

SOUTH AUSTRALIA

**MARGINAL DAIRY FARMS (AGREEMENT) ACT, 1971**

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**MARGINAL DAIRY FARMS (AGREEMENT) ACT, 1971**

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Marginal Dairy Farms (Agreement) Act, 1971,  
No. 33 of 1971 [Assented to 22 April 1971]

**An Act to approve an Agreement between the Government of the State and the Government of the Commonwealth to provide for Financial Assistance to the State for the purposes of a Marginal Dairy Farms Reconstruction Scheme and for purposes incidental thereto.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

**Short title**

1. This Act may be cited as the *Marginal Dairy Farms (Agreement) Act, 1971*.

**Definitions**

2. In this Act, unless the contrary intention appears—

"acquisition" in relation to land includes acceptance of the surrender of a leasehold interest in land and "acquire" has a corresponding meaning:

"disposal" in relation to land includes the surrender or grant of a leasehold interest in land and "dispose of" has a corresponding meaning:

"land" includes a leasehold interest in land:

"the agreement" means the agreement a copy of which is set out in the schedule to this Act:

"the Commonwealth Minister" means the Minister of State for the Commonwealth for the time being administering the Commonwealth Act and includes any Minister of State for the Commonwealth or member of the Executive Council of the Commonwealth acting for or on behalf of that Minister of State:

"the Fund" means the "Marginal Dairy Farms Reconstruction Scheme Fund" kept pursuant to subsection (1) of section 6 of this Act:

"the Minister" means the body corporate under the name "the Minister of Lands" constituted by the *Minister of Lands Incorporation Act, 1947*:

"the scheme" means the marginal dairy farms reconstruction scheme to be operated by the State in accordance with the agreement.

**Approval of agreement**

3. (1) The agreement is hereby approved.

(2) The Minister is hereby designated as the Authority to operate the scheme on behalf of the State.

(3) The Government of the State and the Minister may do all things that are necessary, expedient or convenient to carry out and give effect to the agreement and to operate the scheme.

**Amendment of agreement**

4. (1) The Government of the State may make with the Government of the Commonwealth an agreement amending the agreement or amending the agreement as amended and in that case a reference in this Act to the agreement shall, unless the contrary intention appears, be read as a reference to the agreement as amended by all agreements amending the agreement.

(2) The Minister shall cause a copy of any agreement made pursuant to subsection (1) of this section to be laid before each House of Parliament.

**Extension of application of scheme**

5. Notwithstanding anything in this Act or in the agreement, the scheme may, with the consent of the Minister and the Commonwealth Minister, extend to the acquisition under the scheme of land comprised in a rural property used wholly or partly for dairying but not being a marginal dairy farm as defined for the purposes of the scheme as if that rural property had been such a marginal dairy farm.

**The Fund**

6. (1) There shall be kept in the Treasury a fund to be called the "Marginal Dairy Farms Reconstruction Scheme Fund".

(2) The Fund shall consist of all moneys received by the Treasurer—

(a) as payments and advances made by the Commonwealth to the State pursuant to the agreement;

(b) in payment for land that is disposed of by the Minister pursuant to the scheme;

or

(c) as an advance to the Fund pursuant to section 7 of this Act.

(3) There shall be paid out the Fund—

(a) such amounts of money as are pursuant to the agreement required to be repaid by the State to the Commonwealth;

(b) such interest on the amounts on money referred to in paragraph (a) of this subsection as are required to be paid by the State to the Commonwealth pursuant to the agreement;

(c) such moneys as are pursuant to the scheme required to be paid by the Minister to the owner of any land by reason of acquisition by the Minister of that land;

(d) moneys in satisfaction of any advance made to the Fund by the Treasurer pursuant to section 7 of this Act;

and

(e) such part of the costs of administering the scheme as are determined by the Minister.

(4) This section shall be sufficient authority without any further or other appropriation for the payment of moneys out of the Fund.

**Advances by the Treasurer**

7. Where there are insufficient moneys in the Fund to make a payment required pursuant to section 6 of this Act to be made to the Commonwealth, the Treasurer may out of moneys to be provided by Parliament for the purpose advance to the Fund such moneys as are necessary to enable such payment to be made.

