

SWINE COMPENSATION ACT.

Act No. 36, 1928.

An Act to provide for the establishment of a Swine Compensation Fund, and for the payment therefrom of compensation to the owners of pigs and carcasses of pigs destroyed as suffering from disease; and for purposes connected therewith. [Assented to, 15th December, 1928.]

George V,
No. 36, 1928.

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

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Swine Com- Short title.
pensation Act, 1928."

(2) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

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

Division into
Parts.

PART I.—PRELIMINARY.

PART II.—SWINE COMPENSATION.

PART III.—SWINE COMPENSATION FUND.

PART IV.—MISCELLANEOUS.

3.

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Definitions.

3. In this Act, unless the context otherwise indicates or requires—

“ Abattoir ” includes—

- (a) a public abattoir as defined by the Meat Industry Act, 1915, and any place at which the slaughtering of cattle has been consented to under section nineteen of that Act; and
- (b) any slaughter-house licensed under the provisions of the Cattle Slaughtering and Diseased Animals and Meat Act, 1902; and
- (c) the abattoir established under the Newcastle District Abattoir and Saleyards Act, 1912; and
- (d) any slaughter-house or place declared by the regulations to be an abattoir for the purposes of this Act;

“ Carcass ” means the carcass of any pig;

“ Chief Veterinary Surgeon ” means the Chief Veterinary Surgeon of the Department of Agriculture;

“ Disease ” means any disease in respect of which the provisions of this Act or any of them are applied in pursuance of section four of this Act;

“ Fund ” means the Swine Compensation Fund established under this Act;

“ Market value ” of a pig means the value of the pig calculated as upon a sale with delivery at the place where the pig is when ordered to be destroyed;

“ Owner ” includes the authorised agent of the owner;

“ Pig ” means any boar, sow, barrow, or sucker;

“ Prescribed ” means prescribed by this Act or by the regulations;

“ Regulations ” means regulations made under this Act.

4.

4. The Governor may by proclamation published in the Gazette declare that—

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Diseases in respect of which Act applies.

(a) any disease of pigs ;

(b) any condition of ill-health or departure from the normal health of pigs ; or

(c) the infestation of pigs with any parasite, external or internal, and whether at an active or cystic stage of its life cycle,

shall be a disease in respect of which the provisions of this Act or such of those provisions as may be specified in the proclamation shall apply.

PART II.

SWINE COMPENSATION.

5. (1) Subject to this Act, compensation shall be payable :—

Compensation payable to certain owners.
cf. Vict. Act, 1927, No. 3,523.

(a) to the owner of any pig destroyed pursuant to an order made or given under the authority of any Act or of any regulation under any Act, because such pig is suffering from or suspected to be suffering from disease ; or

(b) to the owner of any carcass or portion of a carcass condemned at any abattoir under the authority of any Act as unfit for human consumption because of disease ; or

(c) to the owner of any pig destroyed by the order of an approved person because such pig is suffering from or suspected of suffering from disease.

(2) For the purposes of paragraph (c) of subsection one of this section an approved person means a person approved by the Minister for the purposes of this Act, either generally or in a particular case, and who is an inspector under the Stock Diseases Act, 1923, or a registered veterinary surgeon, or a veterinary surgeon employed under any Act of this State or of the Commonwealth.

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Amount
of com-
pensation.
cf. Viet. Act,
1927, No.
3,523, s. 5.

6. (1) Subject to this Act, the amount of compensation payable in respect of any pig destroyed because such pig is suffering from or suspected of suffering from disease shall be—

- (a) if after destruction the pig is found to be free from disease, the market value (subject to the prescribed deductions) of the pig;
- (b) if after destruction the pig is found to be diseased, seven-eighths of the market value (subject to the prescribed deductions) of the pig.

In no case shall the market value of any pig, or class of pigs, be deemed for the purposes of this Act to exceed such sum as may be prescribed by the regulations.

(2) Subject to this Act, the amount of compensation payable pursuant to this Act in respect of any diseased carcass, or portion of a diseased carcass condemned as unfit for human consumption because of disease shall be as prescribed by regulations.

