

DAIRY INDUSTRY.

No. 37 of 1922.

(Affected by No. 34 of 1934, s. 5 and No. 113 of 1965, s. 8.)

[As amended by Acts:

No. 27 of 1936 assented to 11th December, 1936;
No. 27 of 1939 assented to 16th December, 1939;
No. 36 of 1940 assented to 10th December, 1940;
No. 14 of 1953 assented to 20th November, 1953;
No. 51 of 1969 assented to 29th September, 1969;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to regulate the manufacture, sale, storage, transit, and export of dairy produce, including margarine, and for prescribing standards for the same; to provide for the testing, blending, mixing, and grading of cream, and the basis of payment for milk and cream; for the grading and branding of butter; and for purposes consequent thereon or incidental thereto.

[Assented to 30th December, 1922.]

BE it enacted—

1. This Act may be cited as the *Dairy Industry Act, 1922-1969.*

Short title.
Amended by
No. 51 of
1969, s. 1.

2. In this Act the following terms shall, if not inconsistent with the context or subject matter, have the following meanings:—

Interpreta-
tion.
Amended by
No. 27 of
1936, s. 2;
No. 27 of
1939, s. 2;
No. 36 of
1940, s. 5;
No. 14 of
1953, s. 2.
N.S.W., 1915,
No. 45, s. 2.

“Butter fat” means the pure fat of milk.

“Cheese” is the solid or semi-solid product obtained by coagulating the caseinogen of milk (which for the purpose of this definition shall include the lacteal fluid product of any animal where such product is commonly used for domestic purposes), cream or skim milk by means of approved rennets, pepsins, or acids with or without the addition of ripening ferments or approved seasoning ingredients and colouring matter, but without the addition of any foreign fat.

“Cold store” means premises approved in the prescribed manner as a cold store for the examination, grading, marking, weighing, storage, and delivery of dairy produce.

“Condensed milk” means milk condensed or concentrated by any method whatsoever.

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

“Dairy produce” means milk, cream, butter, cheese, dried milk, condensed milk, and any other product of milk or cream.

“Dairy produce factory” means any building or place where dairy produce is manufactured; or where dairy produce is graded, treated or prepared preparatory to manufacture.

“Depot” means any building, structure, or place where dairy produce is deposited for the purpose of weighing, sampling, testing, or grading.

“Inspector” means inspector appointed under this Act.

“Manager” means the owner or occupier of a dairy produce factory, or the person for the time being in control thereof on behalf of the owner or occupier.

“Minister” means Minister for Agriculture.

“Package” includes anything which acts as a container or wrapper.

“Pasteurised” means the heating of milk or cream to a temperature of 185° F. and holding it at such temperature for three minutes, or to a temperature of 145° F. and holding it at such temperature for twenty minutes.

“Prescribed” means prescribed by regulations under this Act.

“Store” means place where condensed milk, butter or cheese is stored, whether in a cold chamber or otherwise, but does not include premises used for the sale by retail of such dairy produce.

2A. (1) From and after the commencement of this section no person shall erect or cause to be erected, or utilise or cause to be utilised any building or premises for the purposes of a dairy produce factory or store or depot unless and until the consent of the Governor shall be first had and obtained.

Restriction on erection of premises to be used as a dairy produce factory. Added by No. 27 of 1939, s. 3. Amended by No. 113 of 1965, s. 8. Cf. Qld. 10 Geo. V. No. 15 as amended by 26 Geo. V., No. 25, s. 27A.

Provided that—

- (i) this section shall not apply to any building or premises which at the time of the commencement of this section are already registered as a dairy produce factory, store, or depot; and
- (ii) the consent of the Governor shall not be necessary in respect of the utilisation of a dairy for the manufacture of dairy produce, where such dairy produce is manufactured solely from the milk produced in such dairy, if the utilisation of such dairy as aforesaid is approved by the Minister.

(2) Any person acting in contravention of this section shall be guilty of an offence.

Penalty: Two hundred dollars.

(3) The Governor may grant or refuse any consent applied for under this section, and, when he grants his consent, he may do so unconditionally or upon and subject to such conditions as he may think fit.

(4) Applications for consent under this section shall be made as prescribed by the regulations.

Registration of premises.
Time for registration.
Amended by No. 27 of 1936, s. 3.

