

Western Australia

**Dairy Industry and Herd Improvement
Legislation Repeal Act 2000**

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No. 25 of 2000

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Dairy Industry and Herd Improvement Legislation Repeal Act 2000

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Defined Terms

Western Australia

Dairy Industry and Herd Improvement Legislation Repeal Act 2000

No. 25 of 2000

An Act to —

- **repeal the *Dairy Industry Act 1973* and the *Herd Improvement Service Act 1984*;**
 - **provide for the transfer of the assets and liabilities of the Dairy Industry Authority of Western Australia to a public company;**
 - **provide for the transfer of the assets and liabilities of the Herd Improvement Service of Western Australia to a public company;**
 - **consequentially amend certain Acts,**
- and for related purposes.**

[Assented to 5 July 2000]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Dairy Industry and Herd Improvement Legislation Repeal Act 2000*.

2. Commencement

- (1) Unless this section specifies otherwise, the provisions of this Act come into operation on the day on which it receives the Royal Assent.
- (2) Part 2 comes into operation on a day fixed by proclamation, but the proclamation cannot be made until the Minister has given to the Governor a certificate in accordance with section 3.
- (3) Part 3 comes into operation on a day fixed by proclamation, but the proclamation cannot be made until the Minister has given to the Governor a certificate in accordance with section 4.
- (4) Part 4 comes into operation on the earlier of the days fixed under subsections (2) and (3) or, if the days so fixed are the same day, on that day.

3. Arrangements for commencement of Part 2

The Minister may give to the Governor the certificate required by section 2(2) when the Minister is satisfied that —

- (a) the DSAP payment start day, as defined in clause 2 of Schedule 2 to the *Dairy Produce Act 1986* of the Commonwealth, has been fixed within the period referred to in clause 3(3) of that Schedule;
- (b) there is in existence a body incorporated under the Corporations Law by the name “Dairy Western Australia Limited” (“**the Company**”);
- (c) the provisions of the constitution of the Company are appropriate to achieve the purposes of Part 2 Division 3;

- (d) the Company has in writing notified the Minister that it agrees to the provisions of Part 2 Division 3, so far as they affect the Company;
- (e) the employment of each person appointed under section 17, 19 or 85 of the *Dairy Industry Act 1973* has been arranged with the Company or the person is covered by provisions applicable under Part 6 of the *Public Sector Management Act 1994*; and
- (f) all other necessary arrangements have been made for the commencement of Part 2.

4. Arrangements for commencement of Part 3

The Minister may give to the Governor the certificate required by section 2(3) when the Minister is satisfied that —

- (a) there is in existence a body incorporated under the Corporations Law by the name “Farmwest Services Limited” (“**the Company**”);
- (b) the provisions of the constitution of the Company are appropriate to achieve the purposes of Part 3 Division 3;
- (c) the Company has in writing notified the Minister that it agrees to the provisions of Part 3 Division 3, so far as they affect the Company;
- (d) the employment of each person appointed under section 12(1) of the *Herd Improvement Service Act 1984* has been arranged with the Company or the person is covered by provisions applicable under Part 6 of the *Public Sector Management Act 1994*; and
- (e) all other necessary arrangements have been made for the commencement of Part 3.

5. Definitions

In this Act, unless the contrary intention appears —

“DIA” means the Dairy Industry Authority of Western Australia established by section 10 of the *Dairy Industry Act 1973*;

“HISWA” means the Herd Improvement Service of Western Australia established by section 4 of the *Herd Improvement Service Act 1984*.

6. Day to be fixed for purposes of section 22

- (1) The Minister is to fix a day for the purposes of the definition of “HISWA customers” in section 22.
- (2) The Minister is to cause notice of the day fixed under subsection (1) to be published in the *Gazette*.

Part 2 — Repeal of *Dairy Industry Act 1973* and related provisions

Division 1 — Interpretation

7. Definitions

In this Part, unless the contrary intention appears —

“**appointed day**” means the day fixed under section 2(2);

“**Company**” means the body referred to in section 3(b);

“**dairy producer**” means a person who immediately before the appointed day was a dairyman as defined in the repealed Act;

“**repealed Act**” means the Act repealed by section 8.

