

DAIRY CATTLE INDUSTRY COMPENSATION.

9° Elizabeth II., No. XLVII.

No. 47 of 1960.

AN ACT to make provision for the Testing of Dairy Cattle and the Establishment of a Fund for the Payment of Compensation to the owners of Dairy Cattle in Certain Cases and for incidental and other purposes.

[Assented to 15th November, 1960.]

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

Short title.

1. This Act may be cited as the *Dairy Cattle Industry Compensation Act, 1960.*

**Commence-
ment.**

2. This Act shall come into operation on a day to be fixed by proclamation.

3. The arrangement of this Act is as follows:— Arrangement.

PART I.—PRELIMINARY.

PART II.—INSPECTION AND TESTING OF DAIRY
CATTLE AND DAIRY CATTLE COMPENSA-
TION.

PART III.—DAIRY CATTLE COMPENSATION
FUND AND STAMP DUTIES.

PART IV.—MISCELLANEOUS.

PART I.—PRELIMINARY.

4. This Act shall be read and construed so as not to exceed the legislative power of the State, the intention being that, where any enactment in this Act would, but for this section, be construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power. Construc-
tion.

5. In this Act unless the context requires other- Interpreta-
tion.
wise—

“animal” means a head of dairy cattle;

“butter fat” means the pure fat of milk;

“Chief Inspector” means the person for the time being holding the office of Chief Inspector of Stock under the Stock Diseases Act, 1895;

“Commissioner” means the person for the time being holding the office of Commissioner of Stamps under the Stamp Act, 1921;

“dairy cattle” means any bull, cow, ox, steer, heifer or calf kept for dairying purposes;

“Department” means the State Government Department known as the Department of Agriculture;

“Director” means the person for the time being holding the office of Director of Agriculture in the Department;

“disease”, in relation to dairy cattle, means tuberculosis or actinomycosis and any other disease of cattle which the Governor by

proclamation declares to be a disease for the purposes of this Act; and "diseased" has a corresponding meaning;

"Fund" means The Dairy Cattle Industry (Butter Fat) Compensation Fund established under this Act;

"inspector" means an inspector of stock appointed under the Stock Diseases Act, 1895;

"owner" includes the authorised agent of the owner;

"veterinary surgeon" means a person duly registered as such under the Veterinary Act, 1911.

Administra-
tion.

6. Subject to the direction and control of the Minister, the Department shall administer this Act except Part III thereof.

Application
of Act.

7. This Act does not apply to an owner of dairy cattle who holds a dairyman's license under section thirty of the Milk Act, 1946.

PART II.—INSPECTION AND TESTING OF DAIRY CATTLE AND DAIRY CATTLE COMPENSATION.

Dairy cattle
to be
inspected
and tested
for disease.

8. (1) The owner of any dairy cattle shall when and as often as he is requested by the Chief Inspector so to do submit the dairy cattle to inspection by the Chief Inspector, an inspector, a veterinary officer of the Department or a veterinary surgeon nominated by the Chief Inspector.

Penalty: Fifty pounds.

(2) The Chief Inspector shall apply or cause to be applied such tests, bacteriological and biochemical investigations or examinations including a tuberculin test to each animal at such intervals as the Chief Inspector considers necessary for the purpose of preventing, controlling or effecting the elimination of disease from the dairy cattle.

(3) The person who applied the test, investigation and or examination as referred to in subsection (2) of this section shall as soon as practicable thereafter lodge with the Department a form as prescribed containing the particulars prescribed therein.

9. (1) When after a test, investigation and or examination as referred to in subsection (2) of section eight of this Act has been applied any animal is found to be suffering from disease or is suspected of so suffering, it shall be marked for the purposes of identification by the person who carried out the test, investigation or examination in such manner as the Chief Inspector directs and is hereby authorised to direct.

Diseased
cattle or
suspected
cattle to be
marked.

