

# MARGARINE.

4<sup>o</sup> GEO. VI., No. XXXVI.

No. 36 of 1940.

AN ACT to regulate the manufacture and sale of Margarine; to repeal the Butterine Act, 1887; to amend the Dairy Industry Act, 1922-1939, so as to provide that it shall not apply to Margarine, and for other purposes.

[Assented to 10th December, 1940.]

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 *Margarine Act*, 1940.

2. This Act is divided into Parts, as follows:—

PART I.—SS. 3 TO 6: PRELIMINARY.

PART II.—SS. 7 TO 13: ADMINISTRATION.

PART III.—SS. 14 TO 24: LICENSING OF MARGARINE MANUFACTURERS.

PART IV.—SS. 25 TO 32: REGULATION OF MANUFACTURE AND SALE OF MARGARINE.

PART V.—SS. 33 TO 38: MISCELLANEOUS.

Short title.  
S.A. No. 37  
of 1939, s. 1.

Act divided  
into Parts.

## PART I.—PRELIMINARY.

Construction  
of Act.  
*ibid* s. 3 (2).

3. This Act shall be construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that, if any provision hereof would, apart from 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.

Saving provisions.

4. Neither this Act, nor any provision of this Act, shall be deemed to repeal the Agricultural Products Act, 1929, or the Dairy Products Marketing Regulation Act, 1934-1937, or the Health Act, 1911-1937, or any provisions thereof respectively; but, where this Act or any provision of this Act is inconsistent with or repugnant to any of the said Acts, or to any of the provisions thereof respectively, this Act and its provisions shall prevail, and the other Acts aforesaid and the provisions thereof respectively shall be read and construed as subject to this Act.

Repeal of  
Butterine Act  
and amend-  
ment of  
Dairy Indus-  
try Act.

5. (1) The Butterine Act, 1887, is hereby repealed.

(2) The Dairy Industry Act, 1922-1939 (No. 37 of 1922 as reprinted in the Appendix to the Sessional Volume of the Statutes for the year 1936 and amended by the Act No. 27 of 1939) is amended as follows:—

- (a) The definition of "Dairy produce" in section two is amended by deleting the words "and also margarine" at the end of such definition.
- (b) The definition of "margarine" in section two is deleted from the said section.
- (c) The definition of "store" in section two is amended by deleting the words "or margarine" in line two of the said definition.
- (d) Section four is repealed and a section is inserted in lieu thereof as follows:—

Penalties 4.—Any person who uses any premises as a dairy produce factory, store, or depot shall, unless he proves that such premises are duly registered under this Act, or that he comes within the proviso to the last preceding section, be guilty of an offence.

Penalty—twenty pounds, and, in addition, a daily penalty of two pounds for every day or part of a day during which the offence is continued.

- (e) Section nine is amended by deleting from paragraph (c) thereof the words “or margarine” in line four of the said paragraph.
- (f) Sections seventeen, eighteen, nineteen, twenty, twenty-one, and twenty-two are all repealed.
- (g) Section twenty-five is amended by deleting paragraph (p) from such section.

6. In this Act, unless the context otherwise requires or some other meaning is clearly intended—

Interpreta-  
tion: S.A.  
No. 37 of  
1939, s. 3 (1).

“Australia” means the States of the Commonwealth of Australia, the Northern Territory, and the Federal Capital Territory.

“Butterfat” means the pure fat of milk.

“Cooking margarine” means margarine which contains beef fat or mutton fat or beef fat and mutton fat in a quantity of not less than ninety per centum by weight of the total quantity of fat and oil contained in such margarine and does not resemble butter in colour.

“Cooking margarine license” means a license to manufacture only cooking margarine issued under this Act and for the time being in force, and includes both an original license and a license issued by way of renewal of a prior license.

“Inspector” means a person who is by this Act declared to be an inspector under this Act or who is appointed as an inspector under this Act.

“Margarine” means any solid or semi-solid substance which—

- (a) is capable of being used as a substitute for butter, whether for cooking or for eating purposes, or for both cooking and eating purposes; and
- (b) is manufactured wholly or mainly from one or more fats or oils or a combination of one or more fats and oils;

but does not include dripping or lard or any single fat sold as fat.

“Package” means cask, keg, crate, box, case, wrapper, tin, and any other receptacle or covering.

“Place” includes any land, building, premises, ship, boat, barge or vehicle, whether owned by the Crown or any other person.

“To sell” includes to barter and to offer or agree to sell or barter, and all parts of the verb “to sell” shall have a corresponding meaning.

“Sale” includes barter and any offer or agreement to sell or to barter.

