

MILK.

12° and 13° GEO. VI., No. XLI.

No. 41 of 1948.

AN ACT to amend the Milk Act, 1946-1947.

[Assented to 21st December, 1948.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Milk Act Amendment Act, 1948*, and shall be read as one with the Milk Act, 1946-1947 (Act No. 27 of 1946, as amended by Acts Nos. 18 and 74 of 1947), hereinafter referred to as the principal Act. Short title.

2. The principal Act, as amended by this Act, may be cited as the Milk Act, 1946-1948. Citation of principal Act as amended by this Act.

3. Section eleven of the principal Act is repealed and substituted by the following:— Repeal and substitution of s. 11.

11. (1) The Board shall comprise the offices of a member as Chairman and two other members.

(2) The Governor shall appoint to each of those offices a person, who is recommended by the Minister.

(3) A person shall not be eligible for recommendation or appointment to, or to hold any of those offices if he—

(a) is a dairyman, milk vendor or holder of a treatment license; or

(b) is a member of any partnership or firm, or a director, officer, or member of, or receives, or is entitled to receive any benefit, remuneration or fee from, any association, society, company or other corporate body, directly or indirectly carrying on the business of, or having for or among its objects, the production, supply, treatment, or distribution of milk.

Repeal and
substitution
of s. 12.

4. Section twelve of the principal Act is repealed and substituted by the following:—

12. (1) The person appointed to the office of Chairman of the Board shall, subject to the provisions of this Act, hold office for a period of seven years from appointment, and on expiration of that period shall, subject to those provisions, be eligible for re-appointment.

(2) Each of the two persons appointed to the office of member of the Board shall, subject to the provisions of this Act generally, and to those of the next succeeding subsection in particular, hold office for a period of three years from appointment, and on the expiration of that period shall, subject to the provisions of this Act be eligible for re-appointment.

(3) Of the two persons firstly appointed to the office of member of the Board pursuant to the provisions of this section, one shall be directed when appointed to retire from office on expiration of a period of two years from appointment and shall retire accordingly, and on expiration of that period shall, subject to the provisions of this Act, be eligible for re-appointment.

Amendment
of s. 13.

5. Section thirteen of the principal Act is amended by adding at the end of the section the words “or becomes incapable of carrying out his duties.”

6. Subsection (2) of section fourteen of the principal Act is repealed. Repeal of s. 14 (2).
7. Section fifteen of the principal Act is repealed. Repeal of s. 15.
8. Section eighteen of the principal Act is amended by substituting for the word "four" in subsection (3), line one, the word "two." Amendment of s. 18 (3).
9. Section twenty-six of the principal Act is amended by adding a subsection as follows:—
- (3) (a) For the purpose of carrying out the duties imposed upon it by the provisions of this Act, the Board may require any person engaged in any of the businesses of, dairyman, milk vendor, treatment, or transport of milk, to produce to the Board any books of account, and any other document kept or prepared in connection with the business, and to supply to the Board such other particulars in relation to the business as the Board shall require. Board empowered to require production of accounts, etc.
- (b) The Board may for a period not exceeding fourteen days retain the books, balance sheets, copies and documents produced as required and take copies of or extracts from them.
- (c) Failure to comply with any requirement made pursuant to the provisions of this subsection constitutes an offence against this Act.
- Penalty—Fifty pounds.
10. The principal Act is amended by adding after section twenty-six the following sections:—
- 26A. (1) For the purposes of this section, unless the context requires otherwise— New s. 26A added.
- "appointed day" means a day appointed by public notice pursuant to the provisions of this section; Definitions.
- "encumbrance" includes mortgage, charge, lien, pledge, trust, contract and any right in derogation of absolute ownership;
- "interest" means any right, contingent or existing, in absolute ownership or under an encumbrance;

“milk delivered to the Board” means milk delivered by and in the name of the dairyman producing it, in such quantities and at such times and places, and to such persons as the Board shall determine; and

“delivery of milk to the Board” and similar expressions shall have a corresponding meaning;

“public notice” means a notice given pursuant to the provisions of this section and published in the *Gazette* and a newspaper published in Perth;

“vested milk” means milk which becomes vested in and the property of the Board pursuant to the provisions of this section.

