

Approved for Reprint, 27th May, 1958.

WESTERN AUSTRALIA.

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## MILK.

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No. 27 of 1946.

[As amended by Acts No. 18 of 1947, assented to 5th November, 1947; No. 74 of 1947, assented to 13th January, 1948; No. 41 of 1948, assented to 21st December, 1948; No. 50 of 1952, assented to 23rd December, 1952; No. 46 of 1954, assented to 8th December, 1954; and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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**AN ACT to consolidate and amend the law relating to the regulation and organisation of the production, purchase, treatment, sale and distribution of milk for use by consumers within the State; to repeal the Metropolitan Milk Act, 1932-1944, and the Dairy Cattle Compensation Act, 1926; and for other purposes.**

[Assented to 14th January, 1947.]

**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, 1946-1954*, and shall come into operation on a date to be fixed by proclamation.<sup>1</sup>

Short title  
and com-  
mencement.  
Amended by  
No. 46 of  
1954, s. 1.

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<sup>1</sup> Came into operation 20th January, 1947. See *Gazette* 17th January, 1947, p. 85.  
12774/3/58—1850.

Act divided  
into Parts.

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

PART I., ss. 3 to 7—PRELIMINARY.

PART II., ss. 8 and 9—DAIRY AREAS AND DISTRICTS.

PART III., ss. 10 to 21—THE MILK BOARD.

*Division 1, ss. 10 to 17—Constitution of the Board.*

*Division 2, ss. 18 to 21—Proceedings of the Board.*

PART IV., ss. 22 to 28—VESTING OF PROPERTY AND GENERAL POWERS AND DUTIES OF THE BOARD.

PART V., ss. 29 to 43—LICENSES.

PART VI., ss. 44 to 64—TESTING OF DAIRY CATTLE AND COMPENSATION.

*Division 1, ss. 44 to 56—Testing of Dairy Cattle.*

*Division 2, ss. 57 to 64—Compensation.*

PART VII., ss. 65 to 76—MISCELLANEOUS.

SCHEDULE—ACTS REPEALED.

PART I.—PRELIMINARY.

Acts  
repealed.

3. The Acts mentioned in the Schedule to this Act are hereby repealed.

Preserving  
existing laws.  
No. 49 of  
1932, s. 2.

4. This Act shall not, except insofar as it expressly or impliedly indicates a contrary intention, affect the provisions of any other Act or of any regulation, by-law, order in council or proclamation.

Application  
of this Act.  
No. 38 of  
1926, s. 4.  
No. 49 of  
1932, s. 5.

5. This Act shall apply and have effect in all parts of the State, except those parts which the Governor by proclamation from time to time declares shall be excluded from the operation of this Act. Provided that any proclamation which excludes any part of the State from the operation of this Act may be revoked, varied or amended by a subsequent proclamation.

6. In this Act, unless the context requires otherwise—

Interpreta-  
tion.  
No. 38 of  
1926, s. 2.  
No. 49 of  
1932, s. 3.

“accommodation milk” means milk other than quota milk supplied by a dairyman for milk purposes for sale or treatment pursuant to a license issued under this Act;

“Board” means the Milk Board of Western Australia constituted by this Act;

“Chief Inspector of Stock” means the Chief Inspector of Stock under the Stock Diseases Act, 1895;<sup>1</sup>

“Commissioner of Public Health” means the Commissioner of Public Health under the Health Act, 1911-1944;<sup>2</sup>

“Compensation Fund” means the Dairy Cattle Compensation Fund established under this Act;

“contract milk” means milk supplied by a dairyman under the terms of a written contract;

“cream” means that portion of the lacteal fluid of an animal in which either through rest or mechanical separation the greater portion of the fat has become concentrated.

Such portion shall—

- (i) be classed as cream, notwithstanding that it has been scalded, pasteurised, or preservatised;
- (ii) not be classed as cream when it is used or intended to be used in the manufacture of butter, cheese, condensed milk or dried milk;

“dairy” means any farm, dairy or other place where animals are kept for the purpose of producing milk for sale, and includes every stock-yard, milking yard, paddock, shed, stable, stall, and other place on, in, or about

<sup>1</sup> Now Stock Diseases Act, 1895-1954.

<sup>2</sup> Now Health Act, 1911-1957.

a dairy in which animals are kept, depastured, or milked, or in which milk produced in the dairy is stored or treated prior to the removal from the dairy;

“dairy area” means a defined portion of the State as constituted and declared to be a dairy area under this Act;

“dairy cattle” means any bull over the age of nine months, and any cow or heifer over the age of twelve months kept in a dairy for dairying purposes;

“dairyman” means the owner or occupier of a dairy;

“Department” means the Department of Agriculture;

“disease” in relation to dairy cattle means tuberculosis, or actinomycosis, or 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;

“district” means a defined portion of a dairy area as constituted and declared to be a district under this Act;

“inspector” means an inspector appointed or acting under the authority of this Act;

“inspector of stock” means an inspector of stock under the Stock Diseases Act, 1895;<sup>1</sup>

“metropolitan area” means that portion of the State including the City of Perth and the City of Fremantle which the Governor shall by order in Council from time to time constitute and declare to be the metropolitan area for the purposes of this Act;

“milk” means the lacteal fluid product of an animal when such fluid is intended for human consumption or use, notwithstanding that—

- (i) it is intended for or purchased for the production of cream; or

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<sup>1</sup> Now Stock Diseases Act, 1895-1954.

- (ii) it has been chilled, pasteurised, flavoured, or had any other substance added to it; or
- (iii) it is concentrated or solidified by freezing.

The term includes cream as hereinbefore defined, but does not include condensed milk or dried milk;

“milk store” means any shop, building, shed, place, cart, or other vehicle in which or from which milk is treated, sold or distributed, or in or from which milk after treatment is offered for sale and distribution to consumers.

“milk vendor” means any person who is the occupier or holder of a milk store and also any person who by himself or by his employee receives or accepts milk to be forwarded or supplied to a milk store or to consumers otherwise than as a carrier.

The term includes a dairyman who sells milk retail to consumers, but does not include a dairyman who sells milk wholesale to persons other than consumers.

The term does not include a person who being the owner or occupier of a milk store uses exclusively for the treatment, manufacture, sale or distribution of ice cream all milk purchased or acquired by him.

“Minister” means the Minister for Agriculture and includes any other Minister of the Crown who temporarily acts as the Minister for Agriculture during the absence of that Minister;

“quota” or “quota milk” means the average daily quantity of milk actually produced and marketed by a dairyman during the months from March to May, both inclusive, in each year, or any other similar period of production which the Board may from time to time determine;

“surplus milk” means the milk produced by a dairyman in excess of quota milk and accommodation milk;

“to sell” means to sell by wholesale or retail, and includes barter, supply for profits, offer for sale, receive for sale, have in possession for sale, expose for sale, send forward or deliver for sale, cause or suffer or allow to be sold, offered or exposed for sale, and refers only to selling for human consumption; and “sale” and “sold” have a corresponding meaning;

“treatment” includes the examination, cleansing, pasteurisation, separation, testing, grading, cooling, refrigerating, bottling, or packing of milk; and “treat” has a corresponding meaning;

“veterinary surgeon” means a veterinary surgeon duly registered under the Veterinary Surgeons’ Act, 1911.<sup>1</sup>

Administra-  
tion of this  
Act.  
No. 38 of  
1926, s. 3.  
No. 49 of  
1932, s. 4.