“Table margarine” means margarine which is not cooking margarine.

“Table margarine license” means a license to manufacture only table margarine issued under this Act and for the time being in force, and includes both an original license and a license issued by way of renewal of a prior license.

## PART II.—ADMINISTRATION.

Administra-  
tion of Act.  
*ibid.* s. 4.

7. This Act shall be administered by the Minister for Agriculture.

Inspectors  
and Analysts.  
*ibid.* s. 5.

8. (1) Every inspector under the Dairy Industry Act, 1922-1939, shall, by virtue of his office as such inspector, be an inspector under this Act.

(2) The Governor may appoint any other persons to be inspectors under this Act.

(3) The Governor, by notice in the *Government Gazette*—

(a) may declare that any person shall be an approved analyst for the purposes of this Act; and

(b) may, if he is of opinion that just cause exists for doing so, declare that any person who has been so declared to be an approved analyst, shall cease to be an approved analyst for the purposes of this Act.

9. Subject to this Act an inspector may—

- (a) exercise, in relation to premises in which margarine is manufactured, all the powers of an inspector of factories under the Factories and Shops Act, 1920-1937, and all the powers of an inspector under the Inspection of Machinery Act, 1921, other than such powers specified in the last-mentioned Act as relate to the registration and inspection of boilers;
- (b) at any reasonable time enter, for the purposes of this Act, any premises in which margarine, or any fats, oils, or other substances of any kind commonly used in the manufacture of margarine is or are manufactured, stored, packed, or sold, to ascertain whether or not the provisions of this Act and the regulations have been or are being complied with, and examine any scales, measures, or apparatus, and any churns, vats, or other utensils therein used in connection with the business carried on in such premises;
- (c) at any reasonable time enter and search any place in which margarine or any fats, oils, or other substances of any kind commonly used in the manufacture of margarine is or are manufactured, stored, packed or sold or are suspected by the inspector to be manufactured, stored, packed, or sold;
- (d) at any time and in any place detain and open any package which contains or which he has reasonable grounds to believe contains margarine, fats, oils, or other substances as mentioned in paragraph (c) hereof, and examine and take samples of such margarine, fats, oils, or other substances for the purpose of ascertaining the composition or condition thereof;
- (e) at any reasonable time enter any place in which there are, or in which he suspects there are, kept any accounts, books, or documents relating to margarine or to any fats, oils or other substances of any kind commonly used in the manufacture of margarine, and inspect, make copies of, or take extract from, any such accounts, books or documents;

Powers of inspectors.

*cf.* W.A. No. 37 of 1922, s. 8 (2); S.A. No. 37 of 1939, s. 6.

- (f) seize and retain, pending the decision of a court, any margarine which he has reason to believe does not comply with, or has been manufactured or packed in contravention of, this Act or the regulations, or in respect of which he has reason to believe an offence against this Act or the regulations has been committed;
- (g) exercise such other powers as are prescribed by the regulations.

Procedure in  
taking  
sample.  
*ibid.* s. 7.

10. When an inspector takes a sample of any substance for the purpose of having it analysed he shall—

- (a) divide the sample into three approximately equal parts;
- (b) place each such part in a separate package and seal or fasten each such package;
- (c) place on each such package a label stating, so far as known to him, the name of the occupier of the place where the sample was taken;
- (d) deliver one of the parts to the person in charge or apparently in charge of the said place;
- (e) retain one of the parts for future comparison; and
- (f) forward the other part for analysis by an approved analyst.

Inspector  
may order  
remedial  
measures,  
*cf.* W.A. No.  
37 of 1922,  
s. 10.

11. (1) Where, as the result of any examination by an inspector in the exercise of his powers under this Act, the inspector is of the opinion—

- (a) that any scales, measures, or apparatus are not up to standard or are incorrect, or are otherwise unfit for the purposes for which they are intended to be used; or
- (b) that any churns, vats, or other utensils used in connection with the manufacture of margarine are not fit for such use; or
- (c) that any place in which margarine or any fats, oils, or other substances of any kind commonly used in the manufacture of margarine, is or are manufactured, stored, or packed, is unfit for such purpose—

he may order—

- (i) such scales, measures, or apparatus to be replaced or corrected, or
- (ii) such churns, vats, or other utensils to be replaced or made fit for use for the purposes for which they are intended to be used; or
- (iii) such place to be made fit for such purposes to his satisfaction—

and it shall be the duty of the owner of the articles, or the owner or occupier of the place to which the order relates, to comply with such order.

(2) Any person who fails in his duty to comply with an order made by an inspector under this section shall be guilty of an offence.

