question whether the establishment

or maintenance of a pasteurisation plant and the sale of pasteurised milk or pasteurised cream in the localities to which the application relates is justified.

(2) The tribunal may determine that localities other than those to which the application relates are preferable for the purposes envisaged by the application and, if it does so, may invite the applicant to amend his application accordingly.

(3) If the tribunal is of opinion that the application (or the application as amended) is justified it shall determine the conditions on which it would recommend the grant of authorization sought by the application.

When such conditions have been determined the chairman shall give public notice thereof in such manner as is prescribed, and shall take such further steps as are prescribed, which steps may include the calling for further applications or objections.

(4) After considering all applications made in relation to a particular proposal, and all objections made to the applications, or any of them, the tribunal shall make its recommendation as to whether authorization sought by the applications should be granted or refused, and if it recommends that authorization should be granted, the tribunal shall therein indicate—

- (a) which application should be preferred;
- (b) the conditions on which the authorization should be granted;
- (c) the place recommended by it as the location of the pasteurisation plant;
- (d) the locality or localities in which pasteurised milk or pasteurised cream should be sold pursuant to the authorization.

(5) The chairman shall furnish the tribunal's recommendation to the Minister.

90. Grant of authorization. (1) The Governor in Council, on the recommendation of the Minister, may, by Order in Council, authorize the person or persons, whom he considers to be the most suitable, to establish or maintain a pasteurisation plant for the treatment of milk or cream and for the sale of pasteurised milk or pasteurised cream in the locality or localities specified in the order.

(2) An authorization granted under subsection (1)—

- (a) shall be subject to such conditions as are specified in the order, or those conditions as varied by a further Order in Council;
- (b) may relate to the establishment or maintenance of a pasteurisation plant located outside the locality or localities

specified in the order in which pasteurised milk or pasteurised cream is to be sold pursuant to the authorization.

(3) The Governor in Council may, by Order in Council—

- (a) renew, suspend, or cancel an authorization granted under subsection (1);
- (b) vary the conditions to which the authorization is subject for the time being,

whether or not the tribunal has made a further recommendation in respect of the matter and whether or not any person has made application for renewal of the authorization or for variation of the conditions to which the authorization is subject for the time being.

91. Application re existing authorization. (1) A person to whom an authorization is granted under section 90 may apply to the tribunal that the authorization be varied or renewed.

(2) An application under subsection (1)—

- (a) shall be in a form approved by the chairman;
- (b) shall furnish the particulars approved for the time being by the chairman;
- (c) shall be lodged with the chairman;
- (d) shall be accompanied by the prescribed fee.

(3) The tribunal may—

- (a) require the application to be advertised to such extent as it thinks fit;
- (b) by notice published as prescribed, call for objections to the application.

(4) After considering all objections made in response to a call made under subsection (3), the tribunal shall make its recommendation with respect to the variation or renewal of the authorization in question.

(5) The chairman shall furnish the tribunal's recommendation to the Minister.

(6) A variation of an authorization that may be applied for under this section may relate to but is not limited to—

- (a) the conditions to which the authorization is subject, including any period for which it is to continue in force;
- (b) the locality or localities in which pasteurised milk or pasteurised cream is to be sold pursuant to the authorization;
- (c) the location of or other matters relevant to the pasteurisation plant to which the authorization relates.

92. Interpretation. In this Part—

“chairman” means chairman of the tribunal;

“milk” means the lacteal fluid product of a bovine;

“pasteurised cream” means cream that contains not less than 350 grams per kilogram of milk fat;

“pasteurised milk” includes modified milk, skim milk, and any other dairy product declared by Order in Council to be pasteurised milk for the purposes of this Part;

“tribunal” means the Milk Pasteurisation Tribunal constituted for the purpose of this Part.

PART VIII—APPEALS FROM AUTHORITY AND INSPECTORS

93. Dairy Industry Appeals Tribunal. (1) There shall be constituted a tribunal called the Dairy Industry Appeals Tribunal.

(2) The tribunal shall consist of 3 members appointed by the Governor in Council by notification published in the Gazette, of whom—

- (a) one shall be a barrister-at-law, solicitor, stipendiary magistrate or person who has been a stipendiary magistrate, who shall preside at each sitting of the tribunal and in this Part is referred to as the presiding member;
- (b) one shall be a nominee of the Minister well versed in matters relating to the dairy industry who shall not (himself or through a partner or membership of a body corporate) have any pecuniary interest, direct or indirect, in the manufacture or sale of dairy produce;
and
- (c) one shall be a nominee of the Minister having special qualifications considered by the Minister to be relevant and appropriate.

(3) A member of the tribunal shall hold office from the date his appointment takes effect for a term determined by the Governor in Council and specified in the notification of his appointment.

