

Approved for reprint, 27th May, 1977.

WESTERN AUSTRALIA.

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# MARKETING OF POTATOES

10° and 11° Geo. VI., No. XXVI.

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**No. 26 of 1946.<sup>1</sup>**

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[As amended by Acts:

No. 4 of 1949, assented to 24th August, 1949;  
No. 3 of 1956, assented to 10th September, 1956;  
No. 29 of 1957, assented to 26th October, 1957;  
No. 55 of 1966,<sup>2</sup> assented to 5th December, 1966;  
No. 94 of 1972,<sup>3</sup> (as amended by No. 19 of 1973);  
No. 26 of 1974 assented to 29th October, 1974.

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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**AN ACT to make provision for the Marketing, Sale and Disposal of Potatoes, to control their production for sale, to repeal the Potato Growers Licensing Act, 1941, and to constitute the Western Australian Potato Marketing Board; and for other relative purposes.**

[Assented to 14th January, 1947.]

Be it enacted—

1. This Act may be cited as the *Marketing of Potatoes Act, 1946-1974*, and shall come into operation on a date to be fixed by proclamation.<sup>1</sup>

Short title  
and com-  
mencement.  
Amended by  
No. 26 of 1974,  
s.1.

<sup>1</sup> Came into operation 20th January, 1947: See *Gazette* 17th January, 1947, p. 95.

<sup>2</sup> Came into operation 1st February, 1967: See *Gazette* 27th January, 1967, p. 255.

<sup>3</sup> Metric Conversion Act, 1972-1973. The relevant amendments included in this reprint effective from 11th January, 1974: See *Gazette* 11th January 1974, p. 92.

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Act divided  
into parts.

**2.** This Act is divided into parts as follows:—

PART I., ss. 3-6—PRELIMINARY.

PART II., ss. 7-20—THE WESTERN AUSTRALIAN POTATO  
MARKETING BOARD.

*Division 1, ss. 7-17—Constitution and Proceedings of the  
Board.*

*Division 2, ss. 18-20—General Powers of the Board.*

PART III., s. 21—REGISTERED AGENTS.

PART IV., ss. 22-36—MARKETING OF POTATOES.

PART V., ss. 37-43—MISCELLANEOUS.

PART I.—PRELIMINARY.

Repeal.

**3.** Subject to sections eight and twenty of this Act, the Potato Growers Licensing Act, 1941 (No. 42 of 1941), is hereby repealed.

Operation.

**4.** Subject as hereinafter provided, this Act shall operate and have effect throughout the State:

Provided that the Governor may, on the recommendation of the Minister, from time to time by proclamation exempt any part of the State defined in such proclamation from the operation of this Act, and may, on the like recommendation, by proclamation revoke or vary any such first-mentioned proclamation.

Interpretation.  
Amended by  
No. 29 of 1957,  
s. 2,  
No. 94 of 1972,  
s. 4 (as amended  
by No. 19 of  
1973);  
No. 26 of 1974,  
s. 2.

**5.** In this Act, subject to the context—

“Agent” means any person lawfully authorised by the Board to take delivery of or sell or deliver potatoes on its behalf, and includes any person lawfully acting on behalf of any agent;

“Board” means the Western Australian Potato Marketing Board constituted under this Act;

“Certificate” means document in the prescribed form issued under this Act by the Board or its agent as evidence of delivery by a grower or his authorised agent to the Board of any quantity of potatoes;

“Commercial producer” means a grower by whom or on whose behalf at least 2000 square metres or any areas of land exceeding in the aggregate 2000 square metres have been planted in the last preceeding period of twelve months commencing from the first day of April in each year.

“Grower” means a person by whom or on whose behalf potatoes are actually grown or produced for sale and where potatoes are grown or produced pursuant to any share-farming or partnership agreement (whether expressed or implied) includes any partner or parties to such agreement;

“inspector” means an inspector appointed under section eighteen of this Act.

“Sell” includes barter and exchange and “sale” has a corresponding meaning.

“Minister” means Minister for Agriculture.

“Public notice” means a notice published in the *Gazette* and in one newspaper circulating in the districts in which potatoes are grown or produced;

“This Act” includes the regulations.

6. 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 Parliament of this State, to the intent that, where any provision therein 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; and to the extent to which it is so in excess, or is repugnant to a law of the Commonwealth, be deemed to be severable from the other provisions of this Act, and not to affect the validity or operation thereof.

Construction.

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## PART II.—THE WESTERN AUSTRALIAN POTATO MARKETING BOARD.

*Division 1.—Constitution and Proceedings of the Board.*

Constitution  
of Board.  
Amended by  
No. 26 of 1974,  
s. 3.

7. (1) For the purposes of this Act, a Board to be known as the Western Australian Potato Marketing Board is hereby constituted.

(2) The Board shall consist of six members appointed by the Governor.

(3) Of the said six members—

(a) two shall be persons nominated by the Minister, of whom one shall be appointed to represent the consumers, and who are not engaged in the commercial production of potatoes;

(b) one shall be a person nominated by the Minister, and after consultation with the Potato Growers' Association executive, and who is a grower;

(c) two shall be persons who are commercial producers and are elected by the commercial producers for appointment by the Governor as members of the Board;

(d) one shall be a person, nominated by the Minister, who is not engaged or financially interested in the business of growing or producing potatoes, or interested in the distribution or sale thereof, and who shall be Chairman of the Board.