**Duty of Registrar-General**

8. (1) Where the Minister proposes to acquire any land pursuant to the scheme he may direct that the vendor shall transfer or surrender the land to Her Majesty the Queen and the Minister may accept such transfer or surrender on behalf of Her Majesty.

(2) If any land is transferred pursuant to subsection (1) of this section the Registrar-General shall at the request of the Minister cancel the title to that land.

(3) If the Minister disposes of any land pursuant to the scheme, the Registrar-General shall at the request of the Minister make on every certificate relating to that land and on every certificate relating to any other land comprised in a rural property of which the land disposed of by the Minister forms or is to form part, an endorsement to the effect that no dealing shall be registered in relation to any such certificate without the prior written consent of the Minister.

(4) The Registrar-General shall at the request of the Minister cancel any endorsement made pursuant to subsection (3) of this section and upon such cancellation that endorsement shall have no further force or effect.

(5) While an endorsement referred to in subsection (3) of this section is in force, the Registrar-General shall not register any dealing in or in relation to the land comprised in a certificate so endorsed without the prior written consent of the Minister.

(6) In this section—

"certificate" means certificate as defined in *The Real Property Act, 1886-1969*:

"dealing" means dealing as defined in the *Real Property Act, 1886-1969*:

"the Registrar-General" means the person for the time being holding the office of Registrar-General under the *Real Property Act, 1886-1969*, or the Registrar-General of Deeds under the *Registration of Deeds Act, 1935-1962*.

## THE SCHEDULE

AN AGREEMENT made the second day of April, One thousand nine hundred and seventy-one Between THE COMMONWEALTH OF AUSTRALIA (in this agreement called "the Commonwealth") of the one part and THE STATE OF SOUTH AUSTRALIA (in this agreement called "the State") of the other part.

WHEREAS—

- (a) the Commonwealth and the State mutually recognize that there is a serious low income problem within the dairy industry, particularly in the case of producers relying on the sale of milk or cream for manufacturing purposes;
- (b) the Commonwealth and the State are agreed that it is desirable to bring into existence a Marginal Dairy Farms Reconstruction Scheme whereby dairy farmers whose farms have insufficient potential to become viable economic units while based on the sale of milk or cream for manufacturing purposes may voluntarily dispose of their land and improvements to the State at market value and, after allowing for redundant improvements, the State may dispose of the land and useful improvements on the basis of the most practicable and economic land use, with the object of building up other rural properties to economic levels permitting reasonable living standards or, where the land is not required for this purpose, for any other purpose;
- (c) the Commonwealth is prepared to provide financial assistance to the State for the implementation of a scheme as aforesaid and to any other State for the implementation of a like scheme in that State, up to a total sum in respect of all States of Twenty-five million dollars (\$25 000 000);
- (d) the Parliament of the Commonwealth has provided by the Marginal Dairy Farms Agreements Act, 1970, that the Commonwealth may make with any State an agreement providing for the making of payments by the Commonwealth to the State for the purposes of a marginal dairy farms reconstruction scheme to be operated by the State in accordance with the agreement and that payments to a State by the Commonwealth under an agreement made in pursuance of the Act shall be by way of financial assistance to the State on the terms and conditions provided by the agreement;
- (e) the said Act sets out requirements with which a scheme provided for by an agreement made in pursuance of the Act is to comply and also specifies provisions that shall be included in an agreement:

NOW IT IS HEREBY AGREED as follows:—

### I—DEFINITIONS

#### Definitions

1. In this agreement, unless the contrary intention appears—

"acquire" includes accept the surrender of a leasehold interest and "acquisition" has a corresponding meaning:

"amalgamation" means the addition of reconstruction land to land held by an applicant:

"applicant" means a person or persons applying to participate under the Scheme and includes a company partnership or Crown instrumentality so applying:

"disposal" includes the surrender or grant of a leasehold interest and "dispose of" has a corresponding meaning:

"economic unit" means a rural property which, in the opinion of the Authority having due regard to the land use proposed and to technological development in the industry or industries concerned, has under average efficient management the continuing capacity to produce on the average per annum to a level that is or is equivalent to twenty-five (25) per cent or more above the maximum level of production of butterfat for the time being specified for a marginal dairy farm under clause 5 of this agreement:

"financial year" means a period of twelve months ending on the thirtieth day of June:

"holding" means the land offered by an applicant for acquisition by the Authority:

"land" includes a leasehold interest in land:

6.