Circumstances
in which cer-
tain milk to
vest in Board.
Cf. N.S.W.
Milk Act,
1931-1936,
s. 26

(2) When in the opinion of the Board there is anything to prevent or likely to prevent the production or distribution of milk so that a state of emergency has in the opinion of the Board arisen or is about to arise in any district or part of a district, the Governor may, by public notice, fix the appointed day, on and from which, and until the Governor, as soon as the state of emergency has terminated, by public notice orders otherwise—

(a) by virtue of this enactment, milk referred to in the notice shall become absolutely vested in and be the property of the Board freed from every interest which shall be converted into a claim for payment by the Board for that interest;

(b) every dairyman referred to in the notice, shall comply with the requirements of this section as to the disposal of vested milk.

(3) The public notice may—

(a) provide for the vesting of the milk in the Board subject to the fulfilment of such conditions as shall be specified in the notice;

Provisions as
to public
notice.

(b) be amended from time to time or cancelled, or both, by subsequent public notice.

(4) Any public notice may refer to any person or thing generally or specifically, but shall not include any reference to milk required by a dairyman or his family for use as food.

(5) (a) On and from the appointed day every dairyman referred to, whether generally or specifically, in a public notice shall not dispose of vested milk otherwise than by delivery of the milk to the Board.

Restraint on dealings with vested milk.

(b) Any dairyman who disposes of, and any person, other than the Board, who acquires from, a dairyman, vested milk, commits an offence.

Penalty—One hundred pounds.

(6) The Board may dispose of vested milk in such manner, as having regard to the purposes of this Act, the Board determines.

Power of Board to dispose of vested milk.

(7) Every delivery of vested milk to the Board shall, for the purposes of the provisions of the Health Act, 1912-1944, relating to food, be deemed to be a sale of that milk to the Board by the dairyman in whose name it is delivered, and those provisions shall apply accordingly.

Cf. Health Act, 1912-1944 (Vol. 1, 1939 reprint), Pt. VIII.

(8) The Board shall, out of the proceeds of vested milk disposed of by the Board under the provisions of this section, make appropriate provision for expenditure incurred in the treatment, carriage, distribution, and sale of the milk, the costs, charges and expenses of the administration by the Board of this Act, and any amounts necessary to repay advances made to the Board, and to provide a sinking fund in respect of any loan raised by the Board, and interest on the advance or loan; and subject to this Act shall make repayments in accordance with the provisions of the next succeeding subsection to each dairyman in respect of vested milk delivered to the Board by him.

Appropriation of proceeds of disposal of vested milk.

(9) (a) The Board shall pay to each dairyman, at such times as the Board shall determine, an amount

Payments to dairyman.

calculated at the rate of the minimum price or prices applicable to or in respect of the vested milk delivered to the Board by the dairyman.

(b) Where, in respect of any period which the Board determines to adopt, the Board has, out of the proceeds of vested milk delivered by dairymen at any particular place—

(i) made the payments referred to in the last preceding paragraph; and

(ii) made such provision for the matters referred to in the last preceding subsection as the Board deems reasonably appropriate to and in respect of the vested milk so delivered,

the Board shall distribute, among those dairymen in proportion to the quantity of vested milk delivered by each of them at that place during that period, so much of any balance, of the proceeds as the Board determines is available for the purpose.

Provision for
ascertaining
price.

(10) For the purposes of ascertaining the price to be paid to a dairyman for vested milk delivered to the Board, and for the purposes of this enactment, the Board's decision as to grade, quality, or description (whether grade, quality, or description is prescribed or not), and as to the quantity or the conditions of production, supply, collection, treatment, or delivery, shall be final and conclusive.

