

Western Australia

Horticultural Produce Commission Amendment Act 2000

As at 30 Jun 2000

No. 20 of 2000

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Horticultural Produce Commission Amendment Act 2000

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Western Australia

Horticultural Produce Commission Amendment Act 2000

No. 20 of 2000

An Act —

- **to amend the *Horticultural Produce Commission Act 1988*;**
- **to validate certain appointments and acts;**
- **to enact transitional provisions; and**
- **to amend the *Constitution Acts Amendment Act 1899* and the *Financial Administration and Audit Act 1985*.**

[Assented to 30 June 2000]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Horticultural Produce Commission Amendment Act 2000*.

s. 2

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. The Act amended

The amendments in this Act are to the *Horticultural Produce Commission Act 1988** unless otherwise indicated.

[* *Act No. 75 of 1988.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 116.]

4. Long title replaced

The long title is repealed and the following long title is inserted instead —

“

An Act to —

- **provide for the constitution of an Agricultural Produce Commission for the purposes of encouraging initiative among producers of agricultural produce to form producers' committees for the purposes of providing services to producers of agricultural produce;**
- **define the functions of the Commission and producers' committees;**
- **authorize the determination and imposition of charges for services; and**
- **amend the *Parliamentary Commissioner Act 1971* and the *Constitution Acts Amendment Act 1899*,**

and for related purposes.

”.

5. Section 1 amended

Section 1 is amended by deleting “*Horticultural*” and inserting instead —

“ *Agricultural* ”.

6. Section 3 amended

(1) Section 3(1) is amended as follows:

- (a) by inserting, in the appropriate alphabetical positions, the following definitions —

“

“**agricultural industry**” means a horticultural industry and such other agricultural industry as may be prescribed but excluding broadacre cropping and grazing industries.

“**agricultural produce**” means the produce of an agricultural industry;

”;

- (b) in the definition of “Commission” by deleting “*Horticultural*” and inserting instead —

“ *Agricultural* ”;

- (c) by deleting the definitions of “growers’ committee” and “horticultural produce”;

- (d) in the definition of “member” by deleting “growers’ ” in both places where it occurs and inserting instead —

“ producers’ ”;

- (e) by deleting the full stop after the definition of “member” and inserting instead —

“

;

“**producers’ committee**” means a producers’ committee established under section 11.

”.

(2) Section 3(2) is repealed.

s. 7

7. Part 2 heading replaced

Part 2 is amended by deleting the heading “PART 2 —
HORTICULTURAL PRODUCE COMMISSION” and
inserting instead —

“

Part 2 — Agricultural Produce Commission

”.

8. Section 4 amended

Section 4(4) is repealed.

9. Section 5 replaced

Section 5 is repealed and the following section is inserted
instead —

“

5. Constitution of the Commission

- (1) The Commission is to consist of 4 members appointed by the Minister.
- (2) A member of the Commission is to have, in the Minister’s opinion, a broad understanding of agricultural industry and —
 - (a) experience in financial management; or
 - (b) other experience relevant to the Commission’s functions.
- (3) The Minister shall, prior to making any appointments to the Commission, establish in writing the particular experience relevant to the Commission’s functions which the Minister determines is necessary for membership of the Commission.

- (4) The Minister shall —
 - (a) publish and make available on request the selection criteria for membership of the Commission established under subsection (3);
 - (b) advertise in a major newspaper circulating in the State when there is a vacancy in the Commission's membership, and that applicants are invited to apply;
 - (c) indicate in such advertisement any conditions required of candidates for membership of the Commission including the disclosure of any possible conflicts of interest.
- (5) The Minister is to appoint one of the members of the Commission to be the chairperson.
- (6) The Schedule has effect with respect to the Commission and its acts and proceedings.

”.

10. Section 6 amended

Section 6(2) is repealed and the following subsections are inserted instead —

“

- (2) Without limiting subsection (1), a producers' committee may be established —
 - (a) in relation to any agricultural produce of a particular kind, class or variety or which possesses a particular characteristic;
 - (b) in relation to a number of different kinds, classes or varieties of agricultural produce; or
 - (c) to achieve specified objects in relation to any agricultural produce,

for the whole State or part of the State.

s. 11

- (3) In performing its functions in relation to a producers' committee the Commission shall have regard to advice to it from the committee.

