



Western Australia

## **Agricultural Produce Commission Act 1988**

Compare between:

[01 May 2009, 02-a0-03] and [17 Sep 2009, 02-b0-03]





Western Australia

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## Agricultural Produce Commission Act 1988

An Act to —

- provide for the constitution of an Agricultural Produce Commission for the purposes of encouraging initiative among producers of agricultural produce to form producers' committees for the purposes of providing services to producers of agricultural produce;
- define the functions of the Commission and producers' committees;
- authorise the determination and imposition of charges for services; and
- amend the *Parliamentary Commissioner Act 1971* and the *Constitution Acts Amendment Act 1899*<sup>2</sup>,

and for related purposes.

*[Long title inserted by No. 20 of 2000 s. 4.]*

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Agricultural Produce Commission Act 1988*<sup>1</sup>.

*[Section 1 amended by No. 20 of 2000 s. 5.]*

### **2. Commencement**

This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

### **3. Terms used**

(1) In this Act unless the context otherwise requires —

***agricultural industry*** means a horticultural industry and such other agricultural industry as may be prescribed but excluding broadacre cropping and grazing industries.

***agricultural produce*** means the produce of an agricultural industry;

***Commission*** means the Agricultural Produce Commission established under section 4;

***member*** in relation to —

(a) the Commission, means a member of the Commission and includes the chairperson;

(b) a producers' committee, means a member of the producers' committee and includes the chairperson;

***producers' committee*** means a producers' committee established under section 11.

*[(2) deleted]*

*[Section 3 amended by No. 9 of 1998 s. 16; No. 20 of 2000 s. 6.]*

## **Part 2 — Agricultural Produce Commission**

*[Heading inserted by No. 20 of 2000 s. 7.]*

### **4. Agricultural Produce Commission established**

- (1) There is hereby established a body to be called the Agricultural Produce Commission.
- (2) The Commission is a body corporate with perpetual succession and a common seal and is capable of —
  - (a) acquiring, holding, managing, leasing and disposing of real and personal property;
  - (b) suing and being sued; and
  - (c) doing and suffering all such acts and things as a corporation may lawfully do and suffer.
- (3) The Commission is not an agent of the Crown in right of the State.

*[Section 4 amended by No. 20 of 2000 s. 8 and 27.]*

### **5. Constitution of the Commission**

- (1) The Commission is to consist of 4 members appointed by the Minister.
- (2) A member of the Commission is to have, in the Minister's opinion, a broad understanding of agricultural industry and —
  - (a) experience in financial management; or
  - (b) other experience relevant to the Commission's functions.
- (3) The Minister shall, prior to making any appointments to the Commission, establish in writing the particular experience relevant to the Commission's functions which the Minister determines is necessary for membership of the Commission.

- (4) The Minister shall —
- (a) publish and make available on request the selection criteria for membership of the Commission established under subsection (3);
  - (b) advertise in a major newspaper circulating in the State when there is a vacancy in the Commission's membership, and that applicants are invited to apply;
  - (c) indicate in such advertisement any conditions required of candidates for membership of the Commission including the disclosure of any possible conflicts of interest.
- (5) The Minister is to appoint one of the members of the Commission to be the chairperson.
- (6) The Schedule has effect with respect to the Commission and its acts and proceedings.

*[Section 5 inserted by No. 20 of 2000 s. 9.]*

**6. Functions of the Commission**

- (1) Subject to this Act the Commission may —
- (a) establish producers' committees in relation to agricultural produce;
  - (b) appoint members to producers' committees;
  - (c) advertise for the formation of producers' committees;
  - (d) conduct polls as prescribed under this Act for the purposes of the establishment and operation of producers' committees;
  - (e) dissolve producers' committees and appoint liquidators for the winding up of producers' committees;
  - (f) provide such services in relation to the functioning of producers' committees as are necessary from time to time;

- (g) direct, co-ordinate and supervise the functioning and expenditure of producers' committees; and
  - (h) provide such other services to producers' committees as the Minister may direct.
- (2) Without limiting subsection (1), a producers' committee may be established —
- (a) in relation to any agricultural produce of a particular kind, class or variety or which possesses a particular characteristic;
  - (b) in relation to a number of different kinds, classes or varieties of agricultural produce; or
  - (c) to achieve specified objects in relation to any agricultural produce,
- for the whole State or part of the State.
- (3) In performing its functions in relation to a producers' committee the Commission shall have regard to advice to it from the committee.