(2) The person who applied the test, investigation or examination shall as soon as practicable forward to the Chief Inspector a prescribed form showing the result of the test, investigation or examination and containing the particulars therein prescribed.

(3) The Chief Inspector or inspector may order any diseased dairy cattle or any dairy cattle suspected to be suffering from disease to be destroyed.

Power of
Chief
Inspector
or inspector
to order
destruction
of diseased
cattle.

10. (1) Subject to the provisions of this Act, compensation is payable under this Act—

Compensa-
tion payable
to owners
of cattle.

(a) to the owner of dairy cattle destroyed by or by order of the Chief Inspector or an inspector pursuant to this Act, because the dairy cattle are suffering from disease or are suspected to be so suffering; or

(b) to the owner of any dairy cattle destroyed with the consent of the Chief Inspector because the cattle are suffering from disease or are suspected to be so suffering.

(2) Where dairy cattle are to be destroyed by order of the Chief Inspector or an inspector or with the consent of the Chief Inspector as provided in subsection (1) of this section, the Chief Inspector or the inspector, as the case may be, may by written notice given to the owner of the animals require them to be destroyed at some abattoirs specified in the notice.

Determina-
tion of value.

(3) (a) The value of any dairy cattle so destroyed shall be determined by agreement between the owner of the cattle and the Chief Inspector or inspector by whom or under whose authority the cattle were destroyed; and in default of agreement some competent and impartial person nominated for the purpose by the Minister shall determine the value.

(b) The determination of that person is final and conclusive.

(4) Notwithstanding anything contained in this Act, no amount of compensation in excess of an amount recommended at least once annually by the Minister and approved by the Governor shall be payable in respect of the destruction of any animal.

Application
for compen-
sation.

11. (1) Compensation under this Act is not payable unless the owner of the dairy cattle so destroyed makes application for compensation to the Chief Inspector in the manner and containing the particulars prescribed and verified as prescribed.

(2) Compensation under this Act is not payable unless the application for it is made by the owner within thirty days after the destruction of the animal in respect of which the application is made, but where the application for compensation is made after the expiration of that period, the Minister may authorise the payment of the whole or portion of the compensation, if he is satisfied that reasonable grounds existed for the delay in making the application.

(3) Compensation under this Act is not payable—

(a) where the owner of any dairy cattle infected with disease or suspected by the owner of being so infected has failed to give the notice required to be given by section eleven of the Stock Diseases Act, 1895; or

- (b) unless the Chief Inspector is satisfied—
- (i) that all stamp duty (if any) payable under this Act in respect of all butter fat sold by the owner of dairy cattle who is claiming compensation has been duly paid in accordance with the provisions of this Act; and
 - (ii) that the owner has complied with this Act with respect to applications and claims for compensation; or
- (c) in respect of dairy cattle imported or introduced into the State, which are destroyed within ninety days of their arrival in the State because they are suffering from disease or are suspected of so suffering, unless the Chief Inspector is satisfied that the animals became diseased after their arrival in the State or unless the animals after being destroyed are found to be free from disease; or
- (d) if the person making the claim for compensation is convicted of an offence under section thirteen or twenty of this Act; or
- (e) in respect of dairy cattle destroyed by or under the Milk Act, 1946, or by or under any other Act except this Act and in respect of which provision is made for compensating the owner for loss or damage resulting from the destruction; or
- (f) in respect of diseased dairy cattle destroyed after test, investigation or examination unless the test, investigation or examination was authorised by the Chief Inspector.

12. Notwithstanding the provisions of any Act, where dairy cattle are affected only with a localised form of disease, an inspector, instead of forthwith destroying the cattle, or ordering them to be destroyed, in accordance with the requirements of any Act or the regulations thereunder, may require the owner to retain the cattle under such conditions as he thinks fit.

Disease of
localised
form in
cattle.

Buying or
selling
diseased
cattle in
order to
claim com-
pensation.

13. A person who buys or sells or who attempts to buy or sell dairy cattle knowing or having reasonable cause to suspect the cattle to be diseased and with the intention of making a claim or enabling any other person to make a claim for compensation under this Act in respect of the destruction of the cattle, commits an offence.