Determina-
tion of value
of pig, &c.,
destroyed as
diseased.
cf. *Ibid.*, s. 6.

7. (1) The value of any pig so destroyed, or of any carcass, or portion thereof so condemned, shall be determined by agreement between the owner thereof and the person by whose order or under whose authority such pig was destroyed or such carcass or portion thereof was condemned, as the case may be.

(2) In default of such agreement the value shall be determined by some competent and impartial person nominated for the purpose by the Minister, and the determination of such person shall be final and conclusive.

(3) The residual value of any pig so destroyed or of any carcass, or portion of a carcass, so condemned shall be determined in the like manner.

(4) The amount of any such residual value shall in every case be deducted from the amount payable as compensation under this Act.

Application
for compen-
sation, &c.
cf. Viet. Act,
1927, No.
3,523, s. 7.

8. (1) No compensation under this Act shall be payable unless the owner of the pig so destroyed or of the carcass or portion of a carcass so condemned, as the case may be, makes application for compensation in the manner prescribed.

(2)

(2) The owner shall forward with the application a certificate containing the prescribed particulars to be furnished by the person by whose order or under whose authority the pig was destroyed, or the person by whom the carcass or portion thereof was condemned.

Where a pig is destroyed upon the order of the Minister the certificate may be furnished by the prescribed person.

(3) No compensation shall be payable unless the application for compensation has been made by the owner within twenty-one days after the destruction of the pig or the condemnation of the carcass or portion thereof.

(4) No compensation shall be payable—

- (a) if the head or part of the head only of a carcass is condemned ; or
- (b) where the owner of a pig affected with the disease has failed to comply with the provisions of any Act or regulation for the time being in force requiring him to give notice of the existence of such disease ; or
- (c) unless the Chief Veterinary Surgeon is satisfied—
 - (i) that all stamp duty (if any) payable under the Swine Compensation Taxation Act, 1928, in respect of all carcasses owned by the person claiming compensation has been paid ; and
 - (ii) that the owner claiming compensation has complied with this Act and the regulations with respect to applications and claims for compensation ; or
- (d) in respect of a pig introduced into New South Wales which is destroyed because such pig is suffering from or suspected to be suffering from swine fever if such pig is ordered to be destroyed within one month after its introduction, unless the Chief Veterinary Surgeon is satisfied that the pig became so diseased after being introduced, or unless it is found to be free from disease.

(5)

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(5) No compensation, or only such part of the compensation otherwise payable as the Chief Veterinary Surgeon thinks reasonable, shall be payable under this Act to any owner if within the period of two years preceding the date of his application for compensation he has been convicted—

- (a) of an offence against this Act or the regulations; or
- (b) of an offence in connection with a pig against the Stock Diseases Act, 1923, or the regulations made thereunder; or
- (c) of an offence against any provision relating to diseases in pigs or pig products or the carcasses of pigs contained in any Act or in any regulation made under any Act.

(6) No compensation shall be payable to the owner of any pig destroyed because it is suffering from or suspected to be suffering from swine fever if the Minister is satisfied that it has at any time during the month immediately preceding its destruction been fed on unboiled garbage or household scraps, unless it is found on post-mortem examination to be free from swine fever.

Compensation money may be applied in payment of debt to Government.

9. Where any person to whom compensation is payable in accordance with the provisions of this Act is indebted to the Government of the State in respect of any advance of money or goods or other assistance rendered to him, the compensation shall be applied in the first place in payment of the debt, and the balance, if any, shall be paid to such person.

Compensation payable in certain cases in respect of pigs which died or were destroyed.

10. (1) Notwithstanding anything contained in this Act, compensation under this Act shall be payable—

- (a) to the owner of any pig which was destroyed at any time after the thirty-first day of December, one thousand nine hundred and twenty-six, and before the commencement of this Act because such pig was suffering from or suspected to be suffering from swine fever and the destruction was carried out under an order of the Minister or on request made by a Government veterinary surgeon or an inspector under the Stock Diseases Act, 1923;

(b)

- (b) to the owner of any pig which is proved to the satisfaction of the Chief Veterinary Surgeon to have died of swine fever after the thirty-first day of December, one thousand nine hundred and twenty-six, and before the first day of July, one thousand nine hundred and twenty-seven. No. 36, 1928.

