



Western Australia

## **Agricultural Practices (Disputes) Act 1995**

Compare between:

[01 Feb 2007, 01-b0-03] and [27 May 2008, 01-c0-04]



Western Australia

## **Agricultural Practices (Disputes) Act 1995**

**An Act to make provision for the resolution of disputes related to the carrying on, or management, of agriculture.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Agricultural Practices (Disputes) Act 1995*<sup>1</sup>.

### **2. Commencement**

This Act shall come into operation on such day as is, or such days as are respectively, fixed by proclamation<sup>1</sup>.

### **3. Interpretation**

In this Act, unless the contrary intention appears —

“**administrative authority**” means a person or body who or which under any written law exercises a function which may affect the carrying out of an agricultural purpose;

“**agricultural operation**” means an area of rural land primarily used for commercial agricultural purposes, and includes a reference to the agricultural activities carried on there;

“**agricultural practice**”, in relation to an agricultural operation, means the method by which, or the manner in which —

- (a) an agricultural purpose is carried out; or
- (b) agricultural activities are managed,

there, and “**practice**” shall be construed accordingly;

“**Board**” means the Agricultural Practices Board of Western Australia established under section 7;

“**Chairperson**” means the holder of the office of Chairperson of the Board, and includes a reference to a member appointed to act in that office;

“**determination**” includes a reference to a decision, order or direction, whether made in mediation proceedings or proceedings before the tribunal or the Board;

**“member”** means a member of the Board, and includes a reference to the Chairperson;

**“owner”**, in relation to an agricultural operation which is leased, includes any person who is a lessee of the land;

**“Registrar”** means the person nominated under section 16 to serve as the Registrar of the Board;

**“rural land”** means land classified or zoned for agricultural or rural use, or for rural lifestyle living, under a local planning scheme as that term is defined in the *Planning and Development Act 2005*;

**“tribunal”** means a tribunal of the Board, however it may be from time to time constituted under this Act.

[Section 3 amended by No. 38 of 2005 s. 15.]

#### 4. Objects and reasons

- (1) The objects of this Act are —
  - (a) to ensure that any normal farm practice which is alleged to create a nuisance, or otherwise to be detrimental to the interests of persons nearby, by reason merely of the —
    - (i) carrying out; or
    - (ii) management,of that practice shall not be impeded by avoidable litigation, or the threat of such litigation, arising out of an allegation of that kind;
  - (b) to make provision —
    - (i) to establish the Agricultural Practices Board and the procedures of the Board, its jurisdiction and the nature and effect of its functions; and
    - (ii) for the reference to the Board of disputes arising from allegations of that kind;

**s. 4**

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- (c) to provide that where a dispute arising out of an allegation of that kind is referred to the Board it shall be —
    - (i) inquired into;
    - (ii) resolved by mediation, where appropriate and practicable; and
    - (iii) reported upon,and that the Board may, in accordance with this Act, make a determination in respect of it;
  - (d) to seek to provide for the resolution of disputes arising out of such allegations, by means of an order made following mediation proceedings or a hearing before a tribunal or the Board, in a manner that is fair, just, economical, informal and quick;
  - (e) to provide, where a dispute is of a kind to which this Act applies, that any other litigation relating to an issue in that dispute shall be adjourned until —
    - (i) the matter has been referred to the Board; and
    - (ii) if the reference is not withdrawn or resolved by mediation, a determination has been made;and
  - (f) to enable the Board —
    - (i) in relation to any particular practice used in respect to an agricultural operation, to determine whether or not that practice is a normal farm practice; and
    - (ii) generally, to provide guidance as to what constitutes a normal farm practice.
- (2) The reasons for the enactment of these provisions are —
- (a) to ensure —
    - (i) that agricultural production continues to be a major contributor to the economy of the State;

- (ii) that agriculture continues to contribute to the preservation of the landscape and environmental resources of the State, to the benefit both of those who reside in the State and those who visit the State; and
- (iii) that normal farm practices, understood and accepted by the rural community, but not always understood by or initially acceptable to persons unfamiliar with the rural lifestyle who encounter those practices by reason of an increasing urbanization of rural areas, are not, whether by reason of that lack of understanding or because of an unwillingness on the part of the farmer to modify any such practice in a practicable and acceptable manner, made the subject of premature litigation contrary to the public interest;

and

- (b) whilst not usurping the role of administrative authorities or of the courts, but having specific regard to the requirements of agriculture, to provide through the proceedings of the Board a means of indicating what potential for settlement may exist for resolving certain kinds of disputes as to agricultural practices, whether those disputes are alleged to be based on the law relating to —
  - (i) nuisance;
  - (ii) trespass; or
  - (iii) any other cause of action alleged, arising from an agricultural practice or an agricultural operation,so as to avoid the premature removal of rural land from agricultural use and any delay or harassment related to the carrying out of a normal farm practice,

**s. 5**

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and the Board is required to conduct its affairs having regard to those reasons.

