

SOUTH AUSTRALIA

METROPOLITAN MILK SUPPLY ACT, 1946

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 October 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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LEGISLATIVE HISTORY

METROPOLITAN MILK SUPPLY ACT, 1946

being

Metropolitan Milk Supply Act, 1946, No. 42 of 1946
[Assented to 19 December 1946]¹

as amended by

Metropolitan Milk Supply Act Amendment Act, 1948, No. 25 of 1948 [Assented to 2 December 1948]
Metropolitan Milk Supply Act Amendment Act, 1950, No. 27 of 1950 [Assented to 16 November 1950]
Metropolitan Milk Supply Act Amendment Act, 1955, No. 23 of 1955 [Assented to 24 November 1955]
Metropolitan Milk Supply Act Amendment Act, 1956, No. 32 of 1956 [Assented to 15 November 1956]
Metropolitan Milk Supply Act Amendment Act, 1957, No. 19 of 1957 [Assented to 24 October 1957]²
Statutes Amendment (Metropolitan Milk Supply, Food and Drugs and Health) Act, 1967, No. 70 of 1967 [Assented to 16 November 1967]³
Metropolitan Milk Supply Act Amendment Act, 1971, No. 108 of 1971 [Assented to 9 December 1971]
Statute Law Revision Act (No. 2), 1974, No. 84 of 1974 [Assented to 21 November 1974]
Metropolitan Milk Supply Act Amendment Act, 1980, No. 110 of 1980 [Assented to 18 December 1980]
Metropolitan Milk Supply Act Amendment Act, 1983, No. 37 of 1983 [Assented to 16 June 1983]
Statutes Amendment (Remuneration) Act, 1985, No. 59 of 1985 [Assented to 30 May 1985]⁴
Metropolitan Milk Supply Act Amendment Act, 1985, No. 114 of 1985 [Assented to 10 November 1985]⁵
Metropolitan Milk Supply Act Amendment Act, 1986, No. 86 of 1986 [Assented to 4 December 1986]⁶
Metropolitan Milk Supply Act Amendment Act, 1987, No. 88 of 1987 [Assented to 10 December 1987]⁷
Statutes Repeal and Amendment (Remuneration) Act, 1990, No. 18 of 1990 [Assented to 19 April 1990]⁸

¹ Came into operation (except Part III) on assent; Part III came into operation 2 October 1947: *Gaz.* 2 October 1947, p. 970.

² Came into operation 6 March 1958: *Gaz.* 6 March 1958, p. 757.

³ Came into operation 1 January 1968: *Gaz.* 7 December 1967, p. 2445.

⁴ Came into operation 13 June 1985: *Gaz.* 13 June 1985, p. 2132.

⁵ Came into operation 1 January 1986: *Gaz.* 21 November 1985, p. 1544.

⁶ Came into operation 1 January 1987: *Gaz.* 18 December 1986, p. 1874.

⁷ Came into operation 23 December 1987: *Gaz.* 17 December 1987, p. 1851.

⁸ Came into operation 19 April 1990: *Gaz.* 19 April 1990, p. 1136.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to provide for the control and regulation of the milk supply of the metropolitan area, and for purposes incidental thereto.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Metropolitan Milk Supply Act, 1946*.

Division of Act

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

PART I—Preliminary: Sections 1 to 3.

PART II—Administration: Sections 4 to 26.

PART III—Metropolitan milk supply: Sections 27 to 45.

PART IV—Supplementary provisions: Sections 46 to 53.

Interpretation

3. (1) In this Act, unless inconsistent with the context or some other meaning is clearly intended—

"board" means the Metropolitan Milk Board appointed under this Act:

"chairman" means chairman or acting chairman of the board:

"dairy farm" means land or premises where cows are milked, or kept for the purpose of producing milk:

"Dairy Industry Advisory Committee" means the Dairy Industry Advisory Committee established under the *Dairy Industry Act, 1928*:

"industrial award" means an award, order, judgment, regulation or other instrument fixing wages or conditions of employment:

"licence" means licence of any kind issued under this Act:

"living wage" means living wage as defined in section 6 of the *Industrial Conciliation and Arbitration Act, 1972*, as amended:

"member" means member or acting member of the board:

"metropolitan area" means the area which, for the time being constitutes the metropolitan area under the regulations for the time being in force under this Act:

"milk" means lacteal fluid product of the cow, but does not include condensed, or dried milk, or milk powder, or any milk or product of milk declared by regulations not to be milk for purposes of this Act:

3.

"Minister" means Minister of the Crown for the time being holding, or acting in, the office of Minister of Agriculture:

"sell" includes barter, and "sale" and "sold" have a corresponding meaning:

"treat" means to pasteurize or to employ any other method or process designed to destroy any bacteria, organisms or micro-organisms in milk or cream, or to pack milk or cream in any form of container, whether in bottles or otherwise, for the purpose of retail distribution, and "treatment" has a corresponding meaning:

"vehicle" includes conveyance of every kind whether used on land, air, or water, including conveyances running on railways and tramways:

"vendor" means a person who sells milk or cream or offers milk or cream for sale (whether by wholesale or retail) or who delivers milk or cream to a purchaser for the purpose of or in pursuance of sale.

(2) Without limiting the application of the *Acts Interpretation Act, 1915-1945*, it is declared that any reference in this Act to compliance or non-compliance with this Act, includes compliance or non-compliance with any regulations under this Act.

4.

PART II

ADMINISTRATION

Establishment of board

4. There shall be established a board to be called the "Metropolitan Milk Board", which shall be charged with the duty of administering this Act.

Incorporation of board

5. The board shall be a body corporate with perpetual succession and a common seal and power to hold and dispose of property of all kinds, and may, in its corporate name, be a party to any legal proceedings.

Members of board

6. (1) The board shall consist of a chairman and two other members, all of whom shall be appointed by the Governor on the recommendation of the Minister. Before making any recommendation the Minister shall by public advertisement call for applications for the seats to be filled and shall obtain and consider a report from the Public Service Board constituted under the *Public Service Act, 1967*, as amended, on the qualifications of the applicants for those seats.