7. Subject to the Minister, this Act shall be administered by the Board.

#### PART II.—DAIRY AREAS AND DISTRICTS.

Dairy areas.  
No. 49 of  
1932, s. 19.

8. (1) The Governor may from time to time on the recommendation of the Minister by order in council—

- (a) constitute and declare to be a dairy area any specified portion of the State to which this Act applies and in which milk is produced or deemed to be produced for the purpose of sale by milk vendors to consumers whether in the metropolitan area or elsewhere;

<sup>1</sup> See Veterinary Act, 1911 (No. 51 of 1911).

- (b) define the boundaries of a dairy area;
- (c) alter the boundaries of a dairy area;
- (d) unite two or more dairy areas into one dairy area;
- (e) divide any dairy area into two or more dairy areas;
- (f) assign a name to a dairy area;
- (g) abolish a dairy area.

(2) For the purpose of the division of the same into districts for the purposes of section nine of this Act, the metropolitan area shall be deemed to be a dairy area constituted under subsection (1) of this section and known as the "Metropolitan dairy area."

9. (1) The Governor may from time to time on the recommendation of the Minister by order in council—

Districts.  
No. 49 of  
1932, s. 19.

- (a) divide any dairy area into districts;
- (b) define the boundaries of a district;
- (c) alter the boundaries of a district;
- (d) unite two or more districts into one district;
- (e) subdivide any district into two or more districts;
- (f) abolish any district.

(2) When a dairy area is divided into districts under subsection (1) of this section persons may, in the carrying on of business as milk vendors under this Act be restricted to any specified one or more of such districts.

### PART III.—THE MILK BOARD.

#### *Division 1—Constitution of the Board.*

10. (1) For the purpose of carrying out the provisions of this Act there shall be a board, to be called "The Milk Board of Western Australia" constituted as hereinafter provided.

Milk Board  
constituted.  
No. 49 of  
1932, s. 6.

(2) Such board shall be a body corporate with perpetual succession and a common seal and shall be capable in law of suing and being sued, and of acquiring, purchasing, holding, exchanging, leasing and disposing of real and personal property, and of doing such other acts, matters, and things within the provisions of this Act as other corporate bodies may lawfully do.

(3) No member of the Board shall be personally liable for any act of the Board, but the Board alone shall be liable.

(4) The Board shall be successor to The Metropolitan Milk Board constituted under the Metropolitan Milk Act, 1932-1944.<sup>1</sup>

(5) Until the due constitution of the Board under this Act, all the powers hereby conferred on the Board may be exercised by the said Metropolitan Milk Board, but such last-mentioned board shall on the constitution of the Board under this Act, be dissolved.

(6) The election of the present members of the Board is hereby validated and, notwithstanding anything contained in this or the preceding section, the present members of the Board shall hold office until a new Board is elected under this Act.

Constitution  
of Board.  
S. 11 sub-  
stituted by  
No. 41 of  
1948, s. 3;  
amended by  
No. 46 of  
1954, s. 2.

11. (1) The Board shall comprise the offices of a member as Chairman and two other members of whom one, who shall be actively engaged in the business of dairyman licensed under this Act, is the representative of dairymen licensed under this Act and one is the representative of consumers of milk.

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

(2a) (a) Before making a recommendation to the Governor for the appointment of a person to the office of member representing dairymen licensed

<sup>1</sup> See Schedule to this Act.



under this Act, either in the first instance or thereafter whenever there is a vacancy in that office, the Minister shall give written notice to the body known as The Farmers' Union of Western Australia (Inc.) that it is his intention to make the recommendation.

(b) If within thirty days of the giving of the notice the body submits a panel of the names of three persons who are actively engaged in the business of dairyman licensed under this Act and are prepared to hold the office, the Minister shall recommend one of those persons for the appointment.

(c) If at the expiration of that period or such extension of that period as he thinks fit, and is hereby authorised to grant, he has not received the panel, the Minister shall recommend for the appointment, such person actively engaged in the business of dairyman licensed under this Act as he thinks fit.

(3) A person shall not be eligible for recommendation or appointment to, or to hold any of those offices, except the office of member representing dairymen licensed under this Act, 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.

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.

Terms of  
Office of  
Members of  
the Board.  
S. 12 sub-  
stituted by  
No. 41 of  
1948, s. 4;  
amended by  
No. 46 of  
1954, s. 3.

(2) Each of the two persons appointed to the office of member of the Board shall, subject to the provisions of this Act, 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) [Sub-section (3) Repealed by No. 46 of 1954, s. 3.]

Vacancies:  
how created.  
Amended by  
No. 41 of  
1948, s. 5.

13. A member of the Board shall vacate his seat as such member, if he resigns by writing under his hand given to the Minister, or if he dies, or becomes an insane person, or if he fails to attend meetings of the Board for three consecutive months without the leave of the Board first being obtained, or becomes incapable of carrying out his duties.

Vacancies to  
be filled.  
Amended by  
No. 41 of  
1948, s. 6.  
[No. 49 of  
1932, s. 9.]

14. (1) In case of a vacancy occurring in the office of an appointed member of the Board, the Governor shall as soon as reasonably may be, appoint a person to fill such vacancy, but the person so appointed shall hold office only during the unexpired portion of the term of his predecessor.

(2) [Sub-section (2) repealed by No. 41 of 1948, s.6.]

15. [Section 15 repealed by No. 41 of 1948, s. 7.]

Remunera-  
tion of  
members.  
No. 49 of  
1932, s. 16

16. (1) The fees and expenses to be paid to and received by members of the Board for their services shall be such as may be prescribed from time to time.

(2) Such fees and expenses shall be charged upon and be paid out of the administration funds of the Board.

Administra-  
tion funds.  
No. 49 of  
1932, s. 12.

17. The funds of the Board which may be used for defraying the costs and expenses of the administration of this Act (in this Act hereinafter referred to as "the administration funds") shall consist of—

(a) license fees and other fees prescribed and payable to the Board;

- (b) moneys appropriated by Parliament and payable to the Board for the purposes of this Act;
- (c) contributions by licensees to the administration funds as in this Act hereafter provided for;
- (d) all other moneys (other than contributions to the Compensation Fund in this Act hereafter provided for) which may come into the hands of the Board under and for the purposes of this Act.

*Division 2—Proceedings of the Board.*

18. (1) Meetings of the Board shall be held at such place and on such days as the Board shall appoint.

Meetings.  
Amended by  
No. 41 of  
1948, s. 8.  
No. 49 of  
1932, s. 13.

(2) The chairman of the Board shall preside at all meetings of the Board at which he is present, and in his absence from any such meeting the members then present shall elect one of their number to be chairman of that meeting.

(3) Any two members of the Board shall form a quorum thereof.

(4) All questions at any meeting shall be determined by a majority of the votes of the members present, and in the event of an equal division of votes such question shall be deemed to be resolved in the negative.

19. No act or proceeding of the Board shall be invalid or be prejudiced by reason only of the fact that at the time when such act or proceeding is done, taken or commenced, there is a vacancy in the office of any member.

Acts of  
Board not  
invalidated  
by vacancy.  
No. 49 of  
1932, s. 14.

Deputy  
members.  
No. 49 of  
1932, s. 15.

