



Western Australia

Agricultural Produce Commission Amendment Act 2021

As at 17 Aug 2021

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Agricultural Produce Commission Amendment Act 2021

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Western Australia

Agricultural Produce Commission Amendment Act 2021

No. 11 of 2021

An Act to amend the Agricultural Produce Commission Act 1988.

[Assented to 17 August 2021]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Agricultural Produce Commission Amendment Act 2021*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Act amended

This Act amends the *Agricultural Produce Commission Act 1988*.

4. Section 3 amended

- (1) In section 3(1) insert in alphabetical order:

authorised officer means a person designated under section 19B as an authorised officer;

pastoral lease has the meaning given in the *Land Administration Act 1997* section 3(1);

- (2) In section 3(1) in the definition of *agricultural industry* delete “may be prescribed but excluding broadacre cropping and grazing industries;” and insert:

is prescribed for the purposes of this definition, other than an industry that concerns livestock enterprises generally conducted on land under a pastoral lease;

5. Section 5 amended

In section 5(1) after “of” insert:

3 or

6. Section 6 amended

(1) In section 6(1):

(a) in paragraph (a) delete “in relation to” and insert:

with responsibility for

(b) after paragraph (a) insert:

(aa) allocate responsibility for agricultural produce to existing producers’ committees; and

(ab) remove responsibility for agricultural produce from producers’ committees; and

(c) delete paragraphs (d) and (e) and insert:

(d) conduct polls under this Act; and

(da) wind up the affairs of producers’ committees and appoint liquidators for that purpose; and

(e) dissolve producers’ committees; and

(d) after paragraph (f) insert:

(fa) provide, as are necessary from time to time, persons to assist producers’ committees in carrying out their functions under this Act; and

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- (2) In section 6(2):
- (a) delete “established —” and insert:

established with responsibility, or be allocated responsibility for —
 - (b) in paragraphs (a) and (b) delete “in relation to”;
 - (c) in paragraph (c) delete “to achieve” and insert:

achieving

7. Section 9 amended

In section 9 delete “officers, servants and other”.

Note: The heading to amended section 9 is to read:

Commission may employ or engage persons

8. Part 3 Division 1 heading inserted

At the beginning of Part 3 insert:

Division 1 — Establishing producers’ committees

9. Section 10 amended

- (1) Delete section 10(1) and insert:
- (1) A producer or producers of agricultural produce, or a body representing the interests of such producers, may request the Commission to conduct a poll for the purpose of establishing a producers’ committee with responsibility for the agricultural produce for the whole State or a part of the State.

- (1A) A request made under subsection (1) must —
- (a) be made in writing; and
 - (b) specify the agricultural produce for which the producers' committee is proposed to have responsibility; and
 - (c) specify the objects sought to be effected by establishing the producers' committee; and
 - (d) if the producers' committee is proposed to be established only in relation to a particular part of the State, specify the part of the State in relation to which it is proposed to be established.
- (1B) The Commission must publish notice of a proposal to establish the producers' committee.
- (2) In section 10(2):
- (a) delete “subsection (1) — ” and insert:

subsection (1B) —
 - (b) delete “shall” (each occurrence) and insert:

must
 - (c) after paragraph (a) insert:
 - (aa) must specify the name or names of the producer or producers, or body, that made the request; and

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- (d) in paragraph (c) delete “the subject of the proposal; and” and insert:

for which the producers’ committee is proposed to have responsibility; and

- (3) In section 10(2a) delete “section and section 11, the Commission shall” and insert:

Division, the Commission must

- (4) In section 10(3):

- (a) delete “shall” (1st occurrence) and insert:

must

- (b) delete “shall” (last occurrence) and insert:

must, subject to subsection (5),

- (5) In section 10(4):