**5. Normal farm practices**

For the purpose of this Act an agricultural practice —

- (a) shall be taken to be a normal farm practice if —
  - (i) it is carried out and managed in a manner consistent with proper and accepted customs and standards, as established and followed in similar agricultural operations under similar circumstances; or
  - (ii) it complies with the requirements of a Code of Practice relating to an operation of that kind, being a Code of Practice that has been made or approved by the Department of Environmental Protection<sup>2</sup> or under any written law,

but it may include the use of innovative technology and management practices; and

- (b) if the owner or the person carrying on the agricultural operation concerned fails to comply with an order made by the Board as to the carrying out or management of that agricultural practice, may thereafter be taken not to be a normal farm practice.

**6. Disputes to which this Act applies**

- (1) This Act applies to disputes in which the issue is a complaint relating to —
  - (a) odour, noise, dust, smoke, fumes, fugitive light, or spray drift, emanating from an agricultural operation; or
  - (b) a matter of a prescribed kind, related to an agricultural practice.
- (2) This Act does not apply unless —



- (a) the land from which the alleged cause of complaint emanates; or
  - (b) the land occupied by the complainant,
- is rural land.

## **Part 2 — The Agricultural Practices Board**

### **Division 1 — Constitution and jurisdiction**

#### **7.        The Agricultural Practices Board of Western Australia**

- (1) There is hereby established a body which, when constituted in accordance with this Act and carrying out the functions conferred by this Act, shall be known as the Agricultural Practices Board of Western Australia.
- (2) The Board shall have a seal of which all courts and persons acting judicially shall take judicial notice.
- (3) Schedule 1 has effect with respect to the constitution and proceedings of the Board and of tribunals of the Board.

#### **8.        Jurisdiction**

- (1) Subject to this Act the Board has jurisdiction with respect to any dispute referred to it that is a dispute to which this Act applies.
- (2) Subject to subsection (3), subsection (5) and subsection (6) and to section 12(7), where any party to proceedings before a court, or a tribunal of any kind other than a tribunal under this Act, alleges that the proceedings relate to a dispute of a kind to which this Act may apply that should first be referred to the Board, the dispute shall not, subject to section 9(3), thereafter be further justiciable at any time by that court or tribunal until —
  - (a) a reference of the dispute has been made to the Board, which may be made by any other party to the dispute should it not be made promptly by the person making that allegation; and
  - (b) a determination under this Act has been made, or subsection (5) has effect, and the proceedings under this Act have been certified by the Registrar as having been concluded,

and any such proceedings shall thereupon be adjourned to a date to be fixed.

- (3) Subsection (2) does not apply to a proceeding that —
- (a) was commenced before the coming into operation of this Act; and
  - (b) remains pending.
- (4) Any question as to whether or not a dispute is a dispute of a kind to which this Act applies, or as to whether or not any circumstances relate to an issue in such a dispute —
- (a) may, in the first instance, be determined by the Board; but
  - (b) where the Board determines that it is —
    - (i) such a dispute; or
    - (ii) an issue in such a dispute,and a party to the dispute nevertheless alleges that the matter is not a dispute relating to an agricultural practice or that on other grounds the Board should not have jurisdiction, the question shall be finally determined by a Judge on a chambers application made by way of originating summons seeking a declaration as to the right of that party under this Act.
- (5) Where in respect of a dispute duly referred to it the Board considers that the issue —
- (a) involves a complex point of law;
  - (b) has been subject to inordinate delay;
  - (c) is one in which the Board has not received the co-operation of the parties to the dispute; or
  - (d) is trivial,

the Board may decline to hear the matter further, and the proceedings shall be deemed to be thereby concluded.

- (6) Where a person who is a party to a dispute referred to the Board is, or has been, served with any document initiating proceedings other than under this Act which relate to an issue in dispute appearing to the Registrar to be the same as or similar to the issue in dispute before the Board, the Registrar may give to that person a certificate in the prescribed form which specifies —
- (a) the parties to the dispute;
  - (b) the date on which the dispute was referred to the Board;
  - (c) the particulars of the dispute, or of the particular issue, alleged;
  - (d) the nature of any proceedings undertaken, and whether or not they are concluded; and
  - (e) any determination made under this Act with respect to the dispute.
- (7) A certificate given under subsection (2) that the proceedings of the Board are concluded or under subsection (6) may be filed, free of charge, in the office of any court or tribunal in which relevant proceedings other than under this Act are initiated.
- (8) Where a certificate given under subsection (6) is filed under subsection (7) —
- (a) the party filing the certificate shall give notice in the prescribed form to the Registrar;
  - (b) effect shall be given to subsection (2) and the proceedings other than under this Act shall be adjourned to a date to be fixed; and
  - (c) the Registrar shall forward to the office of the court or tribunal where the certificate is filed —
    - (i) a copy of any determination made after the date of the certificate by the Board with respect to the dispute specified in the certificate; and
    - (ii) notification, when the proceedings of the Board in respect to the issue concerned are concluded.

- (9) In any proceedings before a court or tribunal in which a certificate given or purporting to be given pursuant to subsection (2) or to subsection (6) is filed, the certificate is admissible evidence of the facts specified therein.

**9. Immunity from judicial supervision**

- (1) Subject to section 8(4), section 12(7) and subsections (2) and (3) —

- (a) no writ of —
  - (i) *mandamus*;
  - (ii) *certiorari*;
  - (iii) prohibition,or other prerogative remedy shall issue; and
- (b) no —
  - (i) relief of like nature to *mandamus*; or
  - (ii) declaratory judgment,shall be given,

in respect of a proceeding taken or to be taken by or before the Board, or in respect of any order made under this Act.