(4) A member of the tribunal is eligible to be re-appointed to the tribunal, if he has not become disqualified from being a member.

94. Disqualification. A person is not qualified to be a member of the tribunal if—

- (a) he is a member of the Legislative Assembly or of any House of the Parliament of the Commonwealth or of any other State or Territory of the Commonwealth;
- (b) he is bankrupt or otherwise takes advantage of the laws for the time being relating to bankrupt or insolvent debtors;
- (c) he has been convicted in Queensland of an indictable offence or elsewhere than in Queensland in respect of an act or omission that, if it occurred in Queensland, would constitute an indictable offence;
- (d) he is a patient within the meaning of the *Mental Health Services Act 1974-1988*.

95. Vacating office as member. The office of a member of the tribunal becomes vacant if the member—

- (a) dies;
- (b) ceases to be, or is not, qualified to be a member;
- (c) attains the age of 70 years;
- (d) resigns his office in writing signed by him and given to the Minister;
- (e) is absent, without prior leave of absence granted by the presiding member, from three consecutive sittings of the tribunal of which due notice has been given to him;
- (f) having been appointed under paragraph (b) of section 93 (2), is found to have, or acquires a pecuniary interest referred to in that paragraph;
- (g) is removed from office as a member by the Governor in Council.

96. Acting members. (1) If any member of the tribunal is temporarily unable to perform the duties of his office, the Governor in Council may, by notification published in the Gazette, appoint another person to temporarily act in the office of that member.

(2) A person appointed to act in the office of a member of the tribunal—

- (a) shall be one who satisfies the requirements of the paragraph of section 93 (2) under which the member was appointed; and
- (b) while he so acts, shall have all the powers, authorities and jurisdiction of a member of the tribunal, including those of the presiding member, if he is appointed to act in the presiding member's office.

97. Casual vacancies. (1) When a vacancy occurs in the office of a member of the tribunal during his term of office a person may be appointed in accordance with section 93 (2) to fill that vacancy.

(2) A person appointed to fill a vacancy referred to in subsection (1)—

- (a) shall be one who satisfies the requirements of the paragraph of section 93 (2) under which his predecessor was appointed;
- (b) may be appointed—
 - (i) for the balance of the term of his predecessor;
 - or
 - (ii) for a term determined by the Governor in Council and specified in the notification of his appointment;and
- (c) if he is otherwise qualified as prescribed, is eligible to be re-appointed.

98. Remuneration of members. (1) Members of the tribunal shall be paid such salary, fees or allowances, and expenses in respect of the performance of their duties as members as the Governor in Council approves from time to time.

(2) Salary, fees, allowances or expenses payable under this section may differ as between the members of the tribunal.

(3) No salary or fees are payable to an officer of the public service of Queensland in respect of his performing duties as a member of the tribunal.

99. Secretary and staff. The tribunal may appoint and employ, or arrange for the provision of, a secretary and such other staff as is necessary for the proper exercise of the tribunal's jurisdiction.

100. Accounts and finance. (1) The presiding member of the tribunal shall either—

(a) cause to be kept proper accounts, books and records of all sums received or paid by or on its behalf and of the purposes for which such sums were received or paid;

or

(b) with the Minister's approval first obtained, arrange for the keeping of such accounts, books and records by the Authority, which the Authority may do on behalf of the tribunal.

(2) The Authority shall defray from its funds all costs (including any salaries, fees, allowances and expenses) properly incurred in respect of the exercise by the tribunal of its jurisdiction.

(3) On request made of it by the Authority, the tribunal shall pay to the Authority out of moneys received by the tribunal such amounts as the Authority specifies, but not exceeding the costs paid by the Authority under subsection (2).

101. Proceedings of tribunal. (1) The tribunal shall sit at such times and at such places as the presiding member appoints.

(2) The tribunal shall be duly constituted and may exercise its jurisdiction if at least two of its members, including the presiding member, are present.

Where more than two members are present the decision of the tribunal, in the event of disagreement among its members, shall be that of the majority of its members.

Where only two members are present the decision of the tribunal, in the event of disagreement between them, shall be that of the presiding member.

(3) The tribunal may inform itself on any matter in such manner as it thinks fit and is not bound by rules or practice as to evidence.

(4) A person may appear before the tribunal in person or by his agent authorized in that behalf, but shall not appear before the tribunal

by counsel or solicitor except by leave of the tribunal or the presiding member.

(5) Proceedings before the tribunal shall be instituted and conducted as prescribed or, where this Act makes no provision or insufficient provision, in accordance with the directions of the presiding member, given generally, or in a particular case.

102. Appeals to tribunal. (1) A person aggrieved by—

- (a) any order, direction or decision of the Authority, other than any order or decision that fixes and declares the price of any dairy produce;
- (b) any order, direction or decision of an inspector, other than—
 - (i) an order or direction to cleanse, or to remove or segregate a person affected with a prescribed disease or prescribed condition; or
 - (ii) a decision relating to grading,

may appeal against the order, direction or decision to the tribunal in accordance with this Act.

