

WESTERN AUSTRALIA

HORTICULTURAL PRODUCE COMMISSION ACT 1988

(No. 75 of 1988)

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WESTERN AUSTRALIA

HORTICULTURAL PRODUCE COMMISSION ACT

No. 75 of 1988

AN ACT to provide for the constitution of a Horticultural Produce Commission for the purposes of encouraging initiative among growers of horticultural produce to form growers' committees for the purposes of providing services to growers of horticultural produce, to define the functions of the Commission and growers' committees, to authorize the determination and fixing of charges and fees for services and to amend the *Parliamentary Commissioner Act 1971* and the *Constitution Acts Amendment Act 1899* and for incidental and other purposes.

[Assented to 23 December 1988.]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Horticultural Produce Commission Act 1988*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act unless the context otherwise requires—

“Commission” means the Horticultural Produce Commission established under section 4;

“growers’ committee” means a growers’ committee established under section 11;

“horticultural produce” means fresh or processed fruit, vegetables and flowers and includes fresh or processed juices of fruit or vegetables;

“member” in relation to—

(a) the Commission, means a member of the Commission and includes the chairperson;

(b) a growers’ committee, means a member of the growers’ committee and includes the chairperson.

(2) For the purposes of this Act a reference to “the relevant growers’ committee” is—

(a) a reference to the growers’ committee appointed under section 11 in relation to horticultural produce of the kind in question throughout the State; or

(b) where a growers’ committee is appointed under section 11 in relation to horticultural produce of a particular kind for only part of the State, a reference to the growers’ committee appointed in relation to horticultural produce of that kind for only the part of the State in question.

PART 2—HORTICULTURAL PRODUCE COMMISSION

Horticultural Produce Commission established

4. (1) There is hereby established a body to be called the Horticultural Produce Commission.

(2) The Commission is a body corporate with perpetual succession and a common seal and is capable of—

- (a) acquiring, holding, managing, leasing and disposing of real and personal property;
- (b) suing and being sued; and
- (c) doing and suffering all such acts and things as a corporation may lawfully do and suffer.

(3) The Commission is not an agent of the Crown in right of the State.

(4) The Commission is not part of the Public Service under the *Public Service Act 1978*.

Constitution of the Commission

5. (1) The Commission shall consist of the following members—

- (a) a member being a person who is not an officer of the Public Service of the State who shall be the chairperson;
- (b) one member who is an officer of the Public Service of the State;
- (c) one member who has a knowledge and understanding of the Horticultural Industry and who is not a member of the State Public Service.

(2) The members of the Commission shall be appointed by the Minister.

(3) The Schedule shall have effect with respect to the Commission and with respect to the acts and proceedings of the Commission.

Functions of the Commission

6. (1) Subject to this Act the Commission may—

- (a) establish growers' committees in relation to horticultural produce;
- (b) appoint members to growers' committees;

- (c) advertise for the formation of growers' committees;
- (d) conduct polls as prescribed under this Act for the purposes of the establishment and operation of growers' committees;
- (e) dissolve growers' committees and appoint liquidators for the winding up of growers' committees;
- (f) provide such services in relation to the functioning of growers' committees as are necessary from time to time;
- (g) direct, co-ordinate and supervise the functioning and expenditure of growers' committees; and
- (h) provide such other services to growers' committees as the Minister may direct.

(2) A growers' committee may be established in relation to horticultural produce of a particular class, kind or variety for the whole State or part of the State.

(3) In carrying out its functions under this Act the Commission is subject to any direction given by the Minister.

Funds of the Commission

7. (1) The funds of the Commission shall consist of—

- (a) moneys the Commission receives in respect of fees and charges in respect of services provided by the Commission to growers' committees;
- (b) moneys paid to the Commission upon the dissolution of any growers' committee under section 15; and
- (c) such moneys as may be lawfully received by the Commission.

(2) An account to be known as Horticultural Produce Commission Account shall be opened and maintained at the Treasury.