(2) The chairman or a member of the board shall not have any interest, direct or indirect, in any business of producing, treating, or selling milk, or be an officer of any association of producers or vendors of milk.

If the chairman or a member of the board contravenes this subsection the Governor may dismiss him from office.

Deputy and acting chairman and members

7. (1) The Governor may appoint a member to be deputy chairman of the board. If the chairman is for any reason unable to perform the duties of his office or if his office has become vacant, or if he is absent from any meeting, the deputy chairman shall act in his place.

(2) If a member of the board is for any reason unable to perform the duties of his office or if his office has become vacant, the Governor may appoint a suitable person, whether a member of the board or not, to be an acting member of the board during the period of such inability or until a permanent appointment is made to the vacant office.

(3) An acting chairman or an acting member shall while so acting have all the powers and duties of the chairman or of a member, as the case may be.

Term of office

8. (1) Subject to this Act the chairman and members of the board shall hold office for five years, but a retiring chairman or member shall be eligible for re-appointment.

(2) A person appointed to a casual vacancy on the board shall hold office only for the balance of the term of office of the person in whose place he was appointed.

Casual vacancies

9. (1) The Governor may remove the chairman or any member of the board from office for incapacity, neglect of duty, or conviction of any crime.

5.

(2) The office of the chairman or a member of the board shall become vacant if he—

- (a) dies;
- (b) resigns by written notice given to the Minister;
- (c) without leave of the board absents himself from three consecutive meetings of the board;
- (d) becomes bankrupt or executes an assignment of his property or a deed of arrangement for the benefit of his creditors or compounds with his creditors for less than one hundred cents in the dollar; or
- (e) is removed from office by the Governor pursuant to this Act.

Quorum

10. (1) The chairman or acting chairman and one member of the board shall form a quorum thereof.

(2) If only two members of the board are present at a meeting and are unable to agree on any matter, the decision of that matter shall be postponed to a full meeting of the board.

Validity of acts of board

11. An act or proceeding of the board shall not be invalid on the ground only of any vacancy in the office of the chairman or any member, or of any defect in the appointment of the chairman or acting chairman, or any member or acting member.

Remuneration, etc., of board

12. (1) The chairman and the other members of the board shall receive such salary and such travelling and other allowances as are determined from time to time by the Governor.

(2) The terms and conditions of employment of the chairman and other members of the board shall, subject to this Act, be as from time to time determined by the Minister and without limiting the generality of the foregoing the Minister may determine that, for the purposes of the accrual of, or the payment of a lump sum in lieu of the grant of, long service leave or for the purposes of the accrual of leave on account of illness or other pressing necessity, previous service under the *Public Service Act, 1967*, as amended, or under any Act repealed by that Act, of the chairman, shall be regarded as service as the chairman of the board.

Staff of board

13. (1) The chairman shall be the principal executive officer of the board and shall not engage in any paid work other than his work as chairman.

(2) The board may appoint any officers and servants whom it requires for the administration of this Act on such terms and conditions as the board from time to time fixes.

(2a) Without limiting the generality of subsection (2) of this section the board may with the approval of the Minister determine that for the purposes of the accrual of, or the payment of a lump sum in lieu of the grant of, long service leave or for the purposes of the accrual of leave on account of illness or other pressing necessity previous service under the *Public Service Act, 1967*, as amended, or under any Act repealed by that Act by an officer or servant of the board shall be regarded as service as an officer or servant of the board.

(3) The board may, with the approval of the Minister administering any department of the Public Service, make use of the services of any person employed in that department or of the plant, equipment, or premises of that department, on any terms and conditions which are agreed upon between the Minister and the board.

Superannuation

14. The board may enter into arrangements with the South Australian Superannuation Board under which the board's employees become eligible to apply for acceptance as contributors to the South Australian Superannuation Fund.

Property of the board

15. For the purposes of this Act, the board may acquire (by purchase or otherwise), hold, deal with and dispose of any estate or interest in real or personal property.

Relation of board to Crown

16. The board shall not be a department of the Government of the State or an agent or servant of the Crown nor shall the chairman, members or employees of the board be subject to the *Public Service Act, 1967*, as amended.

Financial provisions

17. The board shall pay the salaries, remuneration and expenses of the chairman and members and all costs of administering this Act, out of the revenue received by it under this Act.

Levy to meet expenses

18. (1) The board may, by notice in the *Gazette* from time to time require all or any of the persons who hold licences under this Act to pay to the board contributions towards the costs of the administration of this Act.

(2) The notice shall specify the persons or classes of persons who are required to pay contributions, the amount of the contributions or the manner in which they are computed and the time on or before which they must be paid.

(3) The board shall, by post or personal service, give to every person liable to contribute under this section a written notice of the amount payable by him and the time when that amount is to be paid, and if the board decides that contributions may be paid by instalments, the notice shall also state the times when and the instalments in which the contribution is to be paid. The contribution shall be payable in accordance with the notice.

(4) If any contribution or instalment thereof is not paid in full as and when it becomes payable, the board or any person authorized by the board may recover the amount owing, as a debt, by action in any court of competent jurisdiction.

Accounts

19. The board shall keep in such manner and form as it thinks proper, accounts showing accurately and in detail, its assets, liabilities, receipts and expenditure.

Audit

20. (1) The Auditor-General shall make an annual audit of the board's accounts.

(2) For the purpose of any such audit—

- (a) the Auditor-General may exercise any of the powers which he could exercise for the purpose of auditing the accounts of a Government department;
- (b) the board and every member of its staff shall be subject to section 44 of the *Audit Act, 1921-1946*.

(3) The board shall pay to the Treasurer a reasonable fee of an amount approved by the Minister for every audit.

(4) The Auditor-General's report on the board's accounts shall be included in the annual report of the board.

Annual report

21. The board shall within three months after the close of each financial year prepare and present to the Minister a report on its operations during that financial year and the report shall as soon as practicable after receipt thereof be laid before both Houses of Parliament.