”.

11. Section 7 amended

- (1) Section 7(1)(a) is amended by deleting “moneys the Commission receives in respect of fees and charges in respect of” and inserting instead —

“ charges received by the Commission for ”.

- (2) Section 7(2) is amended by deleting “Horticultural” and inserting instead —

“ the Agricultural ”.

12. Part 3 heading replaced

Part 3 is amended by deleting the heading “PART 3 — GROWERS' COMMITTEES” and inserting instead —

“

Part 3 — Producers' committees

”.

13. Section 10 amended

- (1) Section 10(1) is amended as follows:

- (a) by deleting “appointing” and inserting instead —
“ establishing ”;

- (b) by deleting “a growers' committee in relation to the particular horticultural produce in question” and inserting instead —

“ that committee ”.

- (2) Section 10(2)(d) is deleted.

- (3) After section 10(2) the following subsection is inserted —

“

- (2a) In performing its functions under this section and section 11, the Commission shall have regard to any submissions made to it under subsection (2)(f).

”.

- (4) Section 10(3) is amended as follows:

- (a) by deleting “after considering the submissions made under subsection (2)(f)”;
- (b) by deleting “horticultural produce industry in this State” and inserting instead —
- “ agricultural industry in question ”;
- (c) by deleting “growers of that kind of horticultural produce in the area referred to in the notice” and inserting instead —

“

producers who may be affected by the proposal

”.

14. Section 11 amended

- (1) Section 11(1) is amended as follows:

- (a) in paragraph (a) by deleting “appointed” in both places where it occurs and inserting instead —
- “ established ”;
- (b) in paragraph (a)(ii) by deleting “in relation to which the growers’ committee is established”.

- (2) After section 11(1) the following subsections are inserted —

“

- (1a) After receiving the nominations the Commission —
- (a) shall decide how many members there shall be on the producers’ committee; and

s. 15

- (b) if it is of the opinion that the poll of the producers concerned should be held to elect the members, shall conduct a poll.
- (1b) A person is not eligible to stand at a poll to elect members of the producers' committee unless the person is qualified to be appointed to the committee in relation to the kind of agricultural produce in question.
- (1c) Subject to subsection (2), the persons elected at a poll to be members of a producers' committee shall be appointed by the Commission to be members of the committee.

”.
- (3) Section 11(2) is amended by deleting “kind of horticultural” and inserting instead —

“ agricultural ”.

15. Section 12 amended

Section 12(1) is amended as follows:

- (a) by deleting “Subject to any direction given by the Commission and to this section the relevant growers' committee may in relation to the horticultural produce in relation to which it is established in addition to any other functions conferred on a growers' committee under this Act provide any one or more of the following services —” and inserting instead —

“ Subject to any direction given by the Commission and to this section a producers' committee may provide any one or more of the following services as are prescribed in relation to the agricultural produce in relation to which it is established —

”,

- (b) after paragraph (l) by inserting the following paragraph —

“

- (la) establish a compensation scheme for the benefit of producers whose agricultural produce is destroyed as a result of action taken to control a pest or disease of that produce;

”;

- (c) in paragraph (m) by deleting “(l)” and inserting instead —

“ (la) ”.

16. Section 13 amended

Section 13(1) is amended by deleting “the relevant growers’ ” and inserting instead —

“ a producers’ ”.

17. Section 14 replaced

Section 14 is repealed and the following section is inserted instead —

“

14. Imposition of charges for services

- (1) The Commission, at the request and with the advice of a producers’ committee, may determine the cost or estimated cost of providing a service which the producers’ committee is authorized to provide and, with the approval of the Minister, may impose a charge for the provision of that service.
- (2) The Commission is to determine the amount of a charge imposed under this section having regard to the cost or estimated cost of providing the service and any other relevant factors.

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- (3) Notice of a charge imposed under this section is to be published, and the charge is payable, in accordance with the regulations.

”.

