

DAIRY INDUSTRY.

No. 92 of 1973.

AN ACT to consolidate and amend the law relating to the Dairy Industry and Milk and Dairy Produce; to repeal the Dairy Industry Act, 1922-1969, the Dairy Products Marketing Regulation Act, 1934-1937 and the Milk Act, 1946-1971, and for incidental and other purposes.

[Assented to 27th December, 1973.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Dairy Industry Act, 1973.* Short title.

Commence-
ment.

2. This Act or any provision of this Act shall come into operation on such date as is, or on such dates as are, respectively, fixed by proclamation.

Arrangement
of Act.

3. This Act is divided into Parts as follows—

PART I.—PRELIMINARY, ss. 1-9.

PART II.—DAIRY INDUSTRY AUTHORITY OF WESTERN AUSTRALIA, ss. 10-81.

Division 1.—Constitution and proceedings of the Authority and transfer of assets etc. to the Authority, ss. 10-21.

Division 2.—Functions and powers of the Authority and Quota Appeals Committee, ss. 22-51.

Division 3.—Licences, ss. 52-60.

Division 4.—Vesting of Milk in the Authority, ss. 61-70.

Division 5.—Power of Authority to borrow money, ss. 71-74.

Division 6.—General provisions relating to the Authority, ss. 75-81.

PART III.—CONTROL OF QUALITY AND SUPERVISION OF THE SUPPLY, PRODUCTION AND DISTRIBUTION, ETC. OF MILK AND DAIRY PRODUCE, ss. 82-101.

Division 1.—Duties and Functions of the Department of Agriculture and Inspectors, ss. 82-91.

Division 2.—Offences, evidentiary provisions and regulations, ss. 92-101.

SCHEDULE.—Repeals of Acts.

4. (1) The Acts specified in the Schedule to this Act are hereby repealed. Repeals.

(2) Without limiting the operation of the provisions of the Interpretation Act, 1918, and sections 15 and 16 of that Act in particular, it is hereby declared that the repeal of any Act by this Act does not affect any document made or anything done under any Act so repealed, and each such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act, and as if that provision had been in force when the document was made or the thing was done.

(3) Without affecting the generality of subsection (2) of this section—

(a) until regulations are made under this Act, the regulations made under the Acts repealed by this Act, and in force at the time this Act comes into operation, shall apply, so far as they are capable of being applied, to persons, acts, circumstances and things under this Act, as if those regulations were made under this Act;

(b) it is declared that a reference in this Act to the expression "this Act" includes the regulations.

*Vide s. 4
Act No. 30
of 1918.*

5. In this Act, unless the contrary intention appears— Definitions.

"Authority" means the Dairy Industry Authority of Western Australia established under this Act;

"butter fat" means the pure fat of milk;

"Chief, Division of Dairying" means the person for the time being holding the office of Chief, Division of Dairying in the Department or if that office ceases to exist, the

office prescribed for the purposes of this definition, and includes the person for the time being acting in place of the first-mentioned person;

“cold store” means premises that are approved in the prescribed manner to be used for the examination, grading, marking, weighing, storage or delivery of milk and dairy produce;

“commencing date” means the date on which this Act comes into operation;

“cream” means that portion of milk in which through rest, mechanical or some other means the greater portion of the fat has become concentrated, and such portion shall be classed as cream notwithstanding that it has been scalded, pasteurised, preservatised or thickened;

“dairy” means any premises used for or in connection with the stalling, feeding or milking of cattle for the purposes of producing milk which is supplied or to be supplied for profit or sale;

“dairy area” means any portion of the State that is constituted and declared to be a dairy area under this Act;

“dairyman” means the occupier of dairy premises or a dairy farm;

“dairy farm” means any land used for, or in connection with the grazing or feeding and milking of cattle or other animals for the purpose of producing milk which is supplied or to be supplied for profit or sale;

“dairy produce” means any substance declared to be dairy produce for the purpose of this Act;

“dairy produce factory” means any premises where dairy produce is manufactured or where milk, or dairy produce is graded, treated or prepared preparatory to sale or manufacture;

“dairy produce premises” means any cold store, store, dairy, depot, factory or other place of whatever kind where milk or dairy produce is deposited, treated, dealt with, stored or manufactured or where any utensils used for such treatment or manufacture are held for storage or cleansing or both and any premises used for the sale by wholesale or retail of milk or dairy produce;

“dealer” means a person who, whether on his own account or as the agent or servant of another, purchases or receives milk or dairy produce for the purposes of resale, wholesale, or sale, wholesale;

“Department” means the Department of Agriculture;

“depot” means any premises, structure or place where milk or dairy produce is deposited for the purpose of weighing, sampling, testing or grading milk or dairy produce;

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

“grade” or “grading” means the classification according to quality of milk or dairy produce in the prescribed manner; and “to grade” has a corresponding meaning;

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

“licence” means a licence issued under this Act;

“manager” means the person for the time being holding the office of manager of the Authority or if that office ceases to exist, the office prescribed for the purposes of this definition, and includes the person for the time being acting in the place of the firstmentioned person;

“milk” means the lacteal fluid product of any animal where such product is used for domestic purposes or use; and includes cream of any class, milk or cream that has been treated for the purpose of pasteurising, sterilising or homogenising whether or not the pasteurising, sterilising or homogenising is complete.

“person” includes any company, firm, partnership, association, organization or other body of persons corporate or unincorporate;

“quota” means a milk or butter fat delivery quota granted to a person by the Authority under section 28;

“quota year” means the period of twelve months commencing on the date fixed by the Authority by notice under section 25 or any succeeding period of twelve months thereafter;

“section” means a section of this Act;

“sell” means sell by wholesale or by retail and includes barter, supply for profit, offer for sale, receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale, cause, suffer or allow to be sold, offered, or exposed for sale and “sale” and “sold” have corresponding meanings;

“supplementary quota” means a supplementary milk, or butter fat delivery quota granted to a person by the Authority under section 29;

“store” means any premises or place where milk or dairy produce is stored, whether in a cold chamber or otherwise, but does not include any premises used for the sale by retail of the milk or dairy produce;

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

“vendor” in relation to milk or dairy produce means a person of a prescribed class who by himself or his employees supplies or distributes milk or dairy produce to consumers at retail or wholesale prices, otherwise than as a carrier of the milk or dairy produce.

6. (1) The Governor may from time to time by proclamation published in the *Government Gazette* declare any substance, not being milk, in the production or manufacture of which—

Proclama-
tion of
dairy
produce.

(a) milk is used; or

(b) any substance produced or manufactured from milk is used, and which is ordinarily used as a food for humans,

to be dairy produce for the purpose of this Act.

(2) Any proclamation made under this section may be amended or revoked by a subsequent proclamation.

(3) The provisions of section 36 of the Interpretation Act, 1918 apply to every proclamation made under this section as if the proclamation were a regulation.

7. (1) The Minister may, by order published in the *Government Gazette*, declare that all or any provisions of this Act specified in the order, do not apply according to the order to, or in respect of,—

Application
of Act.
Exemptions.

(a) any area or areas of the State;

- (b) any person or any person of a class;
- (c) any dairy produce premises or any dairy produce premises of a class;
- (d) any milk or dairy produce or any milk or dairy produce of a class,

specified in the order.

(2) An order made under subsection (1) of this section shall take effect according to its tenor from a date specified therein, being a date that is not earlier than the date the order is published in the *Government Gazette*.

(3) An order made under subsection (1) of this section may be absolute, or may be subject to such conditions as the Minister thinks fit as specified in the order.

(4) For the purposes of subsection (1) of this section a class may be defined by reference to such circumstances or factors as the Minister thinks fit and specifies in the order made under that subsection.

(5) When a person to whom an order made under paragraph (b) of subsection (1) of this section applies, fails to comply with any condition to which the order was subject, the Minister may, by order published in the *Government Gazette*, amend the order by excluding that person from the operation thereof.

(6) The Minister may, by notice published in the *Government Gazette* cancel or amend an order made under subsection (1) of this section.

Saving
existing laws.

8. Unless otherwise expressly provided in this Act, this Act does not affect the provisions of any other Act that relates to the dairy industry or the manufacture, distribution, control, regulation, sale or consumption of milk or dairy produce, or the regulations, by-laws, rules, orders in council, proclamations or other statutory instruments made thereunder.

9. Subject to the Minister—

Administra-
tion.

- (a) Part II of this Act shall be administered by the Authority;
- (b) Part III of this Act shall be administered by the Department.

PART II.—DAIRY INDUSTRY AUTHORITY OF
WESTERN AUSTRALIA.*Division 1.—Constitution and proceedings of the Authority
and transfer of assets, etc. to the Authority.*Establish-
ment of
Authority.

10. (1) For the purposes of this Act, there shall be established a body by the name of the Dairy Industry Authority of Western Australia.

(2) The Authority—

- (a) is a body corporate, with perpetual succession;
- (b) shall have a common seal;
- (c) in its corporate name, may acquire, hold and dispose of real and personal property;
- (d) may exercise and discharge the powers, authorities, duties and functions conferred or imposed upon it by or under this Act; and
- (e) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.

11. (1) The Authority shall consist of nine members appointed by the Governor in accordance with this section.

Constitution
of Authority.

(2) The nine members so appointed shall be—

- (a) a person nominated in writing by the Minister to be the Chairman of the Authority, and that member shall also represent the consumers of milk and dairy produce;

- (b) four persons who shall be nominated in writing by the Minister from a panel or panels of names submitted by the Farmers' Union of Western Australia (Inc.) in such manner as may be prescribed;
- (c) two persons who shall, subject to subsection (4) of this section, be nominated in writing by the Minister from a panel or panels of names submitted in accordance with subsection (3) of this section;
- (d) one person who shall, subject to subsection (6) of this section, be nominated in writing by the Minister from a panel of names submitted in accordance with subsection (5) of this section;
- (e) a person employed in the Department, nominated in writing by the Minister and that person shall represent the Department.

(3) For the purposes of paragraph (c) of subsection (2) of this section, each of the bodies known as The Butter and Cheese Manufacturers Association, of Western Australia, The Milk Treatment Plants Association of Western Australia, The Western Australian Chamber of Manufactures (Incorporated) and any other body, whether incorporated or unincorporated, which to the satisfaction of the Minister duly represents dairy produce manufacturers or milk treatment plant owners licensed under this Act, or any such dairy produce manufacturers or milk treatment plant owners, may submit to the Minister as prescribed a panel of names of persons who are eligible and willing to act as a member of the Authority, if appointed under that paragraph.

(4) Where no nominations are duly submitted under subsection (3) of this section, or only one such nomination is so submitted within fourteen days after the day prescribed for submitting those nominations to the Minister, the Minister may nominate in writing a person or two persons, as the case requires, for appointment by the Governor to the office or offices of member of the Authority under paragraph (c) of subsection (2) of this section.

(5) For the purposes of paragraph (d) of subsection (2) of this section, the body known as the Amalgamated Milk Vendors Union of Employers may submit to the Minister as prescribed a panel of names of persons who are willing to act as a member of the Authority, if appointed under that paragraph.

(6) Where no panel of names is duly submitted under subsection (5) of this section or where only one name is so submitted, within fourteen days after the day prescribed for submitting the panel to the Minister, the Minister may nominate in writing a person for appointment by the Governor to the office of member of the Authority under paragraph (d) of subsection (2) of this section.

