



Marketing of Potatoes Act 1946

Reprinted as at 7 January 2000

Western Australia

Marketing of Potatoes Act 1946

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Marketing of Potatoes Act 1946

An Act to make provision for the marketing, sale and disposal of ware potatoes and to control their production; to require the registration of growers, and the licensing of areas of land used for the production, of potatoes; to repeal the *Potato Growers Licensing Act 1941*, and to constitute the Potato Marketing Corporation of Western Australia; and for other relative purposes.

[Long title amended by No. 96 of 1985 s.22; No. 11 of 1995 s.4.]

1. Short title and commencement

This Act may be cited as the *Marketing of Potatoes Act 1946*, and shall come into operation on a date to be fixed by proclamation¹.

[2. Repealed by No. 96 of 1985 s.4.]

Part I — Preliminary

3. Repeal

[Omitted under the Reprints Act 1984 s.7(4)(f).]

4. Operation

- (1) Subject to subsections (2) and (3), this Act shall operate and have effect throughout the State.
- (2) 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.
- (3) The provisions of this Act do not bind the department of the Public Service designated as the Department of Agriculture².

[Section 4 amended by No. 11 of 1995 s.6.]

5. Interpretation

- (1) In this Act, unless the contrary intention appears —
 - “**area licence**” means a licence issued by the Corporation authorizing the planting and producing of potatoes on the land described in the licence;
 - “**commercial producer**” means a grower by whom or on whose behalf at least 100 square metres or any areas of land exceeding in the aggregate 100 square metres have been planted with potatoes in the last preceding period of 12 months commencing from 1 April in each year;
 - “**consignment advice**” means a document in the prescribed form furnished by the grower of the potatoes to which the document relates and which contains the prescribed information in relation to those potatoes;

“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;

“packaging” includes any container, bag or other receptacle;

“potato exporter” means a person, other than the Corporation, who or which —

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

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

“potato product manufacturer” means a person who or which, otherwise than by way of a restaurant or food shop, carries on the business of manufacturing a potato product;

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

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

“the Corporation” means the body preserved and continued under section 7(1) as the Potato Marketing Corporation of Western Australia;

“the Fund” means the Potato Marketing Corporation Fund referred to in section 20(1);

“ware potato” means a potato which —

- (a) is grown in the State; and

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- (b) is sold, or in respect of which there are reasonable grounds to believe that it is intended for sale, for human consumption; and
 - (c) is unprocessed, except for cleaning and grading.
- (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 s.4); No. 26 of 1974 s.2; No. 96 of 1985 ss.5 and 22; No. 11 of 1995 s.7.]

6. Construction

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 Potato Marketing Corporation of Western Australia

[Heading amended by No. 96 of 1985 s.22; No. 11 of 1995 s.8.]

Division 1 — Constitution and proceedings of the Corporation

[Heading amended by No. 96 of 1985 s.22; No. 11 of 1995 s.12.]

7. Constitution of Corporation

- (1) The body corporate hitherto constituted under this section and known as the Western Australian Potato Marketing Board and subsequently as the Western Australian Potato Marketing Authority is preserved and continues in existence for the purposes of this Act but shall be known as the Potato Marketing Corporation of Western Australia.
- (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 or to the Western Australian Potato Marketing Authority, 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 Corporation unless in the context it would be incorrect to do so.
- (2) The Corporation shall consist of 6 members appointed by the Minister, 2 of whom shall be persons elected by the commercial producers under section 8.
- (3) Other than the persons elected under section 8, of the members of the Corporation —
 - (a) one shall be appointed as chairman of the Corporation, being a person who in the opinion of the Minister has relevant commercial expertise; and

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- (b) 3 shall be persons who have, in the opinion of the Minister, relevant commercial expertise in finance, in marketing, or in the food industry.

[Section 7 amended by No. 26 of 1974 s.3; No. 96 of 1985 ss.6 and 22; No. 11 of 1995 ss.9 and 12.]

8. Election of members

- (1) The election of the persons eligible to be appointed as representing commercial producers as elective members of the Corporation 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 elections required under subsection (1) shall be paid out of moneys from time to time in the hands of the Corporation for the purposes of this Act.

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

[Section 8 amended by No. 26 of 1974 s.4; No. 96 of 1985 s.22; No. 11 of 1995 ss.10 and 12.]

9. Corporation a body corporate

The Corporation is 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 its corporate name and may, if approved by the Minister, operate under and use an abbreviation or a trading name.

[Section 9 amended by No. 96 of 1985 s.22; No. 11 of 1995 s.11.]

10. Corporation not to represent the Crown

The Corporation shall not, except in relation to any matter in which the Corporation 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; No. 11 of 1995 s.12.]

11. Remuneration of Corporation members

- (1) The members of the Corporation shall be entitled to be paid such remuneration and expenses as are determined in accordance with the regulations.
- (2) Such remuneration and expenses shall be paid out of the moneys from time to time in the hands of the Corporation for the purposes of this Act.

[Section 11 amended by No. 96 of 1985 s.22; No. 11 of 1995 ss.12 and 13.]

12. Term of office

- (1) Except as otherwise provided by this Act, a member of the Corporation shall hold office for such term, not exceeding —
 - (a) in the case of the chairman, 5 years; and
 - (b) otherwise, 3 years,

as is specified in the instrument of appointment, and may from time to time be reappointed.

- (2) A member of the Corporation whose term of office expires shall, unless the office becomes vacant under section 13, continue in office until a successor comes into office.

[Section 12 inserted by No. 11 of 1995 s.14.]

13. Vacancies

The office of a member of the Corporation becomes vacant if that member —

- (a) dies;

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- (b) resigns by written notice given to the Minister;
- (c) is an insolvent under administration within the meaning of the Corporations Law;
- (d) by reason of —
 - (i) mental or physical incapacity;
 - (ii) incompetence;
 - (iii) neglect of duty; or
 - (iv) misbehaviour,impairing the performance of the duties of the office and proved to the satisfaction of the Minister, is removed from office by the Minister; or
- (e) is absent without leave of the Corporation from 3 consecutive meetings of the Corporation of which the member had notice, and is declared by resolution of the Corporation thereby to have vacated office.

[Section 13 amended by No. 96 of 1985 s.22; No. 11 of 1995 s.15.]

14. Proceedings of Corporation not invalidated by vacancies or defects

- (1) No act or proceeding of the Corporation shall be invalid or illegal in consequence only of the number of members of the Corporation not being complete at the time of such act or proceeding.
- (2) All acts and proceedings of the Corporation 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; No. 11 of 1995 s.12]

15. Exercise of powers by Corporation

- (1) All powers vested in the Corporation 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 Corporation at which he is present. If the chairman is absent from a meeting the other members of the Corporation present shall select one of their number to act as chairman at that meeting.
- (3) If the votes of the members of the Corporation present at a meeting and voting on a question are equally divided, the chairman or other person presiding at that meeting shall have and may exercise a casting vote in addition to a deliberative vote.
- (4) Three members of the Corporation shall form a quorum.
- (5) The Corporation shall keep a record of its proceedings.
- (6) Notice of meetings of the Corporation is to be given to the chief executive officer of the Corporation, who shall be entitled to attend any meeting of the Corporation and to participate in the discussion of any matter at the meeting but, unless a person who is a member of the Corporation, is not entitled to a vote.

