

DAIRY INDUSTRY ACT 2000

Reprint as of 9 July 2010

Long Title

An Act to constitute the New South Wales Dairy Industry Conference; to confer certain functions on the NSW Food Authority with respect to the dairy industry; to repeal the *Dairy Industry Act 1979* in connection with the deregulation of the dairy industry; to make related amendments to other Acts; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Dairy Industry Act 2000* .

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

"Chief Executive Officer" of the Food Authority means the person holding office as such under Chapter 1A of the *Public Sector Employment and Management Act 2002* .

"Conference" means the New South Wales Dairy Industry Conference constituted by this Act.

"dairy product" means any food, not being milk, in the production of which:

- (a) milk is used, or
- (b) any substance produced from milk is used.

"exercise" a function includes perform a duty.

"Food Authority" means the NSW Food Authority constituted by the *Food Act 2003* .

"function" includes a power, authority or duty.

"member of staff of the Food Authority" has the same meaning as in the *Food Act 2003* .

"milk" means the mammary secretion of a milking animal obtained from one or more milkings and intended for human consumption as a liquid or for further processing, but does not include colostrum.

"treatment" of milk includes the examination, cleansing, pasteurisation, processing by means of an ultra heat treatment method, modification, homogenisation, separation, sterilisation, alteration or manufacture into another form of milk or into a dairy product, packaging, testing, analysing, grading, cooling, refrigerating, bottling and packing of the milk.

Part 2 The New South Wales Dairy Industry Conference

4 Constitution of Conference

(1) There is constituted by this Act a body corporate with the corporate name of the New South Wales Dairy Industry Conference.

(2) The Conference is not, and does not represent, the Crown.

5 Functions of Conference

(1) The Conference has such functions as are conferred or imposed on it by or under this or any other Act.

(2) In particular, the Conference has the following functions:

(a) to carry out investigations or inquiries into the general policies of the Food Authority with respect to the dairy industry and any other aspect of the dairy industry that it thinks fit,

(b) to report to and advise the Minister on any matter referred to in paragraph (a),

(c) to consult with the Food Authority on food safety schemes relating to the dairy industry under the *Food Act 2003* .

6 Minister must consider reports and advice

(1) The Minister must consider any reports or advice furnished by the Conference under section 5 and take such action (if any) in the matter as the Minister considers appropriate.

(2) Without affecting the generality of subsection (1), the Minister may, in relation to any report or advice concerning the general policies of the Food Authority with respect to the dairy industry:

(a) forward the report or advice to the Food Authority for consideration, or

(b) in accordance with section 109 of the *Food Act 2003* , give such directions to the Food Authority in respect of the matter as the Minister considers appropriate.

7 Members of Conference

(1) The Conference is to consist of the following persons:

(a) the persons elected or appointed pursuant to the regulations under section 8,

(b) one person appointed by the Minister, being a person who is nominated by the Minister for Fair Trading to represent consumers of milk and dairy products,

(c) one person appointed by the Minister, being a person who is nominated by the Minister for Fair Trading to represent employees in the dairy industry,

(d) the Chief Executive Officer of the Food Authority (or delegate).

(2) The Chief Executive Officer of the Food Authority (or delegate) is to be an ex officio member and may not vote at a meeting of the Conference.

8 Constitution and procedure of Conference

Except as otherwise provided by this Act, the regulations may make provision for or with respect to the following:

(a) the number of members of the Conference,

(b) the method of, and qualification for, election or appointment of those members,

(c) the terms of office of those members,

(d) the Chairperson and Deputy Chairperson of the Conference,

(e) the procedure for the calling of meetings of the Conference and for the conduct of business at those meetings,

(f) any other matter relating to the constitution or procedure of the Conference.

9 Staff of Conference

(1) The Conference may employ such staff as may be necessary to assist it in the exercise of its functions.

(2) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of any such staff.

(3) The Conference may engage such consultants and contractors as may be necessary or convenient to exercise any of the functions of the Conference.

(4) The Conference may not employ or engage more persons than the number of persons for the time being approved by the Minister for the purposes of this section.

10 Financial provisions

(1) The Food Authority may, out of its funds, make grants to the Conference for the purposes of paying:

(a) the remuneration of staff of the Conference or consultants or contractors engaged by the Conference, and

(b) the fees for the Chairperson of the Conference for attending meetings.

