

Approved for Reprint, 19th January, 1967.

WESTERN AUSTRALIA.

MARKETING OF ONIONS.

No. 52 of 1938.¹

(Affected by Act No. 113 of 1965.)

[As amended by Acts:

- No. 13 of 1945, assented to 9th January, 1946;
- No. 19 of 1952, assented to 14th November, 1952;
- No. 39 of 1953,² assented to 18th December, 1953;
- No. 83 of 1956, assented to 17th January, 1957;
- No. 18 of 1960, assented to 6th October, 1960;
- No. 39 of 1965, assented to 8th November, 1965;

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

AN ACT to make provision for the marketing, sale and disposal of onions, and to constitute an Onion Marketing Board, and for other relative purposes.

[Assented to 31st January, 1939.]

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 *Marketing of Onions Act, 1938-1965*, and shall come into operation on a day to be fixed by proclamation.¹

Short title.

Amended by
No. 39 of
1965, s. 1

2. In this Act, subject to the context—

Definitions.

Amended by
No. 39 of
1965, s. 3.

“Authorised agent” means any person lawfully authorised by the Board to take delivery of onions on its behalf and includes any person lawfully acting on behalf of any authorised agent.

¹ Proclaimed to come into operation on 5th June, 1939; see *G.G.* 2nd June, 1939, p. 988.

² This Act was never proclaimed and was repealed by Act No. 39 of 1965, s. 2.

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“Board” means the Onion Marketing Board constituted under this Act.

“Certificate” means a document in the prescribed form issued by the Board as evidence of delivery by a grower to the Board of any quantity of onions.

“Grower” means any person by whom, or on whose behalf, onions are grown for sale and includes every party to a sharefarming agreement, pursuant to which onions are grown for sale.

“Minister” means the Minister for Agriculture.

“Public notice” means a notice published in the *Gazette* and in one newspaper circulating in the districts in which onions are grown or produced.

Appoint-
ment and
constitution
of the
Board.
Amended by
No. 39 of
1965, s. 4.

3. (1) The Governor may, whenever requested so to do by a petition signed by not less than fifty growers carrying on the business of growing or producing onions, issue a proclamation fixing the day for the taking of a poll of the growers so carrying on business in Western Australia, on the question whether a Board shall be constituted. The issue of such proclamation shall be conclusive evidence of the validity and regularity of the petition.

(2) If on the taking of such poll more than three-fifths of the votes polled are in favour of the constitution of a Board, the Governor may by a subsequent proclamation declare that a Board to be known as “The Western Australian Onion Marketing Board” shall be constituted, and may thereby appoint a day for the election by growers of the elective members who shall sit on the Board.

(3) No grower shall be entitled to join in any such petition, or take part in any such poll as aforesaid, or in any election under this Act, unless he is of the full age of twenty-one years and be a natural born or a naturalised British subject and

has, during either of the two last preceding growing seasons, delivered to the Board at least three tons of onions for which he has ranked for payment, or, where the Board was not in existence during either of those seasons, satisfies the Director of Agriculture that he has produced and sold during either of them at least three tons of onions.

(4) The number of elective members who shall sit on the Board shall be two, both of whom shall be growers.

(5) The Board shall consist of the members elected under this section and of three additional members to be nominated by the Governor in the prescribed manner, one of whom shall represent the consumers and one at least of such additional members shall be a person of mercantile and commercial experience.

(6) Provision for the expenses of any such poll as aforesaid and for the first election of the members of the Board shall be made by the signatories of the petition pursuant to which the poll was ordered; but the Board shall, on receipt of a notice in writing signed by the Minister specifying such expenses, reimburse such signatories out of the proceeds of sales of onions to be made by the Board as hereinafter in this Act provided.

(7) Regulations made under this Act may provide for—

- (a) the forms of petitions;
- (b) the compilation of lists of persons entitled to vote at polls and elections, the conduct of polls and elections, and the manner of voting thereat, and the ascertainment and announcement of the result thereof;
- (c) the qualifications (subject to subsections (4) and (5) of this section) and tenure of office of members of the Board;
- (d) the holding of periodical elections and the number of members to be elected at any periodical election;

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- (e) the vacation of office by members of the Board, and the filling of casual vacancies by election or nomination, as the case may require, and (subject to the conditions laid down in section ten) the dissolution of the Board.

Acquisition
of onions by
Board.
Amended
by No. 83 of
1956, s. 2;
No. 39 of
1965, s. 5.