3. Premises shall not be used as a dairy produce factory, store, or depot unless registered under this Act: Provided that where premises are so used at the commencement of this Act, they may, without registration, continue to be so used for six months after such commencement.

N.S.W., 1915, No. 45, s. 3.

The premises of a farmer used by him for the preparation or storage of dairy produce shall not be deemed a dairy produce factory, store, or depot within the meaning of this Act, unless such farmer is notified in writing by the Minister that such premises are deemed by him to be a dairy produce factory, store, or depot within the meaning of this Act.

Penalties.
Substituted by No. 36 of 1940, s. 5.
Amended by No. 113 of 1965, s. 8.

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—Forty dollars, and, in addition, a daily penalty of four dollars for every day or part of a day during which the offence is continued.

Application for registration.
Amended by No. 27 of 1936, s. 4; No. 27 of 1939, s. 4; No. 113 of 1965, s. 8.
See N.S.W., 1915, No. 45, s. 5.

5. (1) Application for registration shall be made in the prescribed form and manner annually at the Department of Agriculture in Perth, and when registration is effected (subject to subsection (2) of this section) it shall last until the ensuing thirty-first day of December:

Provided that all dairy produce factories and stores registered under the provisions of this Act prior to the commencement of this subsection shall be deemed to be registered (subject to subsection (2) of this section) until the thirty-first day of March, one thousand nine hundred and thirty-seven.

(2) (a) Upon such application being so made, and upon the inspector being satisfied that the premises are fit for such use, on payment of a prescribed fee not to exceed two dollars, the premises shall be registered and a certificate of registration shall be issued to the applicant, which shall be evidence of registration under this Act.

Registration.

Provided that such registration may be cancelled at any time in the manner prescribed, upon any one of the following grounds:—

- (i) If the manager or the owner or the occupier or any other person employed in the registered premises is after the commencement of this section convicted of three or more offences against this Act or the regulations relating to the mixing, treatment, testing, grading, or weighing of, or to payment for, milk, cream, or butter fat.
- (ii) When, in the case of a dairy produce factory in which butter is manufactured, the Minister is satisfied that in respect of any period of twelve months the owner has manufactured butter of which more than the prescribed proportion is non-choicest when manufactured from cream graded choicest; or
- (iii) When, in the case of a dairy produce factory in which cheese is manufactured, the Minister is satisfied that in respect of any period of twelve months the owner has manufactured cheese of which more than the prescribed proportion is non-choicest cheese from milk graded as the highest quality.

(b) In this subsection "non-choicest butter" and "non-choicest cheese" mean respectively butter and cheese which, in the opinion of the inspecting officer are of a grade lower than the highest grade prescribed therefor.

(3) Nothing in this Act shall, except as expressly provided, affect the provisions of the Health Act, 1911-1919.¹

Notice that premises have ceased to be used as a dairy produce factory, store, or depot.

Amended by No. 27 of 1936, s. 3; No. 113 of 1965, s. 8. See N.S.W., 1915, No. 45, s. 6.

6. (1) When any person ceases to use any registered premises as a dairy produce factory, store, or depot he shall so notify in writing to the Department of Agriculture in the manner prescribed.

(2) If such person fails to so notify he shall be liable to a penalty not exceeding ten dollars.

(3) On such notification being received, or on such penalty being imposed, the registration of the premises shall be cancelled.

Storage.

Storage of dairy produce. Amended by No. 27 of 1936, s. 3; No. 113 of 1965, s. 8. See N.S.W., 1915, No. 45, s. 7.

7. If any person in control holds dairy produce in any store or depot or on board any ship or in any vehicle in such a manner that such produce may be deteriorated either by heat or by injurious smells, or by the proximity of unclean matter, he shall be liable to a penalty not exceeding forty dollars.

Inspection.

Inspectors. Amended by No. 27 of 1936, s. 5.

8. (1) The Governor may, by notification in the *Gazette*, appoint such persons as he may think fit to be inspectors for the purposes of this Act.

(2) Every inspector appointed for the purposes of this Act may exercise, in relation to dairy produce factories, stores, and depots all the powers of an inspector of factories under the Factories and Shops Act, 1920,² and its amendments, and all the powers of an inspector under the Inspection of Machinery

¹ Now the Health Act, 1911-1970.