*[Section 6 amended by No. 29 of 1993 s. 4; No. 20 of 2000 s. 10, 28 and 31.]*

**6A. Directions by Minister**

- (1) The Minister may give directions in writing to the Commission with respect to the performance of its functions either generally or in relation to a particular matter, and the Commission shall give effect to such direction.
- (2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the Commission under Part 5 of the *Financial Management Act 2006*.

*[Section 6A inserted by No. 29 of 1993 s. 5; amended by No. 77 of 2006 Sch. 1 cl. 3(1).]*

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**6B. Minister to have access to information**

- (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled —
  - (a) to have information in the possession of the Commission; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the Commission to furnish information to the Minister;
  - (b) request the Commission to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the staff of the Commission to obtain the information and furnish it to the Minister.
- (3) The Commission shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —

**document** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

**information** means information specified, or of a description specified, by the Minister that relates to the functions of the Commission;

**parliamentary purposes** means the purpose of —
  - (a) answering a question asked in a House of Parliament; or
  - (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

*[Section 6B inserted by No. 29 of 1993 s. 5.]*



**7. Funds of the Commission**

- (1) The funds of the Commission shall consist of —
  - (a) charges received by the Commission for services provided by the Commission to producers' committees;
  - (b) moneys paid to the Commission upon the dissolution of any producers' committee under section 15; and
  - (c) such moneys as may be lawfully received by the Commission.
- (2) An agency special purpose account called the Agricultural Produce Commission Account is established under section 16 of the *Financial Management Act 2006*.
- (3) All moneys received by the Commission and by any producers' committee shall be credited to the Agricultural Produce Commission Account.

*[Section 7 amended by No. 49 of 1996 s. 64; No. 20 of 2000 s. 11, 27 and 31; No. 28 of 2006 s. 7; No. 77 of 2006 Sch. 1 cl. 3(2).]*

**8. Application of funds**

- (1) The funds of the Commission shall be applied for the purposes of carrying out the functions of the Commission under this Act.
- (2) Where the funds of the Commission are not sufficient the Treasurer may make advances of moneys to the Commission from time to time to make up any deficiency in those funds.
- (3) The Treasurer may recoup any moneys advanced to the Commission under subsection (2) whenever the Treasurer is of the opinion the Commission has sufficient funds for carrying out its functions under this Act.

**9. Officers**

The Commission may, with the approval of the Minister, employ or engage such officers, servants and other persons as

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are necessary for the purposes of carrying out its functions under this Act.

### **Part 3 — Producers' committees**

*[Heading inserted by No. 20 of 2000 s. 12.]*

#### **10. Preliminary requirements for the establishment of producers' committees**

- (1) Before establishing a producers' committee the Commission shall cause notice to be published of its intention to establish that committee.
- (2) A notice referred to in subsection (1) —
  - (a) shall be published in the manner directed by the Minister;
  - (b) shall explain in simple terms the objects sought to be effected by the proposal;
  - (c) shall specify the agricultural produce the subject of the proposal;
  - [(d) deleted]*
  - (e) where the producers' committee is to be established only in relation to a particular part of the State, shall specify the part of the State in relation to which the producers' committee is proposed to be established; and
  - (f) shall invite submissions from producers who may be affected by the proposal.
- (2a) In performing its functions under this section and section 11, the Commission shall have regard to any submissions made to it under subsection (2)(f).
- (3) If the Commission is satisfied that, having regard to the interests of the agricultural industry in question, the formation of the proposed producers' committee would be materially to the financial detriment of a producer or producers who may be affected by the proposal the Commission shall not proceed to conduct the poll in accordance with the provisions of this

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section but if the Commission is not so satisfied the Commission shall conduct the poll.