Advances on
account.

(11) The Board may make or arrange for advances on account of vested milk delivered to the Board, and the advances and any payment made on account of that milk may be made at such time or times, and on such terms and conditions, and in such manner as the Board determines.

Effect of
vesting on
contracts.

(12) (a) Subject to the provisions of this subsection, whenever milk, which is or becomes the subject of a contract for sale and purchase, becomes or is vested milk on and from an appointed day fixed by public notice, the contract shall be null and void for the period during which the public notice remains operative.

(b) Notwithstanding any provision of the contract to the contrary, it shall be construed and given effect as if it contained provisions—

- (i) that failure to make or accept delivery of the vested milk during that period shall not be a ground for repudiation, or damages for breach, of the contract; and
- (ii) that at any time, other than during that period, each delivery shall be regarded as being required to be made and accepted under a separate contract.

(c) Subject to the provisions of this subsection nothing contained in this subsection shall prejudice the rights or liabilities of any party to the contract, if those rights or liabilities arise under the contract at any time other than during that period.

(d) Any transaction or agreement with respect to milk which is the subject-matter of any contract or part of a contract declared by this section to be void to any extent shall also be void and of no effect to a corresponding extent, and any money paid in respect of any agreement or part of an agreement hereby made void or of any such transaction, shall, to the extent to which the contract or transaction is made void, be repaid, and the provisions of paragraph (b) of this subsection shall, with appropriate adaptations, apply in respect of the agreement or transaction.

(13) (a) Subject to the provisions of this subsection no proceedings shall be brought against the Board or any person acting under its authority by any person claiming to be entitled to any interest in any vested milk.

Remedy
against Board
confined to
claim for
account.

(b) Subject to the provisions of this subsection, any person who, but for those provisions would be entitled to bring any such proceedings as are referred to in the last preceding paragraph, may adopt the delivery of vested milk to the Board as a delivery thereof by him to the Board, and may claim accordingly for an account of the payments due in respect thereof, and recover the amount found due in any court of competent jurisdiction as a debt to him by the Board.

(c) Notwithstanding the provisions of any other Act or any rule of law to the contrary, any such person as is referred to in the last preceding paragraph shall not be entitled—

- (i) so to claim an account, until he has given prior notice in writing to the Board, in the form and containing the particulars and of the duration prescribed, of the interest he claims in respect of the vested milk;
- (ii) to recover any part of the amount found due on the taking of the account, which has already been paid to other persons at the time of the receipt by the Board of the notice.

Notification
of encum-
brances to
Board.

(14) (a) Every dairyman, who produces vested milk, which is affected by an encumbrance at the appointed day, or becomes so affected after the appointed day, as the case may be, shall so soon as conveniently may be and within forty-eight hours of the appointed day, or that on which the vested milk becomes so affected thereafter, as the case may be, give to the Board a notice in writing, in the form and containing particulars prescribed, of the encumbrance.

(b) Any person, who knowingly fails to comply with the provisions of this subsection, is guilty of an offence against this Act.

Non-liability
of Board for
payments in
good faith,
etc.

(15) (a) Where the Board in good faith and without negligence has made any payment—

- (i) to a dairyman in respect of any interest claimed by him in any vested milk delivered by him to the Board or any person acting under its authority; or
- (ii) to any person entitled or claiming to be entitled through the dairyman in respect of that interest or any part of it; or
- (iii) to any person on the order of that dairyman or lastmentioned person in respect of that interest or any part of it,

the Board shall not be answerable to any other person in respect of the payment, or in any action, suit, claim, or demand whatsoever for damages or otherwise in respect of that interest or any part of it.

