



Western Australia

Potato Growing Industry Trust Fund Act 1947

Reprinted as at 29 October 1999

Potato Growing Industry Trust Fund Act 1947

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Defined Terms



Western Australia

Reprinted under the
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at 29 October 1999

Potato Growing Industry Trust Fund Act 1947

An Act to authorize 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.

1. Short title

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

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation¹.

3. Severability

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.

4. Interpretation

In this Act, unless the context otherwise requires —

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

“**commercial producer**” means a grower by whom or on whose behalf at least 500 square metres or any areas of

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land exceeding in the aggregate 500 square metres have been planted in the last preceding period of 12 months commencing from 1 April in each year;

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

“Corporation” means the body preserved and continued under the *Marketing of Potatoes Act 1946* as the Potato Marketing Corporation of Western Australia, and includes —

- (a) a person authorized by the Corporation as an agent of the Corporation to take delivery of or sell or deliver potatoes on its behalf; and
- (b) a person lawfully acting on behalf of such an agent of the Corporation;

“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;

“potato exporter” has the same meaning as it has in the *Marketing of Potatoes Act 1946*;

“potato product manufacturer” has the same meaning as it has in the *Marketing of Potatoes Act 1946*;

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

“sale” includes barter and exchange;

“**season**” means the period between 1 April in any year and 31 March in the next following year;

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

[Section 4 amended by No. 19 of 1954 s.2; No. 94 of 1972 s.4 (as amended by No. 19 of 1973); No. 63 of 1981 s.4; No. 4 of 1982 s.3; No. 96 of 1986 s.24; No. 11 of 1995 s.58(6).]

5. Administration

- (1) Subject to the general control and direction of the Minister, this Act shall be administered by the chief executive officer of the Department of Agriculture² of the Public Service of the State.
- (2) The cost of the administration of this Act shall be charged to the Fund.

[Section 5 amended by No. 63 of 1981 s.4; No. 11 of 1995 s.58(6); No. 49 of 1996 s.64.]

6. Committee constituted

- (1) For the purposes of this Act, a committee to be known as The Potato Growing Industry Trust Fund Advisory Committee is constituted.
- (2) The Committee shall consist of 3 members, who shall be appointed by the Governor.

[(3) repealed]

- (4) (a) Of the 3 members of whom the Committee shall consist —
 - (i) 2 shall be elective members and shall be commercial producers elected by commercial producers; and
 - (ii) one shall be an officer of the Department of Agriculture² of the Public Service of the State

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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 section 7; and
 - (ii) who is a commercial producer having a business registered with the Corporation under section 22B of the *Marketing of Potatoes Act 1946*.

[Section 6 amended by No. 19 of 1954 s.3; No. 63 of 1981 s.4; No. 4 of 1982 s.4; No. 96 of 1985 s.25; No. 73 of 1994 s.4; No. 11 of 1995 s.58(6); No. 57 of 1997 s.98.]

7. Election of members

- (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.
- (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. Committee a body corporate

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

9. Committee not to represent the Crown

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

10. Remuneration of members of the Committee

- (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.

11. Tenure of office

- (1) The member nominated by the Minister shall hold office during the pleasure of the Governor.
- (2) Elective members shall be appointed by the Governor under section 6 for a term of 3 years.
- (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*.

[Section 11 amended by No. 6 of 1951 s.3; No. 4 of 1982 s.5.]

12. Appointment of deputies

- (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.

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- (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 3 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.

[Section 12 amended by No. 19 of 1954 s.4.]

13. Proceedings of the Committee not invalidated by vacancies or defects

- (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.

- (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. Meetings of the Committee

- (1) The first meeting of the Committee after the coming into operation of this Act¹ 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.
- (2) Subject to this Act, the business of the Committee shall be conducted in such manner as the Committee determines.

15. Powers of Committee how exercised

- (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.
- (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.

16. Officers of the Committee

- (1) The chief executive officer of the Department of Agriculture² of the Public Service of the State 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.

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- (2) Any officer employed in the Department of Agriculture² shall be eligible for appointment under subsection (1).
- (3) Any person who in any way resists, interferes with, hinders or obstructs any person appointed under subsection (1) as aforesaid in the exercise or discharge of any power or duty under this Act shall be guilty of an offence.