12. (1) Subject to this Act, a member appointed under—

*Tenure of
office of
members.*

- (a) paragraph (a) of subsection (2) of section 11, shall hold office for a term of five years;
- (b) paragraph (b) of that subsection, shall hold office for a period of three years;
- (c) paragraph (c) of that subsection, shall hold office for a period of two years;
- (d) paragraph (d) of that subsection, shall hold office for a period of three years;
- (e) paragraph (e) of that subsection shall hold office for a period of three years.

(2) Subject to this Act where the term of office of any member expires by effluxion of time, that member is eligible for re-nomination and reappointment.

(3) The members appointed from time to time under paragraph (b) or (c) of subsection (2) of section 11 shall retire from office in rotation, and for that purpose the following provisions apply to the members first so appointed—

- (a) the order of retirement of the four members appointed under paragraph (b) shall be determined by lot between them and be such that—

- (i) one member shall retire at the expiration of one year next following the date of his appointment;

- (ii) one member shall retire at the expiration of two years next following the date of his appointment; and
 - (iii) the remaining two members shall retire at the expiration of three years next following the date of their appointments;
- (b) the order of retirement of the two members appointed under paragraph (c) of that subsection shall be determined by lot between them and the member to be—
- (i) the first to retire, shall do so at the end of one year next following the date of his appointment;
 - (ii) the second to retire, shall do so at the end of two years next following the date of his appointment.
- (4) The manner of determining the lot referred to in subsection (3) of this section shall be as determined by the Minister.
- (5) After the terms of office of the members referred to in subsection (3) of this section have been rotated as provided in that subsection each appointment made thereafter under paragraph (b) of subsection (2) of section 11 shall be made in accordance therewith for a term of three years and each appointment made thereafter under paragraph (c) of that subsection shall be made in accordance therewith for a term of two years.

Vacancy in
office.

13. (1) Any member of the Authority may be removed from office at any time by the Governor for disability, inefficiency, neglect of duty, misconduct or insolvency and thereupon his office becomes vacant and, without limiting the operation of the foregoing, the office of any member becomes vacant if—

- (a) he resigns his office by writing under his hand addressed to the Governor;
- (b) he dies; or

- (c) he fails to attend three consecutive meetings of the Authority without having first obtained leave to do so from the Authority, unless his failure to so attend is occasioned by illness or other unavoidable cause.

(2) Where a vacancy occurs in the office of member of the Authority otherwise than by reason of the expiration of that member's term of office, the Governor shall appoint a person on the written nomination of the Minister, to fill that office for the unexpired portion of the term for which that member was appointed.

(3) During the absence or illness of a member of the Authority whereby the member is likely to be unable to perform his duties as such member for a period of three months or more consecutively, the Governor may, on the recommendation of the Minister, on such terms and conditions including terms and conditions as to payment of remuneration allowances and expenses, as the Governor may determine, appoint a fit and proper person as a deputy of that member and the person so appointed while he holds office as such deputy—

- (a) has and may exercise or perform the powers, authorities, duties and functions of the member of whom he is the deputy; and
- (b) shall be deemed to be a member of the Authority and shall represent the same interests as the member of whom he is the deputy.

14. (1) A member of the Authority is not required to devote the whole of his time to the duties of his office. Certain members part time.

(2) A member of the Authority other than the member appointed to represent the Department, shall receive out of the funds of the Authority such remuneration, allowances and expenses as may be prescribed. Remuneration of members.

Leave of
absence.

(3) The Minister may grant leave of absence to a member of the Authority on such terms and conditions as the Minister determines.

Meetings of
the Authority.

15. (1) The Authority shall hold such meetings as are necessary for the performance of its functions.

(2) The Chairman of the Authority shall convene the first meeting of the Authority as soon as practicable after the commencing date, and shall preside at all meetings of the Authority at which he is present.

(3) Where the Chairman of the Authority is absent from a meeting of the Authority, the members of the Authority who are present at that meeting shall elect one of their number to be the Chairman of that meeting.

(4) At a meeting of the Authority—

(a) five members entitled to vote form a quorum;

(b) a question arising at the meeting shall be determined by a majority of the valid votes of the members of the Authority present at the meeting and in the event of an equal division of votes, the question shall be deemed to be resolved in the negative.

(5) Subject to subsection (6) of this section, each member of the Authority including the Chairman thereof who is present at a meeting of the Authority has one deliberative vote only.

(6) The member of the Authority appointed under paragraph (e) of subsection (2) of section 11 is not entitled to vote at any meeting of the Authority.

(7) Subject to this Act, the Authority may regulate its procedure in such manner as it thinks fit.

16. (1) The powers of the Authority are not affected by any vacancy in the membership of the Authority, and if a quorum is present all acts and proceedings of the Authority are valid and effectual, notwithstanding the vacancy.

Vacancy in membership not to affect exercise of powers by the Authority.

(2) All acts and proceedings of the Authority are, notwithstanding any defect in the appointment of any member of the Authority or deputy thereof, or that any such member or deputy was disqualified or not entitled to act, as valid as if the member or the deputy had been duly appointed and was qualified to act, and had acted, as a member or deputy, and as if the Authority had been duly and fully constituted.

Defects in appointment, etc. of member not to invalidate acts, etc., of Authority.

17. (1) Subject to this Act, the Authority may appoint, employ and pay out of the funds of the Authority such officers and employees as it considers necessary to enable it to effectively carry out its duties and functions under this Act.

Appointment of staff.

(2) On the commencing date—

(a) all officers and employees of the Dairy Products Marketing Board constituted under the Dairy Products Marketing Regulation Act, 1934, other than the Secretary of the Board, and all officers and employees in the clerical or administrative sections of the Milk Board of Western Australia constituted under the Milk Act, 1946, shall become and be deemed to be appointed respectively, officers and employees of the Authority, at a classification and salary not less than that applying at the commencing date;

(b) all officers and employees in the supervisory section of the Milk Board of Western Australia, shall become and be

deemed to be appointed respectively at a classification and salary not less than that applying at the commencing date, officers and employees of the Department except that where any such officer is required to be an officer of the Authority, he shall be so employed.

(3) Where a condition of employment of a person who, pursuant to subsection (2) of this section becomes an officer or employee of the Authority or the Department, is, immediately before the commencing date regulated by an award or industrial agreement, the condition shall continue to be so regulated until an award by which the Authority or Department, as the case may be, is bound, is made in relation to the condition, by a competent tribunal or the condition is regulated by an industrial agreement to which the Authority or the Department is a party.

Saving of
certain
rights.

18. (1) Where a person becomes, pursuant to subsection (2) of section 17, an officer or employee of the Authority or of the Department, nothing in this Act prejudices or affects any right that, immediately before the commencing date, had accrued or was accruing under the Public Service Arbitration Act, 1966, the Public Service Act, 1904, the Superannuation and Family Benefits Act, 1938, the Milk Act, 1946, the Dairy Products Marketing Regulation Act, 1934 or any other Act, to that person, and any such right so accruing shall, until lawfully terminated or varied, continue to accrue as if—

- (a) the repeals and amendments effected by this Act had not been made; and
- (b) service with the Authority or the Department, as the case may be, were service for the purposes of the Act pursuant to which the right had accrued or was accruing,

but no such officer or employee is entitled to claim in respect of the same period of service a benefit under this Act and another Act.

(2) An officer of the Public Service or an employee within the meaning of the Superannuation and Family Benefits Act, 1938, appointed to the service of the Authority—

- (a) shall retain any rights that have accrued to or are accruing to him as such an officer or employee; and
- (b) may continue to contribute to any fund or account and is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he had continued to be such an officer or employee during his service with the Authority, and for the purposes of this subsection, his service with the Authority shall be deemed to be service for the purposes of that Act and of the Public Service Act, 1904, but no such officer or employee is entitled to claim, in respect of the same period of service a benefit under this Act and another Act.

(3) Where immediately before the commencing date, an appeal was pending before, or could have been made pursuant to any Act to, an authority specified in the Act by a person who on that date becomes, pursuant to subsection (2) of section 17, an officer or employee of the Authority or the Department and the appeal relates to the employment of that person by the Milk Board of Western Australia or the Dairy Products Marketing Board, that appeal may—

- (a) where it is pending, be continued and completed; or
- (b) where it is made after the commencing date, be commenced within the period prescribed by or under the Act by which the right of appeal is conferred,

as if the Milk Board of Western Australia or the Dairy Products Marketing Board, as the case requires, were the Authority.

(4) The decision given on the appeal referred to in subsection (3) of this section shall be given effect to by the Authority or the Department of which the appellant is an officer or employee.

Manager of
Authority.

19. (1) Subject to this section, the Authority shall from time to time appoint a person to be the Manager of the Authority on such terms and conditions as are determined by the Authority and approved by the Minister, and any person so appointed shall vacate the office of Manager in accordance with those terms and conditions.

(2) The person who immediately prior to the commencing date held the office of Chairman of the Milk Board of Western Australia shall, if he consents thereto in writing, be deemed to have been appointed to the office of Manager of the Authority at a classification and salary not less than that applying at the commencing date to the Chairman of the Milk Board of Western Australia, for such portion of his term of office as Chairman of the Milk Board of Western Australia as was unexpired at the commencing date.

(3) The Manager shall be responsible to the Authority for the conduct and organisation of the business of the Authority.

Transfer of
assets and
liabilities,
etc., to
Authority.

20. (1) On the commencing date—

- (a) the Milk Board of Western Australia constituted under the Milk Act, 1946, and the Dairy Products Marketing Board constituted under the Dairy Products Marketing Regulation Act, 1934 (in this section referred to as “the dissolved Boards”) are hereby dissolved and cease to exist and the appointment of the respective members thereof cancelled;
- (b) all real and personal property and every right and interest therein, and the management and control thereof, that immediately

before that date was vested in or belonged to either of the dissolved Boards, shall by force of this section, without any conveyance, transfer or assignment be transferred to, vested in, and belong to, the Authority for the purposes of this Act, subject to any debts, trusts and liabilities affecting them;

- (c) all rights accruing or accrued to either of the dissolved Boards in respect of any property vested in and belonging to the Authority by virtue of this section—

- (i) are vested in and belong to the Authority; and

- (ii) may be enforced by the Authority;

- (d) all contracts, agreements and undertakings made by either of the dissolved Boards and all securities lawfully given to or by either of those dissolved Boards and in force immediately before that date, have effect as contracts, agreements and undertakings, by and with the Authority and securities given to or by the Authority, and may be enforced by and against the Authority accordingly;

- (e) all debts due and money payable by either of the dissolved Boards and all claims liquidated and unliquidated recoverable against either of those Boards shall be debts due, and moneys payable by, and claims recoverable against, the Authority;

- (f) any legal or other proceedings that might but for this section, have been continued or commenced by or against either of the dissolved Boards in its corporate name may be continued or commenced by or against the Authority in its corporate name.

(2) No attornment to the Authority by a lessee from either of the dissolved Boards shall be required.

Construction
of laws and
documents.

21. A reference in—

- (a) any Act, regulation, by-law or other law of the State; and
- (b) any statutory instrument or other document,

in force immediately before the commencing date, to the Milk Board of Western Australia or the Dairy Products Marketing Board shall, unless the context requires otherwise, be read and construed respectively as a reference to the Authority.

*Division 2.—Functions and Powers of the Authority and
Quota Appeals Committee.*

Functions,
etc., of the
Authority.

22. (1) Subject to this Act, the Authority is hereby charged with—

- (a) the organisation of the purchase, production, supply, manufacture, treatment, storage, transport, packing, sale and distribution of milk and dairy produce;
- (b) the regulation of the amount of supply and production of milk and dairy produce, so as to ensure—so far as is practicable—
 - (i) the continuous availability of all classes of milk and dairy produce; and
 - (ii) a reasonable opportunity for profit to all persons engaged in the production, supply, manufacture, treatment, storage, transport, packing, sale and distribution of milk and dairy produce.