4. (1) The Governor may at any time, on the application of the Board, provide and declare by proclamation that the property in all onions belonging to growers shall forthwith, upon the date of publication of the proclamation, or on or from some other date specified therein, be divested from the growers thereof and become vested in and be the absolute property of the Board as the owner thereof and that any onions belonging to growers thereafter coming into existence within a time specified in the proclamation shall become vested in and be the absolute property of the Board, and may by such proclamation make such further provision as will enable the Board effectively to obtain possession of such onions, and to deal with the same, as may be deemed necessary or convenient, in order to give full effect to the objects and purposes for which the Board has been constituted.

(2) The effect of the proclamation shall be to vest the property in such onions in the Board in accordance with its tenor, freed from all mortgages, charges, liens, pledges, interests, and trusts affecting the same, and the rights and interests of every person in or against such property shall be deemed to be converted into a claim to or against the amount to be paid therefor in accordance with the provisions of this Act.

(3) A proclamation made under this section shall not extend to, or affect, any onions that the grower has, by notice given to the Board, in the form and within the time prescribed, declared to be the subject of, or required or intended by him for the purposes of, trade or commerce between the States of the Commonwealth and that are, thereafter, sold

or disposed of in the course of that trade or commerce.

(4) Every grower who has given to the Board a notice such as is mentioned in subsection (3) of this section shall render to the Board such returns, relating to the onions specified in the notice, as may be prescribed.

(5) Where a grower does anything, with regard to the onions, or any of them, specified in a notice given under subsection (3) of this section, that is inconsistent with their sale or disposal in the course of trade or commerce between the States of the Commonwealth, the property in those onions or in those of them in respect of which that thing was done shall vest in the Board and the provisions of this Act, so far as they are capable of being applied, shall apply with respect to those onions.

5. The Board shall be a body corporate, with perpetual succession and a common seal, and may sue and be sued, and hold and dispose of real and personal property.

Board to be body corporate.

6. The Board shall not be deemed to represent the Crown for any purpose whatsoever.

Board not to represent Crown.

7. The members of the Board (other than a nominated member who may be in the public service) shall be paid such remuneration and allowed such expenses from the funds of the Board as may be fixed by the Governor.

Payment of members.

8. No proceedings of the Board, and no act done by or on behalf of the Board, shall be invalidated by reason of any defect in the appointment or election of the chairman or any member of the Board, or of the chairman or any member being disqualified, or by reason of there being any vacancy in the number of the members of the Board.

Informality or vacancy not to invalidate proceedings.

Powers of Board, how exercised.

9. (1) All powers vested in the Board may be exercised by a majority of the members present at any meeting duly held at which a quorum is present, and all questions shall be decided by a majority and by open voting.

(2) The chairman (who shall be elected by the members of the Board in the prescribed manner) shall have a vote, and, if the numbers are equally divided, he shall have a second or casting vote.

(3) Three members of the Board shall form a quorum.

Dissolution of Board.

10. (1) Upon the request of not less than fifty growers carrying on the business of production and having the qualifications required to take part in any poll for the constitution of a Board or in any election under this Act, the Governor may issue a proclamation fixing a day for the taking of a poll of the growers so carrying on business and so qualified on the question whether the Board shall be dissolved. The issue of the proclamation shall be conclusive evidence of the validity of the request.

(2) No such poll shall be directed within two years after the constitution of the Board or within three years after any similar poll upon which a similar question has been answered in the negative.

(3) If at any such poll more than three-fifths of the votes polled are in favour of the dissolution of the Board, the Board shall be deemed to be dissolved accordingly as from the date of the formal announcement of the result of the poll.

Provisions relating to onions acquired by the Board.
Substituted by No. 13 of 1945, s. 2.
Amended by No. 39 of 1965, s. 6.
No. 113 of 1965, s. 8.¹

11. (1) Whenever a proclamation is issued under section four of this Act, the following provisions shall apply, that is to say:—

(a) By virtue of such proclamation every grower shall become and continue to be a bailee in possession on behalf of the Board of all onions produced by him and to which

¹ Decimal Currency Act, 1965.

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the proclamation applies until such time as all those onions have been delivered to, and accepted by, the Board, pursuant to its directions in writing.

- (b) While a grower continues to be a bailee in possession of onions as aforesaid he shall be responsible to the Board for the safe keeping, storage and protection of such onions.
- (c) Subject to paragraph (d) hereof, any grower who, while he continues to be bailee in possession of any onions, sells or delivers any of such onions to any person other than the Board, except with the authority in writing of the Board, and any person, other than the Board, who buys or receives from a grower, who is bailee in possession of onions as aforesaid, any of such onions except as a purchaser from or authorised agent of the Board shall be guilty of an offence.