Penalty — \$2 000.

[Section 16 amended by No. 4 of 1966 s.2; No. 63 of 1981 s.4; No. 20 of 1989 s.3; No. 11 of 1995 s.58(6).]

17. Power to require returns and particulars

- (1) The Committee may, by notice in writing signed by the Chairman, of whose signature judicial notice shall be taken, given to any grower, dealer, potato product manufacturer or potato exporter or the Corporation, require the grower, dealer, potato product manufacturer or potato exporter or Corporation 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.

- (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 — \$1 000.

- (3) The returns and particulars which may be required by the Committee under subsection (1) shall be in addition to any returns and particulars which growers, dealers, potato product manufacturers and potato exporters and the Corporation are required to furnish in accordance with the regulations.

[Section 17 amended by No. 4 of 1966 s.3; No. 96 of 1985 ss.26 and 29; No. 20 of 1989 s.3; No. 11 of 1995 s.58(6).]

18. Power to inspect records

- (1) Any member of the Committee and any inspector or officer of the Committee authorized 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, dealer, potato product manufacturer or potato exporter or the Corporation and which relate to the business carried on by him, and may take notes, copies or extracts thereof or therefrom.
- (2) For the purposes of subsection (1), 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.

[Section 18 amended by No. 96 of 1985 s.29; No. 11 of 1995 s.58(6).]

19. Establishment of The Potato Growing Industry Trust Fund

- (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.
- (2) All moneys from time to time belonging to the Fund shall be credited to an account, to be called “The Potato Growing Industry Trust Fund Account”, which shall be kept at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.
- (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 are hereby declared to be payable into the Fund, and
 - (c) income from moneys invested.

[Section 19 amended by No. 78 of 1995 s.107; No. 49 of 1996 s.64.]

20. Surplus money to be invested

Any moneys standing to the credit of 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 as trust funds may be invested under Part III of the *Trustees Act 1962*.

[Section 20 amended by No. 49 of 1996 s.64; No. 1 of 1997 s.18.]

21. Contributions to the Fund

- (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.
- (3) The contribution to be made by each grower shall be a levy based on his gross proceeds from the sale of potatoes at a percentage rate declared from time to time by the Minister on the recommendation of the Committee.
- (3a) The liability of growers to contribute to the Fund may be suspended by the Minister whenever he and the Committee are satisfied that the moneys then standing to the credit of the Fund are sufficient for the purposes of this Act for the time being.
- (4) During such time as the Corporation is in operation and potatoes of growers are required to be delivered to the Corporation, the Committee may request the Corporation, and it shall be lawful for the Corporation, to pay to the Committee out of any moneys payable by the Corporation 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 Corporation shall be a complete discharge to the Corporation as against the grower concerned in respect of the amount stated in the acknowledgment.

- (5) In the event of the Corporation ceasing to operate, and potatoes of growers no longer being required to be delivered to the Corporation, 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.
- (5a) Every potato product manufacturer or potato exporter who obtains or receives potatoes from a grower and is liable to make to the grower any payment, or to account to the grower 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 potato product manufacturer or potato exporter as against the grower in respect of the amount stated in the acknowledgment.
- (6) The amount of all contributions deducted by a dealer, potato product manufacturer or potato exporter in accordance with subsection (5) shall, until paid by him to the Committee, be a debt owing by the dealer, potato product manufacturer or potato exporter to the Committee, and shall be recoverable at the suit of the Committee from the dealer, potato product manufacturer or potato exporter in any court of competent jurisdiction.
- (7) Any dealer, potato product manufacturer or potato exporter 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

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in accordance with subsection (5) and any dealer, potato product manufacturer or potato exporter 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 — \$2 000.

- (8) Until the amount of the contribution for which a grower is liable under this section is received by the Committee, either from the Corporation or from a dealer, potato product manufacturer or potato exporter, 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.
- (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 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 standing to the credit of the Fund.

[Section 21 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); No. 4 of 1982 s.6; No. 96 of 1985 ss.28 and 29; No. 51 of 1988 s.4; No. 20 of 1989 s.3; No. 11 of 1995 s.58(6); No. 49 of 1996 s.64.]