[Section 15 amended by No. 96 of 1985 s.22; No. 11 of 1995 ss.12 and 16.]

16. Protection of members and officers

- (1) A person who is a member, or subject to section 18(8) an officer, of the Corporation shall not be personally liable for any act done or omitted to be done in good faith by that person or by the Corporation in the performance, or purported performance, of any function under this Act.

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(2) Subsection (1) does not relieve the Corporation of any liability that, but for subsection (1), it might have for the acts or omissions of a member or of an officer of the Corporation.

(3) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

[Section 16 inserted by No. 11 of 1995 s.17; amended by No. 41 of 1996 s.3.]

17. Meetings of the Corporation

(1) The first meeting of the Corporation 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 Corporation but the chairman may, on reasonable notice to members of the Corporation, call a meeting at any time.

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

[Section 17 amended by No. 96 of 1985 s.22; No. 11 of 1995 ss.12 and 18.]

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[Heading amended by No. 96 of 1985 ss.7 and 22; No. 11 of 1995 s.12.]

17A. Functions of Corporation

The functions of the Corporation are to —

- (a) regulate the production of ware potatoes so as to ensure the supply of the quantities, kinds and qualities preferred by consumers in the State;
- (b) take delivery of, and otherwise deal with, potatoes in accordance with this Act and market potatoes in the State and elsewhere;

- (c) register persons who are to be authorized to carry on business as a commercial producer of potatoes, and license the areas of land to be used in any such business;
- (d) encourage and promote the use of potatoes and provide for the monitoring and, if thought fit, regulation of the production of potatoes for propagation or for any other prescribed kind of use;
- (e) foster methods of production and adopt methods of marketing that will enable potatoes grown in the State to compete in price and quality against potatoes 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, and undertake market development; and
- (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; amended by No. 11 of 1995 ss.12 and 19.]

18. Officers of the Corporation

- (1) The Corporation may appoint such inspectors and other officers and employees, subject to any applicable order, award or agreement under the *Industrial Relations Act 1979* or any workplace agreement in force under the *Workplace Agreements Act 1993*, 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.

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- (2) With the consent of the Minister concerned with the administration of the relevant department, agency or instrumentality, the Corporation may, on any terms agreed between itself and the Minister, make use —
- (a) of the services of any officer or employee in the Public Service or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
 - (b) of any facilities of a department of the Public Service or of a State agency or instrumentality,
- after consultation with the Public Service Commissioner³.
- (3) The salaries, wages, and other expenses payable to persons employed or otherwise engaged by the Corporation shall be charged upon and be payable out of the moneys from time to time in the hands of the Corporation for the purposes of this Act.
- (4) Of the officers appointed under this section one shall, subject to the approval of the Minister, be appointed as chief executive officer of the Corporation who —
- (a) shall, subject to the control of the members of the Corporation, administer the day to day operations of the Corporation; and
 - (b) may be a person who is a member of the Corporation.
- (5) For the purposes of this Act an inspector —
- (a) shall act in accordance with any direction which may be given by the chief executive officer of the Corporation; and
 - (b) may be accompanied by a person acting under the supervision of the inspector to assist in making any inspection or examination,

and any reference in this Act to an inspector in the context of a right of entry or in relation to a duty imposed or a power conferred is to be deemed to include a reference to any such person accompanying an inspector and to the chief executive officer.

- (6) In the exercise of his functions an inspector may direct or require a person having the custody or control of any land, premises or thing in respect to which the inspector is authorized to exercise power to furnish reasonable access, facilities and other assistance and relevant information, or to produce any potatoes in their custody or control, for the purpose of the exercise of that power.
- (7) A person who, without lawful excuse —
- (a) delays, hinders or obstructs any inspector;
 - (b) contravenes a direction given, or fails to comply with a requirement made, by an inspector pursuant to this Act;
 - (c) being the owner, occupant or person in charge of any premises or vehicle, refuses to permit an inspector to exercise any function authorized under this Act,
- commits an offence.
- (8) An inspector, or a person acting under the direction or supervision of an inspector, is not liable for any loss, damage or injury resulting from, or alleged to be sustained by reason of, the performance of any duty imposed, or the exercise of any power conferred, by or under this Act upon an inspector if the duty was performed or the power exercised in good faith and in a reasonable manner.
- (9) The chief executive officer of the Corporation shall issue to each inspector appointed under this Act a certificate evidencing that appointment, and in any proceedings under this Act production of a certificate of appointment purporting to be so issued is to be deemed to be *prima facie* evidence of the matters appearing therein without further proof of those matters.

[Section 18 amended by No. 96 of 1985 s.22; No. 32 of 1994 s.3(2); No. 11 of 1995 ss.12 and 20.]

19. General powers of Corporation

- (1) The Corporation 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) fix a minimum price at which potatoes from a domestic marketing pool may be sold to wholesalers by the Corporation;
 - (e) establish or maintain premises for receiving, handling, grading, treatment, storage or sale of potatoes;
 - (f) receive, handle, wash, brush, package, grade, treat, process, store, purchase or sell potatoes, or contract or arrange for any such matter;
 - (g) purchase, hire, construct, erect and maintain any premises, machinery, plant and equipment required for the performance of its functions;
 - (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 Corporation 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 —
 - (i) grant, or refuse, the registration of persons as authorized to carry on business as a commercial producer of potatoes, whatever the purpose for which those potatoes are to be grown;
 - (ii) license, or refuse to license, the areas of land sought to be used in any such business; and
 - (iii) regulate domestic market entitlements, and marketing pools;
- (l) administer the granting, issue, duration, refusal, transfer, suspension and cancellation of licences and registration under this Act;
- (m) impose conditions upon licences granted, including restrictions limiting or defining 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 to consumers in the State except in accordance with the conditions determined by the Corporation;
- (o) require any grower who may cease to grow potatoes for sale, or who may intend to grow less than any relevant market entitlement granted to that grower contemplates, to give to the Corporation written notice and particulars of the circumstances within a reasonable time;

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- (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 Corporation for giving effect to this Act.
- (2) Subject to the approval of the Minister, the Corporation may delegate the exercise of any of its powers, or the performance of any duty conferred or imposed on it, to any other person.
- (3) The Corporation may from time to time appoint any person —
 - (a) on such terms and conditions as are; and
 - (b) to the extent and in the area that is,

agreed between the Corporation and that person, to act as the agent of the Corporation and that person may be thereby authorized to take deliveries from growers, to act as a grading and packing merchant, to sell or distribute potatoes, or to perform any other specified function on behalf of the Corporation.
- (4) The appointment of a person under subsection (3) as an agent of the Corporation may from time to time be amended, or be revoked, by the Corporation.

