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**APPLE AND PEAR MARKETING ACT (No. 2) 1977**

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## APPLE AND PEAR MARKETING (No. 2)

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No. 109 of 1977

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**AN ACT to amend the Apple and Pear Marketing Act 1977 and the Fruit Board Act 1934 to make provision for continuing the Tasmanian Apple and Pear Marketing Authority and adding to its functions (including provision for the taking over by the Authority of functions presently carried on by the State Fruit Board) and to abolish that Board.**

[30 November 1977]

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1—(1)** This Act may be cited as the *Apple and Pear Marketing Act (No. 2) 1977*.

Short title,  
citation, and  
commencement

**(2)** The *Apple and Pear Marketing Act 1977\** is in this Act referred to as the Principal Act.

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\* No. 7 of 1977.

(3) This Act shall commence on a day to be proclaimed.

Long title.

**2** The long title to the Principal Act is repealed and the following long title is substituted:—

“An Act to establish an Apple and Pear Marketing Authority, to empower the Authority to contract with growers for the marketing of apples and pears on all markets and to market on overseas export markets the apples and pears vested in the Authority pursuant to the Act, and to provide for rights of payment in respect of that vesting and for incidental matters.”.

Interpretation.

**3** Section 2 of the Principal Act is amended—

(a) by inserting in subsection (1), after the definition of “Commonwealth Export Regulations”, the following definition:—

“‘Corporation’ means the Australian Apple and Pear Corporation established under the *Australian Apple and Pear Corporation Act 1973*;”;

(b) by inserting in that subsection, after the definition of “fruit”, the following definition:—

“‘licence’ means a licence granted under section 14D of the *Fruit Board Act 1934*;”;

(c) by omitting from that subsection the definition of “season” and substituting the following definition:—

“‘season’ means a fruit season;”;

(d) by omitting from the definition of “seasonal advance” in that subsection the words “the season” and substituting the words “a season”; and

(e) by omitting from that subsection the definition of “supplementary assistance” and substituting the following definition:—

“‘supplementary assistance’ means supplementary financial assistance in respect of fruit granted by the Commonwealth or this State or both the Commonwealth and this State.”.

Establishment  
of the  
Tasmanian  
Apple and  
Pear Marketing  
Authority.

**4** Section 3 of the Principal Act is amended by omitting subsections (3), (4), and (5) and substituting the following subsections:—

“(3) The Authority shall consist of 9 persons appointed by the Governor on the nomination of the Minister.

“(4) Subject to subsections (5) and (6), of the members of the Authority—

- (a) one shall be the chairman of the Authority;
- (b) one shall be an officer of the Treasury;
- (c) two shall be officers of the Department of Agriculture;
- (d) three shall be holders of licences appointed to represent fruit growers in the Southern Division of this State;
- (e) one shall be the holder of a licence appointed to represent fruit growers in the Northern Division of this State; and
- (f) one shall be the Executive Director of the Authority, being a person nominated by the Minister after he has consulted the members of the Authority referred to in paragraphs (d) and (e).

“(5) A member of the Authority referred to in subsection (4) (c) shall be a person specially qualified for appointment by reason of experience in agricultural economics or horticultural science.

“(6) One of the members of the Authority referred to in subsection (4) shall be a person who is experienced in the field of marketing.”.

**5** Section 4 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

Term of office and removal of members of the Authority.

“(1) A member of the Authority holds office for such term not exceeding 3 years and on such terms and conditions as are fixed by the Governor in the instrument of his appointment.”.

**6** Section 5 of the Principal Act is repealed.

Deputies of members.

**7** Section 6 of the Principal Act is amended—

Proceedings of the Authority.

- (a) by omitting subsection (1) and substituting the following subsections:—

“(1) The chairman shall preside at all meetings of the Authority at which he is present.

“(1A) In the absence of the chairman from a meeting of the Authority, the members of the Authority present shall elect one of their number to preside at that meeting.”; and

- (b) by omitting from subsection (4) the word “Four” and substituting the word “Five”.

**8** Section 7 of the Principal Act is amended by inserting in subsection (1), after the words “other officers” (first occurring), the words “(including a registrar)”.

Appointment of secretary and officers.

Principal  
functions and  
powers of the  
Authority.