- (4) For the purposes of facilitating its consideration of the submissions under subsection (3) the Commission may invite any producers who in the opinion of the Commission have an interest in the proposal to attend meetings of the Commission.
- (5) The Commission shall not conduct a poll for the establishment of a producers' committee unless the person or persons requesting the establishment of the producers' committee in question deposit with the Commission such sum as is determined by the Commission as the reasonable costs of the poll and the estimated initial costs of the establishment of the producers' committee.
- (6) Any moneys paid to the Commission under subsection (5) shall be repaid by the producers' committee out of the funds of the producers' committee to the persons who made the deposit under that subsection in accordance with the directions of the Commission.
- (7) The Commission shall not establish a producers' committee in relation to agricultural produce unless the Commission has after complying with subsections (1) and (2) conducted a poll among the producers of agricultural produce the subject of the notice referred to in subsections (1) and (2) and, if the proposal to establish the producers' committee is in relation to a particular part of the State, in the part of the State in question, and the poll is in favour of the proposal.
- [(8) deleted]*
- (9) Notwithstanding that the Commission has complied with subsections (1) to (7) and notwithstanding that a poll of producers vote in favour of the proposal the Commission may refuse to establish, or defer the establishment of, a producers' committee if the Commission considers that having regard to

the circumstances of a particular case it is not desirable or practicable to do so.

*[Section 10 amended by No. 29 of 1993 s. 6; No. 20 of 2000 s. 13, 28, 29, 30 and 31.]*

**11. Establishment of a producers' committee**

- (1) Where the Commission resolves to establish a producers' committee the Commission shall by notice in the *Gazette* —
- (a) specify —
    - (i) the agricultural produce in relation to which the producers' committee is established; and
    - (ii) whether the producers' committee is established in relation to the whole State or in relation to only a portion of the State and in that case the portion of the State in relation to which it is so established;
  - and
  - (b) invite nominations from among the producers concerned for appointment to the producers' committee.
- (1a) After receiving the nominations the Commission —
- (a) shall decide how many members there shall be on the producers' committee; and
  - (b) if it is of the opinion that the poll of the producers concerned should be held to elect the members, shall conduct a poll.
- (1b) A person is not eligible to stand at a poll to elect members of the producers' committee unless the person is qualified to be appointed to the committee in relation to the kind of agricultural produce in question.
- (1c) Subject to subsection (2), the persons elected at a poll to be members of a producers' committee shall be appointed by the Commission to be members of the committee.

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- (2) The Commission shall not appoint a person to be a member of a producers' committee unless the Commission is of the opinion that the person is qualified to be so appointed in relation to the agricultural produce in question.
- (3) Except to the extent prescribed in this Act or the regulations the Commission may from time to time give directions with respect to the, constitution, membership, terms and proceedings of a producers' committee and incidental and related matters.
- (4) Any directions given under subsection (3) shall be published in the *Gazette*.
- (5) Sections 43 and 44 of the *Interpretation Act 1984* apply to directions given under this section as though the directions were subsidiary legislation.

*[Section 11 amended by No. 20 of 2000 s. 14, 28, 30 and 31.]*

**12. Functions of a producers' committee**

- (1) Subject to any direction given by the Commission and to this section a producers' committee may provide any one or more of the following services as are prescribed in relation to the agricultural produce in relation to which it is established —
  - (a) advertise and promote the agricultural produce;
  - (b) control or develop the means of controlling pests and diseases if there is a likelihood of those pests or diseases affecting the quality or volume of output of the agricultural produce;
  - (c) conduct research in relation to any matter, if in the opinion of the producers' committee that research is of advantage to producers of the agricultural produce;
  - (d) conduct educational or instructional programmes relating to the production of agricultural produce;
  - (e) develop and expand markets for the agricultural produce in Western Australia and elsewhere;

