

DAIRY PRODUCTS MARKETING REGULATION.

1° EDWD. VIII., No. XL.

No. 40 of 1936.

AN ACT to amend the Dairy Products Marketing
Regulation Act, 1934.

[Assented to 11th December, 1936.]

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 *Dairy Products Marketing Regulation Amendment Act, 1936*, and shall be read as one with the Dairy Products Marketing Regulation Act, 1934 (No. 34 of 1934), hereinafter referred to as the principal Act. Short title.

2. Section seven of the principal Act is amended, as follows:— Amendment
of s. 7.

(a) by adding a further definition after definition of "Butter fat":—

"Co-operative company" means a company registered as such under the provisions of the Companies Act Amendment Act, 1929;

(b) by adding at the end of the definition of "Dairy products" the words "and also such other products manufactured from milk (not being 'milk' within the meaning of that term as defined in and for the purposes of the Metropolitan Milk Act, 1932-1935) as the Governor may from time to time on the recommendation of the Board by regulation declare to be dairy products under and for the purposes of this Act;

(c) by adding to the definition of "Dealer" a paragraph, as follows:—

The term includes a person residing in this State and carrying on business in this State as a dealer merely as the servant, agent, or representative of another person carrying on business at a principal place of business situated elsewhere than within this State; and such servant, agent, or representative whilst carrying on such business as aforesaid shall be subject to the provisions of this Act in the same manner and to the same extent as if he were carrying on such business for his own benefit;

(d) by inserting after the definition of "Manufacturer" a new definition, as follows:—

"Margarine" includes any solid or semi-solid substance made from animal or vegetable fats or oils, or any combination thereof, the fatty contents of which are not derived exclusively from milk, and which is used or capable of being used as a substitute for butter. The term does not include dripping or lard;

(e) by deleting from the definition of "Milled butter" all the words after the words "and packed" in line five of the said definition;

(f) by inserting after the definition of "Minister" new definitions, as follow:—

"Packer" means any person who, whether as owner or occupier, carries on business in a packing place;

"Packing place" means any building, structure, or other place whatsoever in which bulk butter is packed or wrapped in containers or

wrappers prior to distribution for sale by persons, whether such building, structure or other place is or is not used for any other purpose;

(g) by inserting in the definition of "Producer" after the word "manufacture" in the last line of the definition the words "at a dairy products factory";

(h) by inserting after the definition of "Producer" a new definition, as follows:—

"Renovated butter" means the product obtained by re-treating butter without the addition of any substance except milk, buttermilk, cream, water or salt, or any other substance permitted under the Health Act, 1911-1933;

(i) by deleting the whole of the definition of "Storage place" and inserting in lieu thereof a new definition, as follows:—

"Storage place" means a building or place where dairy products are stored by or for a manufacturer or by or for a dealer pending export or sale or resale thereof within the State for stabilisation purposes under and in accordance with the provisions of this Act and the regulations, and for the purpose of deriving benefit from the Dairy Products Stabilisation Fund in respect of the dairy products so stored.

3. Section eight of the principal Act is amended, as follows:—

Amendment
of s. 8.

(a) by striking out the word "six" in line one of subsection (2) and substituting the word "seven".

(b) by deleting paragraph (c) of subsection (3) and inserting in lieu thereof a paragraph, as follows:—

(c) One shall be nominated by co-operative companies licensed under this Act as manufacturers, and one shall be nominated conjointly by other companies and persons licensed under this Act as manufacturers, provided that no company or person shall be eligible to make a nomination unless such company or person produces at least fifty-two tons of dairy products per annum;

- (c) by inserting after the word "be" in line one of paragraph (d) of subsection (3) the word "producers."

Amendment of
s. 9.