(3) All moneys received by the Commission and by any growers' committee shall be paid into the Horticultural Produce Commission Account.

Application of funds

8. (1) The funds of the Commission shall be applied for the purposes of carrying out the functions of the Commission under this Act.

(2) Where the funds of the Commission are not sufficient the Treasurer may make advances of moneys to the Commission from time to time to make up any deficiency in those funds.

(3) The Treasurer may recoup any moneys advanced to the Commission under subsection (2) whenever the Treasurer is of the opinion the Commission has sufficient funds for carrying out its functions under this Act.

Officers

9. The Commission may, with the approval of the Minister, employ or engage such officers, servants and other persons as are necessary for the purposes of carrying out its functions under this Act.

PART 3—GROWERS' COMMITTEES**Preliminary requirements for the establishment of growers' committees**

10. (1) Before appointing a growers' committee the Commission shall cause notice to be published of its intention to establish a growers' committee in relation to the particular horticultural produce in question.

(2) A notice referred to in subsection (1)—

- (a) shall be published in the manner directed by the Minister;
- (b) shall explain in simple terms the objects sought to be effected by the proposal;
- (c) shall specify the horticultural produce the subject of the proposal;
- (d) where the growers' committee is to be established in relation to a class or variety of horticultural produce shall specify the class or variety in relation to which the growers' committee is to be established;
- (e) where the growers' committee is to be established only in relation to a particular part of the State, shall specify the part of the State in relation to which the growers' committee is proposed to be established; and

- (f) shall invite submissions from growers who may be affected by the proposal.

(3) If after considering the submissions made under subsection (2) (f) the Commission is satisfied that, having regard to the interests of the horticultural produce industry in this State, the formation of the proposed growers' committee would be materially to the financial detriment of a grower or growers of that kind of horticultural produce in the area referred to in the notice the Commission shall not proceed to conduct the poll in accordance with the provisions of this section but if the Commission is not so satisfied the Commission shall conduct the poll.

(4) For the purposes of facilitating its consideration of the submissions under subsection (3) the Commission may invite any growers who in the opinion of the Commission have an interest in the proposal to attend meetings of the Commission.

(5) The Commission shall not conduct a poll for the establishment of a growers' committee unless the person or persons requesting the establishment of the growers' committee in question deposit 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 growers' committee.

(6) Any moneys paid to the Commission under subsection (5) shall be repaid by the growers' committee out of the funds of the growers' committee to the persons who made the deposit under that subsection in accordance with the directions of the Commission.

(7) The Commission shall not establish a growers' committee in relation to horticultural produce unless the Commission has after complying with subsections (1) and (2) conducted a poll among the growers of horticultural produce the subject of the notice referred to in subsections (1) and (2) and, if the proposal to establish the growers' committee is in relation to a particular part of the State, in the part of the State in question, and the poll is in favour of the proposal.

(8) A poll shall be declared to be in favour of the establishment of a growers' committee if and only if—

- (a) the growers who vote at the poll constitute not less than 75% of the persons eligible to vote as growers; and
- (b) of the persons so voting not less than 70% vote in favour of the proposal,

and for the purposes of calculating the percentage of growers for the purposes of this subsection fractions shall be disregarded.

(9) Notwithstanding that the Commission has complied with subsections (1) to (8) and notwithstanding that a poll of growers vote in favour of the proposal the Commission may refuse to establish, or defer the establishment of, a growers' committee if the Commission considers that having regard to the circumstances of a particular case it is not desirable or practicable to do so.

Establishment of a growers' committee

11. (1) Where the Commission resolves to establish a growers' committee the Commission shall by notice in the *Gazette*—

(a) specify—

(i) the horticultural produce in relation to which the growers' committee is appointed; and

(ii) whether the growers' committee is appointed in relation to the whole State or in relation to only a portion of the State in relation to which the growers' committee is established and in that case the portion of the State in relation to which it is so established; and

(b) invite nominations from among the growers concerned for appointment to the growers' committee.