The compensation shall be payable as if the pig had been destroyed after the coming into operation of this Act.

(2) Except under circumstances which the Minister certifies to be exceptional, no compensation shall be payable in pursuance of subsection one of this section unless an application is made by the owner in the prescribed manner within two months after the commencement of this Act.

(3) The value of any pig in respect of which compensation is claimed under this section shall be determined by agreement between the owner of the pig and the Chief Veterinary Surgeon.

In default of such agreement, the value shall be determined by the Minister, and his determination shall be final and conclusive.

(4) The Swine Compensation Fund shall be applied to the payment of claims for compensation under this section in the same manner as it may be applied to the payment of claims for compensation in respect of pigs destroyed after the commencement of this Act.

(5) Save as otherwise provided in this section, the provisions of this Act shall, so far as applicable and with such alterations, modifications, and substitutions as are necessary, extend and apply to compensation and the payment thereof and to claims for compensation under this section in all respects as if the pig had been destroyed after the commencement of this Act.

11. Any person—

- (a) who buys or sells or who attempts to buy or sell any pig knowing or having reasonable cause to suspect the pig to be diseased and with the intention (in the opinion of the Court before which he is charged) of making a claim or enabling any other person to make

Persons trafficking in diseased pigs or carcasses with a view to compensation.

cf. Viet. Act, 1927, No. 3,523, s. 9.

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a claim for compensation therefor or in respect of the carcass or any portion of the carcass thereof; or

- (b) who buys or sells or who attempts to buy or sell any carcass knowing or having reasonable cause to suspect such carcass to be diseased, and with the intention (in the opinion of the Court before which he is charged) of making a claim or enabling any other person to make a claim for compensation in respect of such carcass or any portion thereof,

shall be liable upon summary conviction to a penalty of not less than twenty-five pounds nor more than one hundred pounds for every such pig or (as the case may be) for every such last-mentioned carcass.

PART III.
SWINE COMPENSATION FUND.

Establish-
ment of
Fund.

12. (1) There shall be established and kept in the Treasury an account in Special Deposits Account to be called the Swine Compensation Fund.

(2) There shall be paid to the credit of the Fund—

- (a) all sums of money collected by or for the Commissioner of Stamp Duties in respect of stamp duty under the Swine Compensation Taxation Act, 1928; and
- (b) all penalties recovered under this Act or under the Stamp Duties Act, 1920, as amended by subsequent Acts, in connection with stamp duties imposed by the Swine Compensation Taxation Act, 1928.

(3)

(3) The Fund shall be applied to the payment of— No. 36, 1928.

- (a) claims for compensation in accordance with the provisions of this Act;
- (b) the cost of production and distribution of swine duty stamps; and
- (c) any expenses incurred in obtaining a determination of the value of a pig or of a carcass or portion thereof in accordance with subsection two of section seven of this Act.

(4) Any sum at any time required for the payment of compensation under this Act shall, so far as the fund is insufficient for the payment thereof, be advanced by the Colonial Treasurer.

(5) Any sum advanced by the Colonial Treasurer to the fund in accordance with the provisions of this section shall remain a charge thereon to be recouped by the fund when moneys at credit of the fund are available.

13. (1) It shall be the duty of the person in charge of every abattoir to keep a record in the prescribed form of every pig slaughtered at such abattoir. Record to be kept at abattoir.

(2) The owner of every pig to be slaughtered at an abattoir, or the agent of such owner, shall affix to such record swine duty stamps as prescribed by the Swine Compensation Taxation Act, 1928, in respect of the pig to be so slaughtered, and shall cancel such stamps in the manner prescribed by regulations made under the Stamp Duties Act, 1920, as amended by subsequent Acts.

(3) Unless and until such swine duty stamp has been duly affixed to the record in respect of the pig, the pig shall not be slaughtered at the abattoir.

(4) Without affecting his liability (if any) to pay the amount of any unpaid duty, any person who contravenes any provision of this section shall be liable upon summary conviction to a penalty not exceeding ten pounds.