- (a) delete “facilitating its consideration of the submissions under subsection (3)” and insert:

subsection (3),

- (b) delete “producers who in the opinion of the Commission have” and insert:

producer who in its opinion has

- (6) Delete section 10(5) to (7) and (9) and insert:
- (5) The Commission must not conduct a poll for the establishment of a producers' committee unless the producer or producers, or body, that requested the poll deposits 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) If the Commission resolves to establish the producers' committee, any money paid to the Commission under subsection (5) must be repaid by the producers' committee out of the funds of the producers' committee to the producer or producers, or body, that made the deposit under that subsection.
 - (7) The Commission must not establish a producers' committee with responsibility for agricultural produce unless —
 - (a) the Commission has —
 - (i) complied with subsections (1B) and (2); and
 - (ii) conducted a poll among the producers of the agricultural produce in the whole of the State, or a part of the State, as is relevant to the proposal to establish the producers' committee;
 - and
 - (b) the poll is in favour of the proposal.

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- (8) Even if the Commission has complied with subsections (1B) to (5) and (7) and a poll of producers vote in favour of the proposal, the Commission may refuse to establish, or defer the establishment of, the producers' committee if the Commission considers that, having regard to the circumstances of the case, it is not desirable or practicable to do so.

10. Section 11 amended

- (1) Delete section 11(1)(a)(i) and insert:

- (i) the agricultural produce for which the producers' committee has responsibility; and

- (2) In section 11(1a)(b) delete "the poll" and insert:

a poll

11. Part 3 Divisions 2 and 3 inserted

After section 11 insert:

Division 2 — Allocating responsibility for produce to an existing producers' committee

11A. Preliminary requirements for allocating responsibility for agricultural produce to existing producers' committee

- (1) Subject to subsection (2), a producer or producers of agricultural produce, or a body representing the interests of such producers, may request the

Commission to conduct a poll for the purpose of allocating responsibility for the agricultural produce to an existing producers' committee.

- (2) A request cannot be made under subsection (1) unless the producers' committee has given its written approval to the request being made.
- (3) A request made under subsection (1) must —
 - (a) be made in writing; and
 - (b) specify the producers' committee and the additional agricultural produce for which it is proposed to have responsibility; and
 - (c) specify the objects sought to be effected by allocating responsibility for the additional agricultural produce to the producers' committee; and
 - (d) attach the producers' committee's written approval to the request being made.
- (4) The Commission must publish notice of a proposal to allocate responsibility for agricultural produce to an existing producers' committee.
- (5) A notice referred to in subsection (4) must —
 - (a) be published in the manner directed by the Minister; and
 - (b) specify the name or names of the producer or producers, or body, that made the request; and
 - (c) specify the producers' committee and the additional agricultural produce for which it is proposed to have responsibility; and

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- (d) explain in simple terms the objects sought to be effected by the proposal; and
 - (e) invite submissions from producers who may be affected by the proposal.
- (6) In performing its functions under this Division, the Commission must have regard to any submissions made to it under subsection (5)(e).

11B. Polls to allocate responsibility for produce to existing producers' committee

- (1) If a request is made under section 11A(1) to conduct a poll for the purpose of allocating responsibility for agricultural produce to an existing producers' committee, the Commission must, subject to subsections (2) and (4), conduct the poll.
- (2) The Commission must not conduct the poll if, in its opinion, allocating responsibility for the agricultural produce to the producers' committee would be materially to the financial detriment of a producer or producers of the agricultural produce.
- (3) For the purposes of subsection (2), the Commission may invite any producer who in the opinion of the Commission has an interest in the matter to attend meetings of the Commission.
- (4) The Commission must not conduct the poll unless the producer or producers, or body, that requested the poll deposits with the Commission such sum as is determined by the Commission as the reasonable costs of the poll.

- (5) If the Commission resolves to allocate responsibility for agricultural produce to the producers' committee, any money paid to the Commission under subsection (4) must be repaid by the producers' committee out of the funds of the producers' committee to the producer or producers, or body, that made the deposit under that subsection.