(2) The Commission shall not appoint a person to be a member of a growers' committee unless the Commission is of the opinion that the person is qualified to be so appointed in relation to the kind of horticultural produce in question.

(3) Except to the extent prescribed in this Act or the regulations the Commission may from time to time give directions with respect to the constitution, membership, terms and proceedings of a growers' committee and incidental and related matters.

(4) Any directions given under subsection (3) shall be published in the *Gazette*.

(5) Sections 43 and 44 of the *Interpretation Act 1984* apply to directions given under this section as though the directions were subsidiary legislation.

Functions of a growers' committee

12. (1) Subject to any direction given by the Commission and to this section the relevant growers' committee may in relation to the horticultural produce in relation to which it is established in addition to any other functions conferred on a growers' committee under this Act provide any one or more of the following services—

- (a) advertise and promote the horticultural produce;
- (b) control or develop the means of controlling pests and diseases if there is a likelihood of those pests or diseases affecting the quality or volume of output of the horticultural produce;
- (c) conduct research in relation to any matter, if in the opinion of the growers' committee that research is of advantage to growers of the horticultural produce;
- (d) conduct educational or instructional programmes relating to the production of horticultural produce;
- (e) develop and expand markets for the horticultural produce in Western Australia and elsewhere;
- (f) establish a voluntary insurance scheme for the benefit of growers of the horticultural produce including insurance relating to crops;
- (g) undertake and provide market forecasting for the horticultural produce;
- (h) establish systems of inspection for the horticultural produce for the purpose of quality control or pest and disease control;
- (i) formulate schemes for declaring growers of the horticultural produce to be accredited growers;
- (j) establish systems to facilitate inspection of grading, packaging and storage of the horticultural produce including weight and uniformity (including uniformity of ripeness) within packages;
- (k) support, with or without grant of financial aid, and whether or not initiated by the committee or the Commission, any scheme or activity which in the committee's opinion is capable of assisting in the promotion or sale of the horticultural produce;
- (l) provide such other services for the horticultural produce as may be prescribed;

(m) arrange for the provision of all or any of the services or the exercise of any of the functions referred to in paragraphs (a) to (l) in whole or in part by another person or organization or in conjunction with the Commission or any other person or organization.

(2) For the purposes of carrying out its functions under this Act a growers' committee may, with the approval of the Commission, employ or engage such officers, employees and other persons as are necessary.

(3) A growers' committee shall not provide any service or recommend the imposition of any charge for any service or proposed service additional to the service or services for which the growers' committee was established unless the growers' committee has conducted a poll of the growers concerned and the poll is in favour of the proposal.

(4) The costs of any poll shall be paid out of the general funds of the growers' committee.

(5) The provisions of section 10 (8) applies to and in relation to a poll conducted under subsection (3) as though the poll were a poll under section 10.

Power to require information

13. (1) For the purposes of facilitating the establishment or operation or both the establishment and operation of the relevant growers' committee the Commission may by notice served on a grower require the grower to furnish in writing in the form of a form specified by the Commission within the time specified by the Commission such prescribed statistical information as is specified in the notice.

(2) A person who—

(a) without reasonable cause refuses or fails to comply with a requirement in a notice under this section; or

(b) furnishes to the Commission under this section any information which to the person's knowledge is false or misleading in a material particular,

is guilty of an offence against this Act.

Penalty: \$1 000.

Power to impose charges in relation to services

14. (1) The Commission on the recommendation of the relevant growers' committee may determine the cost or estimated cost of providing any service which the relevant growers' committee is authorized under this Act to provide, and, with the approval of the Minister, may impose on the growers in relation to whom the growers' committee is established a charge in relation to the provision of any such service.

