

WESTERN AUSTRALIA.

ACTS AMENDMENT (POTATO INDUSTRY).

No. 96 of 1985.

AN ACT to amend the Marketing of Potatoes Act 1946 and the Potato Growing Industry Trust Fund Act 1947.

[Assented to 4 December 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Acts Amendment (Potato Industry) Act 1985*. Short title.

Commence-
ment.

2. The provisions of this Act shall come into operation on such day as is fixed, or such days as are respectively fixed, by proclamation.

PART II—MARKETING OF POTATOES ACT 1946.

Principal
Act.
Reprinted as
approved
27 May 1977.

3. In this Part the Marketing of Potatoes Act 1946 is referred to as the principal Act.

Section 2
repealed.

4. Section 2 of the principal Act is repealed.

Section 5
amended.

5. Section 5 of the principal Act is amended—

(a) by inserting after the section designation “5.” the subsection designation “(1)”;

(b) by deleting the definition of “Board” and substituting the following definition—

“ “Authority” means the body preserved and continued under this Act as the Western Australian Potato Marketing Authority; ”;

(c) in the definition of “Commercial producer” by deleting “2000”, in both places where it occurs, and substituting, in each case, the following—

“ 500 ”;

(d) by inserting after the definition of “Minister” the following definition—

“ “potato product” means potato crisps, chips, meal or flakes, or canned potatoes or any other product that is wholly or partly derived from potatoes; ”; and

(e) by inserting the following subsection—

“ (2) Reference in this Act to the processing of potatoes includes reference to the manufacture of potato products. ”.

6. Section 7 of the principal Act is amended— Section 7
amended.

(a) by repealing subsection (1) and substituting the following subsections—

“ (1) The body corporate hitherto constituted under this section and known as the Western Australian Potato Marketing Board is preserved and continues in existence for the purposes of this Act but shall be known as the Western Australian Potato Marketing Authority.

(1a) The corporate identity and rights and obligations of the body corporate are not affected by the change of its name under subsection (1).

(1b) A reference to the Western Australian Potato Marketing Board, whether by use of that name or a similar abbreviated form of that name, in a written law or other instrument or document shall be read and construed as a reference to the Western Australian Potato Marketing Authority unless in the context it would be incorrect to do so. ”; and

(b) in paragraph (b) of subsection (3)—

(i) by deleting “, and” where it first occurs; and

(ii) by deleting “, and who is a grower ”.

Heading to
Part II,
Division 2
amended.

7. The heading to Division 2 of Part II of the principal Act is amended by inserting before "General" the following—

“ *Functions and* ”.

Section 17A
inserted.

8. Before section 18 of the principal Act the following section is inserted—

Functions of
Authority.

“ 17A. The functions of the Authority are to—

- (a) regulate the production of potatoes so as to ensure the supply of the quantities, kinds and qualities of potatoes that are preferred by consumers in the State, for the production of potato products in the State and for export from the State, whilst preventing over-production;
- (b) take delivery of potatoes in accordance with this Act and market potatoes and potato products in the State and elsewhere;
- (c) encourage and facilitate the negotiation and performance of contracts between growers and persons engaged in the processing or export of potatoes;
- (d) encourage and promote the use of potatoes;
- (e) foster methods of production and adopt methods of marketing that will enable potatoes grown and potato products produced in the State to compete in price and quality against potatoes and potato products from alternative sources of supply;

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Acts Amendment (Potato Industry) [No. 96.

- (f) promote, encourage, fund and arrange for the conduct of research into matters relating to the production and marketing of potatoes;
- (g) seek and apply knowledge of new and improved techniques and materials that will assist it to perform its functions. ”.