- (f) establish a voluntary insurance scheme for the benefit of producers of the agricultural produce including insurance relating to crops;
  - (g) undertake and provide market forecasting for the agricultural produce;
  - (h) establish systems of inspection for the agricultural produce for the purpose of quality control or pest and disease control;
  - (i) formulate schemes for declaring producers of the agricultural produce to be accredited producers;
  - (j) establish systems to facilitate inspection of grading, packaging and storage of the agricultural produce including weight and uniformity (including uniformity of ripeness) within packages;
  - (k) support, with or without grant of financial aid, and whether or not initiated by the committee or the Commission, any scheme or activity which in the committee's opinion is capable of assisting in the promotion or sale of the agricultural produce;
  - (l) provide such other services for the agricultural produce as may be prescribed;
  - (la) establish a compensation scheme for the benefit of producers whose agricultural produce is destroyed as a result of action taken to control a pest or disease of that produce;
  - (m) arrange for the provision of all or any of the services or the exercise of any of the functions referred to in paragraphs (a) to (la) in whole or in part by another person or organization or in conjunction with the Commission or any other person or organization.
- (2) For the purposes of carrying out its functions under this Act a producers' committee may, with the approval of the Commission, employ or engage such officers, employees and other persons as are necessary.

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- (3) A producers' committee shall not provide any service or recommend the imposition of any charge for any service or proposed service additional to the service or services for which the producers' committee was established unless the producers' committee has conducted a poll of the producers concerned and the poll is in favour of the proposal.
- (4) The costs of any poll shall be charged to the general funds of the producers' committee.

*[Section 12 amended by No. 73 of 1994 s. 4; No. 49 of 1996 s. 64; No. 20 of 2000 s. 15, 28, 30 and 31.]*

**13. Power to require information**

- (1) For the purposes of facilitating the establishment or operation or both the establishment and operation of a producers' committee the Commission may by notice served on a producer require the producer to furnish in writing in the form of a form specified by the Commission within the time specified by the Commission such prescribed statistical information as is specified in the notice.
- (2) A person who —
  - (a) without reasonable cause refuses or fails to comply with a requirement in a notice under this section; or
  - (b) furnishes to the Commission under this section any information which to the person's knowledge is false or misleading in a material particular,

is guilty of an offence against this Act.

Penalty: \$1 000.

*[Section 13 amended by No. 20 of 2000 s. 16 and 29.]*

**14. Imposition of charges for services**

- (1) The Commission, at the request and with the advice of a producers' committee, may determine the cost or estimated cost of providing a service which the producers' committee is



authorised to provide and, with the approval of the Minister, may impose a charge for the provision of that service.

- (2) The Commission is to determine the amount of a charge imposed under this section having regard to the cost or estimated cost of providing the service and any other relevant factors.
- (3) Notice of a charge imposed under this section is to be published, and the charge is payable, in accordance with the regulations.

*[Section 14 inserted by No. 20 of 2000 s. 17.]*

#### **15. Dissolution of a producers' committee**

- (1) If the Commission takes a poll among the producers concerned for the dissolution of a producers' committee and the poll is in favour of the dissolution of the producers' committee the producers' committee, shall on and from a day appointed by the Commission being a day not later than 6 months after the taking of the poll by notice in the *Gazette*, proceed to be wound up.
- (2) The Commission shall on and from the day appointed under subsection (1) appoint a liquidator to wind up the affairs of any producers' committee required to be wound up under that subsection.
- (3) Upon the appointment of a liquidator under subsection (2) the producers' committee being wound up shall cease to act and the liquidator, may, for the purposes of the winding up of the affairs of the producers' committee in the name of and as the act of the producers' committee —
  - (a) exercise such of the functions of the producers' committee;
  - (b) do such other acts and things as the liquidator thinks fit.
- (4) A liquidator shall receive such remuneration as is determined by the Commission.

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- (5) The Commission may by notice published in the *Gazette* declare a producers' committee to be dissolved.
- (6) The dissolution of a producers' committee shall take effect on the date specified in the notice referred to in subsection (5).
- (7) On the dissolution of a producers' committee all money and other assets of the producers' committee —
  - (a) shall vest in the Commission;
  - (b) shall be dealt with as the Minister directs for the benefit of the producers concerned.
- (8) Notwithstanding anything in subsection (1), where the Commission is satisfied that a producers' committee is operating in such a manner that its operations are materially to the financial detriment of a person who is a producer for the purposes of that producers' committee the Commission may dissolve the producers' committee and where the Commission does so the provisions of subsections (2) to (7) apply in relation to such dissolution.