(2) An appeal shall be instituted in writing addressed to the secretary of the tribunal and lodged with him within 28 days after the person aggrieved receives or is otherwise made aware of the order, direction or decision appealed against and shall be accompanied by the prescribed fee.

103. Grounds of appeal. An appeal may be brought on one or more of the following grounds and no other—

- (a) that the order, direction, or decision is not in accordance with this Act;
- (b) that the order, direction or decision is manifestly unfair to the appellant;
- (c) that giving effect to the order, direction, or decision will cause severe financial hardship to the appellant.

104. Decision on appeal. (1) Upon hearing an appeal the tribunal may—

- (a) affirm the order, direction or decision appealed against;
- (b) remit the matter to the Authority or, as the case may be, the inspector for reconsideration having regard to matters specified by the tribunal;
- (c) set aside the order, direction or decision appealed against;
- (d) substitute its own order, direction or decision for that appealed against, which substituted order, direction, or decision shall take effect as if it were that of the Authority or, as the case may be, the inspector;
- (e) vary, as it thinks fit, the order, direction, or decision appealed against which order, direction, or decision as varied shall

take effect as that of the Authority or, as the case may be, the inspector.

(2) An order, direction, or decision made by the tribunal upon an appeal is final and conclusive and shall be given effect by the Authority or, as the case may be, the inspector, and all other persons concerned.

105. Jurisdiction of tribunal. (1) Jurisdiction is conferred on the tribunal to hear and determine every appeal made to it in accordance with this Act.

(2) It is expressly declared that the tribunal has no jurisdiction in relation to the fixing and declaration of prices for any dairy produce.

(3) For the purposes of the tribunal's exercise of its jurisdiction, otherwise than at a preliminary hearing, the prescribed provisions of the *Commissions of Inquiry Act 1950-1989* apply in relation to the tribunal, its presiding member and its proceedings as if—

- (a) the tribunal were a Commission within the meaning of that Act;
- (b) the presiding member were chairman of such a Commission who is not a judge of the Supreme Court.

The prescribed provisions referred to are—

section 5 (1), (2) and (3) (a); sections 6 to 12 inclusive; sections 14 (except paragraph (b)) to 16 inclusive; sections 19 (1), 20, 22 and 23.

(4) A person summoned to appear as a witness before the tribunal shall be entitled to payment of expenses in accordance with the prescribed rate or, if no rate is prescribed, in an amount determined by the presiding member.

106. Preliminary hearing. (1) In relation to any appeal made to the tribunal the presiding member may, at his discretion, on such terms as he thinks fit, require the parties to the appeal to attend at a preliminary hearing.

Such hearing may be conducted by the presiding member sitting alone.

(2) Upon a preliminary hearing, the presiding member or, if the tribunal conducts the preliminary hearing, the tribunal may—

- (a) make such orders relating to procedure in the conduct of the appeal as are necessary or desirable;
- (b) require the parties to the appeal to permit discovery or to file pleadings;
- (c) grant leave to a party to the appeal to be represented by counsel or solicitor;
- (d) strike out an appeal that he or it considers to be frivolous or vexatious.

(3) Subsection (2) shall not be construed to limit the means by which the presiding member may regulate the proceedings of the tribunal.

107. Meaning of term. In this Part the term “tribunal” means the Dairy Industry Appeals Tribunal.

108. Appeal against grading decision. (1) A person aggrieved by a decision of an inspector with respect to grading may appeal against the decision to the chairman of the Authority by written notice lodged with the chairman within 7 days from the day on which that person is informed of the decision.

(2) In determining an appeal the chairman may—

- (a) confirm the decision of the inspector;
- (b) set aside the decision of the inspector and substitute his own decision in lieu thereof.

(3) Where the chairman substitutes his decision for that of an inspector it shall take effect as if it were a decision of an inspector.

PART IX—OFFENCES PENALTIES AND REMEDIES

109. Offences re pasteurised milk or cream. (1) A person—

- (a) shall not establish or maintain in a locality in respect of which there exists an authorization granted under Part VII a pasteurisation plant for the treatment of milk as defined in Part VII for sale as pasteurised milk (including pasteurised milk as defined in Part VII), or of cream for sale as pasteurised cream as defined in Part VII;

or

- (b) shall not sell pasteurised milk (including pasteurised milk as defined in Part VII) or pasteurised cream as defined in Part VII in a locality in respect of which there exists an authorization granted under Part VII,

unless he is the holder of that authorization or acts under the authority of such holder.

(2) A person who is the holder of an authorization granted under Part VII, and a person acting under the authority of such holder, shall comply in all respects with the conditions to which the authorization is subject.