Penalty—Two hundred dollars.

- (d) The Board may in such cases and on such terms as the Board may think fit exempt (either generally or in any particular case) from the operation of this section—
 - (i) Sales of onions by any grower whose total crop does not exceed three tons;
 - (ii) Sales direct to local consumers or to retail vendors;
 - (iii) Such onions as the grower may require for his own use;
 - (iv) Such other sales, purchases, or transactions as may be prescribed, including sales of particular prescribed varieties of onions, during specified periods, in respect of which the grower has given to the Board

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three months' notice, in writing, of his estimated production and approximate time of availability—
and may at any time revoke any such exemption.

- (e) The Board's decision as to whether any specified person or quantity of onions or transaction falls within the limits of any exemption granted under paragraph (d) hereof shall be final.
- (f) As soon as reasonably may be after the issue of the proclamation the Board shall, by public notice or by notice in writing direct served upon each grower, as the Board may elect, fix a date, which shall not be less than fourteen days after the date of the publication of the public notice or of the service of the notice in writing direct to the grower as the case may be, on or before which growers shall furnish to the Board the statement and declaration required by paragraph (g) of this section.
- (g) (i) Within the time specified by a public notice or other notice in writing published or served as provided for in paragraph (f) hereof, every grower affected thereby shall furnish to the Board in writing in the prescribed form and verified by the statutory declaration of such grower a statement of the estimated quantity and of the variety or varieties of the onions which have been or are in course of being produced by such grower, and which are or will be by virtue of the said proclamation the property of the Board.
- (ii) Subject to the provisions of subparagraphs (iii) and (iv) of this paragraph, every grower shall be bound by the statement furnished by him to the Board as aforesaid to account to the Board for the quantity of onions stated in such statement or for the value thereof.

- (iii) When in the opinion of the Board a grower has in any statement furnished by him in accordance with subparagraph (i) of this paragraph deliberately or recklessly under-estimated or over-estimated the quantity of onions produced or in course of being produced by him the Board may for any purposes relating to sales of onions by the Board or the distribution of proceeds from sales of onions under section fifteen of this Act or for any other purposes material to the administration of this Act itself determine and fix such estimate of the quantity of onions produced or in the course of being produced by such grower as to the Board appears to be warranted by the information available to it, and thereafter may use and apply such estimate for all or any of the purposes aforesaid.
- (iv) Where a grower accounts to the Board for not less than ninety per centum of the quantity of onions specified in a statement, furnished pursuant to subparagraph (i) of this paragraph, or of the quantity determined and fixed by the Board, under subparagraph (iii) of this paragraph, he shall be deemed to have accounted satisfactorily for the whole quantity so specified or fixed and determined; and, where a grower fails to account to the Board for ninety per centum of that quantity, if he is able to show that the failure is due to a circumstance (other than the circumstance that the Board fixed and determined the quantity) for which he was not in any way responsible or over which he had no control, the grower shall not incur any liability to the Board in respect of the quantity of onions for which he has failed to account.

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- (h) (i) A grower when estimating the quantity of onions produced or in course of being produced by him for the purposes of the statement to be furnished by him in accordance with subparagraph (i) of paragraph (g) of this section shall exclude from such estimate onions which are not or are not likely to be of the prescribed quality or which do not or are not likely to conform to the prescribed standard.
- (ii) Whenever the Board is of the opinion from any information available to it that a grower has included in his estimate of onions produced or in course of being produced by him any onions which in accordance with subparagraph (i) of this paragraph such grower should have excluded from such estimate the Board may reduce the said estimate of the grower by excluding therefrom the quantity of onions which the grower should have excluded therefrom as aforesaid.
- (i) As soon as practicable after the receipt from a grower of the statement and declaration furnished by him to the Board in accordance with subparagraph (i) of paragraph (g) of this section, and after the Board is satisfied as to the reasonableness of the estimate of the quantity of onions produced or in course of being produced by such grower specified in such statement or, where in its opinion necessary, the Board has varied such estimate as authorised so to do by this section, the Board shall issue to the grower a certificate in the prescribed form stating the estimate of the quantity of onions produced or in course of being produced by such grower of which the Board approves or which otherwise the Board has determined and fixed as authorised by this section.