² Now Factories and Shops Act, 1963.

Act, 1921, other than such powers specified in the lastmentioned Act as relate to the registration and inspection of boilers.

9. An inspector may—

- (a) at any reasonable time enter for the purposes of this Act any dairy produce factory, store, or depot and examine any books necessary to ascertain if the provisions of this Act have been complied with, and any scales, measures, or apparatus, and any churns, vats, or other utensils therein used in connection with the business of such dairy produce factory, store, or depot;
- (b) at any reasonable time examine any ship or vehicle used for the carriage of dairy produce;
- (c) at any time and in any place detain and open any package which contains, or which he has reasonable grounds to believe contains dairy produce, and examine and take samples of any such produce contained therein for the purpose of ascertaining its composition or condition.

Powers of Inspectors. Amended by No. 27 of 1936, s. 3; No. 36 of 1940, s. 5. See N.S.W., 1915, No. 45, s. 9.

10. (1) Where, as the result of such examination, the inspector is of opinion—

- (a) that any chemical, or any scales, measures, or apparatus used in testing cream or milk 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 for dairy produce are not fit for such use; or
- (c) that any dairy produce factory, store, or depot, or any ship or vehicle used for the

Inspector may order remedial measures. Amended by No. 27 of 1936, s. 3; No. 113 of 1965, s. 8. See N.S.W., 1915, No. 45, s. 10.

manufacture, storage, or carriage of dairy produce is unfit for such purpose—

he may order—

- (i) such chemical to be made fit for the purpose for which it is to be used, or 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 dairy produce, or
- (iii) such dairy produce factory, store, depot, ship, or vehicle to be made fit for such purposes to his satisfaction,

and (subject to an appeal under section twenty-four) it shall be the duty of the manager of the dairy produce factory, store, or depot to comply with such order.

(2) If the manager of a dairy produce factory, store, or depot fails to comply with any order made by an inspector under this section, and such order is not reversed on appeal under the provisions of section twenty-four, the manager shall be guilty of an offence under this Act and shall be liable to a penalty not exceeding one hundred dollars and to a daily penalty not exceeding four dollars for every day during which the offence shall continue after a complaint has been made of such offence before a court of summary jurisdiction.

(3) If any manager fails to comply with any order (not reversed on appeal) the inspector may cause the order to be complied with at the expense of the manager, and in such event (notwithstanding the penal liability of the manager under the preceding subsection) any court of summary jurisdiction on complaint made by the inspector shall order the payment by the manager of the amount incurred and any incidental expenses.

The Manufacture of Dairy Produce.

11. (1) Milk or cream supplied to a dairy produce factory shall, according to the grade of the cream, be paid for on the basis of the butter-fat results, estimated in the prescribed manner:

Payment for milk or cream. Amended by No. 27 of 1936, s. 8; No. 27 of 1939, s. 5; No. 113 of 1965, s. 8. See N.S.W. 1915, No. 45, s. 10.

Provided that where the value of the butter obtained from the cream exceeds that estimated as aforesaid, such excess shall be credited to the persons who supplied the cream, less the charges to be stated and levied by the manager and the net balance then remaining shall be paid to the supplier entitled thereto at the close of the annual accounting period, as fixed under section fifteen of this Act, in which such excess accrued, and not later than three months after the close of such accounting period:

Provided further, that in order to encourage the production of superior grades of milk or cream differential rates shall be payable according to a prescribed scale for each grade of milk or cream.

(2) Milk supplied to a dairy produce factory for the manufacture of cheese, condensed milk, or dried milk, shall comply with the requirements of such regulations as may be prescribed.

(3) Any vendor of milk or cream shall have the right to have his milk or cream tested in his presence or in the presence of his agent at the factory not oftener than once a week.

(4) Where the manager of a dairy produce factory or any other person fails or neglects to make payment for any milk or cream supplied to such dairy produce factory strictly in accordance with the provisions of subsection (1) of this section, he shall be guilty of an offence against this Act.

Penalty: Two hundred dollars.