18. Section 15 amended

- (1) Section 15(1) is amended as follows:
- (a) by deleting “the relevant growers’ ” in the first place where it occurs and inserting instead —
“ a producers’ ”;
 - (b) by deleting “by a simple majority of the persons entitled to vote”;
 - (c) by deleting “relevant growers’ ” in the second and third place where it occurs and inserting instead —
“ producers’ ”.
- (2) Section 15(7)(b) is amended by inserting after “directs” —
“ for the benefit of the producers concerned ”.

19. Section 16 amended

Section 16(1) is amended as follows:

- (a) by deleting “horticultural” and inserting instead —
“ the agricultural ”;
- (b) by deleting “of the kind”.

20. Section 18 amended

Section 18(3) is repealed and the following subsections are inserted instead —

“

- (3) Despite subsection (2), any amount which is no longer required by a producers’ committee —
 - (a) to be applied for the service in relation to which the charge was imposed; or

- (b) to defray the proper costs and expenses of the producers' committee,

may be allocated by the Commission to be applied for the provision of another service that the committee is authorized to provide.

- (4) The Commission shall maintain proper books of account and records showing amounts credited to the account referred to in subsection (1) and the manner in which the moneys in that account are applied.

”.

21. Section 19 amended

Section 19(1) is amended by deleting “a particular kind of horticultural” and inserting instead —

“ agricultural ”.

22. Section 19A inserted

After section 19 the following section is inserted —

“

19A. Application to commercial and non-commercial producers of provisions relating to the control of certain pests or diseases

- (1) Where this section applies, a reference in this Act to “a producer” includes a reference to a producer of any quantity of agricultural produce, whether for sale or not.
- (2) This section applies if —
 - (a) the Minister, by notice published in the *Gazette*, has declared a specified pest or disease to be a pest or disease to which this section applies; and

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- (b) a producers' committee is established, or is to be established, with the object of controlling or developing the means of controlling the pest or disease specified in the notice.

”.

23. Section 22 amended

Section 22(2) is repealed.

24. Section 25 amended

Section 25(2) is amended by deleting paragraph (e) and “and” after it and the following paragraphs are inserted instead —

“

- (e) require that for the purposes of this Act information relating to agricultural produce be furnished to prescribed persons or organizations;
- (ea) prescribe the manner in which charges imposed under this Act shall be paid and collected and the persons to whom the charges shall be paid or by whom the charges shall be collected; and

”.

25. Section 26 amended

Section 26(1) is amended by deleting “this Act” and inserting instead —

“

the Horticultural Produce Commission Amendment Act 2000

”.

26. Schedule amended

- (1) Clause 2 of the Schedule is amended by deleting “Public Service Commissioner” and inserting instead —
“ Minister for Public Sector Management ”.
- (2) Clause 6(4) of the Schedule is amended by deleting “2” and inserting instead —
“ 3 ”.

27. Various references to “Horticultural” changed to “Agricultural”

The provisions of the Act mentioned in the Table to this section are amended by deleting “Horticultural” and inserting instead —

“ Agricultural ”.

Table

section 4(1)

section 7(3)

28. Various references to “horticultural” changed to “agricultural”

The provisions of the Act mentioned in the Table to this section are amended by deleting “horticultural” and inserting instead —
“ agricultural ”.

Table

section 6(1)(a)	section 12(1)(b)	section 12(1)(j)
section 10(2)(c)	section 12(1)(c)	section 12(1)(k)
section 10(7)	section 12(1)(d)	section 12(1)(l)
(2 places)	section 12(1)(e)	section 19(1) (in
section 11(1)(a)(i)	section 12(1)(f)	the second place
section 12(1)(a)	section 12(1)(g)	where it occurs)
	section 12(1)(h)	section 23(c)
	section 12(1)(i)	(3 places)
		section 23(d)

29. Various references to “grower” changed to “producer”

The provisions of the Act mentioned in the Table to this section are amended by deleting “grower” and inserting instead —
“ producer ”.

Table

section 10(3)	section 15(8)
section 13(1) (2 places)	section 23(c)(iii)

30. Various references to “growers” changed to “producers”

The provisions of the Act mentioned in the Table to this section are amended by deleting “growers” and inserting instead —
“ producers ”.