*[Section 15 amended by No. 20 of 2000 s. 18, 29, 30 and 31.]*

**16. List of producers**

- (1) For the purposes of conducting a poll under this Act the Commission shall compile lists of producers of the agricultural produce in relation to which a producers' committee is proposed to be or has been established.
- (2) A person whose name is included or omitted from a list compiled under subsection (1) and who is aggrieved in relation to that fact may apply to the State Administrative Tribunal for a review of the decision to include or omit the person's name.

*[Section 16 amended by No. 20 of 2000 s. 19, 30 and 31; No. 55 of 2004 s. 22.]*

**17. Conduct of polls**

- (1) A poll conducted for the purposes of this Act shall be conducted in accordance with the regulations.
- (2) The regulations may provide that the costs of and expenses relating to a poll shall be recovered by the Commission from the funds of a producers' committee.

*[Section 17 amended by No. 20 of 2000 s. 31.]*

**18. Accounts**

- (1) A producers' committee shall credit to the account established under section 7(2) all moneys received by the producers' committee.
- (2) Moneys received in payment of charges imposed under this Act shall be applied exclusively for the services in relation to which those charges were imposed.
- (3) Despite subsection (2), any amount which is no longer required by a producers' committee —
  - (a) to be applied for the service in relation to which the charge was imposed; or
  - (b) to defray the proper costs and expenses of the producers' committee,

may be allocated by the Commission to be applied for the provision of another service that the committee is authorised to provide.

- (4) The Commission shall maintain proper books of account and records showing amounts credited to the account referred to in subsection (1) and the manner in which the moneys in that account are applied.

*[Section 18 amended by No. 49 of 1996 s. 64; No. 20 of 2000 s. 20 and 31.]*

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**19. Voluntary associations of producers**

- (1) Notwithstanding anything in this Part where a group of producers of agricultural produce applies to the Commission for the performance by the Commission of the functions of the Commission under this Act in relation to that group of producers and the Commission is satisfied that a producers' committee has not been established under this Act in relation to that group of producers for the agricultural produce in question the Commission may with the approval of the Minister perform such functions in relation to the group of producers as are referred to in the application subject to such terms and conditions, including the payment of charges, as are approved by the Minister.
- (2) Where the Commission performs any function or renders any service under subsection (1) each member of the group of producers is jointly and severally liable for such payment of charges (if any) that are payable under the terms and conditions approved under that subsection.

*[Section 19 amended by No. 20 of 2000 s. 21, 28, 30 and 31.]*

**19A. Application to commercial and non-commercial producers of provisions relating to the control of certain pests or diseases**

- (1) Where this section applies, a reference in this Act to *a producer* includes a reference to a producer of any quantity of agricultural produce, whether for sale or not.
- (2) This section applies if —
  - (a) the Minister, by notice published in the *Gazette*, has declared a specified pest or disease to be a pest or disease to which this section applies; and
  - (b) a producers' committee is established, or is to be established, with the object of controlling or developing the means of controlling the pest or disease specified in the notice.

*[Section 19A inserted by No. 20 of 2000 s. 22.]*

## **Part 4 — Miscellaneous**

### **20. Financial provisions**

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in relation to the Commission and its operations.
- (2) The Commission shall ensure that each producers' committee maintains proper accounts and records of its financial administration and operations in such manner and form as the Treasurer approves.

*[Section 20 amended by No. 20 of 2000 s. 31; No. 77 of 2006 Sch. 1 cl. 3(3).]*

### **21. Authentication**

Every summons, process, order, notice, statement or advertisement requiring authentication by the Commission may be authenticated without the seal of the Commission if signed by —

- (a) the chairperson; or
- (b) a person authorised by the chairperson.

### **22. Recovery of charges**

- (1) Any moneys due to the Commission or to a producers' committee may be recovered by the Commission in any court of competent jurisdiction.