- (2) Subsection (1) does not apply if the court before which the remedy, relief or judgment is sought is satisfied —
- (a) that proceedings under this Act have unduly delayed the progress of other proceedings before a court, or a tribunal not under this Act, for a period in excess of such period as may be prescribed;
  - (b) that proceedings under this Act —
    - (i) are being used, improperly, for the purpose of; or
    - (ii) are, contrary to the public interest,delaying proceedings before a court, or a tribunal not under this Act;

- (c) that there has been or is likely to be, a denial of natural justice to any party to the proceeding, or in respect of any order, under this Act; or
  - (d) that the Board had, or has, no jurisdiction conferred by this Act.
- (3) A court before which proceedings, being proceedings that relate to a dispute of a kind to which this Act may apply, are commenced may grant relief by way of injunction to a party to those proceedings in respect to an issue in that dispute.

**10. Protection**

- (1) No liability attaches to the Chairperson or any other member of the Board or a tribunal, the Registrar, or any other person for any act or omission by or on the part of that person, or by the Board or on the part of the Board, that occurred in good faith and in the performance or discharge, or purported performance or discharge, of the functions of that person or the Board under this Act.
- (2) A party to a dispute or a witness appearing before the Board or a tribunal has the same protection, and is subject to the same liabilities, as a witness in any case tried in the Supreme Court.
- (3) No action or proceeding, civil or criminal, lies against the Crown in right of the State, the Minister, the Chairperson or a member presiding at a tribunal or the Registrar in respect of the publication of a transcript of proceedings of the Board or a tribunal or of a report of a determination made, or the reasons for a determination given, by the Board or a tribunal.

**Division 2 — Functions**

**11. Functions of the Board**

- (1) Subject to this Act, the Board is charged with the duty of giving effect, or causing effect to be given, to the objects of this Act

and for that purpose has all such powers as may be reasonably necessary, expedient or desirable.

- (2) Without prejudice to the generality of subsection (1), the Board is —
- (a) where necessary or desirable, to participate in research into the causes of disputes arising from the carrying out, or the management, of agricultural practices and to assist in the prevention or minimizing of such disputes;
  - (b) to inquire into, and where practicable mediate in, disputes to which this Act applies;
  - (c) to conduct proceedings in respect of any dispute that is not resolved by mediation, or in which mediation can not be used, and to make determinations as to the issues in dispute and the cause of the dispute;
  - (d) to make orders of a kind permitted by this Act in respect to disputes referred to the Board;
  - (e) to publish such information and findings as in the opinion of the Board would further the performance of its functions; and
  - (f) to charge for the provision of any service that it undertakes, or in relation to any proceedings, such fees as are prescribed, or, if not so prescribed, as it determines.
- (3) The Board may at any time, and when so requested by the Minister shall, appoint advisory committees, including persons who are not members of the Board, to assist it in the performance of its functions.

### **Division 3 — Determinations**

#### **12. Determinations**

- (1) Where a determination is made in respect of a dispute referred to the Board —
  - (a) the mediator, if of the opinion that a settlement has been reached which is acceptable to all parties to the dispute; or
  - (b) the member presiding, where the matter is dealt with by a tribunal,may make an order that gives effect to that determination.
- (2) An order made under subsection (1) may —
  - (a) require a party to the dispute —
    - (i) to refrain from carrying on any agricultural practice;
    - (ii) in the carrying out or management of any agricultural practice, to observe the limitations, modifications or conditions specified in the order; or
    - (iii) to do, or not to do, any act specified in the order in so far as the act may relate to the carrying on of any agricultural practice;
  - (b) specify what constitutes a normal farm practice;
  - (c) make provision, subject to clause 9 of Schedule 1, as to the payment of costs; or
  - (d) dismiss the proceedings.
- (3) An order made under subsection (1) may specify that an agricultural practice shall, for the purposes of this Act, be taken to be a normal farm practice, for a period specified in the order not exceeding 2 years, notwithstanding that by reason of an amendment to the written law relating to environmental matters



enacted since the practice was adopted that practice does not at the time of the determination comply with that written law.

- (4) An order made under subsection (1) may direct that what is, by that order, required to be done or not to be done shall be given effect to within a time limited in the order.
- (5) Upon the making of any order, proceedings under this Act may be adjourned to a fixed date or without fixing a date.
- (6) Notwithstanding that a certificate may have been given under section 8(2) that the proceedings have concluded, a tribunal may give leave to the person in whose favour an order operates to renew the reference if the order is not complied with, and upon any written notice requesting renewal the Registrar shall take such steps as are required by Schedule 1 to bring the matter before a tribunal, which may be constituted by persons other than those who constituted the tribunal by which the leave was given, as though the notice had been lodged under clause 6 of Schedule 1.
- (7) Where —
  - (a) proceedings are adjourned under subsection (5); or
  - (b) a tribunal gives leave to renew a reference under subsection (6),

if so ordered by a Judge on a chambers application made by way of originating summons by a person who has instituted proceedings before a court, or before a tribunal of a kind other than a tribunal under this Act, in respect to the issue in dispute seeking a declaration as to the rights of that person as affected by this Act, the matter shall be justiciable whether or not the proceedings under this Act are concluded.