(3) A person who commits an offence defined in this section is liable to a penalty of—

50 penalty units, where the offender is an individual;

200 penalty units, where the offender is a corporation.

110. Offence to blend or mix. An owner of a dairy shall not blend or mix milk or cream produced in or on that dairy with milk or cream produced in or on another dairy.

111. Offence to divert supply of milk. (1) An owner of a dairy shall not divert from one processor to another processor the supply of milk produced in or on that dairy, or any part of that supply, unless—

- (a) he has given notice of his intention so to do in accordance with section 79 (4);

or

- (b) the Authority has permitted, or subsequently approves of, the diversion because of adverse weather conditions or some other circumstance of sudden or extraordinary emergency.

(2) A processor shall not take delivery of milk or cream that has been diverted to him in contravention of subsection (1).

112. Offence to sell mixture of milk. (1) A person shall not sell—

- (a) milk that is a mixture of the milk obtained from different species of mammal;
- (b) milk that is a mixture of the milk obtained from one species of mammal and a product of the milk obtained from a different species of mammal;
- (c) dairy produce manufactured from milk obtained by mixing the milk of different species of mammal,

except with the permission in writing of the Authority first obtained and in accordance with the conditions (if any) thereof.

(2) Subsection (1) does not apply to milk, or any dairy produce manufactured from milk, of the species of cattle *Bos taurus* or *Bos indicus* or a cross-breed thereof.

113. Offence to adulterate dairy produce. (1) Subject to this subsection, a person shall not mix with, add to, or use in dairy produce an extraneous ingredient of any kind.

A person does not contravene this subsection by reason only that, during a process in or connected with the manufacture of dairy produce, he mixes therewith, adds thereto, or uses therein any substance approved by or under the *Food Act 1981-1984*.

(2) A person shall not sell dairy produce that contains any ingredient mixed therewith, added thereto, or used therein in contravention of subsection (1).

(3) A person who commits an offence defined in subsections (1) or (2) is liable—

- (a) in the case of an individual, to a penalty of 50 penalty units;
- (b) in the case of a corporation, to a penalty of 100 penalty units.

114. Offence to trade without licence. A person shall not—

- (a) supply or sell market milk to a processor or vendor;
- (b) treat milk for supply as market milk or arrange or carry out the sale or disposal of milk supplied by a producer to a processor as market milk;
- (c) carry on business as a carrier;
- (d) carry on business as a vendor;
- (e) carry on the business of a milkseller;

unless he is the holder of a licence or permit issued under Part IV that authorizes him so to do and he complies with the conditions (if any) of such licence or permit.

115. Offence to perform certain functions without authority. A person shall not—

- (a) pasteurise dairy produce at a dairy, depot or factory;
- (b) test dairy produce in a laboratory;
- (c) grade milk at a dairy, depot or factory;

unless he is the holder of a certificate of competency or permit issued under Part V that authorizes him so to do and he complies with the conditions (if any) of such a permit.

116. Offence to hinder administration of Act. A person shall not—

- (a) assault, threaten, abuse, insult, intimidate or obstruct an inspector or other person in the exercise of his powers or authorities or the discharge of his functions or duties under this Act, or attempt so to do;
- (b) fail to answer any question put to him for the purposes of this Act by an inspector or other person, unless he has a lawful excuse therefor, or knowingly give a false or misleading answer to any such question;
- (c) fail to comply with a lawful order or direction of the Authority or an inspector;
- (d) fail to render assistance or to furnish information, when required by or under this Act to do so, or, in response to such a requirement, knowingly furnish information that is false or misleading;
- (e) fail to produce a licence, certificate, permit, or authority granted under this Act, which he is required under this Act to produce, unless he has a reasonable excuse therefor;
- (f) fail to allow an inspector to make a copy of or an extract from a licence, certificate, permit or authority granted under this Act;
- (g) fail, upon demand made on him, to produce to an inspector for examination or inspection, any book, account, record, or document required under this Act to be produced, or fail to allow an inspector to make a copy of or an extract from any such book, account, record, or document that is produced;
- (h) prevent a person from appearing before, or being questioned by, an inspector, or attempt so to do;
- (i) except with the authority of an inspector or a court order—
 - (i) remove, alter or interfere with any article, or sample of any article, or thing seized and detained under this Act;
 - (ii) erase, alter, open, break or remove a mark, seal or fastening placed by an inspector in exercise of his powers or authorities or discharge of his functions or duties under this Act.

