

WESTERN AUSTRALIA

**MARKETING OF POTATOES  
ACT 1946**

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WESTERN AUSTRALIA

MARKETING OF POTATOES  
ACT 1946

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 Authority; and for other relative purposes.

[*Long title amended by No. 96 of 1985 s. 22.*]

**Short title and commencement**

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

[2. *Section 2 repealed by No. 96 of 1985 s. 4.*]

PART I—PRELIMINARY

**Repeal**

3. Subject to sections 8 and 20, the *Potato Growers Licensing Act 1941* (No. 42 of 1941), is hereby repealed.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**

5. (1) In this Act, subject to the context—

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

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

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

“Commercial producer” means a grower by whom or on whose behalf at least 500 square metres or any areas of land exceeding in the aggregate 500 square metres have been planted in the last preceding period of 12 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 18;

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

“Minister” means Minister for Agriculture;

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

“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.

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

[Section 5 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; No. 96 of 1985 ss. 5 and 22.]

### Construction

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.

## PART II—THE WESTERN AUSTRALIAN POTATO MARKETING AUTHORITY

[Heading amended by No. 96 of 1985 s. 22.]

### Division 1—Constitution and Proceedings of the Authority

[Heading amended by No. 96 of 1985 s. 22.]

### Constitution of Authority

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

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

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

(2) The Authority shall consist of 6 members appointed by the Governor.

(3) Of the said 6 members—

(a) 2 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 after consultation with the Potato Growers' Association executive;

- (c) 2 shall be persons who are commercial producers and are elected by the commercial producers for appointment by the Governor as members of the Authority;
- (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 Authority.

[Section 7 amended by No. 26 of 1974 s. 3; No. 96 of 1985 ss. 6 and 22.]

### **Election of members**

**8.** (1) The election of the elective members of the Authority 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 Authority shall be a charge upon and shall be paid out of the special account established under section 4 of the *Potato Growers Licensing Act 1941*. The expenses incurred in connection with subsequent elections shall be a charge upon, and shall be paid out of moneys from time to time in the hands of the Authority for the purposes of this Act.

(3) [omitted under Reprints Act 1984 s. 7 (4) (e).]

[Section 8 amended by No. 26 of 1974 s. 4; No. 96 of 1985 s. 22.]

### **Authority a body corporate**

**9.** The Authority 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 Authority.

[Section 9 amended by No. 96 of 1985 s. 22.]

### **Authority not to represent the Crown**

**10.** The Authority shall not, except in relation to any matter in which the Authority is specially authorized by the Governor to act on behalf of the Crown, be the agent or servant or the representative of the Crown.

[Section 10 amended by No. 96 of 1985 s. 22.]

### **Remuneration of Authority members**

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

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

*[Section 11 amended by No. 96 of 1985 s. 22.]*

### **Term of office**

**12.** Subject as hereinafter provided, the nominated members and the elective members of the Authority shall each hold office subject to good behaviour for a period of 3 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 2 elective members to represent the commercial producers first elected after the passing of this Act<sup>1</sup>, one of them shall hold office for 2 years only, and the other for 3 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.

*[Section 12 amended by No. 96 of 1985 s. 22.]*

### **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 Authority from more than 4 consecutive meetings of the Authority, and is declared by resolution of the Authority 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 Authority shall hold office for the balance only of the term of the member in whose place he is appointed.

*[Section 13 amended by No. 96 of 1985 s. 22.]*

### **Proceedings of Authority not invalidated by vacancies or defects**

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

(2) All acts and proceedings of the Authority 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 appointed and qualified.

*[Section 14 amended by No. 96 of 1985 s. 22.]*

### **Exercise of powers by Authority**

**15.** (1) All powers vested in the Authority 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 Authority at which he is present. If the chairman is absent from a meeting the other members of the Authority 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 Authority shall form a quorum.

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

*[Section 15 amended by No. 96 of 1985 s. 22.]*

### **Protection of members**

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

*[Section 16 amended by No. 96 of 1985 s. 22.]*

### **Meetings of the Authority**

**17.** (1) The first meeting of the Authority 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 Authority: Provided that the chairman may, on reasonable notice to members of the Authority, call a meeting at any time.