Special reports

22. (1) The Governor may, at any time, appoint a person to enquire into and report to him upon the general management of the affairs of the board.

(2) Any person so appointed shall be a Royal Commission constituted of a sole Commissioner within the meaning of the *Royal Commissions Act, 1917*, and that Act shall apply in relation to that person and his inquiry and the persons from whom evidence, information, or documents are sought.

Advances by the Treasurer

23. (1) The Treasurer may, on terms and conditions to be agreed between him and the board lend the board such sums as are reasonably required to meet the initial expenditure of the board.

(2) This Act shall be sufficient authority for the Treasurer to make any such loans.

Special provision relating to scientific research

23a. (1) The board may—

- (a) establish and maintain laboratories and laboratory services for the analysis of milk, cream and other dairy products;
- (b) conduct research with a view to determining the most appropriate basis for grading milk and cream;

8.

- (c) conduct, or participate in the conduct of, scientific research into matters related to the dairy industry;
- (d) provide analytical services, and other services involving scientific investigation, that will, in the opinion of the board, be of benefit to the dairy industry;
- (e) perform other functions that are ancillary or incidental to those referred to in the preceding paragraphs.

(2) The board may make such charges as it thinks fit for services provided under subsection (1).

Returns and information

24. (1) The board, or any person employed by the board and acting under its authority, may by notice in writing require any person to furnish or produce within a reasonable period to be specified in the notice any document or information relating to milk or cream.

(2) If any person—

- (a) without lawful excuse (proof of which shall lie on the defendant) neglects or refuses to furnish or produce any document or information in accordance with a notice served on him under subsection (1) of this section; or
- (b) when required by such a notice to furnish information, furnishes any information which is false,

he shall be guilty of an offence.

Records, etc., to be kept by a licensee

24a. (1) The holder of a licence shall, in accordance with the regulations, keep or cause to be kept such records and books of account as may be prescribed.

(2) At the request of any person employed by the board and acting under its written authority, the holder of a licence or any person who has custody of them shall produce or cause to be produced such records and books of account for the examination of that person and shall permit him to make copies thereof.

(3) The holder of a licence shall, as required by the regulations, forward to the board such periodical returns as may be prescribed.

(4) Any person who—

- (a) fails to comply with subsection (1) of this section;

or

- (b) fails to comply with a request made under subsection (2) of this section;

or

- (c) fails to furnish a return under subsection (3) of this section or furnishes a return that is false or misleading in any material particular,

shall be guilty of an offence.

Secrecy of information

25. Any person who communicates to any other person any contents of any document furnished or produced under section 24 or section 24a of this Act or any other information so furnished or produced, except in the course of the administration of this Act or when required by law to do so in legal proceedings, shall be guilty of an offence.

Powers of inspectors

26. (1) Any person employed by the board and acting under its authority may, for the purpose of the administration and enforcement of this Act, at any reasonable time—

- (a) enter and inspect any premises, place or vehicle;
- (b) inspect any milk or cream, or any animals, apparatus, or utensils used in connection with the production, treatment, transport, sale or storage of any milk or cream;
- (c) open any can or other vessel which contains, or which he suspects to contain, any milk or cream;
- (d) take samples of any milk or cream, or of any water or fodder, or of any materials used in connection with the production or treatment of any milk or cream. For the samples reasonable remuneration shall be offered.

(2) If any person prevents any person from exercising any power under this section, or hinders or obstructs any person in the exercise or attempted exercise of any power under this section, he shall be guilty of an offence.

(3) Any person employed by the board and acting under its authority may request the driver or person in charge of any vehicle on which the person so employed suspects that there is any milk or cream—

- (a) if the vehicle is in motion, to stop the vehicle;
- (b) to keep the vehicle stationary for such time and in such place as is necessary to enable the person so employed to exercise his powers under subsection (1) of this section.

If the driver or person in charge of any vehicle fails to comply with a request under this section he shall be guilty of an offence.

PART III

METROPOLITAN MILK SUPPLY

Commencement of this Part

27. This Part shall come into operation on a day or days to be fixed by the Governor by proclamation. The Governor may so fix different days for the coming into operation of different provisions of this Part.

Metropolitan producing district

28. The board, by notice in the *Gazette*—

- (a) shall declare any area or areas to constitute the metropolitan producing district:
- (b) may from time to time alter the metropolitan producing district.

The metropolitan area

28a. The Governor, on the recommendation of the board, may make regulations defining or indicating the area which shall, for the time being, constitute the metropolitan area for the purposes of this Act.

* * * * *

Milk producer's licences

29. (1) A person shall not sell any milk or cream, which has been produced by him—

- (a) to any person carrying on the business of selling (whether by wholesale or retail) milk or cream within the metropolitan area; or
- (b) to retail consumers within the metropolitan area,

unless he holds a milk producer's licence.

(2) A milk producer's licence shall specify the premises upon which the holder thereof is licensed to produce milk or cream for sale.

(2a) The board may, on the application of the holder of a milk producer's licence, amend the licence by deleting the reference to the premises specified in the licence and substituting a reference to premises specified by the milk producer in the application.

(3) The holder of a milk producer's licence shall not sell any milk or cream produced by him on premises other than premises specified in his licence.

(4) A person shall not sell by wholesale or retail within the metropolitan area any milk or cream produced by a person who does not hold a milk producer's licence.

(5) It shall be a defence to a charge for an offence under this section, if the defendant proves that the milk or cream in respect of which the offence is alleged to have occurred—

(a) was, at the time of its delivery by the producer to the person who purchased it from him, in cans which under the regulations may lawfully be used for holding milk or cream not intended for human consumption as whole milk or sweet cream; or

(b) was not at any time brought within the metropolitan area, as milk or cream.

(6) A person who contravenes this section shall be guilty of an offence.

Licensing treatment plants

30. (1) A person shall not treat any milk or cream intended to be sold for human consumption within the metropolitan area unless he holds a milk treatment licence.

(2) A milk treatment licence shall specify the premises upon which the holder thereof is thereby licensed to treat milk or cream.