4. Section nine of the principal Act is amended as follows:—

- (a) by deleting the word "three" in line five and inserting in lieu thereof the word "two";
- (b) by adding to the section a further proviso as follows:—

Provided further that, as from and after the commencement of this proviso, the members appointed from time to time by the Governor as the representatives of the producers shall retire from office in rotation, and that for the purpose of commencing such rotation the following provisions shall apply in relation to the said members appointed by the Governor next following the commencement of this proviso, that is to say:—

- (a) where such two members were nominated after an election under the regulations held for the purpose of such nomination, the member who received the smaller number of votes at the election shall retire first and shall so retire at the end of the year next following the date of his appointment, and the other member shall hold office for two years next following the date of his appointment;
- (b) where such two members were nominated without the necessity of an election to ascertain such nomination, or were nominated after an election and at such election both received the same number of votes, then in either of such cases the one of such members to retire first shall be determined by lot between them, and the member then to retire first shall do so at the end of the year next following his appointment, and the other member shall hold office for two years after the date of his appointment;

(c) after the rotation has been commenced in the manner provided for in paragraphs (a) and (b) hereof one member shall be nominated and appointed by the Governor as one of the representatives of the producers in each and every year and shall hold office for two years from the date of his appointment.

5. Section twenty of the principal Act is hereby amended by adding a further proviso to subsection (1), as follows:—

Amendment of s. 20.

Provided further, the Board may refuse to grant a license to manufacture dairy products if it considers that the establishment of additional factories is not in the best interests of the industry.

Board may refuse to grant license to manufacture dairy products.

6. A section is inserted in the principal Act after section twenty-one, as follows:—

New section.

21A (1.) No packer shall use or occupy any packing place as a packing place for dairy products unless and until such packing place is licensed under this Act.

Packing places to be licensed.

Penalty: Fifty pounds and, in addition, a daily penalty of two pounds for every day or part of a day on which the packing place is used or occupied in contravention of this section.

(2.) Application for a license for a packing place shall be made to the Board in the prescribed form and shall be accompanied by the prescribed license fee; and the applicant shall also furnish such particulars as are prescribed or as the Board may require.

(3.) No license for a packing place shall be granted under this Act unless and until it conforms in all respects with the conditions prescribed by the regulations.

7. Section twenty-four of the principal Act is amended by inserting in subsection (2) after the word "products" in line four the words "or using or occupying a packing place for the packing of dairy products."

Amendment of s. 24.

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Amendment
of s. 25.

8. Section twenty-five of the principal Act is amended, as follows:—

- (a) by inserting in subsection (2) after the word “place” in line two the words “or the license for a packing place”;
- (b) by inserting in subsection (2) after the word “place” in line four the words “or the packing place.”

Amendment
of s. 26.

9. Section twenty-six of the principal Act is amended—

- (a) by inserting in subsection (1) after the word “place” in line one the words “or for a packing place”;
- (b) by adding at the end of subsection (1) the words “or of the licensed packing place”;
- (c) by inserting in subsection (2) after the word “place” in line two the words “or of a packing place”;
- (d) by inserting in subsection (3) after the word “place” in line one the words “or for a packing place.”

Amendment
of s. 27.

10. Section twenty-seven of the principal Act is amended by inserting in subsection (1) after the word “place” in line five the words “or any packing place.”

Amendment
of s. 29.

11. Section twenty-nine of the principal Act is amended by adding thereto a subsection, as follows:—

(5.) The Governor may from time to time by Order in Council declare that the provisions of this section shall not apply to manufacturers or dealers manufacturing or dealing in any particular kind of dairy product specified in the Order in Council, and while such Order in Council remains in force persons manufacturing or dealing in the particular kind of dairy product specified in the Order in Council shall be exempt from the provisions of this section:

Provided that, where a manufacturer or dealer is manufacturing or dealing in the kind of dairy product specified in the said Order in Council and also is manufacturing or dealing in another kind of dairy

product not specified in such Order in Council, such manufacturer or dealer shall be exempt from the provisions of this section only in respect of that part of his business which consists of manufacturing or dealing in the kind of dairy product specified in the said Order in Council, and shall still remain subject to the provisions of this section in respect of that part of his business which consists of manufacturing or dealing in the other kind of dairy product not specified in the said Order in Council.