**9** Section 8 of the Principal Act is amended—

- (a) by omitting the word “ and ” at the end of paragraph (a) of subsection (1); and
- (b) by inserting after that paragraph the following paragraph:—  
 “(ab) to enter into contracts with the growers of fruit for the marketing of fruit by the Authority; and”.

General powers  
as to fruit.

**10** Section 9 of the Principal Act is amended by inserting after paragraph (b) the following paragraph:—

- “(ba) For the imposition of quotas on the shipment of fruit;”.

Vesting of fruit  
in the  
Authority.

**11** Section 11 of the Principal Act is amended—

- (a) by omitting the words “ the season ” (wherever occurring) and substituting, in each case, the words “ a season ”; and
- (b) by inserting after subsection (3) the following subsection:—  
 “(3A) Notwithstanding that the fruit harvested in a season becomes the absolute property of the Authority by virtue of subsection (3), the Authority is not entitled to be granted stabilization payments or supplementary assistance or both as the owner of the fruit but shall receive money from either or both of those sources, and, subject to the terms and conditions on which the money is received by the Authority, pay it to the persons referred to in subsection (1) of section 13AA, as mentioned in that section.”.

Payment of  
moneys due to  
the  
Commonwealth  
and payment  
for fruit vested  
in the  
Authority.

**12** Section 13 of the Principal Act is amended—

- (a) by omitting subsections (1), (2), and (3) and substituting the following subsections:—  
 “(1) The Authority—  
 (a) shall pay to the Commonwealth the moneys required to be paid to the Commonwealth during a season by a prescribed person for the purposes of a stabilization fund established under the *Apple and Pear Stabilization Act* 1971 of the Commonwealth; and  
 (b) shall, subject to this section and to sections 16, 17, and 18, make payments, at such times as it determines, to the persons who have rights of payment in respect of fruit vested in the Authority during a season.

“(2) In subsection (1) (a), ‘prescribed person’ means a person who owned fruit immediately before its vesting in the Authority during a season.

“(3) Subject to this section, payments by the Authority for the purposes of paragraphs (a) and (b) of subsection (1) shall be made out of funds provided by the pooling by the Authority of the moneys received from the sale on all overseas export markets of the fruit vested in it during a season.”;

(b) by inserting in subsection (4) (a), after the word “Authority”, the words “during a season”;

(c) by omitting subsection (5);

(d) by omitting from subsection (6) the words “this section in relation to the fruit divested from a grower” and substituting the words “subsection (1) (b) in relation to the fruit divested from a grower during a season”;

(e) by omitting from subsection (7) all the words before the words “, the Authority” and substituting the following words:—

“In making payments for the purposes of subsection (1) (b) in relation to the fruit divested from a grower during a season,”; and

(f) by inserting in subsection (8), after the word “Authority” (second occurring), the words “during a season”.

**13** After section 13 of the Principal Act the following Division is inserted:—

*“Division IIIA—Provisions relating to stabilization payments and supplementary assistance*

“13AA—(1) The Authority shall pay to the persons who owned fruit immediately before its vesting in the Authority during a season—

Provisions relating to stabilization payments and supplementary assistance paid to the Authority on behalf of the persons entitled thereto.

(a) the stabilization payments granted to those persons in respect of that fruit and paid to the Authority on their behalf pursuant to, and subject to the terms and conditions of, a prescribed arrangement; and

(b) any supplementary assistance granted to those persons in respect of that fruit and paid to the Authority on their behalf, but subject to the terms and conditions on which that assistance is granted.

“(2) For the purposes of subsection (1) (a) ‘a prescribed arrangement’ is an arrangement made between the Commonwealth or the Corporation and the Authority under which the Authority, as agent of the Commonwealth or the Corporation, as the case may be, is required to pay to each of the persons referred to in subsection (1) the amount of the stabilization payment payable to that person and under which the money received by the Authority for the purpose of such a payment is money deemed to be held in trust for the Commonwealth until it is disbursed in accordance with the arrangement.

“(3) Where supplementary assistance is given by the Commonwealth or by the Commonwealth and this State to a person referred to in subsection (1), the money received by the Authority for the purpose of paying it to that person is money deemed to be held in trust for the Commonwealth or for the Commonwealth and the State, as the case may be, until it is disbursed in accordance with the terms and conditions on which the assistance is granted.