(3) The holder of a milk treatment licence shall not on any premises other than premises specified in his licence, treat any milk or cream intended for human consumption within the metropolitan area.

(3a) The holder of a milk treatment licence shall not treat milk or cream otherwise than in accordance with this Act.

(4) A person who contravenes this section shall be guilty of an offence.

Fees payable by holders of milk treatment licences

30aa. (1) The holder of a milk treatment licence (whether issued before or after the enactment of this section) shall pay to the board a licence fee in respect of each calendar month.

(2) The fee payable by the holder of a milk treatment licence is—

(a) a fee of \$2;

or

(b) a fee calculated, as prescribed by regulation, by reference to the quantity of milk treated by the licence holder during the relevant antecedent period,

whichever is the greater.

(3) The holder of a milk treatment licence shall within 14 days after the end of each calendar month—

(a) lodge with the board a return, in a form approved by the board—

(i) specifying the quantity of milk treated by the licence holder in pursuance of the licence during the relevant antecedent period;

and

- (ii) containing such other information as may be prescribed;

and

- (b) pay to the board the licence fee in respect of the calendar month last preceding lodgment of the return.

Penalty: \$10 000.

(4) In this section—

"relevant antecedent period", in relation to a calendar month, means the last calendar month but one before the commencement of that calendar month.

Powers of board where the holder of a milk treatment licence fails to pay a fee

30ab. (1) Where the holder of a milk treatment licence fails to pay a fee in accordance with this Act—

- (a) any unpaid amount may be recovered by the board as a debt due to the board in a court of competent jurisdiction;

and

- (b) the board may, by written notice served personally or by post on the licence holder, suspend the licence until the fee is paid.

(2) A suspension of a licence takes effect when notice of the suspension is served on the holder of the licence or such later date (if any) as is specified in the notice.

(3) During the period for which a licence is suspended under this section, the holder of the licence shall be deemed to be unlicensed.

(4) Where a milk treatment licence has been under suspension for 3 months or more, the Minister may, by notice in writing to the holder of the licence, cancel the licence.

Application of milk treatment licence fees

30ac. (1) All licence fees in respect of milk treatment licences shall be paid into a fund to be applied, after deduction of administrative costs, for the purposes of an equalization scheme under this section.

(2) The Minister may, by notice published in the *Gazette*—

- (a) declare that an equalization scheme, in the terms stated in the notice, shall come into force as from a date stated in the notice;

or

- (b) vary or revoke an equalization scheme.

(3) An equalization scheme in respect of which a declaration has been made under subsection (2)(a)—

(a) comes into force as from the date stated in the declaration;

and

(b) subject to subsequent variation or revocation, has effect in accordance with its terms.

(4) In this section—

"equalization scheme" means a scheme providing for the payment of amounts from the fund to, or for the benefit of, unlicensed producers of milk or any specified class of such producers.

Milk vendors to be licensed

30a. (1) Except as provided by subsection (3) of this section, a person shall not sell or offer or agree to sell by wholesale or retail within the metropolitan area any milk or cream that has not been produced by him unless he holds a milk vendor's licence.

(2) Except as provided by subsection (3) of this section, a person shall not sell or offer or agree to sell by retail within the metropolitan area any milk or cream that has been produced by him unless he holds a milk vendor's licence in addition to a milk producer's licence.

(3) Subsections (1) and (2) of this section shall not apply to or in relation to any sale by retail of milk or cream or any offer or agreement to sell by retail milk or cream by a person duly licensed as a vendor of milk and cream under the *Food and Drugs Act, 1908-1967*, upon shop premises duly registered under that Act.

(4) Any person who contravenes this section shall be guilty of an offence.

Zones

30b. (1) For the purposes of granting milk vendors' licences, the board may divide the metropolitan area into zones and define and alter each zone.

(2) The board may grant milk vendors' licences with or without reference to a zone but where a licence is granted in respect of a zone, the board shall specify in the licence the zone in respect of which it was granted.

(3) The board may grant a milk vendor's licence to an applicant therefor subject to such terms and conditions specified therein as the board deems necessary to ensure that milk and cream are suitably stored and properly distributed and, without limiting the generality of the foregoing, may grant a licence subject to conditions—

(a) requiring the holder thereof to store all milk and cream prior to distribution upon premises specified by the board in the licence;

and

(b) requiring the holder thereof to employ only such vehicles or vehicles of such a kind or type as may be approved in writing by the board for the purpose of transporting or distributing milk or cream.

(4) The holder of a milk vendor's licence granted in respect of a zone shall not sell by retail or in connection with any sale by retail deliver any milk or cream to any person except within the zone in respect of which the licence was granted.

(5) Any person who contravenes this section shall be guilty of an offence.

Control of quality

30c. (1) The board may, by notice in writing served personally or by post on any person who has in his possession or control any milk or cream that is to be sold or offered for sale within the metropolitan area, require him to furnish particulars within his knowledge, information and belief of—

- (a) the place from which and the person from whom he obtained the milk or cream;
- (b) the place at which and the person by whom the milk or cream was treated and the nature of the treatment to which it was submitted;

and

- (c) the conditions under which the milk or cream was stored and transported before and after treatment.

(2) For the purpose of determining whether milk or cream is fit for human consumption and complies with the prescribed standards, the board may, by notice in writing served personally or by post upon a person who has in his possession or control any milk or cream that is to be sold or offered for sale within the metropolitan area, require him to furnish such particulars in relation to the milk or cream and such samples thereof as the board may specify in the notice.

(3) A person upon whom a notice has been served under subsection (2) of this section shall not sell or otherwise dispose of any milk or cream referred to in the notice until the board has informed him in writing that the milk or cream is fit for human consumption and complies with the prescribed standards or until the expiration of twenty-four hours from the time at which the notice was served upon him, whichever is the earlier.

(4) The board may by notice in writing served personally or by post upon any person require him to cause any milk or cream in his possession or control that is to be sold or offered for sale within the metropolitan area to be treated by the holder of a milk treatment licence.

