

WESTERN AUSTRALIA.

FRUIT CASES.

10° Geo. V., No. XXVIII.

No. 40 of 1919¹

(Affected by Act 19 of 1929.)

[As amended by Acts :

- No. 7 of 1932, assented to 31st October, 1932 ;
- No. 22 of 1933, assented to 13th November, 1933 ;
- No. 6 of 1961, assented to 10th October, 1961 ;
- No. 88 of 1962, assented to 11th December, 1962 ;
- No. 49 of 1963, assented to 17th December, 1963 ;

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

AN ACT to regulate the Size and Description of Cases used in the Sale and Export of Fruit, and for purposes incidental thereto.

[Assented to 17th December, 1919.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the *Fruit Cases Act*, 1919–1963, and shall come into operation on a date to be fixed by proclamation.¹

Short title and commencement.
Amended by No. 49 of 1963, S. 1 (3).

2. In this Act—

“ Case ” means any box, case, or other receptacle used, intended to be used, or capable of being used, for containing fruit.

Interpretation.
See S.A. No. 1233 (1915), s. 3.

“ Export ” means to export or attempt to export from the State.

Amended by No. 22 of 1933, S. 2.

¹ Came into operation 16th January, 1922 : See Gazette 6th January, 1922, p. 2.

“Fruit” means apples, pears, quinces, oranges, mandarins, lemons, citronelles, pomeloes, peaches, nectarines, apricots, plums, cherries, grapes, loquats, passion fruit, figs, gooseberries, cape gooseberries, tomatoes, bananas, and pine-apples, and any other fruit declared by the Governor by notice in the *Gazette* to be fruit within the meaning of this Act.

“Inspector” means an inspector appointed under “The Plant Diseases Act, 1914,” or any Act thereby repealed.

“Second-hand case” means a case which has been used for containing fruit and out of which the fruit previously contained therein has been removed.

“Sell” includes—

- (a) to offer, expose, send or deliver for or on sale ;
- (b) to receive for sale ;
- (c) to cause or suffer to be sold, or received for sale ;
- (d) to attempt to do any of such acts or things, and the word “sale” shall be construed accordingly.

“Standard case” means a case conforming in measurement and capacity to the prescribed standard.

Fruit to be sold
in standard
cases.

See S.A. Act
No. 1233 (1915),
s. 5.

3. (1) Except as hereinafter provided, no person shall sell fruit, or export fruit from the State to any place within the Commonwealth, unless such fruit is contained in the prescribed standard case or cases.

Provided that this section shall not apply to—

- (a) dried, preserved, tinned, or canned fruit :
- (b) fruit sold by weight, or number, in a quantity at one time of less than twenty pounds in weight :
- (c) fruit sold in baskets, wooden buckets, or punnets :

- (d) fruit sold or exported in trays, whether single, cleated together, or enclosed within a frame or crate, but so that none of the trays shall contain more than one layer or more than sixteen pounds in weight of fruit :
- (e) grapes delivered to wineries and distilleries :
- (f) any particular fruit which the Governor by regulation exempts from the provisions of this Act :
- (g) any kind of fruit sold in such cases, or in such circumstances as the Governor, by regulations, exempts from the provisions of this Act as regards that particular kind of fruit :
- (h) fruit sold to a person for the time being registered as a factory buyer pursuant to section *eight* : provided that it is sold by weight and—
 - (i) for the purpose of being used for the manufacture or preparation of articles used for food or drink ; or
 - (ii) for the purpose of being packed for sale in standard cases.

Provided that every receptacle or package containing baskets, wooden buckets, punnets, or trays referred to in paragraphs (c) and (d) must have the name of the grower, the name of the district in which the grower's orchard is situated, the name of the fruit, and the weight or number thereof, legibly marked on the outside of such receptacle or package.

(2) The Governor may make regulations prescribing what shall be deemed to be dried, preserved, tinned or canned fruit for the purpose of this section or any such purpose.

4. The standards for fruit cases shall be such as are for the time being prescribed by regulations.

Standard cases to be prescribed.
See S.A. 1233 (1915), s. 6.

5. No person shall sell or export fruit in a case unless the name of the grower of the fruit, and the name of the district in which the grower's orchard is situated, are legibly and durably impressed, printed, or stencilled at one end on the outside of the case,

Case to show fruitgrower's name, etc.

together with the name of the fruit and the quantity in bushels, three-quarter bushels, half bushels, quarter bushels or other measurements according to the capacity of the standard to which the case should conform, no letters or figures used being less than three-eighths of an inch in length.

Provided that, subject to the regulations—

- (a) where single cases are packed with more than one variety of fruit the name and address of the packer may be impressed, printed, or stencilled on the case as aforesaid instead of the name of the grower of the fruit ; and
- (b) in lieu of the name of the grower or the name and address of the packer, a fruit brand together with the initials of the grower or packer may be used by an individual or firm or by any incorporated company, if such brand is approved and registered by the Department of Agriculture pursuant to the regulations, and a fee of seven shillings and sixpence paid for such registration.