(2) A charge imposed under subsection (1)—

- (a) shall be at the same rate in relation to all relevant growers of horticultural produce of the kind in question in the State or only in the area in relation to which the growers' committee is established;
- (b) may be at different rates in relation to relevant growers in different parts of the State or in different parts of the area in relation to which the growers' committee is so established if the grower's committee has taken a poll on that proposal of the growers of the horticultural produce of the kind in question, or, if the committee is appointed only in relation to a part of the State, then only among the growers of the horticultural produce in that part of the State;
- (c) may be fixed having regard to the frequency or cost of the service provided to a grower;
- (d) may be fixed having regard to any other factors that the growers' committee considers relevant.

(3) A charge imposed under this section becomes due and payable by a grower not earlier than 14 days after the day on which notice of the charge has been published in accordance with the regulations and not later than the date specified in the notice.

Dissolution of a growers' committee

15. (1) If the Commission takes a poll among the growers concerned for the dissolution of the relevant growers' committee and the poll is by a simple majority of the persons entitled to vote in favour of the dissolution of the relevant growers' committee the relevant growers' committee, shall

on and from a day appointed by the Commission being a day not later than 6 months after the taking of the poll by notice in the *Gazette*, proceed to be wound up.

(2) The Commission shall on and from the day appointed under subsection (1) appoint a liquidator to wind up the affairs of any growers' committee required to be wound up under that subsection.

(3) Upon the appointment of a liquidator under subsection (2) the growers' committee being wound up shall cease to act and the liquidator may, for the purposes of the winding up of the affairs of the growers' committee in the name of and as the act of the growers' committee—

- (a) exercise such of the functions of the growers' committee;
- (b) do such other acts and things as the liquidator thinks fit.

(4) A liquidator shall receive such remuneration as is determined by the Commission.

(5) The Commission may by notice published in the *Gazette* declare a growers' committee to be dissolved.

(6) The dissolution of a growers' committee shall take effect on the date specified in the notice referred to in subsection (5).

(7) On the dissolution of a growers' committee all money and other assets of the growers' committee—

- (a) shall vest in the Commission;
- (b) shall be dealt with as the Minister directs.

(8) Notwithstanding anything in subsection (1), where the Commission is satisfied that a growers' committee is operating in such a manner that its operations are materially to the financial detriment of a person who is a grower for the purposes of that grower's committee the Commission may dissolve the growers' committee and where the Commission does so the provisions of subsections (2) to (7) apply in relation to such dissolution.

List of growers

16. (1) For the purposes of conducting a poll under this Act the Commission shall compile lists of growers of horticultural produce of the kind in relation to which a growers' committee is proposed to be or has been established.

(2) A person whose name is included or omitted from a list compiled under subsection (1) and who is aggrieved in relation to that fact may appeal to a Local Court and the Local Court may give such directions in relation to the matter as the court thinks proper.

(3) A decision of the Local Court on an appeal under subsection (2) is final.

Conduct of polls

17. (1) A poll conducted for the purposes of this Act shall be conducted in accordance with the regulations.

(2) The regulations may provide that the costs of and expenses relating to a poll shall be recovered by the Commission from the funds of a growers' committee.

Accounts

18. (1) A growers' committee shall pay into the account established under section 7 (2) all moneys received by the growers' committee.

(2) Moneys received in payment of charges imposed under this Act shall be applied exclusively for the services in relation to which those charges were imposed.

(3) Nothing in subsection (2) prevents the Commission—

(a) from allocating from a special fund an amount to be applied in defraying the proper costs and expenses of the growers' committee incurred—

(i) in providing the service in relation to which the charge was imposed; or

(ii) in the exercise of the functions conferred or imposed on it by this Act in relation to the provision of the service;

or

(b) from allocating from a special fund—

(i) to another special fund; or

(ii) to the general fund of the growers' committee,

any amount which it is no longer required to be applied for the provision of the service in relation to which the charge was imposed.