(2) The Authority—

- (a) may determine and give effect to policies for ensuring the future maintenance and development of the dairy industry and for effecting economies in that industry;

- (b) may assist the introduction, from time to time, of new types of dairy produce;
- (c) may determine and give effect to policies to rationalize the transport, treatment, manufacture, packing, storage and distribution of milk and dairy produce;
- (d) may determine and prescribe dairy areas and districts under such name as the Authority determines, and vary, unite, amend or abolish the areas and districts as the Authority thinks fit;
- (e) may issue, cancel or suspend any licences that are prescribed, and may classify persons and businesses as the Authority thinks fit into classes for the purposes of those licences;
- (f) may carry out the making, settlement and approval of contracts for the supply of milk or butter fat or both by dairymen to the Authority or such other person as the Authority determines;
- (g) may fix the quantity of milk or butter fat or both in excess of his quota that a dairyman is entitled to supply to the Authority or such other person as the Authority determines;
- (h) may provide funds for research or investigation by, and the education and training of, such persons as the Authority determines with a view to improving the dairy industry.

23. (1) The Authority—

Further
powers of
Authority.

- (a) may determine and prescribe grades and minimum standards for the quality and composition of milk and dairy produce and those standards shall be in addition to, and not inferior to, those prescribed under the Health Act, 1911, for the milk or dairy produce;

- (b) may determine and prescribe the premiums and penalties or differential rates of payment or the periods of suspension of licences issued, under this Act, that are to be applied, imposed or made where milk or dairy produce complies or fails to comply with the grades and standards to which paragraph (a) of this subsection refers;
- (c) may determine and prescribe the conditions upon which, and the circumstances when the premiums, penalties or differential rates of payment or periods of suspension to which paragraph (b) of this subsection refers will be applied or imposed;
- (d) may determine and prescribe the classes of milk or dairy produce that shall be graded and prescribe the manner in which they respectively shall be graded;
- (e) may, by instrument in writing, appoint persons to act as agents for the Authority and may authorize those persons to carry out on behalf of the Authority such of its powers and functions as are agreed to between the Authority and any such agent, including, if it is so agreed between the Authority and any such agent, the function of accepting or selling on behalf of the Authority milk that is or may be vested in the Authority pursuant to this Act and the functions of carrying out such further powers, duties and functions as are incidental thereto and have been so agreed, and the Authority may by subsequent instrument vary or revoke any instrument of appointment of a person as its agent.

(2) A determination made by the Authority pursuant to this section has effect according to its tenor, and a person who fails to comply with the determination commits an offence.

Penalty: Two hundred dollars.

24. The Authority may in an agreement, authority, licence or certificate insert conditions and may fix a sum as and by way of liquidated damages for any breach of conditions and those damages are recoverable accordingly.

Power of Authority to impose conditions and fix liquidated damages.

25. The Authority may, by notice published in the *Government Gazette*, fix a date as the date on which the first quota year under this Act shall commence.

Commencing date.

26. (1) The Authority shall invite applications to be made to the Authority for the grant of a quota for the supply of any prescribed class of milk or butter fat in the manner and form prescribed.

Applications for quotas, etc.

(2) Any person may, by application delivered to the Authority apply for the grant to him of a quota.

27. (1) Before the Authority considers applications made under section 26 in respect of a quota year, the Authority shall submit to the Minister a written statement setting out—

Bases or principles on which applications to be determined.

- (a) the quantity of milk or butter fat that will be required to be supplied and the quantity of dairy produce that will be required to be manufactured to ensure that consumers in the State are adequately catered for; and
- (b) its recommendations as to the bases or principles on which applications for a quota in respect of that quota year should be determined.

(2) The Minister shall, after considering a statement submitted to him under subsection (1) of this section in respect of a quota year, furnish the Authority with directions in writing, not inconsistent with this Act, as to the bases or principles on which the Authority is to determine applications for quotas made to it in respect of that quota year.

Determina-
tion of
•application.

28. (1) Subject to the succeeding subsections of this section, the Authority shall consider any application made to it in the manner and form prescribed for a quota in respect of a quota year, and shall either grant a quota to the applicant or refuse the application and in either case shall advise the applicant in writing of its decision.

(2) Where the Authority grants a quota pursuant to subsection (1) of this section, the Authority shall issue a quota certificate on which shall be set forth—

- (a) the name and address of the person to whom it is granted, and if the person is a body corporate, the registered office or principal place of business in the State of that person, together with the quota year for which the quota has been granted;
- (b) the quantity of milk or butter fat that may be delivered pursuant to the quota to the Authority during the quota year for which it is granted; and
- (c) the terms, conditions and limitations subject to which any milk or butter fat shall be delivered and be received by the Authority pursuant to the quota during the quota year or portion thereof in respect of which the milk or butter fat is so delivered,

and, subject to section 39, a quota authorizes the person to whom it is so granted, or if the quota is transferred to another person in accordance with this Act, that other person, as the case requires, to deliver to the Authority the quantity of milk or butter fat that is set forth in the quota certificate during the quota year for which the quota is granted.

(3) Without limiting the power of the Authority to grant a quota for the first quota year to any other person, the Authority shall not refuse to grant a quota for that quota year to a person who immediately prior to the commencing date was a dairyman as defined in, and licensed as such under, the Milk Act, 1946, and who at the time he makes his application for a quota is carrying on business as a

dairyman as so defined; and such quota shall not be for a lesser quantity of milk or butter fat than that referred to in the quota last held by that person.

(4) In exercising its powers under this section in respect of a quota year, the Authority shall give effect to the directions given to it by the Minister under subsection (2) of section 27.

29. (1) Where the Authority is of opinion that the quantity of milk likely to be supplied, or the quantity of dairy produce likely to be manufactured during any part of a quota year will be insufficient to meet the demand therefor for that part of the quota year as estimated by the Authority, the Authority may increase the quantity of milk or butter fat that may be delivered pursuant to any quota or may grant to the holders of quotas for that quota year supplementary quotas in accordance with the provisions of this section and issue to such holders respectively certificates for the supplementary quotas.

Supplemen-
tary quotas.

(2) The Authority shall grant supplementary quotas only—

- (a) with such approval of the Minister and in accordance therewith; and
- (b) to persons who hold quotas for the quota year in which the supplementary quotas are granted,

and a person to whom a supplementary quota is so granted is authorized thereby, during the period specified for the purpose in the supplementary quota certificate issued to him, to supply such additional quantities of milk or butter fat as are set forth in that certificate.

(3) Where the Authority is of opinion that the quantity of milk likely to be supplied, or the quantity of dairy produce likely to be manufactured during any part of a quota year—

- (a) will be more than sufficient; or
- (b) will be insufficient,

to meet the demand therefor for that part of the quota year, as estimated by the Authority, the Authority—

- (c) may, in a case to which paragraph (a) of this subsection refers, by notice in writing sent to any such holder of a quota as the Authority determines inform that holder that the quantity of milk or butter fat or both which is specified in the quota certificate held by him has been reduced by such amount for such period as is specified in the notice;
- (d) may, in a case to which paragraph (b) of this subsection refers if the Authority is of opinion that the holders of quotas and supplementary quotas will be unable to make up the insufficiency, on the application in the prescribed form of any dairyman or of its own motion, grant to any dairyman a quota for the supply of such quantity of milk or butter fat for such period as is specified in the certificate.

(4) Any notice given by the Authority under paragraph (c) of subsection (3) of this section and any quota granted by the Authority under paragraph (d) of that subsection shall have effect according to its tenor and any such quota while it remains in force shall be deemed to be a quota granted under section 28.

Transfer
of quotas.

30. (1) The Authority shall—

- (a) as soon as practicable after the coming into operation of this section in relation to applications under paragraph (a) of subsection (4) of this section; and
- (b) from time to time thereafter as the Authority considers necessary or as requested by the Minister in relation to all or any of the types of applications under this section,

submit to the Minister a statement in writing setting out its recommendations as to the bases or principles on which applications under this section should be determined.

(2) The Minister shall, after considering any statement submitted to him under subsection (1) of this section, furnish the Authority with directions, not inconsistent with this Act, as to the bases or principles on which the Authority is to determine applications made to it under this section, and in determining such applications, the Authority shall comply with such directions as are for the time being in effect.

(3) Without limiting the generality of subsection (2) of this section, it is hereby declared that a direction may be made by the Minister prohibiting the Authority from granting any particular class or classes of applications made to it under this section for such period or periods as the Minister directs.

(4) Any person who holds a quota may apply in writing to the Authority in a form approved by the Authority—

- (a) for the approval of the Authority to the transfer of the whole or part of that quota to another person specified in the application;
- (b) for the consent of the Authority for the surrender to it of the whole or part of that quota subject to the payment by the Authority to him of an amount of compensation to be agreed between the Authority and him.

(5) Any person may apply to the Authority for the grant to him, subject to the payment by him of an amount to be agreed between the Authority and him, of the whole or any part of a quota surrendered to the Authority under this section, if that person, at the time of making the application, is licensed under this Act for the production of the class of milk to which that quota relates.

(6) Subject to the preceding provisions of this section, the Authority shall consider every application made to it in accordance with this section and shall approve or refuse the application and shall, in either case, advise the applicant in writing of its decision.

(7) Where an application has been made under this section for the grant of a quota or part of a quota surrendered to the Authority, the amount to be paid on approval of the application and prior to the grant shall be an amount which is equal to the amount paid by the Authority upon the surrender to it of the quota or part of the quota which is proposed to be so granted.

(8) Where an applicant for a transfer of a quota or part of a quota considers that the Authority failed in considering his application to comply with, or give effect to, the directions given to it in that regard by the Minister under subsection (2) of this section, the applicant may within twenty-eight days of receiving from the Authority written advice of the decision of the Authority with respect to that application appeal in writing on that ground only to the Quota Appeals Committee established under this Act against the refusal of the Authority to approve the transfer of a quota or part of a quota and the applicant shall set out in his appeal the grounds on which the appeal is made.

(9) The Quota Appeals Committee shall consider each appeal made to it in accordance with subsection (8) of this section and may confirm, vary or set aside the decision of the Authority, and the decision of that Committee on the appeal is final and not subject to any appeal.

(10) The decision of the Quota Appeals Committee on such an appeal shall be given effect according to its tenor, by the Authority.

(11) A person shall not, without the prior approval in writing of the Authority granted under this section, transfer a quota or part of a quota from himself to another.

Penalty: For a first offence, a fine not exceeding two hundred and fifty dollars and for a second or subsequent offence a fine not exceeding five hundred dollars.

31. (1) Where an applicant for a quota considers that the Authority failed, in considering his application, to comply with, or give effect to, the directions given to it in that regard by the Minister under subsection (2) of section 27, the applicant may within twenty-eight days of receiving from the Authority written advice of the decision of the Authority with respect to the application, appeal in writing on that ground only to the Quota Appeals Committee established under this Act against—

Appeals.

- (a) the refusal of the Authority to grant him a quota;
- (b) the quantity of milk set forth in the quota certificate issued to him by the Authority; or
- (c) the terms, conditions and limitations set forth in a quota certificate pursuant to paragraph (c) of subsection (2) of section 28

and the applicant shall set out in his appeal the grounds on which the appeal is made.

(2) The Quota Appeals Committee shall consider each appeal made to it in accordance with subsection (1) of this section, and may confirm, vary or set aside the decision of the Authority, and the decision of that Committee on the appeal is final and not subject to any appeal.

