

Western Australia

Agricultural Products Act 1929

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Agricultural Products Act 1929

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Agricultural Products Act 1929

An Act to regulate the packing and sale of agricultural products.

1. Short title

This Act may be cited as the *Agricultural Products Act 1929*¹.
[Section 1 inserted by No. 61 of 1982 s. 3.]

2. Terms used in this Act

- (1) In this Act, unless the contrary intention appears —

“agricultural products” or **“products”** means and includes agricultural, farm, orchard, garden and dairy products and in particular, and without limiting the foregoing, fruit trees and fruit vines;

“code” means a code formulated under section 3F;

“Department” means the department of the Government principally assisting the Minister to administer this Act;

“Director General” means the Director General of Agriculture appointed under Part 3 of the *Public Sector Management Act 1994*;

“inspector” means an inspector appointed under this Act or under the *Plant Diseases Act 1914*;

“lot” means any quantity of loose agricultural products not contained in a package including fruit trees or vines, whether sold singly or in quantities;

s. 2A

“package” means any box, case, bag, sack, material, receptacle, or container used or capable of being used or intended to be used for containing or wrapping agricultural products;

“place” includes farm, garden, orchard, road, railway station, wharf, pier, jetty, vessel, factory, warehouse, market, stall, shop, store, yard, shed, barrow, and any vehicle, stand, or premises whatsoever;

“relevant code” in relation to an agricultural product or class of agricultural products is the code formulated in relation to the agricultural product or class of agricultural products, as the case may be, by the Minister;

“sell” includes —

- (a) to offer, expose, consign, 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 the acts or things mentioned in paragraph (a), (b) or (c),

and the words **“sale”** and **“sold”** shall be construed accordingly.

- (2) In this Act unless the contrary intention appears a reference to **“this Act”** includes a reference to a code.

[Section 2 amended by No. 6 of 1940 s. 2; No. 16 of 1966 s. 2; No. 44 of 1968 s. 2; No. 82 of 1974 s. 3; No. 61 of 1983 s. 4; No. 4 of 1991 s. 3 and 11; No. 32 of 1994 s. 5.]

[2AA. Repealed by No. 20 of 2004 s. 6.]

2A. Inspectors and other officers

- (1) The Governor may appoint such number of inspectors and other officers as he considers necessary for carrying into effect the provisions of this Act.

- (1a) Inspectors and other officers appointed under subsection (1) hold office under and subject to Part 3 of the *Public Sector Management Act 1994*.
- (2) The Minister may by instrument in writing authorise a person to exercise and perform all or any of the powers, duties and functions of an inspector under this Act for such period, not exceeding 12 months, as is specified in the instrument.
- (3) A person acting pursuant to authority conferred on him under subsection (2) shall be deemed, when so acting, to be an inspector.

[Section 2A inserted by No. 82 of 1974 s. 4; amended by No. 32 of 1994 s. 5.]

3. Packing and marking of wool

A person shall not himself or by his servant or agent —

- (a) consign or remove, or cause to permit to be consigned or removed, from the property on which it is produced, any wool that is intended for sale or has been sold unless prior to the consignment or removal the wool is first packed in a bale or package that is marked, branded or labelled in such manner as to clearly and legibly indicate the identity of the producer of the wool; or
- (b) have in his possession, except on the property on which it is produced, any wool that is intended for sale or has been sold unless the wool is packed in the manner referred to in paragraph (a).

Penalty: \$1 000.

[Section 3 inserted by No. 61 of 1982 s. 5; amended by No. 20 of 1989 s. 3.]