11A. From and after the commencement of this section, every person who desires to supply cream to a dairy produce factory shall select the particular dairy produce factory to which he will supply cream,

Supply of cream to factory. Added by No. 27 of 1939, s. 6.

and thereafter he shall not transfer the supply of his cream from the factory which he has selected as aforesaid, and to which he has commenced to supply cream, to any other dairy produce factory until after the expiration of twenty-eight days' notice in writing of his intention so to do given by him to the manager of the factory from which he intends to transfer the supply of cream. In any notice given in accordance with this section, the supplier giving the same shall state therein the name and address of the dairy produce factory to which he intends to transfer the supply of cream.

Provided that no person shall be guilty of any contravention of this section, if he satisfies the court that the transfer of his supply of cream or any portion thereof was made necessary by stress of weather or other circumstances beyond his control.

Provided also, that any person who at the commencement of this section is supplying his cream to more than one dairy produce factory may continue to supply his cream to any two of such factories.

Grading
milk or
cream.
Amended by
No. 27 of
1936, s. 9.
See N.S.W.,
1915, No. 45,
s. 11.

12. (1) The manager of every dairy produce factory shall grade, or cause to be graded, according to quality, all milk or cream which is supplied to him, and in manufacturing butter therefrom shall keep apart and not blend or mix either as cream or butter the various grades thereof. It shall not be compulsory to grade milk or cream in more than three qualities.

(2) All cream graded as "Choice" or "First Grade" must be pasteurised.

(3) Any dairy produce made from milk or cream which has been graded as aforesaid shall be put up in packages bearing a brand registered under this Act, representing the grade or quality of the dairy produce.

The manner of registering such brands, and provisions for cancelling such registration, shall be prescribed by regulations under this Act. Such

brands may be so designed as to indicate the grade of the dairy produce and the factory in which it has been manufactured.

Butter made by a farmer otherwise than in a registered dairy produce factory, under the exemption under the second paragraph of section three of this Act, shall not be sold or kept for sale otherwise than in packages with the words "farm butter" thereon; and in any proceedings for a breach of this subsection an averment in the complaint that the butter so sold or kept for sale was farm butter within the meaning of this subsection shall be deemed to be proved in the absence of proof to the contrary.

13. Where milk or cream which is supplied to a dairy produce factory is manifestly affected by putrefactive decomposition, the manager of the factory shall not manufacture dairy produce from such milk or cream, or retain it on the premises. Such milk or cream shall be treated by adding thereto such substance as may be prescribed (such added substance not being such as to in any way destroy the value of such milk or cream for animal food), and may be returned to the supplier.

Putrescent milk or cream.
Amended by No. 27 of 1936, s. 10.
See N.S.W., 1915, No. 45, s. 13.

14. No person shall be employed whether as a servant or by contract to test or grade milk or cream supplied to a dairy produce factory, or to carry out the duties of a butter-maker or cheese-maker in a dairy produce factory unless he has the qualifications and has passed the examination prescribed in that behalf and holds a certificate to that effect:

Butter or cheese maker to be qualified.
Substituted by No. 27 of 1936, s. 11.

Provided that this section shall not apply to any person who at the commencement of this section has been continuously employed as a cheese-maker or a butter-maker for a period of not less than one year, in which event such person may be employed in making cheese or in making butter (as the case may be) by virtue of such previous employment.

Factories to
make
returns.
Substituted
by No. 27 of
1936, s. 12.
Amended by
No. 51 of
1969, s. 2.

15. (1) The manager of every dairy produce factory shall every month forward to the Department of Agriculture a statement showing the quantity and value of each grade of dairy produce manufactured in the factory and the quantity and value of milk or cream of each grade for which the suppliers have been paid.

(2) [Repealed by No. 51 of 1969, s. 2.]

Grading of
butter for
export.
Amended by
No. 27 of
1936, s. 12.
See N.S.W.,
1915, No. 45,
s. 16.

16. (1) Dairy produce shall not be exported from Western Australia unless it is graded, and is up to the standard prescribed by regulations under the Commerce (Trade Descriptions) Act 1905.¹ If it is found by an inspector that the dairy produce is of a grade different from that indicated by the registered brand on the package, such inspector shall give notice to the owner or owners that such dairy produce cannot be exported under the brand indicated on the package.

A certificate of such grading shall be supplied to the person exporting the dairy produce, and to the person who has manufactured it.

(2) Dairy produce shall not be so exported unless it has been kept at the prescribed temperature for the prescribed time.

