



Western Australia

# **Marketing of Potatoes Amendment and Repeal Act 2016**

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As at 12 Sep 2016

No. 22 of 2016

Extract from [www.slp.wa.gov.au](http://www.slp.wa.gov.au), see that website for further information



# Marketing of Potatoes Amendment and Repeal Act 2016

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Western Australia

## **Marketing of Potatoes Amendment and Repeal Act 2016**

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**No. 22 of 2016**

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**An Act —**

- **to repeal the *Marketing of Potatoes Act 1946* to deregulate the ware potato industry; and**
- **to provide for consequential amendments to other Acts and related purposes.**

*[Assented to 12 September 2016]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary matters**

### **1. Short title**

This is the *Marketing of Potatoes Amendment and Repeal Act 2016*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) sections 3 to 11 — on 30 September 2016;
- (c) section 12 — on 31 December 2016;
- (d) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

**Part 2 — *Marketing of Potatoes Act 1946* amended**

**3. Act amended**

This Part amends the *Marketing of Potatoes Act 1946*.

**4. Long title replaced**

Delete the long title and insert:

**An Act to provide for the winding up of the Potato Marketing Corporation of Western Australia and related purposes.**

**5. Section 5 amended**

In section 5(1) insert in alphabetical order:

*transition day* means the day on which the *Marketing of Potatoes Amendment and Repeal Act 2016* section 12 comes into operation;

**6. Section 5A inserted**

After section 5 insert:

**5A. Application of Act limited**

This Act does not apply on or after transition day except as provided in Part 6.

**7. Section 8 deleted**

Delete section 8.

**8. Section 17AA inserted**

At the beginning of Part II Division 2 insert:

**17AA. Corporation to continue performing its functions for certain purposes**

- (1) The Corporation must continue to perform its functions under this Act, but only for the following purposes —
  - (a) to complete any domestic marketing pool that was established, but not concluded, immediately before the commencement of this section;
  - (b) to continue any legal proceedings as far as is reasonably practicable until transition day and to make all reasonable endeavours to facilitate the continuation of those proceedings by the State on and after that day in accordance with Part 6;
  - (c) to prepare reports and financial statements, including to facilitate the preparation of the final report required under the *Financial Management Act 2006* Part 5 Division 3;
  - (d) to wind up its affairs (including realising its assets and discharging its liabilities) as soon as practicable but, in any case, not later than transition day.
- (2) The Corporation may do all things necessary or convenient to be done for acting under subsection (1) including —
  - (a) entering into negotiations with commercial producers on any matter relating to its winding up; and
  - (b) executing a contract, deed or other instrument necessary for its winding up.



- (3) This section overrides sections 17A and 19 and those sections must be read as if the Corporation's functions were conferred only to give effect to the purposes specified in subsection (1).

**9. Section 19A deleted**

Delete section 19A.

**10. Section 20B deleted**

Delete section 20B.

**11. Section 44 deleted**

Delete section 44.

**12. Part 6 inserted**

At the end of the Act insert:

**Part 6 — Transitional provisions for *Marketing of Potatoes Amendment and Repeal Act 2016***

**45. Terms used**

In this Part, unless the contrary intention appears —  
***assets*** —

- (a) means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description; and
- (b) includes money and securities, choses in action and documents;

**former Corporation** means the Corporation as in existence immediately before transition day;

**liability** means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

**new employer** means a department of the Public Service of the State designated by the Minister by notice published in the *Gazette*;

**right** means any right, power, privilege or immunity whether actual, contingent or prospective.

**46. Former Corporation abolished**

- (1) On transition day, the former Corporation is abolished.
- (2) A person who, immediately before transition day, is a member of the former Corporation ceases to be a member on that day.

**47. Existing employees**

- (1) In this section —  
**existing employee** means a person —
  - (a) who, immediately before transition day, is employed by the former Corporation; and
  - (b) whose contract of employment does not expire until after that day.
- (2) An existing employee, on and after transition day, is taken to be employed under this Act as an employee of the new employer.
- (3) Except as otherwise agreed by an existing employee, the operation of this section does not —
  - (a) affect the employee's remuneration; or

- (b) affect the employee's existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
  - (c) affect any rights under a superannuation scheme; or
  - (d) interrupt the continuity of the employee's service.
- (4) For the purposes of this section —
- (a) an existing employee's service with the former Corporation is taken to have been service with the new employer; and
  - (b) the new employer may employ an existing employee otherwise than under the *Public Sector Management Act 1994* Part 3, and that employee is to be employed subject to any relevant industrial award or agreement.

**48. Transfer of contracts for services**

A person engaged by the former Corporation under a contract for services that is in force immediately before transition day is taken to have been engaged, on and after transition day, by the new employer on the same terms and conditions for the remainder of the duration of the contract.

**49. Transfer of assets, liabilities, proceedings, remedies and immunities**

- (1) On transition day —
- (a) the assets and rights of the former Corporation immediately before that day vest in or become, by force of this section, the property of the State; and

**s. 12**

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- (b) the liabilities of the former Corporation immediately before that day become, by force of this section, the liabilities of the State.
- (2) On and after transition day, any proceedings or remedy that, immediately before that day, might have been brought or continued by or available against or to the former Corporation may be brought or continued by, and are or is available against or to, the State.
- (3) As soon as is practicable after transition day, all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of the former Corporation are to be delivered to the Minister.