- (j) The Board may make or arrange for advances on account of onions produced or in course of being produced by a grower on the basis of the estimate of the quantity of such onions of such grower of which the Board has approved or which otherwise the Board has determined and fixed as aforesaid; and any payment made by the Board on account of such onions may be made at such time or times and on such terms and conditions and in such manner as the Board may think fit.

(2) A court convicting a person of buying or receiving onions from a grower, contrary to the provisions of paragraph (c) of subsection (1) of this section, shall, whether or not imposing any penalty for that offence, order the offender to pay to the Board an amount equal to the retail value of the onions at the date of his conviction; and any amount so ordered to be paid may be recovered as if it were a penalty imposed under this section.

12. (1) Subject to this Act every contract (whether made before or after the issue of the proclamation under section four) not dealing solely with onions under and pursuant to any exemption under the last preceding section so far as it relates to delivery of onions in Western Australia, or to the sale of onions for delivery in Western Australia, shall when specified by the Board in a notice published in the *Gazette*, be null and void as from the date upon which it was made so far as such contract had not been completed by delivery at the date of such notice, and for the purposes of this section every such contract shall be deemed to be severable.

Contracts
for sale of
onions.

(2) Any transaction or contract with respect to any onions which are the subject-matter of any contract declared by this section to be void shall also be void; and any money paid in respect of any contract or part of a contract hereby made void,

or of any such transaction as aforesaid, shall, to the extent to which such contract or transaction is made void, be repaid.

Liens,
mortgages,
etc.
Amended by
No. 13 of
1945, s. 3;
No. 113 of
1965, s. 8.¹

13. (1) Every grower when furnishing to the Board in accordance with paragraph (g) of section eleven of this Act the statement of the estimated quantity of onions produced or in course of being produced by him shall give to the Board notice of any lien, mortgage, charge, encumbrance or other claim affecting such onions.

Penalty—Twenty dollars.

(2) No person claiming any right or title, whether as owner of or as being entitled to any lien, mortgage, charge, encumbrance, or other claim over any onions referred to in the statement furnished by a grower to the Board in accordance with paragraph (g) of section eleven of this Act shall have any claim against the Board on account thereof; but he may adopt the furnishing of such statement to the Board as being made wholly or partly on his account, as the case may be, and claim accordingly the payment or a just proportion of the payments to be made in respect thereof.

Marketing
powers, etc.
Amended by
No. 13 of
1945, s. 4.

14. (1) Subject to this Act, the Board may sell, or arrange for the sale of any onions which are vested in and are the property of the Board within the meaning and for the purposes of this Act, and do all acts, matters, and things necessary or expedient in that behalf, and in particular, but without limiting the generality of the foregoing powers, may—

- (a) appoint and employ such agents, servants, and officers as may be necessary;
- (b) arrange with the Government of the Commonwealth, or the State, or with any bank, for financial assistance or accommodation, and give such security over its assets and property as it shall consider reasonable;

¹ Decimal Currency Act, 1965.

- (c) as far as practicable provide onions for consumption within the State, and for the supply thereof during any period of shortage to those places within the State where any shortage is experienced;
- (d) make such arrangements as may be deemed necessary with regard to sales for export or for oversea ships' stores, or for consignment to other countries or States: Provided that the Minister may, by order under his hand, stop or prohibit any action or proposed action on the part of the Board which he considers is or would be detrimental to the public interests, or likely to affect the supply and distribution of onions at reasonable prices to consumers thereof, and may revoke any such order.

(2) Provided that when selling or arranging for sales of onions as authorised by this section the Board shall as far as practicable allocate to such sales the onions produced by the various growers respectively in the proportions which the quantities of onions mentioned in the certificates issued by the Board to such growers respectively under paragraph (i) of section eleven of this Act bear to the aggregate quantity of onions mentioned in all such certificates aforesaid, with the intent that there shall not be any unreasonable discrimination in favour of any grower in the disposal of such onions.

15. (1) Subject to this Act the Board shall, out of the proceeds of sales of onions disposed of by it under this Act, make payments to each grower who has received from the Board a certificate issued by the Board under paragraph (i) of section eleven of this Act in respect of the quantity of onions specified in such certificate on the basis of the net proceeds of the sale of all the onions of the same quality or standard sold by the Board during or covering such periods of time as may be prescribed and the proportion which the quantity of onions specified in such certificate bears to the aggregate quantity of onions specified in all the certificates aforesaid

Payments to
growers.
Substituted
by No. 13 of
1945, s. 5.
Amended by
No. 19, of
1952, s. 2.

issued by the Board to all the growers who received such certificates, or the Board shall make the payments on such other basis as the Board may determine, but the Board may, in determining the amount of the payments, take into account any other circumstances which it considers relevant.