[3A-3C. Repealed by No. 47 of 1985 s. 2.]

s. 3D

3D. Minister may prohibit certain local sales of fruit or vegetables

- (1) The Minister may, by order, prohibit the sale, except for the purposes of export from the State, of any products that are —
 - (a) below a specified grade;
 - (b) below a specified size; or
 - (c) below a specified grade and a specified size.
- (2) In subsection (1) —

“products” means products belonging to any class of fruit or vegetables that is the subject of a code or to any variety of products within such a class;

“specified grade” means a grade specified in the order that is one of the grades specified in the code that relates to the product concerned; and

“specified size” means a size that is specified in the order.
- (3) An order under subsection (1) —
 - (a) is to be published in the *Government Gazette* and a daily newspaper published in Perth;
 - (b) has effect for the period or periods specified in the order or indefinitely if no period is specified; and
 - (c) may be revoked or amended in accordance with paragraph (a).

[Section 3D inserted by No. 4 of 1991 s. 4.]

3E. Offence

A person shall not sell, except for the purpose of export from the State, any fruit or vegetables of which the sale is pursuant to the provisions of section 3D prohibited, and any person who contravenes the provisions of this section commits an offence.

Penalty: \$1 000.

[Section 3E inserted by No. 16 of 1966 s. 7; amended by No. 44 of 1968 s. 7; No. 61 of 1982 s. 7; No. 4 of 1991 s. 5.]

3F. Minister may formulate codes

- (1) For the purposes of this Act the Minister may formulate codes providing for the grading, marking and packing of agricultural products.
- (2) The Minister may in a code specify the package, or kind of package to be used in relation to an agricultural product.
- (3) A code may be amended or repealed by the Minister and may be made so as to —
 - (a) apply generally or be limited in its application to the particular products or class of products specified in the code;
 - (b) apply in relation to the particular time, place or circumstances specified in the code;
 - (c) provide that any act or thing shall be done with the approval or to the satisfaction of a specified person or class or persons and may confer a discretionary authority;
 - (d) adopt, either wholly or in part or with modifications and either specifically or by reference any standards, rules, codes or specifications prescribed under a Commonwealth Act or published by Standards Australia or other like body specified in the code; and
 - (e) provide that where by reason of unavailability of materials or other reason that the Minister considers valid any requirement adopted by a code cannot be conformed to the Minister may approve such use of materials as he considers to be consistent with the achievement of the objects of the code.
- (4) A code and any amendment or repeal thereof shall be published in the *Government Gazette*.

s. 3G

[Section 3F inserted by No. 61 of 1982 s. 8; amended by No. 4 of 1991 s. 6 and 11; No. 74 of 2003 s. 25.]

3G. Topping prohibited

Except in the case of a sale for the purposes of export from the State, a person shall not himself or by his servant or agent sell any lot or portion of a lot of products or any products contained in a package unless the outer layer or shown surface of such products is so arranged, stacked or packed that it is a true indication of the fair average size, nature and quality of all the products in such lot or package.

Penalty: \$1 000.

[Section 3G inserted by No. 61 of 1982 s. 8.]

3H. Products to be packed, graded and marked in accordance with the relevant code

- (1) Except in the case of a sale for the purposes of export from the State, a person who packs any products intended for sale otherwise than by way of retail sale shall grade the products and pack and mark the package in accordance with the relevant code.
- (2) Except in the case of a sale for the purposes of export from the State, a person shall not sell any products otherwise than by way of retail sale unless —
 - (a) the products are contained in a package that conforms to the relevant code; and
 - (b) the products are graded, marked and packed in accordance with the relevant code.
- (3) Except in the case of a sale for the purposes of export from the State, a person shall not sell any products by way of retail sale unless the products are graded and marked in accordance with the relevant code.
- (4) A person who contravenes or fails to comply with subsection (1), (2) or (3) commits an offence.

Penalty: \$1 000.

[Section 3H inserted by No. 61 of 1982 s. 8; amended by No. 20 of 1989 s. 3.]

