

DAIRY INDUSTRY.

No. 45 of 1980.

AN ACT to amend the Dairy Industry Act 1973-1979 and to repeal the Filled Milk Act 1959.

[Assented to 12 November 1980.]

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:—

1. (1) This Act may be cited as the *Dairy Industry Amendment Act 1980*. Short title.

(2) In this Act, the Dairy Industry Act 1973-1979 is referred to as the principal Act. Act No. 92 of 1973 as amended by No. 7 of 1979.

(3) The principal Act as amended by this Act may be cited as the Dairy Industry Act 1973-1980.

Commence-
ment.

2. This Act shall come into operation on the twenty-eighth day after the day on which it is assented to by the Governor.

Section 5
amended.

3. Section 5 of the principal Act is amended by deleting the definitions of "dairy area" and "district" and inserting, in their appropriate alphabetical positions, the following definitions—

" "dairy area" means any part of the State that is declared under section 22A (1) to be a dairy area;

"district" means any part of a dairy area that is declared under section 22A (1) to be a district;

"filled milk" means—

(a) any liquid or powder, however described, containing—

(i) the non-fat solids of milk;
and

(ii) any fat, other than butter fat; and

(b) any liquid or powder which is filled milk by virtue of conforming to any prescribed chemical or physical criteria for filled milk; "

Section 7
amended.

4. Section 7 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection—

" (1a) Without limiting the power of the Minister to make an order under subsection (1) (b) of this section in relation to filled milk, the Minister may on the recommendation of the Authority, by order published in the *Government*

Gazette, declare that section 93A does not apply to or in respect of any particular filled milk or filled milk of a class specified in the order. ”; and

- (b) in subsections (2), (3), (4) and (6) by inserting after “subsection (1)”, in each place where it occurs, the following—

“ or (1a) ” .

5. Section 22 of the principal Act is amended in subsection (2) by deleting paragraph (d). Section 22 amended.

6. After section 22 of the principal Act, the following section is inserted— Section 22A inserted.

“ 22A. (1) The Authority may from time to time by notice published in the *Government Gazette* under the hand of the Chairman declare— Authority may constitute dairy areas and districts.

(a) any specified part of the State to which this Act applies to be a dairy area; and

(b) any specified part of a dairy area to be a district,

and may in like manner amend or revoke a notice so published.

(2) For the purposes of subsection (1) an order in council under section 8 or 9 of the Milk Act 1946 which was in force, as amended by any instrument made under this Act, at the commencement of the Dairy Industry Amendment Act 1980 shall be deemed to be a notice published under subsection (1).

(3) A notice under subsection (1) relating to a dairy area or district may make reference to a plan or map on which the boundaries of the dairy area or district are delineated, and, if so, shall contain particulars of the place at which a copy of the plan or map is available for inspection under subsection 4 (b).

(4) A plan or map referred to in subsection (3) shall be available for inspection by any person free of charge during office hours—

(a) at the principal office of the Authority;
and

(b) at such other place within the dairy area or district to which the plan or map relates as is specified pursuant to subsection (3).

(5) In any proceedings, the validity of a plan or map referred to in subsection (3) is not affected by any error, misdescription or irregularity unless the person who asserts the error, misdescription or irregularity shows that he was misled thereby in a way which is material to the proceedings. ” .

Section 24
amended.

7. Section 24 of the principal Act is amended by deleting “The Authority” and substituting the following—

“ Except where section 55A applies, the Authority ” .

Section 48
amended.

8. Section 48 of the principal Act is amended in subsection (1) by deleting “Rural Economics and Marketing Section” and substituting the following—

“ Marketing and Economics Branch ” .

Section 52
amended.

9. Section 52 of the principal Act is amended—

(a) in subsection (1) by deleting the penalty provision at the foot of the subsection and substituting the following—

“ Penalty: \$400 and in the case of a continuing offence a further fine of \$25 for each day or part thereof on which the offence continues after conviction. ”;
and

- (b) by inserting after subsection (1) the following subsection—

“ (1a) The holder of a licence issued for the purpose of carrying on a business referred to in paragraph (b) of subsection (1) of this section shall not carry on any business mentioned in that paragraph otherwise than in accordance with such conditions as are attached to the licence under section 55A.

Penalty: \$200 and in the case of a continuing offence a further fine of \$10 for each day or part thereof on which the offence continues after conviction. ” .

10. After section 55 of the principal Act, the following section is inserted—

Section 55A
inserted.

“ 55A. (1) The Authority may, on the grant of a licence for the purpose of carrying on a business referred to in section 52 (1) (b), attach to the licence such conditions as it thinks fit, which conditions shall be endorsed upon or attached to the licence.

Conditions
may be
attached to
certain
licences.

(2) The Authority may at any time during the currency of a licence referred to in subsection (1) of this section, or upon a renewal thereof, by notice in writing given to the holder of the licence—

(a) attach to the licence such conditions as it thinks fit whether by adding any new condition or amending any existing condition;

(b) revoke any condition attached to a licence. ” .

11. Section 56 of the principal Act is amended by inserting after subsection (3) the following subsection—

Section 56
amended.

“ (3a) A licence which is suspended under section 58 or 58A may be renewed without

affecting the continuance of the suspension or of any authorization under section 58A (5). ” .

Section 58A
inserted.

12. After section 58 of the principal Act, the following section is inserted—

Suspension
of certain
licences
for breach
of a
condition.