11C. Allocating responsibility for agricultural produce to existing producers' committee

- (1) The Commission must not allocate responsibility for agricultural produce to an existing producers' committee unless —
- (a) the Commission has —
 - (i) complied with section 11A(4) and (5); and
 - (ii) conducted a poll under section 11B among the producers of the agricultural produce;
 - and
 - (b) the poll is in favour of the proposal.
- (2) Even if the Commission has complied with sections 11A(4) and (5) and 11B(1) to (4), the Commission may refuse to allocate responsibility for the agricultural produce to the producers' committee if the Commission considers that, having regard to the circumstances of the case, it is not desirable or practicable to do so.
- (3) If the Commission resolves to allocate responsibility for agricultural produce to the producers' committee, then on a day specified by the Commission in a notice under section 11D(1) the producers' committee

commences to have responsibility for the agricultural produce.

11D. Notice of allocation of responsibility for agricultural produce to existing producers' committee and appointing additional members

- (1) If the Commission resolves to allocate responsibility for agricultural produce to an existing producers' committee, the Commission must by notice published in the *Gazette* —
 - (a) specify the producers' committee and the agricultural produce for which it is allocated responsibility; and
 - (b) specify the day on which the producers' committee commences to have responsibility for the agricultural produce; and
 - (c) invite nominations from among the producers of the agricultural produce for appointment to the producers' committee.
- (2) After receiving nominations the Commission —
 - (a) must decide how many members, in addition to the current number of members, there is to be on the producers' committee; and
 - (b) if it is of the opinion that a poll of the producers of the agricultural produce should be held to elect the members, must conduct a poll.
- (3) A person is not eligible to stand at a poll under this section to elect members of a producers' committee unless the person is qualified to be appointed to the producers' committee in relation to the agricultural produce in question.

- (4) Subject to subsection (5), a person elected at a poll under this section to be a member of a producers' committee must be appointed by the Commission to be a member of the producers' committee.
- (5) The Commission must not appoint a person under this section 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.

**Division 3 — Appointment of non-producers to
producers' committees**

11E. Appointment of non-producers to producers' committees

- (1) A producers' committee may nominate for appointment to that producers' committee a person who would not be eligible to stand at a poll under section 11 or 11D to elect members of the producers' committee.
- (2) The Commission may appoint a person nominated under subsection (1) by a producers' committee to be a member of the producers' committee if —
 - (a) the Commission is of the opinion that it would be desirable and practicable to do so; and
 - (b) the Commission is of the opinion that the person has experience relevant to the producers' committee's functions; and
 - (c) after the person is appointed, the majority of members of the producers' committee would be producers of the agricultural produce for which the producers' committee has responsibility.

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- (3) A person appointed to a producers' committee under subsection (2) may take part in the consideration and discussion of any matter before a meeting of the producers' committee, but cannot vote on any matter.

12. Part 3 Division 4 heading inserted

Before section 12 insert:

Division 4 — Functions of producers' committees

13. Section 12 amended

- (1) In section 12(1):
- (a) delete “in relation to which it is established —” and insert:
- for which the producers' committee has responsibility —
- (b) in paragraph (d) delete “relating to the production of” and insert:
- that, in the opinion of the producers' committee, may be of advantage to producers of the
- (c) in paragraph (k) before “promotion” insert:
- production,

- (d) in paragraph (la) before “action” insert:

a pest or disease of that produce or

- (e) in paragraph (m) delete “organization or in conjunction with the Commission or any other person or organization.” and insert:

organisation or in conjunction with the Commission or any other person or organisation.

- (2) Delete section 12(2).

- (3) In section 12(3):

- (a) delete “shall” and insert:

must

- (b) delete “for which the producers’ committee was established” and insert:

the producers’ committee is authorised to provide

- (4) After section 12(4) insert:

- (5) A producers’ committee may, for the purposes of providing services in relation to agricultural produce —

- (a) communicate, consult or liaise with producers of agricultural produce; and
(b) hold meetings with producers of agricultural produce.

14. Section 12A amended

In section 12A(1):

- (a) delete “officers, employees and other persons employed or engaged under section 12(2) by a producers’ committee established to administer a fruit fly foliage baiting” and insert:

person employed or engaged by the Commission to assist a producers’ committee with responsibility for administering a fruit fly control

- (b) delete “committee.” and insert:

committee or carry out any other control measures determined by the producers’ committee.