20. In case of illness, other incapacity, or absence from the State of any member of the Board by reason whereof the member is likely to be unable to perform his duties for three months, the Governor may, on the recommendation of the Minister, appoint some person of the class to which the sick, incapacitated or absent member belongs to act in his place as a member of the Board during the sickness, incapacity or absence of such member.

Meetings to  
be conducted  
and business  
transacted in  
the manner  
prescribed.

21. The meetings of the Board shall be conducted and the business shall be transacted at such meetings in such manner as may be prescribed.

PART IV.—VESTING OF PROPERTY AND GENERAL POWERS AND DUTIES OF THE BOARD.

Vesting of  
property.

22. On the due constitution of the Board under this Act, all the property and assets whatsoever of the Metropolitan Milk Board as constituted under the Metropolitan Milk Act, 1932-1944,<sup>1</sup> and all moneys standing to the credit of the Dairy Cattle Compensation Fund established under the Dairy Cattle Compensation Act, 1926,<sup>1</sup> shall, subject as hereinafter provided, vest in the Board and all the liabilities of the said Metropolitan Milk Board shall become liabilities of the Board.

Provided that—

- (1) (a) moneys standing to the credit of the Dairy Cattle Compensation Fund aforesaid;
- (b) moneys standing to the credit of The Dairymen's Compensation Fund, and The Milk Vendors' Compensation Fund established under the Metropolitan Milk Act, 1932-1944,<sup>1</sup> respectively—

shall upon becoming vested in the Board under this section be placed to the credit of the Dairy Cattle Compensation Fund as established under and for the purpose of this Act, and be used and applied as authorised by the provisions of this Act; and

<sup>1</sup> See Schedule to this Act.

(2) All other moneys formerly held by the Metropolitan Milk Board aforesaid shall, upon becoming vested in the Board under this section, be placed to the credit of the ordinary administration funds of the Board and be used and applied for defraying the ordinary administration expenses of the Board under this Act.

23. (1) The Board may with the approval of the Minister purchase, take on lease, or otherwise acquire buildings or land and all such apparatus and plant and other property as the Board may think requisite for carrying into effect the purposes of this Act, and may from time to time sell or exchange or let any property acquired by or vested in the Board for the purposes of this Act.

Power to purchase property.

(2) All moneys resulting from the sale, exchange, or letting of any property by the Board may be applied in the purchase of property for the Board or the improvement of the property of the Board or in defraying the administration expenses of the Board as the Board may think fit and the Minister approve.

24. (1) The Board may appoint and pay out of the ordinary administration funds of the Board such officers as it considers necessary to enable it to carry out its functions and duties under this Act.

Officers of the Board. No. 49 of 1932, s. 17.

(2) For the purposes of this Act the Board may, with the approval of the Minister of Public Health, authorise any specified officer or officers in the employ of the Board to exercise the powers and functions of health inspectors under the provisions of the Health Act, 1911-1944,<sup>1</sup> if and so long as such officer or officers possess the qualifications necessary for appointment as a Health Inspector under the said Act.

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<sup>1</sup> Now Health Act, 1911-1957.

Departmental  
inspectors.  
No. 49 of  
1932, s. 18.

25. (1) The Minister may, by notice in writing signed by him and published in the *Government Gazette*, authorise any inspectors of stock and other inspectors employed on the staff of the Department to be and act as inspectors for the Board under and for the purposes of this Act; and all such inspectors when performing any duties under this Act, shall be deemed to be performing such duties for the Board.

(2) The Minister may fix the remuneration (if any) to be paid by the Board to departmental inspectors acting for the Board, and such remuneration shall be payable by the Board out of its funds.

Powers and  
functions of  
the Board.  
Amended by  
No. 74 of  
1947, s. 3;  
No. 41 of  
1948, s. 9.  
[No. 49 of  
1932, ss. 36  
and 37.]

26. (1) Subject to this Act, and in particular to subsection (2) of this section, the Board is hereby charged with the following matters:—

(A) the regulations and organisation of—

- (i) the production of milk in dairy areas;
- (ii) the supply and sale of milk by dairy-men to milk vendors;
- (iii) the supply, sale and distribution of milk to consumers;
- (iv) the treatment of milk before sale and distribution to consumers, including (subject to the provisions of the Health Act, 1911-1944,<sup>1</sup> and the regulations thereunder) the prescribing of conditions under which certain processes connected with or incidental to the treatment of milk shall be used or carried out;
- (v) the prohibition of the use for human consumption in any form of milk which appears to be deleterious to health or unwholesome;
- (vi) the transport, carriage and conveyance of milk produced in dairy areas;

<sup>1</sup> Now Health Act, 1911-1956.

- (vii) plant, machinery, appliances, containers and other things used or reputed to be used in connection with the production, supply, sale, distribution, treatment, transport, carriage and conveyance of milk.
- (B) (i) The prohibition of the employment in places used for the treatment of milk of persons in the carrying out of specified technical operations in connection with or incidental to the treatment of milk, unless such persons hold a certificate of competency from the Board;
- (ii) prescribing examinations for, and the issue of certificates of competency to be held by persons to qualify them for employment in the carrying out of specified technical operations in connection with or incidental to the treatment of milk;
- (iii) the prohibition of the use of separators in places used for the treatment of milk without the written consent of the Board.
- (C) The inspection of—
- (i) dairies, milk stores, milk, and places for the treatment of milk;
  - (ii) plant, machinery, appliances, containers and other things used or reputed to be used in connection with the production, supply, sale, distribution, treatment, transport, carriage and conveyance of milk.
- (D) The issue and revocation of licenses.
- (E) The inspection, and testing for disease, of dairy cattle in dairy areas as determined by the Minister.
- (F) Measures and means which in the opinion of the Board are requisite and necessary to provide a regular supply of fresh, clean and

wholesome milk to consumers, and to prevent the supply to consumers of milk which is not or is believed not to be fresh, clean and wholesome, or which is adulterated.

- (G) Subject to paragraph (I) hereof, the making settlement and approval of contracts for the supply of milk by dairymen to milk vendors.
- (H) Fixing the proportionate quantities of accommodation milk which dairymen shall be entitled to supply to milk vendors.
- (I) Fixing the minimum price or prices per gallon to dairymen for milk supplied in any dairy area:

Substituted  
by No. 74 of  
1947, s 3.

Provided, as regards—

- (a) milk, other than surplus milk, such price shall be fixed in accordance with—
  - (i) butter fat content and value; and
  - (ii) bacterial test; and
  - (iii) added value for services incidental to the production of milk; and
  - (iv) if necessary, a premium during periods of scarcity; and
- (b) surplus milk, such price shall be fixed in accordance with its butter fat content and at ruling butter fat rates, less a charge approved by the Board for separation or other treatment carried out by the milk vendor.

Provided that a different price or prices may be fixed in respect of milk produced in different dairy areas or parts thereof,



whether sold to or purchased by a milk vendor in a district in the dairy area in which the milk was produced or in a district in a different dairy area.

- (J) Fixing the maximum price or prices which may be charged for milk sold by milk vendors to other milk vendors: Substituted by No. 74 of 1947, s. 3.

Provided that a different maximum price or prices may be fixed—

- (a) in respect of milk sold in different dairy areas or parts thereof; and
  - (b) according to differences in grade, quality, description or quantity or place of delivery;
- (K) Fixing the maximum rates for road transport of milk from and in dairy areas.

- (L) Fixing the maximum rate or rates which may be charged by any person for any particular services connected with the treatment of milk: Substituted by No. 74 of 1947, s. 3.