### **13. Orders as to costs**

- (1) An order made under section 12 as to the payment of costs may be made to take effect at a specified time or so as to take effect

upon default made in complying with some other order made by a tribunal.

- (2) The Registrar shall cause a copy of an order that makes provision as to the payment of costs to be given to the person against whom the order is made as soon as is practicable after it is made, if that person is not present or represented at the making of the order.
- (3) Where a determination requires the payment of any costs, the Registrar shall, upon application by a party to the proceedings in which the determination was made or a person claiming through or under such a party, issue a certified copy of the record of that determination.
- (4) A person to whom costs are to be paid under such a determination may enforce it by lodging a certified copy of it, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.
- (5) When lodged, the determination is to be taken to be a judgment of the court and may be enforced accordingly.

*[Section 13 amended by No. 59 of 2004 s. 141.]*

**14. Effect of a determination**

- (1) Except in so far as it provides for payment as to costs, a determination made under this Act is not binding on the parties to the dispute to which the determination relates but shall nevertheless be taken to be declaratory of the public interest.
- (2) In any proceedings before a court, or in relation to any matter falling to be determined by an administrative authority, there shall be a rebuttable presumption —
  - (a) that a normal farm practice which —
    - (i) has been carried out on, or in relation to, the relevant agricultural operation during any of the preceding 3 years;

- (ii) is not carried out in contravention of, or by a method or in a manner which contravenes, any written law except in so far as an order under section 12(3) may specify; and
    - (iii) does not pose a direct threat to public health or safety,
  - does not constitute a public or private nuisance, and is deemed not otherwise to invade or interfere with the use and enjoyment of other land or property, notwithstanding changed conditions in or around the locality of the agricultural operation; and
  - (b) that any such practice should be permitted to continue.
- (3) Notwithstanding that the presumption to which subsection (2) refers is established, a determination made under this Act does not prejudice the operation of, and may be overridden by, the judgment of a court of competent jurisdiction or the decision of an administrative authority.

#### **Division 4 — Staff and administration**

##### **15. Staff**

The Board may, by arrangement made between the Chairperson and the relevant employing authority, within the meaning of the *Public Sector Management Act 1994*, and on such terms and conditions as they agree, make use, either full-time or part-time, of —

- (a) the services of any officer or employee employed in the public service or in a State agency or instrumentality or otherwise in the service of the Crown in the right of the State; or
- (b) any facilities of a department of the public service of the State or of a State agency or instrumentality.

**16.        The Registrar**

- (1) The Minister shall nominate a person whose services are made use of under section 15 to serve as the Registrar and executive officer of the Board.
- (2) The principal function of the Registrar is, subject to the control of the Board, to administer the day to day operations of the Board.
- (3) The Registrar may exercise such of the functions of the Board, or such functions in relation to such matters, as may in writing under the hand of the Chairperson be delegated to the Registrar but shall, if the Board or the Chairperson so directs, refer any matter or thing arising in the exercise of those functions to the Board for its determination.
- (4) Nothing in subsection (3) prevents the Board from exercising a function referred to in that subsection.

**17.        Relationship with Minister**

- (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled —
  - (a) to have information in the possession of the Board; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the Registrar to furnish information to the Minister;
  - (b) request the Chairperson to give the Minister access to information; and
  - (c) for the purposes of paragraph (b), make use of any staff or facilities available to the Board to obtain the information and to furnish it to the Minister.

- (3) The Board shall comply with a request made under subsection (2) and make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) Prior to the submission of the annual report of operations required by the *Financial Management Act 2006*, and at any other time the Minister so requests, the Chairperson shall furnish to the Minister a report on the activities of the Board not previously reported on, in terms of the conduct and consequence of any inquiry, mediation, hearings or other matters relevant to this Act.
- (5) For the purposes of this section —
  - “document”** includes any data that is recorded or stored mechanically, photographically, or electronically and any tape, disc or other device or medium on which it is recorded or stored;
  - “information”** means information specified, or of a description specified, by the Minister that relates to the functions of the Board;
  - “parliamentary purposes”** means the purpose of —
    - (a) answering a question asked in a House of Parliament; or
    - (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

*[Section 17 amended by No. 77 of 2006 s. 17.]*

## **18. Ministerial directions**

- (1) Subject to subsection (2), the Minister may give directions in writing to the Board —
  - (a) as to matters of administration, either generally or with respect to a particular matter; or
  - (b) as to the performance of the functions of the Board, generally,

and the Chairperson shall ensure that effect is given to any such direction.

- (2) The power conferred by subsection (1) does not extend to any direction in respect of the conduct of proceedings relating to any particular —
- (a) person;
  - (b) issue; or
  - (c) matter relating to an issue,
- in respect of any particular dispute.
- (3) The text of any direction given to the Board by the Minister under this Act shall be included in the annual report submitted by the accountable authority of the Board under Part 5 of the *Financial Management Act 2006*.

*[Section 18 amended by No. 77 of 2006 s. 17.]*

## **19. Remuneration and expenses**

- (1) Subject to subsection (2), a member, or a person appointed as a mediator or to a committee of the Board, is to be paid out of the funds of the Board such remuneration and allowances as may be determined by the Minister and agreed with the Minister to whom the administration of the *Public Sector Management Act 1994* is committed.
- (2) A person who is an employee within the meaning of the *Public Sector Management Act 1994* is entitled to be paid from the funds of the Board only such travelling and subsistence allowances as the Minister, after consultation with the Minister to whom the administration of that Act is committed, may from time to time determine.

