

No. 6389.

SWINE ACT 1958.

An Act to consolidate the Law relating to Compensation for the Owners of Pigs in Certain Cases and to prohibit the Making of Certain Charges or Deductions in connexion with the Sale of Swine.

[30th September, 1958.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the *Swine Act* 1958, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*, and is divided into Parts and Divisions as follows :—

Short title
commence-
ment and
division.

Part I.—Swine Compensation ss. 3–18.

Division 1.—Swine Compensation ss. 4–10.

Division 2.—Swine Compensation Fund and Stamp Duties ss. 11–15.

Division 3.—Supplementary ss. 16–18.

Part II.—Swine Sales ss. 19–22.

Repeal.
Schedule.

2. (1) The Acts mentioned in the Schedule to this Act to the extent thereby expressed to be repealed are hereby repealed accordingly.

(2) Except as in this Act expressly or by necessary implication provided—

(a) all persons things and circumstances appointed or created by or under the repealed Acts or existing or continuing under any of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed;

(b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any regulation order application certificate statement agreement determination compensation stamp duty charge proceeding liability or right made effected issued granted given accrued incurred or acquired or existing or continuing by or under such repealed Acts before the commencement of this Act.

PART I.—SWINE COMPENSATION.

Interpretation.
No. 3784 s. 3;
No. 4119
s. 2 (a).
No. 5062 s. 2,
No. 5204 s. 2.

3. In this Part unless inconsistent with the context or subject-matter—

"Carcass."

"Carcass" means the carcass of any pig within the meaning of this Part.

"Chief
inspector of
of stock."

"Chief inspector of stock" means the chief inspector of stock under the *Stock Diseases Act 1958*.

"Comptroller
of Stamps."

"Comptroller of Stamps" means the Comptroller of Stamps under the *Stamps Act 1958*.

"Disease."

"Disease" means tuberculosis or swine fever or swine erysipelas or swine plague or infectious necrotic enteritis or swine dysentery; and "diseased" has a corresponding interpretation.

"Fund."

"Fund" means the Swine Compensation Fund under this Part.

"Inspector of
stock."

"Inspector of stock" means an inspector of stock under the *Stock Diseases Act 1958*.

"Market
value."

"Market value" of a pig means the value of such pig calculated as upon a sale with delivery on the place where the pig is when ordered to be destroyed.

"Owner."

"Owner" includes the authorized agent of the owner.

"Pig."

"Pig" means any boar sow barrow or sucker.

"Prescribed."

"Prescribed" means prescribed by or under this Part.

"Regulations" means regulations made under this Part.

"Swine duty stamps" means stamps issued pursuant to Division two of this Part by the Comptroller of Stamps.

"Regulations."
"Swine duty stamps."

DIVISION 1.—SWINE COMPENSATION.

4. Subject to the Minister this Part (except Division two hereof) shall be administered in the Department of Agriculture.

Administration of Act.
No. 3784 s. 4.

5. (1) Subject to this Part compensation shall be payable under this Part in the cases and to the extent and subject to the conditions hereinafter provided—

Compensation payable to certain owners.

No. 3784 s. 5;
No. 4119 s. 2 (a);
No. 5062 s. 3.

(a) to the owner of any pig destroyed (by or by order of any inspector of stock pursuant to any Act or any regulation or order under any Act) because such pig is suffering from or suspected of suffering from disease; or

Where pig destroyed by order of inspector of stock.

(b) to the owner of any carcass or portion of a carcass condemned under Part XV. of the *Health Act* 1958 at any abattoir by a meat inspector as unfit for human consumption because of disease; or

Where carcass condemned by him.

(c) to the owner of any pig destroyed (with the consent of the chief inspector of stock by or by the order of a dairy supervisor or registered veterinary surgeon approved by the Minister for the purposes of this Part whether generally or in any particular case) because such pig is suffering from or suspected of suffering from disease; or

Where pig destroyed by dairy supervisor or registered veterinary surgeon in certain cases.

(d) to the owner of any carcass or portion of a carcass outside a meat area within the meaning of the *Health Act* 1958 where the services of a meat inspector are not available which has, by such a registered veterinary surgeon or (where the services of such a registered veterinary surgeon are not available) by a medical officer of health appointed under section thirty-one of the said Act, been certified as unfit for human consumption because of disease; and any reference hereinafter in this Part contained to any carcass or portion of a carcass condemned as unfit for human consumption because of disease shall be read and construed as including a reference to any carcass or portion of a carcass certified under this paragraph.

Where carcass condemned in certain cases.

(2) Subject to this Part compensation as aforesaid—

Compensation, how payable.

