

WESTERN AUSTRALIA

MARKETING OF POTATOES AMENDMENT ACT 1995

No. 11 of 1995

**AN ACT to amend the *Marketing of Potatoes Act 1946* and
for related purposes.**

[Assented to 30 June 1995]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Marketing of Potatoes Amendment Act 1995*.

2. This Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

3. In this Act the *Marketing of Potatoes Act 1946** is referred to as the principal Act.

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 130.]

4. The long title to the principal Act is amended —

- (a) by deleting "potatoes," and substituting the following —

“ ware potatoes and ”,

- (b) by deleting "for sale," and substituting the following —

“

; to require the registration of growers, and the licensing of areas of land used for the production, of potatoes;

27.

and

- (c) by deleting “**Western Australian Potato Marketing Authority**” and substituting the following —

“

**Potato Marketing Corporation of
Western Australia**

”

Section 3 amended

5. Section 3 of the principal Act is amended by deleting “Subject to sections 8 and 20, the” and substituting the following —

“ The ”.

Section 4 amended

6. Section 4 of the principal Act is amended —

(a) by inserting, after the section designation “4.”, the subsection designation “(1)”;

(b) by deleting “as hereinafter provided” and substituting the following —

“ to subsections (2) and (3) ”;

(c) by deleting “Provided that the” and substituting the following —

“ (2) The ”; and

(d) by adding the subsection following —

“
(3) The provisions of this Act do not bind the department of the Public Service designated as the Department of Agriculture.

”.

Section 5 amended

7. Section 5 (1) of the principal Act is amended —

(a) by deleting “subject to the context” and substituting the following —

“ unless the contrary intention appears ”;

- (b) by deleting the definitions of “Agent”, “Authority”, “Certificate”, “Minister”, and “This Act” respectively;
- (c) in the definition of “Commercial producer” —
 - (i) by deleting “500”, in both places where it occurs, and substituting the following —

“ 100 ”; and
 - (ii) by inserting, after “planted”, the following —

“ with potatoes ”;
- (d) in the definition of “potato product”, by deleting “means” and substituting the following —

“ includes peeled potatoes, ”;

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

“

“area licence” means a licence issued by the Corporation authorizing the planting and producing of potatoes on the land described in the licence;

“consignment advice” means a document in the prescribed form furnished by the grower of the potatoes to which the document relates and which contains the prescribed information in relation to those potatoes;

“packaging” includes any container, bag or other receptacle;

“potato exporter” means a person, other than the Corporation, who or which —

- (a) exports potatoes from the State;
or
- (b) acts on behalf of a person who or which exports potatoes from the State;

“potato product manufacturer” means a person who or which, otherwise than by way of a restaurant or food shop, carries on the business of manufacturing a potato product;

“the Corporation” means the body preserved and continued under section 7 (1) as the Potato Marketing Corporation of Western Australia;

“the Fund” means the Potato Marketing Corporation Fund referred to in section 20 (1);

“ware potato” means a potato which —

- (a) is grown in the State; and
- (b) is sold, or in respect of which there are reasonable grounds to believe that it is intended for sale, for human consumption; and
- (c) is unprocessed, except for cleaning and grading.

Heading to Part II amended

8. Part II of the principal Act is amended by deleting “**THE WESTERN AUSTRALIAN POTATO MARKETING AUTHORITY**” from the heading and substituting the following —

“

**THE POTATO MARKETING CORPORATION OF
WESTERN AUSTRALIA**

”.

Section 7 amended, and transitional provisions

9. (1) Section 7 of the principal Act is amended —

(a) in subsection (1) —

(i) by inserting, after “Board”, the following —

“

and subsequently as the Western
Australian Potato Marketing
Authority

”;

and

(ii) by deleting “Western Australian Potato Marketing Authority” and substituting the following —

“

Potato Marketing Corporation of
Western Australia

”;

(b) in subsection (1b) —

(i) by inserting after “Board”, the following —

“
or to the Western Australian Potato
Marketing Authority
”,
and

(ii) by deleting “Western Australian Potato
Marketing Authority” and substituting the
following —

“ the Corporation ”;

(c) in subsection (2), by deleting “Governor” and
substituting the following —

“
Minister, 2 of whom shall be persons
elected by the commercial producers under
section 8
”,
and

(d) by repealing subsection (3) and substituting the
subsection following —

“
(3) Other than the persons elected
under section 8, of the members of the
Corporation —

(a) one shall be appointed as
chairman of the Corporation,
being a person who in the
opinion of the Minister has
relevant commercial expertise;
and

- (b) 3 shall be persons who have, in the opinion of the Minister, relevant commercial expertise in finance, in marketing, or in the food industry.

”.

(2) Where the appointment of a person as a member of the Western Australian Potato Marketing Authority, under the provisions of section 7 of the principal Act as enacted before the coming into operation of this section, is still in effect immediately before the coming into operation of this section —

- (a) if that appointment was made following an election of the member by commercial producers in accordance with section 8, the member shall continue to hold office for the term specified in the instrument of appointment, as though the appointment had been made by the Minister; but
- (b) otherwise, the appointment is terminated on and by virtue of this section coming into operation.

(3) Subsection (2) does not affect the eligibility of the person to be appointed as a member of the Corporation under section 7 of the principal Act as amended by this section.

Section 8 amended

10. Section 8 of the principal Act is amended —

- (a) in subsection (1), by deleting “elective members of the Authority” and substituting the following —

“

persons eligible to be appointed as
representing commercial producers as
elective members of the Corporation

”;

and

(b) in subsection (2) —

(i) by deleting the first sentence; and

(ii) by deleting “subsequent elections shall be a charge upon, and” and substituting the following —

“ elections required under subsection (1) ”.

Section 9 amended

11. Section 9 of the principal Act is amended —

(a) by deleting “Authority shall be” and substituting the following —

“ Corporation is ”; and

(b) by deleting “the name of the Western Australian Potato Marketing Authority” and substituting the following —

“
its corporate name and may, if approved by
the Minister, operate under and use an
abbreviation or a trading name
”.

General amendment changing name of the body corporate

12. Subject to the provisions of this Act, the principal Act is amended by deleting “*Authority*” and “*Authority*”, wherever occurring, and substituting, respectively, the following —

“ *Corporation* ” and “ *Corporation* ”.

Section 11 amended

13. Section 11 (1) of the principal Act is amended by deleting “approved by the Governor” and substituting the following —

“ determined in accordance with the regulations ”.

Section 12 repealed, and a new section substituted

14. Section 12 of the principal Act is repealed and the following section is substituted —

“

Term of office

12. (1) Except as otherwise provided by this Act, a member of the Corporation shall hold office for such term, not exceeding —

(a) in the case of the chairman, 5 years; and

(b) otherwise, 3 years,

as is specified in the instrument of appointment, and may from time to time be re-appointed.

(2) A member of the Corporation whose term of office expires shall, unless the office becomes vacant under section 13, continue in office until a successor comes into office.

”.

Section 13 amended

15. Section 13 of the principal Act is amended —

(a) by deleting “(1) The office of a member shall become vacant if he — ” and substituting the following —

“

The office of a member of the Corporation becomes vacant if that member —

”.