(3) The decision of the Quota Appeals Committee on such an appeal shall be given effect according to its tenor, by the Authority.

32. (1) For the purposes of this Act a committee to be known as the Quota Appeals Committee shall be established.

Quota
Appeals
Committee.

(2) The Committee when established has the powers, authorities and duties conferred or imposed upon it by this Act.

(3) The Committee shall consist of three members appointed by the Governor of whom—

- (a) one shall be a person who is a practitioner as defined by the Legal Practitioners Act, 1893 of not less than five years' standing and practice, or a stipendiary magistrate appointed or deemed to have been appointed under the Stipendiary Magistrates Act, 1957, or a person who has been such a magistrate and that member shall be the Chairman of the Committee;
- (b) one shall be a person nominated in writing by the Minister being a person who is a qualified economist well versed in matters relating to the economics of the dairy industry, and who shall not directly or indirectly by himself or any of his partners have any pecuniary interest in the production, treatment, manufacture, carriage or sale of any milk or dairy produce;
- (c) one shall be a person nominated in writing by the Authority, being a person who is one of the four members of the Authority appointed pursuant to paragraph (b) of subsection (2) of section 11.

(4) If the Authority fails or refuses to nominate a person for membership of the Committee before a date specified in writing by the Minister in that behalf the Governor may appoint a fit and proper person to be the third member thereof and the person so appointed shall be deemed to have been duly nominated by the Authority.

(5) The provisions of the Public Service Act, 1904, do not apply to or in respect of an appointment of a member of the Committee, and a member of the Committee is not, as such a member, subject to that Act during his term of office as that member.

33. (1) Subject to this Act, each person appointed a member of the Quota Appeals Committee shall hold office for a period of three years from the date of his appointment as member, and if otherwise qualified is eligible to be reappointed from time to time, a member of that Committee in accordance with subsection (3) of section 32.

Tenure of
office of
members of
the Commit-
tee.

(2) The provisions of section 13 apply with the necessary modifications, to a member of the Quota Appeals Committee, and a member appointed under paragraph (c) of subsection (3) of section 32 who ceases to be a member of the Authority shall cease to be a member of the Committee, unless otherwise determined by the Minister on the recommendation of the Authority.

(3) When a vacancy occurs in the office of a member of the Quota Appeals Committee otherwise than by reason of the expiration of that member's term of office, the Governor may appoint another person as such a member for the unexpired portion of the term of office of his predecessor, and any such appointment shall be made in accordance with section 32.

34. (1) The Governor may appoint a person qualified as provided in paragraph (a) of subsection (3) of section 32, to act temporarily as chairman of the Quota Appeals Committee during any time when for any reason the Chairman is unable to perform his duties as chairman, and while so acting that person has all the powers and shall perform the duties of, the Chairman, and shall, while so acting, be deemed to be the Chairman.

Acting
Chairman.

(2) A person having the qualifications required to be held by the member in whose place he will act, may be appointed by the Minister to act in the place of a member of the Committee during any time when for any reason the member is unable to perform his duties as member and while so acting that person has the powers and shall perform the duties of the member for whom he so acts and shall, while so acting, be deemed to be a member.

Acting
member.

Allowances,
fees and
expenses of
members of
Committee.

35. The Chairman and other members of the Quota Appeals Committee are entitled to receive such allowances, fees and expenses as are prescribed.

Quorum and
deciding of
questions
before
Committee.

36. At a sitting of the Quota Appeals Committee—

- (a) the Chairman and any other member constitutes a quorum;
- (b) a question before a sitting of the Committee shall be decided by a majority of the members present at that sitting but if only two members are present at the sitting and those members fail to agree on any question, the question shall be referred to the next sitting of the Committee at which all members thereof are present.

Staff.

37. The Quota Appeals Committee shall be given the services of a secretary and of such other officers as may in the opinion of the Minister be necessary for the proper performance of its functions and duties under this Act.

Powers,
rights and
privileges
of the
Committee.

38. Without prejudice to the operation of section 31, the Quota Appeals Committee has all the powers, rights and privileges that are specified in the Royal Commissions Act, 1968, as appertaining to a Royal Commission and the provisions of that Act have effect as if they were enacted in this Act, and in terms made applicable to the Committee.

Cancellation
of quota.

39. (1) Where the Authority is satisfied that the holder of a quota or supplementary quota—

- (a) has been granted the quota or supplementary quota erroneously or as a result of any false or misleading statement or representation;

- (b) has withheld information or has provided false information concerning the quota or supplementary quota; or
- (c) is no longer a licensed dairyman, whether by reason of the cancellation or suspension of his licence, or otherwise,

the Authority may by notice in writing by certified mail advise the person specified in the notice that on a day, being not less than fourteen days from the day the notice is sent to the person, the Authority intends for reasons so specified to consider whether or not the quota or supplementary quota should be varied or cancelled as specified in the notice, and that if he so desires he may submit reasons in writing opposing the proposed cancellation or variation.

(2) On the day specified in the notice, or on any later day to which the matter is adjourned by the Authority, the Authority shall decide, after considering all the reasons submitted by or on behalf of the person who holds the quota or supplementary quota, whether or not to vary or cancel the quota or supplementary quota.

(3) A person whose quota or supplementary quota has been varied or cancelled by the Authority through the provisions of this section may appeal in writing to the Quota Appeals Committee established under this Act and the Committee may confirm, vary or set aside the decision of the Authority and has and may exercise in relation to the appeal the powers conferred on it by the foregoing provisions of this Act.

40. (1) The Authority may, in writing, require the holder of a quota for the supply of milk for use for human consumption as milk to supply such greater quantity of milk during such period as the Authority specifies in its request.

(2) Where the holder of a quota for the supply of milk for use for human consumption as milk—

- (a) fails to comply with a request made under subsection (1) of this section; and

- (b) does not satisfy the Authority that his failure to so comply was due to reasons beyond his control,

the Authority may, in any succeeding quota year, decline to grant to that holder a quota for the supply of a greater quantity of milk for use for human consumption as milk than the quantity specified in the quota issued for the quota year in which the holder failed to comply with the request of the Authority, notwithstanding that but for the provisions of this subsection the Authority would have been obliged to issue to that holder a quota for the supply of such a greater quantity.

Power of
Authority
to obtain
information,
etc.

41. The Authority may—

- (a) obtain any information it considers necessary or expedient for exercising its powers and performing its duties under this Part;
- (b) obtain assistance or advice from any person or organization.

Sales pro-
motion of
dairy
produce.

42. (1) The Authority may initiate, conduct or arrange to have conducted the promotion of sales of any or all classes of milk or any or all classes of dairy produce.

(2) For the purposes of assisting the Authority to effectively carry out the power conferred by subsection (1) of this section the Authority may establish a committee to be known as the Dairy Industry Promotion Committee comprised of persons actively engaged in the promotion, vending and selling of milk or dairy produce or both.

(3) The constitution of the Committee and the manner in which it conducts its meetings and affairs shall be as prescribed by the Authority.

(4) The Committee shall assist and make recommendations to the Authority on the promotion, vending and selling of milk and dairy produce.

(5) The Authority is empowered to provide funds for the promotion of all classes of milk and dairy produce but the total amount to be provided annually for the promotion shall be such amount as is approved by the Minister in writing after consultation with representatives nominated by the Farmers' Union of Western Australia (Inc.) for the purpose.

43. (1) The Authority may, with the approval of the Minister, delegate to any person or body any of its powers and functions under this Act except this power of delegation. Delegation.

(2) The Authority may at any time revoke a delegation given under subsection (1) of this section, and a delegation so given does not prevent the exercise or discharge by the Authority of any of its powers or functions.

(3) Any payment due to any person or body for the performance of a function delegated thereto by the Authority may be made from the funds of the Authority.

(4) Any person or body to whom any powers have been delegated by the Authority under this section shall be deemed to be an authorized officer of the Authority in connection with the carrying out or exercise of any of the powers so delegated.

44. (1) For the purpose of carrying out the functions and powers conferred upon, and the duties imposed upon, it by this Act the Authority may require any person engaged in the business of— Power of Authority to require books of account, etc.

(a) dairyman, dairy produce vendor, manufacturer or dealer or of the transport or treatment of milk or dairy produce; or

(b) using or occupying any storage place or any packing place,

to produce to the Authority or make available for inspection by a duly authorized officer of the Authority, any books of account, and any other documents kept or prepared in connection with the

business and to supply to the Authority or that officer such other particulars in relation to the business as the Authority may reasonably require.

(2) A person who without reasonable excuse refuses or fails to produce any book of account or other document when duly required to do so under subsection (1) of this section is guilty of an offence.

Penalty: Two hundred dollars.

(3) The Manager or any officer of the Authority authorized in writing by him in that behalf is a duly authorized officer for the purposes of subsection (1) of this section.

Authority
subject to
control
of the
Minister.

45. Notwithstanding anything contained in this Act, the Authority in exercise of its powers or the performance of its functions under this Act is subject to the control of the Minister and if any action or proceeding or intended action or proceeding by the Authority is not approved by the Minister, he may by notice in writing addressed to, and served upon, the Chairman of the Authority prohibit the action or proceeding or intended action or proceeding either absolutely or subject to such conditions as he thinks fit, and effect shall be given by the Authority to the notice.

Power of
Authority
to fix prices
for milk,
etc.

46. (1) The Authority may, from time to time by orders published in the *Government Gazette* in accordance with subsection (3) of section 49—

(a) fix the minimum price or prices that may be paid to dairymen for milk or any component of milk but such price or prices shall, subject to subsection (1) of section 23, be fixed in accordance with all or any of the following matters—

(i) the grade, quality, composition, description or quantity of the milk or the components of milk;

- (ii) the dairy area or part thereof or time of the year in which the milk or the component of milk is produced or supplied;
 - (iii) the conditions or methods of collection or transport of the milk or the component of milk;
 - (iv) any premium that may be applied to the price of the milk or the component of milk during any period of scarcity of milk;
 - (v) any current quota or supplementary quota fixed in relation to the milk or the component of milk by the Authority pursuant to sections 28 and 29 and whether the milk or the component of milk supplied is within or surplus to that quota;
 - (vi) the purpose for which the milk or the component of milk is to be used;
 - (vii) any other matter that in the opinion of the Authority is incidental to any of the foregoing matters;
- (b) fix the maximum price or prices that may be charged for milk, or any declared dairy produce sold to wholesalers, retailers or vendors, or at which milk, or any declared dairy produce may be sold by retail, but a different maximum price or prices may be fixed—
- (i) in respect of milk or dairy produce delivered, distributed, supplied or sold in different dairy areas or parts thereof;
 - (ii) according to the grade, the quality, the class, the description or the quantity or the place of delivery thereof;

- (iii) according to the type and the size of the container or the package, if any, in which the milk or dairy produce is delivered, distributed, supplied or sold;
 - (iv) according to the conditions or methods of delivery, distribution, supply or sale of the milk or dairy produce;
 - (v) according to the time of the year in which the milk or dairy produce is produced, delivered, distributed, supplied or sold;
- (c) fix the rates that may be paid to, or charged by, any person for the collection, transport, carriage, manufacture, treatment, storage, distribution, supply or delivery or any other service of whatever kind connected with the production, storage or distribution of milk, or declared dairy produce, but a different rate or rates may be fixed for any of those services performed in different dairy areas or parts thereof.
- (2) The Authority may from time to time revoke or vary any price or rate fixed by it under this section.

Power of the Governor to declare dairy produce for the purpose of s. 46.

47. (1) The Governor by proclamation published in the *Government Gazette* may declare any produce to be declared dairy produce for the purposes of section 46.