Prohibition of manufacture and sale of undersized fruit cases.

6. (1) No person shall manufacture or sell cases or shucks intended for fruit cases of a prescribed standard, which are of less dimensions, size, or capacity than that of the prescribed standard case.

(2) If any person charged with any offence under this Act or any regulations hereunder relating to the sale of any fruit in a case of less dimensions, size, or capacity than those of the standard case, shall prove that he purchased the same from a manufacturer who represented the case to be of the dimensions, size, and capacity of a standard case, such proof shall be a good defence to such charge.

Offence to falsely mark case or to alter case or mark.
See S.A. No. 1253 (1915), s. 9.

7. (1) No person shall place, cause, or suffer to be placed on a case any name, address, guarantee, or particulars required by this Act which is or are incorrect in any particular.

(2) Subject to section *seven*, no person shall alter the size, shape, or any of the measurements of, or in any way tamper with any case bearing a fruitgrower's or packer's name and address, or wilfully deface or alter or in any way tamper with such name or address.

8. (1) Except as hereinafter provided, no person shall—

New cases to be used subject to exceptions.

Amended by No. 7 of 1932, s. 2.; No. 22 of 1933, s. 3.; No. 6 of 1961, s. 2.

- (a) sell or export fruit in a case which has previously been used for any purpose whatever ; or
- (b) have in any such case fruit intended for sale or export.

Provided that, subject to the regulations under this Act and the regulations under the Plant Diseases Act, 1914, nothing in this section shall prevent a case, which has been used for any purpose hereinafter mentioned, and no other, from being used again for containing fruit to the extent and subject to the conditions following, that is to say—

- (i) When fruit sold to a registered factory buyer for the purpose of his business has been sent to his factory in a case, the case may, after undergoing the prescribed inspection and treatment, be used again for containing fruit to be carried to the premises of any registered factory buyer, such fruit having been sold to him for the purposes of his business ;
- (ii) [*Repealed by No. 6 of 1961, s. 2.*]
- (iii) A second-hand case may be used for containing fruit intended for sale, or for conveying fruit to a packing shed for packing prior to sale or export, so long as the case is clean and free from disease, and the brands and marks (if any) thereon of any previous packers or growers are first removed therefrom, and the provisions of section five of this Act are duly complied with in relation to such case ;
- (iv) Fruit contained in a second-hand case as authorised by paragraph (iii) of this proviso shall be sent or carried only in accordance with regulations which may specify the method of transport and the places from and to which such case may be sent or carried ;
- (v) If an inspector finds a second-hand case being sent or carried, whether containing fruit or not, which in his opinion is unfit to

contain fruit by reason of disease or uncleanness found therein, or which is being used, sent, or carried in contravention of this section, or any regulations relating thereto, the inspector may seize such case, and, subject to paragraph (vi) of this proviso, may destroy the same without incurring any liability whatsoever in respect thereof, and such seizure and destruction shall be effected at the expense of the sender of the fruit ;

- (vi) When any case seized by an inspector under paragraph (v) hereof contains fruit, the inspector, prior to destroying the case, shall require the person in whose possession the case was found, to remove the fruit from such case, and, if such person shall fail, refuse, or neglect so to do, the inspector may himself remove the fruit from the case and leave it at the place where the case was seized as aforesaid ; and neither the inspector nor the Crown, nor any common carrier, shall incur any liability whatsoever in relation to any damage occasioned by reason of the fruit being removed from the case as aforesaid ;
- (vii) Any expense incurred by an inspector in relation to the seizure and destruction of any case under the authority of paragraphs (v) and (vi) hereof for the payment of which any person is liable under this section, may be recovered by action from such person at the suit of the Director of Agriculture in any court of competent jurisdiction.

(2) Provision may be made by regulation for allowing such alterations as may be necessary to be made in any of the particulars impressed, printed, or stencilled under section *five* on any case used or intended to be used pursuant to the foregoing proviso.

Registration of
factory buyers
and records to
be kept.
S.A. 1233, s. 10

9. (1) Any occupier of premises where fruit is received in bulk for the purpose of being packed for sale in standard cases, or where fruit is used for the manufacture or preparation of articles used for food or drink (which premises are hereinafter referred to as "the factory"), and any agent of such occupier,

may, on application as prescribed and on compliance with the prescribed conditions, be registered in the prescribed manner as a factory buyer for the purposes of this Act.

(2) Registration pursuant to this section shall be for a term of one year, and may from time to time be renewed for a further term of one year: Provided that if any person registered pursuant to this section is convicted of any offence against this Act, the magistrate or justices by whom he is convicted may, in addition to any other penalty imposed for such offence, order that his registration shall be cancelled, and he shall thereupon cease to be so registered.

(3) Every person registered pursuant to this section shall keep, or cause to be kept, a record containing the following particulars as to each purchase of fruit—

- (a) the name and address of the person from whom the fruit was purchased ;
- (b) the date when purchased ;
- (c) the weight of each kind of fruit included in the purchase, whether delivered at the factory or not ;
- (d) the weight of each fruit of such kind which has been delivered at the factory ;
- (e) such (if any) other particulars as are prescribed.

