

DRIED FRUITS.

17° GEO. V., No. XLIX.

No. 49 of 1926.

AN ACT to make provision for the Marketing of Dried Fruits, and for other purposes.

[Assented to 24th December, 1926.]

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

Preliminary.

1. This Act may be cited as the *Dried Fruits Act, 1926.* Short title.
2. This Act shall come into operation on a day to be fixed by proclamation.* Commencement.
3. In this Act, unless inconsistent with the context or subject matter— Interpretation.

S.A., No. 1657, s. 3,
No. 1702, s. 3.
Vic. No. 3380, s. 3.

“Board” means the Dried Fruits Board constituted by this Act;

“Dealer” means any person not being a grower within the meaning of this Act who sells in any one year, whether on his own behalf or as agent for some other person, more than two tons of dried fruits, but does not include a shopkeeper who sells only such dried fruits as he buys from registered dealers;

* 1st January, 1927; see *Gazette* 24th December, 1926.

- “Dried fruits” means dried grapes and such other dried fruits as are declared by proclamation to be dried fruits for the purposes of this Act;
- “Export parity price” of any dried fruits means the selling price for the time being in London of the like Australian dried fruits, less cost of freight, insurance, exchange, duties, and all other charges;
- “Grower” means any person who produces dried fruits for sale or barter;
- “Minister” means the Minister for Agriculture.
- “Package” includes every sack, bag, barrel, case, box, carton, or other container;
- “Packing shed” means any building, erection, or other place whatsoever in which dried fruits are stemmed, processed, graded, sorted, or packed for the purposes of sale, whether such building, erection, or other place is or is not used for any other purpose;
- “Public notice” means notice published in the *Gazette* and in a newspaper published in Perth.

Dried Fruits Board.

Dried Fruits Board.
S.A., No. 1657, s. 4.

4. A Board to be called the “Dried Fruits Board” is hereby constituted.

Constitution of
Board.
See *Ibid.*, s. 5.

5. (1.) The Board shall consist of five members, who shall be appointed by the Governor. Each member shall be a representative of the growers.

(2.) The Governor may appoint one of the members to be chairman of the Board, and another member to be deputy chairman of the Board.

(3.) Notice of every appointment of a member of the Board, or of a member to be chairman or deputy chairman of the Board, shall be published in the *Gazette*.

Terms of office of
members.
Ibid., s. 6.

6. The members of the Board shall not hold office for a longer period than two years without re-appointment.

First representative
members.
Ibid., s. 7.

7. The first representatives of the growers to be appointed as members of the Board shall be nominated by the Minister after consultation with representatives of any association or associations of growers; and such members shall retire on the thirty-first day of December, nineteen hundred and twenty-seven, but shall be eligible for re-appointment.

8. The persons to be appointed as the members of the Board after the thirty-first day of December, nineteen hundred and twenty-seven, shall be elected by the growers as hereinafter provided.

Members to be elected after 31st December, 1927.

Ibid., s. 8.

9. (1.) The elections shall take place at the time and in manner prescribed.

Elections.

Ibid., s. 12.

(2.) Every grower of dried fruits who is for the time being registered with the Board shall, at every election, be entitled to one vote for each candidate required to be elected.

10. Any three members of the Board shall form a quorum thereof.

Quorum.

Ibid., s. 13.

11. (1.) At all meetings of the Board the chairman shall preside, if present; and in his absence the deputy chairman shall preside. The chairman or deputy chairman presiding shall have a casting as well as a deliberative vote.

Majority decision to be sufficient.

Ibid., s. 14.

(2.) Whenever the members are not unanimous as to any matter, such matter shall be decided by the majority of votes, and the decision so arrived at shall be the decision of the Board.

12. No act or proceeding of the Board shall be invalid or be prejudiced by reason only of the fact that at the time when such act or proceeding is done, taken, or commenced there is a vacancy in the office of any member.

Acts of Board not invalidated by vacancy.

Ibid., s. 15.

13. In case of illness or other incapacity, or absence from the State, of any member of the Board, or of a vacancy in the office of any member, the Governor may appoint some person to be a deputy member of the Board during such illness, incapacity, or absence, or until such vacancy is filled.