Note: The heading to amended section 12A is to read:

Power to enter orchards to administer fruit fly control scheme

15. Section 13 amended

- (1) Before section 13(1) insert:

(1A) In this section —

prescribed person means a person prescribed for the purposes of this definition.

- (2) In section 13(1) delete “producer require the producer to furnish in writing in the form of” and insert:

producer, or a prescribed person, require the producer or prescribed person to furnish in writing in

(3) Delete section 13(2) and insert:

(2) A person must not without reasonable excuse fail to comply with a requirement in a notice under this section.

Penalty for this subsection: a fine of \$1 000.

Note: The heading to amended section 13 is to read:

Power to require statistical information

16. Section 14 amended

(1) After section 14(2) insert:

(2A) Without limiting subsection (1) or (2), the cost or estimated cost of providing a service includes any cost of or associated with communicating, consulting, liaising or meeting with producers of agricultural produce for the purposes of providing the service.

(2) After section 14(3) insert:

(4) A charge imposed under this section that is paid to, or collected by, a person is held by that person on trust for the producers' committee providing the service for which it is imposed until it is paid to the Commission in accordance with the regulations.

(5) The regulations may provide for the circumstances in which a charge imposed under this section may be waived, refunded or reduced, in whole or in part.

17. Part 3 Division 5 inserted

After section 14 insert:

Division 5 — Removing responsibility for agricultural produce from or dissolving producers' committees

14A. Removing responsibility for agricultural produce from producers' committee after poll

- (1) The Commission may conduct a poll of the producers of agricultural produce for which a producers' committee has responsibility for the removal of responsibility for the agricultural produce from the producers' committee.
- (2) If the poll is in favour of removing responsibility for the agricultural produce from the producers' committee, then on a day specified by the Commission by notice published in the *Gazette*, the producers' committee ceases to have responsibility for the agricultural produce.

14B. Removing responsibility for agricultural produce from producers' committee without poll

- (1) The Commission may remove responsibility for agricultural produce from a producers' committee if the Commission is satisfied that the producers' committee —
 - (a) is operating in a manner that is materially to the financial detriment of a producer or producers of the agricultural produce; or
 - (b) is no longer providing any service the producers' committee is authorised to provide.

- (2) If the Commission resolves to remove responsibility for agricultural produce from a producers' committee, then on a day specified by the Commission by notice published in the *Gazette* the producers' committee ceases to have responsibility for the agricultural produce.

18. Section 15 amended

- (1) Delete section 15(1) to (3) and insert:
 - (1) The Commission may conduct a poll of producers of the agricultural produce for which a producers' committee has responsibility for the dissolution of the producers' committee.
 - (2) If the poll is in favour of the dissolution of the producers' committee, then on a day specified by the Commission by notice published in the *Gazette* the affairs of the producers' committee must commence to be wound up by —
 - (a) the Commission; or
 - (b) a liquidator appointed by the Commission.
 - (3) The day specified under subsection (2) must not be later than 6 months after the taking of the poll.
- (3A) On the day specified by the Commission under subsection (2), the producers' committee must cease to act.
- (3B) On and from the day specified by the Commission under subsection (2), the Commission or the liquidator,

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as is relevant, may for the purposes of winding up the affairs of the producers' committee —

- (a) perform the functions of the producers' committee; and
- (b) do such other acts and things as the Commission, or liquidator, thinks fit.

- (2) Delete section 15(8).

Note: The heading to amended section 15 is to read:

Dissolution of producers' committee after poll

19. Section 15A inserted

After section 15 insert:

15A. Dissolution of producers' committee without poll

- (1) The Commission may dissolve a producers' committee if the Commission is satisfied that the producers' committee —
 - (a) is operating in a manner that is materially to the financial detriment of a producer or producers of agricultural produce for which it has responsibility; or
 - (b) is no longer providing any service the producers' committee is authorised to provide.
- (2) If the Commission resolves to dissolve a producers' committee, then on a day specified by the Commission by notice published in the *Gazette*, the affairs of the producers' committee must commence to be wound up by —
 - (a) the Commission; or
 - (b) a liquidator appointed by the Commission.