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

*[Section 17 amended by No. 96 of 1985 s. 22.]*



*Division 2—Functions and General Powers of Authority*

[*Heading amended by No. 96 of 1985 ss. 7 and 22.*]

**Functions of Authority**

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

- (a) regulate the production of potatoes so as to ensure the supply of the quantities, kinds and qualities of potatoes that are preferred by consumers in the State, for the production of potato products in the State and for export from the State, whilst preventing over-production;
- (b) take delivery of potatoes in accordance with this Act and market potatoes and potato products in the State and elsewhere;
- (c) encourage and facilitate the negotiation and performance of contracts between growers and persons engaged in the processing or export of potatoes;
- (d) encourage and promote the use of potatoes;
- (e) foster methods of production and adopt methods of marketing that will enable potatoes grown and potato products produced in the State to compete in price and quality against potatoes and potato products from alternative sources of supply;
- (f) promote, encourage, fund and arrange for the conduct of research into matters relating to the production and marketing of potatoes;
- (g) seek and apply knowledge of new and improved techniques and materials that will assist it to perform its functions.

[*Section 17A inserted by No. 96 of 1985 s. 8.*]

**Officers of the Authority**

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

- (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 1978*<sup>2</sup>, and of the *Government Employees (Promotions Appeal Board) Act 1945*<sup>3</sup>, shall not apply to such appointees, or any of them.

(2) With the consent of the Minister administering any Department of the Public Service of the State, the Authority 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 Authority shall be charged upon and be payable out of the moneys from time to time in the hands of the Authority for the purposes of this Act.

[Section 18 amended by No. 96 of 1985 s. 22.]

### **General powers of Authority**

19. The Authority 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;
- (ba) enter into a partnership or an arrangement for the sharing of expenditure, profits and losses;
- (bb) form or establish, or participate in the formation or establishment of, any corporation or joint venture;
- (bc) subscribe for, invest in or otherwise acquire, and dispose of, shares in, or debentures or other securities of, a corporation;
- (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) process or contract or arrange for the processing of any potatoes;
- (g) purchase, hire, construct, erect and maintain any premises, machinery, plant and equipment required for the processing of potatoes;
- (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 Authority 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 licences to growers, and regulate the registration of growers, potato growing areas and contracts for the supply of potatoes for processing or export;
- (l) regulate the granting, issue, duration, refusal, transfer, suspension and cancellation of licences and registration under this Act;

- (m) prescribe the conditions upon which licences may be granted, including the power to limit and define the area or areas within which potatoes may be sown or produced for sale or the quantity of potatoes that may be 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 licence issued by the Authority;
- (o) require any grower who may cease to grow or produce potatoes for sale, or who may intend to produce less potatoes than contemplated by the conditions of his licence, to give to the Authority 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 Authority for giving effect to this Act.

[Section 19 amended by No. 96 of 1985 ss. 9 and 22.]

### **Appeals**

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

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

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

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

[Section 19A substituted by No. 96 of 1985 s. 10.]

### **Administration of special account under Act No. 42 of 1941 s. 4**

**20.** From and after the commencement of this Act<sup>1</sup>, the moneys paid in to the special account at the Treasury under section 4 of the *Potato Growers Licensing Act 1941*, shall be administered by the Authority 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) [omitted under Reprints Act 1984 s. 7 (4) (e).]
- (b) [omitted under Reprints Act 1984 s. 7 (4) (e).]

- (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 Authority, 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.

[Section 20 amended by No. 96 of 1985 s. 22.]

#### **Directions by Minister**

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

[Section 20A inserted by No. 96 of 1985 s. 11.]

#### **Authority may establish consultative groups**

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

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

[Section 20B inserted by No. 96 of 1985 s. 11.]

#### **Co-operation with Potato Industry Council**

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

[Section 20C inserted by No. 96 of 1985 s. 11.]

PART III—REGISTERED AGENTS

**Registered agents**

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

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

(3) The Authority 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 Authority an agent may to the extent authorized by the Authority take deliveries of potatoes from growers or sell or distribute potatoes on behalf of the Authority.

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

(6) The Authority 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 Authority, 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 Authority, with the approval of the Minister, shall determine.

[Section 21 amended by No. 96 of 1985 s. 22.]

PART IV—MARKETING OF POTATOES

[21A. Omitted under Reprints Act 1984 s 7 (4) (e).]

**Prohibition against sales other than to Authority**

**22.** [(1) repealed]

(2) On or after 1 October 1948, a grower shall not sell or deliver any potatoes to any person other than the Authority and a person other than the Authority 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 25, 26A or 26B.

(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), it is sufficient to refer to the grower as "a grower" without the necessity of stating the name of a grower.