Deputy member.

Ibid., s. 16.

Officers.

14. (1.) The Board may appoint a secretary to the Board, and any other officers whom it considers necessary to enable it to carry out its duties and functions.

Secretary, inspectors, and other officers.

Ibid., s. 17.

(2.) The Board may also appoint such inspectors and other officers as it considers necessary for the purposes of this Act; and may authorise other persons to do such acts

and things as it considers necessary for carrying out the purposes of this Act.

(3.) Any person who in any way resists, interferes with, hinders, or obstructs any inspector or other officer or person in the exercise or discharge of any power or duty under this Act shall be liable to a penalty not exceeding one hundred pounds or to be imprisoned for any term not exceeding six months.

Contribution by
growers to
expenditure.

See *ibid.*, s. 18, and
Vic. No. 3418, s. 3.

15. (1.) Every grower shall, in every year, contribute towards the expenditure to be incurred by the Board in the administration of this Act, and in carrying out their duties and functions, such sum as is determined by the Board in accordance with the regulations; and such contribution shall be paid by the grower to the Board at the times, in the instalments, and in the manner prescribed:

Provided that no grower shall be required to contribute in any year an amount exceeding the rate of one-sixteenth of a penny per pound on the quantity of dried fruit produced by him during the last preceding year, or in the case of a new grower on the quantity of dried fruit estimated to be produced by him during the current year.

(2.) If any such sum or any instalment thereof is not paid as and when the same becomes payable, the amount thereof may be recovered as a debt due to the Board by action in any court of competent jurisdiction.

General powers of
the Board.

Ibid., s. 19.

16. The Board shall have power in its absolute discretion from time to time—

- (a) to make contracts with any person in respect to the purchase or sale of dried fruits produced in Australia;
- (b) to enter into contracts with Boards appointed under legislation in force in other States with objects similar to those of this Act for concerted action in the marketing of dried fruits produced in Australia and for purposes incidental thereto, and to carry out such contracts;
- (c) to open shops or depots for the sale of dried fruits, either wholesale or by retail;

- (d) to provide depots for the storage or distribution of dried fruits;
- (e) to fix the remuneration to be paid to dealers for the sale or distribution of dried fruits; and
- (f) by means of advertising or any other appropriate means, to encourage the consumption of dried fruits, and create a greater demand therefor.

17. (1.) The Board shall also have power, in its absolute discretion, from time to time to determine where and in what respective quantities the output of dried fruits produced in any particular year is to be marketed, and to take whatever action the Board thinks proper for the purpose of enforcing such determination.

Board may give directions as to disposal of any season's dried fruits crop.

Ibid., s. 20. 1

(2.) Notice of every such determination shall be given—

- (a) by public notice; or
- (b) by sending by post to each grower or dealer affected or likely to be affected by the determination, at his address as registered with the Board, a letter containing particulars of the determination.

Registration of Growers, Dealers, and Packing Sheds.

18. (1.) Every person who is, at the time of the commencement of this Act, a grower within the meaning of that term as defined in this Act, or who, after the commencement of this Act, engages in the business of a grower, shall, within one month from the notification in the *Gazette* of the appointment of the first members of the Board, or within one month from the time when he commences to engage in the business of a grower, whichever is later, register with the Board by furnishing to the Board the following particulars, which shall be verified by a statutory declaration, namely:—

Growers to register with the Board, and to furnish certain particulars.

S.A., No. 1657, s. 21.
No. 1702, s. 5.

- (a) His full name and address;
- (b) The situation of his land, and a description of it sufficient to enable it to be identified;
- (c) The quantity of dried fruits produced by him in Western Australia in the year one thousand nine hundred and twenty-six;

(d) The estimated quantity of dried fruits he expects to produce in the year one thousand nine hundred and twenty-seven, or the then current year; and

(e) Any other particulars prescribed.

(2.) Every such person shall, so long as he continues to be engaged in the business of producing dried fruits, furnish to the Board, at such times as the Board by public notice requires, such particulars as are prescribed with respect to the dried fruits produced or likely to be produced by him during any particular year.