[Section 19 amended by No. 96 of 1985 ss.9 and 22; No. 11 of 1995 ss.12 and 21.]

19A. Appeals

- (1) A person who considers himself aggrieved by a decision made by the Corporation in exercise of a power conferred on the Corporation, 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 Corporation.

- (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 Corporation.
- (5) The functions of the Minister under this section in relation to any appeal against a decision of the Corporation relating to the regulation of the domestic market entitlement allocations may be delegated by the Minister, in writing, to a person or body of persons specified in the instrument of delegation.

[Section 19A inserted by No. 96 of 1985 s.10; amended by No. 11 of 1995 ss.12 and 22.]

20. Cost of administration

- (1) There shall be established and kept —
 - (a) at the Treasury, as an account forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) with the approval of the Treasurer, at a bank,an account to be called the “Potato Marketing Corporation Fund”, and the cost of the administration of this Act, and of any other activity under this Act assumed by the Corporation, shall be paid from that account.
- (2) There shall be credited to the Fund —
 - (a) any money derived from the payment of fees, or the sale of potatoes, or any other activity under this Act assumed, by the Corporation; and
 - (b) all other money lawfully received by the Corporation for the purposes of this Act.

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- (3) The Fund may be used —
- (a) to meet the costs of the administration of this Act, including any expense incidental to the administration of the Fund;
 - (b) for the payment of any moneys payable to growers or other persons in respect of potatoes accepted by the Corporation and of expense directly connected with any other activity under this Act assumed by the Corporation, so far as the Corporation may be liable for payment; and
 - (c) for any other expenditure lawfully incurred under and for the purposes of this Act.
- (4) For the purposes of this Act, the Corporation may establish, manage and disburse reserve funds, forming part of the account referred to in subsection (1), for the purpose of —
- (a) market research and development; or
 - (b) other research into matters related to the activities of the Corporation.

[Section 20 inserted by No. 11 of 1995 s.23.]

20A. Directions by Minister

- (1) The Minister may give directions in writing to the Corporation concerning the performance of its functions, either generally or with respect to a particular matter, and the Corporation shall, subject to this Act, give effect to any such direction.
- (2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of the Corporation under section 66 of the *Financial Administration and Audit Act 1985*.
- (3) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

[Section 20A inserted by No. 96 of 1985 s.11; amended by No. 11 of 1995 ss.12 and 24; No. 41 of 1996 s.3.]

20B. Corporation may establish consultative groups

- (1) The Corporation may establish consultative groups of persons for the purpose of considering, and advising the Corporation on, any matter relating to the performance of the functions of the Corporation that is referred to them by the Corporation, 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; amended by No. 11 of 1995 s.12.]

[20C. Repealed by No. 11 of 1995 s.25.]

[Part III repealed by No. 11 of 1995 s.26.]

Part IV — Marketing of potatoes

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

22. Prohibition against sales other than to Corporation

- (1) A person shall not sell or deliver ware potatoes, otherwise than —
 - (a) to —
 - (i) the Corporation; or
 - (ii) an agent authorized to act on behalf of the Corporation;
 - or
 - (b) in accordance with a permit granted, or exemption notified, under section 25.
- (2) A person, other than the Corporation or an agent authorized to act on behalf of the Corporation, shall not purchase or take delivery of ware potatoes —
 - (a) from a grower of those potatoes; or
 - (b) from a person other than such a grower, unless those potatoes are sold or delivered in accordance with a permit granted, or exemption notified, under section 25.
- (2a) A person shall not purchase or take delivery of any potatoes, whether or not ware potatoes, unless the potatoes are —
 - (a) accompanied by such a sales docket, delivery note or relevant consignment advice as may be required by the regulations and which contains the prescribed information; or
 - (b) the subject of a sale or transaction in respect of which under section 25(3) an exemption from the provisions of paragraph (a) applies.
- (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 for any offence against this section, evidence —
- (a) that an inspector had reasonable cause to believe 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 or a relevant consignment advice from the grower; 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 relevant consignment advice from the grower; or
 - (e) that the person charged did in fact produce to the inspector a sales docket, or delivery note or relevant consignment advice, but did not contain the prescribed information or that —
 - (i) the sales docket, or delivery note or relevant consignment advice, did not purport to have been issued by or on behalf of the Corporation or the holder of a relevant permit under section 25; or
 - (ii) it was not in fact issued by or on behalf of the Corporation or the holder of a relevant permit under section 25; 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

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branded or marked in accordance with particulars shown in the sales docket or delivery note or relevant consignment advice, or did not correspond with the description given in the sales docket or delivery note or relevant consignment advice,

shall be deemed to be *prima facie* evidence that the person charged purchased, or as the case may be, took delivery of, the potatoes in a manner contravening the provisions of this Act.

- (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 this Act, he may, upon giving a written receipt therefor to the person, if any, apparently in possession or having the control of the potatoes, impound the whole or any quantity of the potatoes suspected by him of being so dealt with and also —
 - (a) any sales docket, delivery note, consignment advice or other document that appears to him to relate to those potatoes and is produced to him or that he finds; and

- (b) any packaging used for those potatoes,
which is, in the opinion of the inspector, likely to be evidence relevant to the investigation of a suspected offence under this Act and shall cause any potatoes, document or packaging so impounded to be taken before a justice, to be dealt with in the manner provided in subsection (10).
- (8) A person convicted of an offence against subsection (2) is, subject to section 41(4), liable —
- (a) for a first offence, to a fine of not more than \$2 000;
 - (b) for a subsequent offence, to a fine of not more than \$5 000,
- and the Court convicting that person may, impose on that person a further penalty of an amount not exceeding twice the value of the quantity of potatoes involved, as 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 a figure calculated by reference to the price for potatoes of that grade, or if no sales of that grade occurred the average price, obtained by the Corporation from wholesale merchants, on or about the day on which the offence was committed, for potatoes sold by it.
- (10) Where any document or packaging, or any quantity of potatoes, is impounded under this Act and taken before a justice, the justice may cause the thing impounded to be detained in such custody as he may direct until the conclusion of any investigation that may be held with respect to it and, if any person is charged with an offence in respect of which the thing impounded is likely to afford evidence at the trial, may cause it to be further detained for the purpose of being produced in evidence at such trial, subject to section 41B.

[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 s.4); No. 26 of 1974 s.6; No. 96 of 1985 ss.12 and 22; No. 20 of 1989 s.3; No. 11 of 1995 ss.12 and 27.]

s. 22A

22A. Halting and inspection of certain vehicles

(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) require 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, consignment advice 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, consignment advice or other document relating to the potatoes that is produced to him or that he finds on the vehicle; and
- (e) upon giving a written receipt, impound any packaging that he has reasonable cause to believe may be or have been used for potatoes, and any quantity of potatoes, found on the vehicle and which, in the opinion of the

inspector, is likely to be evidence relevant to the investigation of a suspected offence under this Act,

and shall cause any such document, packaging or potatoes impounded to be taken before a justice, thereupon to be dealt with in the manner provided in section 22(10).