“ 58A. (1) Where the holder of a licence issued for the purpose of carrying on a business referred to in paragraph (b) of section 52 (1) has carried on any business mentioned in that paragraph otherwise than in accordance with a condition attached to the licence under section 55A, the Authority may, subject to subsections (2) and (3) and in accordance with section 58 (3), suspend his licence for such period, not exceeding 3 months, as it thinks fit.

(2) The Authority shall before it suspends a licence under subsection (1) of this section notify the holder of the licence in writing of the default complained of, and give him an opportunity within a period specified in the notice, being not less than 7 days after the receipt thereof, to—

- (a) remedy the default and satisfy the Authority that he has taken all steps reasonably available to him to ensure that the default will not recur; and
- (b) make such representations concerning the default and the proposed suspension as he may wish to make.

(3) The Authority may suspend a licence under subsection (1) only where, after the expiration of the period referred to in subsection (2), the holder of the licence has failed to remedy the default or the Authority is not satisfied as mentioned in paragraph (a) of that subsection.

(4) The Authority may exercise the powers conferred by this section in respect of the breach of a condition, notwithstanding that the holder of the licence has not been convicted under subsection (1a) of section 52 for that breach; and the exercise of the said powers does not preclude the taking of proceedings and the imposition of any punishment under that subsection.

(5) Where the Authority has under this section suspended the operation of a licence, it may in writing authorize another person, for such period as it thinks fit, to sell or deliver milk or dairy produce as if he were the holder of the suspended licence; and a person so authorized shall for the purposes of this Act be deemed to be the holder of the licence according to the tenor of such authorization. ” .

13. Section 75 of the principal Act is amended by repealing subsection (2) and substituting the following subsection—

Section 75
amended.

“ (2) Any funds of the Authority not immediately required for the purposes of this Act may, with the approval of the Treasurer, be invested in any manner authorized by law for the investment of trust funds. ” .

14. Section 87 of the principal Act is amended, in subsection (1)—

Section 87
amended.

(a) in paragraph (a) (ii), by inserting after “sale of milk” the following—

“ , filled milk ”;

(b) in paragraph (b), by inserting after “carriage of milk” the following—

“ , filled milk ”;

- (c) in paragraph (c), by inserting—
 - (i) after “contains milk,” the following—
 - “ filled milk, ”; and
 - (ii) after “production of milk” the following—
 - “ , filled milk ”; and
- (d) in paragraph (d), by inserting after “any milk” and also after “production of milk” the following—
 - “ , filled milk ” .

Section 88
amended.

15. Section 88 of the principal Act is amended—
- (a) in subsection (1) (d), by inserting after “on any dairy” the following—
 - “ produce ”; and
 - (b) in subsection (3) (a) by inserting after “in which the dairy” the following—
 - “ produce ” .

Section 89
amended.

16. Section 89 of the principal Act is amended—
- (a) in subsection (1), by inserting after paragraph (b) the following paragraph—
 - “ (ba) any filled milk is being manufactured, packed or sold contrary to this Act; ”; and
 - (b) in subsection (2) by inserting after “any milk” the following—
 - “ , filled milk ” .

Section 90
amended.

17. Section 90 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“ (1) Upon the request of an inspector, every owner, manager or person in charge of dairy produce premises or of premises upon which

filled milk is found or of any conveyance upon or in which milk, filled milk or dairy produce is found, and every vendor or purchaser of milk, filled milk or dairy produce shall, as soon as is practicable after he is requested so to do by the inspector—

- (a) furnish to the inspector the name and address or a list of the names and addresses of the person or persons supplying milk, filled milk or dairy produce to him, so far as such information is known to him;
- (b) give to the inspector any personal assistance and information that he is capable of giving, to aid the inspector in determining the cause of any defect or deterioration in the milk or dairy produce, or any source of contamination, infection or disease to which stock, milk or dairy produce may be exposed. ” .

18. After section 93 of the principal Act, the following section is inserted—

Section 93A
inserted.

“ 93A. A person shall not manufacture, pack or sell filled milk.

Offence of
manufacturing etc.
filled milk.

Penalty: \$1 000 and in the case of a continuing offence a further fine of \$50 for each day or part thereof on which the offence continues after conviction. ” .

19. Section 97 of the principal Act is amended—

Section 97
amended.

(a) in subsection (1)—

- (i) in paragraph (e), by deleting the full stop and substituting a semi-colon; and
- (ii) by inserting, after paragraph (e), the following paragraph—
 - “ (f) compliance by the Authority with section 22A (4). ”;
 - and

- (b) in subsection (2) (a) by inserting after “any milk” the following—
 “ , filled milk ” .

Section 100
amended.

20. Section 100 of the principal Act is amended—

- (a) in paragraph (a), by inserting after “an order”, in both places where it occurs, the following—

“ or notice ”; and

- (b) in paragraph (b)—

- (i) in subparagraph (iii), by deleting the final comma and substituting a semi-colon; and

- (ii) by inserting, after subparagraph (iii), the following subparagraph—

“ (iv) that a plan or map referred to in the certificate is a plan or map delineating the boundaries of a dairy area or district for the purposes of section 22A (3), ” .

Section 101
amended.

21. Section 101 of the principal Act is amended in subsection (2)—

- (a) by inserting, after paragraph (a), the following paragraph—

“ (aa) the chemical and physical criteria by conforming to which a substance is filled milk for the purposes of the definition of that term in section 5, and the methods of examination or analysis to be used for determining whether a substance is filled milk; ”; and

(b) in paragraph (o), by inserting after “any milk” the following—

“ , filled milk ” .

22. The Filled Milk Act 1959 is repealed.

Repeal.