Dealers to register with Board, and furnish certain particulars.

S.A., No. 1657,
s. 23.

19. Every person who in the year one thousand nine hundred and twenty-six sold, whether on his own behalf or as agent for some other person, more than two tons of dried fruits not produced by him from fruit grown by him, and who at the commencement of this Act is still engaged in the business of a dealer in dried fruits, shall, within one month from the notification in the *Gazette* of the appointment of the first members of the Board, register with the Board by furnishing to the Board the following particulars, which shall be verified by statutory declaration, namely:—

(a) His full name and address and, if he carries on business under a registered firm name, that firm name;

(b) The place where he carries on his business;

(c) The quantity of dried fruits sold by him in Western Australia, whether on his own behalf or as agent for some other person, in the years one thousand nine hundred and twenty-five and one thousand nine hundred and twenty-six;

(d) The estimated quantity of dried fruits he expects to sell as aforesaid in the year one thousand nine hundred and twenty-seven; and

(e) Any other particulars prescribed.

New dealers to register on commencement of business and furnish certain particulars.

Ibid., s. 24.

20. Every person who, after the commencement of this Act, engages in the business of a dealer in dried fruits shall, within one month of his commencing to engage in such business, register with the Board by furnishing to the Board the following particulars, which shall be verified by statutory declaration, namely:—

(a) His full name and address and, if he carries on business under a registered firm name, that firm name;

- (b) The place where he carries on his business;
- (c) The estimated quantity of dried fruits he expects to sell in the course of his business as such dealer in the then current year; and
- (d) Any other particulars prescribed.

21. (1.) The Board may at any time, by notice in writing given to any registered dealer, require him to furnish to the Board any particulars with respect to the dried fruits sold or likely to be sold by him whether on his own behalf or as agent for some other person, in any particular year, and may, by notice in writing given as aforesaid, give to any dealer such directions with respect to such dried fruits as the Board thinks proper, in order to ensure the observance of any determination for the time being in force.

Duty of dealers to furnish returns and obey directions of Board.

S.A., No. 1702, s. 7.

(2.) The Board may at any time, by notice in writing given to the owner, occupier, or person in charge of any registered packing shed, require such owner, occupier, or person to furnish to the Board within the time mentioned in the notice any particulars with respect to the dried fruits which are at the time or have previously been or are likely to be in such packing shed for the purpose of being stemmed, processed, graded, sorted, or packed, and may, by notice in writing given as aforesaid, give to any such owner, occupier, or person such direction as the Board thinks proper in order to ensure the observance of any determination for the time being in force.

(3.) Any person who fails to comply with any requirement or direction of the Board under this section shall be liable to a penalty not exceeding five hundred pounds.

(4.) Any notice required to be given to any person for the purposes of this section may be served personally or sent by post addressed to such person at his usual or last known place of abode: Provided that a notice sent by post to the owner, occupier, or person in charge of a packing shed may be addressed to such owner, occupier, or person at the packing shed.

22. (1.) Every packing shed shall be registered with the Board by the occupier thereof.

Registration of fruit packing sheds.

S.A., No. 1657,
s. 25.

Vic., No. 3380,
s. 15.

(2.) Application for registration shall be made in such form as is prescribed, and the person making application shall furnish such particulars as are prescribed or as the Board requires.

(3.) The registration of a packing shed shall expire on the thirty-first day of December in the year when it was effected, but may be renewed in such manner and upon such conditions as are prescribed.

(4.) When a packing shed has been registered the registration thereof may at any time during the currency of the registration, upon application in the prescribed form, be transferred in favour of any other person.

(5.) Every application for registration or for the renewal or transfer of registration shall be accompanied by the following fee:—

(a) For registration or for renewal of registration, one pound;

(b) For transfer of registration, five shillings.

(6.) Every occupier of a packing shed required by this section to be registered who does not register the same pursuant to this Act shall be liable to a penalty not exceeding two pounds for every day whilst such shed remains unregistered.

Registration may be cancelled.