Penalty: Fifty pounds, and also a daily penalty of two pounds for every day during which the offence shall continue, after a complaint of such offence has been made before a court of summary jurisdiction.

(3) If any person fails in his duty to comply with an order made by an inspector under this section, the inspector may cause the order to be complied with at the expense of such person, and in such event (notwithstanding the penal liability of such person under the preceding subsection) any court of summary jurisdiction, on complaint made by the inspector, shall order the payment by the person aforesaid of the amount incurred and any incidental expenses.

12. If any person prevents or attempts to prevent any inspector from exercising any power conferred upon him by or under this Act, or hinders or attempts to hinder any inspector whilst exercising any such power, he shall be guilty of an offence.

Hindering  
inspector an  
offence.  
*ibid.* s. 9.

Penalty: Fifty pounds.

13. (1) The Minister may by notice in writing require any person to furnish to him, to the best of the knowledge and ability of such person, and within a time specified in the notice, any information as to any margarine, or any fat, oil, or other substance of a kind commonly used in the manufacture of margarine which is or has at any time been in the possession, custody or control of that person.

Returns as to  
margarine.  
*ibid.* s. 10.

(2) If any person—

(a) fails to comply with any such notice in any particular; or

(b) wilfully furnishes in response to any such notice any information which is false or misleading  
he shall be guilty of an offence.

Penalty—One hundred pounds.

### PART III.—LICENSING OF MARGARINE MANUFACTURERS.

Duty to hold  
license to  
manufacture  
margarine.  
*ibid.* s. 11.

14. (1) No person shall manufacture margarine—

(a) unless he hold a license;

(b) on any premises other than the premises specified in a license held by him; or

(c) in contravention of any term or condition of a license held by him.

(2) Any person who in any respect contravenes this section shall be guilty of an offence.

Penalty—One hundred pounds and, in addition, where the offence is of a continuing nature, a daily penalty of twenty pounds for every day or part of a day on which the offence is continued.

Application  
for license.  
*ibid.* s. 12.

15. (1) Every application for a license shall be made to the Minister, in the prescribed form, and shall be accompanied by a statement of the type of margarine which it is proposed to manufacture, and of such other particulars as are prescribed.

(2) Subject as hereinafter provided, the Minister may grant or refuse any application for a license.

Provided that—

(i) the owner of any dairy produce factory which at the time of the commencement of this Act is registered under section three of the Dairy Industry Act, 1922-1939, shall, upon application duly made, be entitled to be granted a license in respect of that factory; and

(ii) where a license is applied for by way of renewal of a prior license which has not been cancelled, the Minister shall not refuse a license by way of renewal, unless the appli-



cant has been convicted of an offence against this Act committed during the period of operation of the prior license, or has contravened or failed to observe any term or condition of the prior license.

16. Subject to this Act, every license shall be applied for annually on or before the first day of January in each and every year, and shall have effect for one year.

Duration of license.  
*ibid.* s. 13.

Provided that, where a license is applied for within fifteen days after the first day of January, such license shall be deemed to have been applied for as from such first day of January, and where such license is applied for on a day more than fifteen days after the first day of January in any year, such license shall take effect as from the day when the license is actually granted, and shall continue in force until the thirtieth day of December next ensuing and no longer.

17. Every license shall be in the form fixed by the Minister and shall contain such terms and conditions (if any) as are prescribed.

Form and conditions of license.  
*ibid.* s. 14

18. (1) A license shall be either—  
 (a) a table margarine license; or  
 (b) a cooking margarine license.

Classes of licenses.

(2) Both a table margarine license and a cooking margarine license shall not be held in respect of the same premises.

19. Subject as hereinafter provided, for every license there shall be payable such annual fee, not exceeding five pounds, as is prescribed, and no license shall be issued until the fee payable has been paid therefor.

Fee for license.  
*ibid.* s. 15

Provided that, where application for a license is made after the thirty-first day of July in any year, one half only of the prescribed annual fee for the license shall be payable for the license issued pursuant to such application.

20. No license shall be granted in respect of any premises which are within one hundred yards of any dairy produce factory as defined in section two of the Dairy Industry Act, 1922-1939.

No license for premises near dairy produce factories.  
*ibid.* s. 16.

Change of premises.  
*ibid.* s. 17.

21. Where the holder of a license has acquired any margarine factory, either in addition to or in substitution for that margarine factory mentioned in his license, the Minister may, on the application of that holder, indorse a declaration on the license that it shall apply to the said factory, either in addition to or, as the case may be, in substitution for, the factory mentioned in the license; and upon such an indorsement being made, the license and all its terms and conditions shall apply accordingly.

