

MARKETING OF APPLES AND PEARS.

13° Geo. VI., No. CXXXI.

No. 45 of 1949.

**AN ACT relating to the Marketing, Sale and Disposal
of certain Apples and Pears.**

[Assented to 26th October, 1949.]

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

1. (1) This Act may be cited as the *Marketing of
Apples and Pears Act, 1949.*

Short title
and com-
mencement

(2) The provisions of this section and of sections three
and four of this Act shall come into operation on the
day whereon this Act is assented to by the Governor.
The remaining provisions of this Act shall come into
operation on the first day of January, 1950:

Provided that if, on or before the thirty-first day of
December, 1949, the agreement referred to in section
four of this Act has not been entered into, a proclamation
to that effect shall be made on or before that last
mentioned date, and thereupon the remaining provisions
of this Act shall have no force or effect.

2. This Act shall be read and construed subject to the
Commonwealth of Australia Constitution Act and so as
not to exceed the legislative powers of the State, to the
intent that where any provision of this Act would, but
for this section, be construed as being in excess of those
powers, it shall nevertheless be deemed to be validly
enacted to the extent to which it is not in excess of those
powers.

Construction.

Interpreta-
tion.

3. In this Act, subject to the context—

“agent” means a person appointed by the Commonwealth Board to receive and deal with apples and pears for the purposes of this Act;

“grower” means the owner, lessee or occupier of an orchard of which not less than one acre is wholly or principally used for the growing of apples or pears or of apples and pears;

“registered grower” means a grower or other person registered under this Act;

“the Commonwealth Board” means the Australian Apple and Pear Marketing Board for the time being constituted under the National Security (Apple and Pear Acquisition) Regulations of the Commonwealth;

“the Commonwealth Regulations” means the National Security (Apple and Pear Acquisition) Regulations of the Commonwealth for the time being in force;

“the Minister” means the Minister of the Crown for the time being charged with the administration of this Act;

“the State Board” means the Western Australian Apple and Pear Marketing Board constituted under this Act.

Agreement
with the Com-
monwealth.

4. (1) The Governor may enter into an agreement with the Governor-General in Council of the Commonwealth for the appointment of the Commonwealth Board as the agent of the State Board to exercise and perform such of the powers, functions, discretions, authorities, duties and obligations of the State Board under this Act as are specified in the agreement, in accordance with and subject to this Act and to the Commonwealth Regulations insofar as such Regulations are applicable.

(2) The agreement may include provisions for all or any matters which may be deemed to be necessary or expedient for or in relation to the matters referred to in subsection (1) of this section and for the more effectual exercise and discharge by officers and authorities of the Commonwealth of any powers, discretions and authorities in relation thereto. Any such agreement shall be valid and effectual for all purposes.

(3) Upon the making of the agreement aforesaid, the Commonwealth Board shall be and is hereby empowered to exercise such of the powers, functions, discretions and authorities of the State Board under this Act as are specified in the agreement.

(4) The agreement may be varied or added to by mutual agreement between the Governor and the Governor-General in Council of the Commonwealth.

(5) Any act or thing done, and any notice or requirement given or made by or on behalf of the Commonwealth Board in exercise or in purported exercise of any power, discretion or authority as the agent or delegate of the State Board under or pursuant to this Act shall be deemed to have been so done, given or made, as the case may be, with the lawful authority of the State Board without any proof of such authority.

5. (1) For the purposes of this Act, a Board to be known as the Western Australian Apple and Pear Marketing Board shall be constituted by the Governor.

Constitution
of State
Board.

(2) The State Board shall consist of the members for the time being of the State Committee constituted for the State of Western Australia under the Commonwealth Regulations, or, if such State Committee shall cease to exist as such, then the same or such other persons as the Governor may appoint.

(3) The State Board shall be a body corporate with perpetual succession and a common seal, and may sue or be sued and acquire and hold real and personal property under the name of the Western Australian Apple and Pear Marketing Board.

(4) The Chairman and Deputy Chairman for the time being of the State Committee constituted for the State of Western Australia under the Commonwealth Regulations, or such other members as the Minister may appoint, shall respectively be the Chairman and Deputy Chairman of the State Board.