*[(2) deleted]*

*[Section 22 amended by No. 49 of 1996 s. 64; No. 20 of 2000 s. 23 and 31.]*

**23. Evidentiary**

In any legal proceedings —

- (a) until evidence is given to the contrary proof is not required of —
  - (i) the constitution of a producers' committee;
  - (ii) the constitution of the Commission;
  - (iii) any resolution of the Commission or producers' committee;
  - (iv) the appointment of any member or of the Commission or of a producers' committee;
- (b) production of a copy of the *Gazette* or a newspaper containing or purporting to contain a copy of any notice or advertisement published under this Act is —
  - (i) evidence of the matters contained in the notice or advertisement; and
  - (ii) evidence that all steps necessary to be taken prior to the publication of the notice or advertisement were duly taken;
- (c) an averment on behalf of the Commission —
  - (i) that any agricultural produce is or was, during a specified period, agricultural produce to which this Act applies or applied as the case requires;
  - (ii) that any area or place is or was an area or place or is or was during a specified period within an area specified in a notice or advertisement; or
  - (iii) that any person is or was a producer during a specified period of agricultural produce,is until the contrary is proved evidence of that fact; and
- (d) a certificate —
  - (i) signed or purporting to be signed by a prescribed officer of the Commission;

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- (ii) certifying that on a specified day or during a specified period any person was or was not included in a list of producers of agricultural produce compiled under this Act,

is, without proof of the signature of the person purporting to sign the certificate or that the person is a prescribed officer, evidence of the matters certified in and by the certificate.

*[Section 23 amended by No. 20 of 2000 s. 28, 29, 30 and 31.]*

**24. Protection of members**

A person who is or was a member of the Commission or a producers' committee, or an officer or employee of the Commission or producers' committee is not personally liable for any Act done or omitted to be done in good faith by the Commission or a producers' committee or by him acting as a member of the Commission or producers' committee or as an officer or employee of the Commission or a producers' committee.

*[Section 24 amended by No. 20 of 2000 s. 31.]*

**25. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting the generality of subsection (1) the regulations may —
  - (a) prescribe the method of determining the eligibility of producers to be regarded as producers for the purposes of this Act;
  - (b) provide for the taking of any poll including the method of voting at a poll and determining the manner in which the results of a poll shall be ascertained;



- (c) prescribe matters concerning the compilation and revision of lists of names of producers;
- (d) prescribe the manner in which the results of a poll taken under this Act shall be notified;
- (e) require that for the purposes of this Act information relating to agricultural produce be furnished to prescribed persons or organizations;
- (ea) prescribe the manner in which charges imposed under this Act shall be paid and collected and the persons to whom the charges shall be paid or by whom the charges shall be collected; and
- (f) prescribing penalties not exceeding \$2 000 for any breach of the regulations.

*[Section 25 amended by No. 29 of 1993 s. 7; No. 20 of 2000 s. 24 and 30.]*

**26. Review**

- (1) Within a period of 12 months commencing on the fifth anniversary of the day on which the *Horticultural Produce Commission Amendment Act 2000* comes into operation the Minister shall cause an investigation and review to be conducted, and a report to be prepared as to —
  - (a) the operation of this Act;
  - (b) the operation of the Commission and any producers' committee; and
  - (c) the need for this Act to continue in operation.
- (2) The Minister shall cause a copy of the report prepared for the purposes of subsection (1) to be laid before each House of Parliament as soon as is practicable after it is completed.

*[Section 26 amended by No. 20 of 2000 s. 25 and 31.]*

*[27. Omitted under the Reprints Act 1984 s. 7(4)(e).]*

## **Schedule**

[Section 5(3)]

**1. Term of office of member of Commission**

Subject to this Schedule, a member of the Commission shall be appointed for such period not exceeding 3 years as is specified in the instrument of appointment of that member.

**2. Remuneration of member of Commission**

A member of the Commission other than a member who is an officer of the Public Service of the State or the Commonwealth is entitled to be paid such remuneration and allowances as the Minister, on the recommendation of the Minister for Public Sector Management, determines.

*[Clause 2 amended by No. 20 of 2000 s. 26(1).]*

**3. Casual vacancies**

Where an office of member of the Commission becomes vacant the Minister shall, subject to this Act, fill the vacancy.