(5) A person, who contravenes this section, or who fails forthwith to comply with a notice served upon him under this section or who, when required by such a notice to furnish particulars, furnishes particulars that are, to his knowledge, false in any material particular, shall be guilty of an offence.

Licence not to be transferred, etc.

30d. (1) The holder of a milk vendor's licence shall not assign, transfer or otherwise deal with the licence except with the approval in writing of the board.

(2) A person who contravenes this section shall be guilty of an offence.

Transitional provisions

30e. A person who, immediately before the commencement of the *Statutes Amendment (Metropolitan Milk Supply, Food and Drugs and Health) Act, 1967*, was licensed under the *Food and Drugs Act, 1908-1962*, as a vendor of milk and cream, and to whom a zone had been allotted under the *Metropolitan Milk Supply Act, 1946-1957*, shall be deemed for the purposes of this Act to be the holder of a milk vendor's licence granted under this Act in respect of that zone, until the expiry of the licence or until the thirtieth day of June, 1968, whichever is the earlier.

Applications for licences

31. (1) Every application for a licence shall—

- (a) be made in the manner and form prescribed;
- (b) specify the nature of all premises that the applicant proposes to use in connection with any business to be carried on in pursuance of the licence and where they are situated;

and

- (c) except in the case of an application for a milk treatment licence—be accompanied by the appropriate fee.

(2) The fees for milk producers' licences and milk vendors' licences shall be fixed by the board by notice in the *Gazette*.

(3) If an application is refused, the fee (if any) paid on the application shall be refunded to the applicant.

Refusal of licences

32. (1) Except as allowed by this Act the board shall not refuse an application for a licence.

(2) Where—

- (a) a person applies for a licence for unlicensed premises as defined in this subsection; and
- (b) such premises or the plant, equipment, or animals to be used by the applicant in carrying on the business for which the licence is required do not comply with this Act,

the Board may refuse the application or grant a provisional licence.

In this subsection "unlicensed premises" means premises in respect of which a licence has not previously been granted, or premises the licence in respect of which has expired more than a month before the making of the application.

(2a) A provisional licence—

- (a) shall be in force for the period specified therein by the board:
- (b) while so in force shall have effect as a licence of the kind applied for:

(c) shall contain a condition that the applicant will, before the expiration of the provisional licence, do everything required to make the premises, plant, equipment and animals comply with this Act:

(d) may contain any other conditions which the Board deems necessary.

(2b) If the conditions of a provisional licence are complied with before the expiration of such provisional licence the holder thereof shall be entitled to be granted a licence of the kind for which he applied.

(2c) If the conditions of a provisional licence are not so complied with the licence applied for by the holder thereof shall be refused.

(3) The board may refuse an application for a milk producer's licence if the applicant's dairy farm is not within the metropolitan producing district: Provided that the board shall not refuse a licence on the ground that the applicant's dairy farm is not within the metropolitan producing district if—

(a) for twelve months before the day on which this section came into force, milk or sweet cream has been regularly supplied from the said dairy farm to a person carrying on the business of selling (whether by wholesale or retail) milk or cream within the metropolitan area, or has been so supplied to retail consumers within that area; or

(b) a milk producer's licence in respect of the said dairy farm has been in force at any time within six months before the making of the application and has not been cancelled or suspended.

(3a) Where the Minister, after consulting with the Dairy Industry Advisory Committee, is of the opinion that the issue of further milk producer's licences would result in lower returns to licensed milk producers thus rendering milk production uneconomic, the Minister may direct that no further licences be issued to milk producers.

(3b) A direction under subsection (3a) shall not affect an application for renewal of a current licence.

(3c) The Minister may, after consulting with the Dairy Industry Advisory Committee, revoke a direction under subsection (3a).

(3d) The board shall comply with a direction of the Minister under subsection (3a).

(3e) No direction shall be made under subsection (3a) on or after 30 June, 1988, and all directions made under that subsection shall expire on that date.

(4) The board may refuse an application for a licence if—

(a) the applicant has twice contravened or failed to comply with the terms or conditions of a licence previously granted to him under this Act;

or

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(b) the applicant whilst holding a licence, has, after being warned by the board, continued to contravene any industrial award or to pay wages below the living wage;

or

(c) the applicant has been twice convicted of offences against this Act;

or

(d) the applicant has been convicted of an indictable offence or any other offence that, in the opinion of the board, renders him unfit to hold a licence.

(5) Forthwith upon receipt of an application for a milk vendor's licence or for approval of the transfer or assignment of a milk vendor's licence the board shall notify the Director General of Public Health in writing of the name and address of the applicant or the intended transferee or assignee and upon the advice of the Director General of Public Health that a person is suffering from an infectious or loathsome disease within the meaning of subsection (4) of section 30a of the *Food and Drugs Act, 1908*, as amended, or that for any other reason a person is likely to contaminate milk or cream, the board shall—

(a) refuse an application by that person for a milk vendor's licence;

or

(b) refuse an application for its approval of the transfer or assignment of a milk vendor's licence to that person;

or

(c) cancel a milk vendor's licence granted, transferred or assigned to that person,

as the case may require.

(6) The board—

(a) may refuse an application for a milk vendor's licence;

or

(b) may, by notice in writing served personally or by post on the holder of a milk vendor's licence, cancel the licence,

if, in its opinion, it is likely that—

(c) all or most of the milk and cream that will be sold pursuant to the licence will be sold to members of the public at a shop, whether directly by the licensee or ultimately by a subsequent vendor of the milk or cream;

and

- (d) the granting or continuance of the licence will have an adverse effect upon the existing system of distribution of milk and cream in the metropolitan area.

(7) Where the board has power to refuse an application for a milk vendor's licence under subsection (6), it may, instead of refusing the application, grant a milk vendor's licence upon terms and conditions authorizing the sale of cream, but prohibiting the sale of milk, in pursuance of the licence.