State Board
not to
represent
the Crown.

6. The State Board shall not, except in relation to any matter in which the State Board is specially authorised by the Governor to act on behalf of the Crown, be the agent or servant or the representative of the Crown.

Remuneration
of members
of the State
Board.

7. (1) The members of the State Board shall be entitled to be paid such remuneration as is approved by the Governor, and such expenses as are approved by the Minister.

(2) Subject to the agreement aforesaid with the Commonwealth, such remuneration and expenses shall be paid out of funds for the time being in the hands of the State Board or made available to the State Board by or at the request of the Treasurer.

Protection
of members.

8. A member of the State Board shall not be personally liable for any act done in good faith by the State Board, or by the member acting as such.

Meetings of
the State
Board.

9. (1) The State Board shall meet at such times and places as the Board or its Chairman determines.

(2) At any meeting of the State Board, a majority of members thereof shall constitute a quorum.

(3) At any meeting of the State Board, the person presiding shall have a deliberative vote only.

(4) All questions before the State Board shall be decided by a majority of votes.

(5) The State Board shall regulate its own procedure and shall keep a record of its proceedings.

(6) The State Board may co-opt any person to attend a meeting of the State Board. Any person so co-opted shall act in an advisory capacity only, but shall be entitled to receive and be paid such fees and expenses in respect of his attendance as the Minister thinks fit.

Officers of
the State
Board.

10. (1) The State Board may appoint such officers as the Minister may approve.

(2) Officers so appointed shall hold office during the pleasure of the Minister and shall not be subject to the provisions of the Public Service Act, 1904-1948.

(3) Subject to the agreement aforesaid with the Commonwealth, officers so appointed shall be remunerated out of funds for the time being in the hands of the State Board or made available to the State Board by or at the request of the Treasurer.

11. The State Board may, for facilitating the operation or purposes of this Act, but subject to the agreement aforesaid with the Commonwealth, do all or any of the following:—

General powers of the State Board.

- (a) Purchase or sell any property.
- (b) Enter into any contract.
- (c) Borrow money and mortgage or charge any of its property.
- (d) Make any advances of money or other property to the Commonwealth Board or to any grower, registered grower, agent or other person.
- (e) Delegate any of its functions or powers, and revoke any such delegation.
- (f) Establish or maintain premises for receiving, handling, storing or dealing with apples or pears.
- (g) Undertake transport and carrying services.
- (h) Market or assist in the marketing of apples and pears acquired under this Act.
- (i) Do all other acts, matters and things which may be necessary or convenient to be done by the State Board for furthering the objects or purposes of this Act, or for giving effect to the agreement referred to in section four of this Act.

12. (1) Subject to this section, any person who grows any apples or pears may, and every grower shall within one month from the commencement of this section, make

Growers to register.

application to the State Board to be registered as a grower, and the State Board shall register that person or grower accordingly:

Provided that no person who, at the date of the commencement of this section, is a registered grower within the meaning of the Marketing of Apples and Pears Act, 1948, or of the Commonwealth Regulations in force at the date of such commencement shall be required to make the application aforesaid, and every such person shall be deemed to be a registered grower for the purposes of this Act.

(2) Every person who becomes a grower after the date of the commencement of this section, but before the thirtieth day of June, 1950, shall make application to the State Board to be registered as a grower within one month of his becoming a grower.

Acquisition
of certain
apples and
pears.

13. (1) Subject to this section, all apples and pears which are grown in the State of Western Australia by a person who is a registered grower or a grower and which are harvested on or after the first day of January, 1950, and before the first day of October, 1950, shall, upon being harvested, or having matured, upon being deemed by the Commonwealth Board to be harvested, by force of this Act, be acquired by the State Board.

(2) Any apples or pears, whether or not acquired under this Act and whether or not sold, removed, or otherwise dealt with by any Board or person, may be acquired or re-acquired by the State Board by the service on the owner or other person for the time being in possession or control of the apples or pears, as the case may be, of a notice signed by a member or officer of the State Board claiming and specifying the apples and pears; and upon such service the apples or pears the subject of the notice shall be deemed to have been acquired by the State Board under and for the purposes of this Act.