(4) Every person registered pursuant to this section shall, upon demand by an inspector, produce to such inspector the records required to be kept by him under this section, and shall permit him to take copies thereof or extracts therefrom.

9A. (1) In this section unless the context requires otherwise—

“ direct buyer ” means—

- (a) a person who during the period of two years immediately prior to the commencement of the Fruit Cases Act Amendment Act, 1962, purchased direct from a grower or growers an annual average quantity of not less than one

Registration of direct buyers of apples.
Added by No. 88 of 1962, s. 2; Amended by No. 49 of 1963, s. 2.

hundred bushels of apples for the purpose of selling the same either wholesale or retail ; or

- (b) a person who after the commencement of that Act purchases direct from a grower or growers an aggregate quantity of apples of not less than one hundred bushels during any period of twelve months commencing on the first day of January, for the purpose of selling the same either wholesale or retail ;

“ grower ” means a person by whom or on whose behalf apples are actually grown or produced for sale, and includes a person who carries on the business of processing apples and a person who operates a packing shed for apples ;

“ prescribed grades ” means when used in relation to apples the grades of apples prescribed by regulations made under the Agricultural Products Act, 1929.

(2) (a) Every direct buyer who is a person referred to in paragraph (a) of the interpretation “ direct buyer ” in subsection (1) of this section shall on or before the thirty-first day of January, one thousand nine hundred and sixty-three, make application as prescribed and in accordance with the prescribed conditions to be registered in the prescribed manner as a direct buyer for the purposes of this section.

(b) Every direct buyer who is a person referred to in paragraph (b) of the interpretation “ direct buyer ” in subsection (1) of this section shall, within fourteen days after having become a direct buyer within the meaning of that paragraph, make application as prescribed and in accordance with the prescribed conditions to be registered in the prescribed manner as a direct buyer for the purposes of this section.

(c) Upon making application pursuant to paragraph (a) or (b) of this subsection, the direct buyer shall be and continue to be registered as a direct buyer for the purposes of this Act until the thirty-first day of December next following the date of registration,

and registration pursuant to this subsection may from time to time be renewed for a further term of one year.

(3) Every person who purchases apples direct from a grower or growers for the purpose of selling the same either wholesale or retail shall keep or cause to be kept a record containing the following particulars as to each purchase of apples—

- (a) the name and address of each grower from whom the apples were purchased ;
- (b) the date or dates when purchased ;
- (c) the prescribed grades of the apples purchased and the quantity of each prescribed grade so purchased ;
- (d) such other particulars (if any) as may be prescribed.

(4) Every person referred to in subsection (3) of this section shall, upon demand by an inspector, produce to that inspector the records required to be kept by him under this section, and shall permit that inspector to take copies thereof or extracts therefrom.

(5) A direct buyer who fails or neglects to make application to be registered in accordance with the provisions of and within the time specified by this section commits an offence against this Act.

(6) This section shall remain in force until the thirty-first day of December, one thousand nine hundred and sixty-five and no longer.

10. (1) Any inspector or police officer or constable may, at any time during the day-time, enter upon any land, or into any warehouse, store, shop, building, or other premises, or enter any ship, boat, vehicle, railway wagon, or other conveyance, during the day or night, where fruit is or may reasonably be supposed to be sold or packed and kept for sale, carriage, or export, and may—

- (a) measure any case, whether containing fruit or not, there found, and if necessary may, without incurring any liability for damage to the case or the contents thereof, remove the same to be measured elsewhere ;

Powers of
inspectors.
See S.A. No.
1233 (1915),
s. 13.

- (b) do any act or thing required or permitted by regulation to be done for the purposes of this Act.

(2) No person shall in any way obstruct or interfere with any inspector or police officer or constable in the discharge of any of his duties or the exercise of any of his powers under this Act, or refuse to give any information or knowingly give any false information in answer to any reasonable inquiry.

Regulations.
See S.A. No.
1233 (1915),
s. 14.

11. The Governor may make regulations prescribing all such matters and things as this Act requires or permits to be prescribed, or which it may be necessary or convenient to prescribe for giving effect to the provisions or objects of this Act.

Penalties.
See S.A. No.
1233 (1915),
s. 15.

12. (1) Any contravention of or failure to observe the provisions of this Act or the regulations, whether by act or omission, shall be an offence against this Act.

(2) Any person guilty of an offence against this Act shall be liable to a penalty for the first offence of not more than Twenty pounds, and for any subsequent offence of not less than Two pounds or more than Fifty pounds, and the minimum fine hereby provided for shall be irreducible.

Evidence.
Added by
No. 22 of 1933,
s. 4.

13. In any proceedings in respect of offences under this Act—

- (a) no proof shall be required of the authority of the inspector to take the proceedings, or of his appointment as such inspector ; and
- (b) the person whose name is marked on the outside of a case as the grower or packer of the fruit contained therein shall be deemed to be the grower or packer of such fruit until the contrary is proved.