12. Section thirty of the principal Act is amended by adding thereto a subsection, as follows:—

*Amendment
of s. 30.*

(3.) The Governor may from time to time by Order in Council declare that the provisions of this section shall not apply to manufacturers or dealers manufacturing or dealing in any particular kind of dairy product specified in the Order in Council, and while such Order in Council remains in force persons manufacturing or dealing in the particular kind of dairy product specified in the Order in Council shall be exempt from the provisions of this section:

Provided that, where a manufacturer or dealer is manufacturing or dealing in the kind of dairy product specified in the said Order in Council and also is manufacturing or dealing in another kind of dairy product not specified in such Order in Council, such manufacturer or dealer shall be exempt from the provisions of this section only in respect of that part of his business which consists of manufacturing or dealing in the kind of dairy product specified in the said Order in Council, and shall still remain subject to the provisions of this section in respect of that part of his business which consists of manufacturing or dealing in the other kind of dairy product not specified in the said Order in Council.

13. Section thirty-two of the principal Act is amended, as follows:—

*Amendment
of s. 32.*

(a) by inserting in paragraph (1) after subparagraph (b) a new subparagraph, as follows:—

(b1) the packing of dairy products in packing places;

(b) by deleting paragraph (5) and inserting in lieu thereof a new paragraph, as follows:—

(5) Subject to any other Act, the regulation and organisation, with a view to cheapening the cost, of transport of milk and cream for use in the manufacture of dairy products from the premises of the producer to the dairy products factory.

Amendment
of s. 34.

14. Section thirty-four of the principal Act is amended by deleting from subsection (1) all the words after the word "Minister" in line seven to the end of the subsection, and inserting in lieu thereof the words "by public notice cancels the prior notice by which the quota was promulgated."

Amendment
of s. 35.

15. Section thirty-five of the principal Act is repealed and a new section is inserted in lieu thereof, as follows:—

Certain sales
prohibited.
cf. N.S.W., No.
17 of 1933,
s. 7; Vict.,
No. 4204; 24
Geo. V., s. 8;
Qld., No. 14 of
1933, s. 10.

35. (1.) Subject to subsection (2) of this section, no manufacturer or dealer shall, whilst a quota promulgated under section thirty-four of this Act remains in force, sell in the course of intra-State trade or commerce within the State of Western Australia dairy products manufactured by such manufacturer or held by such dealer in excess of such quota.

Penalty: Five hundred pounds.

(2.) A manufacturer or dealer may sell dairy products as aforesaid in excess of the quota upon and subject to the following conditions, namely—

(a) He shall first make application to and obtain from the Board a permit to sell dairy products in excess of the quota.

(b) If so required by the Board as a consideration for the granting of the permit, he shall pay to the Board for the credit of the Dairy Products Stabilisation Fund in respect of the dairy product sold under the authority of the permit, an amount, to be determined and as determined by the Board but not to exceed a sum calculated in respect of the dairy product sold as aforesaid on the basis of the

amount of the difference between the export parity price of the dairy product on the day of the sale and the market price thereof ruling in Western Australia on the same day as declared by the Board.

- (c) Application for a permit under this subsection shall be in writing in the prescribed form signed by the applicant, and shall contain such particulars as may be prescribed or are required by the Board.
- (d) Permits granted by the Board under this subsection shall be in writing in the prescribed form, and be signed by the chairman of the Board or any authorised officer or member of the Board.
- (e) The Board may grant or refuse a permit under this subsection at its discretion; and a refusal to grant a permit shall be final and conclusive.

16. Section thirty-six of the principal Act is repealed and a new section is inserted in lieu thereof, as follows:—

Amendment
of s. 36.

36. (1.) The Board may from time to time determine in connection with and for the purposes of the application of moneys in the Dairy Products Stabilisation Fund the quantities, classes or qualities of any dairy products which—

Dairy products intended
for storage
and export.

- (a) may be stored by any manufacturer pending sale or export by him; and
- (b) may be sold by any manufacturer to dealers for storage pending sale or export by such dealers; and
- (c) may be stored by any dealer pending sale or export by him:

Provided that, when in respect of any dairy product a quota has been determined under section thirty-four of this Act and is in force, any quantity determined by the Board under this subsection in respect of such dairy product while such quota remains in force shall be a quantity in excess of such quota.