4. Power of inspectors

- (1) Whenever and wherever an inspector has reasonable grounds for believing that agricultural products other than wool are exposed or offered for sale, or are held in storage for the purposes of sale, or are in process of transport for the purposes of sale an inspector may at any reasonable time enter and inspect any place, and examine any products in or on such place, and require the owner or person for the time being in charge of such products to open any package, or if no such owner or person is present, may himself open any package, and in any case the inspector may take, without payment therefor, samples of the agricultural products in sufficient quantity to permit the inspector to determine whether the agricultural products in his opinion, comply with the requirements of this Act.
- (2) If an inspector has reasonable grounds for believing that with respect to any package of products other than wool or lot there is a contravention of or failure to comply with this Act he may take possession of and detain such package or lot for such time as may be necessary to enable him properly to inspect and examine the same, but such inspector shall take all reasonable precautions to protect such packages or products or lots from injury, damage, theft, or loss to the owner until the agricultural products are dealt with in accordance with this section.
- (3) Such package or lot shall at all times during such detention be at the risk and expense of the owner thereof.
- (4) Where pursuant to subsection (2) an inspector takes possession of and detains any package or lot he shall —
 - (a) serve on the owner or person in charge of the package or lot a notice in the prescribed form (in this section called a “**detention notice**”) informing the owner or person in charge of the package or lot that the agricultural

s. 4

products in the package or lot do not conform to the provisions of this Act and that the agricultural products are detained subject to this section; and

- (b) subject to subsection (4a), affix a copy of the detention notice to each package or lot of agricultural products in respect of which the detention notice applies.
- (4a) Where it is not practicable for an inspector to affix a detention notice to each package or lot of agricultural products in accordance with subsection (4)(b) the inspector shall, instead of affixing a detention notice to each package or lot, separate the packages or lots of agricultural products that are the subject of the detention notice by marking off the floor space occupied by them and placing a notice in the vicinity of the packages or lots so detained indicating that the packages or lots so set aside are the subject of a detention notice and the number of packages or lots to which the detention notice applies.
- (4b) Where the identity of the owner or the person in charge of any agricultural products is not known to him the inspector may address the detention notice to the owner or the person in charge of the agricultural products by affixing the notice to the package of agricultural products in relation to which the notice applies.
- (4c) Where pursuant to this section an inspector detains any agricultural products or package of agricultural products but is of the opinion that the agricultural products can be made to conform to the requirements of this Act the inspector may order the owner or the person for the time being in charge of the agricultural products to take such measures or do all such things with respect thereto at the expense of the owner of the agricultural products as the inspector determines to be necessary to make the agricultural products conform to the requirements of this Act.
- (4d) Where an inspector is satisfied that any agricultural products or any package of agricultural products cannot be made to conform to the requirements of this Act the inspector may order that the

agricultural products or portion thereof be destroyed or otherwise disposed of as prescribed.

- (4e) Where an inspector has ordered any agricultural products to be destroyed the agricultural products the subject of the order shall not be destroyed without the written approval of the Minister or a person authorised by the Minister in that behalf.
- (4f) Whilst a detention notice is in force in relation to any agricultural products or package or lot of agricultural products a person shall not —
 - (a) sell, or permit, suffer or cause another person to sell, the agricultural products to which the detention notice applies; or
 - (b) remove any detention notice affixed by an inspector under this section to the agricultural products or package or lot of agricultural products or any notice indicating that the packages or lots of agricultural products are the subject of a detention notice.

Penalty: \$2 000.

- (4g) An inspector may, with the approval of the Director General or a person authorised by the Director General in that behalf, revoke any detention notice given under this section and upon the revocation being so authorised the inspector shall remove the detention notice from the agricultural products or package of agricultural products as the case requires.
- (5) An inspector acting under the provisions of this section shall, if and when called upon, produce the certificate issued to him under section 8A(9).
- (6) Any inspector or person acting under the direction or supervision of an inspector is not liable for any loss or damage resulting from or caused by the performance or exercise of any of the powers conferred by this section upon an inspector.

[(7) repealed]

s. 4A

- (8) Nothing in this section authorises any inspector to examine, inspect, take samples or possession of, detain, give any order in relation to, or otherwise deal with any agricultural products while they are being held on the property on which they were produced, unless they are being offered or exposed for sale there.