117. Offences involving fraud. (1) A person shall not—

- (a) counterfeit any licence, permit, certificate, entitlement, authority, or mark provided for by this Act;
- (b) use with fraudulent intent any such licence, permit, certificate, entitlement, authority, or mark that has been counterfeited;
- (c) impersonate a person named in any such licence, permit, certificate, entitlement, or authority;
- (d) alter, deface, or obliterate a mark allocated under this Act put on dairy produce or a package containing dairy produce;
- (e) put on dairy produce or a package containing dairy produce a mark that is or purports to be a mark allocated under this Act to a particular person or class of person, unless he is that person or, as the case may be, a person of that class;
- (f) remove with fraudulent intent any of the contents of a package containing dairy produce that has been inspected to put into that package dairy produce not contained therein at the time of inspection;
- (g) use, for the purpose of packing for commercial purposes dairy produce, a package that has been used previously for that purpose or is designed for use for any other purpose unless all marks thereon, being marks allocated under, or used for the purposes of, this Act have been first erased.

(2) A person shall not falsely represent that dairy produce had by him for sale is of a particular grade or class.

118. Offences relating to fixed price. (1) Where the minimum price to be paid by a processor for milk supplied to him by a producer or another processor is fixed and declared by order under this Act, the first-mentioned processor shall pay to the producer or other processor, for such milk, a price not less than the minimum price so fixed.

(2) Where the maximum or minimum price at which milk sold by a processor or a vendor shall be sold by him is fixed and declared by order under this Act, the processor or, as the case may be, the vendor shall not sell milk at a price in excess of the maximum price so fixed or at a price less than the minimum price so fixed.

(3) A person who commits an offence defined in subsection (1) or (2) is liable to the penalty of 180 penalty units.

119. General offence provision. (1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

(2) A person who commits an offence against this Act, if there is no other penalty prescribed for the offence, is liable to a penalty of 40 penalty units.

120. Forfeitures in addition to penalty. (1) Where a person is convicted of an offence against this Act in the commission of which a

vehicle or vessel was used, the court before which he is convicted may order that the vehicle or vessel be forfeited to the Authority, whether or not any other penalty is imposed on the offender.

(2) A vehicle or vessel ordered to be forfeited shall thereupon become the property of the Authority, which is entitled to take possession of it, and may be disposed of in such manner as the Authority thinks fit.

121. Proceedings for offences. (1) Proceedings for offences against this Act shall be taken in a summary manner under the *Justices Act 1886-1988* upon the complaint of an inspector or other person, in either case authorized in that behalf by the Authority or the Minister.

An averment in a complaint that the complainant is duly authorized to lay the complaint is sufficient proof of such authorization in the absence of evidence to the contrary.

(2) Proceedings for an offence against this Act may be commenced within one year after the offence is committed or within 6 months after the offence comes to the knowledge of the complainant, whichever period is the later to expire.

(3) Where charges of offences (whether of the same description or of different descriptions) against this Act are made against the same defendant or defendants or different defendants the court before which the charges are brought is authorized to hear together, with the consent of the defendant or all of the defendants, those charges in respect of which the evidence to be adduced by or on behalf of the complainant is the same or substantially the same.

122. Offence by corporation. (1) If a corporation contravenes or fails to comply with any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened or failed to comply with the same provision.

(2) A person may be proceeded against and convicted pursuant to subsection (1), whether or not the corporation has been proceeded against or been convicted of the offence in question.

(3) Nothing in this section affects any liability of a corporation for an offence against this Act committed by the corporation.

(4) It is a defence in proceedings against a person pursuant to subsection (1) to prove that the contravention or failure to comply occurred without that person's consent or connivance and that he had used due diligence to prevent the commission of the offence.

123. Vicarious liability for agent's or employee's offence. (1) Notwithstanding sections 7 and 23 of *The Criminal Code*, or any other Act, or rule of law or practice, if a person contravenes or fails to comply with any provision of this Act as an agent or employee, the principal or employer of that person shall be deemed to have contravened or failed to comply with the same provision.

It is immaterial that the contravention or failure to comply occurred without the authority or contrary to the instructions of the principal or employer.

(2) Nothing in this section affects any liability of a person for an offence against this Act committed by him.

124. Exculpation of employee. It is a defence in proceedings against a person for an offence against this Act committed by him as an employee to prove that the offence was committed while the business of his employer was being conducted under the personal superintendence of the employer, or a manager or other representative of the employer, and that the offence was committed with the knowledge of the employer, manager or representative.

125. Appropriation of penalties etc. Unless otherwise expressly provided by this Act, all penalties, costs, fees, and other moneys recovered under this Act shall be paid into and form part of the funds of the Authority to be applied to its use for the purposes of this Act.

126. Injunction against persistent offenders. (1) Where a person has been convicted on at least three separate occasions of an offence against this Act, whether the offences are of the same kind or of different kinds, and it appears to the Authority that the person is a persistent offender against this Act, the Authority may make application to the Supreme Court for an order in the nature of a mandatory or restrictive injunction against the person to restrain him from contravening or failing to comply with the provisions of this Act, generally, or with one or more particular provisions of this Act.