(b) If prior to receiving notice of claim to payment for any interest in the vested milk, other than that made by the dairyman and referred to in the last preceding paragraph,—

Protection of Board.

the Board has in good faith and without negligence adjusted and settled with the dairyman, or any person entitled or claiming to be entitled through him or on his or that person's order, in respect of the claim made by him, or with any person who has made a claim in accordance with the provisions of paragraph (c) of subsection (13) of this section for the money payable thereunder,—

the Board shall not incur any liability to the true owner of that interest or any part thereof or to any party claiming through, under, or in trust for him:

Provided that the Board shall not be entitled to the protection of this subsection in respect of any moneys remaining in its hands at the time of receipt by it of notice of that other claim or thereafter coming to its hands in respect of the interest the subject matter of that other claim.

(c) This section shall not in any way prejudice or affect any rights between or among themselves of any parties claiming adversely to one another to be entitled to any interest in the vested milk the subject matter or part of the subject matter of any claim for payment.

(d) Subject to the provisions of paragraph (b) of this subsection the Board may plead those provisions in absolute bar of any proceedings by any such dairyman, transferee, or party as aforesaid in respect of such interest or any part thereof.

(16) No action, claim, or demand whatsoever shall lie, or be made or allowed by or in favour of any person whomsoever against His Majesty, or the Minister or (save as in this Act provided) the Board or any

Protection of Crown and its officers.

officer or person acting in the execution of the provisions of this Act for or in respect of any damage or loss or injury sustained or alleged to be sustained by reason of the passing of this Act or the publication of any public notice pursuant to the provisions of this section or of its operation, or of anything done or purporting to be done in good faith thereunder.

New s. 26B added.
Consent of Board to sale of acquisition of certain businesses.

26B. (1) No person, carrying on the business of dairyman, milk vendor or milk treatment under the authority of the appropriate license issued by the Board pursuant to the provisions of this Act shall dispose of the license without first having obtained the consent in writing of the Board.

Penalty—Fifty pounds.

(2) No person shall acquire any license referred to in the last preceding subsection without first having obtained the consent in writing of the Board.

Penalty—Fifty pounds.

(3) The Board, having regard to the objects of this Act, may grant or refuse its consent.

(4) (a) In any case where the Board refuses its consent under this section there shall be an appeal to the Minister within the prescribed time and manner.

(b) On the hearing of any such appeal the Minister may make such order as he thinks just.

Repeal of s. 33 (2).

11. Subsection (2) of section thirty-three of the principal Act is repealed.

Amendment of s. 41 (1).

12. Section forty-one of the principal Act is amended by—

- (a) deleting from subsection (1) all words after the word "Board" in line nineteen;
- (b) substituting for all words after the word "Act" in subsection (2) line four the words "and apply the balance in satisfaction of the payor's obligations under the provisions of the last preceding section."

13. Section fifty-three of the principal Act is amended by adding after the word "compensation" in paragraph (d) line six a paragraph as follows:—

Amendment
of s. 58.

(e) If the person making a claim for compensation has not contributed to the Compensation Fund in accordance with the provisions of this Act, during any year commencing on the first day of July, on which his cattle are tested pursuant to the provisions of section forty-four of this Act.

14. Section sixty of the principal Act is amended by substituting for subsection (1) the following:—

Amendment
of s. 60.

(1) For the purpose of providing moneys for the Compensation Fund—

(a) every licensed dairyman may contribute to the Compensation Fund at a rate to be prescribed by regulations, but not to exceed an amount equal to one-half of one penny per gallon for every gallon of milk sold by him;

(b) the Treasurer, out of moneys appropriated by Parliament for the purpose, shall contribute to the Compensation Fund an amount equal to the amount of the contributions made from time to time by the contributors pursuant to the provisions of the last preceding paragraph.

15. Section sixty-one of the principal Act is amended by substituting for paragraph (b) the following:—

Amendment
of s. 61.

(b) The period of twenty-one days for service of a claim for compensation in respect of—

(i) the destruction of diseased cattle, shall be computed from the day of destruction;

(ii) the restriction of the supply and delivery of milk, shall be computed from the day of service of notice imposing the restriction.