Provided that a different rate or rates may be fixed for milk treated in different dairy areas or parts thereof.

- (La) Fixing the maximum price or prices at which milk may be sold by retail in any dairy area: Substituted by No. 74 of 1947, s. 3.

Provided that a different maximum price or prices may be fixed—

- (a) in respect of milk delivered or sold in different dairy areas, or parts thereof, and
  - (b) according to differences in grade, quality, description or quantity.
- (M) Defining the functions, authorities and duties of inspectors.
- (N) Prescribing conditions in relation to any of the matters specified in this section.

- (O) The issue of directions or orders to any dairyman, milk vendor, or other person to supply and sell milk in reasonable quantities to any person or class of persons or to any authority organisation or other body.
- (P) Any other matter which in the opinion of the Minister is incidental to any of the matters aforesaid.

(2) Nothing in subsection (1) of this section or elsewhere in this Act shall be deemed in any way to affect or prejudice the rights, powers, and duties of inspectors appointed under the Health Act, 1911-1944,<sup>1</sup> or of the Chief Inspector of Stock or any inspectors of stock.

Board empowered to require production of accounts, etc.  
ss. (3) added by No. 41 of 1948, s. 9.

(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.

(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.

26A. (1) For the purposes of this section, unless the context requires otherwise—

“appointed day” means a day appointed by public notice pursuant to the provisions of this section;

Added by No. 41 of 1948, s. 10.

Definitions.

<sup>1</sup> Now Health Act, 1911-1957.

“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.

(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—

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

- (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.

Provisions  
as to public  
notice.

(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;
- (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.

Restraint on  
dealings with  
vested milk.

(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.

(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.

Power of  
Board to  
dispose of  
vested milk.

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

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

(7) Every delivery of vested milk to the Board shall, for the purposes of the provisions of the Health Act, 1912-1944,<sup>1</sup> 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.

Appropriation  
of  
proceeds of  
disposal of  
vested milk.

(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

<sup>1</sup> See Health Act, 1911-1957.

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.

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

(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. Provision for ascertaining price.

(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 Advances 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.

(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.

Notification  
of encum-  
brances to  
Board.

(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.

Protection  
of Board.

(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,

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 Her Majesty, or the Minister or (save as in this Act provided) the Board or any 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.

Protection of  
Crown and  
its officers.

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.

Added by  
No. 41 of  
1948, s. 10.  
Consent of  
Board to sale  
or acquisition  
of certain  
businesses.

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.

27. The Board may at any time after the first September, one thousand nine hundred and forty-eight, on giving twelve months' notice prescribe that after the expiration of such notice all milk delivered to householders other than that which is supplied from T.T. accredited herds and complies with any other conditions which the Board may prescribe shall be pasteurised in conformity with the definition contained in the Food and Drug Regulations<sup>1</sup> and bottled and capped in conformity with regulations issued by the Board.

28. Notwithstanding anything contained in this Act, the Board in exercise of its powers under this Act shall be subject to the control of the Minister, and if any action or proceedings or intended action or proceedings is not approved by the Minister, he may by notice in writing addressed to and served on the chairman of the Board, prohibit such action or proceeding either absolutely or subject to such condition as he may think fit, and effect shall be given by the Board to such notice.

#### PART V.—LICENSES.

29. (1) Subject as otherwise expressly provided by this Act, a person shall not—

(a) carry on business as a dairyman in any dairy area; or

(b) carry on business as a milk vendor in any district; or

(c) treat milk intended for sale to consumers, except under the authority of the appropriate license issued by the Board under this Act.

Limitations of powers of Board in taking proceedings. No. 49 of 1932, s. 35.

Prohibition against carrying on business as dairyman or milk vendor, or treating milk without license. No. 49 of 1932, s. 20.

<sup>1</sup> See *Government Gazette*, 21st June, 1951, pp. 1783-1819.

Penalty—Fifty pounds or imprisonment for three months.

(2) Subsection (1) of this section shall not apply to any person who proves to the satisfaction of the Board that milk produced by him is not sold or intended for sale to consumers.

(3) For the purposes of this section the fact that any person who is the owner or occupier of any place where animals are kept for depasture or milking has delivered milk in any quantity of, or quantities aggregating, one gallon or more on any specified day to any person or persons (other than a member of the family of such owner or occupier or an employee of such owner or occupier) shall be *prima facie* evidence that such owner or occupier was carrying on business as a dairyman at the place hereinbefore mentioned.

(4) Notwithstanding anything in this Act contained, if any person shall prove to the satisfaction of the Board that all milk and cream acquired by him is so acquired solely for the purpose of manufacturing, the Board may, in its absolute discretion, and for such period or periods, and subject to such conditions (if any) as the Board shall think fit, grant to such person, and at any time alter, a certificate of exemption in the prescribed form; and such certificate, whilst in force and subject to the due compliance with and observance of its conditions (if any), shall exempt such person as aforesaid from the operation of this Act. If any person shall fail to comply with or observe any of the conditions relating to such certificate as aforesaid, the Board may, in its absolute discretion, forthwith revoke such certificate.

Provided that such person as aforesaid shall from time to time furnish to the Board as and when required, returns and other information relating to all milk and cream acquired by him, and shall at all times permit an inspector to enter upon such person's premises and inspect his books and other records relating to his acquisition of milk and cream.

Kinds of  
licenses.  
Amended by  
No. 18 of  
1947, s. 3.  
[No. 49 of  
1932, s. 21.]

30. (1) Licenses which may be issued under this Act are as follows:—

- (i) A dairyman's license—which shall entitle the licensee to carry on the business or calling of a dairyman in specified premises in a specified dairy area, and to supply by wholesale milk produced on such premises for consumption or treatment in a district;
- (ii) a milk vendor's license—which may be in one of the following forms and have effect as follows:—
  - (a) A milkman's license—which shall entitle the licensee to sell milk in a specified district from any vehicle or vehicles used by the licensee for the distribution of milk from a specified depot or place in the district;
  - (b) a cream vendor's license—which shall entitle the licensee to sell cream from any vehicle or vehicles in a specified locality in a specified district;
  - (c) a milk shop license—which shall entitle the licensee to sell milk in a specified shop in a specified district;
  - (d) a milk store license—which shall entitle the licensee to sell milk in a particular store in a specified district provided the milk is consumed in the store;
- (iii) a treatment license—which shall entitle the licensee to treat in a manner specified therein milk in specified premises within a specified district for use or consumption by consumers.

(2) Wherever in subsection (1) of this section the expression "district" is used, such expression shall mean a district constituted under and for the purposes of this Act whether situated within or outside the metropolitan area.

(3) Every license issued under this Act shall be so issued subject to the provisions of this Act and the regulations made thereunder.

(4) Every license shall be incapable of transfer or assignment except with the express approval in writing of the Board.

(4A) The Board shall not in any case issue a treatment license to any applicant therefor if by the issue of such license, such applicant shall become the licensee of more than one quarter of the total number of treatment licenses issued or to be issued.

Added by  
[No. 18 of  
1947, s. 3.]

(4B) The Board shall not give its approval to the transfer or assignment of a treatment license if the proposed transferee or assignee thereof is already the licensee of one-quarter or more of the total number of treatment licenses.

Added by  
[No. 18 of  
1947, s. 3.]