Penalty: Twenty-five pounds in respect of each animal so bought or so sold or in respect of which the attempt is made, as the case may be.

PART III.—DAIRY CATTLE COMPENSATION FUND
AND STAMP DUTIES.

Establish-
ment of
Dairy Cattle
Compensa-
tion Fund.

14. (1) (a) For the purposes of administering this Act and paying compensation in accordance with the provisions of this Act, there shall be established and kept in the Treasury an account to be called The Dairy Cattle Industry (Butter Fat) Compensation Fund.

(b) The Director shall control the Fund and the Fund may be operated upon for the purposes in such manner as from time to time the Treasurer approves and is hereby authorised to approve.

(c) The Director shall keep such records relating to operations on the Fund, in such manner as the Treasurer approves and is hereby authorised to approve.

(2) The Director shall pay or cause to be paid to the Fund—

(a) all sums of money received by or for the Commissioner in respect of stamp duty on statements under this Act which sums the Treasurer is authorised to pay to the Fund;

(b) all moneys received from the Treasurer under the provisions of section sixteen of this Act;

- (c) all moneys received for the residual value of any animal destroyed pursuant to this Act, which moneys by force of this Act are appropriated to and form part of the Fund;
- (d) moneys advanced to the Fund by the Treasurer under the authority of subsection (4) of this section;
- (e) the amount of all penalties recovered under this Act in respect of offences against this Act; and
- (f) any other payments made to the Director under this Act for payment to the Fund.

(3) Subject to this Act, the Fund shall be applied for the purposes of administering this Act and to the payment pursuant to this Act of claims for compensation.

(4) (a) Where the Treasurer is of opinion that the moneys recorded as standing to the credit of the Fund are for the time being insufficient for the purposes of this Act, the Treasurer with the approval of the Governor, who is hereby authorised to grant the approval, may from time to time advance to the Fund from the Public Account advances of such amounts sufficient for the time being to make up the deficiency.

(b) The amount of each such advance shall be subsequently repaid to the Treasurer from the Fund by the Director when moneys are available to the Fund to make the repayment and each amount when so repaid shall be paid by the Treasurer into the Public Account.

(c) Moneys so advanced by the Treasurer are whilst they remain unpaid a charge on the Fund.

(5) Any moneys recorded as standing to the credit of the Fund may, until required for the purposes of this Act, be temporarily invested at the request of the Director by the Treasurer in any securities approved by the Treasurer and the Director shall cause all interest derived from the investment to be paid to the credit of the Fund.

Contribution
by Treasurer
to Fund.

15. The Treasurer, out of moneys appropriated by Parliament for the purpose, shall contribute to the Fund an amount equal to the amount of the stamp duty received by or for the Commissioner in respect of stamp duty on statements under this Act.

Amount of
duty.

16. There shall be charged for the use of Her Majesty upon any instrument specified under the heading "STATEMENTS ON SALES OF BUTTER FAT" of The Second Schedule to the Stamp Act, 1921, the duty specified under that heading.

Statements
to be made
out on sale
of butter
fat and
stamps
affixed.

17. (1) The manager of every dairy produce factory registered under the Dairy Industry Act, 1922, shall upon the sale of any butter fat to or through him that is produced from dairy cattle and so sold by or on account of the owner of the dairy cattle and paid for in accordance with the provisions of that Act, whether payment of the purchase money is or is not made in full at the time of the sale or is to be made by instalments or is otherwise deferred—

- (a) write out or cause to be written out a statement setting forth the amount of butter fat so sold, the amount of the purchase money in respect thereof, and the date of the sale;
- (b) affix, as agent for the vendor, to the statement butter fat duty stamps to the amount of duty payable under this Act and cancel the stamps; and
- (c) send the statement to the vendor within fourteen days after the end of each month in which any such sale was made.