- (b) by deleting paragraphs (c), (d) and (e) and substituting the paragraphs following —

“

(c) is an insolvent under administration within the meaning of the Corporations Law;

(d) by reason of —

(i) mental or physical incapacity;

(ii) incompetence;

(iii) neglect of duty; or

(iv) misbehaviour,

impairing the performance of the duties of the office and proved to the satisfaction of the Minister, is removed from office by the Minister;

or

(e) is absent without leave of the Corporation from 3 consecutive meetings of the Corporation of which the member had notice, and is declared by resolution of the Corporation thereby to have vacated office.

”
,

and

- (c) by repealing subsection (2).

Section 15 amended

16. Section 15 of the principal Act is amended —

- (a) by repealing subsection (3) and substituting the subsection following —

“

(3) If the votes of the members of the Corporation present at a meeting and voting on a question are equally divided, the chairman or other person presiding at that meeting shall have and may exercise a casting vote in addition to a deliberative vote.

”.

and

- (b) by inserting, after subsection (5), the subsection following —

“

(6) Notice of meetings of the Corporation is to be given to the chief executive officer of the Corporation, who shall be entitled to attend any meeting of the Corporation and to participate in the discussion of any matter at the meeting but, unless a person who is a member of the Corporation, is not entitled to a vote.

”.

Section 16 repealed and re-enacted with amendment

17. Section 16 of the principal Act is repealed and the following section is substituted —

“

Protection of members and officers

16. (1) A person who is a member, or subject to section 18 (8) an officer, of the Corporation shall not

be personally liable for any act done or omitted to be done in good faith by that person or by the Corporation in the performance, or purported performance, of any function under this Act.

(2) Subsection (1) does not relieve the Corporation of any liability that, but for subsection (1), it might have for the acts or omissions of a member or of an officer of the Corporation.

”.

Section 17 amended

18. Section 17 (1) of the principal Act is amended by deleting “: Provided that” and substituting the following —

“ but ”.

Section 17A amended

19. Section 17A of the principal Act is amended —

(a) in paragraph (a) —

(i) by inserting, before “potatoes” where it first occurs, the following —

“ ware ”;

(ii) by deleting “of potatoes that are”; and

(iii) by deleting “, for the production of potato products in the State and for export from the State, whilst preventing over-production”;

(b) in paragraph (b) —

(i) by inserting, after “delivery of”, the following —

“ , and otherwise deal with, ”; and

- (ii) by deleting “and potato products”;
- (c) by deleting paragraph (c) and substituting the paragraph following —
 - “
 - (c) register persons who are to be authorized to carry on business as a commercial producer of potatoes, and license the areas of land to be used in any such business;”;
- (d) in paragraph (d), by adding, after “potatoes”, the following —
 - “
 - and provide for the monitoring and, if thought fit, regulation of the production of potatoes for propagation or for any other prescribed kind of use”;
- (e) in paragraph (e) —
 - (i) by deleting “and potato products produced”; and
 - (ii) by deleting “and potato products”;
- (f) in paragraph (f), by deleting “potatoes,” and substituting the following —
 - “
 - potatoes, and undertake market development; and”.

Section 18 amended

20. (1) Section 18 (1) of the principal Act is amended —

- (a) by deleting “a secretary and such inspectors, clerks and other officers and employees” and substituting the following —

“

such inspectors and other officers and employees, subject to any applicable order, award or agreement under the *Industrial Relations Act 1979* or any workplace agreement in force under the *Workplace Agreements Act 1993*,

”;

and

- (b) by deleting “, and the provisions of the *Public Service Act 1978*, and of the *Government Employees (Promotions Appeal Board) Act 1945*, shall not apply to such appointees, or any of them”.

(2) Section 18 (2) of the principal Act is amended —

- (a) by deleting “administering any Department of the Public Service of the State” and substituting the following —

“

concerned with the administration of the relevant department, agency or instrumentality

”;

and

- (b) by deleting “make use of the services of any person employed in that department” and substituting the following —

“

make use —

- (a) of the services of any officer or employee in the Public Service or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) of any facilities of a department of the Public Service or of a State agency or instrumentality,

after consultation with the Public Service Commissioner

”;

- (3) Section 18 of the principal Act is further amended by adding the subsections following —

“

(4) Of the officers appointed under this section one shall, subject to the approval of the Minister, be appointed as chief executive officer of the Corporation who —

- (a) shall, subject to the control of the members of the Corporation, administer the day to day operations of the Corporation; and
- (b) may be a person who is a member of the Corporation.

(5) For the purposes of this Act an inspector —

- (a) shall act in accordance with any direction which may be given by the chief executive officer of the Corporation; and
- (b) may be accompanied by a person acting under the supervision of the inspector to assist in making any inspection or examination,

and any reference in this Act to an inspector in the context of a right of entry or in relation to a duty imposed or a power conferred is to be deemed to include a reference to any such person accompanying an inspector and to the chief executive officer.

(6) In the exercise of his functions an inspector may direct or require a person having the custody or control of any land, premises or thing in respect to which the inspector is authorized to exercise power to furnish reasonable access, facilities and other assistance and relevant information, or to produce any potatoes in their custody or control, for the purpose of the exercise of that power.

(7) A person who, without lawful excuse —

- (a) delays, hinders or obstructs any inspector;
- (b) contravenes a direction given, or fails to comply with a requirement made, by an inspector pursuant to this Act;
- (c) being the owner, occupant or person in charge of any premises or vehicle, refuses to permit an inspector to exercise any function authorized under this Act,

commits an offence.

(8) An inspector, or a person acting under the direction or supervision of an inspector, is not liable for any loss, damage or injury resulting from, or alleged to be sustained by reason of, the performance of any duty imposed, or the exercise of any power conferred, by or under this Act upon an inspector if the duty was performed or the power exercised in good faith and in a reasonable manner.

(9) The chief executive officer of the Corporation shall issue to each inspector appointed under this Act a certificate evidencing that appointment, and in any proceedings under this Act production of a certificate of appointment purporting to be so issued is to be deemed to be *prima facie* evidence of the matters appearing therein without further proof of those matters.

”.

Section 19 amended

21. Section 19 of the principal Act is amended —

- (a) by inserting after the section designation “**19.**” the subsection designation “(1)”;
- (b) by deleting paragraph (d) and substituting the paragraph following —

“

- (d) fix a minimum price at which potatoes from a domestic marketing pool may be sold to wholesalers by the Corporation;

”.

- (c) by deleting paragraph (f) and substituting the paragraph following —

“

- (f) receive, handle, wash, brush, package, grade, treat, process, store, purchase or sell potatoes, or contract or arrange for any such matter;

”;

- (d) in paragraph (g), by deleting “the processing of potatoes” and substituting the following —

“ the performance of its functions ”;

- (e) by deleting paragraph (k) and substituting the paragraph following —

“

- (k) at its discretion —

- (i) grant, or refuse, the registration of persons as authorized to carry on business as a commercial producer of potatoes, whatever the purpose for which those potatoes are to be grown;

- (ii) license, or refuse to license, the areas of land sought to be used in any such business; and

- (iii) regulate domestic market entitlements, and marketing pools;

”;

- (f) in paragraph (l), by deleting “regulate” and substituting the following —

“ administer ”;

- (g) in paragraph (m), by deleting “prescribe the conditions upon which licences may be granted, including the power to limit and define” and substituting the following —

“
impose conditions upon licences granted,
including restrictions limiting or defining
”;

- (h) in paragraph (n) —

- (i) by inserting, after “sale”, the following —

“ to consumers in the State ”;

- (ii) by deleting “of any licence issued” and substituting the following —

“ determined ”;

- (i) in paragraph (o) —

- (i) by deleting “or produce”; and

- (ii) by deleting “produce less potatoes than contemplated by the conditions of his licence” and substituting the following —

“
grow less than any relevant market
entitlement granted to that grower
contemplates
”;

and

(j) by adding the subsections following —

“

(2) Subject to the approval of the Minister, the Corporation may delegate the exercise of any of its powers, or the performance of any duty conferred or imposed on it, to any other person.