(4C) For the purposes of the last two preceding subsections, a proposed transferee or assignee of or an applicant for any treatment license—

Added by  
[No. 18 of  
1947, s. 3.]

- (a) being a partner or member of a firm or company which is or becomes a licensee of any treatment license; or
- (b) being a firm or company of which any partner or member is or becomes the licensee of any treatment license; or
- (c) being a firm or company the partners or members of which are the same or substantially the same persons as the partners or members of a firm or company which is or becomes the licensee of any treatment license—

shall be deemed to be the licensee of every treatment license, the licensee whereof is or becomes the firm or company of which the proposed transferee or assignee or the applicant is a partner or member, or the licensee whereof is or becomes a person who is a partner or member of the firm or company which is the proposed transferee or assignee or the applicant.

Added by  
[No. 18 of  
1947, s. 3.]

(4D) No person who is the licensee of a treatment license shall continue to hold such license if he is a partner or member of a firm or company which is or becomes the licensee of one-quarter or more of the total number of treatment licenses.

(5) The fees respectively payable for the various licenses aforesaid shall be as prescribed but in any event shall not exceed the sum of ten shillings for any such license.

(6) No licensee under this section shall store or place, or have in his possession or under his control, any milk in any premises, district, depot, place, locality, shop or store, which has not been specified in a license issued to such licensee under subsection (1) of this section.

How licenses  
obtained.  
No. 49 of  
1932, s. 22.

31. (1) Every person who desires to obtain a license under this Act shall make application in writing in the prescribed form to the Board.

(2) Licenses shall have effect until the thirtieth day of June next following the date of the issue thereof.

(3) Any person who on the thirtieth day of June next preceding the day of application for a license was the holder of the particular kind of license applied for under this Act shall be entitled to a period of fourteen days' grace after the said thirtieth day of June in which to apply for a license and shall not during such period of grace be liable to any penalty for carrying on business in terms of the license so held by him.

(4) (a) All licenses issued under the Metropolitan Milk Act, 1932-1944,<sup>1</sup> and in force at the commencement of this Act shall by force of this Act be deemed to be surrendered at the expiration of thirty days after the commencement of this Act.

(b) If the licensee under any license mentioned in paragraph (a) of this subsection desires to obtain a license under this Act in substitution for such

<sup>1</sup> See Schedule to this Act.

surrendered license, he shall make application in writing in the prescribed form to the Board, and the Board shall deal with the same and exercise the same powers and authorities in regard thereto as it may exercise in relation to other applications for licenses under this Act.

(c) The prescribed license fee payable under section thirty of this Act shall not be payable in respect of any substituted license issued under this subsection.

32. (1) Any person to whom the Board has refused to issue a license under this Act may appeal to the Minister within the prescribed time and manner against the decision of the Board.

Appeal where license refused. No. 49 of 1932, s. 23.

(2) On the hearing of the appeal the Minister may order the license applied for to be issued or may confirm the decision of the Board.

(3) The decision of the Minister shall be final.

33. (1) Whenever a person appeals against the decision of the Board refusing the issue of a license to such person, such person shall, pending the hearing of the appeal, refrain from doing in relation to milk any of those things for the doing of which the authority of the license refused is necessary under this Act.

Delivery or treatment of milk to be suspended pending appeal. Amended by No. 41 of 1948, s. 11.

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

(2) [Subsection (2) repealed by No. 41 of 1948, s. 11.]

34. (1) Every person who in any year intends to produce milk for sale in any district (whether such district is comprised within the metropolitan area or not) or to bring into any such district for sale any milk other than milk for use as milk shall give notice thereof in writing in the prescribed form to

Returns to be furnished in respect of milk brought into districts other than for use as such. No. 49 of 1932, s. 24.

the Board, and during such year or thereafter, shall submit to the Board at such times and places as may be specified such returns, giving information as to the quantities of milk handled and to the manner of its disposal as the Board may require.

Provided that the Board may by notice in writing signed by the chairman and published in the *Government Gazette* from time to time exempt persons from their obligation to comply with the provisions of this section when the district or districts in which milk is intended to be sold or brought as aforesaid is or are situate outside the metropolitan area.

(2) Any person who fails in any respect to comply with the provisions of subsection (1) of this section, when he is not exempted from such compliance shall be guilty of an offence.

Penalty—Fifty pounds.

Revocation  
of licenses.  
No. 49 of  
1932, s. 25.

35. (1) (a) Upon the conviction of any person holding a license under this Act for any offence against this Act or any regulation made under this Act, the Board may forthwith revoke the license held by such person.

(b) Upon the conviction of any such person for any offence against the laws or regulations relating to public health, where such offence relates to the premises in respect of which the license is granted or to the conduct of the business carried on in connection with such premises, the Board may, at the request of the Commissioner of Public Health, forthwith revoke the license held by such person.

Provided that the Board shall, at the request of the Commissioner of Public Health, prohibit the sale of milk from such premises until such premises are made to comply with the requirements of the Health Act.<sup>1</sup>

<sup>1</sup> See Health Act, 1911-1957.



(2) A license may be revoked under this section by notice in writing signed by the chairman of the Board with its approval and served upon the person whose license is revoked.

(3) Sections thirty-two and thirty-three of this Act shall apply, with such adaptations as may be necessary in respect of the decision of the Board revoking the license held by a person in the same way and to the same extent as the said sections apply in relation to the decision of the Board refusing the issue of a license to a person under this Act.

Appeal and suspension of business pending hearing of appeal.

(4) Where the Board revokes a license and the licensee does not appeal against such revocation, or having appealed the revocation of the license is confirmed by the Minister, notice of such revocation of such license shall be given by the Board to the Commissioner of Public Health and to the local authority in whose district the license which has been revoked was exercised and to the depot, if any, to which the license holder had been supplying his milk.

36. Papers relating to any and all appeals to the Minister shall be laid upon the Table of both Houses of Parliament.

37. A licensed person shall not mix or permit the mixing of any milk purchased or obtained for treatment with any other milk not purchased or obtained for treatment.

Penalty for mixing milk for treatment. No. 49 of 1932, s. 26.

Penalty—Fifty pounds or imprisonment for three months.

38. (1) An unlicensed dairyman shall not sell or offer to sell or supply milk to a licensed dairyman for the purpose of or in connection with the business of the licensed dairyman.

Illicit dealing in milk. No. 49 of 1932, s. 27.

(2) A licensed person shall not obtain milk for sale or treatment under his license from an unlicensed person.

(3) Any person who contravenes either subsection (1) or subsection (2) of this section shall be liable to a penalty of fifty pounds or to imprisonment for three months.

Penalty for employing certain persons in connection with the treatment of milk.

39. Where in accordance with the requirements of the Board or the regulations only a person holding a prescribed certificate of competency issued to him by the Board may be employed in the use or carrying out of a specified process in relation to the treatment of milk, a person licensed to treat milk shall not employ in connection with the treatment of milk a person who does not hold a certificate of competency as aforesaid in contravention of the said requirements of the Board or of the said regulations.

Penalty—Fifty pounds.

Contribution by licensees to administration expenses of the Board.  
No. 49 of 1932, s. 31.

40. (1) Every holder of a license under this Act shall, in every year contribute towards the expenditure to be incurred by the Board in the administration of this Act and in carrying out its duties and functions such sum as is determined by the Board in accordance with the regulations; and, subject to section forty-one of this Act, such contribution shall be paid by the holder of the license to the Board at the times, in the instalments and in the manner prescribed.