**20. Funds of the Board**

- (1) The funds available for the purpose of enabling the Board to perform its functions consist of —
  - (a) moneys from time to time appropriated by Parliament; and
  - (b) any other moneys lawfully received by, made available to, or payable to, the Board.
- (2) An account called the Western Australian Agricultural Practices Board Account is to be established —
  - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
  - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

and the cost of the administration of this Act is to be paid from that account.

- (3) There shall be credited to the Account established under subsection (2) all moneys to which subsection (1) refers.

*[Section 20 amended by No. 77 of 2006 s. 17.]*

**21. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Board and its operations.

*[Section 21 amended by No. 77 of 2006 s. 17.]*

*[22. Repealed by No. 77 of 2006 s. 17.]*

*[23. Omitted under the Reprints Act 1984 s. 7(4)(e).]*

**24.        Review of Act**

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement and in the course of that review the Minister shall consider and have regard to —
  - (a) the effectiveness of the operation of the Board;
  - (b) the need for the continuation of the functions of the Board; and
  - (c) such matters, other than those referred to in paragraphs (a) and (b), as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on the review made under subsection (1) and shall, as soon as is practicable after its preparation, cause that report to be laid before each House of Parliament.

**25.        Regulations**

- (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 enabling the Board to exercise the jurisdiction conferred on it or otherwise for giving effect to the purposes of this Act.
- (2) Without derogating from the generality of the power conferred by subsection (1), the regulations may —
  - (a) in relation to the jurisdiction of the Board, provide for sittings of the Board or any tribunal and for security for costs to be given;
  - (b) provide for —
    - (i) the manner of making a referral to the Board;
    - (ii) the forms to be used;
    - (iii) the fees to be paid and their application;
    - (iv) the payment of witness allowances; and



- (v) the amount that may be charged for the provision of transcripts of evidence;
- (c) assign functions to the Registrar and regulate the manner in which they are to be performed;
- (d) prescribe generally as to the practice and procedure of the Board, and the effect to be given to any determination of the Board; and
- (e) subject to any legal costs determination (as defined in the *Legal Practice Act 2003*), prescribe a scale of costs for proceedings before the Board or a tribunal.

*[Section 25 amended by No. 65 of 2003 s. 13(2).]*

## **Schedule 1**

[Section 7]

### **The Board, and its proceedings**

#### **1. Chairperson and Acting Chairperson**

- (1) The Minister shall, in writing, appoint a person to be the Chairperson of the Board.
- (2) The Minister, in appointing a person to be the Chairperson, shall select a person who, in the opinion of the Minister, has relevant experience in the administration or effect of the law relating to agricultural practices.
- (3) The Minister may, in writing, appoint a member to act, at any time when in the opinion of the Minister it may be necessary, in the office of Chairperson of the Board (either in addition to, or where the need arises by reason of the absence or any incapacity of that person in substitution for, the Chairperson appointed under subclause (1)), and when so acting a person has the powers and duties of Chairperson but if additionally appointed shall so act in accordance with any directions that may be given by, and be accountable to, the Chairperson appointed under subclause (1).
- (4) The Chairperson shall preside at any meeting of the Board at which that person is present, but otherwise the members present may appoint one of their number to preside.

#### **2. Members of the Board**

- (1) Other than the Chairperson, the membership of the Board shall consist of 6 persons appointed, in writing, by the Minister, of whom —
  - (a) 2 shall be selected from a panel of names submitted to the Minister by farm lobby organizations, the assistance of which has been sought by the Minister, as persons who have relevant knowledge of agricultural practices;
  - (b) 2 shall be persons who, in the opinion of the Minister, have relevant experience in relation to environmental matters; and

- (c) 2 shall be selected by the Minister as persons to represent the interests of the public, preferably at the local government level.
- (2) The Minister may appoint, in respect of each category of persons appointed under the respective paragraphs of subclause (1), a person to be the deputy of the members in that category.
- (3) In the absence, for any reason, of a member from a meeting of the Board the deputy for a member of that category may attend the meeting and while so attending has all the functions, and authority, of the member.
- (4) Subject to this Act, a member holds office for such period not exceeding 3 years as is specified in the instrument of appointment, and is eligible for reappointment.
- (5) A member may resign office, by writing signed by the member and delivered to the Minister.
- (6) The Minister may terminate the appointment of a member —
  - (a) for mental or physical disability, inefficiency or for misbehaviour; or
  - (b) for other good cause, whether the events or circumstances giving rise to that good cause occurred before, on, or after the date on which the appointment took effect.
- (7) Where the office of a member becomes vacant otherwise than by effluxion of time, the Minister may appoint to the vacant office for the unexpired residue of the term a person who is eligible for appointment to that office.

**3. Public sector employee may be a member or mediator**

- (1) A person who is an employee within the meaning of the *Public Sector Management Act 1994* may be appointed to be a member, to a committee of the Board, or as a mediator.
- (2) The provisions of Part 3 of the *Public Sector Management Act 1994* do not apply to or in respect of —
  - (a) the appointment of a person to the Board;
  - (b) the selection of a person to be a member of a tribunal; or

**cl. 4**

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- (c) a member of a tribunal or a mediator, in that capacity.