(a) in cases of swine fever or of swine erysipelas or of swine plague or of infectious necrotic enteritis or of swine dysentery—shall be payable out of the Swine Compensation Fund under this Part; and

- (b) in cases of tuberculosis—forty per centum of such compensation shall be payable by the Treasurer of Victoria out of moneys to be provided by Parliament for the purpose and the remainder of such compensation shall be payable out of the said Swine Compensation Fund.

Amount of
compensation.
No. 3784 s. 6;
No. 5708 s. 5.

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

- (a) if after destruction such pig is found to be free from disease—the market value (subject to such deductions as are hereinafter specified) of such pig; and
- (b) if after destruction such pig is found to be diseased—seven-eighths of the market value (subject to such deductions as are hereinafter specified) of such pig:

Provided that in no case shall the market value of one pig be for the purposes of this Part deemed to be more than Twenty pounds.

Compensation
for carcass or
portion
thereof.

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

Determination
of value of
pig &c.
destroyed as
diseased.
No. 3784 s. 7.

7. (1) The value of any pig so destroyed or any carcass or portion thereof so condemned shall be determined by agreement between the owner thereof and the inspector or other officer (including any dairy supervisor or veterinary surgeon approved as aforesaid and any medical officer of health appointed as aforesaid) under whose authority such pig was destroyed or such carcass or portion thereof was condemned (as the case may be); and 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.

Determination
of residual
value.

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

Amount of
residual
value to be
deducted from
compensation.

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

8. (1) No compensation under this Part shall be payable unless the owner of the pig so destroyed or of the carcass or portion thereof so condemned makes application for compensation in the manner and containing the particulars prescribed and verified as prescribed.

Application
for
compensation.
No. 3784 s. 8;
No. 3881
s. 5 (a),
No. 4215 s. 5,
No. 4893
s. 6 (a),
No. 5146 s. 6.
Certificate of
inspector &c.

(2) The owner shall forward with such application a certificate (containing the prescribed particulars) to be furnished by the inspector of stock or by the dairy supervisor or veterinary surgeon approved as aforesaid who destroyed or ordered the destruction of the pig or the meat inspector or the veterinary surgeon approved as aforesaid or the medical officer of health appointed as aforesaid who condemned the carcass or any portion thereof.

(3) No compensation under this Part shall be payable unless the application for compensation has been made by the owner within thirty days after the destruction of the pig or the condemnation of the carcass or portion thereof:

Time within
which
compensation
claim to be
made.

Provided that in any case where the application for compensation is made after the expiration of that period the Minister may authorize the payment of the whole or portion of the compensation if he is satisfied that reasonable grounds existed for the delay in making the application.

(4) No compensation under this Part shall be payable—

Compensation
not payable
in certain
cases.

- (a) if the head only of any carcass is condemned as unfit for human consumption because of disease; or
- (b) where the owner of any pig visibly affected with tuberculosis has failed to give notice pursuant to the *Stock Diseases Act* 1958 or the *Milk and Dairy Supervision Act* 1958 or the regulations under either of the said Acts of the existence of such disease; or
- (c) unless the chief inspector of stock is satisfied—
 - (i) that all stamp duty (if any) payable under this Part in respect of all pigs of the owner claiming compensation any one of which is destroyed or the carcass of any one of which is condemned has been duly paid in accordance with the provisions of sub-section (1) of section thirteen of this Act; and
 - (ii) that the owner claiming compensation has complied with this Part and the regulations with respect to applications and claims for compensation; or
- (d) in respect of any pig introduced into Victoria, whether by sea or land, which is destroyed because such pig is suffering from or suspected of suffering from swine fever, if such pig is so destroyed within

one month after the introduction of such pig, unless the chief inspector of stock is satisfied that such pig became so diseased after being introduced or unless such pig is found to be free from disease.

Power to withhold compensation or part thereof in certain cases.

(5) No compensation or only such part of the compensation otherwise payable to the owner as the chief inspector of stock thinks reasonable shall (unless the Minister thinks fit) be payable under this Part to any owner if such owner has been convicted of any offence against this Part or the regulations or against the *Stock Diseases Act 1958* or the *Milk and Dairy Supervision Act 1958* or the *Cattle Compensation Act 1958* or the regulations under any of the said Acts or against Part XV. of the *Health Act 1958* or the regulations under the said Part.

If disease is in localized form.

No. 3784 s. 9.

9. Notwithstanding anything in any Act when a pig is affected only with a localized form of disease an inspector of stock, instead of forthwith destroying the pig or ordering the same to be destroyed in accordance with the requirements of any Act or the regulations thereunder, may in his discretion require the owner to retain such pig under such conditions as are prescribed.

10. Every person—

Person trafficking in diseased pigs or carcasses with a view to compensation.
No. 3784 s. 10.