Cancellation and suspension of licence

33. (1) The board may cancel or suspend for such time as it thinks fit any licence—

- (a) if the holder thereof twice contravenes or fails to observe any term or condition of his licence, or is twice convicted of an offence against this Act:
- (b) if the holder thereof has, after being warned by the board, continued to contravene any industrial award or to pay wages below the living wage:
- (c) if the premises, plant, equipment or animals used by the applicant in the business for which the licence is required do not comply with this Act:
- (d) if milk or cream that the holder of the licence has produced, sold or offered for sale is not of the prescribed grade, standard or quality:
- (e) if the holder thereof has been convicted of any indictable offence or any other offence that, in the opinion of the board, renders him unfit to hold a licence.

(2) During the period for which a licence is suspended the holder of the licence shall be deemed to be unlicensed.

(3) The board may cancel a milk producer's licence if, for a period of six months, the holder thereof has not carried on business in pursuance of the licence.

Provisions as to warnings given by the board

34. (1) A warning given by the board under subsection (4) of section 32 or paragraph (b) of subsection (1) of section 33 of this Act shall—

- (a) be given by written notice served personally or by post on the person to whom the warning is directed:
- (b) specify detailed particulars of the alleged contravention of an award or of the alleged payment of wages below the living wage.

(2) The board shall not serve any such notice on a dairyman unless it is satisfied that at the time of the alleged contravention of an award, or of the alleged payment of wages below the living wage, the dairyman was selling the milk produced by him, at the price fixed by the board under this Act.

Appeals

35. (1) If a licence is refused, cancelled or suspended pursuant to this Act the licensee may, in accordance with rules of court, appeal to the Supreme Court against the refusal, cancellation or suspension.

(2) On every such appeal the Supreme Court shall have power to review the whole matter in issue and all circumstances relevant thereto and to make such order thereon as it deems just.

Power of board after refusal, cancellation or suspension of licence

36. When a licence is refused, cancelled or suspended pursuant to this Act the applicant or holder of a licence thereby affected may apply at any time to the board for the grant of a licence or, as the case may be, the removal of the cancellation or suspension; and the board may, if it considers that circumstances justify it in doing so, grant the licence or remove the cancellation or suspension as from such day as it deems just.

Term of licence

37. (1) Subject to subsection (2), a licence shall, unless sooner cancelled or suspended, remain in force until the thirtieth day of June next ensuing after the issue of the licence.

(2) A milk treatment licence shall, unless cancelled or suspended, remain in force until surrendered by the holder of the licence.

(3) Notwithstanding subsections (1) and (2), the board may issue a licence on a temporary basis and, in that event, the licence shall, subject to cancellation or suspension, remain in force for the period stated in the licence.

Special permits to purchase milk

37a. (1) The board may, if it considers it necessary to do so, issue a permit to any holder of a milk treatment licence authorizing him to buy chilled milk from any proprietor of a dairy produce factory or milk depot in any part of the State.

(2) A permit so issued may contain terms and conditions as to any one or more of the following matters:—

- (a) the duration of the permit;
- (b) the quantity of milk to be bought pursuant to the permit;
- (c) the quality of such milk and the temperature to which it must be chilled before being delivered to the holder of the permit;
- (d) the price to be paid for the milk by the holder of the permit; and
- (e) any conditions as to transport of the milk, or other matters which the board deems it necessary to insert in the permit, in the interests of the public.

(3) If a condition of a permit is broken or not observed, the board may revoke the permit.

(4) Milk purchased in accordance with a permit issued under this section shall for the purposes of section 29 of this Act be deemed to be milk produced by the holder of a milk producer's licence.

* * * * *

Mode of computing wages

38. For the purposes of this Part, the wages paid to an employee shall be deemed to include both the money actually paid as wages, and an additional sum in respect of the other benefits and advantages received by him as an employee, such as board, lodging, fuel, light, commodities and any share of produce to which he may be entitled.

Condition of licence

38a. (1) The board may grant a licence on condition that the holder thereof may use only premises specified by the board in the licence (which may be the same as or different from premises specified therein pursuant to any other provision of this Act) as depots for the receipt storage or transmission of milk or cream or for any other purpose in connection with the business to be carried on in pursuance of the licence.

(2) The board may at any time, by notice in writing served personally or by post on the holder of the licence, vary or revoke a condition made under subsection (1) of this section.

Exemption of holder of licence and premises from certain enactments

39. (1) Except as provided in subsection (1a) of this section, the holder of a licence and any premises specified therein under this Act shall not, in relation to any business carried on or anything done in pursuance of the licence be subject to—

(a) section 27 of the *Food and Drugs Act, 1908-1967*, or any regulation under paragraphs (6) or (11) of section 61 of that Act or any by-law or regulation referred to in section 63 of that Act;

or

(b) any regulation under section 115 of the *Health Act, 1935-1967*.

(1a) Subsection (1) of this section shall not apply, operate or have effect to or in relation to any person in respect of any sale by retail of, or any offer or agreement to sell by retail, any milk or cream upon shop premises within the metropolitan area, or to or in relation to those shop premises.

(2) The holder of a milk producer's licence and the premises upon which he is licensed to produce milk or cream for sale shall not be subject to the *Dairy Industry Act, 1928-1942*.

* * * * *

Fixing of prices

41. (1) The board may, from time to time, make regulations binding on the persons or the classes of persons specified therein—

(a) Fixing the prices to be paid to holders of milk producers' licences or to wholesale or retail vendors, either specifically or by reference to maximum and minimum prices, for milk and cream that is to be sold or offered for sale within the metropolitan area, which prices or maximum and minimum prices may vary according to differences in the grade, quality, description, or quantity of the milk or cream (whether grade, quality, or description are prescribed or not), or the conditions or place of delivery, distribution or sale, and in the case of milk according to whether it is to be consumed as whole milk or used for the production of cream:

- (b) Fixing the charges for the collection, treatment, storage, transport, or distribution of milk and cream that is to be sold or offered for sale within the metropolitan area:
- (c) Containing any ancillary provisions which are necessary or convenient for the purpose of securing observance of the prices or charges so fixed:
- (d) Varying or revoking any regulation in force under this section.