Ibid., s. 26.

See Vic., No. 3380,
s. 14 (4).

23. The Board may, with the approval of the Minister, cancel the registration of any packing shed if a person registered in respect thereof is in the opinion of the Board deliberately contravening any determination of the Board with respect to any dried fruits in such packing shed or if, in the opinion of the Board, he persistently refuses to collaborate with the Board in regard to carrying out any direction or policy of the Board in pursuance of the object of this Act.

Unregistered
packing sheds
prohibited.

Ibid., s. 27.

24. Any person, being the owner or occupier or person in charge of any packing shed not registered as required by this Act, who carries on in such packing shed the business of stemming, processing, grading, sorting, packing, buying, or selling dried fruits, shall be liable to a penalty of not more than one hundred pounds.

Board may Purchase, or Compulsorily Acquire, Dried Fruits.

25. (1.) Subject to section ninety-two of the Commonwealth of Australia Constitution Act and for the purposes of this Act or of any contract made by the Board, the Board may purchase by agreement or acquire compulsorily any dried fruits in Western Australia grown and dried in Australia, not being dried fruits which are held for export under and in accordance with a valid and existing license granted under the Dried Fruits Export Control Act, 1924, of the Parliament of the Commonwealth, or of which the board constituted under that Act has accepted the control for the purposes of that Act or which are included in any contract referred to in section eighteen of that Act: Provided that the Board under the powers conferred by this Act shall not acquire compulsorily any such dried fruits in any case where the owner or the person having the control thereof has exported or arranged to export such quantity as he is licensed to export under and in accordance with such a license as aforesaid, and such further quantity (if any) as is determined by the Board, and for the export of which a license can be obtained under the said Commonwealth Act.

Board may purchase or compulsorily acquire dried fruits.

See Ibid., s. 28.

(2.) Any dried fruits acquired pursuant to this Act may be sold by the Board in such manner as it thinks fit.

(3.) The Board may, for the purpose of obtaining money to carry out this Act, and any acquisition authorised by this section, enter into any agreement with any person or with any bank carrying on business in Western Australia.

26. The following provisions shall have effect with respect to the compulsory acquisition of dried fruits under and for the purposes of this Act:—

Provisions as to compulsory acquisition of dried fruits.

See Ibid., s. 29.

(1) The Board, by order in writing under the hand of the chairman or deputy chairman of the Board, such order being served upon any person being the owner of or having the control or disposal of any dried fruits described or referred to in the order, may declare that such dried fruits are acquired by the Board; and in any such order it shall be sufficient to describe the dried fruits so acquired as dried fruits in a certain locality or place or in any other manner by which the dried fruits may be identified.

Order by the Board.

Effect of order.

- (2) Upon the service of any such order all dried fruits described or referred to in such order shall cease to be the property of the then owner or owners thereof, and shall become and remain the absolute property of the Board, freed from any mortgage, charge, lien, or other encumbrance thereon whatsoever; and the then owner or owners and all agents, managers, attorneys, servants, and workmen of such owner or owners shall, without delay, hindrance, obstruction, claim, demand, or objection whatsoever, give immediate and peaceable possession of such dried fruits to the Board and all the title and property of the then owner or owners thereof shall be changed into a right to receive payment of the value thereof at the export parity price thereof, to be paid at such times and intervals as the Board may by notice published in the *Gazette* declare: Provided that in any case where at the time of acquisition any person holds any mortgage, charge, lien, or other encumbrance over any such dried fruits, such person shall be entitled to receive payment, out of the sum which would otherwise be payable to the owner or owners, of the principal moneys and interest (if any) for the time being secured thereby in preference to the owner or owners, and only the balance (if any) of the value of such dried fruits shall be paid to the owner or owners.

Authority for
delivery of
possession.

- (3) The production of any such order shall be sufficient authority for the delivery of possession of any dried fruits described or referred to, or claimed to be described or referred to, in such order.

Seizure and taking
possession of
dried fruits.

