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WESTERN AUSTRALIA.

POTATO GROWING INDUSTRY TRUST FUND.

11° and 12° Geo. VI., No. LXIX.

No. 69 of 1947.¹

[As amended by Acts:

No. 6 of 1951, assented to 12th October, 1951;
No. 19 of 1954, assented to 28th September, 1954;
No. 73 of 1954,² assented to 14th January, 1955;
No. 4 of 1966, assented to 16th September, 1966;
No. 94 of 1972³ (as amended by No. 19 of 1973);

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

AN ACT to authorise and provide for the administration of a trust fund in relation to the potato growing industry, and the application of moneys in the fund and for purposes incidental thereto.

[Assented to 10th January, 1948.]

BE it enacted—

1. This Act may be cited as the *Potato Growing Industry Trust Fund Act, 1947-1973.*

Short title.
Amended by
No. 19 of
1973, s. 2.

2. This Act shall come into operation on a day to be fixed by proclamation.¹

Commence-
ment.

¹ See G.G. 19/3/48, pp. 628-9 and G.G. 1/10/48, p. 2333.

² Proclaimed 1/3/55, G.G. 18/2/55, p. 343.

³ Metric Conversion Act, 1972-1973. The relevant amendments included in this reprint effective from 11th January, 1974; see *Gazette* 11/1/74, p. 92.

Severability.

3. This Act shall be read and construed so as not to exceed the legislative power of the State, the intention being that where any enactment herein would but for this section be construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Interpre-
tation.
Amended by
No. 19 of
1954, s. 2;
No. 94 of
1972, s. 4 (as
amended by
No. 19 of
1973).

4. In this Act, unless the context otherwise requires—

“Association” means the Potato Growers’ Association of Western Australia Incorporated;

“Board” means the Western Australian Potato Marketing Board constituted under the Marketing of Potatoes Act, 1946 (No. 26 of 1946), and includes agent as defined by that Act;

“commercial producer” means a grower by whom or on whose behalf at least 2 000 square metres or any areas of land exceeding in the aggregate 2 000 square metres have been planted in the last preceding period of twelve months commencing from the first day of April in each year and who is qualified to vote at the election of a member of the Legislative Assembly.

“Committee” means the Potato Growing Industry Trust Fund Advisory Committee constituted under this Act;

“dealer” means any person who—

- (a) purchases wholesale from a grower potatoes for resale; or
- (b) receives from a grower potatoes for sale by wholesale on behalf of the grower; or
- (c) being a grower, sells by wholesale or retail, or partly by each, in any one season, a total weight of at least 2.5 tonnes of potatoes produced by him;

“Fund” means the Potato Growing Industry Trust Fund established by this Act;

“grower” means any person who produces potatoes for sale;

“retail” means the sale of the quantities and in the manner prescribed;

“sale” includes barter and exchange;

“season” means the period between the first day of April in any year and the thirty-first day of March in the next following year;

“Under Secretary” means the Under Secretary¹ for Agriculture;

“wholesale” means the sale of the quantities and in the manner prescribed.

5. (1) Subject to the general control and direction of the Minister, this Act shall be administered by the Under Secretary.

Administra-
tion.

(2) The cost of the administration of this Act shall be paid out of the Fund.

Cost of Ad-
ministration.

6. (1) For the purposes of this Act, a committee to be known as The Potato Growing Industry Trust Fund Advisory Committee is constituted.

Committee
constituted.
Amended by
No. 19 of
1954, s. 3.

(2) The Committee shall consist of three members, who shall be appointed by the Governor.

(3) (a) Subject to the provisions of this section and pending the appointment of the three members referred to in the next preceding subsection and the constitution of the Committee pursuant to this Act, there shall be a temporary committee.

Temporary
committee.

(b) The temporary committee shall consist of three persons, who shall be appointed by the Governor.

¹ Now Director of Agriculture.

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(c) Of the three persons referred to in the next preceding paragraph—

- (i) two shall be commercial producers, who shall be nominated by the Minister, and
- (ii) one shall be a person, who shall be an officer of the Department of Agriculture of the State, and who shall be nominated by the Minister, and who shall be chairman of the temporary committee.