[Section 4 amended by No. 12 of 1964 s. 2; No. 42 of 1965 s. 4; No. 16 of 1966 s. 8; No. 82 of 1974 s. 6; No. 61 of 1982 s. 9; No. 20 of 1989 s. 3; No. 4 of 1991 s. 7.]

4A. Inspection of wool

- (1) Where an inspector has reasonable grounds for suspecting that wool which —
- (a) is intended for sale or has been sold; and
 - (b) is not packed in the manner referred to in section 3(b),

is in or on any place, not being the place on which it was produced, he may enter in or on and search that place and inspect any wool there found.

- (2) An inspector may, for the purposes of exercising the powers conferred by subsection (1), stop and detain any vehicle which he suspects on reasonable grounds to be carrying wool of a kind referred to in that subsection.
- (3) A person who, being in charge of any vehicle, fails to stop the vehicle when required to do so by a person who makes himself known as an inspector, commits an offence.

Penalty: \$2 000.

[Section 4A inserted by No. 42 of 1965 s. 5; amended by No. 16 of 1966 s. 9; No. 61 of 1982 s. 10; No. 20 of 1989 s. 3.]

5. Exceptions to Act

Nothing in this Act shall apply to any products, package of products or lot consigned or forwarded to a consignee for the

purpose of manufacture or processing or packing, and distinctly and conspicuously marked or branded as such.

6. Penalty for obstructing an inspector

Any person who —

- (a) resists or wilfully obstructs or interferes with any inspector in carrying out his duties; or
- (b) refuses to give information or knowingly gives false information in answer to any reasonable inquiry made by an inspector for the purposes of this Act,

shall be guilty of an offence under this Act.

Penalty: \$2 000.

[Section 6 amended by No. 16 of 1966 s. 10; No. 61 of 1982 s. 11; No. 20 of 1989 s. 3.]

7. Proceedings

Subject to section 8A and Part 3 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, proceedings in respect of any offence under this Act may be taken and prosecuted by an inspector.

[Section 7 amended by No. 4 of 1991 s. 8; No. 57 of 1997 s. 18(1); No. 84 of 2004 s. 78.]

8. Evidence

- (1) 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 or inside of any package containing products for sale, or on any label thereon, as the seller or packer thereof, shall be deemed to be the seller or packer thereof until the contrary is proved.

s. 8A

- (2) In any proceedings in respect of an offence under section 3, the averment of the prosecutor that any wool the subject of the charge is or was intended for sale or has been sold shall, if contained in a sworn prosecution notice verified on oath, be deemed to be proved in the absence of proof to the contrary.
- (3) When in any proceedings in respect of an offence under this Act relating to agricultural products found on, in or about any building, structure or vehicle the prosecution shows that the building, structure or vehicle —
 - (a) was being used at the time for the sale of agricultural products (whether of the same kind or of any other kind); or
 - (b) had previously been regularly or frequently used for the sale of agricultural products (whether of the same kind or of any other kind),

the agricultural products so found shall be deemed to have been offered and exposed for sale unless the accused proves that it was not intended to be sold until the provisions of this Act in relation thereto had been duly complied with.

[Section 8 amended by No. 42 of 1965 s. 6; No. 82 of 1974 s. 7; No. 61 of 1982 s. 12; No. 84 of 2004 s. 80 and 82.]

8A. Infringement notices

- (1) An inspector who has reason to believe that a person has committed an offence against section 3E, 3G, 3H or 4(4f) may, within 5 days after the alleged offence is believed to have been committed, give to the alleged offender an infringement notice in the prescribed form —
 - (a) containing a description of the alleged offence;
 - (b) advising that if it is not wished to have a prosecution for 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 a

designated officer within a period of 28 days after the giving of the notice; and