(4) At the hearing of a complaint of an offence referred to in subsection (3), 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 50 kilograms in weight, or was estimated by an inspector in a manner which the Court deems reasonable to exceed 50 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 Authority or an agent; or
  - (ii) it was not in fact issued by or on behalf of the Authority 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 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).

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 50 kilograms in weight, or estimated by an inspector in a manner which the Court deems reasonable to exceed 50 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 50 kilograms in weight, or estimated by an inspector in a manner which the Court deems reasonable to exceed 50 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 50 kilograms in weight is being, is likely to be, or has been, dealt within a manner contravening subsection (2), 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 50 kilograms of potatoes suspected by him of being so dealt with.

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

- (a) for a first offence, to a fine of not less than \$100 or more than \$400;
- (b) for a subsequent offence, to a fine of not less than \$200 or more than \$400,

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), 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), ascertained in accordance with the provisions of subsection (9).

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

[Section 22 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; No. 96 of 1985 ss. 12 and 22.]

### Halting and inspection of certain vehicles

22A. (1) Where an inspector has reasonable grounds for suspecting that there is on a vehicle a quantity of potatoes exceeding 50 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),

and if upon his inspection of the vehicle the inspector is satisfied that there is on the vehicle a quantity of potatoes exceeding 50 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 a 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) 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);
- (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 \$100 or more than \$400;
- (e) for a subsequent offence, to a fine of not less than \$200 or more than \$400.



(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.

[Section 22A inserted by No. 55 of 1966 s. 4; amended by No. 94 of 1972 s. 4 (as amended by No. 19 of 1973); No. 96 of 1985 s. 22.]

### **Unlicensed person not to produce potatoes for sale**

**22B.** (1) A person who is not the holder of a valid licence issued by the Authority 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), 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, 500 square metres is *prima facie* evidence that the land was planted with a view to producing potatoes for sale.

(3) A person convicted of an offence against subsection (1) 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 15 cents; and
- (b) for a second or subsequent offence, of not more than 25 cents nor less than 15 cents.

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

[Section 22B inserted by No. 55 of 1966 s. 5; amended by No. 26 of 1974 s. 7; No. 96 of 1985 ss. 13 and 22.]

### **Duty of Authority to accept delivery**

**23.** (1) Subject to subsection (3), the Authority 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 Authority at the place or places, at the times, during the periods, in the quantity or quantities, and of the quality or standards, that the Authority 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 Authority on the ground that they are below the prescribed quality, the Authority shall issue to the grower thereof a certificate of such refusal in the prescribed form.

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

*[Section 23 amended by No. 96 of 1985 ss. 14 and 22.]*

#### **Effect of delivery to Authority**

24. All potatoes delivered to the Authority by growers and accepted by the Authority shall thereupon be vested in and become the absolute property of the Authority 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.

*[Section 24 amended by No. 96 of 1985 s. 22.]*

#### **Authority may permit sales to others**

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

(2) A person holding a permit granted under subsection (1) may, notwithstanding the provisions of section 22, 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 22 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 Authority 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 Authority 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 2 preceding sections—

- (a) such growers of small quantities of potatoes as the Authority 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 Authority's decision as to whether any specified person or article falls within the limits of any such exemption shall be final.

*[Section 25 amended by No. 29 of 1957 s. 4; No. 96 of 1985 s. 22.]*

### **Grower restricted from using his potatoes in a business**

**26.** (1) Subject to subsection (2), 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 Authority may grant a permit to any grower for the purpose of removing the restrictions imposed by subsection (1). Such permit may be granted subject to any conditions which the Authority may think fit to impose.

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

- (a) for a first offence, to a fine of not less than \$100 or more than \$400;
- (b) for a subsequent offence, to a fine of not less than \$200 or more than \$400.

*[Section 26 amended by No. 55 of 1966 s. 6; No. 96 of 1985 s. 22.]*

### **Delivery of potatoes to manufacturer**

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

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

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

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

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

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

[Section 26A inserted by No. 96 of 1985 s. 15.]

### **Delivery of potatoes for export**

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

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

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

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

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

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

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

[Section 26B inserted by No. 96 of 1985 s. 15.]

### **Mode of delivery to Authority**

**27.** Subject to this Act—

- (a) delivery of any potatoes may be tendered to the Authority 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 Authority, either generally, or in any particular case, directs, or as are prescribed;
- (c) the Authority may accept delivery of any potatoes so tendered, and the potatoes so delivered to, and accepted by, the Authority, shall be deemed to be vested in and be the absolute property of the Authority 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.