(d) The three persons referred to in the next preceding paragraph shall—

- (i) hold office on the temporary committee for a period commencing on appointment and terminating on the constitution of the Committee or the expiration of twelve months, subject to extension as provided in the next succeeding paragraph, whichever shall first happen, and
- (ii) be eligible, at any time, for appointment subject to this Act to the Committee.

(e) If the Committee shall not be constituted at the expiration of the period of twelve months referred to in the next preceding paragraph, the Governor may from time to time, at the request of the Minister, extend that period and any extension of that period until the Committee is constituted or until the temporary business then being conducted by the temporary committee is finalised.

(f) Subject to this section, the provisions of this Act, the appropriate alterations by way of adaptation being regarded as having been made, shall apply to the temporary committee as if it were the Committee constituted under this Act, and to the persons referred to in paragraphs (b), (c) and (d) of this subsection as if they were members of that Committee.

(g) Notification of the appointment of persons as members of the temporary committee shall be published in the *Government Gazette*.

(4) (a) Of the three members of whom the Committee shall consist—

- (i) two shall be elective members and shall be commercial producers elected by commercial producers; and
- (ii) one shall be an officer of the Agricultural Department of the State, nominated by the Minister, and shall be chairman.

(b) For the purposes of the provisions of this Act relating to the election of elective members of the Committee the expression “commercial producer” means a person—

- (i) whose name is, with the approval of the Minister, included in the roll mentioned in the next succeeding section;
- (ii) [*Deleted by No. 19 of 1954, s. 3.*]
- (iii) who is qualified to vote at the election of a member of the Legislative Assembly, and
- (iv) who holds a current potato grower’s license under the Marketing of Potatoes Act, 1946 (No. 26 of 1946).

7. (1) Subject to the provisions of this section, the election of the elective members of the Committee shall be held and conducted in such manner and at such times as shall be prescribed. Election of members.

(2) The Minister shall cause to be prepared in time for the election a roll of persons qualified to vote and appoint a time for enrolment.

(3) The expenses incurred in connection with the election of the elective members of the Committee shall be a charge upon, and shall be paid out of the moneys from time to time in the hands of the Committee for the purposes of this Act.

8. The Committee shall be a body corporate, with perpetual succession and a common seal, and may Committee a body corporate.

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sue and be sued, and with the approval of the Minister, acquire and hold real and personal property under the name of The Potato Growing Industry Trust Fund Advisory Committee.

Committee
not to
represent
the Crown.

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

Remunera-
tion of
members
of the
Committee.

10. (1) The members of the Committee 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 Committee for the purposes of this Act.

Tenure of
office.
Amended by
No. 6 of
1951, s. 3.

11. (1) The member nominated by the Minister shall hold office during the pleasure of the Governor.

(2) (a) Of the two elective members first appointed to the Committee, one shall subject to the provisions of paragraph (e) of this subsection, retire in each year on the day preceding the anniversary of appointment, the first retirement under this paragraph to take place on the day preceding the first anniversary of appointment, and the succeeding retirement to take place in the succeeding year thereafter on the anniversary of that day, the elective member to retire in each year being according to agreement between the elective members, or, failing agreement, being determined by lot.

(b) The vacancy in office on the Committee resulting from each retirement referred to in the next preceding paragraph or from the expiration of each term of office referred to in the next succeeding paragraph shall be filled by a successor in office elected by the commercial producers for the purpose and appointed by the Governor.

(c) The successor shall be appointed for a term of office of two years.

(d) In the event of—

(i) no successor being elected, or

(ii) an elected successor not taking office,

the member who but for this paragraph would retire pursuant to subsection (2), paragraph (a) or paragraph (c) of this section, as the case may be, shall, subject to this Act, remain in office until a successor is elected and takes office.