Division 2 — Repeal and transitional provision

8. *Dairy Industry Act 1973* repealed

The *Dairy Industry Act 1973* is repealed.

9. Performance of necessary transitional functions

- (1) Despite the repeal effected by section 8, DIA continues in existence for the purpose of —
 - (a) receiving the notice referred to in section 12(4);
 - (b) performing the functions described in sections 15 and 41; and
 - (c) reporting as required by section 66 of the *Financial Administration and Audit Act 1985* and section 43.
- (2) The accountable authority, within the meaning of the *Financial Administration and Audit Act 1985*, of DIA also continues in existence for the purpose described in subsection (1)(1)(c).

- (3) For the purposes of subsection (1) DIA —
 - (a) is to be constituted by a person appointed by the Minister; and
 - (b) is to perform the functions referred to in that subsection through that person.
- (4) The person referred to in subsection (3) holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
- (5) DIA has the powers that are necessary or convenient for the purposes of subsection (1).
- (6) The Minister is to provide the clerical or other assistance that DIA reasonably requires for the purposes of subsection (1).

Division 3 — Transfer of DIA's business to the Company

10. Purposes of this Division

- (1) The purposes of this Division are to bring about —
 - (a) the transfer of the assets and liabilities of DIA to the Company by way of sale of DIA's business;
 - (b) the issue to the Minister on behalf of the State of shares in the Company ("**the shares**") equal to the net asset value of that business; and
 - (c) the transfer of the shares to dairy producers by the Minister on behalf of the State.
- (2) This to be done on the basis that the shares will be transferred to dairy producers —
 - (a) in the manner determined by the Minister after consultation with the Company; and
 - (b) without their giving consideration for the transfer.

11. Transfer of DIA's business to the Company

- (1) On the appointed day the assets and rights of DIA are, by operation of this section, transferred to the Company by way of sale and without the need for any conveyance or assignment.
- (2) On and after the appointed day the liabilities of DIA are, by operation of this section, the liabilities of the Company.

12. Determination of amount of consideration for sale

- (1) The Minister, after consultation with the Company, is to determine the net asset value of the business of DIA as at the appointed day.
- (2) The net asset value of the business is the total value of the assets and rights transferred to the Company under section 11(1), determined on the basis of their market value as at the appointed day, less the amount of the liabilities transferred to the Company under section 11(2).
- (3) The Minister is to notify the Company in writing of —
 - (a) the net asset value determined under subsection (1); and
 - (b) the nominal value of the shares to be issued by the Company under section 13.
- (4) A copy of the notice given under subsection (3) is to be given to DIA.

13. Consideration to be satisfied by allotment of shares

- (1) The consideration for the transfer effected by section 11 is that the Company is to allot and issue to the Minister on behalf of the State fully paid shares in the Company that have a total value equal to the net asset value specified in the notice given to the Company under section 12(3) (“**the notice**”).
- (2) The shares are to have the nominal value specified in the notice.
- (3) The allotment and issue of shares is to be made as soon as is practicable after the notice is given.

14. Minister to transfer shares

As soon as is practicable after the allotment and issue of shares under section 13, the Minister is to transfer those shares to dairy producers in the manner determined by the Minister after consultation with the Company.

15. DIA to prepare statement

- (1) As soon as is practicable after notice is given to the Company under section 12(3), DIA is to prepare a statement showing as at the appointed day —
 - (a) a description of the assets and rights of DIA that have been transferred to the Company under section 11; and
 - (b) a description of the liabilities of DIA that have become the liabilities of the Company under that section.
- (2) The statement is also to specify —
 - (a) the value of each asset as at the appointed day; and
 - (b) the amount of each liability, or category of liabilities, as at that day,as determined by the Minister under section 12(1).
- (3) DIA is to cause the statement to be published in the *Gazette* for public information.