(2) Any proclamation made under this section may be amended or revoked by a subsequent proclamation.

(3) The provisions of section 36 of the Interpretation Act, 1918 apply to every proclamation made under this section as if the proclamation were a regulation.

48. (1) For the purposes of this Division, the Authority shall request the Minister to cause the Rural Economics and Marketing Section of the Department to carry out surveys, at the time required under subsection (2) of this section, of the cost and income structure of the dairy industry in the State with particular reference to the costs of the production, manufacture, treatment, distribution, and of such other similar aspects related to milk and dairy produce as the Minister directs.

Power of
Authority
to initiate
surveys by
Department.

(2) A survey under this section shall be carried out at intervals of not more than three years, but the Authority may request that a supplementary survey be carried out at such other times as it considers appropriate.

(3) The information obtained from a survey carried out under this section shall be embodied in a report, copies of which shall be furnished to the Authority.

49. (1) For the purpose of fixing any price or rate which may be fixed by the Authority in accordance with section 46, the Authority—

Power of
Authority
to notify
prices and
rates.

- (a) shall have regard to any report furnished to it under subsection (3) of section 48;
- (b) may conduct an investigation or may cause an investigation to be conducted for the purpose of obtaining such further information as it considers necessary for that purpose; and
- (c) may have regard to such other information as the Authority considers necessary or desirable for that purpose.

(2) For the purpose of conducting an investigation under subsection (1) of this section, the Authority has the like powers and authority to summon witnesses and receive evidence as are con-

ferred upon a Royal Commission appointed under the Royal Commissions Act, 1968 or a Commissioner thereof, and that Act shall apply, with the necessary modifications, to any witness summoned by or appearing before the Authority.

(3) The Authority with the written approval of the Minister, may, by order published in the *Government Gazette*, notify prices and rates (which prices and rates are subject to variations in respect of premiums, penalties and differential rates determined and prescribed under subsection (1) of section 23) in respect of any declared dairy produce, milk or any component of milk and these prices and rates shall take effect on and from a day (not being earlier than the date of publication of the order) to be specified in the order and shall continue to have effect until varied or revoked by a subsequent order made by the Authority.

(4) Subject to subsection (1) of section 23, any person who—

- (a) sells any milk, component of milk or declared dairy produce to wholesalers, retailers or vendors or by retail at a price exceeding the maximum price notified by an order in force under subsection (3) of this section or the maximum price having effect under subsection (1) of section 51 in respect of that milk, component of milk or declared dairy produce; or
- (b) pays or charges any price or rate for the collection, transport, carriage, manufacture, treatment, storage, distribution, supply or delivery or other service connected with the production, storage and distribution of milk, component of milk or declared dairy produce exceeding the price or rate so notified under subsection (3) of this section or having effect under subsection (1) of section 51 in respect thereof; or

- (c) buys milk, or any component of milk from the dairyman who supplied the milk or the component of milk at a price less than the price so notified under subsection (3) of this section or having effect under subsection (1) of section 51 in respect thereof,

is guilty of an offence against this Act.

50. (1) If after any agreement is made for the sale and purchase of milk, a component of milk or any declared dairy produce, the Authority, in the exercise of its powers under section 46, notifies any price that affects either directly or indirectly the price to be paid or charged under that agreement for the milk, the component of milk or the declared dairy produce, that agreement shall, on and from the date the notification takes effect, be deemed to be altered so that the price or charge so notified shall be substituted for the agreed price or charge in the agreement.

Effect of
price fixing
on agree-
ments.

(2) An order made by the Authority under sections 46 and 47 does not apply to the price or charge for any milk, component of milk or declared dairy produce supplied before the date the order takes effect under an agreement made before that date.

51. (1) Any price or rate fixed by the Milk Board of Western Australia under section 26 of the Milk Act, 1946, and in force or purporting to be in force, immediately before the commencing date shall be deemed to have been notified by an order made by the Authority pursuant to this Division.

Prices and
rates fixed
by Milk
Board to be
continued,
etc.

(2) The interim price or prices to be paid to dairymen for butter fat, or other component of milk, at the commencing date shall be that price or

prices as recommended by the Butter and Cheese Manufacturers Association of Western Australia and operative immediately prior to the commencing date, until such prices are varied by the Authority.

Division 3.—Licences.

Licences.

52. (1) Subject to this Act, a person shall not—

- (a) act as a dairyman in any dairy area;
- (b) carry on the business of a milk or dairy produce vendor in any district;
- (c) treat milk intended for sale to consumers;
- (d) carry on the business of a manufacturer of dairy produce;
- (e) carry on the business of packing or storing milk or dairy produce; or
- (f) carry on business as a dealer in milk or dairy produce,

except under the authority of a licence issued under this Act by the Authority permitting him so to do.

Penalty: Four hundred dollars and in the case of a continuing offence to a further fine of Twenty-five dollars in respect of each day or part thereof on which the offence continues after conviction.

(2) Subsection (1) of this section does not apply to any person who proves to the satisfaction of the Authority that the milk or dairy produce—

- (a) produced by him is not sold or intended for sale to consumers; or
- (b) packed or stored by or on his account, is not sold to or intended to be sold to consumers.

(3) For the purposes of this section the fact that the owner or occupier of any place where animals are kept for depasturing or milking—

- (a) has carried or delivered milk in any quantity of, or quantities aggregating, one gallon or more; or
- (b) has carried or delivered any other dairy produce in any quantity or quantities in the aggregate that may reasonably be expected to be obtained only from one gallon of milk or more,

on any one day to a person or persons, other than a member of the family of the owner or occupier or of an employee thereof, is evidence that the owner or occupier was acting as a dairyman at that place.

(4) The Authority may, in addition to any licence required under subsection (1) of this section, issue such licences as may be prescribed to such persons as may be prescribed.

53. (1) The Authority shall not issue any licence under this Act unless it has received a written notification from the Department to the effect that the premises and facilities to which the licence will relate comply with such requirements as are prescribed for that licence and that those premises are registered under this Act with the Department.

Issue of
licences.

(2) Every licence issued by the Authority under this Act shall be issued subject to this Act.

(3) The holder of a licence under this Act shall not store or place, or have in his possession or under his control any milk or dairy produce in any premises, district, depot, place, locality, shop or store which has not been specified in that licence.

**Transfer of
licence.**

54. (1) A licence shall not be transferred from one person to another except with the prior consent in writing of the Authority.

(2) The Authority, having regard to the objects of this Act, may grant or refuse its consent to the transfer of a licence.

**Application
for licence.**

55. (1) An application for a licence shall be made to the Authority in the prescribed form and shall be accompanied by the fee prescribed for the licence to which the application relates, and by such particulars as may be prescribed and such particulars (if any) as may be requested of the applicant by the Authority or the Department.

(2) If the Authority refuses to issue the licence to the applicant the amount of the fee that accompanied the application for the licence shall be refunded to the applicant.

**Term of
licence.**

56. (1) Subject to this Act every licence shall take effect on and from the date it is granted and shall continue in force until the next succeeding thirtieth day of June.

(2) Every licence may be renewed by the Authority for a period of twelve months on application being made to it in the prescribed form for that purpose.

(3) An application for a renewal of a licence—

(a) shall be accompanied by the prescribed fee for the renewal of the licence to which the application relates; and

(b) shall be made at any time before the licence expires.

(4) The holder of a licence is not entitled as of right to the renewal of the licence upon the expiry thereof.

(5) All licences issued under the Milk Act, 1946, or the Dairy Products Marketing Regulation Act, 1934, and in force on the commencing date shall be deemed to be in force under this Act—

(a) until the expiry date thereof; or

(b) until such later date as the Minister may allow on payment of such percentage of the fee prescribed under the Act pursuant to which the licence was issued as the Minister determines.

(6) The holder of a licence to which subsection (5) of this section refers and which is in force may apply to the Authority under and in accordance with this Act for the appropriate licence in lieu thereof.

(7) Notwithstanding that this Act has not come into operation the provisions of subsections (5) and (6) of this section and this subsection shall be deemed to have come into operation.

57. (1) The Authority may refuse to grant any licence to, or may cancel any licence issued to, any person—

Power of
Authority
to refuse
to issue
licence, etc.

(a) if he has been convicted of any offence against the Dairy Industry Act, 1922, the Milk Act, 1946, this Act or Division 2 of Part VIII of the Health Act, 1911, or against any regulations made under the first three mentioned Acts or by-laws made under that Division;

(b) if in the opinion of the Authority he is not a fit and proper person to hold the licence;

(c) if in the opinion of the Authority it is necessary or desirable in the public interest, or to enable the Authority to effectively carry out or give effect to any of the provisions of this Act, to refuse to issue or to cancel the licence;

(d) on the written request of the Commissioner of Public Health, upon the conviction of the person for any offence against the laws or

regulations relating to public health if the offence relates to the premises in respect of which the licence is granted or to the conduct of the business carried on in connection therewith.

(2) The Authority shall cancel a licence on the written advice from the Department that the registration of the premises in respect of which the licence is issued has been cancelled.

(3) Before cancelling a licence under this section the Authority shall, in the prescribed manner, notify the holder of the licence of the grounds upon which the Authority proposes to cancel the licence.

(4) (a) A person so notified or a person whose application for a licence has been refused may, in the manner and within the time prescribed, appeal against the cancellation or refusal to a court of petty sessions constituted by a stipendiary magistrate sitting alone.

(b) The court of petty sessions shall hear and determine the appeal and its decision is final and shall be given effect by the Authority.

Suspension
of licences
by
Authority

58. (1) Where the Authority receives from the Department a written notification that any milk or dairy produce supplied or manufactured pursuant to a licence fails to comply with this Act or Division 2 of Part VIII of the Health Act, 1911, or the by-laws made thereunder, the Authority shall suspend that licence for such period as is prescribed as the appropriate period according to the circumstances of the case.

(2) Where the Authority receives from the Department a written notification that the registration of premises in respect of which a licence is issued has been suspended, the Authority shall suspend that licence, but the Authority shall revoke the suspension of the licence upon receiving from the Department a written notification that the suspension of the registration of those premises has been revoked.

(3) The suspension of a licence under this section by the Authority takes effect when notice in writing of the suspension signed by the Manager on behalf of the Authority is served upon the holder of the licence to which the notice relates.

59. Where the Authority—

- (a) cancels a licence and the holder of the licence does not appeal in accordance with section 57, or having appealed under that section the court of petty sessions hearing the appeal confirms the cancellation of the licence; or

Notice of cancellation etc., to be given to Department.

- (b) suspends a licence,

notice in writing of the cancellation or suspension of the licence shall be given as soon as practicable thereafter by the Authority to the Department.

60. (1) Subject to subsection (2) of this section, a person shall not erect or cause to be erected or use or cause to be used any building or premises for the purposes of a dairy produce factory except with the prior consent in writing of the Authority.

Restriction on erection of certain buildings or premises without consent of Authority.

(2) Subsection (1) of this section does not apply to—

- (a) a building or premises that immediately prior to the commencing date was registered or licensed under the Dairy Industry Act, 1922, the Milk Act, 1946 or the Dairy Products Marketing Regulation Act, 1934, as a dairy produce factory, treatment plant, store or depot;
- (b) the use of a building or premises for the treatment of milk or the manufacture of dairy produce if the milk is not sold or the dairy produce is manufactured there solely from milk produced on the dairy farm wherein the building is or the premises are, and the dairy produce is not sold.

(3) An application for consent under this section shall be made to the Authority in the manner

prescribed and each application shall be forwarded to the Department for its recommendation in relation thereto.