Election of  
Members.  
Amended by  
No. 26 of 1974,  
s. 4.

8. (1) The election of the elective members of the Board shall be held and conducted in such manner and at such times and subject to such conditions as shall be prescribed by regulations.

(2) The expenses incurred in connection with the first election of the elective members of the Board shall be a charge upon and shall be paid out of the special account established under section four of the Potato Growers Licensing Act, 1941. The expenses incurred in connection with subsequent elec-

tions shall be a charge upon, and shall be paid out of moneys from time to time in the hands of the Board for the purposes of this Act.

(3) For the purpose of electing the elective members of the Board in the first instance the register of potato growers compiled for the purposes of the Potato Growers Licensing Act, 1941, shall be deemed a sufficient substitute for the register of growers to be compiled under this Act.

9. The Board shall be a body corporate, with perpetual succession and a common seal, and may sue and be sued, and acquire and hold real and personal property under the name of the Western Australian Potato Marketing Board.

Board a body corporate.

10. The Board shall not, except in relation to any matter in which the 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.

Board not to represent the Crown.

11. (1) The members of the Board shall be entitled to be paid such remuneration and expenses as are approved by the Governor.

Remuneration of Board members.

(2) Such remuneration and expenses shall be paid out of the moneys from time to time in the hands of the Board for the purposes of this Act.

12. Subject as hereinafter provided, the nominated members and the elective members of the Board shall each hold office subject to good behaviour for a period of three years from the date of their appointment by the Governor or from such other date as the Governor shall fix, and shall be eligible for re-nomination or re-election as the case may be: Provided that of the two elective members to represent the commercial producers first elected after the passing of this Act, one of them shall hold office for two years only, and the other for three years. The elective member to retire first shall be that one who received the lower number of votes at the election. If both the said elective members received the same number of votes at the election, or if no ballot were taken, they shall determine by lot which one of them shall retire first.

Term of office.

Vacancies.

13. (1) The office of a member shall become vacant if he—

- (a) dies;
- (b) resigns by written notice given to the Minister;
- (c) is removed from his office by the Governor for misbehaviour or mental or physical incapacity to perform his duties as a member;
- (d) becomes bankrupt; or
- (e) absents himself without permission of the Board from more than four consecutive meetings of the Board, and is declared by resolution of the Board to have forfeited his seat.

(2) The Minister may appoint to the vacant office of a member, a person representative of the same interests as the member. The person so appointed to fill a casual vacancy on the Board shall hold office for the balance only of the term of the member in whose place he is appointed.

Proceedings  
of board not  
invalidated by  
vacancies or  
defects.

14. (1) No act or proceeding of the Board shall be invalid or illegal in consequence only of the number of members of the Board not being complete at the time of such act or proceeding.

(2) All acts and proceedings of the Board shall, notwithstanding the subsequent discovery of any defect in the appointment or qualification of any member thereof, be as valid as if such member had been properly appointed and qualified.

Exercise of  
powers by  
Board.

15. (1) All powers vested in the Board may be exercised by a majority of the members present at any meeting duly held at which a quorum is present, and all questions shall be decided by a majority and by open voting.

(2) The chairman shall preside at every meeting of the Board at which he is present. If the chairman

is absent from a meeting the other members of the Board present shall select one of their number to act as chairman at that meeting.

(3) The chairman shall have a deliberate vote only, and if the numbers are equally divided on any question, such question shall be deemed to be resolved in the negative.

(4) Three members of the Board shall form a quorum.

(5) The Board shall keep a record of its proceedings.

16. A member of the Board shall not be personally liable for any act done in good faith by the Board or by the member acting as such. Protection of members.

17. (1) The first meeting of the Board after the passing of this Act shall be convened by the chairman, and thereafter meetings shall be held at the times and places determined by the Board: Provided that the chairman may, on reasonable notice to members of the Board, call a meeting at any time. Meetings of the Board.

(2) Subject to this Act, the business of the Board shall be conducted in such manner as the Board determines.

*Division 2.—General Powers of Board.*

18. (1) The Board may appoint a secretary and such inspectors, clerks and other officers and employees as it requires to assist it— Officers of the Board.

(a) In the administration of this Act;

(b) in the collection, handling, examination, grading, treatment, storage, distribution and sale of potatoes and other services incidental or auxiliary to any of the foregoing matters, and the provisions of the Public Service Act, 1904-1935,<sup>1</sup> and of the Government Employees (Promotions Appeal Board) Act, 1945, shall not apply to such appointees, or any of them.

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<sup>1</sup> Now Public Service Act, 1904-1975.

(2) With the consent of the Minister administering any Department of the Public Service of the State, the Board may, on any terms agreed between itself and the Minister, make use of the services of any person employed in that department.

(3) The salaries, wages, and other expenses payable to persons employed or otherwise engaged by the Board shall be charged upon and be payable out of the moneys from time to time in the hands of the Board for the purposes of this Act.

General  
powers of  
Board.

