

DAIRY INDUSTRY (AMENDMENT) ACT.

Act No. 40, 1962.

Elizabeth II, An Act to make further provision with respect to the powers of inspectors under the Dairy Industry Act, 1915, as amended by subsequent Acts, and the manufacture and preparation of margarine; for these and other purposes to amend that Act, as so amended; and for purposes connected therewith.
 [Assented to, 14th December, 1962.]

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

Short title
and
citation.

1. (1) This Act may be cited as the "Dairy Industry (Amendment) Act, 1962".

(2)

(2) The Dairy Industry Act, 1915, as amended by **No. 40, 1962** subsequent Acts and by this Act, may be cited as the Dairy Industry Act, 1915-1962.

2. (1) The Dairy Industry Act, 1915-1960, is ^{Amendment of Act No.} _{45, 1915.}

(a) by inserting in subsection one of section two next Sec. 2. after the definition of "Inspector" the following (Definitions.) new definition :—

"Manufacture" in relation to margarine includes packaging.

(b) by omitting section nine and by inserting in lieu ^{Subst. sec. 9, new secs.} _{9A, 9B.} thereof the following sections :—

9. (1) An inspector, upon production of written ^{Powers of} evidence of his appointment as such, at any reasonable time may, for the purposes of this Act,—

(a) enter and remain in or on any dairy produce factory, store, place, vessel or vehicle which is, or which he suspects, on reasonable grounds, is, being used for or with respect to the manufacture, storage, distribution, sale or conveyance of any dairy produce, fat, oil or other substance of any kind commonly used in the manufacture or preparation of margarine or which is, or which he suspects, on reasonable grounds, is, being used for the storage or custody of any accounts, records, books, documents or any other thing whatsoever relating to any such dairy produce, fat, oil or other substance;

(b) search and inspect any dairy produce factory, store, place, vessel or vehicle and examine any dairy produce, fat, oil, or other substance of a kind commonly used in the manufacture or preparation of margarine, scales, measures, apparatus, churns, vats, utensils, accounts, records, books,

No. 40, 1962

books, documents, labels, goods, packages, parcels or any other things of any nature or kind whatsoever found therein or thereon;

- (c) without payment take samples of any such dairy produce, fat, oil, substance or labels;
- (d) detain and open any such packages, cases, parcels or other things which contain, or which he suspects, on reasonable grounds, contain, any dairy produce, fat, oil or substance commonly used in the manufacture or preparation of margarine;
- (e) take copies of, or extracts or notes from, any such accounts, records, books, documents or labels;
- (f) request any person found in or on any dairy produce factory, store, place, vessel or vehicle or the holder of any license granted under section 22A of this Act—
 - (i) to produce any accounts, records, books, documents, labels or any other things whatsoever—
 - (a) which relate to, or which the inspector suspects, on reasonable grounds, relate to, the manufacture, storage, distribution, sale or conveyance of any dairy produce, fat, oil or other substance of a kind commonly used in the manufacture or preparation of margarine; and
 - (b) which at the time of the request are in the possession or under the control of that person; and
 - (ii)

(ii) to answer any question with respect No. 40, 1962
to—

- (a) any such accounts, records, books, documents, labels or other things whatsoever; or
- (b) the manufacture, storage, distribution, sale or conveyance of any dairy produce, fat, oil or other substance of a kind commonly used in the manufacture or preparation of margarine.

(2) Any person who—

- (a) prevents or attempts to prevent any inspector from exercising any power conferred on him by or under this Act;
- (b) hinders or obstructs any inspector in the exercise of any such power;
- (c) fails to comply with any request of an inspector under paragraph (f) of subsection one of this section; or
- (d) furnishes to an inspector any information which is false or misleading in any material particular,

shall be guilty of an offence against this Act and shall be liable upon summary conviction to a penalty not exceeding two hundred pounds or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment and in the case of an offence under paragraph (c) of this subsection to an additional penalty not exceeding forty pounds for every day on which the offence is continued.

(3) A person shall not be guilty of an offence under paragraph (c) of subsection two of this section by reason of his failure to answer any question referred to in subparagraph (ii) of paragraph (f) of subsection one of this section if he proves to the

No. 40, 1962

the satisfaction of the court that he did not know and could not with reasonable diligence have ascertained the answer to the question.

(4) A person shall not be excused from answering any question, if required to do so under paragraph (f) of subsection one of this section, on the ground that the answer might tend to criminate him or make him liable to a penalty, but the information furnished by him shall not be admissible against him in any proceedings civil or criminal, except in proceedings for an offence under subsection two of this section.