Voluntary associations of growers

19. (1) Notwithstanding anything in this Part where a group of growers of a particular kind of horticultural produce applies to the Commission for the performance by the Commission of the functions of the Commission under this Act in relation to that group of growers and the Commission is satisfied that a growers' committee has not been established under this Act in relation to that group of growers for the horticultural produce in question the Commission may with the approval of the Minister perform such functions in relation to the group of growers as are referred to in the application subject to such terms and conditions, including the payment of charges, as are approved by the Minister.

(2) Where the Commission performs any function or renders any service under subsection (1) each member of the group of growers is jointly and severally liable for such payment of charges (if any) that are payable under the terms and conditions approved under that subsection.

PART 4—MISCELLANEOUS

Financial provisions

20. (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in relation to the Commission and its operations.

(2) The Commission shall ensure that each growers' committee maintains proper accounts and records of its financial administration and operations in such manner and form as the Treasurer approves.

Authentication

21. Every summons, process, order, notice, statement or advertisement requiring authentication by the Commission may be authenticated without the seal of the Commission if signed by—

- (a) the chairperson; or
- (b) a person authorized by the chairperson.

Recovery of charges

22. (1) Any moneys due to the Commission or to a growers' committee may be recovered by the Commission in any court of competent jurisdiction.

(2) Any moneys due by a growers' committee to the Commission shall on the direction of the Minister be paid by the growers' committee to the Commission and where the growers' committee fails to pay the amount so directed or fails to pay the amount within the time specified by the Commission the Minister may direct that any amount specified in the direction shall be paid out of the account of the growers' committee held at any bank or at the Treasury and effect shall be given to any such direction.

Evidentiary

23. In any legal proceedings—

- (a) until evidence is given to the contrary proof is not required of—
 - (i) the constitution of a growers' committee;
 - (ii) the constitution of the Commission;
 - (iii) any resolution of the Commission or growers' committee;
 - (iv) the appointment of any member or of the Commission or of a growers' committee;
- (b) production of a copy of the *Gazette* or a newspaper containing or purporting to contain a copy of any notice or advertisement published under this Act is—
 - (i) evidence of the matters contained in the notice or advertisement; and
 - (ii) evidence that all steps necessary to be taken prior to the publication of the notice or advertisement were duly taken;
- (c) an averment on behalf of the Commission—
 - (i) that any horticultural produce is or was, during a specified period, horticultural produce to which this Act applies or applied as the case requires;

- (ii) that any area or place is or was an area or place or is or was during a specified period within an area specified in a notice or advertisement; or
- (iii) that any person is or was a grower during a specified period of horticultural produce,

is until the contrary is proved evidence of that fact; and

(d) a certificate—

- (i) signed or purporting to be signed by a prescribed officer of the Commission;
- (ii) certifying that on a specified day or during a specified period any person was or was not included in a list of growers of horticultural produce compiled under this Act,

is, without proof of the signature of the person purporting to sign the certificate or that the person is a prescribed officer, evidence of the matters certified in and by the certificate.

Protection of members

24. A person who is or was a member of the Commission or a growers' committee, or an officer or employee of the Commission or growers' committee is not personally liable for any act done or omitted to be done in good faith by the Commission or a growers' committee or by him acting as a member of the Commission or growers' committee or as an officer or employee of the Commission or a growers' committee.

Regulations

25. (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting the generality of subsection (1) the regulations may—

- (a) prescribe the method of determining the eligibility of growers to be regarded as growers for the purposes of this Act;
- (b) provide for the taking of any poll including the method of voting at a poll;

- (c) prescribe matters concerning the compilation and revision of lists of names of growers;
- (d) prescribe the manner in which the results of a poll taken under this Act shall be notified;
- (e) require that for the purposes of this Act information relating to horticultural produce be furnished to prescribed persons or organizations and prescribe the manner in which fees and charges imposed under this Act shall be paid and collected; and
- (f) prescribing penalties not exceeding \$2 000 for any breach of the regulations.

