



ANNO VICESIMO NONO

# ELIZABETHAE II REGINAE

A.D. 1980

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No. 16 of 1980

An Act relating to the marketing of certain canned fruits, and for related purposes.

[Assented to 17th April, 1980]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

## PART I

## PART I

### PRELIMINARY

1. This Act may be cited as the "Canned Fruits Marketing Act, 1980". Short title.
  
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.
  
3. This Act is arranged as follows:— Arrangement of Act.

PART I—PRELIMINARY.

PART II—MARKETING OF CANNED FRUITS.

PART III—MISCELLANEOUS.
  
4. (1) In this Act, unless the contrary intention appears— Interpretation.

"Advisory Committee" means the Australian Canned Fruits Industry Advisory Committee established by the Commonwealth Act:

"canned fruits" means fruits preserved by sterilization and enclosed (with or without syrup, water or other liquid) in an air-tight container, being fruits that consist of—

  - (a) apricots, peaches or pears;
  - or
  - (b) a mixture of fruits no less than fifty-five per cent of which consists of one or more of the fruits specified in paragraph (a) of this subsection,

and includes the container containing the fruits and any contents of the container that are not fruits, but does not include—

(c) goods that, having regard to their characteristics, may be described as “fruit pulp”, “solid pack”, “pie pack”, “jam”, “jelly” or “conserve”;

or

(d) goods of a kind declared by the Corporation not to be canned fruits:

“canner” means a proprietor of a factory at which canned fruits are produced:

“Commonwealth Act” means the *Canned Fruits Marketing Act* 1979 of the Parliament of the Commonwealth as that Act is amended from time to time:

“Commonwealth Minister” means the Minister of State of the Commonwealth administering the Commonwealth Act, or another Minister of State of the Commonwealth acting for and on behalf of that Minister:

“Corporation” means the Australian Canned Fruits Corporation established by the Commonwealth Act:

“equalization market” and “equalization pool” have the same respective meanings as in the Commonwealth Act:

“marketing agent” means a person who is an agent of the Corporation under an agreement in force under section 8 of this Act or under the corresponding provision of the Commonwealth Act or of a State Act:

“premium” has the same meaning as in the Commonwealth Act:

“production”, in relation to a canner, means production at a factory of which the canner is the proprietor:

“season” means the period of twelve months commencing on 1st January, 1980, and each of the next four succeeding periods of twelve months:

“State Act” means an Act of the Parliament of another State relating to the marketing of canned fruits.

(2) In this Act, a reference to canned fruits of a season shall be read as a reference to canned fruits produced at a factory during that season.

(3) For the purposes of this Act, the net proceeds of the disposal by the Corporation of canned fruits shall be deemed to be an amount equal to the proceeds of that disposal, less—

(a) any amounts deducted from those proceeds, in accordance with an agreement in force under section 8 of this Act, or under the corresponding provision of the Commonwealth Act or of a State Act, by the marketing agent who effected that disposal;

and

(b) an amount calculated in respect of the canned fruits at the insurance reimbursement rate in force under section 12 of this Act, or under the corresponding provision of the Commonwealth Act or of a State Act, at the time of that disposal.

(4) For the purposes of subsection (3) of this section, any moneys received by the Corporation under a policy of insurance in respect of canned fruits shall be deemed to be proceeds of the disposal of those canned fruits.

(5) In this Act—

(a) a reference to the disposal by the Corporation in the equalization market of canned fruits shall be read as a reference to the sale of the canned fruits in Australia by the Corporation—

(i) for consumption in Australia;

(ii) for delivery to a place in the equalization market outside Australia;

or

(iii) for delivery to a ship or aircraft for export from Australia to a place in the equalization market;

and

(b) a reference to the disposal by the Corporation of canned fruits shall be read as a reference to such disposal, whether in the equalization market or otherwise.

(6) In this Act, a reference to canned fruits acquired by the Corporation under an Act (whether this Act, the Commonwealth Act or a State Act) shall be read as a reference to canned fruits that—

(a) have become the property of the Corporation by force of that Act;

or

(b) have been purchased by the Corporation under that Act.

5. (1) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that, where any provision of this Act, or the application of any provision of this Act to any person or circumstances, is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected.

Act to  
apply  
subject to  
Constitution.

(2) If, by reason of the Commonwealth of Australia Constitution Act, a provision of this Act or a notice under a provision of this Act cannot validly apply in relation to any particular canned fruits or kind of canned fruits, that provision or notice shall be construed as intended to operate in relation to all canned fruits to which it purports to apply, being canned fruits in relation to which it can validly apply.

PART II

## PART II

## MARKETING OF CANNED FRUITS

Powers of Corporation.

6. (1) On or after 1st January, 1980, the Corporation may—
- (a) purchase canned fruits;
  - (b) sell or dispose of, or make arrangements for the sale or disposal of, canned fruits;
  - (c) manage and control all matters connected with, or arising out of, the handling, storage, protection, transfer, shipment or sale of canned fruits;
  - (d) promote the sale and consumption of canned fruits, whether in Australia or overseas;
  - (e) do such things as it thinks fit in order to improve the methods of production, storage, transport and marketing of canned fruits;
- and
- (f) do all things that the Corporation is required or permitted by this Act to do or that are incidental to the exercise of the foregoing powers or are necessary or convenient to be done by the Corporation for giving effect to this Act.