(3) The State Board may, by notice published in the *Gazette*, exempt any apples or pears from the operation of this section, subject to such conditions, if any, as may be stipulated in the notice.

14. All apples and pears acquired by the State Board under this Act shall thereupon by force of this Act vest in and become the absolute property of the State Board, freed and discharged from all mortgages, charges, liens, pledges, interests, trusts, contracts and encumbrances affecting them; and the rights and interests of every person to or in the apples or pears (including any rights or interests arising in respect of any moneys advanced in respect of those apples or pears) shall thereupon be converted into a claim for compensation therefor in accordance with the provisions of this Act.

Effect of acquisition by State Board. Compensation.

15. (1) For the purposes of this Act, all agents, growers and other persons affected or purporting to be affected by this Act or by the Commonwealth Regulations, or by any act or thing done by or on behalf of the State Board or the Commonwealth Board thereunder, shall comply with and observe the same.

Commonwealth Regulations to be observed.

(2) Any agent, grower, or other person who, by act or omission, fails to comply with and observe any of the provisions of this Act or of the Commonwealth Regulations or any act or thing done by or on behalf of the State Board or the Commonwealth Board thereunder, shall commit or be deemed to commit an offence against this Act, and be punishable accordingly: Provided, however, that a person already convicted of an offence under a Commonwealth law shall not, in respect of the act or omission constituting that offence, be liable to punishment under this Act.

16. (1) The Commonwealth Board, acting on behalf of the State Board, may itself or by any of its officers, require any grower or other person to furnish such returns or information relating to apples or pears as the Commonwealth Board on behalf of the State Board may require, and to produce all books, documents and other papers in his custody or under his control relating thereto.

Inspection of stocks. books, etc.

(2) No person shall—

- (a) refuse or fail to comply with any requirement made under the last preceding subsection; or
- (b) with intent to evade any of the provisions of this Act, destroy, mutilate, deface, secrete, alter or remove any book, document or other paper.

Records and
books of
account to
be kept.

17. (1) Every agent and every other person into whose possession, custody or control any apples or pears the property of the State Board passes shall keep and maintain proper records and books of account in relation to the receipt and disposal of those apples and pears.

(2) Every person required by the last preceding subsection to keep proper records and books of account shall preserve those records and books of account for a period of one year after the date of the transaction to which the records or books of account relate.

Delivery.

18. Any person having in his possession, control or disposal any apples or pears acquired under this Act shall, on receipt of notice from the State Board or from any person authorised by it, or from the Commonwealth Board or any of its members or officers or from any person authorised by it or them requiring him to deliver and consign those apples or pears to an agent, packing shed, cool store or any other person or place specified in the notice, deliver or consign, as the case may be, those apples or pears, packed or delivered in the manner specified in the notice, to the agent, packing shed, cool store or other person or place within the time and in the manner specified in the notice and shall in so delivering supply, in such form as may be required, all particulars thereof.

No person to
deliver apples
and pears
except as
provided.

19. Except as provided by this Act, or except with the consent of the State Board, no person shall—

- (a) part with the possession or custody of, or move, any apples or pears the property of the State Board under this Act which are held in his possession or custody;
- (b) take into his possession or custody any apples or pears which are the property of the State Board; or
- (c) sell, purport to sell or offer for sale, or buy, purport to buy or offer to buy any apples or pears which are the property of the State Board.

20. (1) Upon the due delivery or consignment of any apples or pears to the State Board in accordance with the provisions of this Act and notices and requirements given or made thereunder, or upon the acquisition of any apples or pears in accordance with section thirteen of this Act, every person having any right or interest in those apples or pears may forward to the State Board a written claim for compensation in such form as may be required, and shall be entitled to be paid such amount of compensation as the State Board determines. No other person shall be entitled to compensation under this Act in respect of apples or pears acquired under this Act, and no person shall be entitled to compensation in respect of any acquisition, delivery or consignment as aforesaid otherwise than in accordance with the provisions of this section.

Compensation.