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

[(3) repealed.]

- (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 s.4); No. 96 of 1985 s.22; No. 20 of 1989 s.3; No. 11 of 1995 s.28.]

22B. Commercial producers carrying on certain kinds of business to be registered, and areas licensed

- (1) A person shall not —
- (a) as a commercial producer grow potatoes for sale —
 - (i) to consumers in the State;
 - (ii) as, or to a manufacturer of, any potato product;
 - (iii) for export, or when exported; or
 - (iv) for propagation,unless that business is registered, in the prescribed manner, with the Corporation and is carried on in

s. 22B

- accordance with this Act and with the terms of, and any conditions or restrictions that apply to, that registration;
- (b) as a commercial producer plant potatoes, whether in connection with the carrying on of a business of the kind referred to in paragraph (a), or for propagation or for any other purpose, otherwise than on land specified in an area licence —
- (i) issued to that commercial producer by the Corporation; or
 - (ii) acquired by that commercial producer from another commercial producer by means of a transfer approved by the Corporation under this Act.
- (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, 100 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, subject to section 41(4), liable —
- (a) for a first offence, to a fine of not more than \$2 000; and
 - (b) for a subsequent offence, to a fine of not more than \$5 000.
- [(4) *repealed.*]
- (5) The Corporation may —
- (a) refuse —
 - (i) to grant an application for the registration of a business;
 - (ii) to approve the transfer of a registration; or

(iii) to issue, or to approve the transfer of, an area licence;

or

(b) cancel or suspend the operation of any such registration or licence,

at the written request of the Commissioner for Health where that officer is of the opinion that a health risk exists, at the written request of the Director General of Agriculture where that officer is of the opinion that a risk exists by reason of any pest or disease, or if the applicant or prospective transferee is a person convicted of an offence under the *Health Act 1911* or this Act.

(6) Subject to subsection (5), the Corporation shall not refuse an application for approval to the transfer of an area licence unless the Corporation has reason to believe that the transfer will or may result in the terms of the licence, or of any conditions or restrictions that apply to it, not being observed.

(7) An area licence —

(a) has effect from the time specified in the licence;

(b) has no effect at any time when —

(i) any of its terms, conditions or restrictions, whether set out in the licence or made applicable under section 22C(5), are not observed; or

(ii) the operation of it is suspended under subsection (5) or section 22D;

and

(c) may be cancelled by the Corporation.

(8) Where an application for the registration of a business is granted, the Corporation shall issue to the applicant a certificate in the prescribed form identifying —

(a) the commercial producer who is the holder;

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- (b) the name under which the holder is thereby authorized to carry on business;
 - (c) the location of the business;
 - (d) the size and nature of the activities under this Act thereby authorized; and
 - (e) any other terms, and any conditions or restrictions, applicable.
- (9) A purported transfer from one holder to another of any registration or area licence shall not have effect unless and until approval has been sought from and given by the Corporation in the prescribed manner.

[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; No. 20 of 1989 s.3; No. 11 of 1995 s.29.]

22C. Registration, and area licensing, generally

- (1) Regulations may be made under section 43 —
- (a) providing for the system of registration of businesses, and of area licensing, required under this Act;
 - (b) imposing duties on persons who carry on a business registered under this Act, or who hold an area licence; and
 - (c) requiring the payment of fees in relation to any registration or area licence, and prescribing the amount of those fees.
- (2) The operation of a registration or area licence has effect, subject to this Act, for such period as is specified in it or, if no period is specified, for such period as is prescribed.
- (3) The Corporation may renew the period of operation of a registration or area licence, or approve the transfer of the authorization it confers from one holder to another or, where its

operation relates to any place, may authorize its operation in relation to another place.

- (4) The grant or renewal, or the approval to the transfer, of a registration may be made subject to such terms, conditions and restrictions as the Corporation thinks fit.
- (5) The grant or renewal, or the approval to the transfer, of an area licence may be made subject to such terms, conditions and restrictions as the Corporation thinks fit, but —
 - (a) regard shall be had to the estimate made by the Corporation as to the demand anticipated for any particular period or particular purpose and any consequent need to regulate planting; and
 - (b) regard may be had to the proposed method of growing, taking into account that organic methods may require a larger area than would otherwise be used.
- (6) The Corporation may, from time to time during the operation of any registration or area licence, by notice in writing to the holder add to, cancel, suspend or otherwise vary the terms of, and the conditions and restrictions that apply to, that registration or licence.
- (7) Application for the registration of a business, or for the issue of an area licence, or for approval to the transfer of a registration or of an area licence, shall be made to the Corporation in the prescribed manner.

[Section 22C inserted by No. 11 of 1995 s.30.]

22D. Cancellation or suspension of a registration or area licence

- (1) If the Corporation proposes to cancel or suspend any registration or area licence the Corporation is to give to the holder notice in writing of the proposal, of the reason for it, and of the date upon which the cancellation or suspension will, subject to subsection (3), take effect.

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(2) The provisions of subsection (3) do not have effect where the cancellation or suspension of a registration or area licence is occasioned for a reason referred to in section 22B(5).

(3) A notice given under subsection (1) is to state that within —
(a) 7 days, in the case of a proposal to suspend; or
(b) 21 days, in the case of a proposal to cancel,

after service of the notice the person to whom it is given may make representations in writing to the Corporation concerning the proposal, that effect will not be given to the proposal until any representations received within that period have been considered, and that if the proposal is to take effect despite those representations the holder will be notified of the date on which it will take effect.

(4) Subject to subsection (3), the Corporation may cancel, or suspend the operation of, any registration or area licence at discretion.

(5) The cancellation, or suspension of the operation, of a registration or area licence may relate to the doing of some, but not all, of the activities or things authorized by the registration or licence.

[Section 22D inserted by No. 11 of 1995 s.30.]

23. Duty of Corporation to accept delivery

(1) Subject to subsection (3), the Corporation shall not refuse to accept delivery from any grower of any ware potatoes provided that —

- (a) they are of the prescribed quality and, if the case so requires, are in any container which conforms to the prescribed standards;
- (b) when so prescribed, they are potatoes for which a certificate of merchantable quality from such officer of the Department of Agriculture² 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 Corporation at the place or places, at the times, during the periods, in the quantity or quantities, and of the quality or standards, that the Corporation has, in the area where such potatoes are produced, by public notice or by notice to the grower or growers concerned, stipulated, if any such notice was given.
- (2) When any potatoes are refused by the Corporation on the ground that they are below the prescribed quality, the Corporation shall issue to the grower thereof a certificate of such refusal in the prescribed form.
- (3) The Corporation is not required to accept delivery from any grower of potatoes that have been produced, or are tendered for delivery, otherwise than —
- (a) by or on behalf of a business registered under this Act;
 - (b) within the terms of the domestic market entitlement allocated to that business; and
 - (c) in accordance with the terms, conditions and restrictions applying to the registration of that business and to the area licence in respect to the land where the potatoes were produced.
- (4) The Corporation may accept delivery from any grower of potatoes —
- (a) not being within the terms of a domestic market entitlement allocated to the business by or on behalf of which the delivery is made;
 - (b) for use by potato product manufacturers; or
 - (c) for export,
- but is not under any duty to do so.