(2) On an application made under subsection (1) the court may make such order, directed to the person to whom the application relates, as it considers just and necessary to secure that person's compliance with this Act or any provisions thereof.

(3) In addition to any other liability that he may incur for breach of an order made against him under this section, a person to whom such an order is directed who breaches the order commits an offence against this Act and is liable—

- (a) in the case of an individual, to a penalty of 100 penalty units;
- (b) in the case of a corporation, to a penalty of 200 penalty units.

PART X—MISCELLANEOUS PROVISIONS

127. Evidentiary provisions. (1) The provisions of this section apply in relation to all proceedings for the purposes of this Act or with respect to matters arising from this Act.

- (2) It is not necessary to prove the appointment or signature of—
- (a) any member of the Authority or the Dairy Industry Appeals Tribunal;
 - (b) the general manager, secretary, or other employee of the Authority;
 - (c) the secretary of the Dairy Industry Appeals Tribunal;
 - (d) any inspector or analyst;

or the authority of any such person to do an act, take proceedings, or to make or give any order or direction under this Act.

Every such signature shall be taken to be that of the person whose signature it purports to be, and every such authority shall be taken to exist, in the absence of evidence to the contrary.

(3) A document or paper purporting to be a copy of or extract from a licence, certificate, permit, or other document or writing in the custody of or issued by or on behalf of the Authority and purporting to be certified by the chairman, general manager, or secretary of the Authority as a true copy of the original is admissible in evidence, without the need to call for production of the original, as evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

(4) A certificate, purporting to be that of the chairman, general manager or secretary of the Authority, that—

- (a) a person named therein is or is not (or at a time specified therein was or was not) the holder of a licence, permit, certificate, entitlement, or other authority under this Act;
- (b) a licence, permit, certificate, entitlement, or other authority under this Act is (or was at a time specified therein) subject to conditions or restrictions specified therein;

is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

(5) A certificate purporting to be that of the chairman, general manager or secretary of the Authority or of the secretary of the Dairy Industry Appeals Tribunal, as to the receipt or otherwise of any notice, application, or payment, or as to an amount of fees or other moneys payable under this Act by a person specified therein is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

(6) A certificate or document purporting to be issued under the *Main Roads Act 1920-1988* and relating to a motor vehicle described therein is evidence that the person specified therein is registered under that Act in relation to that vehicle and is evidence and, in the absence of evidence to the contrary, conclusive evidence that such person was using the vehicle at a time or during a period material to the proceedings in which the certificate or document is produced.

(7) An entry in a minute book of the Authority purporting to record any proceedings of the Authority and signed by the chairman of

the Authority or a copy of or extract from such an entry certified by the chairman to be a true copy or extract is evidence and, in the absence of evidence to the contrary, conclusive evidence that the proceedings to which the entry relates were duly conducted and such copy or extract is admissible in evidence without the need to call for production of the original.

(8) An averment or allegation in a complaint—

- (a) as to the date on which the commission of an offence against this Act came to the knowledge of the complainant;
- (b) that a place specified is, or an act specified was done or omitted, in a locality specified;
- (c) that any person or place was, or was not, at a material time authorized, approved or registered under this Act;
- (d) that any licence, permit, certificate, or other authority required by this Act to be obtained was not duly obtained by a person required to obtain it;
- (e) that a person has failed to do that which he was required by this Act or directed under this Act to do, or has done that which he was forbidden to do by—
 - (i) this Act or a person acting under the authority of this Act;
 - or
 - (ii) any condition or restriction to which any licence, permit, certificate, or other authority under this Act was subject;
- (f) that a specified substance is or is not dairy produce;
- (g) that dairy produce was manufactured at a time specified by a person specified;
- (h) that dairy produce was supplied for a use or intended for a purpose specified;

is evidence and, in the absence of evidence to the contrary, conclusive evidence of the averment or allegation.

(9) The onus of proving—

- (a) that dairy produce was not sold for consumption by humans; or
- (b) that dairy produce was, at a material time, fit for consumption by humans;

is upon the defendant charged with an offence.

128. Analysts' evidence. (1) Where, in relation to proceedings for an offence against this Act a copy of a certificate of analysis purporting to be that of an analyst—

- (a) if obtained on behalf of the prosecution, is served with the summons; or
- (b) if obtained on behalf of the defendant, is given to the complainant at least 3 clear days before the day on which

the defendant is required by the summons to appear and answer the matter of complaint,

then, unless the court takes action under subsection (2), the certificate of which a copy has been so served or given is admissible in evidence without calling the analyst and is sufficient evidence of the matters contained therein.

