

AG301\*

Perth Market Act 1926

## **Perth Market Amendment By-laws 2000**

Made by the Perth Market Authority and approved and confirmed by the Administrator in Executive Council.

### **1. Citation**

These by-laws may be cited as the *Perth Market Amendment By-laws 2000*.

### **2. Commencement**

These by-laws come into operation on 1 August 2000.

### 3. The by-laws amended

The amendments in these by-laws are to the *Perth Market By-laws 1990\**.

[\* Published in Gazette 28 December 1990, pp. 6415-32.

For amendments to 21 July 2000 see 1999 Index to Legislation of Western Australia, Table 4, p. 205.]

### 4. By-law 3 amended

By-law 3(1) is amended as follows:

- (a) by inserting after the definition of “central trading area” the following definition —

“

“certificate of condemnation” means a certificate that certifies that prescribed produce is unfit for sale;

”;

- (b) by deleting the definition of “principal”;

- (c) by deleting the full stop at the end of the definition of “the public market” and inserting a semicolon instead and inserting after that definition the following definition —

“

“written agreement” means a written agreement between a supplier of prescribed produce and an occupier that is signed or otherwise executed by both parties to the agreement.

”.

### 5. Division heading inserted

Before by-law 24 the following heading is inserted in Part 4 —

“ Division 1 — General ”.

### 6. By-laws 27 to 28 repealed

By-laws 27, 27A, and 28 are repealed.

### 7. Division 2 inserted

After by-law 32 in Part 4 the following Division is inserted —

“

**Division 2 — Provisions applying to prescribed produce supplied otherwise than under exempt supply agreements**

#### 32A. Application of Division

- (1) This Division applies in relation to prescribed produce supplied otherwise than under an exempt supply agreement.

- (2) Except as provided for in a provision of this Division, this Division applies despite anything to the contrary in an agreement.
- (3) In sub-bylaw (1) —
- “**exempt supply agreement**” means a written agreement for the supply of prescribed produce by a supplier to an occupier —
- (a) that —
- (i) is entered into by the supplier and the occupier before the produce leaves the premises of the supplier; and
- (ii) except as provided for in paragraph (b), is not subsequently varied;
- (b) that specifies the price for the produce, the circumstances in which the price may be varied and the terms of payment of the price; and
- (c) under which the produce becomes the property of the occupier.

**32B. Duties of occupier to provide certain documents relating to supply and sale of prescribed produce**

- (1) Within 7 days (or another period agreed by the occupier and the supplier in a written agreement) after an occupier is supplied with prescribed produce for the purpose of sale by the occupier, the occupier is to give to the supplier a receipt that specifies —
- (a) the type and quantity of produce supplied to the occupier;
- (b) the date on which the produce was supplied to the occupier; and
- (c) unless the occupier gives details of the produce to the supplier under by-law 32D(1) — details of any produce that the occupier considers unfit for sale and the reasons for that opinion.
- (2) Within 3 days after an occupier sells prescribed produce supplied to the occupier otherwise than under a written agreement, the occupier is to give to the supplier a notice that states —
- (a) that the sale has taken place; and
- (b) the quantity, grade, size and variety of any produce referred to in sub-bylaw(1)(a) that has not been sold.
- (3) A notice that is required to be given under sub-bylaw (2) is to be given in the manner agreed by the occupier and the supplier or, if there is no agreement, by letter sent by ordinary prepaid post

mailed on or before the expiry of the period referred to in that sub-bylaw.

- (4) Within 7 days (or another period agreed by the occupier and the supplier in a written agreement) after an occupier sells prescribed produce, the occupier is to give to the supplier a sale note that specifies —
  - (a) the date on which the produce was sold to the buyer; and
  - (b) the amount that is the difference between —
    - (i) the total amount paid or payable by the buyer to the occupier for the purchase of the produce; and
    - (ii) the total amount payable by the occupier to the supplier for the supply of that produce.
- (5) An occupier is to specify in a sale note given under sub-bylaw (4) details of each amount that makes up at least 10% of the difference referred to in paragraph (b) of that sub-bylaw.
- (6) Unless it is otherwise agreed by the occupier and the supplier in a written agreement, an occupier is to specify in a sale note given under sub-bylaw (4) —
  - (a) the quantity of, and the price paid or payable by the buyer to the occupier for, each separate grade, size and variety of produce sold to the buyer; and
  - (b) the price payable by the occupier to the supplier for each separate grade, size and variety of produce sold to the buyer.
- (7) Within 7 days after an occupier sells prescribed produce, the occupier is to give to the buyer an invoice that specifies —
  - (a) the date on which the produce was sold to the buyer;
  - (b) the quantity, grade, size and variety of the produce sold to the buyer; and
  - (c) the price for which the produce was sold to the buyer and the terms of payment of that price.