Death of holder of license.  
*ibid.* s. 18.

22. If the holder of a license dies, his personal representatives, for the purposes of carrying out their duties as such—

- (a) shall, subject to this Act, be entitled to continue to manufacture margarine, under and in accordance with the license, until the expiration thereof, as if the license had been granted to them;
- (b) shall, subject to this Act, be entitled to renewals of the license from time to time;
- (c) shall be entitled to transfer the license and all their rights in respect thereof to any other person.

Transfer of license.  
*ibid.* s. 19.

23. (1) A license may, with the consent of the Minister, be transferred.

(2) The Minister shall not capriciously withhold his consent to the transfer of any license.

(3) No transfer of a license shall be valid unless and until the Minister has indorsed a memorandum thereof on the license.

Cancellation of license.

24. (1) The Minister may cancel any license held by any person who is guilty of an offence against section fourteen or section twenty-six of this Act.

(2) If a table margarine license is so cancelled the Minister may, subject to this Act—

- (a) grant a new table margarine license for the unexpired term of the cancelled license; or
- (b) vary the conditions of the current table margarine licenses by increasing proportionately

the respective maximum amounts specified therein.

**PART IV.—REGULATION OF THE MANUFACTURE AND SALE OF MARGARINE.**

25. (1) The Minister may—

- (a) by notice in the *Government Gazette* declare the maximum quantity of table margarine which holders of table margarine licenses, taken in the aggregate, may manufacture in any year commencing on the first day of January in that year: Provided that such maximum quantity of table margarine to be manufactured in any period of twelve months ending thirty-first day of December, otherwise than for export beyond the Commonwealth of Australia shall not exceed three hundred and sixty-four tons; and
- (b) fix the maximum quantity of table margarine which holders of table margarine licenses respectively may manufacture during the currency of their licenses.

Control of amount of table margarine to be manufactured.  
*ibid.* s. 20.

(2) The notice referred to in paragraph (a) of subsection (1) of this section shall be published in the *Government Gazette* not later than fourteen days before the commencement of the year to which it relates.

(3) The maximum quantity of table margarine which the holders of table margarine licenses respectively may manufacture during the currency of their licenses, when fixed by the Minister, shall be stated in the licenses issued to such holders.

(4) When the Minister has fixed the maximum quantity of table margarine which the holder of a table margarine license may manufacture during the currency of his license, the Minister may fix such maximum quantity in respect of the whole term of the license, or apportion the same over weekly, monthly, or quarterly periods within the currency of the license.

(5) If any person manufactures or sells any table margarine in excess of the maximum quantity as fixed for him by the Minister contrary to the provisions of this section, he shall be guilty of an offence.

Penalty: One hundred pounds.

Manufacture  
by cooking  
margarine  
licensees of  
certain type  
of margarine  
for sale, to  
prescribed  
classes of  
persons.

26. (1) Notwithstanding anything in this Act or in any license, any person who holds a cooking margarine license, may manufacture for sale only to any prescribed person or class of persons, in lumps of not less than fourteen pounds, margarine which contains beef fat or mutton fat or beef fat and mutton fat in a quantity of between seventy-five and ninety per centum by weight of the total quantity of fat and oil contained in such margarine.

(2) Any person who—

- (a) packs any such margarine so manufactured in lumps of less than fourteen pounds; or
- (b) sells any such margarine so manufactured—
  - (i) in lumps of less than fourteen pounds; or
  - (ii) otherwise than to any such prescribed person or any person being a member of any such prescribed class of persons—

shall be guilty of an offence.

Penalty: One hundred pounds and, in the case of a continuing offence, an additional penalty of twenty pounds for each day on which the offence is continued, after a conviction or order of any court in relation to the offence.

Margarine  
for export.  
*ibid.* s. 21.

27. (1) Notwithstanding any other provision of this Act, the Minister may grant a special permit to any person authorising him to manufacture for export beyond Australia such quantity of table margarine as is specified in the permit.

(2) Every such special permit—

- (a) shall contain such conditions as the Minister thinks proper to ensure that none of the margarine manufactured thereunder shall be sold or distributed within Australia, and also any other terms and conditions which are prescribed;
- (b) may be cancelled by the Minister upon breach of any condition thereof.

(3) Any person who contravenes any condition of any such special permit, whether by act or omission, shall be guilty of an offence.

Penalty: One hundred pounds.

28. (1) No person shall manufacture or sell or have in his possession for sale any margarine which contains any butter fat.

Margarine not to contain butter fat. *ibid.* s. 22.