"marginal dairy farm" means a rural property not less than one half of the gross income from which is obtained from the production of milk or cream that is derived from not less than twenty lactating cows, such milk or cream being sold at a price pertaining to milk or cream to be used in the manufacture of butter, cheese or other products, and which rural property, if used only for dairying and purposes incidental to dairying, is not reasonably capable of producing to the level agreed between the Commonwealth and the State in accordance with clause 5 of this agreement:

"price" includes the consideration for the surrender of a leasehold interest:

"reconstruction land" means land acquired by the Authority under the Scheme:

"structural improvements" includes houses, bails, sheds, fencing, stock yards and water supplies:

"the Act" means the Marginal Dairy Farms Agreements Act 1970 of the Commonwealth and includes any amendments that may from time to time be made to that Act:

"the Authority" means the State or the instrumentality designated by the State to operate the Scheme on behalf of the State:

"the Minister" means the Minister of State for Primary Industry of the Commonwealth and includes a Minister or member of the Federal Executive Council for the time being acting for that Minister:

"the Scheme" means the Marginal Dairy Farms Reconstruction Scheme to be operated by the State in accordance with the provisions of this agreement:

"the State Minister" means the Minister of the State from time to time responsible for the administration of the Scheme on the part of the State and includes a Minister of the State for the time being acting on behalf of that Minister:

"the State Treasurer" means the Treasurer of the State and includes a Minister of the State for the time being acting on behalf of the Treasurer of the State:

and

"the Treasurer" means the Treasurer of the Commonwealth and includes a Minister or member of the Federal Executive Council for the time being acting for the Treasurer of the Commonwealth.

## II—OBJECTIVES

### **State to operate scheme**

2. The State shall operate a Marginal Dairy Farms Reconstruction Scheme in accordance with the provisions of this agreement.

### **Commonwealth to provide financial assistance**

3. The Commonwealth shall provide financial assistance to the State for the purposes of the Scheme upon the terms and conditions set out in this agreement.

### **Requirements of the scheme**

4. The Scheme shall comply with the following requirements—

- (a) the Scheme shall, to the extent that financial assistance is available to the State under this agreement and subject otherwise to the provisions of this agreement provide for the making of agreements between the Authority and the owners of land comprised in marginal dairy farms in the State for the disposal of the land, including structural improvements thereon, to the Authority at prices based on market values current at the time of the disposal;

and



7.

- (b) the Scheme shall provide for the disposal by the Authority of land that becomes available for such disposal as a result of acquisitions under the Scheme, but so that—
- (i) subject to the next succeeding subparagraph, the price or rent in respect of such a disposal shall be based upon market values current at the time of disposal, having regard to the type of land use proposed and, if the Authority so desires, after taking into account costs incurred by the Authority in respect of the land after acquisition;
  - (ii) the applicant obtaining land from the Authority will not be required to pay for structural improvements on the land that are unsuitable or redundant in relation to the proposed use of the land by the applicant;
  - (iii) land will not be disposed of for use primarily for dairying unless it is to be so used as part of a rural property that constitutes an economic unit;
- and
- (iv) disposals will be made so as to encourage the most practicable and economic use of land.

III—OPERATION OF SCHEME

**Specification of marginal dairy farm**

5. The level in respect of a marginal dairy farm agreed for the purpose of the definition thereof in clause 1 of this agreement shall be production by a rural property as so defined of, or of the equivalent of, an average per annum of Twelve thousand pounds of butterfat, or such other level of production as may from time to time be agreed by the Minister and the State Minister.