16. Values etc. may be estimated if necessary

It is sufficient for the purposes of this Division for a value or amount to be estimated if it is not reasonably practicable, for those purposes, for —

- (a) a definite value to be assigned to an asset or right as at the appointed day; or
- (b) the exact amount of a liability, or category of liabilities, to be determined as at that day.

Division 4 — Consequential amendments to other Acts

17. *Constitution Acts Amendment Act 1899*

Schedule V Part 3 to the *Constitution Acts Amendment Act 1899** is amended by deleting the item commencing “The Dairy Industry Authority”.

[* *Reprinted as at 15 April 1999.*

For subsequent amendments see Acts Nos. 26, 34, 38, 44 and 60 of 1999.]

18. *Financial Administration and Audit Act 1985*

Schedule 1 to the *Financial Administration and Audit Act 1985** is amended by deleting “Dairy Industry Authority of Western Australia”.

[* *Reprinted as at 9 July 1999.*

For subsequent amendments see Acts Nos. 5, 8, 38 and 60 of 1999 and Gazette 16 November 1999, 24 December 1999 and 28 January 2000.]

19. *Government Employees Superannuation Act 1987*

Schedule 1 Part B to the *Government Employees Superannuation Act 1987** is amended by deleting “Dairy Industry Authority of Western Australia”.

[* *Reprinted as at 22 January 1999.*

For subsequent amendments see Acts Nos. 53 of 1998 and 8 and 38 of 1999.]

20. *Public Sector Management Act 1994*

Schedule 2 to the *Public Sector Management Act 1994** is amended by deleting item 6.

[* *Reprinted as at 26 March 1999.*

For subsequent amendments see Acts Nos. 5 and 38 of 1999.]

21. *Stock (Identification and Movement) Act 1970*

Section 30(2)(a)(i) of the *Stock (Identification and Movement) Act 1970** is deleted.

[* *Reprinted as at 8 June 1995.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 241.]

Part 3 — Repeal of *Herd Improvement Service Act 1984* and related provisions

Division 1 — Interpretation

22. Definitions

In this Part, unless the contrary intention appears —

“appointed day” means the day fixed under section 2(3);

“Company” means the body referred to in section 4(a);

“HISWA customers” means dairy farmers and beef farmers who are shown in the records referred to in section 41(1) to have —

- (a) been provided with services by HISWA for which fees or charges were paid; or
- (b) purchased ova, semen or equipment from HISWA, at any time within the period of 3 years ending on the day fixed under section 6(1);

“repealed Act” means the Act repealed by section 23.

Division 2 — Repeal and transitional provision

23. *Herd Improvement Service Act 1984* repealed

The *Herd Improvement Service Act 1984* is repealed.

24. Performance of necessary transitional functions

- (1) Despite the repeal effected by section 23, HISWA continues in existence for the purpose of —
 - (a) receiving the notice referred to in section 27(4);
 - (b) performing the functions described in sections 30 and 41; and
 - (c) reporting as required by section 66 of the *Financial Administration and Audit Act 1985* and section 43.

- (2) The accountable authority, within the meaning of the *Financial Administration and Audit Act 1985*, of HISWA also continues in existence for the purpose described in subsection (1)(1)(c).
- (3) For the purposes of subsection (1) HISWA —
 - (a) is to be constituted by a person appointed by the Minister; and
 - (b) is to perform the functions referred to in that subsection through that person.
- (4) The person referred to in subsection (3) holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
- (5) HISWA has the powers that are necessary or convenient for the purposes of subsection (1).
- (6) The Minister is to provide the clerical or other assistance that HISWA reasonably requires for the purposes of subsection (1).

Division 3 — Transfer of HISWA's business to the Company

25. Purposes of this Division

- (1) The purposes of this Division are to bring about —
 - (a) the transfer of the assets and liabilities of HISWA to the Company by way of sale of HISWA's business;
 - (b) the issue to the Minister on behalf of the State of shares in the Company ("**the shares**") equal to the net asset value of that business; and
 - (c) the transfer of the shares to HISWA customers by the Minister on behalf of the State.
- (2) This to be done on the basis that the shares will be transferred to HISWA customers —
 - (a) in the manner determined by the Minister after consultation with the Company; and

- (b) without their giving consideration for the transfer.