- (4) All dried fruits described or referred to, or claimed to be described or referred to, in any such order or demand may, without any warrant other than this Act, be seized and taken possession of by any officer authorised, either generally or in any particular case, in writing by the chairman or deputy chairman of the Board in that behalf; and such officer, with any necessary assistance, may, for any of the purposes of this section, enter any place at any time and use any force which may be necessary.

- (5) Any person who refuses to deliver, or delays or obstructs or hinders the delivery of, any dried fruits described or referred to, or claimed to be described or referred to, in any such order shall be liable to a penalty of not more than one hundred pounds; and if such person is a company the individual person guilty of the offence, and also the managing director or other manager in Western Australia of the company, shall each be liable to the like penalty. Penalty for refusal to deliver and for obstruction, etc.
- (6) In the event of any doubt or dispute as to the person legally entitled to receive any moneys payable under this section, the Board may pay the same into the Supreme Court to abide the order of that court. Disputes as to amounts payable.
- (7) The receipt given by any person to the Board for any moneys paid for any dried fruits acquired under this section shall be a sufficient discharge to the Board in respect of the liability to make payment therefor; but nothing herein shall prejudice or affect the right of any person claiming to be entitled to receive any such moneys to recover the same from any person to whom the Board has paid the same. Effect of receipts.

Saving.

Miscellaneous Provisions.

27. (1.) All agreements in writing made before the coming into operation of this Act, for the sale of any dried fruits to be produced in the year one thousand nine hundred and twenty-seven are hereby declared to be null and void: Provided that where a dealer has by any such agreement agreed to sell to any person or persons any dried fruits already purchased by him from growers, then such last-mentioned agreement shall continue valid and subsisting, and the agreements made by such dealer with growers shall be deemed to refer only to such quantity of dried fruits as is respectively notified in writing by the Board to each grower concerned, and so far as regards such quantity each such agreement shall continue valid and subsisting, but so far as regards the difference between such quantity and the quantity to which it actually refers shall be null and void. Existing contracts for the sale of dried fruits.
S.A. No. 1657, s. 30.

(2.) Every agreement which by the proviso to subsection (1) hereof is declared to be valid and subsisting shall be registered by the purchaser thereunder with the Board within one month after the notification in the *Gazette* of the appointment of the first members of the Board, and the Board may, before registering any such agreement, require to be furnished with such evidence, in the form of a statutory declaration or otherwise, of its authenticity as the Board thinks proper. If any such agreement is not registered as required by this subsection, it shall cease to have any effect.

(3.) The Board shall, for the purposes of the proviso to subsection (1) hereof, notify to growers whose contracts are by that proviso declared to continue valid and subsisting as to part thereof, what quantity of dried fruits each grower is bound to deliver thereunder, and the Board's notification shall in all courts be accepted as conclusive evidence of that quantity.

(4.) Any purchaser who has, prior to the coming into operation of this Act, advanced to any grower any sum or sums of money under any agreement which is by this section declared to be null and void shall, by force of this Act, have a lien for the total sum advanced by him over the fruit crop of the next ensuing harvest of such grower, and such lien may be registered as prescribed.

Penalty for disobey-
ing determination
of Board.

S.A. No. 1702, s. 8.

28. If any of the following persons, that is to say—

- (a) any grower;
- (b) any dealer; or
- (c) any person being the owner or occupier or person in charge of any packing shed,

sells or otherwise disposes of any dried fruits contrary to any determination of the Board applying to such fruits and notified to him in manner prescribed, such person shall be liable to a penalty not exceeding five hundred pounds.

Penalty for pos-
session of dried
fruits under
standard or
misrepresenting
standard of
dried fruits.

S.A. No. 1657, s. 32.

29. (1.) While any regulation made under this Act prescribing standards of quality for different grades of dried fruits and the grade description or grade mark to be used with respect to each standard is in force, every person shall

be liable to a penalty of not more than one hundred pounds who—

- (a) packs any dried fruits in any package branded or marked with a grade description or grade mark which is not the grade description or grade mark prescribed to be used for dried fruits of the quality packed in the particular package;
- (b) has in his possession any dried fruits contained in any package branded or marked with a grade description or grade mark which is not the grade description or grade mark prescribed to be used for dried fruits of the quality contained in the particular package; or
- (c) by the use of any description or mark on a package containing dried fruits represents such fruits to be of a particular standard, whereas in fact such fruits are not of that standard.