Provided that a holder of a license shall not be required to contribute in any year an amount exceeding the rate of one penny half penny for every five shillings of the gross proceeds in that year derived by him from the carrying on of his business in the exercise of his license.

(2) If any such sum or any instalment thereof, is not paid as and when the same becomes payable the amount thereof may be recovered as a debt due to the Board by action in any court of competent jurisdiction.

## 41. (1) Any milk vendor who—

- (a) applies for or holds a milk shop license or a milk store license; and
- (b) satisfies the Board that a fair estimate of the quantity of milk likely to be sold by him under the license during the whole period of the license is under one thousand gallons,—

Contributions may be commuted to fixed payment in certain cases. Amended by No. 41 of 1948, s. 12. [No. 49 of 1932, s. 32.]

shall have the right to pay to the Board—

- (i) where the estimated quantity aforesaid is under five hundred gallons, a fee of ten shillings; and
- (ii) where the estimated quantity aforesaid is over five hundred gallons but under one thousand gallons, a fee of one pound—

in full satisfaction of the fixed license fee otherwise payable for the license under section thirty of this Act, and in discharge of his obligation under section forty of this Act to contribute to the administration funds of the Board.

(2) On receipt of the payment prescribed by subsection (1) of this section the Board shall deduct the fixed fee for the license prescribed under section thirty of this Act, and apply the balance in satisfaction of the payor's obligations under the provisions of the last preceding section.

42. Nothing in this Act or in any other Act shall be deemed to give to any person carrying on business as a dairyman or as a milk vendor or treating milk at the commencement of this Act a right to the issue to him of a license under this Act, or to give to any person holding a license under this Act a right to a renewal of such license upon the expiry thereof.

Persons not to be deemed to have a right to the issue of licenses. No. 49 of 1932, s. 33.

Avoiding  
necessity to  
register  
premises  
with local  
authority.  
No. 49 of  
1932, s. 24.

43. Notwithstanding the provisions of any other Act, regulation, or by-law, any person who is the holder of a license under this Act in respect of any particular premises shall not be required to obtain a license for or obtain registration of the same premises from any local health authority or local board of health in order to enable him to occupy or carry on any premises as a dairy or sell dairy produce on or from the premises in question.

PART VI.—TESTING OF DAIRY CATTLE AND  
COMPENSATION.

*Division I.—Testing of Dairy Cattle.*

Dairy cattle  
to be tested  
for disease.

44. (1) It shall be the duty of every dairyman holding a dairyman's license under this Act, whilst he continues to hold such a license, to submit all dairy cattle kept by him as such to regular inspections by the Chief Inspector of Stock, or by a veterinary officer of the Department or by a veterinary surgeon as required by the Chief Inspector of stock.

Penalty—Fifty pounds.

(2) The Chief Inspector of Stock shall apply or cause to be applied a tuberculin test to each head of dairy cattle kept by a licensed dairyman as aforesaid at such intervals as the said Chief Inspector shall consider necessary for controlling or effecting the elimination of disease from the dairy cattle kept by every licensed dairyman as aforesaid.

(3) Save and except as the Minister may in particular cases otherwise determine, the expenses incurred in connection with inspections and tests of dairy cattle made and conducted pursuant to this section shall be deemed to be expenses incurred in connection with the administration of this Act and shall be borne and paid by the Board as such out of its administration funds.

Dairy cattle  
to be marked  
for identifica-  
tion.

45. Each head of dairy cattle inspected shall, prior to being tested as provided for in section forty-four of this Act, be described and marked with a tattoo, ear tag, or firebrand by the inspector of

stock who inspects the same, and particulars of such description and tattoo, ear tag or firebrand shall be entered in a register which shall be kept for the purpose in the Department under the supervision of the Chief Inspector of Stock.

46. Whenever upon a test being applied any head of dairy cattle kept by a licensed dairyman is found to be suffering with disease, the Chief Inspector of Stock shall—

Dairy cattle diseased to be removed and slaughtered. Report to Board.

- (a) report the fact in writing to the Board and to the Commissioner of Public Health, and
- (b) cause the diseased dairy cattle to be removed immediately from the herd of dairy cattle kept by the licensed dairyman as aforesaid and to be destroyed as soon thereafter as practicable.

47. (1) Whenever any dairy cattle have been tested and are then found to be, or are suspected of suffering from disease, the Chief Inspector of Stock, in addition to carrying out his duties under section forty-six of this Act, may if he thinks it necessary and at the request of the Commissioner of Public Health, shall serve upon the licensed dairyman concerned notice in writing under his hand directing the licensed dairyman forthwith to cease the supply or distribution from his dairy of milk produced from his dairy cattle (including the dairy cattle found to be or suspected of being diseased) until the receipt by the said dairyman of further directions from the Board.

Upon report from Chief Inspector of Stock, dairyman may be prohibited from supplying milk.

(2) Upon receipt of notice from the Chief Inspector of Stock under subsection (1) of this section, the licensed dairyman shall duly and faithfully observe and comply with the direction contained therein, until the receipt of further directions by the Board.

Penalty—Fifty pounds.

Chief Inspector of Stock to inform Board when licensed dairyman directed to cease supply or distribution of milk.

48. When, in accordance with the provisions of subsection (1) of section forty-seven of this Act, the Chief Inspector of Stock directs a licensed dairyman to cease the supply or distribution of milk from his dairy, the Chief Inspector of Stock shall, when making to the Board the report provided for in paragraph (a) of section forty-six of this Act, also inform the Board of the service of such direction upon the said licensed dairyman.

Board may direct licensed dairyman to cease supply or distribution of milk from his dairy or authorise such supply or distribution.

49. (1) When the Board receives from the Chief Inspector of Stock, in accordance with section forty-six of this Act, a report that dairy cattle kept by a licensed dairyman are found to be or are suspected of being diseased, the following provisions shall apply, namely:—

- (a) When, in accordance with section forty-eight of this Act, the Chief Inspector of Stock has also informed the Board that he has directed the licensed dairyman to cease the supply or distribution of milk from his dairy, the Board may, by notice in writing under the hand of the chairman of the Board served on the said licensed dairyman—
  - (i) confirm the direction given by the Chief Inspector of Stock, as aforesaid, and order the licensed dairyman to continue to observe and comply with the same until the Board orders otherwise; or
  - (ii) subject to the concurrence of the Commissioner of Public Health, cancel the said direction.
- (b) When the Chief Inspector of Stock has not served on the licensed dairyman under section forty-five of this Act a notice directing him to cease the supply or distribution of milk from his dairy, the Board may, if it thinks fit, and at the request of the Commissioner of Public Health shall serve

upon the said licensed dairyman a notice in writing under the hand of the chairman of the Board, directing him to cease the supply and distribution from his dairy of milk produced from the dairy cattle kept by him until otherwise ordered by the Board.

- (c) The Board may by a like notice cancel or revoke any direction or order given or made by it under this section: Provided that, where notice has been served by the Board at the request of the Commissioner of Public Health, such notice shall not be cancelled without his concurrence.

(2) Upon receipt of notice from the Board under subsection (1) of this section, the licensed dairyman shall duly and faithfully observe and comply with the direction contained therein until such notice is cancelled or revoked by the Board.

Penalty—Fifty pounds.

50. The Chief Inspector of Stock shall, when requested by the Board from time to time so to do, submit to the Board on the prescribed form a report setting forth the following particulars:—

Chief Inspector of Stock to furnish reports to the Board.

