

WESTERN AUSTRALIA

AGRICULTURAL PRODUCTS AMENDMENT ACT

No. 4 of 1991

AN ACT to amend the *Agricultural Products Act 1929*.

[Assented to 23 May 1991.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Agricultural Products Amendment Act 1991*.

Principal Act

2. In this Act, the *Agricultural Products Act 1929** is referred to as the principal Act.

[*Authorized for reprint 14 January 1970 and amended by Acts Nos. 82 of 1974, 61 of 1982, 47 of 1985, 122 of 1987 and 20 of 1989.]

Section 2 amended

3. Section 2 of the principal Act is amended in subsection (1)—

(a) by inserting after “In this Act” the following—

“ , unless the contrary intention appears ”;

(b) by deleting the definitions of “citrus” and “stone-fruit”; and

(c) by inserting before the definition of “inspector” the following definitions—

“ “code” means a code formulated under section 3F;

“Department” means the department of the Government principally assisting the Minister to administer this Act;

“Director General” means the Director General of Agriculture appointed under the *Public Service Act 1978*; ”.

Section 3D repealed and a section substituted

4. Section 3D of the principal Act is repealed and the following section is substituted—

Minister may prohibit certain local sales

“ 3D. (1) The Minister may, by order, prohibit the sale, except for the purposes of export from the State, of any products that are—

(a) below a specified grade;

(b) below a specified size; or

(c) below a specified grade and a specified size.

(2) In subsection (1)—

“products” means products belonging to any class of fruit or vegetables that is the subject of a code or to any variety of products within such a class;

“specified grade” means a grade specified in the order that is one of the grades specified in the code that relates to the product concerned; and

“specified size” means a size that is specified in the order.

(3) An order under subsection (1)—

- (a) is to be published in the *Government Gazette* and a daily newspaper published in Perth;
- (b) has effect for the period or periods specified in the order or indefinitely if no period is specified; and
- (c) may be revoked or amended in accordance with paragraph (a). ”.

Section 3E amended

5. Section 3E of the principal Act is amended by deleting “apples, pears, citrus or stone-fruit” and substituting the following—

“ fruit or vegetables ”.

Section 3F amended

6. Section 3F of the principal Act is amended in subsection (3) (d) by deleting “of the” and substituting the following—

“ prescribed under a Commonwealth Act or published by the ”.

Section 4 amended

7. Section 4 of the principal Act is amended—

- (a) in subsection (4) (a) by inserting after “owner” in both places where it occurs the following—

“ or person in charge of the package or lot ”;

(b) in subsection (4g) by deleting “Permanent Head” in both places where it occurs and substituting the following—

“ Director General ”;

(c) in subsection (5) by deleting “satisfactory evidence of his appointment as such” and substituting the following—

“ the certificate issued to him under section 8A (9) ”;

and

(d) in subsection (8) by deleting “fruit whilst that fruit is being held on the property on which it was produced unless that fruit is being offered or exposed for sale on that property” and substituting the following—

“ agricultural products while they are being held on the property on which they were produced, unless they are being offered or exposed for sale there ”.

Section 7 amended

8. Section 7 of the principal Act is amended by deleting “Proceedings” and substituting the following—

“ Subject to Part VIBA of the *Justices Act 1902* and section 8A, proceedings ”.

Sections 8A, 8B and 8C inserted

9. After section 8 of the principal Act, the following sections are inserted—

Infringement notices

“ 8A. (1) An inspector who has reason to believe that a person has committed an offence against section 3E, 3G, 3H or 4 (4f) may, within 5 days after the alleged offence is believed to have been committed, give to the alleged offender an infringement notice in the prescribed form—

(a) containing a description of the alleged offence;

- (b) advising that if it is not wished to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to a designated officer within a period of 28 days after the giving of the notice; and
- (c) identifying the persons who are designated officers.

(2) An inspector who has reason to believe that a person has committed an offence against section 6 may, with the approval of the Director General and within 5 days after the alleged offence is believed to have been committed, give to the alleged offender an infringement notice in accordance with subsection (1).

(3) In an infringement notice, the amount specified as being the modified penalty for the offence referred to in the notice shall be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

(4) A designated officer may, in a particular case, extend the period of 28 days within which the modified penalty may be paid pursuant to the infringement notice, and the extension may be allowed whether or not the period of 28 days has elapsed.

(5) Where the modified penalty payable pursuant to an infringement notice has been paid within 28 days or such further time as is allowed, the bringing of proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(6) Where the modified penalty has not been paid within 28 days or such further time as is allowed, a designated officer may withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

(7) Payment of a modified penalty pursuant to an infringement notice shall not be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

(8) The Director General may, by notice published in the *Gazette*, appoint persons or classes of persons to be designated officers for the purposes of this section, and may in like manner revoke any such appointment.

(9) The Director General shall issue to each inspector a certificate in the prescribed form which the inspector shall produce whenever required to do so by a person to whom he has given or is about to give an infringement notice.

Modified penalties revenue fund

8B. (1) There is to be established and kept at the Treasury an account called the "Agricultural Products Act Modified Penalties Revenue Fund" (referred to in this section and section 8C as "the Fund").

(2) The Director General shall ensure that all money received in the Department as payment of—

- (a) modified penalties under section 8A; or
- (b) amounts collected under Part VIBA of the *Justices Act 1902*,

is paid into the Fund.

Use of money in the Fund

8C. (1) Money in the Fund may be applied towards—

- (a) the enforcement of sections 3E, 3G, 3H, 4 (4f) and 6, including operation of the infringement notice system prescribed by section 8A;
- (b) the cost of measures to prevent or eradicate pests and diseases affecting fruit trees or vegetable plants and their respective crops;

- (c) compensating growers for losses resulting from the measures mentioned in paragraph (b);
- (d) promotion and encouragement of scientific research for the improvement of fruit crops and vegetable crops and their respective transportation; and
- (e) purposes that the Minister considers will promote and encourage the fruit growing industry or the vegetable growing industry.

(2) The amount that is to be paid out of the Fund for the purpose specified in subsection (1) (a) is to be determined annually by the Director General and no money is to be paid out for that purpose except as so determined.

(3) Money is not to be paid out of the Fund for any purpose specified in subsection (1) (b) to (e) except as determined by the Minister after consideration of advice and recommendations from the body known as the Western Australian Fruit and Vegetable Industry Advisory Committee. ”.

Section 9 amended

10. Section 9 of the principal Act is amended in subsection (2)—

(a) by inserting after “fruit” the following—

“ and vegetables ”; and

(b) by deleting “its” and substituting the following—

“ their ”.

Various sections amended

11. The provisions of the principal Act specified in the first column of the table are amended as specified in the second column.

TABLE

Provision	Amendment
Section 2 (1)— definition of “relevant code”	Delete “pursuant to section 3F of this Act”
Section 2 (2)	Delete “formulated by the Minister under this Act”
Section 3F (2)	Delete “formulated under subsection (1) of this section”
Section 3F (3)	Delete “formulated under this section”
Section 3F (4)	Delete “formulated under this section”