“(4) The Authority shall cause a payment made by it under subsection (1) to be accompanied by a statement indicating the nature of the payment.”.

Amendment of heading to Division IV, Part II.

**14** Part II of the Principal Act is amended by omitting the heading to Division IV and substituting the following heading:—

“*Division IV—Financial provisions*”.

**15** Before section 14 of the Principal Act the following section is inserted in Division IV of Part II:—

Application of Division.

“13A Except as otherwise provided, this Division applies to fruit that is marketed by the Authority on any market, whether that market is in the Commonwealth or elsewhere.”.

Interpretation.

**16** Section 14 of the Principal Act is amended by omitting the definitions of “prescribed market” and “reputed bushel unit”.

Advances by the Treasurer.

**17** Section 15 of the Principal Act is amended—

(a) by omitting from subsection (1) the words “the prescribed market” and substituting the words “an overseas export market”;

(b) by omitting from subsection (2) the word “administrative”; and



- (c) by omitting from subsection (5) the words “ the prescribed market ” (wherever occurring) and substituting, in each case, the words “ an overseas export market ”.

**18** Section 16 of the Principal Act is amended by omitting subsections (1), (2), and (3) and substituting the following subsection:—

Power of  
Authority to  
borrow by way  
of overdraft;  
Guarantees by  
Treasurer.

“(1) For the purpose of marketing fruit and making seasonal advances to growers (being seasonal advances secured by the proceeds of the sale of fruit pursuant to paragraphs (a) and (ab) of section 8 (1)), the Authority may, with the approval of the Treasurer, borrow by way of overdraft any sums of money not exceeding in the aggregate the sum of \$5 000 000 and the Treasurer may, on such terms and conditions as he determines, guarantee the repayment of the whole or any part of the principal moneys so borrowed and the whole or any part of the interest and other charges payable by the Authority in respect of those moneys.”.

**19** Section 17 of the Principal Act is amended—

Guarantees by  
the Authority.

- (a) by omitting from subsections (1) and (3) the words “ the prescribed market ” (wherever occurring) and substituting, in each case, the words “ an overseas export market ”; and

- (b) by omitting subsection (2) and substituting the following subsection:—

“(2) The total losses guaranteed by the Authority under subsection (1) shall not exceed a sum approved by the Treasurer.”.

**20** Section 18 of the Principal Act is amended—

Repayment of  
accommodation  
advances.

- (a) by omitting from subsections (1) and (2) the words “ the prescribed market ” (wherever occurring) and substituting, in each case, the words “ an overseas export market ”; and

- (b) by adding at the end of subsection (2) the words “ from this State on behalf of persons referred to in section 13AA (1)”.

**21** Section 20 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

Reports of  
activities and  
accounts to be  
made to  
Minister and  
tabled by him.

“(1) The Authority shall, not later than 31st January in each year, submit to the Minister—

- (a) a report of its activities during the period of 12 months ended on the preceding 31st December; and  
(b) a copy of the accounts of the Authority during that period.”.

Dissolution of  
the Authority.

**22** Division VI of Part II of the Principal Act is repealed.

Regulations.

**23** Section 24 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:—

“(2) Without prejudice to the generality of subsection (1), the regulations may make provision for or with respect to—

- (a) the information to be given to the Authority by growers of fruit and agents;
- (b) the appointment by the Minister of a committee of not more than five persons for a period not exceeding twelve months to advise him on the future organization of the Tasmanian fruit industry;
- (c) the payment of sitting fees and allowances to the members of a committee referred to in paragraph (b) and the provision of assistance for that committee, being assistance of such kind as may be prescribed in the regulations or as may be approved by the Minister, and the payment for that assistance out of the fees received for the grant of licences; and
- (d) the payment out of the fees received for the grant of licences of the costs of making arrangements for the establishment of a body the members of which are the holders of licences and the function of which is to advise the members of the Authority referred to in paragraphs (d) and (e) of section 3 (4).”.

Abolition of  
the State Fruit  
Board and  
related matters.