**Eligibility of outgoing dairy farmers**

6. Applicants wishing to dispose of holdings shall be eligible to participate in the Scheme provided that the holding offered by the applicant for acquisition by the Authority is a marginal dairy farm and—

- (a) the applicant has been operating the holding for a period of not less than two years prior to the date of the application to participate in the Scheme or for such other period as may at any time be agreed by the Minister and the State Minister;
- or
- (b) in a case where the Authority certifies that it is satisfied in the circumstances of the case, illness, disability or death is preventing or inhibiting the operation of a holding.

**Acquisition to be at discretion of the Authority**

7. (1) The determination of whether a rural property is capable of producing to the level specified under clause 5 of this agreement shall be made by the Authority, considering the level of production that would result under average efficient management from the property in its existing state at the date of application.

(2) The Authority shall not be under any obligation to acquire any particular holding.

**Power to acquire land other than marginal dairy farms**

8. Notwithstanding any other provision of this agreement, the Authority may, with the consent of the Minister and of the State Minister, acquire for the purpose of the Scheme land which is comprised in a rural property used wholly or partly for dairying and which, in the state of development at the time of acquisition by the Authority, is not a marginal dairy farm.

**Acquisition of land by Authority**

9. When acquiring holdings under the Scheme the Authority will do so in accordance with the following:—

- (a) holdings shall be acquired at a price agreed by negotiation between the applicant or his nominated agent and the Authority;
- (b) holdings shall be acquired without plant or livestock;
- (c) the price shall be based on the current market value of the holding, including the value of structural improvements, according to the system of tenure under which the holding is held;

8.

(d) on completion of the acquisition the Authority shall receive an unencumbered title to the holding.

**Use of land held by Authority**

10. Pending disposal reconstruction land may be utilized by the Authority as it deems fit, including short term lease.

**Eligibility of farmers applying for reconstruction land**

11. Applicants wishing to obtain reconstruction land will be eligible to participate in the Scheme provided that—

(a) where the reconstruction land is to be used for amalgamation—

(i) the applicant is the owner of land or the occupier of land under the Crown Lands or other pertinent legislation of the State such land being, in the opinion of the Authority, suitable for amalgamation;

and

(ii) in cases where the Authority considers that the appropriate use of the land is dairying, the applicant has owned the land referred to in the previous paragraph for a period of at least two years prior to the date of the application to participate in the Scheme or such other period as may at any time be agreed by the Minister and the State Minister;

(b) where the reconstruction land is not to be used for amalgamation, the applicant wishes to obtain the land for a forestry undertaking or for any other purpose except dairying, the Authority being satisfied that it is appropriate to use the land for that purpose.

**Disposal of land by Authority**

12. When disposing of reconstruction land the Authority will do so in accordance with the following:—

(a) the Authority shall have due regard to the objective of securing the most practicable and economic land use;

(b) reconstruction land made available for amalgamation, when combined with the applicant's own land, will constitute an economic unit;

(c) the area of reconstruction land made available to an applicant who intends to continue in dairying shall be such that on amalgamation the combined area will not exceed twice the minimum area that is needed to form an economic unit or such other area as may at any time be agreed by the Minister and the State Minister;

(d) where land is being made available to an applicant eligible in accordance with paragraph (b) of clause 11 of this agreement, the State Minister or his delegate in that behalf consents.

**Manner of disposal of land by Authority**

13. (1) The Authority may for the purpose of the implementation of the Scheme dispose of reconstruction land in such manner as it may determine in keeping with the objectives of the Scheme.

(2) Holdings acquired by the Authority may be sold as a whole or in parts, or together with other reconstruction land, according to individual circumstances.

(3) In the event of there being more applicants of apparent equal merit for reconstruction land than can be satisfied, allotment may be decided by ballot.

**Term and conditions of disposal**

14. (1) Reconstruction land disposed of by the Authority shall be disposed of for a tenure and on terms and conditions that accord with the practice in the State and the provisions of this agreement.

(2) The terms and conditions shall be based on fair market value at the time of disposal having regard to the tenure and to the type of land use proposed.

(3) The terms and conditions of disposal for amalgamation shall include conditions prohibiting the disposal, after amalgamation, by any means of any interest in any part of the amalgamated property during any period in respect of which money is owed or payable to the Authority by the applicant who obtains the reconstruction land, except with the consent of the State Minister or his delegate in that behalf.