(2.) No manufacturer or dealer shall withdraw from storage any portion of any dairy product stored by him under this section without first obtaining from the Board a permit so to do.

Penalty: One hundred pounds.

(3.) When a quota has been determined under section thirty-four of this Act and is in force, nothing in this section shall operate so as to prevent a manufacturer or dealer with the permission of the Board and in accordance with regulations storing in a storage place, instead of selling within Western Australia, dairy products within the said quota as well as dairy products in excess of such quota as authorised by subsection (1) of this section.

(4.) Where dairy products within the quota are stored in a storage place with the permission of the Board under subsection (3) hereof, then subject to this Act and the regulations the manufacturer or dealer so storing the same shall be eligible for benefit from the Dairy Products Stabilisation Fund in respect of such dairy products.

(5.) Where any manufacturer or dealer desires to withdraw from storage any portion of any dairy product stored by him under and for the purpose of this section, whether such dairy product so stored is within the quota or in excess of the quota (if any) in force when such dairy product was placed in storage, or whether such dairy product was placed in storage when there was not any quota in force in relation thereto, he shall first make application to and obtain from the Board a permit so to do. The application shall be in writing in the prescribed form, signed by the applicant, and shall contain such particulars as may be prescribed or as may be required by the Board, including *inter alia* the following particulars:—

- (a) the purpose for which the dairy product is proposed to be withdrawn;
- (b) if the dairy product is being withdrawn for the purpose of sale within Western Australia, the names and addresses of the intended purchasers of the dairy product to be withdrawn, the quan-

tity proposed to be sold to such purchasers respectively, and the purchase price to be paid by such purchasers respectively.

(6.) The Board may grant or refuse any application for permit made under subsection (5) hereof, or may grant a permit with such modifications or subject to any conditions whatever which the Board may think fit to impose, including *inter alia* conditions relating to—

- (a) the quantity of dairy product which may be sold to any proposed purchaser named in the application for the permit;
- (b) the quantity which the applicant must sell to any other known purchaser not named in such application but desirous of purchasing from the applicant a portion of the dairy product to be withdrawn by the applicant; and
- (c) the purchase price which the applicant may charge against the purchasers of any portion of the dairy product to be withdrawn by the applicant.

(7.) Any refusal by the Board to grant a permit and any condition to the granting of a permit imposed by the Board as provided for in subsection (6) hereof shall be final and conclusive and be binding upon the applicant.

(8.) Every permit granted by the Board under subsection (6) hereof for the purposes of subsection (2) hereof shall be in writing in the prescribed form and be signed by the chairman of the Board.

(9.) If any applicant to whom a permit has been granted by the Board under subsection (6) hereof subject to any condition knowingly fails in any respect duly to observe, perform, or comply with such condition he shall be guilty of an offence against this Act.

Penalty: One hundred pounds.

(10.) If any person who has made application under subsection (6) hereof for a permit to withdraw a portion of his dairy product from storage as required by subsection (2) hereof subsequently withdraws such application, or refuses to accept the permit granted pursuant to such application by reason of any condition imposed by

the Board in relation to the granting of such permit, and when requested by the Board so to do refuses within a time specified by the Board to accept the permit granted and to withdraw from storage the quantity of dairy product specified in the permit and to dispose of the same in accordance with the conditions imposed by the Board in relation to and upon the granting of the permit, the Board may demand from such person repayment forthwith in full without any deduction whatsoever, whether specified as an allowable deduction under section forty-one of this Act or not, to the Board of all moneys previously paid by the Board to such person out of the Dairy Products Stabilisation Fund either as a loan, advance, compensation, premium, or otherwise howsoever in respect of the quantity of the dairy product specified in the said permit under section forty-one of this Act.