(4) The Authority may grant or refuse any consent applied for under this section and any such consent may be unconditional or subject to such conditions as the Authority thinks fit and may be revoked at any time by the Authority.

Division 4.—Vesting of Milk in the Authority.

Vesting of
milk in the
Authority.

61. (1) All milk supplied in the State—

- (a) for human consumption, as milk, or for use by humans, as milk; or
- (b) for use in the production or manufacture of dairy produce,

is by force of this section absolutely vested in and becomes the property of the Authority.

(2) Milk vested in the Authority by force of subsection (1) of this section and accepted by the Authority at a place where the Authority accepts milk, is so vested, freed from all mortgages, charges, liens, pledges, interests, trusts and any other encumbrance of whatever kind affecting the milk, and the rights and interests of any person in that milk are converted into a claim for payment for the quantity of the milk so accepted.

Delivery and
acceptance
of milk.

62. (1) Subject to this Act, a dairyman may deliver to the Authority any milk vested in the Authority under section 61.

(2) Nothing in this Act requires the Authority to accept all or any milk delivered to it by any person.

(3) The Authority may, from time to time, determine—

- (a) the places at which milk from any dairy farm will be accepted by the Authority;
- (b) the periods during which milk may be so delivered and accepted.

(4) Milk delivered to and accepted by the Authority may be disposed of by the Authority to milk vendors or to other persons.

(5) Where any milk is not accepted by the Authority, the person who, but for section 61, would have been the owner of the milk—

(a) is entitled to dispose of that milk in any manner, and subject to any conditions, specified in an instrument, in writing, authorizing him to do so issued to him by the Authority; and

(b) shall, unless the Authority otherwise determines and notifies him in writing before he disposed of the milk, be deemed to have been authorised to dispose of the milk in any manner, otherwise than by supplying it—

(i) for human consumption, as milk, or for use by humans, as milk, in the State; or

(ii) for use in the production or manufacture, in the State, of dairy produce.

(6) A dairyman who, except as authorized by subsection (5) of this section, supplies, sells or delivers milk vested in the Authority under section 61 to a person other than the Authority is guilty of an offence against this Act.

(7) A person—

(a) who buys or receives any milk knowing that it is supplied, sold or delivered in contravention of subsection (6) of this section; or

(b) who buys by wholesale any milk at a price other than the price notified by an order in force under subsection (3) of section 49,

is guilty of an offence against this Act.

63. (1) All milk delivered at a place where the Authority will accept milk shall be delivered in the name of the dairyman on whose dairy premises the milk was produced.

Delivery of
milk.

(2) All milk delivered at a place where the Authority will accept milk is subject to the standards of quality and composition as prescribed.

(3) The Authority shall, out of the proceeds of milk disposed of by the Authority under this Act, make provision for—

- (a) expenditure incurred in the treatment, carriage, distribution and sale of the milk, the costs, charges, and expenses of the administration of this Act by the Authority, and any amounts necessary to repay advances made to the Authority; and
- (b) a sinking fund in respect of any loan raised by the Authority, and interest of any such advance or loan,

and, subject to this Act, shall, in accordance with subsection (4) of this section, make payments to each dairyman in respect of the milk accepted from him.

(4) The Authority shall, at such times as it thinks fit, pay to each dairyman in respect of milk or component of milk delivered by him to, and accepted by, the Authority an amount calculated at the rate of the appropriate minimum price notified under section 49 but subject to the provisions of subsection (1) of section 23.

(5) Where milk produced under a share-farming or partnership agreement is delivered to and accepted by the Authority, the Authority may make payment to each of the parties to the agreement in accordance with their interests in the milk delivered.

Determina-
tion of
quantity
of milk
delivered to
and accepted
by the
Authority.

64. (1) For the purposes of this Act, and of any order made, or notice, certificate, or other document issued, thereunder, delivery of milk at a place where the Authority will accept milk shall not, except to the extent provided by this section, constitute delivery to, or acceptance by, the Authority of that milk.

(2) Where, during any period, a person delivers, or a person from time to time delivers, milk at a place where the Authority will accept milk—

- (a) the quantity of milk or the quantity of milk of any grade, class or description, that is delivered to the Authority by that person during that period or at that time at that place;
- (b) the quantity of milk, or the quantity of milk of any grade, class or description, that is accepted by the Authority from that person during that period or at that time at that place;
- (c) the purpose or purposes for which the quantity or quantities of milk so delivered and accepted is used or to be used; and
- (d) the conditions under which any quantity of milk so delivered and accepted was produced, collected, treated, carried, deposited, stored, distributed, delivered or supplied,

shall be deemed, as the case may require, to have been—

- (e) such quantity or quantities, in respect of that person, period, time, place, or that grade, class or description;
- (f) such purpose; or
- (g) such conditions,

as may at any time thereafter be determined by the Authority or by an officer of the Authority authorized in writing by it for that purpose.

(3) In any legal proceedings by or against the Authority, a certificate by the Authority—

- (a) to the effect that—
 - (i) no milk;
 - (ii) no milk of a specified grade, class or description;

(iii) a quantity of milk; or

(iv) a quantity of milk of a specified grade, class or description,

was, during a specified period, delivered to the Authority by, and accepted by the Authority from, a specified person at a specified place or the purpose or purposes for which no milk or a quantity of milk was so delivered and accepted;

(b) as to the conditions under which any quantity of milk was produced, collected, treated, carried, deposited, stored, distributed, delivered or supplied,

is conclusive evidence of the matters specified in the certificate and of the fact that the place so specified was a place at which the Authority would, during that period, accept milk and any such certificate shall not be questioned, reviewed or examinable in any court of law.

(4) A determination referred to in subsection (2) of this section made in relation to any milk, or a certificate under subsection (3) of this section embodying any matters in respect of which any such determination has been made, has effect whether or not that milk was of any grade, quality or description specified in the determination or certificate and whether or not any quantity or conditions under which that milk was produced, collected, treated, carried, deposited, stored, distributed, delivered or supplied or any purpose for which that milk was used was or were as specified in the determination or certificate.

(5) No proceedings shall be taken in any court in any circumstances in relation to any act or thing done or omitted to be done pursuant or purportedly pursuant to this section by the Authority or an officer of the Authority.

65. The Authority may make or arrange for the making of advances on account of milk delivered to the Authority, and any of those advances and any payment made on account of any of that milk may be made at such time or times, and on such terms and conditions, and in such manner as the Authority thinks fit.

Advances by
Authority.

66. (1) Every contract, whether made before, on, or after the commencing date, or provision in any such contract, so far as it relates to milk referred to in subsection (1) of section 61, is and shall be deemed to have been void and of no effect as from the date upon which the contract was made, except in so far as the contract relates to milk that has been accepted by the Authority or to the supply, sale or delivery of milk, the supply, sale or delivery of which is not prohibited under subsection (6) of section 62, or the contract has been completed at the commencing date.

Avoidance
of contracts
for sale
of milk.

(2) Any provision in a contract, being a provision referred to in subsection (1) of this section, shall be deemed to be severable.

(3) Any transaction or contract with respect to milk that is the subject matter of any contract or provision of a contract declared by this section to be void is also void and of no effect, and any money paid pursuant to any such contract or provision or to any such transaction shall be repayable.

(4) The Minister may, by order published in the *Government Gazette*, declare that this section shall not apply to or in respect of any contract specified in the order and made before the commencing date.

67. (1) Subject to this section, no proceedings shall be brought in any court against the Authority or any person acting under its authority by any person claiming to be entitled under any bill of sale, mortgage, charge, lien or other encumbrance

Remedy
against
Authority
confined to
claim for
account.

over, of or upon any milk delivered by a dairyman to, and accepted by, the Authority, or claiming to be the true owner of that milk, as against the dairyman who delivered the milk.

(2) Any person who but for subsection (1) of this section would have been entitled to bring any such proceedings as are referred to in subsection (1) of this section, may adopt the delivery of the milk to the Authority as a delivery thereof by him to the Authority, and may claim accordingly for an account of the payments due in respect thereof, and recover the amount due in any court of competent jurisdiction as a debt.

(3) Notwithstanding the provisions of any Act or any rule of law to the contrary, any such person as is referred to in subsection (2) of this section is not entitled to make any such claim for an account of the payments due in respect of the milk as is so referred to, or any part of those payments, unless he has given prior notice in writing to the Authority in the form prescribed and containing the particulars prescribed of the bill of sale, mortgage, charge, lien, or other encumbrance, or the claim of ownership, and then only for such part of those moneys as has not been paid to any other person at the time of the receipt by the Authority of the notice.

Duty to give
notice of
encum-
brances.

68. (1) Every person delivering milk to the Authority which is subject to any bill of sale, mortgage, charge, lien or encumbrance or in respect of which he has entered into any contract in derogation of his title to supply the milk as the absolute owner thereof (and whether the bill of sale, mortgage, charge, lien, or encumbrance, or contract was made before, on, or after the commencing date) shall, within one month after the making thereof, give to the Authority a notice in writing in the prescribed form of the bill of sale, mortgage, charge, lien, encumbrance, or contract.

(2) A person who wilfully fails to comply with the provisions of this section is guilty of an offence against this Act.

69. Where the Authority in good faith and without negligence has made any payment—

Authority
not liable
for payments
made in
good faith.

- (a) to a dairyman delivering or causing to be delivered any milk to the Authority or any person acting under its authority;
- (b) to any person entitled or claiming to be entitled through that dairyman; or
- (c) to any person on the order of that dairyman or of a person referred to in paragraph (b) of this section,

the Authority is not answerable to any other person in respect of that payment for the milk or any part thereof, or in any action, suit, claim, or demand for damages or otherwise.

70. (1) If before receiving notice of claim to any payment for milk vested in the Authority or to the chose in action or any part thereof the subject matter of that payment the Authority has in good faith and without negligence made that payment, in whole or in part, in accordance with the provisions of this Division, the Authority does not, to the extent to which it has made that payment, incur any liability to the true owner of the milk or chose in action or any part thereof or to any person claiming through, under, or in trust for him.

Authority
protected in
certain
cases.

(2) This section does not in any way prejudice or affect any rights *inter se* of any parties claiming adversely to one another to be entitled to the milk or chose in action the subject matter or part of the subject matter of any claim for payment.

(3) The Authority may plead this section in absolute bar of any proceeding by any dairyman, transferee, or party referred to in the preceding provisions of this section in respect of any such milk or chose in action or part.

Division 5.—Power of Authority to borrow money.

Power of
Treasurer
to make
advances
to the
Authority.

71. (1) If at any time the funds of the Authority are not sufficient for the purpose of defraying the costs, charges and expenses incurred by it in the exercise of its powers and functions under the Act the Treasurer may advance to the Authority on such terms and conditions as are agreed between the Treasurer and the Authority such amounts of money as are sufficient for the time being to make up the deficiency.

(2) The amount of any advance made pursuant to subsection (1) of this section, is a charge upon the revenue of the Authority and is repayable by the Authority to the Treasurer as and when money becomes available to the Authority to make the repayment.

(3) Any moneys paid by the Treasurer to the Authority under this section may be paid to the Authority out of moneys appropriated by Parliament for the purpose.

Authority
may borrow
money.

72. (1) For the purposes of carrying out its powers and functions under this Act, the Authority is authorised with the prior approval in writing of the Minister and the Treasurer to borrow money upon such terms and conditions only as the Treasurer approves.

(2) The Treasurer on behalf of the State is hereby authorised to guarantee, on such terms and conditions as he thinks fit, repayment of any money borrowed by the Authority under this section and the payment of interest thereon.