(2) If the court to which a certificate referred to in subsection (1) is, or is proposed to be, produced is satisfied that in the circumstances of the case the analyst who issued the certificate should be called as a witness, it may, of its own motion or on application by either party, order that the analyst be called as a witness by the party producing or proposing to produce the certificate, and may grant an adjournment for that purpose.

(3) An order may be made under subsection (2) at any stage of the proceedings, and the court that makes the order shall adopt such procedures as appear to it just and equitable to enable the analyst to testify and to be examined by the parties, irrespective of the stage reached in the proceedings.

129. Service of documents. Any document or writing authorized or required by this Act to be given to any person shall be duly given if—

- (a) it is served personally on the person to whom it is directed;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (c) it is sent by post, telex, facsimile, or similar facility to the place of residence or business of the person to whom it is directed last known to the person who gives it.

130. Exclusion of liability. No liability shall be incurred by the Crown or any person on account of anything done pursuant to this Act or done in good faith and without negligence for the purposes of this Act.

131. Regulations. (1) The Governor in Council may make regulations not inconsistent with this Act providing for all matters, whether general or to meet particular cases, that are necessary or convenient for the administration of this Act, or for carrying this Act into effect.

Without limiting the powers to make regulations conferred by this subsection, regulations may be made with respect to the matters specified in the Second Schedule.

(2) Regulations—

- (a) may be made to be of general application throughout the State or of limited application in any area of the State or with respect to any class of person or premises or otherwise as provided therein;
- (b) may adopt, wholly or partially, and by way of reference or express specification therein, any of the standards, codes,

rules, specifications or methods relevant to the dairying industry of any institution or body identified therein;

- (c) may authorize the Authority to approve of forms, fees, standards, or other matters specified therein.

(3) The power to regulate conferred by subsection (1) includes power to prohibit.

132. Tabling Orders in Council. Section 28A of the *Acts Interpretation Act 1954-1985* (Tabling of Regulations) applies with respect to Orders in Council made under this Act, as if such orders were regulations.

FIRST SCHEDULE

[s.4]

| Enactment | Extent of Repeal |
|--|---|
| <i>Milk Supply Act 1977</i> | the whole |
| <i>Milk Supply Act Amendment Act 1978</i> | the whole |
| <i>Milk Supply Act Amendment Act 1981</i> | the whole |
| <i>Milk Supply Act Amendment Act 1983</i> | the whole |
| <i>Milk Supply Act Amendment Act 1985</i> | the whole |
| <i>Milk Supply Act Amendment Act 1986</i> | the whole |
| <i>City of Brisbane Market Act and Other Acts Amendment Act 1985</i> | sections 14 and 15 and the heading immediately preceding section 14 |
| <i>Dairy Produce Act 1978</i> | the whole |
| <i>Dairy Produce Act Amendment Act 1979</i> | the whole |
| <i>The Margarine Act of 1958</i> | the whole |
| <i>Margarine Act Amendment Act 1973</i> | the whole |
| <i>Margarine Act and Another Act Amendment Act 1974</i> | the whole |
| <i>Margarine Act Amendment Act 1975</i> | the whole |
| <i>Margarine Act Amendment Act 1978</i> | the whole |
| <i>Margarine Act Amendment Act 1982</i> | the whole |
| <i>The Filled Milk Act of 1958</i> | the whole |
| <i>Filled Milk Act Amendment Act 1982</i> | the whole |

SECOND SCHEDULE

Subject-matter for Regulations

[s.131]

1. Powers etc. for purposes of Act. Powers, authorities, functions and duties of persons or tribunals concerned in the administration or execution of this Act.

2. Qualifications of persons. Qualifications of—

(a) inspectors or analysts;

(b) persons employed in the analysis, examination, grading,

testing, or manufacture of dairy produce, or the carrying out of other procedures in respect of dairy produce, at dairy produce premises or laboratories;

or

(c) officers engaged in giving effect to this Act.

3. Assessment of qualifications. Means of assessing qualifications for the purposes of this Act; examinations; eligibility of candidates; appointment of examiners.

4. Certificates of competency. Certificates of competency to be issued under this Act to, or to be held by, persons referred to in clause 3; conditions thereof; revocation thereof.

5. Entitlements. Matters relevant to entitlements under this Act, including— the methods for determining entitlements; eligibility for entitlements; incidents of entitlements; dealing with and disposing of entitlements; variation of entitlements; cancellation and suspension of entitlements.

6. Licences etc. Matters relevant to licences, permits, certificates, and other authorities required for the purposes of this Act, including— the grant and issue thereof, and duplicates; eligibility therefor; exemptions from the holding thereof; conditions thereof; endorsement thereof; renewal, cancellation, suspension, and surrender thereof; authority conferred thereby; use of licences as security for loans.

7. Premises and vehicles. Buildings and structures to be provided in connexion with dairy produce premises and other premises for the purposes of this Act; construction, facilities, condition and use of dairy produce premises and other premises for the purposes of this Act, and of vehicles or vessels for use in the handling of dairy produce; standards to be complied with in relation thereto; approval for erection of such premises.