9. Section 19 of the principal Act is amended— Section 19 amended.

(a) by inserting after paragraph (b) the following paragraphs—

“ (ba) enter into a partnership or an arrangement for the sharing of expenditure, profits and losses;

(bb) to form or establish, or participate in the formation or establishment of, any corporation or joint venture;

(bc) to subscribe for, invest in or otherwise acquire, and to dispose of, shares in, or debentures or other securities of, a corporation; ”;

(b) in paragraph (f) by inserting before “contract” the following—

“ process or ”;

(c) in paragraph (g) by deleting “any processing which the Board has the power to carry out” and substituting the following—

“ the processing of potatoes ”;

(d) in paragraph (k) by deleting “and potato growing areas” and substituting the following—

“ , potato growing areas and contracts for the supply of potatoes for processing or export ”;

(e) in paragraph (l) by inserting before “suspension” the following—

“ transfer, ”; and

(f) in paragraph (m) by inserting after “sale” the following—

“ or the quantity of potatoes that may be produced for sale ”.

Section 19A
repealed and
substituted.

10. Section 19A of the principal Act is repealed and the following section is substituted—

Appeals.

“ 19A. (1) A person who considers himself aggrieved by a decision made by the Authority in exercise of a power conferred on the Authority under section 19, may appeal to the Minister by serving on the Minister a statement in writing of the grounds of his appeal.

(2) On receiving a statement served under subsection (1) the Minister may confirm, vary or reverse the decision of the Authority.

(3) The Minister may, before exercising the powers conferred by subsection (2), require the person referred to in subsection (1) to furnish him with such information in addition to that contained in the statement served on him by that person as the Minister thinks desirable to enable him to consider the appeal.

(4) The decision of the Minister under subsection (2) is final and not subject to any further appeal and shall be given effect to by the Authority. ”.

11. After section 20 of the principal Act the following sections are inserted—

Sections 20A, 20B and 20C inserted.

“ 20A. The Minister may give directions in writing to the Authority concerning the performance of its functions, either generally or with respect to a particular matter, and the Authority shall comply with those directions.

Directions by Minister.

20B. (1) The Authority may establish consultative groups of persons for the purpose of considering, and advising the Authority on, any matter relating to the performance of the functions of the Authority that is referred to them by the Authority, and may appoint in writing the members of such groups.

Authority may establish consultative groups.

(2) The Minister may determine the terms and conditions of appointment, including remuneration and allowances, of a member of a consultative group.

20C. The Authority shall participate in the meetings of the body known as the Potato Industry Council and shall liaise and consult with that body with respect to the performance by the Authority of its functions. ”.

Co-operation with Potato Industry Council.

12. Section 22 of the principal Act is amended in subsection (2) by deleting “twenty-five of this Act” and substituting the following—

Section 22 amended.

“ 25, 26A or 26B ”.

13. Section 22B of the principal Act is amended—

Section 22B amended.

(a) in subsection (2) by deleting “two thousand” and substituting the following—

“ 500 ”; and

(b) by inserting after subsection (3) the following subsection—

“ (4) This section does not apply to the planting or production of potatoes for sale under a contract registered by the Authority under section 26A or 26B. ”.

Section 23
amended.

14. Section 23 of the principal Act is amended—

(a) in subsection (1) by deleting “The” and substituting the following—

“ Subject to subsection (3), the ”; and

(b) by inserting after subsection (2) the following subsection—

“ (3) The Authority is not required to accept delivery from any grower of potatoes that have been produced, or are tendered for delivery, otherwise than under, and in accordance with the conditions of, a licence issued by the Authority. ”.

Sections 26A
and 26B
inserted.

15. After section 26 of the principal Act the following sections are inserted—

Delivery of
potatoes for
manufacture.

“ 26A. (1) In this section potato product manufacturer” means a person who or which carries on the business of manufacturing a potato product but does not include a person carrying on the business of a restaurant or food shop.

(2) A grower may sell and deliver potatoes to a potato product manufacturer in accordance with a written contract registered by the Authority.

(3) Where a written contract providing for the sale and delivery of potatoes by a grower to a potato product manufacturer is submitted to the Authority together with the prescribed fee, the Authority shall register that contract.

(4) Moneys received by the Authority as fees for—

- (a) the registration of contracts under this section; and
- (b) the registration of lands and premises used for or in connection with the production or preparation of potatoes for sale under such contracts,

shall be applied towards the costs and expenses of the administration of the registration systems and any excess may be applied towards the development of the potato product industry and markets for potato products in such manner as the Authority thinks fit.