17. }
18. } [Sections 17 to 22 repealed by No. 36 of
19. } 1940, s. 5.]
20. }
21. }
22. }

Penalties.

Penalty.
Amended by
No. 113 of
1965, s. 8.
See N.S.W.,
1915, No. 45,
s. 23.

23. Any person contravening any of the provisions of this Act shall, where no other penalty is by this Act provided, be liable to a penalty not exceeding forty dollars: Provided that no penalty shall be enforced under section sixteen, when it is shown that the misrepresentation of the quality of the butter put up in the boxes is not intentional.

¹ Commonwealth Act No. 16 of 1905.

Appeals.

24. A board of appeal shall be constituted by the Minister to deal with appeals from decisions of inspectors. Such board shall consist of three members, one of whom shall be nominated by the Minister, and shall be chairman, one by the Commissioner of Public Health, and one by the managers of dairy produce factories.

Appeals.
Amended by
No. 27 of
1936, s. 16.
See N.S.W.,
1915, No. 45,
s. 24.

A right of appeal to such board is conferred upon any person dissatisfied with a decision of an inspector.

Every such appeal shall be lodged in the prescribed time and manner.

24A. }
24B. } [Added by No. 27 of 1939, s. 8 and
24C. } repealed by No. 14 of 1953, s. 3.]

Regulations.

25. (1) The Governor may make regulations—
- (a) prescribing generally the manner of registration of premises, the forms of application for and certificates of registration;
 - (b) prescribing the form of notices, certificates, or other documents to be used under this Act;
 - (c) prescribing the keeping of books for recording the quantity of milk or cream received daily in a dairy produce factory, and the tests thereof, the amount of dairy produce manufactured and sold;
 - (d) regulating the keeping of any books which by this Act or the regulations are directed to be kept;
 - (e) prescribing the qualifications to be possessed and the examinations to be passed by persons employed in testing or grading milk and cream or employed as butter-makers or as cheese-makers, and the issue, renewal, and cancellation of certificates to such persons;

Regulations.
Amended by
No. 27 of
1936, s. 17;
No. 36 of
1940, s. 5;
No. 113 of
1965, s. 8.
See N.S.W.,
1915, No. 45,
s. 25.

- (f) prescribing the furnishing of advice docketts to suppliers of milk or cream by managers of dairy produce factories, and the form of such docketts;
- (g) prescribing the books to be kept in any dairy produce factory showing the results of tests of milk, cream, and butter, and the weight of dairy produce manufactured in the factory, and prescribing the forms of statements required under this Act to be made;
- (h) prescribing the method of estimating butter-fat results and the minimum amount of cheese of each quality to be obtained from milk of any particular grade and the minimum amount of butter of each quality to be obtained from milk or cream of any particular grade;
- (i) prescribing the maximum percentage of lactic acid and the maximum and minimum percentage of butter fat to be contained in any cream delivered at a dairy produce factory in any prescribed locality for the manufacture of butter;
- (j) prescribing standards for dairy produce;
- (k) prohibiting the adding to any cream which is intended to be made into butter for sale of any preservative matter, except of the kinds, in the quantities, and under and subject to the conditions prescribed, or prohibiting altogether the addition of any preservative matter;
- (l) providing for the registration of brands to be applied to packages of dairy produce, and for cancelling any such registration;
- (m) prescribing the conditions under which any preservative matter (if any) may be introduced into dairy produce, and the kind and quantity of such preservative matter;

- (n) regulating the grading of dairy produce and the supplying of a certificate of such grading;
- (o) prescribing the temperature at which dairy produce must be kept before export, or the time during which it must be so kept;
- (p) [*Deleted by No. 36 of 1940, s. 5.*]
- (q) regulating the size of cream or milk cans;
- (r) and generally for all matters and things which by this Act are contemplated, required, or permitted to be prescribed, or which appear to be necessary or convenient to be prescribed for the purpose of more effectually carrying out the provisions of this Act:

Provided that all regulations made for the purposes set out in paragraphs (i), (j), (k), and (m) shall before publication be recommended by the Commissioner of Public Health.

(2) Any regulation made under this Act may impose any penalty not exceeding forty dollars for each breach of the same, or where the breach is a continuing one, not exceeding four dollars for every day during which such breach continues. Penalties.