(4) Those structural improvements on reconstruction land which the Authority indicates as being available for purchase and which the applicant designates as being useful will be sold to the applicant at values agreed with the Authority according to their usefulness to the applicant after amalgamation.

**Disposal of redundant assets**

15. (1) Structural improvements on reconstruction land which are not purchased by an applicant as provided in subclause (4) of clause 14 of this agreement and which the Authority considers might otherwise be used for dairying shall be disposed of by tender, public auction or otherwise, for removal or, subject to paragraph (d) of clause 12 of this agreement, *in situ* with a small area of land.

(2) Structural improvements which the Authority is satisfied will not be used for dairying may be dealt with as the Authority considers fit.

**Other operational arrangements**

16. Matters in connection with the Scheme not provided for in this agreement (other than financial arrangements) shall be carried out as agreed from time to time by the Minister and the State Minister.

IV—FINANCIAL ARRANGEMENTS

**Financial assistance to State**

17. Subject to compliance by the State and the Authority with the provisions of this agreement the Commonwealth shall in accordance with and subject to the provisions of this agreement provide financial assistance to the State out of a total sum of Twenty-five million dollars (\$25 000 000) available to all the States in respect of a period of four years commencing on the twenty-seventh day of July, 1970, consisting of amounts equal to the amounts expended by the Authority, before the expiration of the said period of four years, as the price of land (including structural improvements) acquired by the Authority under the Scheme.

**Token financial assistance to States**

18. Notwithstanding anything contained in this agreement, the Commonwealth shall not be obliged to make payments of financial assistance to the State under this agreement if the making of the payment would mean that payments by the Commonwealth under this agreement and under agreements with other States in respect of like schemes would exceed in total the said sum of Twenty-five million dollars (\$25 000 000).

**Payments by Commonwealth**

19. The Commonwealth shall, from time to time, at the request of the State and subject to the provisions of this agreement make payments to the State of the financial assistance provided for by clause 17 of this agreement.

**Supporting Financial Evidence**

20. (1) The State shall furnish to the Treasurer such documents and other evidence in support of each request by the State for a payment to it by the Commonwealth under the last preceding clause as the Treasurer may from time to time reasonably request, whether the request by the Treasurer is made before or after the Commonwealth has made a payment pursuant to the request by the State.

(2) Any statement of expenditure by the State furnished to the Treasurer in connection with a request for payment in accordance with subclause (1) of this clause shall be certified by the Auditor-General of the State as to its correctness in accordance with the books and documents of the Authority.

**Advances**

21. (1) The Treasurer may, at such times and in such amounts as he things fit, made advances on account of an amount that may become payable to the State under clause 19 of this agreement.

(2) An amount or part of an amount advanced by the Treasurer under this clause may be deducted by the Commonwealth from amounts to be paid subsequently under clause 19 of this agreement, or if there are no further amounts to be paid under that clause, shall be refunded by the State to the Treasurer at his request.

**Application for financial assistance**

22. The State shall ensure that an amount, or any part of an amount, paid or advanced to the State under clause 19 or under clause 21 of this agreement is not used or applied except for the operation of the scheme.

**Interest**

23. Interest at the rate of six per centum per annum shall accrue in respect of so much of each amount that has been paid or advanced to the State under this agreement as is repayable by the State under clause 24 of this agreement has not for the time being been repaid or refunded to the Commonwealth, calculated from the date upon which the payment or advance was made by the Commonwealth.

**Payments by the State, with interest**

24. (1) Subject to the provisions of this clause, the State shall repay to the Commonwealth one half of each of the payments made to the State under clause 19 of this agreement and of the advances made to the State and not refunded under clause 21 of this agreement, together with the interest referred to in the last preceding clause, by forty-six (46) equal consecutive half yearly payments, the first payment to be made on the fifteenth day of July of the second financial year that wholly occurs after the payment or advance was made by the Commonwealth to the State and subsequent payments to be made on each succeeding fifteenth day of January and fifteenth day of July thereafter until the full amount of the repayment, including interest, has been paid.