(2) It shall not be obligatory upon the State Board to recognise any assignment of any amount of compensation payable under this section, and any payment made by the State Board in respect of compensation to the person in respect of whose right or interest in the apples or pears the claim for compensation shall be deemed by the State Board to have arisen shall be a good and sufficient discharge of any liability of the State or of the State Board in respect of that claim.

21. (1) Every contract relating to the sale of any apples or pears acquired under this Act entered into before the acquisition of those apples or pears shall be and be deemed void and of no effect in so far as that contract has not been completed by delivery.

Contracts for sale of apples and pears.

Provided that apples and pears the subject of inter-State trade or commerce, and so much of any contract as solely relates thereto, shall not be affected by this section.

(2) Any transaction or contract with respect to any apples or pears the subject of any contract or part of a contract affected by this section shall also be void and of no effect, and any money paid in respect of any such contract or of any such transaction shall be repaid.

22. Any person having any apples or pears the property of the State Board in his possession or under his care shall exercise proper care and take all proper and

Care of apples and pears acquired.

reasonable precautions to preserve and safeguard those apples and pears and to keep them free from any damage or deterioration.

Finance.

23. (1) The Treasurer may make any advance, or may arrange with the Commonwealth Bank of Australia for the making by that Bank of any advance to the State Board or to the Commonwealth Board for its or their use in giving effect to or facilitating the objects or purposes of this Act and may, on behalf of the State, guarantee to that Bank the repayment, out of moneys appropriated by the Parliament of Western Australia or by the Commonwealth, of any advance made by the Bank in pursuance of any such arrangement.

(2) In respect of any such advances made to the State Board, the State Board may make the whole or any part of such advances available to the Commonwealth Board for its use for the purposes of this Act.

(3) For the purposes of this Act, the State Board may arrange with the Commonwealth Board for the making by the Commonwealth Board of any payments on behalf of the State Board.

Advances.

24. (1) The State Board may pay or arrange for payment to any grower or to any person deemed by the State Board to have any right or interest in the crop of any grower, in respect of any apples or pears which have been acquired under this Act the amount of compensation due to him as provided by section twenty of this Act, and, pending such payment, may pay or arrange for the payment to him of advances or progress or other payments on account or in respect of such compensation.

(2) Any such payments of compensation or of advances or progress or other payments in respect of such compensation shall, if paid to such person by the Commonwealth Board, be treated for the purposes of this Act as if so paid to such person by the State Board.

(3) Where any such advances or progress or other payments on account of compensation, whether made by the State Board or the Commonwealth Board, or by both Boards, exceeds the amount of the compensation payable to such person under this Act, the amount of the difference shall be recoverable by the State Board as a debt.

25. Any person who furnishes any returns or gives any information required by or under this Act to be furnished or given which is false in any particular shall be guilty of an offence against this Act. False returns.

26. (1) Any person who contravenes or fails to comply with any provisions of this Act, or of regulations under this Act, shall be guilty of an offence against this Act. Offences.

(2) Any person guilty of an offence against this Act shall be liable to a fine not exceeding one hundred pounds.

(3) Proceedings for offences against this Act shall be heard and determined summarily.

27. (1) Any proceedings, whether civil or penal, may be taken in the name of the State Board by its secretary. Legal proceedings.

(2) In any prosecution under this Act—

(a) the averment of the prosecution that, at the date of the commission of the alleged offence, any apples or pears had been acquired under this Act shall be *prima facie* evidence of the fact; and

(b) evidence that, on any particular date, a grower was not a registered grower shall be evidence that the grower had not, prior to that date, made application under the Marketing of Apples and Pears Act, 1948, under the Commonwealth Regulations or under this Act to be registered as a grower.

28. The Governor may make regulations under this Act for prescribing all such matters as may be necessary or convenient for giving effect to, achieving or facilitating the objects of this Act, or for giving effect to the agreement referred to in section four of this Act. Regulations.

29. Upon the completion of all matters and things arising under the agreement referred to in section four of this Act, the Governor shall make a proclamation to that effect and upon the publication in the *Gazette* of such proclamation, this Act shall cease to have any further force or effect. Duration of Act.