(11.) When a demand for repayment is made upon any person under subsection (10) hereof, the amount of repayment demanded shall be a debt owing by the person upon whom the demand is made to the Board, and shall be recoverable from such person at the suit of the Board in any court of competent jurisdiction: Provided that, when the amount demanded has been paid to or recovered by the Board in full, the portion of the dairy product mentioned in the permit, acceptance of which was refused as aforesaid, shall be delivered by the Board to the applicant for such permit or his nominee on demand free of all conditions.

Amendment
of s. 37.

17. Section thirty-seven of the principal Act is amended by adding thereto a subsection, as follows:—

(2.) The Board may by public notice or other notice in writing require all packers or any packer to furnish to the Board within a time specified by such notice returns of all dairy products packed by such packers or packer in their or his licensed packing place.

Amendment
of s. 38.

18. Section thirty-eight of the principal Act is amended by adding at the end thereof the words "or in respect of any dairy product which is by Order in Council declared to be excluded from the provisions of section thirty of this Act."

19. Section forty-one of the principal Act is amended, as follows:— Amendment
of s. 41.

(a) by deleting from subsection (2) subparagraph (iv) of paragraph (a) and inserting in lieu thereof a subparagraph (iv), as follows:—

(iv) the amount of any premium paid to the manufacturer or dealer under subsection (3) or subsection (3a) of this section;

(b) by deleting from subsection (2) subparagraph (c) of subparagraph (i) of paragraph (b) and inserting in lieu thereof a new subparagraph (c), as follows:—

(c) the amount of any premium paid to the manufacturer or dealer under subsection (3) or subsection (3a) of this section;

(c) by inserting after subsection (3) a new subsection, to stand as subsection (3a), as follows:—

(3a) The Board may, out of the moneys in the Dairy Products Stabilisation Fund, from time to time pay to manufacturers and dealers in respect of dairy products stored by them in a storage place in accordance with section thirty-six of this Act a premium in accordance with rates to be fixed from time to time by the Board, but not exceeding one-halfpenny per pound avoirdupois of such dairy products so stored as aforesaid.

20. Section forty-two of the principal Act is amended by adding thereto subsections as follow: Amendment of
s. 42.

(2.) The contributions to the Dairy Products Stabilisation Fund as and when received by the Board shall be paid to the credit of such fund in an account at a bank to be approved by the Minister and shall be applied in the manner and for the purposes authorised by this Act.

(3.) The Board may create reserve accounts in connection with its ordinary administration funds and the Dairy Products Stabilisation Fund of such amounts respectively as the Governor may from time to time approve, and may place to the credit of such reserve accounts out of the administration funds or out of the Dairy Products Stabilisation Fund (as the case may

be) any moneys from time to time not immediately required for the purposes for which the said funds respectively are created under this Act.

(4.) The Board may invest any money in any reserve account mentioned in subsection (3) hereof by way of fixed deposit with the bank in which the various funds of the Board are banked upon such terms as may be mutually arranged between the Board and the bank; and any interest or profit derived by the Board from such investment shall be paid to the credit of the ordinary administration fund or to the credit of the Dairy Products Stabilisation Fund according to the reserve account out of which the moneys have been invested.

(5.) Where by reason of moneys in the reserve account being invested as provided for in subsection (4) hereof, the moneys for the time being in the ordinary administration funds of the Board are not sufficient to meet the financial obligations of the Board, the Board may, as an alternative to obtaining advances from the Treasurer under section forty-three of this Act, with the approval of the Governor borrow from the bank, in which moneys from the reserve account are invested as aforesaid, by way of an overdraft on current account such amount as the bank may be willing to lend on the security of the said fixed deposit investment and as may be required by the Board; and any interest payable by the Board to the bank in respect of the money borrowed shall be paid, and the amount borrowed shall be repaid out of the ordinary administration fund of the Board or out of the reserve account created in connection therewith, as the Board may think fit.