(2) The amount of the stamp duty payable by the vendor in respect of the sale and affixed to the statement by the manager as his agent may be deducted by the manager from the amount of the purchase price payable to the vendor.

(3) Any manager who contravenes or fails to comply with any of the provisions of this section commits an offence.

Penalty: Fifty pounds.

(4) In this Part the expression "manager" has the same meaning as that expression has in the Dairy Industry Act, 1922.

18. (1) The stamp duties on the statements referred to in section seventeen of this Act shall be denoted by adhesive stamps (in this Part called "butter fat duty stamps") issued by the Commissioner.

Butter fat
duty stamps
issued by
Commis-
sioner of
Stamps.

(2) No statement required to be stamped under this Act shall be regarded or taken to be duly or properly stamped with an adhesive stamp to denote the payment of any duty under this Act unless the words "butter fat stamp duty" are printed on and form part of the stamp.

19. Without prejudice to any other method of recovery, the amount of any unpaid stamp duty payable under this Act may be recovered by action by the Commissioner in any court of competent jurisdiction.

Recovery of
stamp duty.

20. (1) Without affecting the operation of section twenty-one of this Act, every person who practises or is concerned in any fraudulent act, contrivance or device with intent to defraud Her Majesty of any stamp duty payable under this Act commits an offence.

Penalty.

Penalty: One hundred pounds or imprisonment for six months or both the fine and the imprisonment.

(2) All offences under this section shall be tried and determined by a stipendiary magistrate.

21. Subject to this Act, the provisions of the Stamp Act, 1921, and any regulations made under that Act shall, with such adaptations as are necessary, extend and apply with respect to butter fat duty stamps.

Application
of Stamp
Act, 1921.

PART IV.—MISCELLANEOUS.

Offence of
obstructing
or hindering
officers.

22. A person shall not in any way obstruct, hinder or interfere with or attempt to obstruct, hinder or interfere with the Chief Inspector, inspector, veterinary officer of the Department, veterinary surgeon or officer of the Department, in the exercise of any of his powers or functions or the performance of any of his duties under this Act.

Penalty: Fifty pounds.

Prima facie
evidence
and judicial
notice of
certain
matters.

23. (1) Subject to subsection (3) of this section, in all questions arising under this Act a certificate or a notice under the hand of an inspector is *prima facie* evidence of the truth of the matter contained therein.

(2) Courts, judges and other persons acting judicially shall take judicial notice of the appointment and signature of the inspector.

(3) Where a question arises as to whether any particular cattle are or are not dairy cattle, the Chief Inspector shall determine the question and his determination is final and conclusive.

General
penalties.

24. (1) A person who—

- (a) does that which by or under this Act he is forbidden to do; or
- (b) does not do that which by or under this Act he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act,

is guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act is liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence, or, if a penalty or punishment is not so mentioned, to a penalty not exceeding fifty pounds.

25. The Governor may make regulations—

- (a) prescribing the manner of making and dealing with and the verification of applications for compensation;
- (b) prescribing the form of any certificate to be issued by the Chief Inspector or any inspector or other person in respect of the destruction of any diseased dairy cattle or any dairy cattle suspected of suffering from disease, and the particulars to be set forth in any such certificate;
- (c) prescribing for the retention under this Act of dairy cattle by their owner, where the cattle are affected with a localised form of disease only and the conditions of the retention;
- (d) safeguarding the Fund from claims for compensation in respect of dairy cattle where they are diseased or suspected of being diseased when introduced or being introduced into the State whether by land, sea or air, and generally preventing fraudulent or dishonest claims for compensation;
- (e) prescribing all matters and things necessary or convenient to be prescribed with respect to the Fund and the administration thereof;
- (f) prescribing forms for the purposes of this Act;
- (g) prescribing penalties not exceeding fifty pounds in any case for any contravention of or failure to comply with the regulations; and
- (h) generally in relation to all matters and things which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to or carrying out this Act, and safeguarding against evasions and breaches of this Act.