- (a) The herds of dairy cattle inspected, the dates of such inspections, the number of cattle in each herd, and the names of the owners thereof;
- (b) the number and description of dairy cattle found to be or suspected of being diseased, and the names of the owners of such cattle;
- (c) the number of diseased dairy cattle slaughtered and the dates of the slaughtering thereof—

over such period of time as may be specified by the Board.

51. (1) Where any dairy cattle kept by a licensed dairyman are directed by the Chief Inspector of Stock to be destroyed, and such cattle have a sale

Destruction of diseased cattle.

value, any inspector of stock may take or order the owner to take such dairy cattle to an abattoirs for slaughter and sale of the carcass.

(2) The proceeds of the sale of such carcass, after deducting slaughtering charges and other expenses actually incurred in relation to the destruction of the dairy cattle shall be the property of and be paid to the Board, which upon receipt thereof shall pay the same to the credit of the Compensation Fund for the purposes thereof.

Dairyman may claim compensation when directed to cease supply or distribution of milk.

52. Where, under the provisions of this Division, a licensed dairyman has been directed by notice served upon him either by the Chief Inspector of Stock or by the Board to cease the supply or distribution from his dairy of milk produced from dairy cattle kept by him, such dairyman may claim against the Board in accordance with the relevant provisions of this Act for payment of compensation out of the Compensation Fund in respect of the loss sustained by him in consequence of the said direction.

Dairyman may claim compensation for dairy cattle destroyed in certain cases. Amended by No. 41 of 1948, s 13. [No. 38 of 1926, ss. 5, 6, 7.]

53. Subject as hereinafter provided, where any dairy cattle kept by a dairyman who holds a dairyman's license under this Act are destroyed by reason of suffering from disease as provided for in this Act such dairyman may claim against the Board in accordance with the relevant provisions of this Act for payment of compensation out of the Compensation Fund in respect of the loss sustained by him by the destruction of the said dairy cattle.

Provided that compensation shall not be payable under this section in any of the following cases, that is to say:—

- (a) Where the dairyman concerned does not make a claim for compensation;
- (b) where the claim for compensation is not made within twenty-one days after the destruction of the dairy cattle;



- (c) if the dairy cattle destroyed were visibly suffering from disease, and the person concerned failed to give notice thereof pursuant to the Stock Diseases Act, 1895,<sup>1</sup> or as otherwise required by law;
- (d) if the person making the claim for compensation is convicted under section fifty-four of this Act of having purchased or otherwise acquired the dairy cattle destroyed for the purpose and with the intention of making such claim for compensation.
- (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.

Added by  
[No. 41 of  
1948, s. 13.]

54. Any person who buys or sells or attempts to buy or sell any dairy cattle knowing or having reasonable cause to suspect that such dairy cattle are diseased and with the intention (in the opinion of the Court before whom he is charged) of making a claim or enabling any other person to make a claim for compensation under this Act shall be guilty of an offence.

Persons  
trafficking  
in  
diseased  
cattle with  
a view to  
compensa-  
tion.  
No. 38 of  
1926, s. 9.

Penalty—Fifty pounds.

55. Nothing contained in this Act shall affect, limit or restrict or be deemed to affect, limit or restrict the operation or enforcement of any provision of the Stock Diseases Act, 1895,<sup>1</sup> or any regulation, proclamation or order made or issued under that Act.

Saving  
provision.

<sup>1</sup> Now Stock Diseases Act, 1895-1954.

Obstruction  
of inspectors,  
etc.

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

Penalty—Fifty pounds.

*Division 2—Compensation.*

Dairy Cattle  
Compensa-  
tion Fund.  
No. 38 of  
1926, s. 8.  
No. 49 of  
1932, s. 29.

57. (1) For the purposes of this Act there shall be established and kept at the Treasury an account to be called the "Dairy Cattle Compensation Fund."

(2) The Compensation Fund shall be administered by the Board.

(3) The following moneys shall be paid to the credit of the Compensation Fund, that is to say:—

- (a) All sums of moneys which by any express provisions of this Act are required to be paid into the Compensation Fund;
- (b) all penalties recovered under this Act in respect of offences against this Part of this Act;
- (c) all contributions payable to the Compensation Fund as hereinafter provided for by persons holding licenses under this Act, and by the Treasurer, respectively;
- (d) any advances received by the Board from the Treasurer for the purposes of the Compensation Fund.

(4) The moneys from time to time in the Compensation Fund shall be applied by the Board as and when required for the payment of compensation,

when such compensation is payable under the provisions of this Act, and for such other purposes as may be expressly authorised by this Act.

58. If at any time the amount to the credit of the Compensation Fund is not sufficient to provide for the payment of an amount of compensation which under this Act the Board is liable to pay, the Treasurer may advance to the Board the amount for the time being required by the Board: and the amount of such advance shall be a charge upon the Compensation Fund and shall be repayable to the Treasurer out of that fund.

Treasurer may make advances. No. 38 of 1926, s. 8 (4).

59. Any moneys at any time standing to the credit of the Compensation Fund and not immediately required by the Board for the purposes of this Act may be invested by the Board in any kinds of investments authorised for the investment of trust funds and which are readily realisable.

Moneys in Compensation Fund not required immediately may be invested.

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

Contributions by licensees to 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;

Amended by No. 41 of 1948, s. 14, ss. (1) substituted.

(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.

(2) The contributions payable under this section shall be assessed, and be paid at such times and in such manner as may be prescribed by regulations.

Provisions relating to claims for compensation. Amended by No. 41 of 1948, s. 15; No. 50 of 1952, s. 2. [No. 49 of 1932, s. 30.]

61. Where any person entitled under any provision of this Act to make a claim against the Board for payment of compensation out of the Compensation Fund, desires to make any such claim, the following provisions shall apply, that is to say:—

- (a) The claim shall be made in writing in the prescribed form signed by the claimant, shall be addressed to the Board, and be served on the Board within twenty-one days after the grounds upon which the claim is made shall have arisen.
- (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.
- (c) The claim shall contain such particulars as may be prescribed, and shall be verified by a statutory declaration of the claimant.
- (d) Where the Board requires further particulars in relation to the claim, the claimant shall furnish such further particulars to the Board upon the requisition of the Board in writing signed by the chairman.
- (e) The claim shall contain a definite statement of the amount of compensation claimed, together with the details thereof.
- (f) Upon receipt of the claim, and after consideration thereof, the Board may—
  - (a) admit liability for the amount of the compensation claimed; or
  - (b) admit liability for any portion of the amount of compensation claimed; or
  - (c) reject the claim.

Substituted by [No. 41 of 1948, s. 15.]