19. The Board may for the purposes of carrying out the duties and functions imposed on it by the other provisions of this Act—

- (a) buy or sell any property;
- (b) enter into any contract;
- (c) borrow money and mortgage or charge any of its property as security for the repayment of any money borrowed;
- (d) delegate any of its functions and revoke any such delegation;
- (e) establish or maintain premises for receiving, handling, grading, treatment, storage or sale of potatoes;
- (f) contract or arrange for the processing of any potatoes;
- (g) purchase, hire, construct, erect and maintain any premises, machinery, plant and equipment required for any processing which the Board has the power to carry out;
- (h) may with respect to the marketing or production of any potatoes enter into arrangements with any body, association or corporation in the Commonwealth which has among its principal objects the management, control or regulation of the marketing or production of the potatoes, and may



through any member or delegate of the Board participate in the membership or management of any such body, association or corporation;

- (i) undertake transport and carrying services;
- (j) exercise the functions usually exercised by shipping agents;
- (k) at its discretion, grant or refuse licenses to growers, and regulate the registration of growers and potato growing areas;
- (l) regulate the granting, issue, duration, refusal, suspension and cancellation of licenses and registration under this Act;
- (m) prescribe the conditions upon which licenses may be granted, including the power to limit and define the area or areas within which potatoes may be sown or produced for sale, and may from time to time add to, vary or revoke such conditions or any of them;
- (n) prohibit the production of potatoes for sale except in accordance with the conditions of any license issued by the Board;
- (o) require any grower who may cease to grown or produce potatoes for sale, or who may intend to produce less potatoes than contemplated by the conditions of his license, to give to the Board written notice and particulars of the circumstances within a reasonable time;
- (p) do all other acts, matters and things which it is required by this Act to do, or which may be necessary or convenient to be done by the Board for giving effect to this Act.

19A. (1) Where an applicant who, at any time in the two years immediately prior to the commencement of the proposed month of planting, has

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held a license issued by the Board permitting him to produce potatoes for sale planted during that month of the year—

- (a) is refused a license to plant in that month; or
- (b) is granted a license in respect of a reduced area to that previously permitted to be planted in that month,

he may appeal to the Minister in writing setting out the grounds of his appeal, and the Minister shall thereupon consider the decision of the Board and either approve, or vary or reverse that decision.

(2) An order made by the Minister under this section is final and not subject to any appeal, and shall be given effect to by the Board.

Administration  
of special  
account under  
No. 42 of 1941,  
s. 4.

20. From and after the commencement of this Act, the moneys paid in to the special account at the Treasury under section four of the Potato Growers Licensing Act, 1941, shall be administered by the Board under this Act, subject to the approval of the Minister. The said special account may be operated on in the manner prescribed, and, subject in every case to the approval in writing of the Minister, the moneys in the said special account may be used and applied for any one or more of the following purposes, namely—

- (a) in the payment of debts which, prior to the commencement of this Act, were incurred by the Potato Growers Advisory Committee under section four of the Potato Growers Licensing Act, 1941, and which, in the opinion of the Minister, should be paid by the Board from the moneys in the said special account;
- (b) in the payment of expenses of or in connection with the holding of the first election under this Act for the elective members of the Board;

- (c) in the promotion and encouragement of scientific research for the improvement of potato crops and in the transport of such crops;
- (d) on the recommendation of the Board, to assist financially the Western Australian Potato Growers Association Incorporated and its branches in its or their activities for the benefit of growers;
- (e) in the payment of any advances or administrative expenses under this Act, including premiums on policies of insurance against fire; and
- (f) in any manner which in the opinion of the Minister is deemed to be best calculated to develop and protect the potato growing industry.

PART III.—REGISTERED AGENTS.

21. (1) For the purposes of this Act, the Board may register, subject to such conditions as may be attached by the Board, suitable persons as its agents. Registered agents.

(2) Any person desiring registration as an agent of the Board shall apply in writing to the Board for such registration, and give the Board such information relevant to his application as the Board requires.

(3) The Board shall have a discretion to grant or refuse registration to any applicant therefor, and to define the area in which an agent shall operate.

(4) The registration of an agent shall remain in force until it is cancelled or the agent surrenders it or dies.

(5) While registered as aforesaid and within the area, if any, defined by the Board an agent may to the extent authorised by the Board take deliveries of potatoes from growers or sell or distribute potatoes on behalf of the Board.

The Board may impose conditions as to the exercise by the agent of his authority from the Board, and the agent shall observe and perform such conditions and such other duties and functions on behalf of the Board as the Board directs.

(6) The Board may cancel the registration of any agent if he has failed in any way to comply with this Act, or with the conditions attached to his registration, or the regulations or to carry out any of his duties as an agent of the Board, or if he becomes bankrupt or in any way as a debtor takes the benefit of the laws relating to bankruptcy.

(7) Every registered agent shall be entitled to receive as remuneration for his services and for any facilities made available by him in dealing with potatoes, and as remuneration for any expenses properly incurred by him such amount as the Board, with the approval of the Minister, shall determine.

PART IV.—MARKETING OF POTATOES.

Added by  
No. 3 of 1956,  
s. 2.