- (3) Section 15(3A) to (7) applies, with any necessary modifications, to the dissolution of a producers' committee under this section.

20. Part 3 Division 6 heading inserted

Before section 16 insert:

Division 6 — Conducting polls

21. Section 16 amended

Delete section 16(1) and insert:

- (1) For the purposes of conducting a poll under this Act the Commission must —
- (a) in the case of a producers' committee that has, or is proposed to have, responsibility for agricultural produce for the whole of the State — compile a list of producers of the agricultural produce in the whole of the State; and
 - (b) in the case of a producers' committee that has, or is proposed to have, responsibility for agricultural produce only in relation to a particular part of the State — compile a list of producers of the agricultural produce in that part of the State.

22. Sections 16A and 16B inserted

After section 16 insert:

16A. Weighted voting

- (1) The Commission may in compiling a list of producers of agricultural produce, determine in writing the number of votes each producer is to have in a poll of the producers of the agricultural produce.
- (2) In determining the number of votes each producer is to have in the poll, the Commission is to ensure that each producer —
 - (a) has at least 1 vote; and
 - (b) has such number of votes as is proportionate to the percentage of the relevant agricultural produce produced in the State, or the relevant part of the State, that was produced by the producer in the 3 year period preceding the year in which the determination is made.
- (3) The Commission must not make a determination under subsection (1) unless it is satisfied that —
 - (a) there is sufficient industry data available to the Commission for it to make the determination; and
 - (b) it is in the best interests of the agricultural industry to do so.
- (4) As soon as practicable after making a determination under subsection (1), the Commission must give a copy of the determination to each producer of the agricultural produce concerned.

- (5) In a poll for which a determination has been made under subsection (1), the number of votes a producer has is to be in accordance with the determination.

16B. Commission's costs of conducting polls

- (1) Subject to subsection (2), the Commission is entitled to recover from the funds of a producers' committee the Commission's costs of conducting a poll in relation to the producers' committee.
- (2) The amount the Commission may recover under subsection (1) —
- (a) for a poll under section 10 or 11 — is the amount by which the costs of the poll exceed the sum deposited with the Commission under section 10(5) for the purposes of establishing the producers' committee; and
 - (b) for a poll under section 11B — is the amount by which the costs of the poll exceed the sum deposited with the Commission under section 11B(4) for the purposes of the poll.

23. Section 17 amended

Delete section 17(2).

24. Part 3 Division 7 heading inserted

After section 17 insert:

Division 7 — Other matters

25. Section 19 amended

In section 19(1) delete “a producers’ committee has not been established under this Act in relation to that group of producers” and insert:

there is no producers’ committee with responsibility

26. Part 3A inserted

After section 19A insert:

Part 3A — Compliance

Division 1 — Authorised officers

19B. Authorised officers

The Commission may, by instrument in writing, designate any person employed or engaged by the Commission as an authorised officer for the purposes of this Part.

Division 2 — Powers of authorised officers

19C. Terms used

In this Division —

charge means a charge imposed under this Act;

compliance purposes means the following purposes —

- (a) monitoring compliance with a requirement under this Act to pay or collect a charge;
- (b) monitoring compliance with a requirement under this Act to give information, or produce a record, relating to the production, processing,

sale or purchase of agricultural produce or the payment or collection of a charge;

- (c) monitoring compliance with a requirement in a notice under section 13;
- (d) investigating a suspected contravention of a requirement referred to in paragraph (a), (b) or (c) or an offence under this Act;

record includes a receipt, return or other document;

relevant person means a person who is or was —

- (a) a producer of agricultural produce for which a producers' committee has responsibility; or
- (b) a person required under this Act to pay or collect a charge; or
- (c) a person required under this Act to give information, or produce a record, relating to the production, processing, sale or purchase of agricultural produce or the payment or collection of a charge; or
- (d) a person required to comply with a requirement in a notice under section 13;

relevant record means a record that —

- (a) is required to be kept or given under this Act; or
- (b) relates to the production, processing, sale or purchase of agricultural produce in relation to which a charge is payable; or
- (c) relates to the payment or collection of a charge; or
- (d) contains any information that is, or is likely to be, relevant for compliance purposes.