(2.) Where it is made to appear to the satisfaction of any inspector or officer appointed under this Act, or any member of the police force, at the time of discovering an offence—

- (a) that the person primarily liable has used all due diligence to avoid a breach of this section; and
- (b) by what person the offence has been committed; and
- (c) that it has been committed without the knowledge, consent, or connivance of the person primarily liable,

the said inspector, officer or member of the police force shall proceed against the person whom he believes to be the actual offender without first proceeding against the person primarily liable.

30. (1.) Every person who packs any dried fruits shall, in manner prescribed, legibly and durably brand, stamp, or mark, upon, or cause to be branded, stamped, or marked upon, every package containing any of such dried fruits—

Packages containing dried fruits to be branded.

Ibid., s. 33.

- (a) the name of the packer of such dried fruits;
- (b) the registered brand or registered mark of such packer;
- (c) a mark, consisting of one or more words, letters, or figures, or a combination of them, for the purpose of indicating the quality of the dried fruits contained in such package; and

(d) the net weight of the dried fruits contained in such package.

(2.) Every person who fails to observe any of the provisions of this section shall be liable to a penalty not exceeding fifty pounds.

Board subject to
control of
Minister.

31. Notwithstanding anything hereinbefore contained, the Board in the exercise of its powers shall be subject to the control of the Minister, and if any action or proceeding, or intended action or proceeding by the Board is not approved by the Minister, he may, by notice in writing addressed to and served on the chairman, prohibit such action or proceeding, either absolutely or subject to such conditions as he may think fit, and effect shall be given by the Board to such notice.

General penalty.

Vic. No. 3330, s. 17.

32. Every person who does not do anything directed to be done, or does anything forbidden to be done, by or under this Act, shall be liable to the penalty expressly provided therefor; and if no penalty is expressly provided therefor, shall be liable to a penalty of not exceeding one hundred pounds.

Indemnity.

See Vic. No. 3330,
s. 12.

33. No action, claim, or demand whatsoever shall lie or be made or allowed by or in favour of any person whomsoever against His Majesty, or the Minister, or the Board or any member thereof, or any officer or person acting in the execution of this Act, for or in respect of any damage, loss, or injury sustained or alleged to be sustained by reason of the passing of this Act, or of its operation, or of anything done or purporting to be done thereunder, save only for the price pursuant to this Act payable for any dried fruits purchased or acquired, or in respect of contracts made, under this Act.

Regulations.

Ibid., s. 34.

34. (1.) The Governor may make regulations for or with respect to—

- (a) the purchase, acquisition, sale, or marketing, or the arranging for the purchase, acquisition, sale, or marketing, of dried fruits;
- (b) the inspection of, and the granting of certificates as to the quality of, dried fruits intended for sale;
- (c) the branding, marketing, or labelling of packages containing dried fruits;

- (d) the registration of growers and dealers and the forms to be used in connection therewith, and the fee to be paid for the registration of a dealer;
- (e) the particulars to be furnished to the Board by growers and dealers desiring to be registered under this Act, in addition to the particulars required by this Act;
- (f) fixing standards of quality for different grades of dried fruits, and the grade description or grade mark to be respectively used for packages containing dried fruits of different grades;
- (g) any matters required or permitted by this Act to be prescribed;
- (h) the fees or other remuneration to be received by the members of the Board;
- (i) the audit of the accounts of the Board; and
- (j) generally, all matters and things that may be deemed by the Governor to be necessary or convenient to be prescribed for carrying this Act into effect.

(2.) Any such regulations may prescribe penalties of not more than one hundred pounds for any contravention thereof or failure to comply therewith.

35. This Act shall continue in operation until the thirty-first day of March, one thousand nine hundred and thirty, and no longer: Duration of Act.

Provided that the expiration of this Act shall not affect—

- (a) the previous operation of this Act or anything duly done or suffered under this Act; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against this Act; or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.