(3) The Corporation may from time to time appoint any person —

(a) on such terms and conditions as are; and

(b) to the extent and in the area that is,

agreed between the Corporation and that person, to act as the agent of the Corporation and that person may be thereby authorized to take deliveries from growers, to act as a grading and packing merchant, to sell or distribute potatoes, or to perform any other specified function on behalf of the Corporation.

(4) The appointment of a person under subsection (3) as an agent of the Corporation may from time to time be amended, or be revoked, by the Corporation.

”.

Section 19A amended

22. Section 19A of the principal Act is amended —

(a) in subsection (1), by deleting “under section 19”; and

(b) by adding the subsection following —

“

(5) The functions of the Minister under this section in relation to any appeal against a decision of the Corporation relating to the regulation of the domestic market entitlement allocations may be delegated by the Minister, in writing, to a person or body of persons specified in the instrument of delegation.

”

Section 20 repealed and a new section substituted

23. Section 20 of the principal Act is repealed and the following section is substituted —

“

Cost of administration

20. (1) There shall be established and kept —

- (a) at the Treasury, as an account forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
- (b) with the approval of the Treasurer, at a bank,

an account to be called the “Potato Marketing Corporation Fund”, and the cost of the administration of this Act, and of any other activity under this Act assumed by the Corporation, shall be paid from that account.

(2) There shall be credited to the Fund —

- (a) any money derived from the payment of fees, or the sale of potatoes, or any other activity under this Act assumed, by the Corporation; and
- (b) all other money lawfully received by the Corporation for the purposes of this Act.

(3) The Fund may be used —

- (a) to meet the costs of the administration of this Act, including any expense incidental to the administration of the Fund;
- (b) for the payment of any moneys payable to growers or other persons in respect of potatoes accepted by the Corporation and of expense directly connected with any other activity under this Act assumed by the Corporation, so far as the Corporation may be liable for payment; and
- (c) for any other expenditure lawfully incurred under and for the purposes of this Act.

(4) For the purposes of this Act, the Corporation may establish, manage and disburse reserve funds, forming part of the account referred to in subsection (1), for the purpose of —

- (a) market research and development; or
- (b) other research into matters related to the activities of the Corporation.

24. Section 20A of the principal Act is amended —

- (a) by inserting, after the section designation “20A.”, the subsection designation “(1)”;
- (b) by deleting “comply with those directions” and substituting the following —

, subject to this Act, give effect to any such direction

”.

and

- (c) by adding the subsection following —

(2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of the Corporation under section 66 of the *Financial Administration and Audit Act 1985*.

”

25. Section 20C of the principal Act is repealed.

26. (1) The heading to Part III of the principal Act is deleted.

- (2) Section 21 of the principal Act is repealed.

Section 22 amended

27. (1) Section 22 (2) of the principal Act is repealed and the following subsections substituted —

“

(1) A person shall not sell or deliver ware potatoes, otherwise than —

(a) to —

(i) the Corporation; or

(ii) an agent authorized to act on behalf of the Corporation;

or

(b) in accordance with a permit granted, or exemption notified, under section 25.

(2) A person, other than the Corporation or an agent authorized to act on behalf of the Corporation, shall not purchase or take delivery of ware potatoes —

(a) from a grower of those potatoes; or

(b) from a person other than such a grower, unless those potatoes are sold or delivered in accordance with a permit granted, or exemption notified, under section 25.

(2a) A person shall not purchase or take delivery of any potatoes, whether or not ware potatoes, unless the potatoes are —

(a) accompanied by such a sales docket, delivery note or relevant consignment

advice as may be required by the regulations and which contains the prescribed information; or

- (b) the subject of a sale or transaction in respect of which under section 25 (3) an exemption from the provisions of paragraph (a) of this subsection applies.

”.

(2) Section 22 (4) of the principal Act is amended —

- (a) by deleting “of an offence referred to in subsection (3)” and substituting the following —

“ for any offence against this section ”;

- (b) in paragraph (a), by deleting “that”, and substituting the following

“

that an inspector had reasonable cause to believe

”;

- (c) in paragraph (c), by adding, at the end of the paragraph, the following —

“

or a relevant consignment advice from the grower

”;

- (d) in paragraph (d), by adding, at the end of the paragraph, the following —

“

or relevant consignment advice from the grower

”;

(e) in paragraph (e) —

(i) by inserting, after “delivery note” wherever it appears, the following —

“ or relevant consignment advice ”;

(ii) by inserting, after “but”, the following —

“
did not contain the prescribed
information or that —
”;

and

(iii) by deleting “or an agent”, in subparagraphs (i) and (ii), and substituting the following —

“
or the holder of a relevant permit
under section 25
”;

(f) by deleting “from a grower contrary to the provisions of subsection (2)” and substituting the following —

“
in a manner contravening the provisions of
this Act
”;

and

(g) by deleting the proviso.

(3) Section 22 (7) is amended —

(a) by deleting “subsection (2)” and substituting the following —

“ this Act ”;

- (b) by deleting “as samples not more than 0.9 kilogram for every 50 kilograms of” and substituting the following —

“ the whole or any quantity of the ”; and

- (c) by adding, after “so dealt with”, the following —

“
and also —

- (a) any sales docket, delivery note, consignment advice or other document that appears to him to relate to those potatoes and is produced to him or that he finds; and

- (b) any packaging used for those potatoes,

which is, in the opinion of the inspector, likely to be evidence relevant to the investigation of a suspected offence under this Act and shall cause any potatoes, document or packaging so impounded to be taken before a justice, to be dealt with in the manner provided in subsection (10).

”.

- (4) Section 22 (8) of the principal Act is amended —

- (a) by inserting, before “liable”, the following —

“ , subject to section 41 (4), ”;

- (b) in paragraph (a), by deleting “\$1 000” and substituting the following —

“ \$2 000 ”;

- (c) in paragraph (b), by deleting “\$2 000” and substituting the following —

“ \$5 000 ”;

- (d) by deleting “a person of purchasing or taking delivery of potatoes from a grower contrary to that subsection shall, in addition to the penalty imposed for that offence pursuant to paragraph (a) or (b)” and substituting the following —

“ that person may ”;

- (e) by deleting “equal to” and substituting the following —

“ not exceeding twice ”; and

- (f) by deleting “found by the Court to have been purchased or taken delivery of, as the case may be, by that person contrary to subsection (2),” and substituting the following —

“ involved, as ”.

- (5) Section 22 (9) of the principal Act is amended by deleting “the wholesale price obtained by the Authority” and substituting the following —

“

a figure calculated by reference to the price for potatoes of that grade, or if no sales of that grade occurred the average price, obtained by the Corporation from wholesale merchants

”.