**4. Mediation proceedings**

- (1) The Registrar shall refer any dispute for mediation if any of the parties so requests, and may do so even if not so requested.
- (2) The Registrar, in consultation with the Chairperson, is to make arrangements as to who is to be the mediator to deal with a particular dispute referred for mediation, but the mediator is not required to be a person who is a member.
- (3) The primary function of the mediator is to attempt to bring the parties to a dispute to a settlement acceptable to them all.
- (4) A mediator may request a party to the dispute to —
  - (a) attend at a meeting with the mediator;
  - (b) answer questions put by the mediator;
  - (c) produce documents to the mediator, or consent to another person who has relevant documents producing them to the mediator; or
  - (d) attend at any mediation proceedings at which the mediator and any other party to the dispute are to be present.
- (5) During mediation a person may either appear personally or be assisted or represented in the proceedings, with leave of the mediator, by any other person not a legal practitioner.
- (6) A mediator —
  - (a) may, in accordance with natural justice but without regard to the rules of evidence, technicalities, form or precedent, conduct the proceedings at such times and places as are convenient to the parties;
  - (b) shall act according to equity, good conscience and the substantial merits of the case;
  - (c) may seek information in such manner as seems reasonable;
  - (d) may give directions as to the conduct of the proceedings;
  - (e) is not required to keep a record of the conduct of the proceedings, except in so far as may be necessary for the preparation of a report upon those proceedings; and

- (f) shall report the outcome of the proceedings to the Chairperson, and furnish a copy of the order made to the Registrar.
- (7) Where it appears to the mediator —
  - (a) that any dispute is trivial; or
  - (b) that it is impracticable in a particular case to attain an acceptable settlement,

the function of the mediator is to report on the matter to the Chairperson who may, if the mediator so recommends it, make an order dismissing the reference.
- (8) A person who, in connection with a mediation, makes a statement or representation that the person knows to be false or misleading in a material particular commits an offence and is liable to a fine of \$2 000.
- (9) A person who, in connection with a mediation, demands or receives any fee or reward —
  - (a) for assisting, otherwise than as a witness or interpreter; or
  - (b) for representing,

a party to the mediation, commits an offence and is liable to a fine of \$500.

**5. Tribunals of the Board**

- (1) For the purpose of any hearing the Chairperson may constitute a tribunal comprising members who would together be eligible to constitute a quorum of the Board.
- (2) Where the parties to a dispute so agree, the regulations so prescribe, or the Chairperson determines that in the circumstances it is appropriate, matters in which the Board has jurisdiction may be dealt with by a tribunal constituted by the Chairperson, or a member appointed to do so by the Chairperson, sitting alone.
- (3) Where the regulations so prescribe, matters in which the Board has jurisdiction may be dealt with by a tribunal constituted by the Registrar sitting alone but the Registrar may, and if the Chairperson

**cl. 6**

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so directs the Registrar shall, refer a particular matter or thing to the Board or to a tribunal as constituted under subclause (1) or (2).

- (4) Nothing in this clause prevents any matter from being dealt with by the Board, if the Board so requires.
- (5) Where the Chairperson in relation to a particular dispute appoints a member to a tribunal for that dispute the Chairperson shall cause the appointment to be evidenced in writing under the hand of the Registrar.
- (6) Subject to section 12(6) and to clause 12(b), a tribunal shall, at all times throughout the taking of a proceeding, be constituted by the same person or persons.
- (7) A tribunal constituted under this Schedule —
  - (a) has, in relation to the issues before it, all the powers of the Board, unless in any particular case the instrument of appointment constituting that tribunal otherwise provides; and
  - (b) may sit and exercise the jurisdiction of the Board notwithstanding that another such tribunal differently constituted is at the same time sitting and exercising the jurisdiction of the Board in relation to some other dispute.
- (8) If proceedings before the Board are instituted in relation to 2 or more disputes and the same or similar issues are involved the proceedings may by order of the Chairperson be consolidated, if the Chairperson considers that it would not unfairly prejudice any party and it would be otherwise expedient to conduct the proceedings together, and thereupon a tribunal may exercise the jurisdiction conferred in respect of each of those disputes together in the consolidated proceedings, either on the basis of the evidence given at the original hearing of each dispute or by way of a new hearing, in such manner as may be specified in that order.

**6. Procedure for referring a dispute to the Board**

- (1) The reference of a dispute to the Board shall be instituted by lodging with the Registrar —
  - (a) a written notice setting out the parties to the dispute and short particulars of the matters in issue;

- (b) the prescribed fee; and
  - (c) if the Registrar so directs, security for costs.
- (2) On the lodgement with the Registrar of a notice of referral, the Registrar shall —
  - (a) bring the fact of the lodgement and the notice of referral to the attention of the Chairperson, and in accordance with the directions of the Chairperson cause —
    - (i) arrangements to be made for a person to act as mediator, and for mediation proceedings; or
    - (ii) a tribunal to be constituted, either initially or following the unsuccessful outcome of mediation proceedings;
  - (b) fix a time and place for any proceedings before a tribunal to be commenced;
  - (c) give reasonable notice to the parties to the dispute of the time and place of any proceedings to be taken; and
  - (d) serve, on such other persons likely to be affected as the Registrar may determine or the Chairperson may direct, a copy of the notice of referral together with reasonable notice of the time and place fixed for any proceedings,

and any person on whom a copy of the notice of referral is served under paragraph (d) is entitled to be heard at the proceedings and, if that person appears or is represented at the hearing, the person shall be taken to have elected to be a party to the proceedings.