(5) Where any answer to a question referred to in subparagraph (ii) of paragraph (f) of subsection one of this section, or any information whatsoever, is given to an inspector by the prescribed officer of a body corporate which is the holder of a cooking margarine license or a table margarine license or both such licenses, such answer and information shall, for the purposes of any proceedings against the body corporate under any of the provisions of this Act, be binding upon and admissible in evidence against the body corporate, unless it is proved that the answer or information was given in relation to a matter in respect of which the prescribed officer had no authority to bind the body corporate.

The provisions of this subsection shall be in addition to and not in derogation from any rule of law relating to the binding effect and admissibility in evidence of statements made by any officer or employee of a body corporate.

(6) Nothing in this section shall authorise an inspector to enter in or upon or remain in or to search or inspect that portion of any dairy produce factory, place, vessel or vehicle which is used for residential purposes except under a written authority given by the Minister. Any such authority shall be limited to a particular case.

(7)

(7) Any matter or thing done by an inspector ^{No. 40, 1962} bona fide and for the purpose of executing this Act shall not subject the inspector personally to any action, liability, claim or demand.

(8) Any person who communicates any information acquired by him in the course of the administration of this Act except in accordance with the instruction in writing of the Minister or for the purpose of proceedings in any court shall be guilty of an offence against this Act and shall be liable upon summary conviction to a penalty not exceeding forty pounds.

(9) In this section "prescribed officer of a body corporate" means the managing director, manager or other governing officer, by whatever name called or any member of the governing body of the body corporate and, where any officer or employee of the body corporate gives any information to an inspector, whether in answer to a question or not, relating to any part of the operations of the body corporate over which such officer or employee exercises any superintendence or control, includes that officer or employee.

9A. (1) An inspector who finds a person committing an offence against this Act or contravening any provision of this Act, or who suspects, on reasonable grounds, a person of having committed or attempted to commit any such offence, or of having contravened or attempted to contravene any such provision, may demand from that person his name and place of abode.

(2) Any person who upon demand made as aforesaid and upon production of written evidence of the inspector's appointment as such—

- (a) fails or refuses to state his name or place of abode, or
- (b) gives a false name or place of abode,
shall

296 Dairy Industry (Amendment) Act.

No. 40, 1962

shall be guilty of an offence against this Act and shall be liable upon summary conviction to a penalty not exceeding forty pounds.

**Personation
of inspector.**

9B. Any person who forges or counterfeits any written evidence of appointment of an inspector or makes use of any forged, counterfeited or false written evidence of such an appointment or personates an inspector or falsely pretends to be an inspector shall be guilty of an offence against this Act and shall be liable upon summary conviction to a penalty not exceeding forty pounds.

**Sec. 10.
(Inspector
may order
remedial
measures.)**

(c) by omitting from section ten the word "examination" and by inserting in lieu thereof the words "search, inspection or examination";

**Sec. 21A.
(Labelling
of table and
cooking
margarine.)**

(d) by inserting next after subsection one of section 21A the following new subsection :—

(1A) No person shall sell (otherwise than for export beyond the Commonwealth of Australia) any table margarine unless such margarine is made up in lumps of one pound or of half a pound.

**Subst.
sec. 22.**

(e) by omitting section twenty-two and by inserting in lieu thereof the following section :—

**Books to
be kept.**

22. (1) The manager of any premises or place in or at which margarine is manufactured or prepared shall keep such books as may be prescribed containing such particulars as may be prescribed relating to the manufacture, storage, distribution, acquisition or disposal, or stocks, of margarine manufactured in those premises and to the acquisition or disposal, or stocks of any fat, oil or other substance commonly used in the manufacture or preparation of margarine.

(2)

(2) The manager of any premises or place No. 40, 1962 (not being any premises or place referred to in subsection one of this section) used for the wholesale or retail distribution or the storage of margarine shall keep such books as may be prescribed containing such particulars as may be prescribed relating to the storage, distribution, acquisition and disposal, and stocks, of margarine acquired or disposed of in connection with any business carried on or in such premises or place.

(3) Different regulations may be made for the purposes of any provision of this section according to time, place or circumstances, including but without limiting the generality of the foregoing provisions of this subsection according to whether the regulations relate to cooking margarine or table margarine.

(4) Any person who contravenes any of the provisions of this section shall be guilty of an offence against this Act and shall be liable on summary conviction to a penalty not exceeding two hundred pounds.