(3) The Treasurer shall cause any money required for fulfilling any guarantee given by him pursuant to this section, to be paid out of the Public Account which Account is hereby to the necessary extent appropriated accordingly, and the Treasurer shall cause any sums received or recovered by him from the Authority or otherwise in respect of a sum so paid by the Treasurer to be paid into the Public Account.

73. (1) The Authority shall invest in its name, in such securities as the Treasurer thinks fit, all moneys set aside for the purpose of redeeming any loan raised pursuant to section 72 as a sinking fund and all interest accruing thereon.

Investment
of sinking
fund.

(2) The Authority shall from time to time—

- (a) apply the accumulated sinking fund in payment of the principal of any loan raised by the Authority pursuant to this Division when the loan becomes payable; and
- (b) apply that fund in the redemption of any debentures or inscribed stock issued or created pursuant to this Division.

74. (1) The Authority shall keep or cause to be kept a register of debentures and a register of inscribed stock and, as soon as practicable after the issue of any debentures or the creation of any inscribed stock pursuant to this Division, shall cause to be entered in the appropriate register the number, date and amount of any debenture issued and the name of the purchaser of any inscribed stock and the amount of stock purchased by him.

Register of
debentures
and
inscribed
stock.

(2) Each register may be inspected at all reasonable times by any person on payment of ten cents for each inspection.

(3) A register is evidence of any matters required or authorized by or under this Act to be entered therein.

*Division 6.—General provisions relating to the
Authority.*

75. (1) The funds of the Authority shall consist of—

Funds of the
Authority.

- (a) all licence fees and other fees prescribed by or under this Act, which fees shall be paid to the Authority;

- (b) any money appropriated by Parliament and payable to the Authority for the purposes of this Act;
- (c) any money that the Authority may borrow under and subject to the provisions of this Act; and
- (d) all other money that the Authority receives under and for the purposes of this Act.

(2) Any funds of the Authority, until they are required by the Authority for the purposes of this Act, may be temporarily invested as the Treasurer may direct, in any securities in which money in the Public Account, as that account is defined in the Audit Act, 1904, may lawfully be invested, and all interest derived therefrom shall be paid to the Authority.

Certain expenditure to be paid out of the funds of the Authority.

76. The funds of the Authority—

- (a) shall be paid from time to time as they are received by it, to the credit of an account in the name of the Authority kept at a bank to be approved by the Minister; and
- (b) shall be chargeable with the remuneration and expenses of the members of the Authority, the salaries and wages payable by the Authority and with all other expenditure for which the Authority is liable under this Act or which is lawfully incurred by the Authority in the performance and carrying out of its powers, authorities, functions and duties under this Act.

Accounts of Authority.

77. (1) The Authority shall cause to be kept proper books of account and true and regular accounts to be entered therein of—

- (a) all money received and paid by the Authority, and of all money owing to and by the Authority, and of the several purposes for which the money was received, and paid, and is owing; and

- (b) all the assets and liabilities of the Authority.

(2) All books of account kept by the Authority, pursuant to subsection (1) of this section shall be open to the inspection of the Auditor General and any person authorized in writing by the Auditor General to inspect the books.

78. (1) The Authority shall cause its accounts to be balanced on each thirtieth day of June.

Accounts to be balanced annually and to be audited.

(2) The Authority 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 ending on the thirtieth day of June, and such other statements as may be necessary to exhibit a true and correct view of the financial position and transactions of the Authority, to be compiled from the books of account and submitted to the Auditor General for audit.

(3) The accounts of the Authority shall be audited by the Auditor General appointed under the Audit Act, 1904, and he has in respect thereof, all the powers conferred on him by that Act in relation to the audit of public accounts; and that Act applies to all members of the Authority and its employees in the same manner as it applies to accounting officers as defined in that Act.

(4) Towards defraying the costs and expenses of any such audit by the Auditor General, the Authority shall pay to the Consolidated Revenue Fund such amounts, at such periods, as the Treasurer may determine.

79. (1) The Authority shall as soon as practicable after each thirtieth day of June make and submit a report of its operations for the year preceding that day, together with a true copy of the accounts as then last audited by the Auditor General together with his report thereon.

Report and accounts of Authority to be furnished annually to Minister.

(2) The Minister shall, on receipt of the report and the accounts, cause copies of the report and those accounts to be laid as soon as practicable before both Houses of Parliament.

Authority
to pay
Department
amount
towards
defraying
cost of
certain
services.

80. The Authority may remit to the Department annually such sum of money calculated as prescribed for any services performed by the Department on behalf of the Authority.

Power of
Manager,
etc., to take
proceedings
for the
Authority.

81. (1) Any information, complaint or other legal proceedings under this Act may be laid or taken in the name of the Authority by the Manager or by any other officer thereof authorized in that behalf either generally or in any particular case.

(2) In any proceedings the production of a certificate from the Authority that any person has been so authorised is conclusive evidence of his authority and evidence that his authority to act as provided in subsection (1) of this section remains in force.

(3) The Manager or other officer of the Authority shall, out of the Funds of the Authority, be reimbursed all damages, costs, charges and expenses to which he becomes liable by reason of anything done by him pursuant to subsection (1) of this section.

PART III.—CONTROL OF QUALITY AND SUPERVISION OF THE SUPPLY, PRODUCTION AND DISTRIBUTION, ETC., OF MILK AND DAIRY PRODUCE.

Division 1.—Duties and Functions of the Department of Agriculture and Inspectors.

Power of
Department
to supervise
and control
milk and
dairy
produce for
certain
purposes.

82. For the purposes of ensuring the wholesomeness and purity of milk and dairy produce the Department is hereby charged with—

- (a) the control of the quality of, and the supervision of the supply, production and distribution of milk and dairy produce;

- (b) the prohibition of the sale for human consumption of milk and dairy produce in any form that appears to be deleterious to health or unwholesome; and
- (c) such other duties relating to those purposes as may be prescribed.

83. (1) Subject to this Act, a person shall not use premises, or cause or permit premises to be used, as dairy produce premises unless the premises are registered under this Act by the Department for the purpose or purposes for which the premises are being used.

Dairy produce premises to be registered, etc.

(2) The Department may take such measures and use such means as are necessary to prevent the supply or sale of milk or dairy produce which—

- (a) has been produced on premises not registered by the Department;
- (b) is unfit for human consumption or for use for the manufacture of dairy produce; or
- (c) does not comply with the standards prescribed for that milk or dairy produce.

84. Nothing contained in this Act and in particular in section 82 or 83 shall be construed as affecting or prejudicing the rights, powers and duties of any health surveyor appointed under the Health Act, 1911, or an inspector of stock appointed under the Stock Diseases (Regulations) Act, 1968, or an inspector for the purposes of the Cattle Industry Compensation Act, 1965.

Saving of rights, etc., of certain inspectors.

85. (1) The Governor may appoint such number of persons to be inspectors under and for the purposes of this Act, as he considers necessary to enable the Department to effectively carry out its functions and duties under this Act.

Inspectors.

(2) For the purposes of this Act the Department may, with the prior approval of the Minister of Public Health, authorize any specified inspector so appointed to exercise the powers and functions of Health Surveyors under the Health Act, 1911, if and so long as that inspector possesses the qualifications necessary for appointment as a Health Surveyor under that Act.

(3) An inspector appointed under this section is without further appointment deemed to be an inspector under and for the purposes of the Margarine Act, 1940.

Production
by inspector
of certificate
of appoint-
ment.

86. Each inspector shall be furnished by the Department with a certificate of his appointment as an inspector, and on applying for admission to any premises or place for the purpose of this Act, shall, if so required, produce that certificate to the occupier or person apparently in charge of the premises or place.

Powers of
inspectors
as to
inspection,
etc., of dairy
produce
premises.

87. (1) An inspector may, for the purposes of the execution of this Act, do all or any of the following things—

- (a) enter and inspect at all reasonable times any dairy produce premises, shop or other premises and require the production of and examine—
 - (i) any certificate of registration, books, accounts, papers, records or documents for the purpose of ascertaining if the provisions of this Act have been complied with;
 - (ii) any equipment, utensils, machinery, ingredients or materials therein that are used or which he believes on reasonable grounds are being, or are likely to be, used in the preparation, production, treatment, storage, packing or sale of milk or dairy produce;

- (b) enter and search any ship, aircraft, vehicle or conveyance of any kind used or which he believes on reasonable grounds is being, or is likely to be, used for the carriage of milk or dairy produce and for that purpose may stop and detain the ship, aircraft, vehicle or conveyance pending the completion of the search;
- (c) open or order to be opened any package which contains or which he believes on reasonable grounds contains milk, dairy produce or material or ingredients used in the production of milk or dairy produce;
- (d) examine and take in the prescribed manner, such quantity of samples of any milk or dairy produce or any materials, ingredients or water used in connection with the production of milk or dairy produce, as is necessary to have them examined or analysed;
- (e) such other things as may be prescribed.

(2) An inspector who has taken any sample under this section may forward it to an expert for examination or to a duly qualified analyst for analysis, who upon receipt thereof, shall as soon as practicable examine, or as the case may be, analyse the sample, and shall give to the inspector forwarding the sample a certificate in the prescribed form signed by the expert or analyst of the result of the examination or analysis.

(3) An inspector who takes a sample pursuant to this section shall, before submitting it for examination or analysis, deal with the sample in manner prescribed.

88. (1) If, after inspection made pursuant to this Act, an inspector is satisfied that—

Further
powers of
inspectors

- (a) any dairy produce premises are in an unclean or unwholesome condition or are otherwise unfit for the purposes for which they are used;

- (b) any utensil, equipment, machinery, apparatus, material or thing on any dairy produce premises, or any conveyance, vehicle, aircraft or ship used for the carriage of milk or dairy produce, is in an unclean or unwholesome condition, or is unfit for the purpose for which it is used;
- (c) the water supply from which water is obtained and used in connection with the production of milk or of dairy produce on any dairy produce premises is impure or unwholesome;
- (d) any ingredients or materials found on any dairy premises are prohibited or are otherwise unfit to be used in the production of milk or dairy produce;
- (e) any person employed in connection with dairy produce premises is affected with disease, so that any milk or dairy produce is likely to be contaminated,

he may, by notice in writing in the prescribed form, require the owner of the dairy produce premises or of the conveyance, vehicle, aircraft or ship, as the case may be, or their respective agents, to comply with any direction specified in the notice.

(2) An inspector, by any such notice, may direct that—

- (a) the dairy produce premises, or any utensils, equipment, machinery, material, apparatus or thing thereon, or the conveyance, vehicle, aircraft or ship, as the case may be, shall be cleaned, disinfected, and rendered wholesome to the satisfaction of the inspector;
- (b) any such dairy produce premises, utensils, equipment, machinery, material, apparatus or thing, conveyance, vehicle, aircraft or ship, as the case may be, shall

not be used in connection with milk or dairy produce for the period specified in the notice, or until the inspector is satisfied that it or they are fit for use;

- (c) any such water supply shall not be used in connection with the dairy produce premises unless it is treated to the satisfaction of the inspector;
- (d) the use of any such ingredients or materials in the production of milk or dairy produce be prohibited;
- (e) any such person who is affected with disease be effectively segregated;
- (f) no milk or dairy produce shall be removed from such dairy produce premises during any period specified in the notice.

(3) (a) A notice shall not be given under paragraph (e) of subsection (1) of this section unless the inspector has obtained a certificate from the medical officer of the district in which the dairy premises are, or from some other legally qualified medical practitioner, that the person is affected with such a disease as is likely to contaminate any milk or dairy produce.