**4. Vacation of office**

The office of a member becomes vacant if the member —

- (a) dies; or
- (b) is absent from 4 consecutive meetings of the Commission without the permission of the Minister; or
- (c) ~~not being a member appointed under~~ is, according to the Interpretation Act 1984 section 5(1)(b), is an undischarged 13D, a bankrupt or a person whose property is subject to an order or arrangement affairs are under ~~the~~ insolvency laws ~~relating to bankruptcy~~; or
- (d) is removed from office by the Minister on the ground that the member is mentally or physically incapable of performing the duties of a member or for incompetence, neglect of duty or misconduct proved to the satisfaction of the Minister.

*[Section 4 amended by No. 18 of 2009 s. 7.]*

**5. Disclosure**

- (1) A member of the Commission who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Commission shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose his or her interest at a meeting of the Commission.
- (2) A disclosure under subclause (1) shall be recorded in the minutes of the meeting of the Commission and the member shall not unless the meeting otherwise determines —
  - (a) be present during any deliberation by the Commission with respect to that matter; or
  - (b) take part in any decision of the Commission with respect to that matter.
- (3) For the purpose of making a determination by the Commission under subclause (2) in relation to a member who has made a disclosure under subclause (1), a member who has a direct or indirect interest in the matter to which the disclosure relates shall not —
  - (a) be present during any deliberation of the Commission for the purpose of making the determination; or
  - (b) take part in the making by the Commission of the determination.

**6. Meetings**

- (1) The first meeting of the Commission shall be convened by the chairperson of the Commission and thereafter, subject to subclause (2), shall be held at such times and places as the Commission determines.
- (2) A special meeting of the Commission may at any time be convened by the chairperson of the Commission.
- (3) The chairperson of the Commission shall preside at any meeting of the Commission at which the chairperson is present and in the absence of the chairperson, the members present shall elect one of their number to preside.
- (4) At any meeting of the Commission 3 members constitute a quorum.

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- (5) At any meeting of the Commission the member presiding at the meeting shall have a deliberative vote, and in the case of an equality of votes being cast on any question, shall have a casting vote.

*[Clause 6 amended by No. 20 of 2000 s. 26(2).]*

**7. Resolution without meeting**

A resolution in writing signed or assented to by letter, or electronic means of communication by each member of the Commission shall be as valid and effectual as if it had been passed at a meeting of the Commission.

**8. Procedures of the Commission**

Except to the extent that they are prescribed, the Commission shall determine its own procedures.

**9. Validity of acts of Commission**

No act, proceeding or decision of the Commission shall be invalid on the ground of any vacancy in the office of any member of the Commission or of any defect in the appointment of any member of the commission.

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### Notes

<sup>1</sup> This ~~reprint~~ is a compilation ~~as at 1 May 2009~~ of the *Agricultural Produce Commission Act 1988* and includes the amendments made by the other written laws referred to in the following table<sup>1a, 3</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Horticultural Produce Commission Act 1988</i> <sup>4</sup>	75 of 1988	23 Dec 1988	s. 1 and 2: 23 Dec 1988; Act other than s. 1 and 2: 1 Sep 1989 (see s. 2 and <i>Gazette</i> 1 Sep 1989 p. 3017)
<i>Horticultural Produce Commission Amendment Act 1993</i>	29 of 1993	15 Dec 1993	15 Dec 1993 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Agricultural Legislation Amendment and Repeal Act 1998</i> Pt. 6	9 of 1998	30 Apr 1998	4 Jul 1998 (see s. 2 and <i>Gazette</i> 3 Jul 1998 p. 3581)
<i>Horticultural Produce Commission Amendment Act 2000</i> <sup>5</sup>	20 of 2000	30 Jun 2000	s. 1 and 2: 30 Jun 2000; Act other than s. 1 and 2: 11 Aug 2000 (see s. 2 and <i>Gazette</i> 11 Aug 2000 p. 4691)
<b>Reprint of the <i>Agricultural Produce Commission Act 1988</i> as at 5 Apr 2002</b> (includes amendments listed above)			
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 5 <sup>6</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 2 Div. 1	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)