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- (5) Acceptance by the Corporation of the delivery of any potatoes does not constitute any representation, express or implied, that the acceptance will require the Corporation to pay any amount, or at all, for those potatoes except such as is required under this Act.

[Section 23 amended by No. 96 of 1985 ss.14 and 22; No. 11 of 1995 ss.12 and 31.]

24. Effect of delivery to Corporation

- (1) All potatoes delivered to the Corporation by growers and accepted by the Corporation shall thereupon be vested in and become the absolute property of the Corporation freed and discharged from all mortgages, charges, liens, pledges, interests, trusts, contracts and encumbrances affecting those potatoes 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, unless a contract between the grower and the Corporation otherwise provides.
- (2) Potatoes shall be taken to have been accepted by the Corporation when —
- (a) delivery has been made to or on behalf of the Corporation in accordance with a sales docket, delivery note or relevant consignment advice as may be required by the regulations and which contains the prescribed information; and
 - (b) a price has been determined, by or on behalf of the Corporation following the grading of the potatoes.
- (3) For the purpose of accepting delivery of potatoes on behalf of the Corporation, the Corporation may under section 19(3) appoint persons as agents for the time being, and whilst the appointment subsists delivery of potatoes to such an agent shall be taken to be delivery to the Corporation.

[Section 24 amended by No. 96 of 1985 s.22; No. 11 of 1995 ss.12 and 32.]

25. Permits that the Corporation may grant, and exemptions

- (1) The Corporation, on application in the prescribed manner, may grant to any person a permit —
 - (a) to purchase potatoes;
 - (b) to sell potatoes;
 - (c) to use potatoes in or in connection with any catering, manufacturing or other business;
 - (d) to sell and deliver potatoes to a potato product manufacturer; or
 - (e) to sell and deliver potatoes to a potato exporter,in accordance with the terms of, and any conditions and restrictions that apply to, the permit.
- (2) The Corporation shall specify in a permit under subsection (1) the period for which it has effect, but may by notice in writing to the holder add to, cancel, suspend or vary the other terms of, and the conditions and restrictions that apply to, the permit.
- (3) The Corporation may, by a public notice or by written notice given to the growers thereby affected, exempt from the provisions of this Act specified in the notice —
 - (a) the growing of a small area or quantity of potatoes;
 - (b) the sale of potatoes direct to local consumers or to retail vendors;
 - (c) the use by a grower of potatoes required for propagation by the grower; or
 - (d) such other sales or transactions as may be prescribed,in accordance with the terms of the notice.
- (4) Subject to section 19A, the decision of the Corporation as to whether any person or thing falls within the terms of an exemption given by notice under subsection (3) shall be final.

[Section 25 inserted by No. 11 of 1995 s.33.]

26. The marketing of potatoes

- (1) The Corporation shall establish a marketing system for ware potatoes, comprising marketing pools, an entitlement to participate in which may be allocated by reference to —
- (a) the tonnage deliverable;
 - (b) the area licensed; or
 - (c) both,

according to its terms, as may be determined by the Corporation in respect to the relevant pool period.

- (2) The Corporation shall, prior to the commencement of each pool period, submit to the Minister a written statement setting out —
- (a) an estimate by the Corporation of —
 - (i) the quantity, expressed in tonnes; or
 - (ii) the area to be licensed,required to satisfy the anticipated domestic demand for ware potatoes in that pool period; and
 - (b) the recommendations of the Corporation as to whether any, and what, additional provision, not exceeding 5% of the quantity or area so estimated, should be made so as to ensure that, if the anticipated domestic demand is exceeded, the actual requirement of consumers in the State can be met,

and the Minister shall, after considering that statement, by directions given under section 20A(1) to the Corporation, establish the quantity of ware potatoes the delivery of which the Corporation is to be required to accept under section 23 as the domestic marketing pool and the Corporation shall then, by public notice, advertise the pool period, the tonnage to be accepted, and any particular specifications relevant to that pool.

- (3) The Corporation may also establish, and by public notice advertise, marketing pools related to potatoes other than ware potatoes, for —
- (a) export, generally;
 - (b) particular export markets; or
 - (c) other purposes,

and shall specify the specifications relevant to each pool and the relevant pool periods.

[Section 26 inserted by No. 11 of 1995 s.40.]

[26A. Repealed by No. 11 of 1995 s.35.]

[26B. Repealed by No. 11 of 1995 s.36.]

27. Marketing pools

The specification of a marketing pool —

- (a) shall establish —
 - (i) the quantity of potatoes which the Corporation is willing to accept in respect of that pool, if that is not to be unlimited; and
 - (ii) any market entitlements, and the method by which they are to be allocated;

and

- (b) may impose conditions as to —
 - (i) the quality;
 - (ii) the size;
 - (iii) testing for potato cyst nematodes, or other matters relating to disease or pests;
 - (iv) public health matters;
 - (v) timing;
 - (vi) variety;

- (vii) the packaging; and
- (viii) other matters,
relating to the potatoes that may be delivered.

[Section 27 inserted by No. 11 of 1995 s.40.]

28. Domestic market entitlements

- (1) For each domestic marketing pool established under section 26(2) the Corporation shall allocate domestic market entitlements specifying the quantity of ware potatoes that the Corporation is required to accept if delivered in accordance with section 23(1) by or on behalf of a registered business during the relevant pool period.
- (2) The Corporation —
 - (a) shall allocate a domestic market entitlement to each business for the time being registered under section 22B; and
 - (b) may invite applications from growers, or from persons other than growers, for the allocation of such an entitlement, but any such allocation shall not have effect unless or until the business to which the entitlement is, or is to be, allocated is registered under section 22B.
- (3) The regulation of the domestic market entitlement allocation required, under section 19(k), to be conducted by the Corporation shall be —
 - (a) based on principles approved by the Minister on the written recommendation of the Corporation; or
 - (b) as set out in guidelines for the Corporation given by the Minister by way of direction under section 20A(1),

and if a person is aggrieved by a decision of the Corporation in the exercise of that power that person may appeal to the Minister under section 19A.

- (4) In making recommendations to the Minister, and in allocating domestic market entitlements, the Corporation may have regard to —
- (a) the likelihood or otherwise of continuity and certainty of delivery;
 - (b) the anticipated market demand;
 - (c) any other anticipated requirement of consumers; and
 - (d) any other factors regarded as relevant by the Corporation.
- (5) A domestic market entitlement allocated to a business registered under section 22B may, if approval is sought from and given by the Corporation in the prescribed manner, be transferred by the respective holders of the certificates of registration concerned from that business to another business so registered.
- (6) The Corporation shall not refuse an application for approval to the transfer of a domestic market entitlement unless, had the application been made in respect of the transfer of an area licence, the provisions of section 22B(5) or (6) would have applied.