21A.<sup>1</sup> [*The provisions of this section ceased to be in operation after the 31st December, 1956.*]

Prohibition  
against sales  
to other than  
the Board.  
Amended by No.  
4 of 1949,  
s. 3; No. 29  
of 1957, s. 3;  
No. 55 of 1966,  
s. 3;  
No. 94 of 1972,  
s. 4 (as  
amended by  
No. 19 of 1973);  
No. 26 of 1974,  
s. 6

22. (1) [*Repealed by No. 29 of 1957, s. 3.*]

(2) On or after the first day of October, one thousand nine hundred and forty-eight, a grower shall not sell or deliver any potatoes to any person other than the Board and a person other than the Board shall not purchase or take delivery of any potatoes from a grower: Provided that the foregoing provision of this subsection shall not apply to any potatoes sold or delivered as allowed under section twenty-five of this Act.

(3) In a complaint for an offence of purchasing, or an offence of taking delivery of, potatoes from a grower, contrary to the provisions of subsection (2) of this section, it is sufficient to refer to the grower as "a grower" without the necessity of stating the name of a grower.

<sup>1</sup>Expired on the 31st December, 1956: See paragraph (6) of the section.

(4) At the hearing of a complaint of an offence referred to in subsection (3) of this section, evidence

- (a) that the person charged was in possession or control of a quantity of potatoes at a material time; and
- (b) that the quantity of potatoes exceeded 63.5 kilograms in weight, or was estimated by an inspector in a manner which the Court deems reasonable to exceed 63.5 kilograms in weight; and
- (c) that the person charged was at that material time required by an inspector to produce to the inspector a sales docket evidencing that the potatoes were purchased by the person charged, or a delivery note evidencing the delivery of the potatoes to the person charged; and
- (d) that the person charged did not produce to the inspector any sales docket, or as the case may be, any delivery note; or
- (e) that the person charged did in fact produce to the inspector a sales docket, or delivery note, but
  - (i) the sales docket, or delivery note, did not purport to have been issued by or on behalf of the Board or an agent;or
  - (ii) it was not in fact issued by or on behalf of the Board or an agent; or
  - (iii) if it did so purport or was so issued, the potatoes were not contained in any bags or other containers, or were not contained in bags or other containers branded or marked in accordance with particulars shown in the

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sales docket or delivery note, or did not correspond with the description given in the sales docket or delivery note;

shall be deemed to be *prima facie* evidence that the person charged purchased, or as the case may be, took delivery of, the potatoes from a grower contrary to the provisions of subsection (2) of this section.

Provided that it shall be a defence if it can be shown that the potatoes are the property of a grower and are being held for seed purposes.

(5) A person who is the driver or who is in charge or apparently in charge of a vehicle on which there are potatoes to a quantity exceeding 63.5 kilograms in weight, or estimated by an inspector in a manner which the Court deems reasonable to exceed 63.5 kilograms in weight, shall be deemed to have control of the potatoes, but this presumption does not prejudice any other method of proof of possession or control.

(6) Evidence that a person had in his possession or control potatoes of a quantity exceeding 63.5 kilograms in weight, or estimated by an inspector in a manner which the Court deems reasonable to exceed 63.5 kilograms in weight, shall be deemed *prima facie* evidence that he received the whole of the quantity into his possession or control by one and the same purchase, or, as the case may be, by one and the same acceptance of delivery.

(7) Where an inspector has reasonable grounds for suspecting that a quantity of potatoes exceeding 63.5 kilograms in weight is being or is likely to be, or has been, dealt within a manner contravening subsection (2) of this section, he may, upon giving a written receipt therefor to the person, if any, apparently in possession or having the control of the potatoes, impound as samples not more than 0.9 kilogram for every 63.5 kilograms of potatoes suspected by him of being so dealt with.

(8) A person convicted of an offence against subsection (2) of this section is liable—

- (a) for a first offence, to a fine of not less than fifty dollars or more than two hundred dollars;
- (b) for a subsequent offence, to a fine of not less than one hundred dollars or more than two hundred dollars,

and the Court convicting a person of purchasing or taking delivery of potatoes from a grower contrary to that subsection shall, in addition to the penalty imposed for that offence pursuant to paragraph (a) or (b) of this subsection, impose on that person a further penalty of an amount equal to the value of the quantity of potatoes found by the Court to have been purchased or taken delivery of, as the case may be, by that person contrary to subsection (2) of this section, ascertained in accordance with the provisions of subsection (9) of this section.

(9) The value of a quantity of potatoes is to be ascertained, for the purposes of subsection (8) of this section, by applying to that quantity the wholesale price obtained by the Board, on or about the day on which the offence was committed, for potatoes sold by it.

**22A.** (1) Where an inspector has reasonable grounds for suspecting that there is on a vehicle a quantity of potatoes exceeding 63.5 kilograms in weight, he may—

- (a) direct the driver, or the person apparently in charge, of the vehicle to permit the inspector to search the vehicle and anything thereon; and
- (b) if the vehicle is in motion, direct the driver to stop the vehicle so that the inspector may exercise in relation thereto the powers referred to in paragraph (a) of this subsection,

Halting and inspection of certain vehicles.  
Added by No. 55 of 1966, s. 4.  
Amended by No. 94 of 1972, s. 4 (as amended by No. 19 of 1973)

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and if upon his inspection of the vehicle the inspector is satisfied that there is on the vehicle a quantity of potatoes exceeding 63.5 kilograms in weight he may—

- (c) request the person apparently in charge of the vehicle—
  - (i) to give to the inspector his name and address;
  - (ii) to supply to the inspector such information relating to the potatoes and the journey and destination or the intended journey and destination of the vehicle as the inspector requires; and
  - (iii) to produce to the inspector any sales docket, delivery note or other document relating to the potatoes;
- (d) upon his giving to the person apparently in charge of the vehicle an written receipt clearly identifying the document impounded, impound any sales docket, delivery note or other document relating to the potatoes that is produced to him or that he finds on the vehicle; and
- (e) upon his giving a written receipt therefor, impound any bag or other container suitable as a container for potatoes that he finds on the vehicle either with or without the potatoes, if any, contained in the bag or container.