Table

section 10(2)(f)	section 12(1)(f)	section 19(1)
section 10(4)	section 12(1)(i)	(4 places)
section 10(7)	(2 places)	section 19(2)
section 10(9)	section 12(3)	section 23(d)(ii)
section 11(1)(b)	section 15(1)	section 25(2)(a)
section 12(1)(c)	section 16(1)	(2 places)
		section 25(2)(c)

31. Various references to “growers’ ” changed to “producers’ ”

The provisions of the Act mentioned in the Table to this section are amended by deleting “growers’ ” and inserting instead —

“ producers’ ”.

Table

section 6(1)(a)	section 10(2)(e)	section 11(2)
section 6(1)(b)	(2 places)	section 11(3)
section 6(1)(c)	section 10(3)	section 12(1)(c)
section 6(1)(d)	section 10(5)	section 12(2)
section 6(1)(e)	(3 places)	section 12(3)
(2 places)	section 10(6)	(3 places)
section 6(1)(f)	(2 places)	section 12(4)
section 6(1)(g)	section 10(7)	section 15(2)
section 6(1)(h)	(2 places)	section 15(3)
section 7(1)(a)	section 10(9)	(4 places)
section 7(1)(b)	section 11(1) (the	
section 7(3)	first, second, third,	
section 10(1)	and fifth place	
	where it occurs)	

Table (continued)

section 15(5)	section 17(2)	section 23(a)(iii)
section 15(6)	section 18(1)	section 23(a)(iv)
section 15(7)	(2 places)	section 24 (5 places)
(2 places)	section 19(1)	section 26(1)(b)
section 15(8)	section 20(2)	
(3 places)	section 22(1)	
section 16(1)	section 23(a)(i)	

32. Validation

- (1) Any appointment made after the commencement of the *Plant Diseases Amendment Act 1993* and before the commencement of this Act to a growers' committee by the Commission purporting to act under section 11 of the *Horticultural Produce Commission Act 1988* is hereby validated and declared to have been lawfully made.
- (2) Any act or thing done after the commencement of the *Plant Diseases Amendment Act 1993* and before the commencement of this Act by a growers' committee purporting to act under the *Horticultural Produce Commission Act 1988* that would have been lawful if this Act had been in force at the time when it was done is hereby validated and declared to have been lawfully done.

33. Consequential amendments

- (1) Schedule V Part 3 to the *Constitution Acts Amendment Act 1899** is amended as follows:
 - (a) by deleting "Horticultural Produce Commission or any growers' committee established under the *Horticultural Produce Commission Act 1988*.";

- (b) by inserting after the item relating to the Agricultural Practices Board of Western Australia the following item —

“

The Agricultural Produce Commission or any producers' committee established under the *Agricultural Produce Commission Act 1988*.

”.

[* *Reprinted as at 15 April 1999.*

For subsequent amendments see Acts Nos. 53 of 1998 and 26 of 1999.]

- (2) Schedule 1 to the *Financial Administration and Audit Act 1985** is amended as follows:
- (a) by deleting “Horticultural Produce Commission”;
- (b) by inserting before the item relating to the Albany Port Authority the following item —
- “ Agricultural Produce Commission ”.

[* *Reprinted as at 10 January 1997.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 91 and Acts Nos. 53 and 65 of 1998 and 26 of 1999.]

34. Transitional

- (1) On the commencement of this Act the account known as the Horticultural Produce Commission Account established under section 7 of the *Horticultural Produce Commission Act 1988* is continued in existence under the name the Agricultural Produce Commission Account.
- (2) If immediately before the commencement of this Act a committee established under section 11 of the *Horticultural Produce Commission Act 1988* is in existence then on commencement —
- (a) the committee continues in existence; and

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- (b) the name of the committee is deemed to have “Producers’” substituted for “Growers’”.
- (3) If the procedure for establishing a growers’ committee under the *Horticultural Produce Commission Act 1988* has been initiated but has not been completed before the commencement of this Act, that procedure may continue to be followed and be completed after the commencement of this Act as if this Act had not come into operation but if a committee is established under that procedure it is established as a producers’ committee with a name containing “Producers’” instead of “Growers’”.

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