(e) The elective member,

appointed in the year, one thousand nine hundred and forty-nine,

shall,

by virtue of the provisions of this paragraph and notwithstanding those of the preceding paragraphs of this subsection,

remain in office until—

the expiration in the year, one thousand nine hundred and fifty-two, of the term of office of the other elective member, when

both offices of elective member shall become vacant and thereafter both of those offices shall be filled—

by the appointment of persons elected pursuant to the provisions of subsection (4) of section six of this Act for the purpose,

for a term of three years expiring in the case of each of the offices on the same day.

(3) Any elective member retiring or whose term of office expires under this section is eligible for re-election.

(4) Notification of the appointment of persons as members of the committee shall be published in the *Government Gazette*.

Appointment
of deputies.
Amended by
No. 19 of
1954, s. 4.

12. (1) The Minister may, in respect and subject to the approval of each elective member of the Committee, appoint a person to be the deputy of that member, and in respect of the member nominated by the Minister, a person to be deputy of that member.

(2) Any person so appointed shall, in the event of the illness or absence of the member of whom he is the deputy, have all the powers of that member during his illness or absence.

(3) No appointment of a deputy and no acts done by him as a deputy shall be questioned in any proceedings on the ground that the occasion for his appointment had not arisen or had ceased.

(4) (a) The office of an elective member shall become vacant, as well by reason of death as by reason of his—

- (i) absence from three consecutive regular meetings of the Committee, unless he shall obtain the consent or ratification of the remaining members of the Committee to his absenting himself therefrom;
- (ii) becoming of unsound mind or being declared under any law for the time being relating to lunacy, incapable of managing his affairs;
- (iii) becoming bankrupt or taking the benefit of any Act for the relief of bankrupt debtors, or
- (iv) resignation or retirement,

and the Governor may remove an elective member on the ground of misbehaviour or incapacity.

(b) The office of an elective member becoming vacant for any of the reasons mentioned in the preceding paragraph may be filled by the executive of the body known as the Potato Growers' Association of Western Australia appointing for that purpose a person for the remainder of the term of the office

so becoming vacant and during that time, and on expiration thereof the person so appointed shall be eligible for election to the Committee.

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

Proceedings of the Committee not invalidated by vacancies or defects.

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

14. (1) The first meeting of the Committee after the coming into operation of this Act shall be convened by the chairman, and thereafter meetings shall be held at the times and places determined by the Committee: Provided that the chairman, or any member of the Committee may, on reasonable notice to members of the Committee, call a meeting at any time.

Meetings of the Committee.

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

15. (1) All powers vested in the Committee 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.

Powers of Committee; how exercised.

(2) The chairman shall preside at every meeting of the Committee at which he is present. If the chairman is not present at a meeting, the other members of the Committee present shall select one of their number to act as chairman at that meeting.

(3) Two members of the Committee shall form a quorum.

(4) The Committee shall keep a record of its proceedings.

Officers
of the
Committee.
Amended by
No. 4 of
1966, s. 2.

16. (1) The Under Secretary may appoint a secretary to the Committee and any inspectors and other officers whom he is satisfied, on the information of the Committee, are necessary to enable the Committee to carry out its duties and functions.

(2) Any officer employed in the Department of Agriculture shall be eligible for appointment under subsection (1) of this section.

Obstructing
officers
of the
Committee
an offence.

(3) Any person who in any way resists, interferes with, hinders or obstructs any person appointed by the Under Secretary as aforesaid in the exercise or discharge of any power or duty under this Act shall be guilty of an offence.

Penalty—One hundred dollars.

Power to
require
returns and
particulars.
Amended by
No. 4 of
1966, s. 3.

17. (1) The Committee may, by notice in writing signed by the Chairman, of whose signature judicial notice shall be taken, given to any grower or dealer, or the Board, require the grower or dealer or Board to furnish in writing to the Committee such returns and particulars in relation to his business as carried on by him under this Act or the Marketing of Potatoes Act, 1946 (No. 26 of 1946), as the Committee may deem necessary for the purposes of this Act and the Committee may specify in the notice a time within which the returns and particulars shall be furnished.

Offence.

(2) Any person who fails or refuses to comply with the requisitions of any such notice within the time limited by such notice, or who furnishes any untrue returns or particulars, shall be guilty of an offence.

