

WESTERN AUSTRALIA.

FRUIT GROWING INDUSTRY (TRUST FUND).

5° and 6° Geo. VI., No. XLVII.

No. 47 of 1941.¹

(Affected by Act No. 113 of 1965.)

[As amended by Acts:

No. 11 of 1944, assented to 18th December, 1944;

No. 39 of 1951, assented to 20th December, 1951;

No. 28 of 1956, assented to 29th November, 1956;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to authorise the establishment of a Trust Fund in relation to the Fruit Growing Industry; to provide for the administration of such Fund, and the application of the moneys from time to time in such Fund, and for other purposes incidental thereto.

[Assented to 15th January, 1942.]

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

1. This Act may be cited as the *Fruit Growing Industry (Trust Fund) Act, 1941-1956*, and shall come into operation on a day to be fixed by proclamation.¹

Short title
and com-
mencement.
Amended by
No. 28 of
1956, s. 1.

¹ Came into operation on 9th March, 1942, see *Gazette* 6/3/42, p. 309.

Construction.

2. This Act shall be construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the Parliament of the State to the intent that any portion thereof, which may be held to be in excess of that power shall, to the extent to which it is so in excess, be deemed to be severable from the other portions of this Act and not to affect the validity or operation thereof.

Interpre-
tation.Amended by
No. 11 of
1944, s. 2.

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

“Association” means Western Australian Fruit Growers’ Association Incorporated.

“Committee” means the Fruit Growing Industry Trust Fund Committee constituted under this Act.

“Dealer” means any person who—

- (a) purchases fruit from a grower wholesale for resale; or
- (b) receives fruit from a grower for sale wholesale on behalf of such grower; or
- (c) being a grower, himself sells wholesale in a season not less than two hundred and fifty bushels of fruit produced by him; or
- (d) being a grower, himself sells retail in any one year not less than two hundred and fifty bushels of fruit produced by him; or
- (e) who purchases fruit wholesale for resale after some method of treatment which renders it saleable in an altered form or condition.

“Fund” means the Fruit Growing Industry Trust Fund established by this Act.

“Fruit” means apples, pears, and any other fruit which the Governor may from time to time by regulation declare to be “fruit” for the purposes of this Act.

“Grower” means any person who produces fruit for sale.

“Minister” means the Minister of Agriculture or the Minister of the Crown from time to time acting as the Minister of Agriculture.

“Sale” includes barter or exchange.

“Under Secretary” means the Under Secretary for Agriculture.

4. Subject to the Minister, this Act shall be administered by the Under Secretary. Administra-
tion.

5. (1) A Committee, to be called “The Fruit Growing Industry Trust Fund Committee,” is hereby constituted for the purposes of this Act. Fruit
Growing
Industry
Trust Fund
Committee.

(2) The Committee shall consist of three members, who shall be appointed by the Governor. Two of such members shall be persons who have been nominated by the Association and approved by the Minister, and the remaining member shall be a person representing the Department of Agriculture and nominated by the Minister.

(3) The member representing the Department of Agriculture shall be the chairman of the Committee.

(4) Notice of every appointment of a member of the Committee shall be published in the *Government Gazette*.

(5) The Committee shall be a body corporate, with perpetual succession and a common seal.

6. The members of the Committee shall not hold office for a longer period than three years without reappointment and, subject to due nomination, shall be eligible for reappointment. Terms of
office of
members.

7. Any two members of the Committee shall form a quorum thereof. Quorum.

Fruit Growing Industry (Trust Fund).

Chairman to
preside.
Majority
decision to
be sufficient.

8. (1) At all meetings of the Committee the chairman shall preside, if present, and, in his absence, one of the members present shall be appointed by such members to be chairman of the meeting.

(2) Whenever all the members of the Committee are present at a meeting and they are not unanimous as to any matter, such matter shall be decided by the majority of the votes, and the decision so arrived at shall be the decision of the Committee.

(3) When only two members of the Committee are present and they are not unanimous as to any matter, no decision shall be made on such matter at such meeting, but further consideration thereof shall be adjourned until the next meeting of the Committee.

Acts of
Committee
not invali-
dated by
vacancy.

9. No act or proceeding of the Committee shall be invalid or prejudiced by reason only of the fact that at the time when the act or proceeding is done, taken, or commenced there is a vacancy in the office of any member, or by reason of the fact that the decision in regard thereto was arrived at by correspondence with the unanimous assent of the members.

Deputy
member.

10. In case of illness or other incapacity or absence from the State of any member of the Committee, or a vacancy in the office of any member, the Governor may appoint some person to be a deputy member of the Committee during such illness, incapacity, or absence, or until such vacancy is filled.

Secretary,
inspectors,
and other
officers.
Amended by
No. 113 of
1965, s. 8.

11. (1) The Under Secretary may appoint a secretary to the Committee and any inspectors and other officers whom he is satisfied, on the information of the Committee, are necessary to enable the Committee to carry out its duties and functions.