19D. Obtaining information and relevant records

- (1) An authorised officer may, for compliance purposes, do 1 or more of the following —
 - (a) direct a relevant person —
 - (i) to give any information as is required; or
 - (ii) to answer a question put to the person;
 - (b) direct a relevant person to produce to the authorised officer a relevant record in the person's custody or under the person's control.
- (2) An authorised officer may examine and make a copy of a record produced in response to a direction under subsection (1)(b), and retain the record for as long as is reasonably necessary.
- (3) A direction under subsection (1)(a) —
 - (a) may be given orally or in writing; and
 - (b) must specify the time at, or within which, the information or answer must be given to the authorised officer; and
 - (c) may require that the information or answer —
 - (i) be given orally or in writing; or
 - (ii) if it is directed to be given in writing, be given by means specified in the direction; or
 - (iii) be verified by statutory declaration.
- (4) A direction under subsection (1)(b) —
 - (a) must be in writing given to the person required to produce the record; and
 - (b) must specify the time at, or within which, the record is to be produced; and

- (c) may require that the record be produced to the authorised officer —
 - (i) at a place specified in the direction; and
 - (ii) by the means specified in the direction.

19E. Failure to comply with directions

A person must not without reasonable excuse fail to comply with a direction given to the person under section 19D(1).

Penalty: a fine of \$1 000.

19F. Self-incrimination not an excuse

- (1) An individual is not excused from complying with a direction under section 19D(1) to provide information or answer questions, or to produce a record, on the ground that the information, answer or record might incriminate the individual or make the individual liable to a penalty.
- (2) However, any information or answer provided, or record produced, by an individual in compliance with a direction under section 19D(1) is not admissible in evidence in any proceedings against the individual other than proceedings for perjury or an offence against section 19G(2).

27. Section 19G inserted

At the beginning of Part 4 insert:

19G. False or misleading information

- (1) In this section —
record has the meaning given in section 19C.

- (2) A person must not give false or misleading information to —
- (a) an authorised officer pursuant to a direction under section 19D(1); or
 - (b) the Commission pursuant to a notice under section 13; or
 - (c) any person pursuant to a requirement under this Act to give information, or produce a record, to that person relating to the production, processing, sale or purchase of agricultural produce or the payment or collection of a charge imposed under this Act.

Penalty for this subsection: a fine of \$1 000.

- (3) For the purposes of subsection (2), a person gives false or misleading information if the person does 1 or more of the following —
- (a) states anything that the person knows is false or misleading in a material particular;
 - (b) omits from a statement anything without which the statement is, to the person's knowledge, misleading in a material particular;
 - (c) gives or produces any record that —
 - (i) the person knows is false or misleading in a material particular; or
 - (ii) omits anything without which the record is, to the person's knowledge, misleading in a material particular.

28. Section 20A inserted

After section 20 insert:

20A. Giving notices and other documents electronically

- (1) A notice or other document required or permitted under this Act to be given to a person may be given to the person by emailing it to an email address —
 - (a) provided by the person; or
 - (b) appearing on recent correspondence addressed by or on behalf of the person to the Commission or a producers' committee; or
 - (c) otherwise notified to the Commission or a producers' committee, or published by the person.
- (2) This section is in addition to the *Interpretation Act 1984* section 76.

29. Section 24 amended

- (1) At the beginning of section 24 insert:
 - (1) In this section —
officer or employee —
 - (a) in relation to the Commission —
 - (i) means a person employed or engaged by the Commission; and
 - (ii) includes an authorised officer;and

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(b) in relation to a producers' committee — means a person employed or engaged by a producers' committee.

(2) In section 24:

(a) delete “A person” and insert:

(2) A person

(b) delete “him” and insert:

the person

Note: The heading to amended section 24 is to read:

Protection from liability

30. Section 25 amended

In section 25(2)(e) delete “organizations; and” and insert:

organisations; and

31. Sections 26 and 27 deleted

Delete sections 26 and 27.

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