(2) The powers conferred by subsection (1) of this section are exercisable only by an inspector who is wearing, or who bears and displays, the prescribed item of identification, or who otherwise clearly indicates that he is an inspector to the person in relation to whom he proposes to exercise any of those powers.



(3) A person who—

- (a) fails to comply with a direction or request given or made under subsection (1) of this section;
- (b) fails to give to the best of his knowledge and belief any information requested by an inspector under that subsection; or
- (c) hinders or obstructs an inspector in the course of that inspector's duty,

commits an offence, and is liable on conviction—

- (d) for a first offence, to a fine of not less than fifty dollars or more than two hundred dollars;
- (e) for a subsequent offence, to a fine of not less than one hundred dollars or more than two hundred dollars.

(4) The provisions of this section are in addition to, and not in derogation of, any other provisions of this Act or of the regulations relating to the authority of, or obstruction of, inspectors.

**22B.** (1) A person who is not the holder of a valid license issued by the Board permitting him to produce potatoes for sale shall not—

- (a) plant potatoes with a view to producing potatoes for sale; or
- (b) produce potatoes for sale.

(2) At the hearing of a complaint of an offence referred to in subsection (1) of this section, evidence that the total area of land shown to have been planted with potatoes by the person charged exceeds, or was estimated by an inspector in a manner which the court considers to have been reasonable to exceed, two thousand square metres is *prima facie* evidence that the land was planted with a view to producing potatoes for sale.

Unlicensed persons not to plant potatoes for sale.  
Added by No. 55 of 1966, s. 5;  
Amended by No. 26 of 1974, s. 7.

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(3) A person convicted of an offence against subsection (1) of this section is liable to a fine to be calculated on the basis of the total area found to be planted at a rate per square metre—

- (a) for a first offence, of not more than seven and one-half cents; and
- (b) for a second or subsequent offence, of not more than twelve and one-half cents nor less than seven and one-half cents.

Duty of Board to accept delivery.

**23.** (1) The Board shall not refuse to accept delivery from any grower of any potatoes provided that—

- (a) they are of the prescribed quality and, if the case so requires, are in any bag, case or other container which conforms to the prescribed standards; and,
- (b) when so prescribed, they are potatoes for which a certificate of merchantable quality from such officer of the Department of Agriculture or other person as is approved (whether generally or in any particular case) in that behalf by the Minister has been obtained and tendered with the potatoes; and
- (c) they are delivered to the Board at the place or places, at the times, during the periods, in the quantity or quantities, and of the quality or standards, that the Board or its agent operating in the area where such potatoes are produced shall, by public notice or by notice to the grower or growers concerned, stipulate or require.

(2) When any potatoes are refused by the Board on the ground that they are below the prescribed quality, the Board shall issue to the grower thereof a certificate of such refusal in the prescribed form.

Effect of delivery to Board. Compensation.

**24.** All potatoes delivered to the Board by growers and accepted by the Board shall thereupon be

vested in and become the absolute property of the 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 potatoes shall thereupon be converted into a claim for compensation therefor in accordance with the provisions of this Act.

25. (1) The Board may grant a permit to any grower authorising him to sell potatoes to a person or persons (not being the Board) subject to such conditions and restrictions as the Board determines.

Board may permit sales to other than Board.  
Amended by No. 29 of 1957, s. 4.

(2) A person holding a permit granted under subsection (1) of this section may, notwithstanding the provisions of section twenty-two of this Act, sell potatoes in accordance with the terms of such permit, but not otherwise.

(3) Where a grower produces or has produced potatoes on or after the day mentioned in section twenty-two of this Act or potatoes to which the permit referred to in this section applies, those potatoes shall, for the purposes of this Act, be deemed to be or to have been vested in the grower until he sells or has sold them or disposes or has disposed of them.

(4) The Board may revoke or vary any permit or consent granted by it under this section and may vary the conditions and restrictions to which any permit or consent is subject.

(5) The Board may, by a public notice or by written notice, given to the growers thereby affected, in such cases and on such terms as may be prescribed, exempt (either generally or in any particular case) from the operation of the last two preceding sections—

- (a) such growers of small quantities of potatoes as the Board may think fit;
- (b) sales direct to local consumers or to retail vendors;

- (c) such potatoes as the grower may require for his own use;
- (d) such other sales, purchases or transactions as may be prescribed, and may at any time revoke or vary the conditions of such exemption.

(6) The Board's decision as to whether any specified person or article falls within the limits of any such exemption shall be final.

Grower may not use own potatoes in own hotel, etc. Amended by No. 55 of 1966, s. 6.

**26.** (1) Subject to subsection (2) of this section, a grower shall not use in or in connection with any hotel, boarding house, restaurant, manufacturing business or other business which is owned or conducted by him, potatoes produced by him or under his control.