**50. Exemption from State tax**

- (1) In this section —  
*State tax* includes —
  - (a) duty chargeable under the *Duties Act 2008*; and
  - (b) any other tax, duty, fee, levy or charge under a law of the State.
- (2) State tax is not payable in relation to —
  - (a) anything that occurs by the operation of this Part; or
  - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (3) The Minister may certify in writing that —
  - (a) a specified thing occurred by operation of this Part; or

- (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is sufficient evidence of the matters it certifies, unless the contrary is shown.

**51. Closure of accounts**

- (1) As soon as is practicable after transition day, any account maintained by the former Corporation must be closed by the Minister and the moneys in the account credited to the Account.
- (2) The Minister must, by notice published in the *Gazette*, order that any money standing to the credit of the Account be credited to the Consolidated Account if the Minister is satisfied that the affairs of the former Corporation have been completely wound up.
- (3) The Minister must, by notice published in the *Gazette*, order that the Account be closed if the Minister is satisfied that —
  - (a) there is no money standing to the credit of that account; and
  - (b) there is no further money to be credited to that account.
- (4) On the publication of an order under subsection (3), the Account is closed.

**52. Agreements, instruments and documents**

- (1) In this section —  
**subsisting**, in relation to an agreement, instrument or document, means subsisting immediately before transition day.

- (2) A subsisting agreement, instrument or document that contains a reference to the former Corporation has effect from that day as if that reference were amended to be a reference to the Minister.
- (3) Subsection (2) does not apply to an agreement or instrument to which the former Corporation was a party.
- (4) A subsisting agreement or instrument to which the former Corporation was a party has effect from transition day as if —
  - (a) the Minister were substituted for the former Corporation as a party to the agreement or instrument; and
  - (b) a reference to the former Corporation in the agreement or instrument were amended to be a reference to the Minister.
- (5) Subsection (2) or (4)(b) does not apply to a reference if —
  - (a) regulations made under section 57 provide otherwise; or
  - (b) that application would be inappropriate in the context in which the reference occurs.

**53. Completion of things commenced**

Anything commenced to be done by the former Corporation before transition day may be continued by the Minister so far as the doing of that thing is within the functions of the Minister.

**54. Continuing effect of things done**

- (1) In this section —  
*relevant act* means an act, matter or thing done or omitted to be done before transition day by, to or in respect of the former Corporation.

- (2) To the extent that a relevant act has force or significance on or after transition day it is taken, from that day, to have been done or omitted by, to or in respect of the Minister so far as the act, matter or thing is relevant to the functions of the Minister.
- (3) This section does not affect the operation of any other provision of this Part.

**55. Effect on other instruments, rights and obligations**

The operation of this Part must not be regarded —

- (a) as a breach of contract or confidence or otherwise a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any assets, rights or liabilities; or
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

**56. Interpretation Act 1984 not affected**

Except to the extent this Part expressly provides differently, the *Interpretation Act 1984* applies in relation to the repeal of an enactment by the *Marketing of Potatoes Amendment and Repeal Act 2016*.

**57. Transitional regulations**

- (1) In this section —  
*publication day*, for regulations made under subsection (2), means the day on which those regulations are published in the *Gazette*;  
*specified* means specified or described in regulations made under subsection (2);  
*transitional matter* means any matter of a transitional or savings nature arising from the enactment of the *Marketing of Potatoes Amendment and Repeal Act 2016*.
- (2) If there is no sufficient provision in this Part for dealing with a transitional matter, the Governor may make regulations prescribing matters necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.
- (3) Regulations made under subsection (2) may provide that specified provisions of a written law —
  - (a) do not apply to or in relation to a specified matter; or
  - (b) apply with specified modifications to or in relation to a specified matter.
- (4) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than the publication day but not earlier than transition day, the regulations have effect according to their terms.
- (5) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
  - (a) to affect in a manner prejudicial to a person (other than the State or an authority of the State) the rights of that person existing before the publication day for those regulations; or



- (b) to impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or omission made before the publication day for those regulations.
- (6) Regulations can only be made under subsection (2) within 24 months after the day on which the *Marketing of Potatoes Amendment and Repeal Act 2016* receives the Royal Assent.

## **Part 3 — Repeals and consequential amendments**

### **Division 1 — *Marketing of Potatoes Act 1946* and regulations repealed**

#### **13. Repeals**

These written laws are repealed:

- (a) the *Marketing of Potatoes Act 1946*;
- (b) the *Marketing of Potatoes Regulations 1987*.

### **Division 2 — Other Acts amended**

#### **14. *Constitution Acts Amendment Act 1899* amended**

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part 3 delete the item relating to the Potato Marketing Corporation of Western Australia.

#### **15. *Financial Management Act 2006* amended**

- (1) This section amends the *Financial Management Act 2006*.
- (2) In Schedule 1 delete the item relating to the Potato Marketing Corporation of Western Australia.

#### **16. *Statutory Corporations (Liability of Directors) Act 1996* amended**

- (1) This section amends the *Statutory Corporations (Liability of Directors) Act 1996*.
- (2) In Schedule 1 delete the item relating to the Potato Marketing Corporation of Western Australia.

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**Defined terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
transition day .....	5