22. Application of moneys in the Fund

- (1) The moneys standing to the credit of 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), and subject in every case to the approval in writing of the Minister, the moneys standing to the credit of 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.

[Section 22 amended by No. 4 of 1982 s.7; No. 51 of 1988 s.5; No. 49 of 1996 s.64.]

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

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

[Section 23 inserted by No. 98 of 1985 s.3.]

[24. Repealed by No. 98 of 1985 s.3.]

25. Offences

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

26. Penalty

The penalty for any offence against this Act or the regulations for which no penalty is expressly provided shall be a fine not exceeding \$2 000.

[Section 26 amended by No. 4 of 1966 s.5; No. 20 of 1989 s.3.]

27. Summary proceedings

- (1) Proceedings for offences against this Act or the regulations shall be taken and disposed of summarily.
- (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 authorized 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 authorized shall be deemed to be conclusive proof of the fact.

28. Protection of administrative authorities

- (1) When, in good faith, the Minister or a member of the Committee, or any person authorized 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) repealed]

[Section 28 amended by No. 73 of 1954 s.5.]

29. Regulations

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.

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Notes

- ¹ This reprint is a compilation as at 29 October 1999 of the *Potato Growing Industry Trust Fund Act 1947* 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>Potato Growing Industry Trust Fund Act 1947</i>	69 of 1947	10 January 1948	19 March 1948 (see section 2 and <i>Gazette</i> 19 March 1948 pp.628-9) Further proclaimed 1 October 1948 (see section 2 and <i>Gazette</i> 1 October 1948 p.2333)	
<i>Potato Growing Industry Trust Fund Act Amendment Act 1951</i>	6 of 1951	12 October 1951	12 October 1951	
<i>Potato Growing Industry Trust Fund Act Amendment Act 1954</i>	19 of 1954	28 September 1954	28 September 1954	
<i>Limitation Act Amendment Act 1954</i>	73 of 1954	14 January 1955	1 March 1955 (see section 2 and <i>Gazette</i> 18 February 1955 p.343)	Second Schedule inserted in the <i>Limitation Act 1935</i> (No. 35 of 1935)
<i>Potato Growing Industry Trust Fund Act Amendment Act 1966</i>	4 of 1966	16 September 1966	16 September 1966	
<i>Metric Conversion Act 1972</i> section 4	94 of 1972	4 December 1972	11 January 1974 (see section 2 and <i>Gazette</i> 11 January 1974 p.92)	(as amended by the <i>Metric Conversion Act Amendment Act 1973</i> (No. 19 of 1973))

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Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Statutory Designations) and Validation Act 1981</i> section 4	63 of 1981	13 October 1981	13 October 1981	
<i>Potato Growing Industry Trust Fund Amendment Act 1982</i>	4 of 1982	6 May 1982	18 June 1982 (see section 2 and <i>Gazette</i> 18 June 1982 p.1993)	
<i>Acts Amendment (Potato Industry) Act 1985, Part III</i>	96 of 1985	4 December 1985	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>Potato Growing Industry Trust Fund Amendment Act 1988</i>	51 of 1988	8 December 1988	27 January 1989 (see section 2 and <i>Gazette</i> 27 January 1989 p.264)	
<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>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i>	73 of 1994	9 December 1994	9 December 1994	
<i>Marketing of Potatoes Amendment Act 1995, section 58(6)</i>	11 of 1995	30 June 1995	4 September 1995 (see section 2 and <i>Gazette</i> 1 September 1995 p.4063)	

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Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Sentencing (Consequential Provisions) Act 1995, Part 66</i>	78 of 1995	16 January 1996	4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 October 1996	25 October 1996 (see section 2(1))	
<i>Trustees Amendment Act 1997, section 18</i>	1 of 1997	6 May 1997	16 June 1997 (see section 2 and <i>Gazette</i> 10 June 1997 p.2661)	
<i>Statutes (Repeals and Minor Amendments) Act 1997, section 98</i>	57 of 1997	15 December 1997	15 December 1997 (see section 2)	

² Now known as Agriculture Western Australia.

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
Association.....	4
commercial producer	4, 6(2)(b)
Committee.....	4
Corporation	4
dealer.....	4
Fund	4
grower	4
potato exporter	4
potato product manufacturer	4
retail	4
sale	4
season.....	4
wholesale	4