26. Transfer of HISWA's business to the Company

- (1) On the appointed day the assets and rights of HISWA are, by operation of this section, transferred to the Company by way of sale and without the need for any conveyance or assignment.
- (2) On and after the appointed day the liabilities of HISWA are, by operation of this section, the liabilities of the Company.

27. Determination of amount of consideration for sale

- (1) The Minister, after consultation with the Company, is to determine the net asset value of the business of HISWA as at the appointed day.
- (2) The net asset value of the business is the total value of the assets and rights transferred to the Company under section 26(1), determined on the basis of their market value as at the appointed day, less the amount of the liabilities transferred to the Company under section 26(2).
- (3) The Minister is to notify the Company in writing of —
 - (a) the net asset value determined under subsection (1); and
 - (b) the nominal value of the shares to be issued by the Company under section 28.
- (4) A copy of the notice given under subsection (3) is to be given to HISWA.

28. Consideration to be satisfied by allotment of shares

- (1) The consideration for the transfer effected by section 26 is that the Company is to allot and issue to the Minister on behalf of the State fully paid shares in the Company that have a total value equal to the net asset value specified in the notice given to the Company under section 27(3) (“**the notice**”).
- (2) The shares are to have the nominal value specified in the notice.

- (3) The allotment and issue of shares is to be made as soon as is practicable after the notice is given.

29. Minister to transfer shares

As soon as is practicable after the allotment and issue of shares under section 28, the Minister is to transfer those shares to HISWA customers in the manner determined by the Minister after consultation with the Company.

30. HISWA to prepare statement

- (1) As soon as is practicable after notice is given to the Company under section 27(3), HISWA is to prepare a statement showing as at the appointed day —
- (a) a description of the assets and rights of HISWA that have been transferred to the Company under section 26; and
 - (b) a description of the liabilities of HISWA that have become the liabilities of the Company under that section.
- (2) The statement is also to specify —
- (a) the value of each asset as at the appointed day; and
 - (b) the amount of each liability, or category of liabilities, as at that day,
- as determined by the Minister under section 27(1).
- (3) HISWA is to cause the statement to be published in the *Gazette* for public information.

31. Values etc. may be estimated if necessary

It is sufficient for the purposes of this Division for a value or amount to be estimated if it is not reasonably practicable, for those purposes, for —

- (a) a definite value to be assigned to an asset or right as at the appointed day; or

- (b) the exact amount of a liability, or category of liabilities, to be determined as at that day.

Division 4 — Consequential amendments to other Acts

32. *Financial Administration and Audit Act 1985*

Schedule 1 to the *Financial Administration and Audit Act 1985** is amended by deleting “Herd Improvement Service of Western Australia”.

[* *Reprinted as at 9 July 1999.*

For subsequent amendments see Acts Nos. 5, 8, 38 and 60 of 1999 and Gazette 16 November 1999, 24 December 1999 and 28 January 2000.]

33. *Government Employees Superannuation Act 1987*

Schedule 1 Part B to the *Government Employees Superannuation Act 1987** is amended by deleting “Herd Improvement Service of Western Australia”.

[* *Reprinted as at 22 January 1999.*

For subsequent amendments see Acts Nos. 53 of 1998 and 8 and 38 of 1999.]

34. *Public Sector Management Act 1994*

Schedule 2 to the *Public Sector Management Act 1994** is amended by deleting item 19.

[* *Reprinted as at 26 March 1999.*

For subsequent amendments see Acts Nos. 5 and 38 of 1999.]