(2) The Conference may enter into arrangements with persons or bodies engaged in, or representing persons engaged in, the dairy industry for contributions to the other costs and expenses of the Conference.

Part 3 Dairy Industry Functions of Safe Food

11 General services relating to dairy industry

(1) The Food Authority may:

(a) establish and maintain laboratories and carry out research and make investigations into matters relating to milk and dairy products (including chemical, physical, bacteriological and economic research and investigations), and

(b) carry out examinations, tests or analyses of milk or dairy products, and

(c) publish reports, information and advice concerning the production, collection, treatment, carriage, storage, distribution, delivery, supply, use or sale of milk or dairy products, and

(d) promote and encourage the production, supply, use, sale or consumption of milk or dairy products.

(2) Without limiting subsection (1), the Food Authority may provide services relating to the quality of milk or dairy products.

12 Promotional activities

(1) The Food Authority has, and is taken always to have had, power to enter into agreements for the use, within the State or elsewhere, of any trade mark of which it is, or is entitled to be, registered as proprietor.

(2) The Food Authority may, with the approval of the Minister, establish a committee to furnish advice with respect to the promotion and encouragement of the production, supply, use, sale or consumption of milk and dairy products.

(3) A committee established under this section is to consist of such persons as are approved by the Minister.

(4) The Food Authority may, from the funds of the Food Authority, pay a member of the committee such fees for attending meetings of the committee, and such expenses and allowances, as the Minister from time to time determines in respect of that member.

(5) A committee established under this section must, at such times as the Food Authority may direct, report to the Conference on its work and activities.

13 Fees

(1) A charge or fee for the supply of a service, product or commodity, or the furnishing of information, by the Food Authority may be fixed by regulation, or if there is no charge or fee so fixed, by order of the Food Authority, subject to the maximum (if any) fixed by the regulations.

(2) In the regulations or in any such order provision may be made requiring a deposit or prepayment in respect of any such charge or fee.

(3) Different charges or fees may be fixed according to such circumstances or factors as are specified in the regulation or order.

(4) The charge or fee must be paid to the Food Authority by the person to whom or at whose request the service, product, commodity or information is supplied or furnished.

Part 4 Provisions Relating to Deregulation of Dairy Industry

14 No compensation for deregulation

(1) The purpose of this section is to exclude the payment of compensation for deregulation of the dairy industry by or on behalf of the Crown.

(2) Compensation for deregulation is:

(a) compensation because of the enactment or operation of this Act, including the repeal of provisions of the *Dairy Industry Act 1979* , or for any consequence of that enactment or operation, or

(b) compensation because of the implementation, operation, cancellation or variation of any scheme under section 9 (1) (g) of the *Dairy Industry Act 1979* or for any consequence of that implementation, operation, cancellation or variation, or

(c) compensation because of any statement or conduct relating to a matter referred to in paragraph (a) or (b) or to the deregulation of the dairy industry in connection with any such matter.

(3) Compensation for deregulation is not payable by or on behalf of the Crown.

(4) This section applies to or in respect of any event, act, omission, statement or conduct whether occurring before or after the commencement of this section.

(5) In this section:

"compensation" includes damages or any other form of monetary compensation.

"conduct" includes a representation of any kind:

(a) whether made verbally or in writing, and

(b) whether negligent, false, misleading or otherwise.

"private subsidiary corporation" has the same meaning as it has in the *Food Act 2003* , and includes a private subsidiary corporation within the meaning of the *Dairy Industry Act 1979* .

"the Crown" means the Crown within the meaning of the *Crown Proceedings Act 1988* , and includes:

(a) the Food Authority, the Conference or a private subsidiary corporation,

(b) the Chief Executive Officer or a member of the Conference,

(c) an officer, employee or agent of the Crown, the Food Authority, the Conference or any such subsidiary corporation.

Part 5 Financial Matters

15 Funding of operations of Food Authority

The Food Authority is to ensure, as far as is reasonably practicable, that money received by the Food Authority:

- (a) under this Act, or
- (b) under section 70 of the *Dairy Industry Act 1979* before the commencement of this Act, or
- (c) from interests in private corporations acquired under the *Food Production (Safety) Act 1998* (whether those interests were acquired before or after that commencement),

is used for the purposes of the carrying out of its functions under this Act or in connection with any food safety scheme (within the meaning of the *Food Act 2003*) relating to the dairy industry.