Penalty—Twenty dollars.

(3) The returns and particulars which may be required by the Committee under subsection (1) of this section shall be in addition to any returns and particulars which growers and dealers and the Board are required to furnish in accordance with the regulations.

18. (1) Any member of the Committee and any inspector or officer of the Committee authorised in writing in that behalf by the Committee, may inspect books, accounts, registers, records, documents or writings which are in the custody or control of any grower or dealer or the Board and which relate to the business carried on by him, and may take notes, copies or extracts thereof or therefrom.

Power to inspect records.

(2) For the purposes of subsection (1) of this section, any member, inspector, or officer aforesaid may, at any reasonable time, enter any premises in which he believes any such books, accounts, registers, records or writings are kept.

Power to search.

19. (1) For the purposes of this Act there shall be established a fund, to be called The Potato Growing Industry Trust Fund, which shall be administered by the Committee.

Establishment of The Potato Growing Industry Trust Fund.

(2) All moneys from time to time belonging to the Fund shall be deposited in an account, to be called "The Potato Growing Industry Trust Fund Account", which shall be kept at the Treasury.

(3) The Fund shall consist of—

- (a) contributions made to the Fund under this Act;
- (b) penalties imposed upon convictions for offences against this Act, which, notwithstanding the Fines and Penalties Appropriation Act, 1909, are hereby declared to be payable into the Fund, and
- (c) income from moneys invested.

20. Any moneys in the Fund, which are not immediately required for the purposes of this Act, may, subject to the approval of the Minister, be invested by the Committee in any investments authorised by law for the investment of trust funds.

Surplus money to be invested.

Contributions to the Fund. Amended by No. 6 of 1951, s. 4; No. 4 of 1966, s. 4; No. 94 of 1972, s. 4 (as amended by No. 19 of 1973).

21. (1) Subject to this Act, every grower shall in every season contribute to the Fund in relation to the potatoes produced by him for sale and sold in that year.

(2) All such contributions shall be paid to the Committee.

Rates of contributions.

(3) The rate of the contribution to be made by growers under this section shall be such rate as shall be declared from time to time by the Minister, on the recommendation of the Committee:

Provided that—

- (i) contributions shall not in any event exceed two cents in respect of each fifty kilograms of potatoes sold and exported for sale by every dealer and the Board; and
- (ii) the liability of the grower to contribute to the Fund may be suspended at any time and from time to time by the Minister whenever the Minister and the Committee are satisfied that the moneys in the Fund for the time being are sufficient for the purposes of this Act.

Deduction of contribution by the Board.

(4) During such time as the Board is in operation and the potatoes of growers are in the disposition of the Board, the Committee may request the Board, and it shall be lawful for the Board, to pay to the Committee out of any moneys payable by the Board to any grower the amount of the contribution then payable by the grower to the Committee under this section, and the acknowledgment by the Committee of the payment by the Board shall be a complete discharge to the Board as against the grower concerned in respect of the amount stated in the acknowledgment.

Provision for deduction of contributions by dealers.

(5) In the event of the Board ceasing to operate, and the disposition of potatoes by the growers thereof being no longer under the control of the Board, every dealer who obtains or receives potatoes from a grower, and is liable to make to the grower any payment, or to account to the growers for any

moneys in respect of the potatoes so obtained or received by him, shall deduct out of the moneys payable by him to the grower or held by him to the credit of the grower, and pay to the Committee the amount of the contribution for which the grower is then liable under this section, and the acknowledgment by the Committee of the payment shall be a complete discharge to the dealer as against the grower in respect of the amount stated in the acknowledgment.

(6) The amount of all contributions deducted by a dealer in accordance with subsection (5) hereof shall, until paid by him to the Committee, be a debt owing by the dealer to the Committee, and shall be recoverable at the suit of the Committee from the dealer in any court of competent jurisdiction.

(7) Any dealer who fails or neglects to deduct contributions from moneys payable by him to any grower or held by him to the credit of any grower in accordance with subsection (5) of this section and any dealer who, having deducted contributions as required by that subsection, fails or neglects or refuses, without reasonable excuse to pay the contributions to the Committee at the time or in the manner prescribed, shall be guilty of an offence.