**7. Proceedings before the Board or a tribunal**

- (1) The Board, or a tribunal, shall —
  - (a) conduct its proceedings in accordance with natural justice but without regard to the rules of evidence, technicalities, form or precedent, at such times and places as are necessary to enable it to discharge its functions;
  - (b) observe the principles of equity and good conscience; and
  - (c) act according to the substantial merits of the case.
- (2) The Minister may at any time require the Chairperson to convene a meeting of the Board.

**cl. 7**

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- (3) A quorum for a meeting of the Board comprises —
  - (a) the Chairperson; and
  - (b) 3 other persons, each of whom has been appointed to a different category of membership under the respective paragraphs of clause 2(1) from each of the other persons present.
- (4) At any proceedings of the Board or a tribunal —
  - (a) the member presiding shall determine any question relating to —
    - (i) jurisdiction;
    - (ii) evidence;
    - (iii) law; or
    - (iv) procedure;
  - (b) subject to paragraph (a), any decision shall be determined by a majority vote of the members, but the member presiding shall have a casting vote in addition to a deliberative vote should the votes be otherwise equal; and
  - (c) if the member presiding considers that to be proper, expert or other evidence may be required or admitted.
- (5) For the purpose of any proceedings under this Act the Board may appoint persons to act as —
  - (a) counsel; or
  - (b) expert or technical advisers,to assist the Board.
- (6) A party to proceedings before the Board or a tribunal may be represented by a legal practitioner if —
  - (a) all parties to the dispute agree; or
  - (b) the member presiding —
    - (i) is of the opinion that a question of law is likely to be raised, or argued, at the proceedings; and
    - (ii) allows legal practitioners to appear and be heard.



- (7) The Board, or a tribunal, may —
- (a) by summons signed by the Registrar, require —
    - (i) any person to attend before it;
    - (ii) the production before it of any document;
  - (b) inspect any document produced, and retain the document for such reasonable period as may be required, and make copies of the document or any of the contents;
  - (c) require any person to swear to truly answer all questions relating to a matter before it that are put to the person (and for that purpose the Registrar or member presiding may administer any oath or affirmation required); and
  - (d) require any person attending before it (whether or not the person has been summoned to attend) to answer any relevant question.
- (8) A person is not excused from complying with a requirement under subclause (7) to swear, or to answer any question, on the ground that the answer to the question might be incriminating or render the person liable to a penalty, but an answer given by the person is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under this Act arising out of the false or misleading nature of that answer.
- (9) The Board or tribunal —
- (a) is to make a full and thorough investigation, without regard to requirements that might have been appropriate in legal proceedings;
  - (b) may inform itself on any matter in such manner as it thinks fit, and admit any evidence considered by the person presiding to be relevant notwithstanding that the evidence would not be admissible in a court of law; and
  - (c) may take into account any matter relating to an agricultural practice that is within the knowledge or experience of a member or which has arisen in or as a result of other proceedings before the Board or a tribunal,
- and may hear evidence *in camera*.

**cl. 8**

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- (10) The Board or a tribunal shall afford to a person who is entitled to be heard at any proceedings relating to a matter referred under this Act a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions.
- (11) The member presiding may direct that any evidence given before the Board or a tribunal, or the contents of any documents or a report as to the nature of any exhibit or other thing there produced, shall not be published.
- (12) The Board or a tribunal may make such order as may be appropriate in respect of any determination made.
- (13) If a party to a dispute who has been required to attend before the Board or a tribunal does not do so, the absence of the person does not preclude the making of any order that could be made if the person had attended.
- (14) The Board, and any tribunal, shall cause an accurate record to be kept of its proceedings.
- (15) The member presiding shall, in every case, cause to be forwarded to the Minister a copy of any determination made, and shall if so requested also cause to be forwarded notes as to the evidence given, and any member who dissents from a determination may likewise forward written reasons for so dissenting.
- (16) In relation to matters other than proceedings in respect of a dispute, a meeting or a part of a meeting of the Board or a committee of the Board may be held by telephone or a method of communication approved by the Chairperson for the purposes of that meeting, and any person who takes part in a meeting so held is deemed to have been present at the meeting notwithstanding that they were not all present in person at the same place at the time when the meeting was so held.

*[Clause 7 amended by No. 24 of 2005 s. 63.]*

**8. Offences relating to proceedings of the Board or a tribunal**

- (1) A person who —
  - (a) having been served with a summons to attend before the Board or a tribunal, fails without reasonable excuse (proof of

which lies upon that person) to attend in obedience to the summons;

- (b) having been served with a summons to produce before the Board or a tribunal any document, fails without reasonable excuse (proof of which lies upon that person) to comply with the summons;
- (c) misbehaves before the Board or a tribunal, wilfully insults the Board or a tribunal, or interrupts the proceedings;
- (d) fails without reasonable excuse (proof of which lies upon that person) to swear, or to answer any question, when required to do so by the Board or a tribunal; or
- (e) in connection with an issue in dispute, makes a statement or representation that the person knows to be false or misleading in a material particular,

commits an offence and is liable to a fine of \$2 000.