16 Fund to be established

All money received under this Act by the Food Authority or its officers or employees, and all money appropriated by Parliament for the purposes of the functions of the Food Authority, under this Act is to go to form a fund out of which may be paid:

- (a) the expenses of the Conference, and
- (b) all expenses of the Food Authority in the carrying out of its functions under this Act.

17 Recovery of charges, fees and other money

Any charge, fee or money due to the Food Authority under this Act is recoverable by the Food Authority as a debt.

Part 6 Miscellaneous

18 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

19 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

20 Authority to take proceedings

- (1) Any information, complaint or other legal proceeding under this Act may be laid or taken in the name of the Food Authority by the Chief Executive Officer of the Authority or by any other member of staff of the Food Authority authorised by the Food Authority in that behalf either generally or in any particular case.
- (2) In any proceedings the production of a notification in the Gazette that any person has been so authorised is conclusive evidence of the authority and evidence that the authority to act remains in force.
- (3) The Chief Executive Officer or other member of staff of the Food Authority must, out of the funds of the Food Authority, be reimbursed all damages, costs, charges and expenses to or with which the

Chief Executive Officer or other member of staff is put or becomes chargeable because of anything contained in subsection (1).

21 Service of proceedings on Food Authority

Any summons, writ or other proceeding to be served on the Food Authority under this Act may be served by being served on the Chief Executive Officer of the Authority.

22 Evidence

In any proceedings in any court or before any persons having by law or consent of parties authority to hear, receive and examine evidence, a certificate purporting to be signed by the Chief Executive Officer of the Food Authority certifying that a person has been appointed as the delegate of the Food Authority for the purposes of this Act and specifying what functions of the Food Authority were delegated to the person and the period during which the person was a delegate is prima facie evidence of the facts stated in it.

23 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the following:

(a) the forms of instruments to be used for the purposes of this Act and the fees payable in connection with any such instrument,

(b) the functions of the Food Authority with respect to the dairy industry.

(3) The regulations may create offences punishable by a penalty not exceeding 5 penalty units.

24 Repeal of Dairy Industry Act 1979 No 208

The *Dairy Industry Act 1979* is repealed on and from 1 January 2001.

26 Savings and transitional provisions

Schedule 2 has effect.

1 Definitions

In this Schedule:

"former Act" means the *Dairy Industry Act 1979* .

Schedule 2 - Savings and transitional provisions

1 Definitions

In this Schedule:

"former Act" means the *Dairy Industry Act 1979* .

2 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

3 References to Act

A reference in any Act (other than this Act) or in any instrument made under any Act to the *Dairy Industry Act 1979* is to be read as a reference to or including this Act.

4 Members of Conference

(1) A person who, immediately before the repeal of Part 1A of the former Act, held office as a member of the Conference ceases to hold office on that repeal.

(2) A member who ceases to hold office because of this clause is not entitled to any remuneration or compensation because of so ceasing to hold office but is eligible (if otherwise qualified) to be reappointed as a member of the Conference.

5 Continuation of Dairy Industry Conference Regulation 1999

(1) The *Dairy Industry Conference Regulation 1999* , as in force immediately before the repeal of Part 1A of the former Act, continues in force and is taken to be a regulation made under this Act.

(2) The *Dairy Industry Conference Regulation 1999* may be amended and repealed in the same way as any other regulation made under this Act.

6 Assets, rights and liabilities of Conference

The assets, rights and liabilities of the Conference constituted under Part 1A of the former Act are, on and from the repeal of that Part, transferred to the Conference constituted under this Act.

7 Cancellation of milk quota schemes

Any scheme established under section 9 (1) (g) of the former Act is cancelled on and from 1 July 2000.

8 Registration certificates under former Act

(1) A person who was, immediately before the commencement of this clause, the holder of a certificate of registration under the former Act as a dairy farmer or dairy produce merchant is taken to be the holder of a dairy farmer's licence or dairy produce merchant's licence under the *Food Production (Dairy Food Safety Scheme) Regulation 1999* .