- (c) identifying the persons who are designated officers.
- (2) An inspector who has reason to believe that a person has committed an offence against section 6 may, with the approval of the Director General and within 5 days after the alleged offence is believed to have been committed, give to the alleged offender an infringement notice in accordance with subsection (1).
- (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) A designated officer may, in a particular case, extend the period of 28 days within which the modified penalty may be paid pursuant to the infringement notice, and the extension may be allowed whether or not the period of 28 days has elapsed.
- (5) Where the modified penalty payable pursuant to an infringement notice has been paid within 28 days or such further time as is allowed, 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) Where the modified penalty has not been paid within 28 days or such further time as is allowed, a designated officer may 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) Payment of a modified penalty pursuant to an infringement notice shall not be regarded as an admission for the purposes of any proceedings, whether civil or criminal.
- (8) The Director General may, by notice published in the *Gazette*, appoint persons or classes of persons to be designated officers

s. 8B

for the purposes of this section, and may in like manner revoke any such appointment.

- (9) The Director General shall issue to each inspector a certificate in the prescribed form which the inspector shall produce whenever required to do so by a person to whom he has given or is about to give an infringement notice.

[Section 8A inserted by No. 4 of 1991 s. 9; amended by No. 84 of 2004 s. 80.]

8B. Agricultural Products Act Modified Penalties Revenue Account

- (1) An agency special purpose account called the Agricultural Products Act Modified Penalties Revenue Account (referred to in this section and section 8C as “**the Account**”) is established under section 16 of the *Financial Management Act 2006*.
- (2) The Director General shall ensure that all money received in the Department as payment of modified penalties or other amounts in connection with infringement notices given under section 8A is credited to the Account.

[Section 8B inserted by No. 4 of 1991 s. 9; amended by No. 49 of 1996 s. 64; No. 57 of 1997 s. 18(2); No. 77 of 2006 s. 17.]

8C. Use of money in the Account

- (1) Money standing to the credit of the Account may be applied towards —
- (a) the enforcement of sections 3E, 3G, 3H, 4(4f) and 6, including operation of the infringement notice system prescribed by section 8A;
 - (b) the cost of measures to prevent or eradicate pests and diseases affecting fruit trees or vegetable plants and their respective crops;
 - (c) compensating growers for losses resulting from the measures mentioned in paragraph (b);

- (d) promotion and encouragement of scientific research for the improvement of fruit crops and vegetable crops and their respective transportation; and
 - (e) purposes that the Minister considers will promote and encourage the fruit growing industry or the vegetable growing industry.
- (2) The amount that is to be charged to the Account for the purpose specified in subsection (1)(a) is to be determined annually by the Director General and no money is to be charged for that purpose except as so determined.
- (3) Money is not to be charged to the Account for any purpose specified in subsection (1)(b) to (e) except as determined by the Minister after consideration of advice and recommendations from the body known as the Western Australian Fruit and Vegetable Industry Advisory Committee.

[Section 8C inserted by No. 4 of 1991 s. 9; amended by No. 49 of 1996 s. 64; No. 77 of 2006 s. 17.]

9. Regulations

- (1) The Governor may make regulations not inconsistent with 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 this Act.
- (2) Without limiting the generality of subsection (1), the Governor may make regulations for the purpose of maintaining grades and standards of fruit and vegetables, at any stage of their sale or supply.

[Section 9 amended by No. 44 of 1968 s. 9; No. 4 of 1991 s. 10.]

Notes

- ¹ This is a compilation of the *Agricultural Products Act 1929* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