Provided that it shall be permissible to manufacture, sell, or have in possession for sale, margarine containing butter fat derived from skim milk which contained not more than one-twentieth of one per centum of butter fat and was used as an emulsifying agent in the manufacture of the said margarine.

(2) Any person who contravenes this section shall be guilty of an offence.

Penalty: Fifty pounds.

29. (1) No person shall manufacture, sell, or have in his possession for sale any margarine, unless one-tenth of one per centum by weight of such margarine consists of dry starch or Queensland or other approved Australian arrowroot intimately mixed with the other constituents of the margarine.

Substances to be included in margarine. *ibid.* s. 23.

(2) Any person who contravenes this section shall be guilty of an offence.

Penalty: Fifty pounds.

30. (1) No person shall sell (otherwise than for export beyond the Commonwealth of Australia) any table margarine unless—

Packing and labelling of table margarine.

(a) such margarine is made up in cube form and in lumps of one pound or of half a pound weight; and

(b) such margarine is packed in a package on which is written or printed legibly and conspicuously—

(i) the words "table margarine"; and

(ii) the name and address of the manufacturer of the margarine.

(2) This section shall not apply to margarine manufactured pursuant to section twenty-six of this Act.

(3) Any person who in any respect contravenes any of the provisions of this section shall be guilty of an offence.

Penalty: Fifty pounds.

Labelling of  
cooking mar-  
garine.

31. (1) No person shall sell (otherwise than for export beyond the Commonwealth of Australia) any cooking margarine, or any margarine manufactured pursuant to the provisions of section twenty-six of this Act, unless such margarine is packed in a package on which is written or printed legibly and conspicuously—

- (a) the words “cooking margarine for cooking purposes only”; and
- (b) the name and address of the manufacturer of the margarine.

(2) Any person who in any respect contravenes any of the provisions of this section shall be guilty of an offence.

Penalty: Fifty pounds.

Notices to be  
displayed in  
shops, etc.,  
where mar-  
garine sold.  
*ibid.* s. 24.

32. (1) The occupier of every store, shop, stall in market or other place where margarine is sold shall place and keep placed in a conspicuous position in such store, shop, stall, or other place a sign conspicuously displaying the words “Margarine sold here.”

(2) The occupier of every hotel, cafe, restaurant, tea-room, or other place where margarine is supplied for consumption by customers on the premises shall conspicuously display the word “Margarine” on every vessel containing any such margarine, and also, shall place and keep placed in a conspicuous position in the said hotel, cafe, restaurant, tea-room, or other place a sign displaying the words “Margarine is served here.”

#### PART V.—MISCELLANEOUS.

Offences.  
*ibid.* s. 27.

33. Any contravention of this Act, whether by act or omission, shall be an offence.

General  
penalty.  
*ibid.* s. 26.

34. The penalty for any offence against this Act for which no penalty is expressly provided, shall be a fine not exceeding one hundred pounds.

Procedure for  
offences.  
*ibid.* s. 28.

35. Proceedings for offences against this Act shall be taken and disposed of summarily under the provisions of the Justices Act, 1902-1936.

Court may  
make order  
as to mar-  
garine seized  
by an in-  
spector.

36. Whenever, in accordance with his powers under this Act an inspector has seized and retained any margarine pending the decision of the court in proceedings

before the court in relation to such margarine, the court may order that such margarine shall be forfeited to the Crown, or make such other order as it thinks proper as to the disposal of such margarine.

37. Any moneys required to defray the cost of the administration of this Act shall be paid out of money appropriated by the Parliament for that purpose. Financial provision. *ibid.* s. 29.

38. The Governor may make regulations, not inconsistent with this Act, for or with respect to— Regulations.

- (a) the labelling of or the writing or printing of particulars on packages of margarine;
- (b) securing information as to the manufacture, ingredients, sale stocks, and prices of margarine;
- (c) the situation, construction, operation, maintenance and cleanliness of premises where margarine is manufactured;
- (d) the packing of margarine;
- (e) the methods of analysis of any margarine for the purposes of this Act;
- (f) prescribing chemical and physical criteria for the fatty portion of any type of margarine which may constitute the basis of proof for the purposes of this Act that any margarine is or is not of such type;
- (g) licenses, applications for licenses, the granting of licenses and transfer of licenses;
- (h) prescribing fees to be paid and forms to be used under this Act;
- (i) penalties not exceeding fifty pounds for the breach of any regulation; and
- (j) prescribing any matter which by this Act is required or permitted to be prescribed, or which is necessary or expedient to be prescribed to give effect to this Act.