[Section 28 inserted by No. 11 of 1995 s.40.]

29. Shortfalls in requirement

- (1) Where the quantity of potatoes which is delivered to the Corporation, or to a person on behalf of the Corporation, is not sufficient in respect of any pool period to meet the requirements of the market the Corporation may —
- (a) make available for the purposes of that market potatoes delivered to the Corporation, or to a person on behalf of the Corporation, for the purpose of any other market; or
 - (b) import, or authorize persons on behalf of the Corporation to import, potatoes,

as the Corporation thinks fit, subject to any direction given by the Minister under section 20A.

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- (2) Where any potatoes delivered to and accepted by the Corporation for the domestic marketing pool are used by the Corporation for the purposes of an export marketing pool, the compensation payable under section 30 in respect of those potatoes shall be calculated in accordance with section 30(7).

[Section 29 inserted by No. 11 of 1995 s.40.]

30. Compensation

- (1) Subject to this Act, the Corporation 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 Corporation under this Act, in respect of the potatoes so delivered on the basis of the net proceeds of the sale of potatoes of a comparable quality, standard, variety, or grade, delivered to the Corporation and accepted for the purposes of the same marketing pool and pool period, and the proportion of the potatoes so delivered by those persons during each such period, or on such other basis as the Corporation may determine, but in determining the basis of payment and the amount of such payments the Corporation shall give effect to subsection (7) and section 32 and may have regard to any other circumstances which it considers relevant.
- (2) Notwithstanding anything contained in subsection (1), the Corporation may —
- (a) make progress payments to each person by or for whom the potatoes were delivered to the Corporation under this Act, in respect of the potatoes from time to time so delivered by that person and accepted for a particular marketing pool and at or about the time of each such delivery or at such other times and on such terms and conditions and in such manner, having regard to expected market returns, as the Corporation may determine;

- (b) out of any surplus moneys in the hands of the Corporation in respect of a particular marketing pool for a particular pool period make final payments to each such person on such basis, subject to this Act, as the Corporation may determine.
- (3) The Corporation 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 Corporation 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 in respect of the same marketing pool and pool period to the Corporation;
 - (b) the costs and expenses, or estimated costs and expenses, of the administration, having regard to the requirement to differentiate between marketing pools, by the Corporation of the provisions of this Act, including the repayment of advances made to or moneys borrowed by the Corporation and the payment of interest;
- [(c), (ca) & (d) repealed]*
- (e) such portion of those proceeds, or, as the case may be, progress or final payments as may be prescribed, to be paid to a reserve fund to be maintained by the Corporation for such purposes as may be prescribed, but any moneys standing to the credit of a reserve fund established under this subsection prior to the coming into operation of section 41 of the *Marketing of Potatoes Amendment Act 1995*¹ shall thereafter be used only for the purposes prescribed in relation to paragraph (e).
- (4) For the purposes of ascertaining the amount of any payment to be made by the Corporation under subsection (1) or subsection (2), and generally for the purposes of this Act, the decision of the Corporation as to —
- (a) the quality, standard, variety, grade, class, description or value of any of the potatoes delivered to the Corporation

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(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) repealed.]

- (6) Except in so far as any cost or expense can not be attributed precisely, the Corporation shall differentiate between marketing pools, distinguishing in particular between matters relating to —
 - (a) the domestic market for deliveries effected under section 23 which the Corporation is required to accept; and
 - (b) the export market and deliveries which the Corporation is not under a duty to accept,

and shall not transfer surplus moneys or distribute expenses from one kind of pool to another, but may utilize any surplus moneys in a prescribed manner.

- (7) Notwithstanding that the Corporation may use the potatoes which become vested in it for any purpose, where potatoes accepted for the purpose of the domestic marketing pool are used for any other purpose the proceeds, after deduction of the amounts permitted by subsection (3), received for those potatoes shall be dealt with in such manner as may be prescribed, but so that the person from whom the potatoes were accepted shall receive from the Corporation the amount which would have been relevant had the potatoes in fact been used for the domestic marketing pool.

[Section 30 amended by No. 55 of 1966 s.7; No. 26 of 1974 s.8; No. 96 of 1985 ss.17 and 22; No. 11 of 1995 ss.12 and 41.]

31. Payment may be withheld

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

[Section 31 inserted by No. 11 of 1995 s.42.]

32. The price applicable to ware potatoes for the domestic market

- (1) For the purpose of determining the payments to be made by the Corporation in respect of ware potatoes delivered and accepted for sale in a domestic marketing pool the Corporation shall recommend to the Minister a price, which takes into account —
- (a) a level of return that should provide a reasonable opportunity for profit from the economically efficient production of potatoes during preferred planting periods in the State; and
 - (b) such other material factors as may be determined by the Corporation at discretion and are explained to the Minister,
- and, if the basis of the pricing is approved by the Minister, payment under section 30 shall, subject to subsection (2), be made accordingly.
- (2) In relation to the potatoes delivered by or on behalf of any particular grower the price generally payable may be varied, at the discretion of the Corporation having regard to commercial considerations, by the Corporation to take into account —
- (a) a seasonal premium, payable for the purpose of encouraging the production of potatoes otherwise than during preferred planting periods;

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- (b) a premium, or a discount, applicable to the quality or variety of the potatoes delivered and reflecting normal competitive conditions;
- (c) other premiums, or penalties, applicable to that grower having regard to conditions or circumstances determined by the Corporation,

but any such premium or discount is to be based on market research, and the price to be paid to that grower may be fixed, according to the quality of the potatoes, either at the time of grading or at the time of the actual marketing of those potatoes.

- (3) A payment advice, to be given by the Corporation to the person by or for whom the potatoes were delivered to the Corporation at or near the end of the growing season shall set out the details of the price that was paid by the Corporation showing —
 - (a) any progress payment made under section 30(2)(a); and
 - (b) the amount of any final payment made under section 30(2)(b),

and the basis on which those payments were determined.

[Section 32 inserted by No. 11 of 1995 s.44.]

33. Restrictions on carriage of potatoes

- (1) Notwithstanding anything to the contrary in any written law, or the law relating to common carriers, or any agreement to the contrary, 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 Corporation (which request the Corporation is hereby authorized to make), and without incurring liability, refuse to carry any potatoes referred to by the Corporation 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.

- (2) No request under this section shall be made by the Corporation in respect of any potatoes not remaining vested in the Corporation at the time of the making of the request.

[Section 33 amended by No. 96 of 1985 ss.18 and 22; No. 11 of 1995 ss.12 and 45.]