(2) The Board may grant a permit to any grower for the purpose of removing the restrictions imposed by subsection (1) of this section. Such permit may be granted subject to any conditions which the Board may think fit to impose.

(3) A person convicted of an offence against subsection (1) of this section is liable—

- (a) for a first offence, to a fine of not less than fifty dollars or more than two hundred dollars;
- (b) for a subsequent offence, to a fine of not less than one hundred dollars or more than two hundred dollars.

Mode of delivery to Board.

**27.** Subject to this Act—

- (a) delivery of any potatoes may be tendered to the Board by the growers thereof, or by any person then entitled to sell or dispose of the potatoes;
- (b) such tender shall be made at or within such time at such place, and in such manner, as the Board, either generally, or in

any particular case, directs, or as are prescribed;

- (c) the Board may accept delivery of any potatoes so tendered, and the potatoes so delivered to, and accepted by, the Board, shall be deemed to be vested in and be the absolute property of the Board freed and discharged from all mortgages, charges, liens, pledges, interests, trusts, contracts, and encumbrances affecting the same, and the rights and interests of every person in the potatoes shall thereupon be converted into a claim for compensation therefor in accordance with the provisions of this Act.

28. All potatoes delivered to the Board shall be delivered in the name of the grower thereof, or other person by or for whom delivery is made under this Act and potatoes delivered to the Board shall be graded according to grade standards prescribed or as may be prescribed under the Agricultural Products Act, 1929-1940<sup>1</sup>.

Name to be given on delivery. Grading of potatoes.

29. The tendering of the potatoes by any person (whether by himself, or by any other person authorised by him), to an authorised agent for acceptance of delivery by him, shall be *prima facie* evidence of an intention to deliver the tendered potatoes to the Board, to be disposed of by the Board in accordance with this Act.

Evidence of intention to deliver.

30. (1) Subject to this Act, the Board shall, out of the proceeds of potatoes disposed of by it under this Act, make payments to the persons by or for whom the potatoes were delivered to the Board under this Act, in respect of the potatoes so delivered on the basis of the net proceeds of the sale of all the potatoes of the same quality, standard, variety, or grade, delivered to the Board during or covering such periods as are prescribed, and the proportion of the potatoes so delivered by those persons during each such period, or on such other basis as the Board may determine, but the Board may, in determining the amount of such payments, take into account any other circumstances which it considers relevant.

Compensation. Amended by No. 55 of 1966, s. 7; No. 26 of 1974 s. 8.

<sup>1</sup> Now Agricultural Products Act, 1929-1974.

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(2) Notwithstanding anything contained in subsection (1) of this section, the Board may—

Progress  
payments.

- (a) make progress payments to each person by or for whom the potatoes were delivered to the Board under this Act, in respect of the potatoes from time to time so delivered by him and at or about the time of each such delivery, calculated at such rate as the Board may determine;
- (b) out of any surplus moneys in the hands of the Board at the end of any period prescribed under subsection (1) of this section, make final payments to each such person on such basis as the Board may determine.

Deductions.

(3) The Board may deduct from the proceeds of the sale of the potatoes, or, as the case may be, from any progress or final payments made by the Board under subsection (2) of this section—

- (a) the expenditure incurred, or estimated to be incurred, in or in connection with the marketing, treatment or processing of potatoes;
- (b) the costs and expenses, or estimated costs and expenses, of the administration by the Board of this Act;
- (c) any sums necessary, or estimated to be necessary, to repay any advances made to the Board or moneys borrowed by the Board in accordance with this Act and any interest thereon;
- (ca) any moneys authorised by subsection (3a) of this section;
- (d) the freight charges incurred, or estimated to be incurred, by the Board in the conveyance of the potatoes from the railway station or other place of delivery to such other place or places as is or are prescribed; and

- (e) such portion of those proceeds, or, as the case may be, progress or final payments, but not exceeding one and a half per centum thereof, as the Governor by proclamation from time to time declares, to be paid to a reserve fund to be maintained by the Board for the purpose of enabling it, from moneys from time to time standing to the credit of the fund, to make fair returns to growers when unusual market conditions prevail.

(3a) Where the amount of any payment or deduction calculated by the Board contains a fraction of a cent the Board may deduct therefrom the fraction of a cent and pay any fractions so deducted into a suspense account and the Board, by taking moneys out of that suspense account, may—

- (a) increase the amount of any payment or deduction to the nearest whole cent; and
- (b) pay any expenses or losses attributable to preceding prescribed periods and not previously brought to account.

(4) For the purposes of ascertaining the amount of any payment to be made by the Board under subsection (1) or subsection (2) of this section, and generally for the purposes of this Act, the decision of the Board as to—

- (a) the quality, standard, variety, grade, class, description or value of any of the potatoes delivered to the Board (whether the quality, standard, variety, grade, class, description or value thereof is prescribed or not);
- (b) the method of determining the dockages and deductions to be made and the amounts thereof respectively;
- (c) the cost of freight, insurance and other charges; and

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- (d) the amounts to be deducted under this section—

shall be final and conclusive.

Certificate to grower upon delivery.