(a) who buys or sells or who attempts to buy or sell any pig knowing or having reasonable cause to suspect such 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 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 to a penalty of not less than Twenty-five nor more than One hundred pounds for every such pig, or (as the case may be) for every such last-mentioned carcass.

DIVISION 2.—SWINE COMPENSATION FUND AND STAMP DUTIES.

Swine Compensation Fund.

No. 3784 s. 11.

Stamp duties &c. to be paid to credit of Fund.

11. (1) There shall be kept in the Treasury an account to be called the "Swine Compensation Fund" (in this Part referred to as "the Fund").

(2) To the credit of the Fund there shall be paid—

(a) all sums of money received by or for the Comptroller of Stamps in respect of stamp duty on statements under this Part; and

(b) all penalties recovered under Division one or Division three of this Part.

(3) The Fund shall and may subject to this Part be applied to the payment pursuant to this Part of claims for compensation.

Application of Fund.

(4) Any sum which the Treasurer of Victoria at any time certifies to be required for payment by way of compensation under this Part (so far only as the Fund is insufficient to pay any sum payable under this Part out of the Fund) shall be paid out of the Consolidated Revenue which is hereby to the necessary extent appropriated accordingly.

Payments out of Consolidated Revenue if necessary.

(5) Any sum paid out of the Consolidated Revenue under the last preceding sub-section shall be deemed to be an advance to the Fund and shall remain a charge thereon to be recouped when funds are available.

Recoup from Fund.

12. There shall be charged for the use of Her Majesty her heirs and successors upon any instrument specified under heading XVIII. of the Third Schedule to the *Stamps Act* 1958 the duty specified under the said heading XVIII.^(a)

Duties on instruments.
No. 3784 s. 12;
No. 5204 s. 2.

13. (1) Every owner of pigs or the agent of such owner shall upon the sale thereof whether payment of the purchase money is or is not made in full at the time of the sale or is to be made by instalments or is otherwise deferred—

Statements to be made out on sale of pigs or carcasses thereof and stamps affixed.

(a) write out or cause to be written out a statement setting forth the number of pigs so sold the amount of the purchase money in respect of each pig and the date of the sale thereof;

No. 3784 s. 13;
No. 3881 s. 5 (b) (c).

(b) affix to the said statement swine duty stamps to the amount of the duty payable under this Part and cancel such stamps; and

(a) The provisions of Heading XVIII. are as follows:—

XVIII.—STATEMENTS ON SALES OF PIGS.

Any statement written out or caused to be written out by the owner of any pig or by the agent of the owner pursuant to the provisions of Part I. of the *Swine Act* 1958 in respect of the sale of any pigs, whether payment of the purchase money in respect of any such sale is or is not made in full at the time of the sale or is to be made by instalments or is otherwise deferred—

For every £1 and also for any fractional part of £1—

(a) of the amount of the purchase money in respect of one pig sold singly; or

(b) of the total amount of the purchase money in respect of any number of pigs sold in one lot—

a stamp duty of Two pence: Provided that the stamp duty in respect of the amount of the purchase money of any one pig whether sold singly or as part of a lot shall not exceed Three shillings and four pence.

Under this heading XVIII. "pig" means any boar sow barrow or sucker.

(c) give or by registered letter transmit the said statement to the purchaser within seven days of such sale.

Penalty.

(2) Without affecting his liability to pay the amount of any unpaid duty every owner or agent who contravenes or fails to comply with any of the provisions of this section shall be liable to a penalty of not more than Fifty pounds.

Swine duty stamps issued by Comptroller of Stamps.
No. 3784 s. 14;
No. 5204 s. 2.
Swine duty stamps, how to be marked.

14. (1) Stamp duties under this Part on the said statements shall be denoted by adhesive stamps (referred to in this Part as "swine duty stamps") issued by the Comptroller of Stamps.

(2) No statement required to be stamped under this Part shall be deemed or taken to be duly or properly stamped with an adhesive stamp to denote the payment of any duty under this Part 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 this Part may be recovered in a court of petty sessions as a civil debt recoverable summarily or in any court of competent jurisdiction.

Application of *Stamps Act*, Part III.

(4) Subject to this Part the provisions of Part III. of the *Stamps Act* 1958 shall with such alterations modifications and substitutions as are necessary extend and apply with respect to swine duty stamps.

Frauds.

(5) Without affecting the generality of the last preceding sub-section every person who practises or is concerned in any fraudulent act contrivance or device not specially provided for by law with intent to defraud Her Majesty of any stamp duty under this Part 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.
No. 3784 s. 15;
No. 5204 s. 2.