Penalty—Two hundred dollars.

(8) Until the amount of the contribution for which a grower is liable under this section is received by the Committee, either from the Board or from a dealer, or from the grower, the amount shall be a debt owing by the grower to the Committee, and shall be recoverable at the suit of the Committee from the grower in any court of competent jurisdiction.

Recovery of amounts due for contributions.

(9) If at any time the amount of any contribution received by the Committee in relation to the liability of a grower to contribute under this section is found to be in excess of the amount of the contribution for which the grower is then liable, the excess may, at the election of the grower, either remain in the Fund

Provision of application of excess of credits.

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to the credit of the grower against future contributions which may become payable by him, or be refunded to the grower by the Committee out of the moneys in the Fund.

Application
of moneys
in the Fund.

22. (1) The moneys in the Fund shall be charged primarily with the payment of the following expenses, namely—

- (a) the costs of the administration of this Act;
- (b) the fees and allowances of the members of the Committee.

(2) After payment of the expenses referred to in subsection (1) hereof, and subject in every case to the approval in writing of the Minister, the moneys in the Fund may be used for all or any of the following purposes, namely—

- (a) the payment of the whole or portion of the costs and expenses of measures taken to prevent or eradicate pests and diseases affecting potatoes;
- (b) the payment of compensation to growers in respect of the whole or portion of losses suffered by them as the result of measures taken to prevent or eradicate the pests and diseases;
- (c) the payment of the costs of the promotion and encouragement of scientific research for the improvement and transport of potato crops;
- (d) the provision of financial help recommended by the Committee and approved by the Minister for the Association and its Branches in the carrying out of its activities for the benefit of growers;
- (e) any other purposes which, in the opinion of the Minister, will promote and encourage the potato growing industry.

23. (1) The Committee shall cause books to be provided and kept, and true and regular accounts to be entered therein—

Committee to keep records. Amended by No. 6 of 1951, s. 5.

- (a) of all contributions to the Fund received by and owing to the Committee;
- (b) all moneys expended out of the Fund by the Committee and the several purposes for which the moneys shall have been so expended; and
- (c) of all the assets and liabilities of the Committee.

(2) All the books referred to in the next preceding subsection shall be open to the inspection of the Auditor General and any person authorised by him to inspect them.

Audit.

(3) The Committee shall cause its accounts to be balanced every year on the thirtieth day of September.

Accounting period.

(4) The Committee shall cause a full and true balance sheet of the assets and liabilities, together with an income and expenditure account for each year, and such other statements as may be directed by the Minister, to be completed from the books and submitted to the Auditor General for audit.

(5) The Auditor General shall, in respect of such accounts, have all the powers conferred on him by the Audit Act, 1904-1947.¹

24. The Committee shall once at least in every year furnish to the Minister a report of its transactions and true copy of the accounts so audited.

Committee to report to Minister.

25. Any contravention of this Act or of any regulations made under this Act, whether by the act or omission, shall be an offence.

Offences.

¹ Now Audit Act, 1904-1966.

Penalty.
Amended by
No. 4 of
1966, s. 5.

26. The penalty for any offence against this Act or the regulations for which no penalty is expressly provided shall be a fine not exceeding one hundred dollars.

Summary
proceedings.

27. (1) Proceedings for offences against this Act or the regulations shall be taken and disposed of summarily.

How legal
proceedings
taken.

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

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

Protection
of adminis-
trative
authorities.
Amended by
No. 73 of
1954, s. 5.

28. (1) When, in good faith, the Minister or a member of the Committee, or any person authorised by the Committee, does or refrains from doing any matter or thing in exercise or purported exercise of any authority, discretion, duty or power, conferred or imposed upon him by this Act, he shall not be subject to any liability in respect thereof.

(2) [*Deleted by No. 73 of 1954, s. 5.*]

Regulations.

29. The Governor may make regulations not inconsistent with this Act prescribing all 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 this Act.