(6) Section 22 of the principal Act is further amended by adding the subsection following —

“

(10) Where any document or packaging, or any quantity of potatoes, is impounded under this Act and taken before a justice, the justice may cause the thing impounded to be detained in such custody as he may direct until the conclusion of any investigation that may be held with respect to it and, if any person is charged with an offence in respect of which the thing impounded is likely to afford evidence at the trial, may cause it to be further detained for the purpose of being produced in evidence at such trial, subject to section 41B.

”.

Section 22A amended

28. (1) Section 22A (1) of the principal Act is amended —

- (a) in paragraph (c), by deleting “request” and substituting the following —

“ require ”;

- (b) in paragraph (c) (iii) and in paragraph (d), respectively, by inserting, after “delivery note”, the following —

“ , consignment advice ”; and

- (c) by deleting paragraph (e) and substituting the following —

“

- (e) upon giving a written receipt, impound any packaging that he has reasonable cause to believe may be or have been used for

potatoes, and any quantity of potatoes, found on the vehicle and which, in the opinion of the inspector, is likely to be evidence relevant to the investigation of a suspected offence under this Act,

and shall cause any such document, packaging or potatoes impounded to be taken before a justice, thereupon to be dealt with in the manner provided in section 22 (10).

”.

(2) Section 22A (2) of the principal Act is amended by deleting “the prescribed item of identification, or who” and substituting the following —

“

identification as an inspector in the manner prescribed
or

”.

(3) Section 22A (3) of the principal Act is repealed.

Section 22B amended

29. (1) Section 22B (1) of the principal Act is repealed and the following subsection substituted —

“

**Commercial producers carrying on certain kinds
of business to be registered, and areas licensed**

22B. (1) A person shall not —

(a) as a commercial producer grow potatoes for
sale —

(i) to consumers in the State;

- (ii) as, or to a manufacturer of, any potato product;
- (iii) for export, or when exported; or
- (iv) for propagation,

unless that business is registered, in the prescribed manner, with the Corporation and is carried on in accordance with this Act and with the terms of, and any conditions or restrictions that apply to, that registration;

- (b) as a commercial producer plant potatoes, whether in connection with the carrying on of a business of the kind referred to in paragraph (a), or for propagation or for any other purpose, otherwise than on land specified in an area licence —
 - (i) issued to that commercial producer by the Corporation; or
 - (ii) acquired by that commercial producer from another commercial producer by means of a transfer approved by the Corporation under this Act.

”.

(2) Section 22B (2) of the principal Act is amended by deleting “500” and substituting the following —

“ 100 ”.

(3) Section 22B (3) of the principal Act is repealed and the following subsection is substituted —

“

(3) A person convicted of an offence against subsection (1) is, subject to section 41 (4), liable —

(a) for a first offence, to a fine of not more than \$2 000; and

(b) for a subsequent offence, to a fine of not more than \$5 000.

”.

(4) Section 22B (4) of the principal Act is repealed.

(5) Section 22B of the principal Act is further amended by adding the subsections following —

“

(5) The Corporation may —

(a) refuse —

(i) to grant an application for the registration of a business;

(ii) to approve the transfer of a registration; or

(iii) to issue, or to approve the transfer of, an area licence;

or

(b) cancel or suspend the operation of any such registration or licence,

at the written request of the Commissioner for Health where that officer is of the opinion that a health risk exists, at the written request of the Director General of Agriculture where that officer is of the opinion that

a risk exists by reason of any pest or disease, or if the applicant or prospective transferee is a person convicted of an offence under the *Health Act 1911* or this Act.

(6) Subject to subsection (5), the Corporation shall not refuse an application for approval to the transfer of an area licence unless the Corporation has reason to believe that the transfer will or may result in the terms of the licence, or of any conditions or restrictions that apply to it, not being observed.

(7) An area licence —

(a) has effect from the time specified in the licence;

(b) has no effect at any time when —

(i) any of its terms, conditions or restrictions, whether set out in the licence or made applicable under section 22C (5), are not observed; or

(ii) the operation of it is suspended under subsection (5) or section 22D;

and

(c) may be cancelled by the Corporation.

(8) Where an application for the registration of a business is granted, the Corporation shall issue to the applicant a certificate in the prescribed form identifying —

(a) the commercial producer who is the holder;

(b) the name under which the holder is thereby authorized to carry on business;

- (c) the location of the business;
- (d) the size and nature of the activities under this Act thereby authorized; and
- (e) any other terms, and any conditions or restrictions, applicable.

(9) A purported transfer from one holder to another of any registration or area licence shall not have effect unless and until approval has been sought from and given by the Corporation in the prescribed manner.

”.

Sections 22C and 22D inserted

30. The principal Act is amended by inserting, after section 22B, the new sections following —

“

Registration, and area licensing, generally

22C. (1) Regulations may be made under section 43 —

- (a) providing for the system of registration of businesses, and of area licensing, required under this Act;
- (b) imposing duties on persons who carry on a business registered under this Act, or who hold an area licence; and
- (c) requiring the payment of fees in relation to any registration or area licence, and prescribing the amount of those fees.

(2) The operation of a registration or area licence has effect, subject to this Act, for such period as is specified in it or, if no period is specified, for such period as is prescribed.

(3) The Corporation may renew the period of operation of a registration or area licence, or approve the transfer of the authorization it confers from one holder to another or, where its operation relates to any place, may authorize its operation in relation to another place.

(4) The grant or renewal, or the approval to the transfer, of a registration may be made subject to such terms, conditions and restrictions as the Corporation thinks fit.

(5) The grant or renewal, or the approval to the transfer, of an area licence may be made subject to such terms, conditions and restrictions as the Corporation thinks fit, but —

- (a) regard shall be had to the estimate made by the Corporation as to the demand anticipated for any particular period or particular purpose and any consequent need to regulate planting; and
- (b) regard may be had to the proposed method of growing, taking into account that organic methods may require a larger area than would otherwise be used.

(6) The Corporation may, from time to time during the operation of any registration or area licence, by notice in writing to the holder add to, cancel, suspend or otherwise vary the terms of, and the conditions and restrictions that apply to, that registration or licence.

(7) Application for the registration of a business, or for the issue of an area licence, or for approval to the transfer of a registration or of an area licence, shall be made to the Corporation in the prescribed manner.

Cancellation or suspension of a registration or area licence

22D. (1) If the Corporation proposes to cancel or suspend any registration or area licence the Corporation is to give to the holder notice in writing of the proposal, of the reason for it, and of the date upon which the cancellation or suspension will, subject to subsection (3), take effect.

(2) The provisions of subsection (3) do not have effect where the cancellation or suspension of a registration or area licence is occasioned for a reason referred to in section 22B (5).

(3) A notice given under subsection (1) is to state that within —

(a) 7 days, in the case of a proposal to suspend;
or

(b) 21 days, in the case of a proposal to cancel,

after service of the notice the person to whom it is given may make representations in writing to the Corporation concerning the proposal, that effect will not be given to the proposal until any representations received within that period have been considered, and that if the proposal is to take effect despite those representations the holder will be notified of the date on which it will take effect.

(4) Subject to subsection (3), the Corporation may cancel, or suspend the operation of, any registration or area licence at discretion.

(5) The cancellation, or suspension of the operation, of a registration or area licence may relate to the doing of some, but not all, of the activities or things authorized by the registration or licence.

”.