15. (1) The provisions of section one hundred and sixty-seven of the *Stamps Act* 1958 shall extend and apply—

(a) to the making of regulations for or with respect to—

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

(b) to such regulations when made.

(2) Any such regulations may prescribe penalties of not more than twenty pounds for any contravention of or failure to comply with such regulations.

Penalties in regulations.

DIVISION 3.—SUPPLEMENTARY.

16. In any proceedings against any owner or any agent for any contravention of or failure to comply with this Part or the regulations the burden of proof that the provisions of this Part or the regulations have been complied with by such owner or agent shall be on the defendant.

Burden of proof.
No. 3784 s. 16.

17. (1) Every person who is guilty of any contravention of or failure to comply with any of the provisions of this Part 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 Part shall be liable to a penalty of not more than Twenty pounds.

Penalty in cases not provided for.
No. 3784 s. 17;
No. 3681 s. 5 (d).

(2) Without prejudice to any proceedings for any indictable offence, an information for any other contravention of or failure to comply with—

(a) any of the provisions of division two of this Part or any amendment of the said division two; or

(b) the regulations thereunder—

may be laid at any time within three years from and after the date on which such contravention or failure occurred.

18. (1) The Governor in Council may make regulations for or with respect to—

Regulations.
No. 3784 s. 18.

(a) the manner of making and dealing with and the verification of applications for compensation;

(b) prescribing subject to this Part the form of any certificate to be issued by any inspector of stock or meat inspector or other officer (including any dairy supervisor or veterinary surgeon approved as aforesaid and any medical officer of health appointed as aforesaid) in respect of the destruction of any diseased pigs or any pigs suspected of suffering from disease or the condemnation of any diseased carcass or portion of a carcass and the particulars to be set forth in any such certificate;

(c) scales of compensation payable in respect of diseased carcasses or portions thereof;

(d) the retention under this Part of pigs by the owner thereof when such pigs are affected with a localized form of disease only and the conditions of such retention;

- (e) safeguarding the Fund and the Consolidated Revenue from claims for compensation in respect of pigs or carcasses or portions thereof in cases where the pigs are diseased or suspected of being diseased when introduced or being introduced into Victoria whether by land or sea; and generally preventing fraudulent or dishonest claims for compensation;
- (f) all matters and things necessary or convenient to be prescribed with respect to the Fund and the administration thereof;
- (g) forms for the purposes of this Part and the regulations;
- (h) prescribing penalties (of not more than Twenty pounds in any case) for any contravention of or failure to comply with the regulations; and
- (i) generally, all matters and things which by this Part are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to or carrying out this Part and guarding against evasions and violations thereof.

Sufficiency of forms.

(2) All forms so prescribed or forms to the like effect may be used for the purposes of this Part and shall be sufficient in law.

Publication.

(3) All such regulations shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within fourteen days after the publication thereof if Parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament.

PART II.—SWINE SALES.

Interpretation.
No. 3784 s. 19.

19. In this Part unless inconsistent with the context or subject-matter—

“Pig.”

“Pig” has the same meaning as in Part I. of this Act.

Penalty on persons making charges &c. for insurance purposes on sale of pigs.
No. 3784 s. 20.

20. 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—

(a) makes any charge to the vendor; or

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

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 of not more than One hundred pounds.

21. Any condition express or implied in any contract or agreement providing for making any charge or deducting any amount which would if made or deducted be an offence hereunder shall be void and of no effect.

Conditions inconsistent herewith in contracts to be inoperative.
No. 3784 s. 21.

22. (1) The provisions of this Part shall extend and apply with respect to companies and other bodies of persons as if they were private persons.

Application to companies &c.
No. 3784 s. 22.

(2) Every company or other body of persons guilty of an offence under this Part 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 secretary or officer of such company or body knowingly authorizes or permits the commission of any such offence he shall also be liable therefor.

Liability of companies &c.

SCHEDULE.

Section 2.

Number of Act.	Title of Act.	Extent of Repeal.
3784 ..	<i>Swine Act 1928</i>	The whole.
3881 ..	<i>Swine Act 1930</i>	So much as is not already repealed.
4119 ..	<i>Swine Act 1933</i>	The whole.
4215 ..	<i>Cattle and Swine (Compensation) Act 1934</i>	So much as is not otherwise repealed.
4893 ..	<i>Cattle and Swine Compensation Act 1942</i>	So much as is not otherwise repealed.
5062 ..	<i>Swine Act 1945</i>	The whole.
5146 ..	<i>Cattle and Swine Compensation Act 1946</i>	So much as is not otherwise repealed.
5204 ..	<i>Stamps Act 1946</i>	First Schedule, Part II., clause 6.
5708 ..	<i>Swine Compensation Act 1953</i>	So much as is not otherwise repealed.