Provided that where after the issue of such a certificate to a grower and before any payment is made to such grower under this section the Board is satisfied by reason of any information available to it since the date of the issue of the certificate to such grower that the quantity of onions specified in the certificate exceeds the quantity of onions actually produced by such grower by more than ten per centum, the Board may, notwithstanding such certificate, make payment to such grower with respect to the quantity of onions actually produced by the grower.

(2) The Board may settle and adjust all conflicting claims in respect to payments to be made in respect of any onions under this section; but at the request of any party to a dispute regarding any such claim the dispute shall be referred in the prescribed manner for decision by the local court held nearest to the office of the Board.

(3) For the purpose of ascertaining the net proceeds of the sale of onions by the Board to be distributed among growers under this section and generally for the purposes of the Act the Board's decision as to the quality or standard of such onions, the method of determining the dockages or deductions, cost of freight and other charges, and all expenses incurred in or about the marketing of the onions and the administration of this Act shall be final.

(4) As and when the Board receives the proceeds of the sale of onions by the Board under this Act, it may deduct therefrom such amount not exceeding twelve and one half per centum of the amount of such proceeds as the Board may from time to time determine and place the same to the credit of an account to be kept by the Board and to be called

“The Board Administration Account” for use by the Board for or on account of the administration expenses of the Board as they arise from time to time.

16. (1) Where a Board has in good faith and without negligence made any payment—

- (a) to a grower in respect of onions produced by him;
- (b) to any person entitled or claiming to be entitled through such grower; or
- (c) to any person on the order of such grower or person,

Non-liability of Board for payments made in good faith without negligence. Amended by No. 13 of 1945, s. 6.

the Board shall not be answerable to any other person in respect of such payment, or any part thereof, or to any action or proceeding whatsoever for damages or otherwise in respect thereof.

(2) For the purpose of this section any person who is believed by the Board or its representative, on reasonable grounds, to be the grower, shall be deemed to be such grower.

(3) This section shall not affect the rights *inter se* of any parties claiming adversely to one another in respect of any such payment or any part thereof.

17. The Board shall cause true and regular accounts to be kept, which shall be audited by the Auditor General, or by a chartered accountant approved by the Minister.

Accounts of Board.

18. Any offence against this Act for which no other penalty is provided shall be punishable on summary conviction by a fine not exceeding ten dollars.

Offences. Amended by No. 113 of 1965, s. 8.¹

19. (1) The Governor may make regulations under this Act with respect to the matters mentioned in subsection (7) of section three, and the Board may make regulations prescribing all

Regulations. Amended by No. 13 of 1945, s. 7; No. 18 of 1960, s. 2;² No. 113 of 1965, s. 8.¹

¹ Decimal Currency Act, 1965.

² Deemed to have operated from 9th January, 1946.

such 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 or achieving the objects of this Act and facilitating the exercise of its powers by the Board.

(2) The power hereby given to the Board shall (without limiting its generality) be deemed to include power to make regulations—

- (a) empowering the Board to institute prosecutions under the Agricultural Products Act, 1929, in respect of onions;
- (b) requiring producers, or persons dealing or trafficking in onions as owners or agents, or concerned in the transport or having the custody of onions, to furnish returns containing such information as the Board may consider necessary;
- (c) for ascertaining whether onions are of the prescribed quality or standard, and prescribing a quality or standard for onions, and for an increase or decrease in the amount otherwise payable to any grower under section fifteen of this Act in respect of onions produced by him according to the quality of the onions whether at the time when such grower furnishes to the Board in respect of onions produced or in course of being produced by him the statement and declaration provided for in paragraph (g) of section eleven of this Act or subsequently; and for regulating the transport, treatment, grading, packing, storing, marketing, selling, exporting and delivery to purchasers from the Board of onions.

(3) Regulations made under this Act may prescribe penalties not exceeding forty dollars in respect of any contravention of any of the regulations.

20. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative powers of the Parliament of this State, to the intent that, where any provision therein would, but for this subsection, be construed as being in excess of those powers, it shall nevertheless be deemed to be validly enacted to the extent to which it is not in excess of those powers.

Act to be
construed
subject to
Federal
Constitution
and laws.