[Section 27 amended by No. 96 of 1985 s. 22.]

### **Delivery under name and grading to follow delivery**

28. All potatoes delivered to the Authority 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 Authority shall be graded according to the prescribed grade standards.

[Section 28 amended by No. 96 of 1985 ss. 16 and 22.]

### **Evidence of intention to deliver**

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

[Section 29 amended by No. 96 of 1985 s. 22.]

### **Compensation**

30. (1) Subject to this Act, the Authority 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 Authority 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 Authority 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 Authority may determine, but the Authority may, in determining the amount of such payments, take into account any other circumstances which it considers relevant.

(2) Notwithstanding anything contained in subsection (1), the Authority may—

- (a) make progress payments to each person by or for whom the potatoes were delivered to the Authority 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 Authority may determine;
- (b) out of any surplus moneys in the hands of the Authority at the end of any period prescribed under subsection (1), make final payments to each such person on such basis as the Authority may determine.

(3) The Authority 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 Authority under subsection (2)—

- (a) the expenditure incurred, or estimated to be incurred, in or in connection with the marketing, treatment or processing of potatoes delivered to the Authority;
- (b) the costs and expenses, or estimated costs and expenses, of the administration by the Authority of the provisions of this Act relating to potatoes delivered to the Authority and the production of those potatoes;
- (c) any sums necessary, or estimated to be necessary, to repay any advances made to the Authority or moneys borrowed by the Authority in accordance with this Act and any interest thereon;
- (ca) any moneys authorized by subsection (3a);
- (d) the freight charges incurred, or estimated to be incurred, by the Authority 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 Authority 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 Authority contains a fraction of a cent the Authority may deduct therefrom the fraction of a cent and pay any fractions so deducted into a suspense account and the Authority, 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 Authority under subsection (1) or subsection (2), and generally for the purposes of this Act, the decision of the Authority as to—

- (a) the quality, standard, variety, grade, class, description or value of any of the potatoes delivered to the Authority (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
- (d) the amounts to be deducted under this section—

shall be final and conclusive.

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

*[Section 30 amended by No. 55 of 1966 s. 7; No. 26 of 1974 s. 8; 96 of 1985 ss. 17 and 22.]*

### **Certificate to grower upon delivery**

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

Provided that the Authority 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 Authority 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 Authority 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 Authority.

(4) The Authority may make advances on account of the potatoes delivered to the Authority, 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 Authority thinks fit.

[*Section 31 amended by No. 96 of 1985 s. 22.*]

### **Contracts for sale of potatoes**

**32.** (1) Subject to this Act, every contract (whether made before or after the issue of the public notice under section 22) 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 Authority 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.

[*Section 32 amended by No. 96 of 1985 s. 22.*]

### **Restrictions on carriage of potatoes**

**33.** Notwithstanding anything to the contrary in the *Government Railways Act 1904*, 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 22), the Commissioner of Railways and any common carrier and any owner, charterer, master or agent of any ship, may, on the request from time to time of the Authority (which request the Authority is hereby authorized to make), and without incurring liability, refuse to carry any potatoes referred to by the Authority 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 Authority in respect of any potatoes not remaining vested in the Authority at the time of the making of the request.

[*Section 33 amended by No. 96 of 1985 ss. 18 and 22.*]



**Restrictions on proceedings against Authority**

34. (1) No proceedings shall be brought against the Authority, or any person acting under the authority of the Authority, in respect of any claim by any person 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 Authority as a delivery thereof by him to the Authority, and may claim accordingly in respect thereof.

(3) Every person making any claim under this section shall give or send to the Authority 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 Authority may be paid to the claimant.

*[Section 34 amended by No. 96 of 1985 s. 22.]*

**Grower to notify Authority of any encumbrances**

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 22) shall, when delivering the potatoes to the Authority, give to the person receiving the potatoes on behalf of the Authority 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 Authority.

(2) The provisions of subsection (1) shall extend and apply to every person by whom any of the potatoes are delivered to the Authority 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 Authority 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 Authority 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 Authority 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.

[Section 35 amended by No. 96 of 1985 s. 22.]

### **Limitation of liability of Authority**

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

- (a) a grower or other person delivering or causing to be delivered to the Authority, or to any person acting under the authority of the Authority, any of the potatoes in relation to which the Authority 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 Authority or causing it to be so delivered,

the Authority 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 Authority of notice of a claim to the moneys payable in respect of a certificate granted by the Authority from any person other than the person named in the certificate or to whom it has been transferred the Authority 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 Authority 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.