| Short title | Number and year | Assent | Commencement |
|---|-------------------------------------|-------------|---|
| <i>Agricultural Products Act 1929</i> | 19 of 1929 (20 Geo. V No. 17) | 27 Nov 1929 | 27 Nov 1929 |
| <i>Agricultural Products Act Amendment Act 1940</i> | 6 of 1940 (4 Geo. VI No. 6) | 18 Oct 1940 | 18 Oct 1940 |
| <i>Agricultural Products Act Amendment Act 1962</i> | 87 of 1962 | 11 Dec 1962 | 11 Dec 1962 |
| <i>Agricultural Products Act Amendment Act 1963</i> | 61 of 1963 | 18 Dec 1963 | 18 Dec 1963 |
| <i>Agricultural Products Act Amendment Act 1964</i> | 12 of 1964 | 2 Oct 1964 | 2 Oct 1964 |
| <i>Agricultural Products Act Amendment Act (No. 2) 1964</i> | 62 of 1964 | 4 Dec 1964 | 4 Dec 1964 |
| <i>Agricultural Products Act Amendment Act 1965</i> | 42 of 1965 | 8 Nov 1965 | 8 Nov 1965 |
| <i>Agricultural Products Act Amendment Act 1966</i> | 16 of 1966 | 17 Oct 1966 | 17 Oct 1966 |
| <i>Agricultural Products Act Amendment Act 1968</i> | 44 of 1968 | 8 Nov 1968 | 8 Nov 1968 |
| Reprint of the <i>Agricultural Products Act 1929</i> approved 29 Jan 1969 (includes amendments listed above) | | | |
| Reprint of the <i>Agricultural Products Act 1929</i> authorised 14 Jan 1970 (includes amendments listed above) | | | |
| <i>Agricultural Products Act Amendment Act 1974</i> | 82 of 1974 | 10 Dec 1974 | 14 Mar 1975 (see s. 2 and <i>Gazette</i> 14 Mar 1975 p. 872) |
| <i>Act Amendment (Agricultural Products) and Repeal Act 1982</i> | 61 of 1982 | 28 Sep 1982 | 1 Oct 1983 (see s. 2 and <i>Gazette</i> 23 Sep 1983 p. 3794) |

| Short title | Number and year | Assent | Commencement |
|--|------------------------|---------------|--|
| <i>Agricultural Products Amendment Act 1985</i> | 47 of 1985 | 3 Oct 1985 | 31 Oct 1985 |
| <i>Marketing of Eggs Amendment Act 1987 s. 21</i> | 122 of 1987 | 31 Dec 1987 | 30 Dec 1988 (see s. 2 and <i>Gazette</i> 30 Dec 1988 p. 5083) |
| <i>Agricultural Legislation (Penalties) Amendment Act 1989 s. 3</i> | 20 of 1989 | 1 Dec 1989 | 15 Dec 1989 (see s. 2 and <i>Gazette</i> 15 Dec 1989 p. 4513) |
| <i>Agricultural Products Amendment Act 1991</i> | 4 of 1991 | 23 May 1991 | 20 Jun 1991 |
| <i>Acts Amendment (Public Sector Management) Act 1994 s. 5</i> | 32 of 1994 | 29 Jun 1994 | 1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948) |
| <i>Financial Legislation Amendment Act 1996 s. 64</i> | 49 of 1996 | 25 Oct 1996 | 25 Oct 1996 (see s. 2(1)) |
| <i>Statutes (Repeals and Minor Amendments) Act 1997 s. 18</i> | 57 of 1997 | 15 Dec 1997 | 15 Dec 1997 (see s. 2(1)) |
| Reprint of the Agricultural Products Act 1929 as at 5 Mar 1999 (includes amendments listed above) | | | |
| <i>Statutes (Repeals and Minor Amendments) Act 2003 s. 25</i> | 74 of 2003 | 15 Dec 2003 | 15 Dec 2003 (see s. 2) |
| <i>Marketing of Eggs Amendment Act 2004 s. 6</i> | 20 of 2004 | 26 Aug 2004 | 2 Jul 2005 (see s. 2(2) and <i>Gazette</i> 28 Jun 2005 p. 2895) |
| <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78, 80 and 82</i> | 84 of 2004 | 16 Dec 2004 | 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53)) |
| Reprint 4: The Agricultural Products Act 1929 as at 4 Aug 2006 (includes amendments listed above) | | | |
| <i>Financial Legislation Amendment and Repeal Act 2006 s. 17</i> | 77 of 2006 | 21 Dec 2006 | 1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137) |