**24**—(1) The State Fruit Board is abolished, and its property is transferred and vested, as provided in the Schedule.

(2) There are transferred to the Authority the powers and duties of the Board as provided in the Schedule.

Amendments  
of the *Fruit  
Board Act 1934*.

**25**—(1) The *Fruit Board Act 1934* is amended—

- (a) by inserting in subsection (2) of section 14E, after the word “order”, the words “made on the recommendation of the Minister”;
- (b) by inserting after that subsection the following subsection:—

“(2A) If there is established such a body as is referred to in section 24 (2) (d) of the *Apple and Pear Marketing Act 1977*, the Minister shall consult that body before he makes a recommendation to the Governor for the purposes of subsection (2).”;

(c) by adding at the end of paragraph (b) of section 15 the words “, subject to any regulations that may be made under paragraph (c) or paragraph (d) of section 24 (2) of the *Apple and Pear Marketing Act 1977*”; and

(d) by omitting from paragraph (e) of that section the word “Council” and substituting the word “Corporation”.

(2) The following provisions of the *Fruit Board Act 1934* are repealed:—

(a) Part II;

(b) Part III, except section 13; and

(c) The first and second Schedules.

## THE SCHEDULE

(Section 24)

### ABOLITION OF THE STATE FRUIT BOARD AND RELATED MATTERS

1 In this Schedule—

Interpretation.

“Board” means the State Fruit Board constituted under the *Fruit Board Act 1934*;

“commencing day” means the day on which this Act commences.

2 On the commencing day—

Abolition of the Board: Vesting of Board's property in the Authority.

(a) the Board is abolished and ceases to exist; and

(b) the appointments of the members of the Board are cancelled.

3—(1) Subject to this paragraph, on the commencing day all the powers and duties of the Board are transferred to, and are exercisable by, the Authority and references to the Board in the *Fruit Board Act 1934* and any other Act shall be construed accordingly.

Transference of powers and duties of the Board to the Authority.

(2) Sub-paragraph (1) does not apply to the following provisions of the *Fruit Board Act 1934*:—

(a) Sections 18 and 18A;

(b) Part V; and

(c) Section 28.

4 On the commencing day—

Transfer of Board's property to the Authority.

(a) all real and personal property and every right and interest therein, and the management and control thereof that, immediately before that day, are vested in or belong to the Board are, by force of this para-

graph, without conveyance, transfer, or assignment, transferred to and vested in, and belong to, the Authority for the purposes of any of its powers and duties, subject to any debts, trusts, and liabilities affecting them;

- (b) all rights accruing or accrued to the Board in respect of any property vested in and belonging to the Authority by virtue of this paragraph—

(i) vest in the Authority for the purposes referred to in clause (a); and

(ii) may be enforced by the Authority;

- (c) all contracts, agreements, and undertakings made by the Board and all securities lawfully given to or by the Board and in force immediately before that day have effect as contracts, agreements, and undertakings by and with the Authority and securities given to or by the Authority, and may be enforced by and against the Authority accordingly;

- (d) all debts due and money payable by the Board and all claims liquidated and unliquidated recoverable against the Board are debts due, and moneys payable by, and claims recoverable against, the Authority; and

- (e) any legal or other proceedings that might, but for this paragraph, have been continued or commenced by or against the Board in its corporate name may be continued or commenced by or against the Authority.

Operation of  
certain licences  
preserved.

5 A person who, immediately before the commencing day, holds a licence granted by the Board under section 14D of the *Fruit Board Act* 1934, shall, on that day, be deemed to hold a licence granted by the Authority under that section.

Operation of  
certain  
statutory  
rules  
preserved.

6 Nothing in this Act shall be construed as prejudicially affecting the operation or continuance in force of any of the following statutory rules:—

- (a) The *Fruit Board (Local Sales) Regulations* 1955 (being Statutory Rules 1955, No. 98);
- (b) The *Fruit (Interstate Trade) Regulations* 1950 (reprinted as Statutory Rules 1962, No. 63);
- (c) The *Fruit Board (Sale and Purchase of Fruit for Processing) Regulations* 1973 (being Statutory Rules 1973, No. 77); and
- (d) The *Fruit Board (Rate of Licence Fees) Order* 1977 (being Statutory Rules 1977, No. 249).