14. (1) Stamp duties imposed by the Swine Compensation Taxation Act, 1928, shall be denoted by adhesive stamps (referred to in this Act as "swine duty stamps") issued by the Commissioner of Stamp Duties. Swine duty stamps issued by Commissioner of Stamp Duties.

(2)

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Swine duty stamps, how to be marked.

(2) No record required to be stamped under this Act or the Swine Compensation Taxation Act, 1928, shall be deemed or taken to be duly or properly stamped with an adhesive stamp to denote the payment of any duty under this Act unless the words "swine stamp duty" are printed on and form part of such stamp.

Recovery of duty.

(3) Without prejudice to any other method of recovery, any unpaid duty under the Swine Compensation Taxation Act, 1928, may be recovered in a court of petty sessions as a civil debt recoverable summarily or in any court of competent jurisdiction.

Application of Stamp Duties Act, 1920, as amended by subsequent Acts.

(4) Subject to this Act, the provisions of the Stamp Duties Act, 1920, as amended by subsequent Acts, shall with such alterations, modifications, and substitutions as are necessary extend and apply with respect to swine duty stamps.

(5) Without affecting the generality of subsection four of this section any person who practises or is concerned in any fraudulent act, contrivance or device not specially provided for by law with intent to defraud His Majesty of any stamp duty under this Act shall be guilty of a misdemeanour and liable to imprisonment for a term of not more than twelve months.

Regulations as to statements and stamp duty thereon.

Vict. Act, 1927, No. 3,523, s. 16.

15. The provisions of sections nine and ten of the Stamp Duties Act, 1920, as amended by subsequent Acts, shall extend and apply to the making of regulations for or with respect to—

- (a) the stamping of records under this Act and the stamps to be used therefor; and
- (b) all matters and things which with respect to any such records or the stamp duty thereon or swine duty stamps are by this Act required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act.

PART IV.

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MISCELLANEOUS.

16. Any person who is guilty of any contravention of or failure to comply with any of the provisions of this Act or the regulations for which no penalty or other punishment is expressly provided, or who permits any contravention of or failure to comply with the provisions of this Act, shall be liable upon summary conviction to a penalty of not more than twenty pounds.

Penalty in cases not provided for. Vict. Act, s. 18.

17. (1) If on the sale of any pig (whether sold singly or as part of a lot) to any person any such person or his agent—

Penalty on persons making charges, &c., for insurance purposes on sale of pigs.

(a) makes any charge to the vendor; or

(b) deducts any amount from the purchase money payable in respect of such sale

cf. Vict. Act, No. 3,550, 1927, ss 3-5.

by way of insurance or indemnity against or contribution in respect of losses incurred by reason of the death of the pig before it reaches the premises of the purchaser or by reason of any disease in or injury to the pig, such person or agent shall be guilty of an offence and liable for every such offence to a penalty not exceeding one hundred pounds.

(2) Any condition expressed or implied in any contract or agreement providing for making any charge or deducting any amount which would if made or deducted after the commencement of this Act be an offence hereunder—

Conditions inconsistent herewith in contracts to be inoperative.

(a) shall, if made after the commencement of this Act, be void and of no effect; or

(b) shall, if made before the commencement of this Act, cease to have any further force, operation or effect upon the date of the commencement of this Act.

(3) (a) The provisions of this section shall extend and apply with respect to companies and other bodies of persons as if they were private persons.

Application to companies, &c.

(b) Every company or other body of persons guilty of an offence under this section shall be subject to the same penalties as if it were a private person; and if any chairman, member of the governing body, director, manager

Liability of companies, &c.

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manager, secretary or officer of such company or body knowingly authorises or permits the commission of any such offence he shall also be liable therefor.

Regulations,

18. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular and without limiting the generality of the foregoing power, the Governor may—

- (a) prescribe the method of making and dealing with and the verification of applications for compensation;
- (b) prescribe the form of any certificate to be issued by any person ordering the destruction of a pig or condemning a carcass or portion thereof;
- (c) impose a penalty not exceeding twenty pounds for any contravention of or failure to comply with any regulation.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House, disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

(3) Any penalty imposed by the regulations may be recovered in a summary manner before a police or stipendiary magistrate, or any two or more justices.