8. Plant and equipment. Erection, installation, and use of plant, machinery, equipment, utensils, appliances in or in connexion with dairy produce premises; the design, construction, location, and use of such plant, machinery, equipment, utensils, and appliances in such premises; standards to be complied with in relation thereto.

9. Use of premises. Requiring, permitting, or prohibiting the use of dairy produce premises or any part thereof for a use prescribed by the regulations.

10. Packages. Labelling and marking of packages containing dairy produce, or substances used in the manufacture of dairy produce, or produced from dairy produce; the packaging of dairy produce.

11. Records and returns. Records to be kept, and returns, statements, lists, or other documents to be furnished by—

(a) holders of licences, permits, certificates, or authorities required for the purposes of this Act;

or

(b) owners of dairy produce premises;

the manner of keeping such records and inspection thereof; times when and places where such returns, statements, lists or other documents are to be furnished.

12. Prevention of disease. Prevention of the introduction or spread of disease into, on or from dairy produce premises; use, control and treatment of stock affected, or suspected of being affected, with disease in or on dairy produce premises; taking and application of tests for the detection of disease in stock.

13. Water supply; drainage. Water supply (including a supply of hot water), to dairy produce premises; prevention of pollution of dairy produce in or on, and of the water supply to, dairy produce premises; drainage from dairy produce premises and places where stock is kept.

14. Handling dairy produce. Inspection of dairy produce premises, and equipment and utensils and appliances used or intended for use in the treatment, storage, or carriage, of dairy produce; methods of controlling temperature of dairy produce and the temperature at which dairy produce must be kept, in store or in transit; the carriage, delivery, storage, supply, treatment, holding for sale, and quality of dairy produce.

15. Inspection etc. of dairy produce. Inspection of dairy produce, water and other substances used in or in connexion with the manufacture of dairy produce; sampling and testing of dairy produce; equipment and methods to be used in sampling or testing; use of marks in connexion with inspections.

16. Analyses. Methods of analysis of dairy produce and of water and other substances used in or in connexion with the manufacture of dairy produce; equipment to be used in analysis; use of marks in connexion with analysis.

17. Supply of milk. Transportation of milk; supply of milk to processors; the relationship between entitlements and access to markets for market milk; conditions for supply of pasteurised milk or pasteurised cream; authorization of persons to supply pasteurised milk or pasteurised cream.

18. Pasteurisation and other treatments. Treatment of, and other sterilization procedures concerning, dairy produce, including ultra heat treatment, pasteurisation, homogenisation, standardization, clarification, filtration, cooling, and straining of dairy produce; methods by which such treatment or other procedures may be carried out.

19. Grading. Grading of dairy produce intended for sale; classes or grades for the purpose of classifying dairy produce intended for consumption by humans.

20. Standards. Standards for composition and quality of dairy produce and substances used in the manufacture of dairy produce; standards and requirements for market-milk.

21. Quality assurance programmes. Matters relevant to quality assurance programmes relating to dairy produce, including—approval, review and amendment of such programmes; persons responsible for implementing such programmes; minimum requirements for manufacturing, storing, inspecting, sampling, testing, grading, examining, analysing, cleaning, sanitising, and other procedures and specifications concerned with the quality of, dairy produce; basis of payment for dairy produce related to its quality.

22. Hygiene. Hygiene, cleansing and disinfecting of dairy produce premises; cleansing and disinfecting of equipment, appliances, utensils, vehicles, vessels, containers and packages used or intended for use in the manufacture, storage, carriage, or sale of dairy produce; safeguarding the quality of dairy produce.

23. Condemnation and disposal of dairy produce. Detention of dairy produce at any place; condemnation of dairy produce; disposal of dairy produce detained or condemned by an inspector; prohibition of and restrictions on use and disposal of dairy produce unfit for consumption by humans, and the manner of disposal thereof.

24. Basis of payment. The basis of payment for dairy produce supplied to processors.

25. Pricing of milk. Determination of prices to be paid for milk; the persons required to pay for or to be paid for milk; the methods of payment for milk.

26. Procedures. Procedures of the Milk Pasteurisation Tribunal and the Dairy Industry Appeals Tribunal.

27. Fees etc. Fees, charges, expenses, and allowances to be paid for the purposes of this Act, the purposes for which and the circumstances in which they are payable; the collection and recovery thereof.

28. Forms. Forms to be used for the purposes of this Act and the purposes for which they are to be used.

29. Offences. Offences consisting in a breach of a regulation and pecuniary penalties not exceeding 40 penalty units payable in respect of such offences.

30. Other matters. All matters required or permitted by this Act to be prescribed where no other method of prescription is specified.