Section 23 amended

31. (1) Section 23 (1) of the principal Act is amended —

(a) by inserting before “potatoes” where it first occurs, the following —

“ ware ”;

(b) in paragraph (a), by deleting “bag, case or other”;

(c) after paragraph (a), by deleting “and,”; and

(d) in paragraph (c) —

(i) by deleting “or its agent operating” and substituting the following —

“ has, ”;

(ii) by deleting “shall”; and

(iii) by deleting “stipulate or require” and substituting the following —

“

stipulated, if any such notice was
given

”.

(2) Section 23 (3) of the principal Act is amended by deleting “than under, and in accordance with the conditions of, a licence issued by the Authority” and substituting the following —

“

than —

- (a) by or on behalf of a business registered under this Act;
- (b) within the terms of the domestic market entitlement allocated to that business; and
- (c) in accordance with the terms, conditions and restrictions applying to the registration of that business and to the area licence in respect to the land where the potatoes were produced.

”.

(3) Section 23 of the principal Act is further amended by adding the subsections following —

“

(4) The Corporation may accept delivery from any grower of potatoes —

- (a) not being within the terms of a domestic market entitlement allocated to the business by or on behalf of which the delivery is made;
- (b) for use by potato product manufacturers; or
- (c) for export,

but is not under any duty to do so.

(5) Acceptance by the Corporation of the delivery of any potatoes does not constitute any representation,

express or implied, that the acceptance will require the Corporation to pay any amount, or at all, for those potatoes except such as is required under this Act.

”.

Section 24 amended

32. Section 24 of the principal Act is amended —

(a) by inserting after the section designation “24.” the subsection designation “(1)”;

(b) by deleting “them;” and substituting the following —

“ those potatoes ”;

(c) by inserting, after “Act”, the following —

“

, unless a contract between the grower and the Corporation otherwise provides

”;

and

(d) by adding the subsections following —

“

(2) Potatoes shall be taken to have been accepted by the Corporation when —

(a) delivery has been made to or on behalf of the Corporation in accordance with a sales docket, delivery note or relevant consignment advice as may be required by the regulations and which contains the prescribed information; and

- (b) a price has been determined, by or on behalf of the Corporation following the grading of the potatoes.

(3) For the purpose of accepting delivery of potatoes on behalf of the Corporation, the Corporation may under section 19 (3) appoint persons as agents for the time being, and whilst the appointment subsists delivery of potatoes to such an agent shall be taken to be delivery to the Corporation.

”.

Section 25 repealed and a new section substituted

33. Section 25 of the principal Act is repealed and the following section is substituted —

“

Permits that the Corporation may grant, and exemptions

25. (1) The Corporation, on application in the prescribed manner, may grant to any person a permit —

- (a) to purchase potatoes;
- (b) to sell potatoes;
- (c) to use potatoes in or in connection with any catering, manufacturing or other business;
- (d) to sell and deliver potatoes to a potato product manufacturer; or
- (e) to sell and deliver potatoes to a potato exporter,

in accordance with the terms of, and any conditions and restrictions that apply to, the permit.

(2) The Corporation shall specify in a permit under subsection (1) the period for which it has effect, but may by notice in writing to the holder add to, cancel, suspend or vary the other terms of, and the conditions and restrictions that apply to, the permit.

(3) The Corporation may, by a public notice or by written notice given to the growers thereby affected, exempt from the provisions of this Act specified in the notice —

- (a) the growing of a small area or quantity of potatoes;
- (b) the sale of potatoes direct to local consumers or to retail vendors;
- (c) the use by a grower of potatoes required for propagation by the grower; or
- (d) such other sales or transactions as may be prescribed,

in accordance with the terms of the notice.

(4) Subject to section 19A, the decision of the Corporation as to whether any person or thing falls within the terms of an exemption given by notice under subsection (3) shall be final.

”.

Section 26 repealed

34. Section 26 of the principal Act is repealed.

Section 26A repealed

35. Section 26A of the principal Act is repealed.

Section 26B repealed

36. Section 26B of the principal Act is repealed.

Section 27 repealed

37. Section 27 of the principal Act is repealed.

Section 28 repealed

38. Section 28 of the principal Act is repealed.

Section 29 repealed

39. Section 29 of the principal Act is repealed.

Sections 26, 27, 28 and 29 inserted

40. The principal Act is amended by inserting, after section 25, the new sections following —

“

The marketing of potatoes

26. (1) The Corporation shall establish a marketing system for ware potatoes, comprising marketing pools, an entitlement to participate in which may be allocated by reference to —

- (a) the tonnage deliverable;
- (b) the area licensed; or
- (c) both,

according to its terms, as may be determined by the Corporation in respect to the relevant pool period.

(2) The Corporation shall, prior to the commencement of each pool period, submit to the Minister a written statement setting out —

(a) an estimate by the Corporation of —

(i) the quantity, expressed in tonnes; or

(ii) the area to be licensed,

required to satisfy the anticipated domestic demand for ware potatoes in that pool period; and

(b) the recommendations of the Corporation as to whether any, and what, additional provision, not exceeding 5% of the quantity or area so estimated, should be made so as to ensure that, if the anticipated domestic demand is exceeded, the actual requirement of consumers in the State can be met,

and the Minister shall, after considering that statement, by directions given under section 20A (1) to the Corporation, establish the quantity of ware potatoes the delivery of which the Corporation is to be required to accept under section 23 as the domestic marketing pool and the Corporation shall then, by public notice, advertise the pool period, the tonnage to be accepted, and any particular specifications relevant to that pool.

(3) The Corporation may also establish, and by public notice advertise, marketing pools related to potatoes other than ware potatoes, for —

(a) export, generally;

(b) particular export markets; or

- (c) other purposes,

and shall specify the specifications relevant to each pool and the relevant pool periods.

Marketing pools

27. The specification of a marketing pool —

- (a) shall establish —

- (i) the quantity of potatoes which the Corporation is willing to accept in respect of that pool, if that is not to be unlimited; and
- (ii) any market entitlements, and the method by which they are to be allocated;

and

- (b) may impose conditions as to —

- (i) the quality;
- (ii) the size;
- (iii) testing for potato cyst nematodes, or other matters relating to disease or pests;
- (iv) public health matters;
- (v) timing;
- (vi) variety;
- (vii) the packaging; and

(viii) other matters,

relating to the potatoes that may be delivered.

Domestic market entitlements

28. (1) For each domestic marketing pool established under section 26 (2) the Corporation shall allocate domestic market entitlements specifying the quantity of ware potatoes that the Corporation is required to accept if delivered in accordance with section 23 (1) by or on behalf of a registered business during the relevant pool period.

(2) The Corporation —

- (a) shall allocate a domestic market entitlement to each business for the time being registered under section 22B; and
- (b) may invite applications from growers, or from persons other than growers, for the allocation of such an entitlement, but any such allocation shall not have effect unless or until the business to which the entitlement is, or is to be, allocated is registered under section 22B.

(3) The regulation of the domestic market entitlement allocation required, under section 19 (k), to be conducted by the Corporation shall be —

- (a) based on principles approved by the Minister on the written recommendation of the Corporation; or

- (b) as set out in guidelines for the Corporation given by the Minister by way of direction under section 20A (1),

and if a person is aggrieved by a decision of the Corporation in the exercise of that power that person may appeal to the Minister under section 19A.