### **32C. Duty of occupier to pay supplier**

- (1) Within 21 days (or another lesser period agreed by the occupier and the supplier in a written agreement) after an occupier sells an item of prescribed produce, the occupier is to pay the supplier for that produce.
- (2) If circumstances outside the occupier's control prevent the full amount to be paid to the supplier from being

determined within the period provided for under sub-bylaw (1), the occupier is to make a reasonable estimate of that amount and is to pay the estimated amount within that period to the supplier.

- (3) If an occupier pays an estimated amount under sub-bylaw (2), the occupier is as soon as is practicable to determine the full amount payable to the supplier and give the supplier details of that determination and, within 60 days after the sale of the prescribed produce —
  - (a) the occupier is to pay to the supplier any amount by which the full amount exceeds the estimated amount; or
  - (b) the supplier is to repay to the occupier any amount by which the estimated amount exceeds the full amount,as the case requires.
- (4) Unless it is otherwise agreed by the occupier and the supplier in a written agreement, an amount payable under sub-bylaw (1) is to include any amount paid by the supplier as a deposit on a container hired by the supplier for the purpose of supplying the prescribed produce to the occupier.

### **32D. Prescribed produce unfit for sale**

- (1) Unless it is otherwise agreed by the occupier and the supplier in a written agreement, as soon as is practicable after an occupier forms the opinion that prescribed produce supplied to the occupier is unfit for sale, the occupier is to make reasonable efforts to give the supplier details of that produce.
- (2) If an occupier gives a supplier details of prescribed produce that the occupier considers unfit for sale, the supplier may —
  - (a) take possession of the produce;
  - (b) ask the occupier to send the produce to a specified person at a specified place; or
  - (c) ask the occupier to have the condition of the produce assessed by a person (an “assessor”) who the occupier and supplier agree —
    - (i) is independent of the occupier and the supplier; and
    - (ii) has experience or qualifications appropriate to the performance of the assessment.

(3) If —

- (a) the condition of prescribed produce is to be assessed under paragraph (c) of sub-bylaw (2); and
- (b) the occupier and the supplier are unable to agree to an assessor for the purposes of that paragraph,

a person nominated by the Authority is to be the assessor for those purposes.

#### **32E. Disposal of prescribed produce unfit for sale**

(1) If —

- (a) despite making reasonable efforts to do so, an occupier is unable to contact a supplier for the purposes of by-law 32D(1); or
- (b) after an occupier has given a supplier details of prescribed produce that the occupier considers unfit for sale, the supplier does not —
  - (i) take possession of the produce; or
  - (ii) ask the occupier to send the produce to a specified person at a specified place or have the condition of the produce assessed under by-law 32D(2),

the occupier may, subject to sub-bylaw (2), dispose of the produce as the occupier thinks fit.

(2) An occupier may dispose of prescribed produce under sub-bylaw (1) only if —

- (a) at least 24 hours have passed since the occupier first attempted to contact the supplier in relation to the produce or since the occupier gave the supplier details of the produce, as the case requires; and
- (b) an assessment has been made of, and a certificate of condemnation obtained from the assessor in relation to, the produce.

#### **32F. Liability for costs**

(1) A supplier who asks an occupier to send prescribed produce to a specified person at a specified place under by-law 32D(2)(b) is liable for any reasonable costs incurred by the occupier in complying with that request.

- (2) A supplier who supplies prescribed produce that an occupier disposes of under by-law 32E(1) is liable for any reasonable costs incurred by the occupier in —
  - (a) obtaining an assessment of, and a certificate of condemnation in relation to, the produce; and
  - (b) disposing of the produce.
- (3) If an occupier gives a supplier details of the costs incurred by the occupier for which the supplier is liable under sub-bylaw (1) or (2), the occupier may —
  - (a) deduct those costs from any amount payable by the occupier to the supplier in relation to the supply of prescribed produce; or
  - (b) to the extent that those costs are not deducted under paragraph (a), recover them in a court of competent jurisdiction as a debt due to the occupier.

#### **32G. Restrictions on sale of prescribed produce**

- (1) Unless authorised to do so by a document to which sub-bylaw (2) applies, an occupier who sells, or offers to sell, prescribed produce in the public market between 7.30 a.m. and 12 noon on a Saturday commits an offence.

Penalty: \$2 000.
- (2) This sub-bylaw applies to a document that is —
  - (a) a written agreement, under which the prescribed produce is supplied to the occupier, that includes provisions that enable the supplier, either in the agreement or in a separate written notice, to elect to authorise, or not to authorise, the occupier for the purposes of sub-bylaw (1); or
  - (b) a written notice, as provided for in the agreement referred to in paragraph (a), given by the supplier to the occupier.
- (3) A written agreement or written notice referred to in sub-bylaw (2) may give an authorisation that applies to —
  - (a) prescribed produce in general; or
  - (b) prescribed produce specified by reference to grade, size or variety.