(2) In addition to making payments in accordance with subclause (1) of this clause, the State may on the fifteenth day of January or on the fifteenth day of July in any year, after having given to the Treasurer notice in writing of at least one month of its intention to do so, pay to the Commonwealth an amount that has been specified in the notice of the repayments that remain to be made by the State under subclause (1) of this clause.

(3) Interest at the rate of six per centum per annum shall accrue on amounts paid by the State in accordance with subclause (2) of this clause, calculated from the date of payment and compounded with half-yearly rests on each fifteenth day of January and fifteenth day of July.

(4) When on any fifteenth day of January or fifteenth day of July the payment due by the State under subclause (1) of this clause exceeds the amount by which the unrepaid balance of the total amount repayable under that subclause together with interest accrued on that total amount up to and including that date exceeds the total of the amounts paid by the State to the Commonwealth in accordance with subclause (2) of this clause together with interest accrued on those amounts up to and including that date under subclause (3) of this clause, the State shall pay to the Commonwealth the amount of the second mentioned excess in lieu of the amount of the payment due under subclause (1) of this clause, and no further payments shall be required to be made by the State to the Commonwealth under this clause.

**Financial administration and adjustments**

25. (1) The State agrees to operate the Scheme in such a way that, taking into account its experience with other schemes of this general nature and the normal expectations as to factors that affect farmers' incomes that are current at the date of this agreement, the amounts recovered from the disposal of assets could be reasonably expected to equal the State's costs of administration and payment of interest and principal to the Commonwealth.

(2) Should the State certify that, after allowing for its costs of administration, it has incurred losses under the Scheme from circumstances beyond its control arising after the date of this agreement and disadvantageous compared with past experience and normal expectations as to factors that affect farmers' incomes referred to in subclause (1) of this clause, the Commonwealth agrees to review the position with the State with a view to adjusting amounts payable to the Commonwealth by the State under this Part of this Agreement to the extent of such losses.

**Financial estimates**

26. The State shall prepare and furnish to the Treasurer not later than the thirtieth day of April in each year a statement or statements showing the estimated expenditure necessary to operate the Scheme during the next succeeding financial year and estimates of the amounts that the State will request the Commonwealth to pay to the State under this agreement during that financial year.

**Audit**

27. (1) The accounts, books, vouchers, documents and other records of the State relating to the operation of the Scheme shall be subject to audit by the Auditor-General of the State.

(2) Until such time as the total amount of the financial assistance to be provided to the State under this agreement has been provided by the Commonwealth and supporting evidence to the satisfaction of the Treasurer in relation to all amounts paid is furnished by the State, a report on the audits in respect of each financial year shall be furnished by the Auditor-General of the State to the Treasurer as soon as possible after the completion of the financial year, indicating whether the expenditure of moneys is in accordance with this agreement and including reference to such other matters arising out of the audits as the Auditor-General of the State considers should be reported to the Treasurer.

**Other financial arrangements**

28. Financial arrangements in connection with the Scheme other than those provided for in this agreement shall be carried out as agreed from time to time between the Treasurer and the State Treasurer.

V—GENERAL

**State to secure performance**

29. The State shall provide for and secure the performance by it and its instrumentalities of the obligations of the State under this agreement.

**Reporting**

30. The State shall report to the Commonwealth on the progress and conduct of the Scheme at the intervals and in the form agreed from time to time by the Minister and the State Minister or by their respective delegates in that behalf.

**Consultation**

31. The Commonwealth or the State when requested by the other shall arrange for consultations between officers of the Commonwealth and the State on any matters in connection with the Scheme.

IN WITNESS WHEREOF this agreement had been executed on behalf of the parties as at the day and year first above written.

SIGNED on behalf of THE COMMONWEALTH OF AUSTRALIA  
by the Right Honourable WILLIAM McMAHON, the Prime Minister  
of the Commonwealth, in the presence of C.R. JONES

}  
}  
} WILLIAM McMAHON

SIGNED on behalf of THE STATE OF SOUTH AUSTRALIA by  
the Honourable DONALD ALLAN DUNSTAN, the Premier of the  
State, in the presence of J.S. WHITE

}  
}  
} D.A. DUNSTAN