(2) Any officer employed in the Department of Agriculture shall be eligible for appointment under subsection (1) of this section.

(3) Any person who in any way resists, interferes with, hinders, or obstructs any person appointed by the Under Secretary as aforesaid in the exercise or discharge of any power or duty under this Act shall be guilty of an offence.

Penalty—One hundred dollars.

12. The chairman and members of the Committee shall be paid and receive in respect of their services such fees and allowances as may be prescribed.

Remuneration of Committee.

13. (1) The Committee may by notice in writing under the hand of the chairman, given to any grower or dealer, require such grower or dealer to furnish in writing to the Committee such returns and particulars in relation to his business as carried on by him under this Act as the Committee may deem necessary for the purposes of this Act, and the Committee may specify in such notice a time within which such returns and particulars shall be furnished.

Power to require returns and particulars. Amended by No. 113 of 1965, s. 8.

(2) Any person who fails or refuses to comply with the requisitions of any such notice within the time limited by such notice, or who furnishes any untrue return or particulars, shall be guilty of an offence.

Penalty—Twenty dollars.

(3) The returns and particulars which may be required by the Committee under subsection (1) of this section shall be in addition to any returns and particulars which growers and dealers are required to furnish in accordance with the regulations.

14. (1) Any member of the Committee and any inspector or officer of the Committee authorised in writing in that behalf by the Committee may inspect any books, accounts, registers, records, documents, or writings which are in the custody or control of any grower or dealer, and which relate to the business carried on by him, and may take notes, copies, or extracts thereof or therefrom.

Entry and inspection.

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(2) For the purposes of subsection (1) of this section any member, inspector, or officer aforesaid may at any reasonable time enter any premises in which he believes any such books, accounts, registers, records, or writings are kept.

Fruit
Growing
Industry
Trust Fund.

15. (1) For the purposes of this Act there shall be established a fund, to be called "The Fruit Growing Industry Trust Fund," which shall be administered by the Committee.

(2) All moneys from time to time belonging to the Fund shall be deposited in an account, to be called "The Fruit Growing Industry Trust Fund Account," which shall be kept at the Treasury.

(3) The Fund shall consist of—

- (a) contributions made to the Fund under this Act; and
- (b) the moneys (if any) appropriated by Parliament for the purposes of this Act; and
- (c) penalties imposed upon convictions of offences against this Act, which, notwithstanding the Fines and Penalties Appropriation Act, 1909, are hereby declared to be payable into the Fund.

Investment
of moneys in
the Fund.

16. Any moneys in the Fund, which are not immediately required for the purposes of this Act, may, subject to the approval of the Minister, be invested by the Committee in any investments authorised by law for the investment of trust funds.

Contri-
butions to
the Fund.
Amended by
No. 39 of
1951, s. 3;
No. 28 of
1956, s. 2;
No. 113 of
1965, s. 8.

17. (1) Subject to this Act, every grower shall in every year contribute to the Fund in relation to the fruit produced by him for sale in that year.

(2) All such contributions shall be paid to the Committee.

(3) During such time as the National Security (Apple and Pear) Regulations of the Commonwealth are in operation and apples and pears produced by growers are under the disposition of the Australian Apple and Pear Marketing Board, the amount of the

contribution shall be assessed in relation to the amount of money payable to the grower by the Commonwealth through the said Board as ascertained by that Board.

(4) After the said National Security (Apple and Pear) Regulations cease to operate and the disposition of apples and pears by the growers thereof is no longer under the control of the Australian Apple and Pear Marketing Board, the amount of the contribution shall be assessed in relation to the amount of money payable to the grower by the dealer who has obtained or received apples or pears or other fruit from such grower for sale or export.

(5) The rate of the contribution to be made by growers under this section shall be such rate as shall be declared from time to time by the Minister, on the recommendation of the Committee—

Provided that—

- (i) such rate of contribution shall not in any event exceed three and one-third cents in respect of every bushel of apples or pears of the measured crop, or of the delivered crop when such was not measured, of such apples or pears as ascertained by the Australian Apple and Pear Marketing Board, or in respect of every bushel of apples or pears or other fruit sold or exported for sale by the dealer, as the case may be; and
- (ii) the liability of the grower to contribute to the Fund may be suspended at any time and from time to time by the Minister whenever the Committee is satisfied that the moneys in the Fund for the time being are sufficient for the purposes of this Act.

(6) During such time as the said National Security (Apple and Pear) Regulations are in operation and the apples and pears of growers are in the disposition of the Australian Apple and Pear Marketing Board, the Committee may request the said Board, and it shall be lawful for the said Board to pay to the Committee out of any moneys payable

by the said Board to any grower the amount of the contribution then payable by such grower to the Committee under this section, and the acknowledgment to the Board by the Committee of the amount so paid shall be a complete discharge to the Board as against the grower concerned in respect of the amount stated in such acknowledgment.