(4) In making recommendations to the Minister, and in allocating domestic market entitlements, the Corporation may have regard to —

- (a) the likelihood or otherwise of continuity and certainty of delivery;
- (b) the anticipated market demand;
- (c) any other anticipated requirement of consumers; and
- (d) any other factors regarded as relevant by the Corporation.

(5) A domestic market entitlement allocated to a business registered under section 22B may, if approval is sought from and given by the Corporation in the prescribed manner, be transferred by the respective holders of the certificates of registration concerned from that business to another business so registered.

(6) The Corporation shall not refuse an application for approval to the transfer of a domestic market entitlement unless, had the application been made in respect of the transfer of an area licence, the provisions of section 22B (5) or (6) would have applied.

Shortfalls in requirement

29. (1) Where the quantity of potatoes which is delivered to the Corporation, or to a person on behalf of the Corporation, is not sufficient in respect of any pool period to meet the requirements of the market the Corporation may —

- (a) make available for the purposes of that market potatoes delivered to the Corporation, or to a person on behalf of the Corporation, for the purpose of any other market; or
- (b) import, or authorize persons on behalf of the Corporation to import, potatoes,

as the Corporation thinks fit, subject to any direction given by the Minister under section 20A.

(2) Where any potatoes delivered to and accepted by the Corporation for the domestic marketing pool are used by the Corporation for the purposes of an export marketing pool, the compensation payable under section 30 in respect of those potatoes shall be calculated in accordance with section 30 (7).

”.

Section 30 amended

41. (1) Section 30 (1) of the principal Act is amended —

- (a) by deleting “all the potatoes of the same” and substituting the following —

“ potatoes of a comparable ”;

- (b) by deleting “during or covering such periods as are prescribed” and substituting the following —

“

and accepted for the purposes of the same
marketing pool and pool period

”;

- (c) by deleting “but the Authority may, in determining” and substituting the following —

“

but in determining the basis of payment
and

”;

and

- (d) by deleting “, take into account” and substituting the following —

“

the Corporation shall give effect to
subsection (7) and section 32 and may have
regard to

”.

- (2) Section 30 (2) of the principal Act is amended —

- (a) in paragraph (a) —

- (i) by deleting “by him” and substituting the following —

“

by that person and accepted for a
particular marketing pool

”;

- (ii) by inserting, after “delivery”, the following —

“
or at such other times and on such
terms and conditions and in such
manner
”,
and

- (iii) by deleting “calculated at such rate” and
substituting the following —

“
having regard to expected market
returns,
”,
and

- (b) in paragraph (b) —

- (i) by deleting “at the end of any period prescribed
under subsection (1),” and substituting the
following —

“
in respect of a particular marketing
pool for a particular pool period
”,
and

- (ii) by inserting, after “basis”, the following —

“ , subject to this Act, ”.

- (3) Section 30 (3) of the principal Act is amended —

- (a) in paragraph (a), by inserting, after “delivered”, the
following —

“
in respect of the same marketing pool and
pool period
”,

(b) in paragraph (b) —

(i) by inserting, after “administration” the following —

“
 , having regard to the requirement to
 differentiate between marketing
 pools,
”;
and

(ii) by deleting “relating to potatoes delivered to the Authority and the production of those potatoes” and substituting the following —

“
 , including the repayment of advances
 made to or moneys borrowed by the
 Corporation and the payment of
 interest
”;

(c) by deleting paragraphs (c), (ca) and (d) respectively;
and

(d) in paragraph (e) —

(i) by deleting “, but not exceeding one and a half per centum thereof, as the Governor by proclamation from time to time declares” and substituting the following —

“ as may be prescribed ”; and

(ii) by deleting “the purpose of enabling it, from moneys from time to time standing to the credit of the fund, to make fair returns to growers

when unusual market conditions prevail” and substituting the following —

“

such purposes as may be prescribed, but any moneys standing to the credit of a reserve fund established under this subsection prior to the coming into operation of section 41 of the *Marketing of Potatoes Amendment Act 1995* shall thereafter be used only for the purposes prescribed in relation to paragraph (e).

”.

(4) Section 30 (3a) of the principal Act is repealed.

(5) Section 30 (5) of the principal Act is repealed.

(6) Section 30 of the principal Act is further amended by adding the new subsections following —

“

(6) Except in so far as any cost or expense can not be attributed precisely, the Corporation shall differentiate between marketing pools, distinguishing in particular between matters relating to —

- (a) the domestic market for deliveries effected under section 23 which the Corporation is required to accept; and
- (b) the export market and deliveries which the Corporation is not under a duty to accept,

and shall not transfer surplus moneys or distribute expenses from one kind of pool to another, but may utilize any surplus moneys in a prescribed manner.

(7) Notwithstanding that the Corporation may use the potatoes which become vested in it for any purpose, where potatoes accepted for the purpose of the domestic marketing pool are used for any other purpose the proceeds, after deduction of the amounts permitted by subsection (3), received for those potatoes shall be dealt with in such manner as may be prescribed, but so that the person from whom the potatoes were accepted shall receive from the Corporation the amount which would have been relevant had the potatoes in fact been used for the domestic marketing pool.

”

Section 31 repealed, and a new section substituted

42. Section 31 of the principal Act is repealed and the following section is substituted —

“

Payment may be withheld

31. The Corporation may, if it has received notice of any mortgage, charge, lien, interest, trust or encumbrance over, or contract relating to, any potatoes, refuse or withhold payment in respect of those potatoes until all parties claiming to be interested in respect of the potatoes advise the Corporation in writing as to the manner in which, and the persons to whom, the payment should be made, or, in case of dispute, until the claims of the respective parties have been determined by a magistrate, which determination the magistrate shall have power to make, on application made by summons by any party to the dispute.

”

Section 32 repealed

43. Section 32 of the principal Act is repealed.

Section 32 inserted

44. The principal Act is amended by inserting, after section 31, the new section following —

“

The price applicable to ware potatoes for the domestic market

32. (1) For the purpose of determining the payments to be made by the Corporation in respect of ware potatoes delivered and accepted for sale in a domestic marketing pool the Corporation shall recommend to the Minister a price, which takes into account —

- (a) a level of return that should provide a reasonable opportunity for profit from the economically efficient production of potatoes during preferred planting periods in the State; and
- (b) such other material factors as may be determined by the Corporation at discretion and are explained to the Minister,

and, if the basis of the pricing is approved by the Minister, payment under section 30 shall, subject to subsection (2), be made accordingly.

(2) In relation to the potatoes delivered by or on behalf of any particular grower the price generally payable may be varied, at the discretion of the Corporation having regard to commercial

considerations, by the Corporation to take into account —

- (a) a seasonal premium, payable for the purpose of encouraging the production of potatoes otherwise than during preferred planting periods;
- (b) a premium, or a discount, applicable to the quality or variety of the potatoes delivered and reflecting normal competitive conditions;
- (c) other premiums, or penalties, applicable to that grower having regard to conditions or circumstances determined by the Corporation,

but any such premium or discount is to be based on market research, and the price to be paid to that grower may be fixed, according to the quality of the potatoes, either at the time of grading or at the time of the actual marketing of those potatoes.

(3) A payment advice, to be given by the Corporation to the person by or for whom the potatoes were delivered to the Corporation at or near the end of the growing season shall set out the details of the price that was paid by the Corporation showing —

- (a) any progress payment made under section 30 (2) (a); and
- (b) the amount of any final payment made under section 30 (2) (b),

and the basis on which those payments were determined.