**32H. Occupiers to keep copies of documents and agreements**

- (1) An occupier is to keep for 2 years after being supplied with prescribed produce for the purpose of sale by the occupier or after selling prescribed produce —
  - (a) a copy of any receipt, notice, sale note or invoice (in this by-law and by-law 32I referred to as a “**prescribed document**”) given by the occupier under by-law 32B in relation to the supply or sale of the prescribed produce; and
  - (b) any account, book, record or other document that relates to that supply or sale.
- (2) An occupier may comply with sub-bylaw (1) —
  - (a) by keeping the prescribed document or other document itself; or
  - (b) by recording or storing the prescribed document or other document by means of an electronic process that —
    - (i) keeps the particulars recorded or stored in the form in which they were originally recorded or stored; and
    - (ii) enables those particulars to be reproduced in written form.
- (3) If an occupier enters into a written agreement, the occupier is to keep a copy of the agreement for 2 years after the day on which the agreement ceases to have effect.

**32I. Occupier to produce documents and allow inspection**

- (1) The manager or an authorised person may during normal business hours require an occupier —
  - (a) to produce; or
  - (b) to allow the manager or authorised person to inspect, or take extracts from or copies of, a prescribed document or other document or written agreement that the occupier is required to keep under by-law 32H.
- (2) An occupier who —
  - (a) fails to comply with a requirement under sub-bylaw (1); or
  - (b) hinders or obstructs the manager or authorised person in the performance of a function under that sub-bylaw,commits an offence.  
Penalty: \$2 000.

**32J. Occupier not to purchase prescribed produce or sell prescribed produce to associates unless authorised**

- (1) Unless authorised to do so by a document to which sub-bylaw (2) applies, an occupier who, having been supplied with prescribed produce for the purpose of sale by the occupier —
- (a) purchases the prescribed produce on the occupier's own account, whether solely or jointly with another person; or
  - (b) sells the prescribed produce to a person with whom the occupier is associated within the meaning of by-law 32K,
- commits an offence.
- Penalty: \$2 000.
- (2) This sub-bylaw applies to a document that is —
- (a) a written agreement, under which the prescribed produce is supplied to the occupier, that includes provisions that enable the supplier, either in the agreement or in a separate written notice, to elect to authorise, or not to authorise, the occupier for the purposes of sub-bylaw (1); or
  - (b) a written notice, as provided for in the agreement referred to in paragraph (a), given by the supplier to the occupier.
- (3) If an occupier is authorised to purchase prescribed produce on the occupier's own account, as referred to in sub-bylaw (1)(a), the occupier is to give to the supplier within 7 days after the purchase written notice of having made the purchase.
- (4) If an occupier is authorised to sell prescribed produce to a person referred to in sub-bylaw (1)(b), the occupier is to give to the supplier within 7 days after the purchase written notice of the name of the person to whom the produce was sold.

**32K. Associated persons**

- (1) For the purposes of by-law 32J, an occupier is associated with another person (the “**other person**”) if the occupier is —
- (a) the other person's spouse (including de facto spouse), brother or sister;
  - (b) the other person's —
    - (i) parent or remoter lineal ancestor; or
    - (ii) child or remoter issue;
  - (c) the other person's business partner;

- (d) a corporation of which the other person is an officer;
  - (e) if the other person is a corporation — an officer of that corporation;
  - (f) an officer of a corporation of which the other person is also an officer;
  - (g) an employee or employer of the other person;
  - (h) an employee of an individual of whom the other person is also an employee;
  - (i) a corporation whose directors are accustomed or under an obligation, whether informal or formal, to act in accordance with the directions, instructions or wishes —
    - (i) of the other person; or
    - (ii) if the other person is a corporation — of the directors or managers of the corporation;
  - (j) a corporation in accordance with the directions, instructions or wishes of which, or of the directors or managers of which, the other person is accustomed or under an obligation, whether informal or formal, to act;
  - (k) a corporation that the other person controls;
  - (l) if the other person is a corporation — a person who holds a substantial interest in that corporation; or
  - (m) a person who, within the meaning of this sub-bylaw, is associated with a person who is associated with the other person.
- (2) In sub-bylaw (1) —  
“**controls**” has the same meaning as it has in the Corporations Law.

### **32L. Review**

- (1) The Authority is to carry out a review of the operation and effectiveness of this Division as soon as is practicable after 1 August 2002.
- (2) The Authority is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to submit the report to the Minister.

”.

Made by the Perth Market Authority by resolution adopted on the 21<sup>st</sup> day of July 2000.

GRAEME ANDERSON, Chairman.  
ROBERT HALLIDAY, Manager.

Approved and confirmed by the Administrator,

M. C. WAUCHOPE, Clerk of the Executive Council.