(5) Where a person is convicted of an offence against this Act by reason of his contravening any of the provisions of this section and that person is the manager of any premises or place in or at which any business is carried on by a margarine company, such margarine company shall be deemed for the purposes of subsections three and seven of section 22A of this Act to have committed the like offence.

In this subsection "margarine company" means any body corporate which is the holder of a cooking margarine license or a table margarine license and includes any body corporate of which the holder of such a license is a subsidiary corporation within the meaning of section six of the Companies Act, 1961, and any subsidiary corporation, within the meaning of that section, of the holder of such a license.

(f)

No. 40, 1962

Sec. 22A.
(Manufacturers of
margarine
to be
licensed.)

(f) (i) by inserting in subsection two of section 22A after the word "prepare" the words ", the premises at which it is proposed to manufacture or prepare the margarine,";

(ii) by inserting in subsection three of the same section after the word "license" where firstly occurring the words "or grant any such application subject to such conditions relating to the manufacture or storage of margarine as the Minister thinks fit and specifies in the license";

(iii) by inserting at the end of paragraph (b) of the same subsection the following new paragraph :—

For the purposes of subparagraph (i) of this paragraph "applicant" includes any body corporate of which the applicant is a subsidiary corporation within the meaning of section six of the Companies Act, 1961, or which is a subsidiary corporation, within the meaning of that section, of the applicant.

(iv) by omitting paragraph (a) of subsection seven of the same section and by inserting in lieu thereof the following paragraph :—

(a) The Minister may cancel a license upon the conviction of the holder thereof of any offence under this section or under section nine, 21A or 22D of this Act.

For the purposes of this paragraph "holder" includes any body corporate of which the holder is a subsidiary corporation within the meaning of section six of the Companies Act, 1961, or which is a subsidiary corporation, within the meaning of that section, of the holder.

(v) by omitting from subsection eight of the same section the words "penalty not exceeding one hundred pounds and to an additional penalty not exceeding twenty pounds" and by inserting in lieu thereof the words "penalty not exceeding

exceeding two hundred pounds and to an ~~No. 40, 1962~~
additional penalty not exceeding forty
pounds";

(vi) by inserting next after the same subsection the following new subsection :—

(9) Proceedings against a person who contravenes any condition referred to in paragraph (a) of subsection six of this section of a table margarine license may be instituted under this Act at any time within twelve months after the date on which the offence is committed.

(g) (i) by omitting from paragraph (a) of subsection Sec. 22D. one of section 22D the words ", prepared or (Returns.) packed" and by inserting in lieu thereof the words "or prepared";

(ii) by omitting from subsection two of the same section the words "may by notice in writing require any person to furnish to him in writing a return or periodical returns within the time or times specified in the notice" and by inserting in lieu thereof the words "or any inspector authorised in writing by the Minister to do so may by notice in writing require any person to furnish to the Minister or inspector within a period of one month, or such longer period or periods as the Minister or inspector, as the case may be, may from time to time allow, after the service of the notice on that person, a return or periodical returns in writing";

(iii) by omitting from subsection three of the same section the words "one hundred pounds" and by inserting in lieu thereof the words "two hundred pounds";

(iv)

(iv) by inserting at the end of the same section the following new subsections :—

(4) Where any person required to furnish to the Minister a return under any provision of this section fails to furnish that return within the time or period prescribed by or under that provision, that person shall be liable on summary conviction to a penalty not exceeding forty pounds for every day after the expiration of that time or period and until the return is furnished to the Minister.

(5) Any authority referred to in subsection two of this section—

(a) may be exercised only during such period as is specified in the authority, may be revoked by the Minister at any time and shall be subject to such limitations and conditions as may be specified in the authority;

(b) shall not prevent the exercise by the Minister of the powers conferred on him by the said subsection two.

Sec. 25.
(Regula-
tions.)

(h) by inserting next after paragraph (u) of subsection one of section twenty-five the following new paragraph :—

(v) prescribing the books to be kept for the purposes of section twenty-two of this Act and the manner in which and the places at which such books shall be kept.

(2) There shall be deemed to be included in every cooking margarine license and table margarine license in force at the commencement of this Act a condition prohibiting the manufacture or preparation of the margarine referred to

to in the license otherwise than at the premises specified in No. 40, 1962
the license as the premises at which the holder of the license
is licensed to manufacture or prepare the margarine.

(3) The amendment made by paragraph (d) of
subsection one of this section shall commence upon a day
to be appointed by the Governor and notified by proclama-
tion published in the Gazette.