- (2) A person who, not being a certificated practitioner (within the meaning of the *Legal Practice Act 2003*), demands or receives any fee or reward for representing a party to a dispute before a tribunal commits an offence.

Penalty: \$500.

*[Clause 8 amended by No. 65 of 2003 s. 13(3).]*

## **9. Costs**

- (1) Each party to a dispute referred to the Board under this Act bears their own costs, subject to subclause (2) and to clause 11(3)(a).
- (2) An order for the payment of costs may be imposed where the member presiding is satisfied that the referral, or the aspect of the dispute to which the order relates, was vexatious or frivolous.
- (3) Upon a determination in respect of a referral any security for costs lodged under clause 6(1)(c) shall be refunded, unless an order is imposed that —
  - (a) the whole or part of the moneys be forfeited, where subclause (2) applies; or

**cl. 10**

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- (b) payment of costs be made from those moneys to any other party to the proceedings, where clause 11(3)(a) applies.

**10. Reasons for determinations**

Where, within 14 days after the Board or a tribunal has given notice of its determination in relation to any referral, a party to the proceedings requests the Registrar to furnish reasons in writing for the determination the Registrar shall comply with the request of that party and set out in writing the reasons for the determination.

**11. Withdrawal of referrals**

- (1) An application for leave to withdraw a referral shall be made in writing and lodged with the Registrar.
- (2) A referral duly made shall not be withdrawn without the leave of the Registrar, after consultation by the Registrar with the Chairperson and the member presiding at any tribunal constituted for that dispute.
- (3) In granting leave to withdraw a referral conditions may be imposed —
  - (a) as to costs; and
  - (b) otherwise,

as the Chairperson or member presiding may direct the Registrar.

**12. Validity of proceedings, etc.**

No act or proceeding of the Board or a tribunal, or of any person acting pursuant to any direction of the Board, is invalidated or prejudiced by reason only —

- (a) that as at the time the Board or that tribunal was constituted there was a defect in the appointment of any member; or
- (b) that after the Board or that tribunal was constituted a vacancy occurred in the membership of the Board or of that tribunal,

and effect shall be given to any such act or proceeding as if the Board or that tribunal had been properly constituted.

**13.      Presumptions**

In any proceedings before or in relation to the Board or a tribunal, unless evidence is given to the contrary, no proof shall be required of —

- (a)    the constitution of the Board or that tribunal;
- (b)    any resolution or determination of the Board or that tribunal;  
         or
- (c)    the appointment of any member of the Board or that tribunal.

**14.      Evidentiary provisions**

In all courts and before all persons and bodies authorised to receive evidence —

- (a)    a document purporting to record a determination made by the Board or a tribunal and purporting to be certified by the Registrar to be such a record, or a copy of it, shall be admitted as a true copy of the record of that determination; and
- (b)    judicial notice may be taken of the signature of the Registrar on such a document, and of the appointment of a particular person to the office of Registrar.

## Notes

- <sup>1</sup> This is a compilation of the *Agricultural Practices (Disputes) Act 1995* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Agricultural Practices (Disputes) Act 1995</i>	26 of 1995	6 Sep 1995	26 Jun 1996 (see s. 2 and <i>Gazette</i> 25 Jun 1996 p. 2901)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 13	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> s. 63	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2(1) and <i>Gazette</i> 23 Dec 2005 p. 6244)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<b>Reprint 1: The <i>Agricultural Practices (Disputes) Act 1995</i> as at 11 Aug 2006</b> (includes amendments listed above)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)

<sup>1a</sup> [On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.](#)

### Provisions that have not come into operation

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
<a href="#">Legal Profession Act 2008</a>	<a href="#">21 of 2008</a>	<a href="#">27 May 2008</a>	<a href="#">To be proclaimed (see s. 2(b))</a>

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s. 639<sup>3</sup>

<sup>2</sup> Under the *Alteration of Statutory Designations Order 2004* a reference in a written law to the Department of Environmental Protection is, unless the contrary is intended, to be read and construed as a reference to the Department of Environment.

Under the *Public Sector Management Act 1994* the names of departments may be changed. At the time of this compilation the former Department of Environment is called the Department of Environment and Conservation.

<sup>3</sup> On the date as at which this compilation was prepared, the *Legal Profession Act 2008* s. 639 had not come into operation. It reads as follows:

“  
—

**639. *Agricultural Practices (Disputes) Act 1995* amended**

(1) The amendments in this section are to the *Agricultural Practices (Disputes) Act 1995*.

(2) Section 3 is amended by inserting in the appropriate alphabetical position —

“  
—

***legal practitioner*** means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

”  
—

(3) Section 25(2)(e) is amended by deleting “legal costs determination (as defined in the *Legal Practice Act 2003*)” and inserting instead —

“  
—

costs determination (as defined in the *Legal Profession Act 2008* section 252)

”  
—

(4) Schedule 1 clause 8(2) is amended by deleting “a certificated legal practitioner (within the meaning of the *Legal Practice Act 2003*)” and inserting instead —

“ a legal practitioner ”.

”  
—