26B. (1) In this section “potato exporter” means a person, other than the Authority, who or which—

Delivery of potatoes for export.

- (a) exports potatoes from the State; or
- (b) acts on behalf of a person who exports potatoes from the State.

(2) A grower may sell and deliver potatoes to a potato exporter in accordance with a written contract registered by the Authority.

(3) Where a written contract providing for the sale and delivery of potatoes to a potato exporter is submitted to the Authority together with the prescribed fee, the Authority shall register that contract.

(4) Moneys received by the Authority as fees for—

- (a) the registration of contracts under this section; and
- (b) the registration of lands and premises used for or in connection with the production or preparation of potatoes for sale under such contracts,

shall be applied towards the costs and expenses of the administration of the registration systems and any excess may be applied towards development of export markets for potatoes in such manner as the Authority thinks fit. ”.

Section 28
amended.

16. Section 28 of the principal Act is amended by deleting “grade standards prescribed or as may be prescribed under the Agricultural Products Act, 1929-1940” and substituting the following—

“ the prescribed grade standards ”.

Section 30
amended.

17. Section 30 of the principal Act is amended—

(a) in subsection (3)—

(i) in paragraph (a) by inserting after “potatoes” the following—

“ delivered to the Authority ”;
and

(ii) in paragraph (b) by deleting “this Act” and substituting the following—

“ the provisions of this Act relating to potatoes delivered to the Authority and the production of those potatoes ”; and

- (b) by inserting after subsection (4) the following subsection—

“ (5) Where the Authority considers that the moneys for the time being standing to the credit of the reserve fund mentioned in paragraph (e) of subsection (3) exceed the amount that needs to be maintained in that fund for the purpose mentioned in that paragraph the Authority may, with the approval of the Minister, apply the excess moneys or any part of them, towards any matter mentioned in paragraph (a), (b), (c) or (d) of subsection (3). ”.

18. Section 33 of the principal Act is amended by deleting “, The Western Australian Transport Board”. Section 33 amended.

19. Section 39 of the principal Act is amended by inserting before “and” the following— Section 39 amended.

“ other than expenditure referred to in section 26A (4) and 26B (4) ”.

20. Section 43 of the principal Act is amended— Section 43 amended.

- (a) in subsection (1), by deleting “Government” and substituting the following—

“ Governor ”; and

- (b) in subsection (2)—

- (i) by deleting paragraph (a) and substituting the following paragraph—

“ (a) prescribing grade standards for potatoes including different standards for different classes of potatoes or potatoes required for different purposes; ”;

(ii) in paragraph (b) by deleting “the potatoes” and substituting the following—

“ potatoes ”;

(iii) by inserting after paragraph (b) the following paragraph—

“ (ba) prescribing fees for the registration of contracts under sections 26A and 26B; ”; and

(iv) by inserting after paragraph (g) the following paragraph—

“ (ga) as to provisions to be included in contracts referred to in section 26A and 26B; ”.

Section 44
added.

21. After section 43 of the principal Act the following section is added—

Review
of Act.

“ 44. (1) The Minister shall carry out a review of the operation of this Act 5 years after the commencement of section 21 of the Acts Amendment (Potato Industry) Act 1985, and in the course of such review the Minister shall consider and have regard to—

(a) the effectiveness of the operations of the Authority;

(b) the need for the continuation of the functions of the Authority; and

(c) such other matters as appear to him to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on his review of this Act and shall, as soon as practicable after the preparation thereof, cause the report to be laid before each House of Parliament. ”.

22. (1) The principal Act is amended by deleting "BOARD", "*Board*" and "Board", wherever they occur, and substituting, respectively, the following—

Miscellaneous amendments.

" *AUTHORITY* ", "*Authority* " and "*Authority* ".