[Section 36 amended by No. 96 of 1985 s. 22.]

PART V—MISCELLANEOUS

**Application of *Financial Administration and Audit Act 1985***

37. The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Authority and its operations.

[Section 37 substituted by No. 98 of 1985 Schedule 1; amended by No. 96 of 1985 s. 22.]

**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 Authority for use on its behalf by the Authority 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.

[Section 38 amended by No. 96 of 1985 s. 22.]

**Charge on proceeds of potatoes marketed**

39. All expenditure of the Authority other than expenditure referred to in section 26A (4) and 26B (4) and all claims against the Authority shall be a charge upon the proceeds of potatoes marketed by the Authority which to the necessary extent shall be deemed part of the Authority's funds accordingly.

[Section 39 amended by No. 96 of 1985 ss. 19 and 22.]

[40. Section 40 repealed by No. 98 of 1985 Schedule 1.]

**Offences**

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.

(2) A person guilty of an offence against this Act for which no other penalty is provided is liable to a penalty not exceeding \$400.

(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.

[Section 41 amended by No. 29 of 1957 s. 5; No. 55 of 1966 s. 8; No. 96 of 1985 s. 22.]

### **Institution of legal proceedings by Authority**

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

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

[Section 42 amended by No. 96 of 1985 s. 22.]

### **Regulations**

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

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

- (a) prescribing grade standards for potatoes including different standards for different classes of potatoes or potatoes required for different purposes;
- (b) requiring lands and premises used for or in connection with the production or preparation for sale of 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;
- (ba) prescribing fees for the registration of contracts under sections 26A and 26B;
- (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 Authority may consider necessary;

- (d) for enabling the Authority or any person authorized 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;
- (g) defining the functions, authorities and duties of inspectors;
- (ga) as to provisions to be included in contracts referred to in section 26A and 26B;
- (h) any other matter which in the opinion of the Minister is incidental to carrying out the functions and duties imposed on the Authority by this Act.

(3) Regulations made under this Act may prescribe penalties not exceeding \$200 in respect of any contravention of any of the regulations.

[Section 43 amended by No. 55 of 1966 s. 9; No. 96 of 1985 ss. 20 and 22.]

### **Review of Act**

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

- (a) the effectiveness of the operations of the Authority;
- (b) the need for the continuation of the functions of the Authority; and
- (c) such other matters as appear to him to be relevant to the operation and effectiveness of this Act.

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

[Section 44 added by No. 96 of 1985 s. 21.]

## NOTES

<sup>1</sup>. This reprint is a compilation as at 1 June 1988 of the Marketing of Potatoes Act 1946 and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Marketing of Potatoes Act 1946</i>	26 of 1946	14 January 1947	20 January 1947 (see <i>Gazette</i> 17 January 1947 p. 95)	
<i>Marketing of Potatoes Act Amendment Act 1949</i>	4 of 1949	24 August 1949	24 August 1949	
<i>Marketing of Potatoes Act Amendment Act 1956</i>	3 of 1956	10 September 1956	10 September 1956	
<i>Marketing of Potatoes Act Amendment Act 1957</i>	29 of 1957	26 October 1957	26 October 1957	
<i>Marketing of Potatoes Act Amendment Act 1966</i>	55 of 1966	5 December 1966	1 February 1967 (see <i>Gazette</i> 27 January 1967 p. 255)	
<i>Metric Conversion Act 1972</i>	94 of 1972	4 December 1972	The relevant amendments as set out in the Second Schedule took effect 11 January 1974 (see <i>Gazette</i> 11 January 1974 p. 92)	The Second Schedule was added by the <i>Metric Conversion Act Amendment Act 1973</i> (No. 19 of 1973)
<i>Marketing of Potatoes Act Amendment Act 1974</i>	26 of 1974	29 October 1974	29 October 1974	
<i>Acts Amendment (Potato Industry) Act 1985, Part II</i>	96 of 1985	4 December 1985	Section 6 (b): 27 March 1986 (see <i>Gazette</i> 27 March 1986 p. 1293); balance: 18 September 1987 (see <i>Gazette</i> 18 September 1987 p. 3587)	
<i>Acts Amendment (Financial Administration and Audit) Act 1985 (as amended by Act No. 3 of 1986)</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2 and <i>Gazette</i> 30 June 1986 p. 2255)	

<sup>2</sup>. Previously *Public Service Act 1904*.

<sup>3</sup>. Repealed by Act No. 94 of 1984.