(2) A person who is taken to be the holder of a licence is liable to pay any licence fee or other charge under the *Food Production (Dairy Food Safety Scheme) Regulation 1999* that would be payable by a person issued any such licence under that regulation and in force from 1 July 2000.

(3) The licence ceases to be in force on 1 July 2001 unless it is earlier cancelled under the *Food Production (Dairy Food Safety Scheme) Regulation 1999* .

9 Promotional activities

(1) An agreement entered into under section 14 (1A) of the former Act, and having effect immediately before the repeal of that provision, is taken to be an agreement entered into under section 12.

(2) A committee established under section 14 of the former Act continues in force and is taken to be a committee established under section 12.

10 Compensation provisions

Nothing in this Act affects the operation of section 35F of the former Act, as in force immediately before its repeal, and section 35F continues to apply to or in respect of liability for compensation as if it had not been so repealed.

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Dairy Industry Act 2000 No 54* . Assented to 30.6.2000. Date of commencement, 1.7.2000, sec 2 and GG No 84 of 30.6.2000, p 6049. This Act has been amended as follows:

2001	No 121	<i>Justices Legislation Repeal and Amendment Act 2001</i> . Assented to 19.12.2001. Date of commencement of Sch 2, 7.7.2003, sec 2 and GG No 104 of 27.6.2003, p 5978.
2003	No 82	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2003</i> . Assented to 27.11.2003. Date of commencement of Sch 3, assent, sec 2 (1).
2004	No 16	<i>Food Legislation Amendment Act 2004</i> . Assented to 24.3.2004. Date of commencement, 5.4.2004, sec 2 and GG No 69 of 2.4.2004, p 1795.
2007	No 94	<i>Miscellaneous Acts (Local Court) Amendment Act 2007</i> . Assented to 13.12.2007. Date of commencement of Sch 2, 6.7.2009, sec 2 and 2009 (314) LW 3.7.2009.
2009	No 96	<i>Public Sector Restructure (Miscellaneous Acts Amendments) Act 2009</i> . Assented to 30.11.2009. Date of commencement of Sch 6, assent, sec 2 (1).
2010	No 59	<i>Statute Law (Miscellaneous Provisions) Act 2010</i> . Assented to 28.6.2010. Date of commencement of Sch 1.10, 9.7.2010, sec 2 (2).

Table of amendments

Long title	Am 2004 No 16, Sch 2.2 [1].
Sec 3	Am 2004 No 16, Sch 2.2 [2] [3]; 2009 No 96, Sch 6 [1].
Sec 5	Am 2004 No 16, Sch 2.2 [4] [5].
Sec 6	Am 2004 No 16, Sch 2.2 [4] [6].
Sec 7	Am 2004 No 16, Sch 2.2 [4]; 2010 No 59, Sch 1.10.
Sec 10	Am 2004 No 16, Sch 2.2 [7].
Part 3, heading	Am 2004 No 16, Sch 2.2 [8].
Sec 11	Am 2004 No 16, Sch 2.2 [4] [7].
Sec 12	Am 2004 No 16, Sch 2.2 [4] [7] [9] [10].
Sec 13	Am 2004 No 16, Sch 2.2 [4].
Sec 14	Am 2004 No 16, Sch 2.2 [4] [5].
Sec 15	Am 2004 No 16, Sch 2.2 [9]–[11].

Secs 16, 17	Am 2004 No 16, Sch 2.2 [4].
Sec 19	Am 2001 No 121, Sch 2.80; 2007 No 94, Sch 2.
Sec 20	Am 2004 No 16, Sch 2.2 [4] [12] [13]; 2009 No 96, Sch 6 [2]–[4].
Sec 21	Am 2004 No 16, Sch 2.2 [4] [12]; 2009 No 96, Sch 6 [5].
Sec 22	Am 2004 No 16, Sch 2.2 [4] [14]; 2009 No 96, Sch 6 [5].
Sec 23	Am 2004 No 16, Sch 2.2 [4].
Sec 25	Rep 2003 No 82, Sch 3.
Sch 1	Rep 2003 No 82, Sch 3.
Sch 2	Am 2004 No 16, Sch 2.2 [15].