(2) The principal Act is amended as follows—

<i>Provision or provisions affected.</i>	<i>Amendment.</i>
Sections 22 (4) (b), (5), (6) and (7) and 22A (1)	Delete "63.5", wherever it occurs, substitute " 50 " in each case.
Sections 22 (a), 22A (3) (d) and 26 (3) (a)	Delete "fifty dollars or more than two hundred dollars" substitute " \$100 or more than \$400 " in each case.
Sections 22 (b), 22A (3) (e) and 26 (3) (b)	Delete "one hundred dollars or more than two hundred dollars" substitute " \$200 or more than \$400 " in each case.
Section 22B (a)	Delete "seven and one-half" substitute " 15 ".
Section 22B (b)	Delete "twelve and one-half cents nor less than seven and one-half" substitute " 25 cents nor less than 15 ".
Section 41 (2)	Delete "two hundred dollars" substitute " \$400 ".
Section 43 (3)	Delete "forty dollars" substitute " \$200 ".

PART III—POTATO GROWING INDUSTRY TRUST
FUND ACT 1947.

Principal Act.
Reprinted
as approved
17 August
1975 and
amended by
Acts Nos. 63
of 1981 and
4 of 1982.

23. In this Part the Potato Growing Industry Trust Fund Act 1947 is referred to as the principal Act.

Section 4
amended.

24. Section 4 of the principal Act is amended—

(a) by deleting the definition of “Board” and substituting the following definition—

“ “Authority” means the body preserved and continued under the Marketing of Potatoes Act 1946 as the Western Australian Potato Marketing Authority and includes an agent as defined by that Act; ”;

(b) in the definition of “commercial producer” by deleting “2 000”, in both places where it occurs, and substituting, in each case, the following—

“ 500 ”; and

(c) by inserting after the definition of “grower” the following definitions—

“ “potato exporter” has the same meaning as it has in section 26B of the Marketing of Potatoes Act 1946;

“potato product manufacturer” has the same meaning as it has in section 26A of the Marketing of Potatoes Act 1946; ”.

Section 6
amended.

25. Section 6 of the principal Act is amended in subparagraph (iv) of paragraph (b) of subsection (4) by deleting “(No. 26 of 1946)” and substituting the following—

“ or who produces potatoes for sale under a contract registered under section 26A or 26B of that Act ”.

26. Section 17 of the principal Act is amended— Section 17 amended.

(a) in subsection (1) by deleting “or dealer”, in both places where it occurs, and substituting, in each case, the following—

“ , dealer, potato product manufacturer or potato exporter ”; and

(b) in subsection (3) by deleting “and dealers” and substituting the following—

“ , dealers, potato product manufacturers and potato exporters ”.

27. Section 18 of the principal Act is amended in subsection (1) by deleting “or dealer” and substituting the following— Section 18 amended.

“ , dealer, potato product manufacturer or potato exporter ”.

28. Section 21 of the principal Act is amended— Section 21 amended.

(a) in paragraph (i) of the proviso to subsection (3) by inserting before the semi-colon the following—

“ and each 50 kilograms of potatoes sold to a potato product manufacturer or a potato exporter under a contract referred to in section 26A or 26B of the Marketing of Potatoes Act 1946 ”;

(b) in subsection (4) by deleting “the potatoes of growers are in the disposition of” and substituting the following—

“ potatoes of growers are required to be delivered to ”;

(c) in subsection (5) by deleting “the disposition of potatoes by the growers thereof being no longer under the control of” and substituting the following—

“ potatoes of growers no longer being required to be delivered to ”;

(d) by inserting after subsection (5) the following subsection—

“ (5a) Every potato product manufacturer or potato exporter who obtains or receives potatoes from a grower under a contract referred to in section 26A or 26B of the Marketing of Potatoes Act 1946 and is liable to make to the grower any payment, or to account to the grower for any moneys in respect of the potatoes so obtained or received by him, shall deduct out of the moneys payable by him to the grower, or held by him to the credit of the grower, and pay to the Committee the amount of the contribution for which the grower is then liable under this section, and the acknowledgment by the Committee of the payment shall be a complete discharge to the potato product manufacturer or potato exporter as against the grower in respect of the amount stated in the acknowledgment. ”;

and

(e) in subsections (6), (7) and (8) by inserting after “dealer”, wherever it occurs, the following—

“ , potato product manufacturer or potato exporter ”.

Miscellaneous
amendments.

29. The principal Act is amended by deleting “Board”, wherever it occurs, and substituting, in each case, the following—

“ Authority ”.