34. Restrictions on proceedings against Corporation

- (1) No proceedings shall be brought against the Corporation, or any person acting under the authority of the Corporation, 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 Corporation as a delivery thereof by him to the Corporation, and may claim accordingly in respect thereof.
- (3) Every person making any claim under this section shall give or send to the Corporation 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 Corporation may be paid to the claimant.

[Section 34 amended by No. 96 of 1985 s.22; No. 11 of 1995 s.12.]

35. Grower to notify Corporation of any encumbrances

- (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 shall, when delivering the potatoes to the Corporation, give to the person receiving the potatoes on behalf of the Corporation 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 Corporation.

- (2) The provisions of subsection (1) shall extend and apply to every person by whom any of the potatoes are delivered to the Corporation 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 Corporation 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 Corporation 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 Corporation at any other railway station or place of delivery.

[Section 35 amended by No. 96 of 1985 s.22; No. 11 of 1995 ss.12 and 46.]

36. Limitation of liability of Corporation

- (1) Where the Corporation 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 Corporation, or to any person acting

under the authority of the Corporation, any of the potatoes in relation to which the Corporation 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 Corporation or causing it to be so delivered,

the Corporation 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) repealed]

- (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; No. 11 of 1995 ss.12 and 47.]

Part V — Miscellaneous

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

- (1) 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 Corporation and its operations.
- (2) Notwithstanding —
 - (a) that by the operation of subsection (1), the financial year of the Corporation will end on 30 June; and
 - (b) that under the provisions of subsection (2), as enacted before the coming into operation of section 48 of the *Marketing of Potatoes Amendment Act 1995*¹, the financial year of the former Authority ended on 30 September,

in so far as sections 66 to 69, inclusive, of the *Financial Administration and Audit Act 1985* have not been complied with in relation to any operations of the former Authority in any year the Minister shall direct the Corporation to cause those sections to be complied with, and effect shall be given to those sections, in respect to operations of the former Authority as though the financial year of the former Authority had ended immediately preceding the coming into operation of section 9 of the *Marketing of Potatoes Amendment Act 1995*¹.

- (3) In subsection (2), “**the former Authority**” means the Western Australian Potato Marketing Authority as constituted under this Act prior to the coming into operation of section 9 of the *Marketing of Potatoes Amendment Act 1995*¹.

[Section 37 inserted by No. 98 of 1985 s.3; amended by No. 96 of 1985 s.22; No. 17 of 1990 s.2; No. 11 of 1995 ss.12 and 48.]

38. Minister to have access to information

- (1) The Minister is entitled —
- (a) to have information in the possession of the Corporation;
and
 - (b) where the information is in or on a document, to have,
and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
- (a) request the Corporation to furnish information to the
Minister;
 - (b) request the Corporation to give the Minister access to
information;
 - (c) for the purposes of paragraph (b) make use of the staff
and facilities of the Corporation to obtain the
information and furnish it to the Minister.
- (3) The Corporation shall comply with a request under
subsection (2) and make its staff and facilities available to the
Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- “document”** includes any tape, disc or other device or medium
on which information is recorded or stored mechanically,
photographically, electronically or otherwise;
- “information”** means information specified, or of a description
specified, by the Minister that relates to the functions or
powers of the Corporation.

[Section 38 inserted by No. 11 of 1995 s.50.]

39. Charge on proceeds of potatoes marketed

All expenditure of the Corporation and all claims against the
Corporation shall be a charge upon the proceeds of potatoes

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marketed by the Corporation which to the necessary extent shall be deemed part of the Corporation's funds accordingly.

[Section 39 amended by No. 96 of 1985 ss.19 and 22; No. 11 of 1995 ss.12 and 51.]

40. Infringement notices

- (1) An inspector who has reason to believe that a person has committed a prescribed offence under this Act may, within 21 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.
- (2) An infringement notice shall be in the prescribed form and shall in every case —
 - (a) contain a description of the alleged offence;
 - (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorized person within a period of 28 days after the giving of the notice; and
 - (c) inform the alleged offender as to who are authorized persons for the purposes of receiving payment of modified penalties.
- (3) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice shall be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.
- (4) The chief executive officer may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.
- (5) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn, the bringing of

proceedings and the imposition of penalties are prevented to the same extent as they would be if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

- (6) The chief executive officer may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (7) Where an infringement notice is withdrawn after the modified penalty has been paid, the amount shall be refunded.
- (8) An amount paid as a modified penalty shall, subject to subsection (7), be dealt with as if it were a penalty imposed summarily under the *Justices Act 1902*.
- (9) Payment of a modified penalty shall not be regarded as an admission for the purposes of any proceedings, whether civil or criminal.
- (10) The Corporation may, in writing, appoint persons or classes of persons to be authorized persons for the purposes of subsection (2), but a person who is an inspector is not eligible to be an authorized person for the purposes of that subsection.

[Section 40 inserted by No. 11 of 1995 s.52.]

41. Offences

- (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, subject to subsection (4), liable to a penalty not exceeding \$5 000.
- (3) Proceedings for offences against this Act shall be heard and determined summarily.

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- (4) Where a body corporate is convicted of an offence under this Act, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this subsection, the court could impose as a pecuniary penalty for that offence.
- (5) Where a court convicts a person of an offence against this Act, the court may, in addition to any other penalty imposed under this Act, order the forfeiture to the Crown —
 - (a) where the commission of the offence involved the sale of any potatoes, of any moneys or cheques that are the proceeds of the sale;
 - (b) of any potatoes the subject of the offence; and
 - (c) of any packaging used in connection with the offence.
- (6) Where a court convicts a person of an offence against this Act, the court may, in addition to any penalty imposed under this Act, cancel, or suspend for any period, any licence or permit held by the person.
- (7) In any proceedings for an offence under this Act, an inspector authorized for the purpose by the chief executive officer of the Corporation may appear on behalf of the Corporation.

[Section 41 amended by No. 29 of 1957 s.5; No. 55 of 1966 s.8; No. 96 of 1985 s.22; No. 20 of 1989 s.3; No. 11 of 1995 s.53.]

41A. Liability of officers for offence by body corporate

- (1) If a body corporate commits an offence against this Act and it is proved that —
 - (a) the offence was committed with the consent or connivance of an officer of the body corporate; or
 - (b) an officer of the body corporate failed to exercise all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the officer's functions and to all the circumstances,the officer commits the like offence.

- (2) An officer may be proceeded against and convicted of an offence against this Act by virtue of subsection (1) whether or not the body corporate has been proceeded against and convicted of the offence.
- (3) In this section, “**officer**” has the same meaning as in the Corporations Law but does not include an employee of the body corporate unless the officer was concerned in the management of the body corporate.

[Section 41A inserted by No. 11 of 1995 s.54.]