- (g) Where the Board admits liability for the amount of compensation claimed, payment of such amount shall be made by the Board to the claimant or his order as soon as practicable.
- (h) (i) Where the Board admits liability for a portion only of the amount of compensation claimed, it shall give notice thereof to the claimant in the prescribed form and shall state the amount of compensation for which liability is admitted.
- (ii) On receipt of the notice from the Board referred to in subparagraph (i) of this paragraph, and within twenty-one days thereafter the claimant shall by notice in writing in the prescribed form served on the Board, either accept the amount of compensation offered by the Board, or reject the offer made by the Board.
- (iii) If the claimant does not serve upon the Board the notice provided for in subparagraph (ii) of this paragraph within the time prescribed by such paragraph, the claimant shall be deemed to have accepted the amount of compensation offered by the Board, and in such case the Board shall not be liable to pay to the claimant any amount of compensation greater than that offered by the Board.
- (i) (i) Where the Board rejects the claim, or where the Board, having admitted liability for a portion only of the amount of compensation claimed, the claimant in accordance with the requirements of subparagraph (ii) of paragraph (h) hereof rejects the offer of the Board and the claimant and the Board are unable to agree mutually as to the amount of compensation to be paid, the claimant may in the manner

prescribed by the regulations, appeal to the Minister against the refusal of the Board to pay to the claimant the amount of compensation claimed by him.

- (ii) The Minister shall appoint a competent person to act as arbitrator and hear and determine the appeal in the manner prescribed by the regulations, and such arbitrator may make such order in relation to the claim, either by dismissing the same or by allowing the same in whole or in part, as to him may seem just. The decision of the arbitrator shall be final and conclusive.
- (j) Notwithstanding anything to the contrary contained in this section or elsewhere 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 one diseased animal.

Provision  
for milk  
improvement.

62. (1) The Board may at any time and from time to time cause to be prepared any scheme for improvement of the production, supply, delivery, distribution and quality of milk for consumers, and submit the same to the Minister for his consideration.

(2) Where the Minister approves of a scheme either without or with modifications, the Governor may on the recommendation of the Minister authorise the adoption of such scheme by the Board.

(3) If the Governor authorises the adoption of such scheme, notice thereof shall be published in the *Government Gazette*.

Scientific  
and technical  
research.

63. The Board through its officers may undertake scientific and technical research for the purposes of improving the purity of milk supplies and generally for the improvement of milk production, treatment and distribution.

64. Where, pursuant to section sixty-two of this Act, the Governor authorises the adoption of a scheme of milk improvement, the Board may, notwithstanding anything to the contrary contained in this Act, use and apply moneys standing to the credit of the Compensation Fund for the purpose of carrying the said scheme into execution.

Money in Compensation Fund may be applied to execution of scheme of milk improvement.

PART VII.—MISCELLANEOUS.

65. (1) All fees prescribed and all penalties imposed and recovered under this Act or the regulations shall be payable to the Board.

Fees and penalties payable to Board.  
No. 49 of 1932, s. 39.

(2) All fees and penalties received by the Board shall be paid to the credit of the ordinary administration funds of the Board, save and except where in accordance with any express provision of this Act they are required to be paid to the credit of the Compensation Fund in which case they shall be paid into that fund.

66. The administration funds of the Board as and when received shall be paid to the credit of an account in the name of the Board at a bank to be approved by the Minister, and shall be chargeable with the remuneration and expenses of the members of the Board, the salaries and wages payable by the Board and with all other expenditure (other than compensation) for which the Board is liable under this Act or which is lawfully incurred by the Board in the performance and carrying out of its powers, functions and duties under this Act.

Application of administration funds.  
No. 49 of 1932, s. 40.

67. The Treasurer may make advances out of moneys appropriated by Parliament to such purpose, to enable the Board to defray any administration expenditure for which the administration funds of the Board may for the time being be insufficient, and such advances with interest at a rate fixed from time to time by the Treasurer shall be a charge upon the administration funds of the Board.

Advances by Treasurer.  
No. 49 of 1932, s. 41.

Accounts.  
No. 49 of  
1932, s. 42.

68. The Board shall cause books to be provided and kept, and true and regular accounts to be entered therein—

(a) of all moneys received and paid by the Board, and of all moneys owing to and by the Board, and of the several purposes for which such moneys shall have been received, and paid, and be owing; and

(b) of all the assets and liabilities of the Board.

Books may  
be inspected.  
No. 49 of  
1932, s. 43.

69. All such books shall be open to the inspection of the Auditor General and any person authorised by him to inspect the same.

Accounts  
to be  
balanced.  
No. 49 of  
1932, s. 44.

70. The Board shall cause its accounts to be balanced every year on the thirtieth day of June.

Accounts to  
be audited.  
No. 49 of  
1932, s. 46.

71. (1) The Board shall cause a full and true balance sheet of its assets and liabilities, together with a revenue and expenditure or profit and loss account for each year and such other statements as may be necessary, to be compiled from the books and submitted to the Auditor General for audit.

(2) The Auditor General shall, in relation to such accounts, have all the powers conferred on him by the Audit Act, 1904.<sup>1</sup>

Annual  
report.  
No. 49 of  
1932, s. 47.

72. The Board shall make and submit a yearly report of its proceedings to the Minister, together with a true copy of the accounts as then last audited and with a copy of the Auditor General's report thereon; and on receipt of same the Minister shall cause copies of such annual report and of such accounts with the Auditor General's report to be laid before both Houses of the Parliament.

<sup>1</sup> Now Audit Act, 1904-1957.



73. Any person who by any act or omission fails in any respect duly to observe and comply with any provision of this Act which imposes any duty upon him shall be guilty of an offence, and where no penalty is expressly prescribed in this Act in respect of any such offence, any person found guilty of such offence shall be liable to a penalty not exceeding fifty pounds.

Offences and  
general  
penalty.

74. Any proceeding for an offence against this Act or the regulations may be instituted and dealt with summarily before Justices under and in accordance with the provisions of the Justices Act, 1902-1942.<sup>1</sup>

Offences to  
be dealt with  
summarily.

75. (1) Any proceedings, whether civil or penal, may be taken in the name of the Board by the secretary, or any officer of the Board authorised in that behalf by the Board.

How legal  
proceedings  
taken.  
No. 49 of  
1932, s. 28.

(2) No proof shall be required of the appointment of the secretary or any officer as an officer of the Board, or of the authority of the secretary or officer to take civil or penal proceedings in the name of the Board, but the averment on the process that the secretary or officer aforesaid is so authorised shall be deemed to be conclusive proof of the fact.

76. (1) The Minister may, with the approval of the Governor, make regulations prescribing forms and fees and other matters and things which by this Act are contemplated, required or permitted to be prescribed or which appear to him to be necessary or convenient to be prescribed for the purpose of enabling the Board effectually to perform and carry out its powers, functions and duties under this Act, and for the purpose of effectually carrying out any of the provisions of this Act or for better effecting the objects or purposes of this Act.

Regulations.  
No. 38 of  
1926, s. 10.  
No. 49 of  
1932, s. 38.

<sup>1</sup> Now Justices Act, 1902-1957.

## (2) The regulations may impose—

- (a) a maximum penalty of fifty pounds, with or without a minimum penalty of two pounds for a breach of any regulation; and
- (b) a daily penalty not exceeding two pounds for every day or part of a day in respect of any breach of any regulation which continues after the date of notice of such breach served by the Board upon the defendant.

## SCHEDULE.

## ACTS REPEALED—SECTION 3.

## Title and Number.

Dairy Cattle Compensation Act, 1926—38 of 1926.

Metropolitan Whole Milk Act, 1932—49 of 1932.

Metropolitan Whole Milk Act Amendment Act, 1933—28 of 1933.

Metropolitan Whole Milk Act Amendment Act, 1935—27 of 1935.

Metropolitan Milk Act Amendment Act, 1936—16 of 1936.

Metropolitan Milk Act Amendment Act, 1939—6 of 1939.

Metropolitan Milk Act Amendment Act, 1944—31 of 1944.