**31.** (1) As soon as practicable after the delivery to the Board of any potatoes, the Board shall grant to the grower thereof or other person by or for whom the potatoes were delivered to the Board, a certificate in the prescribed form in respect of the potatoes so delivered by the grower or other person:

Provided that the Board may, if it has received notice of any mortgage, charge, lien, interest, trust or encumbrance over, or contract relating to, the potatoes, refuse or withhold the grant of such certificate until all parties claiming to be interested in respect of the potatoes advise the Board in writing as to the manner in which, and the persons to whom, the certificate should be granted, or, in case of dispute, until the claims of the respective parties have been determined by a stipendiary or resident magistrate, which determination the magistrate shall have power to make, on application made to him by summons by any party to such dispute.

(2) Where the potatoes are grown, produced or prepared for sale under a share-farming agreement or by more than one person, the Board may grant separate certificates to the parties concerned in accordance with their respective interests in the potatoes.

(3) No certificate under subsection (2) shall be transferable without the consent in writing of the Board.

Advances by Board.

(4) The Board may make advances on account of the potatoes delivered to the Board, and any such advances and any payment made on account of the potatoes, may be made at such time or times and on such terms and conditions and in such manner as the Board thinks fit.

Contracts for sale of potatoes.

**32.** (1) Subject to this Act, every contract (whether made before or after the issue of the pub-



lic notice under section twenty-two of this Act) so far as it relates to delivery of the potatoes in this State, or to the sale of the potatoes for delivery in this State, shall, when specified by the Board in a notification published in the *Gazette*, be deemed to be and to have been void as from the date upon which it was made but to the extent only to which the contract has not been completed by delivery at the date of the notification; and for the purposes of this section, every contract shall be deemed to be severable.

(2) Subject to this Act, any transaction or contract with respect to any potatoes which are the subject of any contract declared by this section to be void shall also be void; and any money paid in respect of any contract hereby made void or of any such transaction shall, to the extent to which the contract or transaction is made void, be recoverable by the person paying that money from the person to whom it is so paid.

33. Notwithstanding anything to the contrary in the Government Railways Act, 1904-1939,<sup>1</sup> or in any other Act, or the law relating to common carriers, or any agreement to the contrary (whether made before or after the issue of the public notice under section twenty-two of this Act), the Commissioner of Railways, The Western Australian Transport Board and any common carrier and any owner, charterer, master or agent of any ship, may, on the request from time to time of the Board (which request the Board is hereby authorised to make), and without incurring liability, refuse to carry any potatoes referred to by the Board in its request from any place in this State to any other place in this State or, except as prescribed, to deliver any of such potatoes: Provided that no request under this section shall be made by the Board in respect of any potatoes not remaining vested in the Board at the time of the making of the request.

Restrictions  
on carriage of  
potatoes.

34. (1) No proceedings shall be brought against the Board, or any person acting under the authority of the Board, in respect of any claim by any person

Restrictions  
on proceed-  
ings against  
Board.

<sup>1</sup> Now Government Railways Act, 1904-1976.

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under or in respect of any bill of sale, mortgage, charge, lien, pledge, interest, trust or encumbrance whatsoever of, upon, in or over, any of the potatoes, or in respect of any claim by any person to be the true owner of the potatoes.

(2) Any person who, but for this section, might have taken any proceedings referred to in subsection (1) may adopt the delivery of the potatoes to the Board as a delivery thereof by him to the Board, and may claim accordingly in respect thereof.

(3) Every person making any claim under this section shall give or send to the Board notice of his claim in the prescribed form, and containing the prescribed particulars of the bill of sale, mortgage, charge, lien, pledge, interest, trust, encumbrance, or claim of ownership, and only such part of the amount due in respect of the delivery to which the claim relates as has not been paid to other persons at the time of the receipt of the notice by the Board may be paid to the claimant.

Grower to  
notify Board  
of any encum-  
brances.

**35.** (1) Every grower of potatoes which are subject to any bill of sale, mortgage, charge, lien, pledge, interest, trust, or encumbrance, or in respect of which, or of the crop from which the potatoes were harvested, he has entered into any agreement in derogation from his title to sell the potatoes as the absolute owner thereof (whether the bill of sale, mortgage, charge, lien, pledge, interest, trust, encumbrance, or agreement was made before or after the issue of the public notice under section twenty-two of this Act) shall, when delivering the potatoes to the Board, give to the person receiving the potatoes on behalf of the Board a notice in writing in the prescribed form and containing the prescribed particulars of every such bill of sale, mortgage, charge, lien, pledge, interest, trust, encumbrance or agreement, and any person entitled to the benefit of any such bill of sale, mortgage, charge, lien, pledge, interest, trust, encumbrance or agreement shall be entitled to give a like notice to the Board.

(2) The provisions of subsection (1) of this section shall extend and apply to every person by whom any of the potatoes are delivered to the Board under this Act on behalf of a grower, and in addition, the notice to be given by that person when delivering the potatoes to the Board shall contain particulars as to all other persons interested in any way in the potatoes, and the nature of their respective interests therein.

(3) A notice given in respect of a delivery made by or on behalf of a grower to any person receiving from or on account of the grower any of the potatoes on behalf of the Board at one railway station or place of delivery, shall not be deemed to be a compliance with this section in respect of a delivery made by or on behalf of that grower to any other person receiving from or on account of such grower any of the potatoes on behalf of the Board at any other railway station or place of delivery.