Review

26. (1) Within a period of 12 months commencing on the fifth anniversary of the day on which this Act comes into operation the Minister shall cause an investigation and review to be conducted, and a report to be prepared as to—

- (a) the operation of this Act;
- (b) the operation of the Commission and any growers' committee;
- and
- (c) the need for this Act to continue in operation.

(2) The Minister shall cause a copy of the report prepared for the purposes of subsection (1) to be laid before each House of Parliament as soon as is practicable after it is completed.

Amendment to *Parliamentary Commissioner Act 1971* and *Constitution Acts Amendment Act 1899*

27. (1) The *Parliamentary Commissioner Act 1971* is amended in the Schedule by inserting after the item relating to the Government Employees' Housing Authority the following—

“ Horticultural Produce Commission or any growers' committee established under the *Horticultural Produce Commission Act 1988*. ”.

(2) The *Constitution Acts Amendment Act 1899* is amended in Schedule V in Part 3 by inserting before the item relating to any hospital board constituted under the *Hospitals Act 1927* the following—

“ The Horticultural Produce Commission or any growers’ committee established under the *Horticultural Produce Commission Act 1988*. ”.

SCHEDULE

(Section 5(3))

Term of office of member of Commission

1. Subject to this Schedule, a member of the Commission shall be appointed for such period not exceeding 3 years as is specified in the instrument of appointment of that member.

Remuneration of member of Commission

2. A member of the Commission other than a member who is an officer of the Public Service of the State or the Commonwealth is entitled to be paid such remuneration and allowances as the Minister, on the recommendation of the Public Service Commissioner, determines.

Casual vacancies

3. Where an office of member of the Commission becomes vacant the Minister shall, subject to this Act, fill the vacancy.

Vacation of office

4. The office of a member becomes vacant if the member—

- (a) dies;
- (b) is absent from 4 consecutive meetings of the Commission without the permission of the Minister;
- (c) not being a member appointed under section 5 (1) (b), is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or
- (d) is removed from office by the Minister on the ground that the member is mentally or physically incapable of performing the duties of a member or for incompetence, neglect of duty or misconduct proved to the satisfaction of the Minister.

Disclosure

5. (1) A member of the Commission who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Commission shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose his or her interest at a meeting of the Commission.

(2) A disclosure under subclause (1) shall be recorded in the minutes of the meeting of the Commission and the member shall not unless the meeting otherwise determines—

- (a) be present during any deliberation by the Commission with respect to that matter; or
- (b) take part in any decision of the Commission with respect to that matter.

(3) For the purpose of making a determination by the Commission under subclause (2) in relation to a member who has made a disclosure under subclause (1), a member who has a direct or indirect interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Commission for the purpose of making the determination; or
- (b) take part in the making by the Commission of the determination.

Meetings

6. (1) The first meeting of the Commission shall be convened by the chairperson of the Commission and thereafter, subject to subclause (2), shall be held at such times and places as the Commission determines.

(2) A special meeting of the Commission may at any time be convened by the chairperson of the Commission.

(3) The chairperson of the Commission shall preside at any meeting of the Commission at which the chairperson is present and in the absence of the chairperson, the members present shall elect one of their number to preside.

(4) At any meeting of the Commission 2 members constitute a quorum.

(5) At any meeting of the Commission the member presiding at the meeting shall have a deliberative vote, and in the case of an equality of votes being cast on any question, shall have a casting vote.

Resolution without meeting

7. A resolution in writing signed or assented to by letter, or electronic means of communication by each member of the Commission shall be as valid and effectual as if it had been passed at a meeting of the Commission.

Procedures of the Commission

8. Except to the extent that they are prescribed, the Commission shall determine its own procedures.

Validity of acts of Commission

9. No act, proceeding or decision of the Commission shall be invalid on the ground of any vacancy in the office of any member of the Commission or of any defect in the appointment of any member of the Commission.