(1a) If the board is of the opinion—

- (a) that the prices or charges fixed by regulation under subsection (1) are, or could be, a contributing factor to loss being suffered, or likely to be suffered, by the persons to whom those prices or charges are payable;

and

- (b) that urgent action is required to avert or minimize that loss,

the board may, by notice in the *Gazette*—

- (c) vary the prices to be paid to retail vendors for the various grades, qualities, descriptions or quantities of milk or cream sold or offered for sale in the metropolitan area, so that maximum prices only apply, and vary all or any of the other prices and charges to such extent as is necessary to avert or minimize the loss;
- (d) make such other variations to the regulations under this section as are necessary.

(1b) A notice under subsection (1a) has effect for such period, not exceeding 30 days, as the board specifies in the notice.

(1c) The board may, by notice in the *Gazette*—

- (a) vary or revoke a notice under subsection (1a);
- (b) from time to time extend the operation of a notice under subsection (1a) for such period, not exceeding 30 days, as the board specifies in the notice.

(1d) On a notice under subsection (1a) ceasing to have effect, the regulations under this section have effect as if the notice had not been made.

(2) In fixing prices under this section the board shall among other things make allowance for the costs incurred in observing all industrial awards affecting persons employed in the production, collection, treatment, storage, transport and distribution of milk and cream, and, as regards persons whose remuneration is not fixed by an industrial award, for payment of wages at reasonable rates not less than the living wage.

(3) A person who contravenes a regulation made under this section shall be guilty of an offence.

(4) It shall be a defence to a charge of contravening this section if the defendant proves that the milk or cream in respect of which the charge was brought was used solely for manufacture into butter, cheese, or other products.

Effect of price fixing orders on contracts

42. (1) Where any prices or charges payable pursuant to a contract for the supply of milk or cream are inconsistent with any regulation made by the board under this Act—

- (a) the contract shall be deemed to be varied so far as is necessary to make it consistent with the regulation; and
- (b) if any dispute arises as to the extent of the variation effected by paragraph (a) of this subsection any party to the contract may apply to the board to determine the matter in issue.

(2) Upon any such application the board may, after hearing all parties to the contract who desire to be heard, make an order varying the contract in such manner as it deems necessary in order to make the contract consistent with the order.

The board shall not make any order as to the costs of an application under this section.

(3) Every order under this section shall be served or advertised as prescribed by the regulations.

An order shall not be binding until it has been so served or advertised.

Quotas for milk and cream

43. (1) The Minister, on the recommendation of the board, shall from time to time make declarations declaring the percentage of any milk or cream specified therein which any person on whom the declaration is binding may during any period mentioned therein sell, either on his own behalf or as agent for another person, for consumption as milk or cream.

(2) A declaration under this section shall be binding on—

- (a) any persons individually named therein;
- (b) any persons belonging to any class of persons indicated therein.

(3) The milk or cream specified in a declaration under this section may, according to the tenor of the declaration, be all milk or cream which during any period specified in the declaration is—

- (a) purchased or treated by any person on whom the declaration is binding;
- (b) in the possession or control of any such person;
- (c) on the premises of any such person.

(4) Every declaration made under this section—

- (a) shall be published in the *Gazette*;
- (b) may declare different percentages for different periods;
- (c) may be revoked or altered by the Minister on the recommendation of the board by another declaration so published.

(5) A declaration under this section shall not apply to any milk which is sold by retail by the producer thereof and produced within the metropolitan area in the course of a business carried on by him as a retail milk vendor.

(6) If any person sells milk or cream in contravention of a declaration made under this section he shall be guilty of an offence.

(7) No person other than the board or a person authorized by the board shall take proceedings for breach of this section.

(8) In any proceedings for an offence against this section if it is proved that any milk or cream was sold, that milk or cream shall be deemed to have been sold for consumption as milk or cream unless the seller (whether he sold on his own behalf or as agent) proves that it was used for some purpose other than consumption as milk or cream.

Meaning of "whole milk"

43a. (1) For the purposes of this Act "whole milk" shall mean milk containing substantially the whole of the fats and solids contained in it at the time when it was taken from the cow.

(2) The allegation in any complaint for an offence against this Act that any milk or substance was whole milk shall be *prima facie* evidence of the fact so alleged.

Rights of holders of milk treatment licences

44. (1) Any person who holds a milk treatment licence may apply to the board for an order that he be admitted to any milk prices equalization scheme in force in respect of milk supplied to the metropolitan area and the board may in its discretion make an order accordingly.

(2) The order may include any incidental provisions necessary for the enforcement thereof.

(3) A person who contravenes any term of an order made under this section shall be guilty of an offence and liable to a fine not exceeding \$2 500.

Application of Royal Commissions Act, 1917

45. For the purpose of obtaining any information which it requires in connection with the administration of this Act, the board may conduct an inquiry, and for that purpose shall have the same power and authority to summon witnesses and take evidence as are conferred upon a Royal Commission by the *Royal Commissions Act, 1917*, and the said Act shall apply to any witness summoned by or appearing before the board as if the board were a Royal Commission.

Reconstituted milk

45a. (1) In this section "reconstituted milk" means the product resulting from the mixing of—

(a) dried milk with water; or

(b) dried skimmed milk and butter or butterfat or any derivative of milk or butter with water.

(2) No person shall within the metropolitan area sell or have in his possession for sale any reconstituted milk unless he has obtained a permit from the board entitling him to do so.

(3) Any such permit—

- (a) shall specify the period or periods during which it is to be in operation, or shall declare that it is to be in operation for an indefinite period terminable by the board at any time by notice to the holder:
- (b) may contain conditions as to the composition and standard (including freedom from bacteria and foreign matter) of the reconstituted milk to which it applies and of the ingredients thereof:
- (c) may contain such other conditions as the board deems proper in the public interest.

(4) Any permit granted under this section may be revoked by the board for breach of any condition thereof.