Section 33 amended

45. Section 33 of the principal Act is amended —

(a) by inserting, after the section designation “**33.**”, the subsection designation “(1)”;

(b) by deleting “the *Government Railways Act 1904*, or in any other Act” and substituting the following —

“ any written law ”;

(c) by deleting “(whether made before or after the issue of the public notice under section 22)”;

(d) by deleting “potatoes: Provided that no” and substituting the following —

“ potatoes.

(2) No

”.

Section 35 amended

46. Section 35 of the principal Act is amended —

(a) in subsection (1), by deleting “(whether the bill of sale, mortgage, charge, lien, pledge, interest, trust, encumbrance, or agreement was made before or after the issue of the public notice under section 22)”;

(b) by repealing subsection (4).

Section 36 amended

47. Section 36 of the principal Act is amended by repealing subsection (2).

Section 37 amended

48. Section 37 of the principal Act is amended by repealing subsection (2) and substituting the following subsections —

“

(2) Notwithstanding —

- (a) that by the operation of subsection (1), the financial year of the Corporation will end on 30 June; and
- (b) that under the provisions of subsection (2) of this section, as enacted before the coming into operation of section 48 of the *Marketing of Potatoes Amendment Act 1995*, the financial year of the former Authority ended on 30 September,

in so far as sections 66 to 69, inclusive, of the *Financial Administration and Audit Act 1985* have not been complied with in relation to any operations of the former Authority in any year the Minister shall direct the Corporation to cause those sections to be complied with, and effect shall be given to those sections, in respect to operations of the former Authority as though the financial year of the former Authority had ended immediately preceding the coming into operation of section 9 of the *Marketing of Potatoes Amendment Act 1995*.

(3) In subsection (2), “**the former Authority**” means the Western Australian Potato Marketing Authority as constituted under this Act prior to the coming into operation of section 9 of the *Marketing of Potatoes Amendment Act 1995*.

”

Section 38 repealed

49. Section 38 of the principal Act is repealed.

Section 38 inserted

50. The principal Act is amended by inserting, after section 37, the new section following —

“

Minister to have access to information

38. (1) The Minister is entitled —

- (a) to have information in the possession of the Corporation; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Corporation to furnish information to the Minister;
- (b) request the Corporation to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of the staff and facilities of the Corporation to obtain the information and furnish it to the Minister.

(3) The Corporation shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section —

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“information” means information specified, or of a description specified, by the Minister that relates to the functions or powers of the Corporation.

”.

Section 39 amended

51. Section 39 of the principal Act is amended by deleting “other than expenditure referred to in section 26A (4) and 26B (4)”.

Section 40 inserted

52. The principal Act is amended by inserting, after section 39, the new section following —

“

Infringement notices

40. (1) An inspector who has reason to believe that a person has committed a prescribed offence under this Act may, within 21 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

(2) An infringement notice shall be in the prescribed form and shall in every case —

- (a) contain a description of the alleged offence;
- (b) advise that if the alleged offender does not wish to have a complaint of 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 an authorized person within a period of 28 days after the giving of the notice; and
- (c) inform the alleged offender as to who are authorized persons for the purposes of receiving payment of modified penalties.

(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) The chief executive officer may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

(5) Where the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn, 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) The chief executive officer may, whether or not the modified penalty has been paid, 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) Where an infringement notice is withdrawn after the modified penalty has been paid, the amount shall be refunded.

(8) An amount paid as a modified penalty shall, subject to subsection (7), be dealt with as if it were a penalty imposed summarily under the *Justices Act 1902*.

(9) Payment of a modified penalty shall not be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

(10) The Corporation may, in writing, appoint persons or classes of persons to be authorized persons for the purposes of subsection (2), but a person who is an inspector is not eligible to be an authorized person for the purposes of that subsection.

”.

Section 41 amended

53. Section 41 of the principal Act is amended —

(a) in subsection (2) —

(i) by inserting, before “liable”, the following —

“ , subject to subsection (4), ”; and

(ii) by deleting “\$2 000” and substituting the following —

“ \$5 000 ”;

- (b) by repealing subsection (2a); and
- (c) by adding the subsections following —

“

(4) Where a body corporate is convicted of an offence under this Act, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this subsection, the court could impose as a pecuniary penalty for that offence.

(5) Where a court convicts a person of an offence against this Act, the court may, in addition to any other penalty imposed under this Act, order the forfeiture to the Crown —

- (a) where the commission of the offence involved the sale of any potatoes, of any moneys or cheques that are the proceeds of the sale;
- (b) of any potatoes the subject of the offence; and
- (c) of any packaging used in connection with the offence.

(6) Where a court convicts a person of an offence against this Act, the court may, in addition to any penalty imposed under this Act, cancel, or suspend for any period, any licence or permit held by the person.

(7) In any proceedings for an offence under this Act, an inspector authorized for the purpose by the chief executive officer of the Corporation may appear on behalf of the Corporation.

”

Sections 41A to 41F inserted

54. The principal Act is amended by inserting, after section 41, the new sections following —

“

Liability of officers for offence by body corporate

41A. (1) If a body corporate commits an offence against this Act and it is proved that —

- (a) the offence was committed with the consent or connivance of an officer of the body corporate; or
- (b) an officer of the body corporate failed to exercise all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the officer's functions and to all the circumstances,

the officer commits the like offence.

(2) An officer may be proceeded against and convicted of an offence against this Act by virtue of subsection (1) whether or not the body corporate has been proceeded against and convicted of the offence.

(3) In this section, “**officer**” has the same meaning as in the Corporations Law but does not include an employee of the body corporate unless the officer was concerned in the management of the body corporate.

Disposal of things impounded

41B. (1) Where any quantity of potatoes, or any document or packaging, is impounded under this Act and taken before a justice —

- (a) if the thing impounded is not to be detained under section 22 (10), the justice shall direct that the thing be returned to the person from whom it was taken, unless he is authorized or required by law to dispose of it otherwise; and
- (b) if a person is convicted of any offence in relation to the thing impounded, the court before which the person is convicted may cause that thing to be destroyed or to be forfeited to the Crown and disposed of in accordance with such manner as the court may direct.

(2) The chief executive officer of the Corporation may authorize the release of any thing impounded under this Act to the person entitled to the possession of the thing or to the person from whom the thing was taken on such conditions (if any) as the chief executive officer thinks fit (including conditions as to the giving of security for payment of the value of the thing if it is ordered to be destroyed or is forfeited).

(3) Any proceeds of the sale or other disposal of any thing forfeited to the Crown under this Act are to be paid to the credit of such fund or funds under this Act as are prescribed or, if no fund is prescribed, then into the Consolidated Fund.

Proof of contents etc. of packaging

41C. In any proceedings for an offence against this Act, proof that any packaging had a mark or label (whether inside or outside the packaging) indicating that the packaging —

- (a) contained potatoes or a particular variety of potatoes is, in the absence of proof to the contrary, proof that the packaging contained potatoes or that particular variety (as the case may be); or
- (b) was packed or consigned by or for a particular person is, in the absence of proof to the contrary, proof that the packaging was packed or consigned by or for (as the case may be) that person.