## Agricultural Produce Commission Act 1988

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Short title	Number and year	Assent	Commencement
<i>Financial Legislation Amendment and Repeal Act 2006</i> Sch. 1 cl. 3	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 2: The Agricultural Produce Commission Act 1988 as at 1 May 2009</b> (includes amendments listed above)			
<a href="#"><i>Acts Amendment (Bankruptcy) Act 2009</i> s. 7</a>	<a href="#">18 of 2009</a>	<a href="#">16 Sep 2009</a>	<a href="#">17 Sep 2009 (see s. 2(b))</a>

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- <sup>1a</sup> On the date as at which this ~~reprint~~[reprint compilation](#) was prepared, provisions referred to in the following table had not come into operation and were therefore not included in ~~compiling the reprint~~[this compilation](#). For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

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Short title	Number and year	Assent	Commencement
<i>Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007</i> s. 63 <sup>7</sup>	24 of 2007	12 Oct 2007	To be proclaimed (see s. 2(1))

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- <sup>2</sup> The provision in this Act amending these Acts has been omitted under the *Reprints Act 1984* s. 7(4)(e).
- <sup>3</sup> The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 3 was repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).
- <sup>4</sup> Now known as the *Agricultural Produce Commission Act 1988*; short title changed (see note under s. 1).
- <sup>5</sup> The *Horticultural Produce Commission Amendment Act 2000* s. 32 and 34 read as follows:

#### 32. Validation

- (1) Any appointment made after the commencement of the *Plant Diseases Amendment Act 1993* and before the commencement of this Act to a growers' committee by the Commission purporting to act under section 11 of the *Horticultural Produce Commission Act 1988* is hereby validated and declared to have been lawfully made.

- (2) Any act or thing done after the commencement of the *Plant Diseases Amendment Act 1993* and before the commencement of this Act by a growers' committee purporting to act under the *Horticultural Produce Commission Act 1988* that would have been lawful if this Act had been in force at the time when it was done is hereby validated and declared to have been lawfully done.

**34. Transitional**

- (1) On the commencement of this Act the account known as the Horticultural Produce Commission Account established under section 7 of the *Horticultural Produce Commission Act 1988* is continued in existence under the name the Agricultural Produce Commission Account.
- (2) If immediately before the commencement of this Act a committee established under section 11 of the *Horticultural Produce Commission Act 1988* is in existence then on commencement —
- (a) the committee continues in existence; and
  - (b) the name of the committee is deemed to have “Producers’” substituted for “Growers’”.
- (3) If the procedure for establishing a growers' committee under the *Horticultural Produce Commission Act 1988* has been initiated but has not been completed before the commencement of this Act, that procedure may continue to be followed and be completed after the commencement of this Act as if this Act had not come into operation but if a committee is established under that procedure it is established as a producers' committee with a name containing “Producers’” instead of “Growers’”.

<sup>6</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>7</sup> On the date as at which this ~~reprint~~[compilation](#) was prepared, the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* s. 63 had not come into operation. It reads as follows:

**63. Agricultural Produce Commission Act 1988 amended**

- (1) The amendment in this section is to the *Agricultural Produce Commission Act 1988*.

- (2) After section 12 the following section is inserted —

“

**12A. Powers of officers, employees and other persons**

- (1) Any officers, employees and other persons employed or engaged under section 12(2) by a producers' committee established to administer a fruit fly foliage baiting scheme may, when authorised by the producers' committee, enter any orchard within the specified area to bait or spray all or any of the fruit trees and fruit vines in the manner and with the materials determined by the producers' committee.
- (2) A person must not enter an orchard under subsection (1) unless —
- (a) the person has taken reasonable steps to give the owner or occupier of the orchard notice of the intended entry; or
  - (b) the owner or occupier of the orchard consents to the entry.
- (3) The notice must specify the purpose for which the entry is required and successive entries for that purpose are to be regarded as entries to which the notice relates.
- (4) The notice must be given not less than 24 hours before the power of entry is exercised.
- (5) In subsection (1) —
- orchard** means any land used for the purpose of growing or cultivating plants, and includes any garden, farm, vinery, vineyard, and hothouse, any place where any plant is cultivated or where any plant which has been cultivated is growing;
- specified area** means the portion of the State specified in a notice under section 11(1)(a)(ii) in relation to which the producers' committee is established.

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***Agricultural Produce Commission Act 1988***

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