Part 4 — Transitional provisions

35. Definitions

In this Part, unless the contrary intention appears —

“appointed day” —

- (a) in relation to DIA, means the day fixed under section 2(2);
- (b) in relation to HISWA, means the day fixed under section 2(3);

“asset” means property of any kind whether tangible, intangible, real, or personal, and includes without limitation —

- (a) any chose in action;
- (b) goodwill;
- (c) any right, interest or claim of any kind, whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

“company” means the body referred to in section 3(b) or 4(a), as the case requires;

“former body” means DIA or HISWA, as the case requires;

“liability” means any liability, duty or obligation —

- (a) whether liquidated or unliquidated, actual, contingent or prospective; and
- (b) whether owed alone or jointly or jointly and severally with any other person;

“right” means any right, power, privilege or immunity.

36. Interpretation Act to apply

With respect to the repeals effected by sections 8 and 23, this Part is supplementary to, and does not displace the operation of, the *Interpretation Act 1984*.

37. Members cease to hold office

On the appointed day the members of the former body or the board of the former body, as the case requires, cease to hold office.

38. References to former body in agreements and instruments

On and after the appointed day agreements and instruments —

- (a) to which the former body is a party; or
- (b) which contain a reference to the former body,

have effect, by operation of this section, as if —

- (c) the company were substituted for the former body as a party to the agreement or instrument; and
- (d) any reference to the former body were, unless the context otherwise requires, a reference to the company.

39. Proceedings and remedies

On and after the appointed day —

- (a) the company is a party to any proceedings by or against the former body commenced before the appointed day; and
- (b) any proceedings or remedy that might have been commenced by, or available against or to, the former body may be commenced by, and are available against or to, the company.

40. Other things in progress

- (1) Any act, matter or thing done or made known, or omitted to be done, before the appointed day by, to or in respect of the former body is to be taken to have been done, made known or omitted by, to or in respect of the company.
- (2) Subsection (1) applies only to the extent that the act, matter or thing has any force, effect or significance after the appointed day.

41. Records

- (1) The former body is to deliver to the company all registers, papers, documents, minutes, receipts, books of account and other records.
- (2) The former body's obligations under subsection (1) are subject to its requirements to have access to information for the purposes of giving effect to section 43.

42. Stamp duty

- (1) Stamp duty under the *Stamp Act 1921* is not chargeable on —
 - (a) the transfer of assets and liabilities effected by operation of section 11 or 26; or
 - (b) any transfer of shares under section 14 or 29.
- (2) The Minister may certify in writing that —
 - (a) a specified asset or liability was transferred by operation of section 11 or 26; or
 - (b) a specified transfer of shares occurred under section 14 or 29,

and such a certificate is conclusive evidence of that fact, unless the contrary is shown.

43. Annual report for part of year

The accountable authority, within the meaning of the *Financial Administration and Audit Act 1985*, of the former body is to report as required by section 66 of that Act for the period from the preceding 1 July to the appointed day, and Division 14 of Part II of that Act applies as if that period were a full financial year.

44. Completion of things commenced

Anything commenced to be done by the former body under the repealed Act before the appointed day may be continued by the company so far as the doing of that thing is within the powers of the company after that day.

45. Further transitional provision may be made

- (1) If there is no sufficient provision in this Part for any matter or thing necessary or convenient to give effect to the transition from the former body to the company the Minister may make that provision by order published in the *Gazette*.
- (2) An order under this section may be made so as to have effect from the appointed day.
- (3) To the extent that a provision of any such order has effect on a day that is earlier than the day 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), the rights of that person existing before the day of its publication; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of publication.

46. Saving

The operation of any provision of this Part is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

Part 5 — Duration of Act

47. Duration of Act

- (1) This Act continues in operation until the end of the termination day, and no longer.
 - (2) The termination day is a day fixed by the Governor by order published in the *Gazette*.
 - (3) An order is not to be made for the purposes of subsection (2) until the Minister has certified to the Governor that the Minister is satisfied that the purposes of Part 2 Division 3 and Part 3 Division 3 have been achieved.
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Defined Terms

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
appointed day	7, 22, 35
asset.....	35
company	35
Company	7, 22
dairy producer	7
DIA	5
former body.....	35
HISWA	5
HISWA customers	22
liability	35
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right.....	35
the Company	3, 4
the notice.....	13, 28
the shares	10, 25