Proof that potatoes were for sale

41D. In any proceedings for an offence against this Act, proof that any potatoes were —

- (a) sold, purchased or delivered by a person and subsequently sold by or on behalf of the person, is conclusive evidence that the potatoes were sold, purchased or delivered by the person for the purpose of sale; or
- (b) in the possession of a person and subsequently sold by or on behalf of the person, is conclusive evidence that the person had the potatoes in possession for the purpose of sale.

Proof of purpose

41E. In any proceedings for an offence against this Act, an averment in the complaint —

- (a) that potatoes were sold or intended for sale for human consumption; or
- (b) that an act occurred for a particular purpose or that anything was done with a particular intent, on proof of that act occurring or that thing being done,

shall, in the absence of proof to the contrary, be taken to be proved.

Certificate relating to licensing matters

41F. In any proceedings for an offence against this Act, production of a certificate purporting to be signed by the chief executive officer of the Corporation and stating that —

- (a) on any date or during any period a person was or was not authorized to do any thing under a licence or permit or was or was not exempted from this Act or specified provisions of this Act by an exemption;
- (b) on any date or during any period any potatoes, premises or other thing were or were not the subject of a licence, permit or exemption;
- (c) on any date or during any period a licence or permit was cancelled, suspended or for any other reason of no effect; or

- (d) on any date or during any period a licence, permit or exemption was subject to any specified condition or conditions,

is, without proof of the signature of the chief executive officer of the Corporation, sufficient evidence of the facts stated in the certificate.

”.

Section 42 amended

55. Section 42 of the principal Act is amended by deleting “secretary”, wherever it appears, and substituting the following —

“ chief executive officer of the Corporation ”.

Section 43 amended

56. (1) Section 43 (2) of the principal Act is amended —

- (a) by deleting paragraph (b), and substituting the paragraph following —

“ (b) for the purposes of section 22C; ”;

- (b) by deleting paragraph (ba);

- (c) in paragraph (c), by inserting, after “furnish”, the following —

“

on demand a sales docket, delivery note or relevant consignment advice relating to those potatoes being a document which sets out, in the prescribed manner if required, such information in relation to those potatoes as may be prescribed and also periodic

”;

(d) in paragraph (e) —

- (i) by deleting “registered”; and
- (ii) by deleting “to buy potatoes” and substituting the following —

“ , under this Act ”;

(e) in paragraph (f) —

- (i) by deleting “the regulation and control of ” and substituting the following —

“ controlling ”;

- (ii) by deleting “treatment,” and substituting the following —

“
handling, washing, brushing,
treatment or
and

- (iii) by inserting, after “potatoes”, the following —

“
and prescribing the documentation
required to accompany potatoes
”;

(f) in paragraph (g), by adding, after “inspectors”, the following —

“
and making provision for modified
penalties and infringement notices in
respect to prescribed offences
”;

(g) by deleting paragraph (ga); and

(h) in paragraph (h), by inserting, before “any”, the following —

“ prescribing fees, and ”.

(2) Section 43 (3) of the principal Act is amended by deleting “\$2 000” and substituting the following —

“ \$5 000 ”.

Section 44 amended

57. Section 44 (1) of the principal Act is amended by deleting “section 21 of the *Acts Amendment (Potato Industry) Act 1985*” and substituting the following —

“

section 7 of the *Marketing of Potatoes Amendment Act 1995*

”.

Certain Acts amended

58. (1) Schedule V to the *Constitution Acts Amendment Act 1899** is amended, in Part 3 —

(a) by deleting “The Western Australian Potato Marketing Board constituted by the *Marketing of Potatoes Act 1946*.”; and

- (b) by inserting, in the appropriate alphabetical position, the following —

“

Potato Marketing Corporation of Western
Australia constituted by the *Marketing of
Potatoes Act 1946*.

”.

[* *Reprinted as at 6 April 1993.*

*For subsequent amendments see 1993 Index to Legislation of
Western Australia, Table 1, pp. 44-6 and Acts Nos. 26 and
53 of 1993 and 6 of 1994.]*

(2) Schedule 1 to the *Financial Administration and Audit
Act 1985** is amended —

- (a) by deleting “Western Australian Potato Marketing
Authority”; and
- (b) by inserting, in the appropriate alphabetical position, the following —

“

Potato Marketing Corporation of Western
Australia

”.

[* *Reprinted as at 1 July 1991.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 75-6 and
Act No. 53 of 1993.]*

(3) Schedule 1 to the *Government Employees Superannuation
Act 1987** is amended in Part B —

- (a) by deleting “The Western Australian Potato Marketing
Authority (on and from 1 January 1988)”; and

- (b) by inserting, in the appropriate alphabetical position, the following —

“

Potato Marketing Corporation of Western
Australia (on and from 1 January 1988)

”.

[* *Reprinted as at 15 November 1991.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 90 and
Act No. 53 of 1993.]*

(4) The Schedule to the *Parliamentary Commissioner Act 1971** is amended —

- (a) by deleting “Western Australian Potato Marketing Authority constituted under the *Marketing of Potatoes Act 1946*.”; and
- (b) by inserting, after the entry relating to “Potato Growing Industry Trust Fund Advisory Committee”, the following —

“

Potato Marketing Corporation of Western
Australia constituted under the *Marketing
of Potatoes Act 1946*.

”.

[* *Reprinted as at 21 October 1992.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, pp. 153-4
and Acts Nos. 26 and 53 of 1993 and 14 of 1994.]*

(5) Schedule 2 to the *Industrial Relations Act 1979** is amended —

- (a) by deleting “The Western Australian Potato Marketing Board constituted by the *Marketing of Potatoes Act 1946*.”; and

- (b) by inserting, after the entry relating to "The Potato Growing Industry Trust Fund Advisory Committee", the following —

"

Potato Marketing Corporation of Western Australia constituted under the *Marketing of Potatoes Act 1946*.

".

[* *Reprinted as at 12 June 1991.*

For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 103.]

(6) The *Potato Growing Industry Trust Fund Act 1947** is amended —

(a) in section 4 —

- (i) by deleting the definition of "Authority";
- (ii) by inserting, in the appropriate alphabetical position, the definition following —

"

"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;
”;

(iii) in the definition of “potato exporter”, by deleting “section 26B of ”; and

(iv) in the definition of “potato product manufacturer”, by deleting “section 26A of ”;

(b) in section 5, by deleting “Permanent Head” and substituting the following —

“
chief executive officer of the Department of Agriculture of the Public Service of the State
”;

(c) in section 6 (4) —

(i) in paragraph (b) (i), by deleting “the next succeeding section” and substituting the following —

“ section 7 ”; and

(ii) by deleting paragraph (b) (iv) and substituting the following —

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

(d) in section 16 —

- (i) in subsection (1), by deleting “Permanent Head” and substituting the following —

“
chief executive officer of the
Department of Agriculture of the
Public Service of the State
”;

and

- (ii) in subsection (3), by deleting “by the Permanent Head as aforesaid” and substituting the following —

“ under subsection (1) ”;

- (e) in section 17, by deleting “Authority”, wherever it occurs, and substituting the following —

“ Corporation ”;

- (f) in section 18 (1), by deleting “Authority” and substituting the following —

“ Corporation ”; and

(g) in section 21 —

- (i) by deleting “Authority”, wherever it occurs, and substituting the following —

“ Corporation ”; and

- (ii) in subsection (5a), by deleting “under a contract referred to in section 26A or 26B of the Marketing of Potatoes Act 1946”.

[* *Reprinted as at 17 August 1975.*

*For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 167.]*