(4) Any person guilty of any contravention of, or failure to comply with, any of the provisions of this section shall be guilty of an offence against this Act.

**36.** (1) Where the Board has, in good faith and without negligence, made any payment for any potatoes to, or to the order of—

Non-liability  
of Board.

- (a) a grower or other person delivering or causing to be delivered to the Board, or to any person acting under the authority of the Board, any of the potatoes in relation to which the Board is constituted; or
- (b) any person entitled, or claiming to be entitled, to such payment through the grower, or through any other person delivering such potatoes to the Board or causing it to be so delivered,

the Board shall not be answerable to any other person in respect of such payment or of the potatoes in respect of which such payment was made.

(2) If prior to the receipt by the Board of notice of a claim to the moneys payable in respect of a certificate granted by the Board from any person other than the person named in the certificate or to whom it has been transferred the Board has paid to such lastmentioned person or to such transferee the moneys payable in respect of the certificate or any part of those moneys, the Board shall, to the extent of such payment, be exonerated from any liability to the claimant in respect of the claim.

(3) The provisions of this section shall not in any way prejudice or affect the rights *inter se* of any parties claiming adversely to one another to be entitled to any moneys payable under, or represented by any certificate.

PART V.—MISCELLANEOUS.

Accounts and  
audit.

37. (1) The Board shall keep full accounts of all money received and paid by it and of the purposes for which the money was so received or paid.

(2) The Auditor General shall in each financial year audit the accounts of the Board for the preceding financial year and every member and officer of the Board shall give the Auditor General and his officers all the information relating to such accounts which he or they require and shall upon request produce to the Auditor General and his officers any books, vouchers, or other documents relating to such accounts and do all things necessary to enable the audit to be made.

(3) The Board shall pay to the Treasurer of the State such reasonable sum for the audit as the Treasurer fixed.

Guarantee of  
bank advances.

38. The Minister may, with the consent of the Treasurer of the State, arrange with a trading bank for the making by that bank of advances to the Board for use on its behalf by the Board for the purposes of this Act, and may guarantee to such bank the repayment out of consolidated revenue of the State of advances made by the bank in pursuance of the arrangement.

39. All expenditure of the Board and all claims against the Board shall be a charge upon the proceeds of potatoes marketed by the Board which to the necessary extent shall be deemed part of the Board's funds accordingly.

Charge on  
proceeds of  
potatoes  
marketed.

40. The Board shall make and submit a yearly report of its proceedings to the Minister together with a true copy of the accounts as then last audited and with a copy of the Auditor General's report thereon: and on receipt of same the Minister shall cause copies of such annual report and of such accounts with the Auditor General's report to be laid before both Houses of the Parliament.

Annual re-  
ports.

41. (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act.

Offences.  
Amended by  
No. 29 of 1957,  
s. 5  
No. 55 of 1966,  
s. 8.

(2) A person guilty of an offence against this Act for which no other penalty is provided is liable to a penalty not exceeding two hundred dollars.

(2a) Where, by this Act, a minimum penalty is provided, that penalty is, in each case, irreducible in mitigation, notwithstanding the provisions of any other Act.

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

42. (1) Any proceedings, whether civil or penal, may be taken in the name of the Board by the secretary or by any officer of the Board authorised in that behalf by the Board.

How legal  
proceedings  
taken.

(2) No proof shall be required of the appointment of the secretary or any officer as an officer of the Board, or of the authority of the secretary or officer to take civil or penal proceedings in the name of the Board but the averment on the process that the secretary or officer aforesaid is so authorised shall be deemed to be conclusive proof of the fact.

43. (1) The Government may make regulations under this Act prescribing all such matters as by

Regulations.  
Amended by  
No. 55 of 1966,  
s. 9.

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this Act are required or permitted to be prescribed, or as may be necessary or convenient to be prescribed for giving effect to or achieving the objects of this Act and facilitating the exercise of its powers by the Board.

(2) The power hereby given shall (without limiting its generality) be deemed to include power to make regulations—

- (a) empowering the Board to institute prosecutions under the Agricultural Products Act, 1929-1940,<sup>1</sup> in respect of potatoes;
- (b) requiring lands and premises used for or in connection with the production or preparation for sale of the potatoes to be registered, and regulating generally the registration of such lands and premises and prescribing the fees payable in respect of the registration thereof;
- (c) requiring growers, or persons dealing or trafficking in potatoes as owners or agents, or concerned in the transport or having the custody or handling of potatoes, to furnish returns containing such information as the Board may consider necessary;
- (d) for enabling the Board or any person authorised by it to inspect any records or accounts relating to potatoes, or to land or premises on which potatoes are produced, stored, graded, packed, or otherwise treated;
- (e) for prescribing the duties, functions and conduct of registered agents, or persons holding permits to buy potatoes;
- (f) the regulation and control of the supply, grading, treatment, processing, storage, distribution, marketing, sale, purchase, use and consumption of potatoes;

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<sup>1</sup> Now Agricultural Products Act, 1929-1974.

- (g) defining the functions, authorities and duties of inspectors;
  - (h) any other matter which in the opinion of the Minister is incidental to carrying out the functions and duties imposed on the Board by this Act.
- (3) Regulations made under this Act may prescribe penalties not exceeding forty dollars in respect of any contravention of any of the regulations.