(6.) Where by reason of moneys in the reserve account being invested as provided for in subsection (4) hereof or otherwise, the moneys for the time being in the Dairy Products Stabilisation Fund are not sufficient to enable the Board to make necessary payments out of such fund, the Board may, as an alternative to obtaining advances from the Treasurer under section forty-three of this Act with the approval of the Governor do either or both of the following things, namely:

- (a) make advances to the Dairy Products Stabilisation Fund out of the Board's ordinary administration funds or out of the reserve account (if any) created in connection therewith; or

- (b) borrow from the bank in which moneys from the reserve account created in connection with the Dairy Products Stabilisation Fund are invested as aforesaid, by way of overdraft on current account such amount as the bank may be willing to lend on the security of the said fixed deposit investment and as may be required by the Board for the purpose of the Dairy Products Stabilisation Fund:

Provided that any advances made out of the ordinary administration fund or out of the reserve account created in connection therewith as provided for in paragraph (a) above shall, as soon as moneys are available for the purpose, be repaid to the fund or the reserve account from which the advances were made out of the Dairy Products Stabilisation Fund or the reserve account created in connection therewith as the Board shall think fit; and any money borrowed from the bank as provided for in paragraph (b) above, together with any interest payable in respect thereof shall be repaid and paid respectively to the bank out of the Dairy Products Stabilisation Fund or the reserve account created in connection therewith as the Board shall think fit.

21. A section is inserted in the principal Act after section forty-two, as follows:—

Board may refund surplus money in Dairy Products Stabilisation Fund.

42A. The Board may, with the approval of the Governor and subject to regulations from time to time after the expiration of any financial year, distribute by way of refund any moneys or any portion of the moneys then in the Dairy Products Stabilisation Fund, excluding moneys then credited in any reserve account created in connection with such fund, which appear in the accounts of the Board as a surplus of moneys in the said fund to and among those persons who in the financial year then completed actually bore the expense incurred by the payment of contributions to the said fund during such financial year:

Provided that before any approval is granted by the Governor for any distribution under this section, the Board shall prepare and submit to the Governor a proposal in writing showing the amount to be distributed, the persons to participate in such distribution, and the amounts or proportions to be paid to such persons.

Amendment of
s. 43

22. Section forty-three of the principal Act is amended by adding thereto a subsection, as follows:—

(2.) If at any time the Treasurer is unable to make advances to the Board as provided for in subsection (1) of this section, and the Board is unable, by reason of not having any funds invested or for any other reason, to borrow from a bank by means of an overdraft on current account as provided for in section forty-two of this Act, and moneys for the time being in the Dairy Products Stabilisation Fund are not sufficient to enable the Board to make to any person willing to store dairy products for purposes of deriving benefit from the Dairy Products Stabilisation Fund in accordance with this Act, payments in accordance with this Act out of the said Fund, the Board may with the approval of the Governor do either or both of the following things, namely:—

- (a) Borrow such amount as may be required by the Board for such purpose from any bank, corporation, or person willing to lend the same on the security of the Dairy Products Stabilisation Fund upon such terms and conditions as may be mutually arranged between the Board and the lender; and in such case the repayment of the sum so borrowed, together with interest payable thereon shall be a charge upon the said Dairy Products Stabilisation Fund; or
- (b) By arrangement with any bank, corporation, or person willing to lend direct to the person willing to store dairy products as aforesaid, money up to the amount which the Board is willing and authorised by this Act to pay to such person out of the Dairy Products Stabilisation Fund to guarantee to such bank, corporation, or person on the security of the Dairy Products Stabilisation Fund repayment with interest thereon of such amount as such bank, corporation, or person may lend pursuant to such arrangement; and in such case any principal or interest which the Board may be required as guarantor aforesaid to repay to such bank, corporation, or person as lender aforesaid shall be a charge upon the Dairy Products Stabilisation Fund: Provided that if and when after the Board as guar-

antor aforesaid has made payment to any bank, corporation, or person as lender, any payment is recovered by the Board from the person to whom money was lent by such bank, corporation, or person, shall be placed to the credit of the Dairy Products Stabilisation Fund.

23. The principal Act as amended by this Act may be cited as the Dairy Products Marketing Regulation Act, 1934-1936.

Citation of
principal Act
as amended
by this Act.