41B. Disposal of things impounded

- (1) Where any quantity of potatoes, or any document or packaging, is impounded under this Act and taken before a justice —
 - (a) if the thing impounded is not to be detained under section 22(10), the justice shall direct that the thing be returned to the person from whom it was taken, unless he is authorized or required by law to dispose of it otherwise; and
 - (b) if a person is convicted of any offence in relation to the thing impounded, the court before which the person is convicted may cause that thing to be destroyed or to be forfeited to the Crown and disposed of in accordance with such manner as the court may direct.
- (2) The chief executive officer of the Corporation may authorize the release of any thing impounded under this Act to the person entitled to the possession of the thing or to the person from whom the thing was taken on such conditions (if any) as the chief executive officer thinks fit (including conditions as to the giving of security for payment of the value of the thing if it is ordered to be destroyed or is forfeited).
- (3) Any proceeds of the sale or other disposal of any thing forfeited to the Crown under this Act are to be paid to the credit of such

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fund or funds under this Act as are prescribed or, if no fund is prescribed, then into the Consolidated Fund.

[Section 41B inserted by No. 11 of 1995 s.54.]

41C. Proof of contents etc. of packaging

In any proceedings for an offence against this Act, proof that any packaging had a mark or label (whether inside or outside the packaging) indicating that the packaging —

- (a) contained potatoes or a particular variety of potatoes is, in the absence of proof to the contrary, proof that the packaging contained potatoes or that particular variety (as the case may be); or
- (b) was packed or consigned by or for a particular person is, in the absence of proof to the contrary, proof that the packaging was packed or consigned by or for (as the case may be) that person.

[Section 41C inserted by No. 11 of 1995 s.54.]

41D. Proof that potatoes were for sale

In any proceedings for an offence against this Act, proof that any potatoes were —

- (a) sold, purchased or delivered by a person and subsequently sold by or on behalf of the person, is conclusive evidence that the potatoes were sold, purchased or delivered by the person for the purpose of sale; or
- (b) in the possession of a person and subsequently sold by or on behalf of the person, is conclusive evidence that the person had the potatoes in possession for the purpose of sale.

[Section 41D inserted by No. 11 of 1995 s.54.]

41E. Proof of purpose

In any proceedings for an offence against this Act, an averment in the complaint —

- (a) that potatoes were sold or intended for sale for human consumption; or
- (b) that an act occurred for a particular purpose or that anything was done with a particular intent, on proof of that act occurring or that thing being done,

shall, in the absence of proof to the contrary, be taken to be proved.

[Section 41E inserted by No. 11 of 1995 s.54.]

41F. Certificate relating to licensing matters

In any proceedings for an offence against this Act, production of a certificate purporting to be signed by the chief executive officer of the Corporation and stating that —

- (a) on any date or during any period a person was or was not authorized to do any thing under a licence or permit or was or was not exempted from this Act or specified provisions of this Act by an exemption;
- (b) on any date or during any period any potatoes, premises or other thing were or were not the subject of a licence, permit or exemption;
- (c) on any date or during any period a licence or permit was cancelled, suspended or for any other reason of no effect; or
- (d) on any date or during any period a licence, permit or exemption was subject to any specified condition or conditions,

is, without proof of the signature of the chief executive officer of the Corporation, sufficient evidence of the facts stated in the certificate.

[Section 41F inserted by No. 11 of 1995 s.54.]

42. Institution of legal proceedings by Corporation

- (1) Any proceedings, whether civil or penal, may be taken in the name of the Corporation by the chief executive officer of the Corporation or by any officer of the Corporation authorized in that behalf by the Corporation.
- (2) No proof shall be required of the appointment of the chief executive officer of the Corporation or any officer as an officer of the Corporation, or of the authority of the chief executive officer of the Corporation or officer to take civil or penal proceedings in the name of the Corporation but the averment on the process that the chief executive officer of the Corporation 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; No. 11 of 1995 ss.12 and 55.]

43. Regulations

- (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 Corporation.
- (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) for the purposes of section 22C;
 - (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 on demand a sales docket, delivery note or

relevant consignment advice relating to those potatoes being a document which sets out, in the prescribed manner if required, such information in relation to those potatoes as may be prescribed and also periodic returns containing such information as the Corporation may consider necessary;

- (d) for enabling the Corporation 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 agents, or persons holding permits, under this Act;
 - (f) controlling the supply, grading, handling, washing, brushing, treatment or processing, storage, distribution, marketing, sale, purchase, use and consumption of potatoes and prescribing the documentation required to accompany potatoes;
 - (g) defining the functions, authorities and duties of inspectors and making provision for modified penalties and infringement notices in respect to prescribed offences;
 - (h) prescribing fees, and any other matter which in the opinion of the Minister is incidental to carrying out the functions and duties imposed on the Corporation by this Act.
- (3) Regulations made under this Act may prescribe penalties not exceeding \$5 000 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; No. 20 of 1989 s.3; No. 11 of 1995 ss.12 and 56.]

44. Review of Act

- (1) The Minister shall carry out a review of the operation of this Act 5 years after the commencement of section 7 of the *Marketing*

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*of Potatoes Amendment Act 1995*¹, and in the course of such review the Minister shall consider and have regard to —

- (a) the effectiveness of the operations of the Corporation;
 - (b) the need for the continuation of the functions of the Corporation; 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 inserted by No. 96 of 1985 s.21; amended by No. 11 of 1995 ss.12 and 57.]

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Notes

¹ This reprint is a compilation as at 7 January 2000 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

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Marketing of Potatoes Act 1946</i>	26 of 1946	14 January 1947	20 January 1947 (see section 1 and <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 section 2 and <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 section 2 and <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 s.4)

Marketing of Potatoes Act 1946

Short title	Number and year	Assent	Commencement	Miscellaneous
<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 section 2 and <i>Gazette</i> 27 March 1986 p.1293); balance: 18 September 1987 (see section 2 and <i>Gazette</i> 18 September 1987 p.3587)	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see section 2 and <i>Gazette</i> 30 June 1986 p.2255)	
<i>Agricultural Legislation (Penalties) Amendment Act 1989, section 3</i>	20 of 1989	1 December 1989	15 December 1989 (see section 2 and <i>Gazette</i> 15 December 1989 p.4513)	
<i>Marketing of Potatoes Amendment Act 1990</i>	17 of 1990	31 July 1990	28 August 1990	
<i>Financial Administration Legislation Amendment Act 1993, section 13</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993 (see section 2(1))	

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Public Sector Management) Act 1994,</i> section 3(2)	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Marketing of Potatoes Amendment Act 1995</i>	11 of 1995	30 June 1995	4 September 1995 (see <i>Gazette</i> 1 September 1995 p.4063)	Section 9(2) and (3): transitional
<i>Statutory Corporations (Liability of Directors) Act 1996,</i> section 3	41 of 1996	10 October 1996	1 December 1996 (see section 2 and <i>Gazette</i> 12 November 1996 p.6301)	

² Under the *Public Sector Management Act 1994* the names of departments can be changed. At the time of this reprint the former Department of Agriculture is called Agriculture Western Australia.

³ Under section 112(2) of the *Public Sector Management Act 1994* (No. 31 of 1994) references to the Public Service Commissioner are to be construed as references to the Minister for Public Sector Management.