PART IV

SUPPLEMENTARY PROVISIONS

Regulations

46. The Governor may, on the recommendation of the board, make any regulations necessary or convenient to be made for the due administration of this Act, and securing observance of the provisions of this Act, including, but without limiting the generality of this section, regulations for all or any of the following purposes:—

- (a) Prescribing conditions, not inconsistent with any express provision of this Act, to be included in any licences and any other matters relevant to the licensing of any persons under this Act:
- (b) Regulating the construction, management, and sanitation of premises used, or to be used, by persons required to be licensed under this Act, and of the plant, equipment, apparatus, vessels and utensils thereon:
- (c) Regulating the housing, keeping, and milking of cows, owned or kept by persons licensed under this Act, and the treatment of such cows when diseased:
- (d) Prescribing grades standards and quality for milk and cream sold or intended for sale by persons licensed under this Act:
- (e) Prescribing the apparatus to be used for testing milk and cream, produced by persons licensed under this Act, and the standards of chemicals to be so used, and the size, construction and marking or painting of the cans or other vessels used for holding and transporting such milk or cream, and providing for different marking or painting of cans according to the purpose for which the milk and cream contained therein are to be used:
- (f) Providing for the examination and certification of testers and graders of milk or cream, and prohibiting uncertificated persons from acting as such testers or graders:
- (g) Prescribing the methods to be adopted by persons licensed under this Act in the production of milk and cream:
- (g1) Prescribing the treatment to which milk or cream shall or may be submitted by the holder of a milk treatment licence and any matter or thing incidental thereto:
- (g2) Prescribing such matters and things as may be necessary or expedient to ensure that vendors and purchasers within the metropolitan area receive adequate supplies of milk and cream:
- (g3) Prescribing the hours between which the holders of milk vendors' licences may or may not deliver milk or cream to retail purchasers thereof:
- (g4) Prescribing generally or in relation to licences of any specified kind, the records and books of account to be kept by the holder of any licence or any specified kind of licence and the manner in which they are to be kept:

- (g5) Prescribing generally or in relation to licences of any specified kind the periodical returns to be forwarded to the board by the holder of any licence or any specified kind of licence and the manner in which they are to be prepared and forwarded to the board:
- (g6) Prescribing the nature of wording, lettering and other contents of labels that shall or may be affixed to any container of milk or cream that is to be sold or offered for sale within the metropolitan area:
- (g7) Prescribing or providing for such matters and things as may be necessary or expedient to facilitate the division of the metropolitan area into zones and the definition and alteration of zones and any matter or thing incidental thereto:
- (h) Conferring on employees of the board any powers necessary or convenient to enable them to assist in enforcing this Act:
- (i) Prohibiting conduct and arrangements likely to defeat the objects or policy of this Act:
- (j) Generally for regulating the production, treatment, transport, and storage of milk and cream that is to be sold or offered for sale within the metropolitan area:
- (j1) Regulating the supply and delivery of milk and cream to vendors and to retail purchasers within the metropolitan area:
- (k) For prescribing penalties recoverable summarily and not exceeding \$1 000 for breach of any regulation.

* * * * *

Offences

47. A person who contravenes any provision of this Act, the contravention of which is not elsewhere made an offence, shall be guilty of an offence.

Contravention of licence

48. A person who contravenes any term or condition of licence shall be guilty of an offence.

Penalty

49. A person guilty of an offence against this Act for which no other penalty is prescribed shall be liable to a fine not exceeding \$2 500.

Procedure for offences

50. Proceedings for offences against this Act shall be disposed of summarily.

Evidentiary provision

51. (1) If a person by himself or his servant or agent delivers milk or cream to another person that delivery shall be *prima facie* evidence of a sale by the person delivering to the person taking delivery or, if the person taking delivery is a servant or agent of some other person, to that other person.

(2) The allegation in any complaint under this Act—

- (a) that any milk or cream was or was not produced, treated, sold or offered for sale by the holder of a licence under this Act;
- (a1) that any milk or cream was sold or delivered within or outside any specified zone;
- (b) that any milk was intended for any purpose specified in the complaint, or was intended for consumption in any district, part of a district, or other area specified in the complaint,

shall be *prima facie* evidence of the matter so alleged.

(3) A certificate signed by the chairman or secretary of the board certifying that any person therein named was at any specified time an employee of the board, or was acting under the instructions or directions of the board, shall be *prima facie* evidence of the matter so certified.

(4) In proceedings for an offence against any provision of this Act all milk shall be deemed to be milk to which that provision applies, unless the defendant proves the contrary.

Financial provision

52. The moneys required for the purposes of this Act shall, except where other provision is made by this Act, be paid out of moneys provided by Parliament for those purposes.

Promotion of the sale of milk and cream

53. (1) The board may, by itself or in conjunction with other persons promote the sale of milk and cream by advertisement or such other means as it thinks fit, and the costs of such promotion shall, for the purposes of this Act, be deemed to be included in the costs of the administration of this Act.

(2) The board and any person who joins with the board in promoting the sale of milk and cream, shall not in relation to that promotion be subject to any regulation made under paragraph (13) of section 61 of the *Food and Drugs Act, 1908-1967*.

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 7 of The Public General Acts of South Australia 1837-1975 at page 277.

Section 3(1):	definition of "Dairy Industry Advisory Committee" inserted by 86, 1986, s. 3
Section 12(1):	amended by 59, 1985, s. 12; 18, 1990, s. 16
Section 14:	substituted by 88, 1987, s. 3
Section 15:	substituted by 37, 1983, s. 2
Section 23a:	inserted by 37, 1983, s. 3
Section 29(2a):	inserted by 86, 1986, s. 4
Sections 30aa - 30ac:	inserted by 114, 1985, s. 3
Section 31(1):	amended by 114, 1985, s. 4(a)
Section 31(2):	amended by 114, 1985, s. 4(b)
Section 31(3):	substituted by 114, 1985, s. 4(c)
Section 32(3a) - (3e):	inserted by 86, 1986, s. 5
Section 32(6) and (7):	inserted by 110, 1980, s. 2
Section 37:	substituted by 114, 1985, s. 5
Section 41(1a) - (1d):	inserted by 88, 1987, s. 4
Section 44(3):	amended by 86, 1986, s. 6
Section 46:	amended by 86, 1986, s. 7
Section 49:	amended by 86, 1986, s. 8