(7) After the said National Security (Apple and Pear) Regulations cease to operate, and the disposition of apples and pears by the growers thereof is no longer under the control of the Australian Apple and Pear Marketing Board, every dealer who obtains or receives apples or pears or other fruit from a grower, and is liable to make to the grower any payment, or to account to the grower for any moneys in respect of the apples or pears or other fruit obtained or received by him as aforesaid, shall deduct out of the moneys payable by him to the grower or held by him to the credit of the grower, and pay to the Committee the amount of the contribution for which the grower is then liable under this section, and the acknowledgment by the Committee of such payment shall be a complete discharge to the dealer as against the grower in respect of the amount stated in such acknowledgment.

(8) The amount of all contributions deducted by a dealer in accordance with subsection (7) hereof shall, until paid by him to the Committee, be a debt owing by such dealer to the Committee, and shall be recoverable at the suit of the Committee from the dealer in any court of competent jurisdiction.

(9) Any dealer who fails or neglects to deduct contributions from moneys payable by him to any grower or held by him to the credit of any grower in accordance with subsection (7) of this section, and any dealer who, having deducted contributions as required by the said subsection, fails or neglects or refuses, without reasonable excuse, to pay such contributions to the Committee at the time or in the manner prescribed, shall be guilty of an offence.

Penalty—Two hundred dollars.

(10) Until such time as the amount of the contribution for which a grower is liable under this section is received by the Committee, either from the Australian Apple and Pear Marketing Board, or from a dealer, or from the grower himself, the amount of such contribution shall be a debt owing by the grower to the Committee, and shall be recoverable at the suit of the Committee from the grower in any court of competent jurisdiction.

(11) If at any time the amount of any contribution received by the Committee in relation to the liability of a grower to contribute under this section is found to be in excess of the amount of the contribution for which the grower is then liable, such excess may remain in the Fund to the credit of such grower against future contributions which may become payable by him, or shall be refunded to the grower by the Committee out of the moneys in the Fund, as the grower may elect.

(12) For the purposes of this section the name "The Australian Apple and Pear Marketing Board" includes any board or authority that may hereafter be substituted for the said Australian Apple and Pear Marketing Board in carrying out the same or similar functions.

18. (1) The moneys in the Fund shall, in the first instance, be charged with the payment of the following expenses, namely:—

Application
of moneys in
the Fund.

- (a) the costs of the administration of this Act;
- (b) the fees and allowances of the members of the Committee.

(2) After payment of the expenses referred to in subsection (1) hereof, and subject in every case to the approval in writing of the Minister, the moneys in the Fund may be used for all or any of the following purposes, namely—

- (a) the payment of the whole or portion of the costs and expenses of measures taken to prevent or eradicate pests and diseases affecting fruit trees and the fruit thereof;

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- (b) the payment of compensation to growers in respect of the whole or portion of losses suffered by them as the result of measures taken to prevent or eradicate the pests and diseases aforesaid;
- (c) the payment of the costs of the promotion and encouragement of scientific research for the improvement of fruit crops and of the transport of such crops;
- (d) the provision of financial help for the Association and its branches in the carrying out of its activities for the benefit of growers.

Provided that such financial help shall only be granted when recommended by the Committee and approved by the Minister; and

- (e) Any other purposes which, in the opinion of the Minister, will promote and encourage the fruit growing industry.

Accounts.

19. The Committee shall cause books to be provided and kept, and true and regular accounts to be entered therein—

- (a) of all contributions to the Fund received by and owing to the Committee;
- (b) all moneys expended out of the Fund by the Committee and the several purposes for which such moneys shall have been so expended; and
- (c) of all the assets and liabilities of the Committee.

Books may be inspected.

20. All such books shall be open to the inspection of the Auditor General and any person authorised by him to inspect the same.

Accounts to be balanced.

21. The Committee shall cause its accounts to be balanced every year on the thirty-first day of July.

22. (1) The Committee shall cause a full and true balance sheet of the assets and liabilities, together with an income and expenditure account for each year, and such other statements as may be necessary, to be completed from the books and submitted to the Auditor General for audit.

Accounts to be audited.

(2) The Auditor General shall, in respect to such accounts, have all the powers conferred on him by the Audit Act, 1904.

23. The Committee shall, once at least in every year, furnish to the Minister a report of its transactions and a true copy of the accounts so audited.

Copies of accounts as audited to be furnished.

24. Any contravention of this Act or of any regulations made under this Act, whether by act or omission, shall be an offence.

Offences.

25. The penalty for any offence against this Act or the regulations for which no penalty is expressly provided, shall be a fine not exceeding one hundred dollars.

General penalty. Amended by No. 113 of 1965, s. 8.

26. Proceedings for offences against this Act or the regulations shall be taken and disposed of summarily under the provisions of the Justices Act, 1902-1936.¹

Procedure.

27. The Governor may make regulations not inconsistent with this Act prescribing all matters as by this Act are required or permitted to be prescribed, or as may be necessary or convenient to be prescribed for giving effect to this Act.

Regulations.

¹ Now Justices Act, 1902-1968.