(b) Such a notice shall continue in force until the person to whom it relates produces to the inspector a certificate from a medical practitioner that the person is free from disease.

(4) No notice shall be given under paragraph (f) of subsection (2) of this section except with the prior approval of the Chief, Division of Dairying.

(5) Notwithstanding the foregoing provisions of this section, where an inspector is of opinion that any utensil, equipment, machinery, material, apparatus or thing to which paragraph (b) of

subsection (2) of this section refers is unfit for the purpose for which it is intended to be used, or is being used—

- (a) he may mark it in such a manner as to make it readily identifiable and may by notice in writing in the prescribed form direct that it shall not be used for that purpose until such time as the inspector is satisfied that it is fit to be used for that purpose; or
- (b) if he is of opinion that such utensil, equipment, machinery, material, apparatus or thing is incapable of being made fit to be used for that purpose, the inspector shall forthwith mark it in manner prescribed and condemn it, and while it remains condemned by the inspector it shall not be used for that purpose.

(6) An inspector, immediately after exercising any of the powers conferred by this section, shall report to the Chief, Division of Dairying thereon, who may vary or cancel any requirement or direction so given and the requirement or direction as so varied shall be given effect accordingly.

Power of
inspector to
condemn
certain
milk, dairy
produce,
etc.

89. (1) If an inspector is satisfied that—

- (a) any milk or dairy produce inspected by him is unfit for human consumption;
- (b) any milk or dairy produce is being or has been produced, removed, sold or delivered contrary to this Act;
- (c) any milk or dairy produce does not comply with the standard prescribed for it;
- (d) any preservatising agent or colouring agent used or intended to be used in connection with the treatment, preparation, manufacture or holding of milk or dairy produce or any disinfectant, does not comply with this Act or by reason of its composition is unsuitable,

he may by order condemn it.

(2) Subject to subsection (3) of this section, any milk or dairy produce, preservatising agent, colouring agent, or disinfectant that has been condemned shall become the property of the Crown, and shall be disposed of as the Minister directs or as may be prescribed.

(3) (a) Where any milk or dairy produce has been condemned pursuant to paragraph (c) of subsection (1) of this section, the owner of the milk or dairy produce may be permitted, if the Chief, Division of Dairying approves, to treat the produce within such time as may be directed by him so that the milk or dairy produce will then comply with the prescribed standard that applies thereto.

(b) Where the Chief, Division of Dairying is satisfied that the milk or dairy produce so complies he may direct that the milk or dairy produce be no longer condemned under this section, and such direction has effect accordingly.

90. (1) Upon the request of an inspector, every owner or manager of dairy produce premises or of any conveyance of whatever kind, and every vendor of dairy produce shall as soon as practicable after he is requested so to do by the inspector—

Owner or
manager to
furnish
information
to inspector.

- (a) furnish to the inspector a list of the names of the persons supplying milk or dairy produce to the owner, manager or vendor;
- (b) give to the inspector any personal assistance and information that he is capable of giving, to aid the inspector in determining the cause of any defect or deterioration in the milk or dairy produce, or any source of contamination, infection or disease to which stock, milk or dairy produce may be exposed.

(2) A person who contravenes or fails to comply with any provision of this section is guilty of an offence against this Act.

Penalty: Two hundred dollars.

Offence of
failure to
comply with
order of
inspector.

91. A person who, without lawful excuse, contravenes or fails to comply with an order or direction of an inspector given pursuant to this Act commits an offence against this Act.

Penalty: One hundred dollars.

Division 2.—Offences, evidentiary provisions and regulations.

Offence of
using, etc.,
unwholesome,
etc., milk and
dairy
produce.

92. (1) A person shall not sell or supply or permit to be sold or supplied, or use or permit to be used, either as milk for human consumption or as dairy produce or in the manufacture of dairy produce, for human consumption—

- (a) any milk or dairy produce while it remains condemned by an inspector pursuant to section 89;
- (b) any milk or dairy produce that is unfit for human consumption;
- (c) any milk that does not comply with the standards prescribed for milk to be used in the manufacture of dairy produce;
- (d) any milk or dairy produce that has been procured or manufactured by or with the help of any person who is unable or unwilling to obtain a certificate from a legally qualified medical practitioner if required by an inspector under section 88.

(2) A person who contravenes or fails to comply with any provision of this section is guilty of an offence.

Penalty: Two hundred dollars.

93. A person shall not—

- (a) sell or supply or permit to be sold or supplied any milk or dairy produce that does not comply with the standard prescribed for that milk or dairy produce;

Offences of selling milk, etc., that does not comply with standards or of exposing milk, etc., to contamination.

or

- (b) expose milk or dairy produce intended for sale for human consumption to deleterious contamination or to influences likely to produce deterioration in quality.

Penalty: Two hundred dollars.

94. A person shall not—

- (a) resist, interfere with, hinder or obstruct the Authority or any member or officer of the Authority or any agent appointed by the Authority to receive milk that is vested in the Authority, or any inspector; or
- (b) without lawful excuse refuse to give any information required of him, or give any false information to any inspector or other such member or officer,

Offence of obstructing, etc.

in the exercise of any powers or functions under this Act.

Penalty: Two hundred dollars or imprisonment for two months.

95. (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence against this Act.

General penalty.

(2) A person who is guilty of an offence against this Act for which no penalty is elsewhere provided in this Act, is liable to a penalty of Three hundred dollars.

Recovery of
fees, etc.
includes
regulations.
See S. 4.
Act No. 30
of 1918.

96. Any fee, charge or money due to the Authority or the Department under the provisions of this Act may be recovered as a debt in a court of competent jurisdiction.

Proof of
certain
matters not
required.

97. (1) In any legal proceedings by or against the Authority no proof is required, until evidence is given to the contrary, of—

- (a) the constitution of the Authority;
- (b) any resolution of the Authority;
- (c) the appointment of any member or any officer of the Authority;
- (d) the presence of a quorum at any meeting at which any question is determined or any act is done by the Authority;
- (e) the authority of any person to take proceedings in respect of offences against this Act.

(2) In any proceedings in respect of offences under this Act—

- (a) the person whose name or mark is on the outside or inside of any package or container containing any milk or class of dairy produce intended for sale, as the packer or seller thereof shall be deemed to be such packer or seller until evidence is given to the contrary;
- (b) the onus of proving any exemption under section 7 lies on the defendant.

Proceedings.

98. (1) No proceedings in respect of offences against this Act shall be taken otherwise than by the Authority or the Department, as the case requires, or by some person with the authority of the Authority or the Department.

(2) Proceedings in respect of offences against this Act may be taken by the Authority or the Department, or by some person authorized by the Authority or the Department in that behalf, either generally or specially.

99. No action, claim or demand lies or shall be made or allowed by or in favour of a person against Her Majesty, or the Minister, or the Authority or any member thereof, or member of the Quota Appeals Committee, or any officer or person acting in good faith in the execution of this Act, for or in respect of any damage, loss or injury sustained, or alleged to be sustained, by reason of the operation of this Act, or anything done in good faith in the execution, or purported execution, of this Act.

Indemnity.

100. In any proceedings in any court or before any persons having by law or consent of parties authority to hear, receive and examine evidence—

Evidence.

- (a) any printed paper purporting to be—
 - (i) an order made and published under this Act; and
 - (ii) printed by the Government Printer, is evidence that an order in the words printed in that paper was duly made and published under this Act; and
- (b) a certificate purporting to be signed by the Chairman or two members of the Authority certifying—
 - (i) that a person has been appointed as the delegate of the Authority under section 43 and specifying what powers, authorities, duties or functions of the Authority were delegated to him and the period during which he was a delegate;
 - (ii) that a person was appointed as an authorized agent to receive on behalf of the Authority any milk

that is vested in the Authority, and that the appointment has not been revoked;

- (iii) that on a day, or during a period, specified in the certificate, a person was or was not licensed and, if the certificate certifies that he was so licensed, certifying the conditions to which the licence issued to him was subject and the activities he was authorized to carry on by that licence,

is *prima facie* evidence of the facts stated therein.

Regulations.

101. (1) The Governor may make regulations prescribing all matters that are contemplated, required or permitted by this Act for carrying out or giving effect to the objects of this Act or which appear to him to be necessary or convenient to be prescribed for the effectual carrying out of this Act and any such regulation may confer upon a person or body specified in the regulation a discretionary authority.

(2) Without limiting the generality of the powers conferred by subsection (1) of this section the Governor may make regulations for or with respect to—

- (a) grades, classes, descriptions and standards relating to the quality, composition and wholesomeness of milk and dairy produce that may be supplied or supplied for sale or sold; the grading or testing of milk or dairy produce and the supplying of a certificate thereof;
- (b) the production, collection, manufacture, treatment, packing, carriage, deposit, storage, distribution, delivery, supply, use or sale of milk and dairy produce;

- (c) prohibiting the production or manufacture of any grade, class or description of milk and dairy produce from ingredients not approved or from ingredients obtained from a source not approved by the Department;
- (d) the construction, alteration and maintenance of dairy produce premises and stores;
- (e) the provision, construction and equipment of laboratories on dairy produce premises and the provision of staff in those laboratories for the purposes of ensuring the wholesomeness and purity of milk and dairy produce;
- (f) the cleaning and sterilizing of cans, vessels, utensils, appliances and equipment used on dairy produce premises;
- (g) the particulars to be kept by dairymen in respect of their herds;
- (h) the books and records to be kept by, and the returns to be made to the Authority or the Department by, persons engaged in the production, collection, treatment, manufacture, transport, storage, deposit, distribution, delivery, use or sale of milk or dairy produce;
- (i) the inspection of dairy produce premises and such other premises as are specified in the regulations;
- (j) the registration of and the use of dairy produce premises and such other premises and facilities as are specified in the regulations, the cancellation or suspension of any such registration and the issue of certificates of registration by the Department;
- (k) the forms for use under this Act;
- (l) the making of payments in respect of milk vested in the Authority;

- (m) the powers, authorities, duties and functions of the Authority, the Department and the Quota Appeals Committee;
- (n) prescribing the licences required under and for the purposes of this Act and the minimum and maximum fees payable for each class of licence, and the methods by which the fees are assessed and the fees to be paid for any other act, matter or thing done under this Act;
- (o) the methods by which any milk or dairy produce that has been seized or condemned may be treated, destroyed or disposed of;
- (p) the qualifications to be possessed by, and the examinations to be passed by, persons employed in testing, treating or grading milk or dairy produce or employed as butter makers or as cheese makers and the issue of certificates of competency to such persons or to such other classes of persons as may be prescribed and the renewal and cancellation of such certificates.

(3) Different regulations may be made under this section so as to apply to different areas, or different classes of persons, or in different circumstances, or so as to apply differently according to such factors as may be specified in the regulations.

(4) The regulations may provide that, in cases specified in the regulations or a class of case so specified, whether on conditions so specified or unconditionally, persons, acts or things, or a class of persons, acts or things, may be excepted from the provisions of the regulations, either wholly or to such extent as is so specified.

(5) The regulations—

- (a) may adopt, either wholly or in part and either specifically or by reference any of the standard rules, codes or methods relating to the dairy industry, of any specified body or institution;

- (b) may require any matter or thing to be verified by statutory declaration.

(6) A regulation may impose a penalty not exceeding two hundred and fifty dollars for any breach thereof and in the case of a continuing offence, whether of commission or of omission to a daily penalty of twenty dollars for each day or part thereof that the offence continues after the offender is convicted.

SCHEDULE.

S. 4.

Dairy Industry Act, 1922-1969.

Dairy Products Marketing Regulation Act, 1934-1937.

Milk Act, 1946-1971.