(2) Except with the approval of the Commonwealth Minister, the Corporation shall not enter into a contract or agreement in connection with the purchase of real or personal property, not being canned fruits, for an amount exceeding \$100 000 or, if a higher amount is prescribed by regulations in force under the Commonwealth Act for the purposes of the provision of that Act that corresponds to this subsection, that higher amount.

(3) The Corporation shall insure against any loss or damage to the Corporation arising out of any loss or deterioration of, or damage to, canned fruits acquired by the Corporation under this Act.

Directions by Commonwealth Minister.

7. The Commonwealth Minister may give directions to the Corporation concerning the performance of its functions and the exercise of its powers under this Act, and the Corporation shall comply with those directions.

Agents.

8. For the purposes of the exercise of its powers under this Act, the Corporation may enter into an agreement with a person providing for that person to act as an agent of the Corporation in respect of the marketing of canned fruits acquired by it under this Act.

Acquisition by Corporation of canned fruits produced.

9. (1) On the production of canned fruits of a season by a canner, the canner may set aside, and identify as the property of the Corporation, the canned fruits so produced.

(2) The Corporation may serve by post on a canner a requirement that the canner set aside, and identify as the property of the Corporation—

- (a) any canned fruits of a season that have been produced by him, and are in his possession at the time of the service of the requirement, not being canned fruits previously set aside under subsection (1) of this section;

or

- (b) any canned fruits of a season that are produced by him during such period after the service of the requirement as is specified in the requirement.

(3) A canner shall not, without reasonable excuse, refuse or fail to take action that is required to be taken by him by a requirement served on him under subsection (2) of this section.

Penalty: One thousand dollars in the case of a canner not being a body corporate, or two thousand dollars in the case of a canner being a body corporate.

(4) On the setting aside by a canner of canned fruits in accordance with subsection (1) of this section or with a requirement under subsection (2) of this section, the canned fruits so set aside become the absolute property of the Corporation freed from all mortgages, charges, liens, pledges, interests and trusts.

(5) A canner who has set aside canned fruits in accordance with subsection (1) of this section or with a requirement under subsection (2) of this section shall, within fourteen days after so setting aside the canned fruits, serve by post on the Corporation a notice of that action.

Penalty: Five hundred dollars.

- (6) In this section, unless the contrary intention appears—

“canned fruits” does not include canned fruits in respect of which a certificate has been issued under subsection (2) of section 5 of the *Canned Fruits Levy Act 1979* of the Parliament of the Commonwealth as that Act is amended from time to time:

“notice” means a notice in accordance with a form approved by the Corporation setting out—

- (a) the kind and quantity of canned fruits to which the notice relates;
- (b) the date on which those canned fruits were produced;
- (c) the date on which those canned fruits were set aside in accordance with subsection (1) of this section or with a requirement under subsection (2) of this section, as the case may be;

and

- (d) such other information, with respect to those canned fruits as is required by the notice.

10. (1) Where the Corporation is of the opinion that canned fruits that—

- (a) have become the property of the Corporation by force of this Act;
- (b) have not been disposed of by the Corporation;

and

- (c) are in the custody or control of a canner,

are unfit for human consumption, the Corporation may serve by post on the canner a notice setting out the opinion of the Corporation and identifying the canned fruits concerned.

Canned fruits  
unfit for  
human  
consumption.

## PART II

(2) On the service on a canner of a notice under subsection (1) of this section, the canner shall set aside, and identify as canned fruits to which a notice under subsection (1) of this section relates, the canned fruits to which the notice relates.

Penalty: One thousand dollars in the case of a canner not being a body corporate, or two thousand dollars in the case of a canner being a body corporate.

Unauthorized dealings with canned fruits.

11. (1) Except with the consent in writing of the Corporation, a canner shall not, with respect to canned fruits of a season that have been produced by him—

(a) move those canned fruits, or cause or permit those canned fruits to be moved, from the cannery in which they were produced;

or

(b) sell or deliver or part with the possession of, or otherwise deal with, those canned fruits.

Penalty: One thousand dollars in the case of a canner not being a body corporate, or two thousand dollars in the case of a canner being a body corporate.

(2) In subsection (1) of this section, "canned fruits" does not include canned fruits in respect of which a certificate has been issued under subsection (2) of section 5 of the *Canned Fruits Levy Act 1979* of the Parliament of the Commonwealth as that Act is amended from time to time.

Insurance reimbursement rate.

12. The cost to the Corporation of insurance required by subsection (3) of section 6 of this Act shall be met from the proceeds of the disposal by the Corporation of the canned fruits covered by the insurance and, for that purpose, the Corporation shall, from time to time, fix an insurance reimbursement rate.

Payment into, and out of, equalization pools.

13. (1) Where, in respect of a season, an equalization pool is set up and maintained under section 7 of the Commonwealth Act for canned fruits of a particular kind, the Corporation shall pay into the equalization pool the net proceeds of the disposal by the Corporation in the equalization market, during the season, of canned fruits of that kind acquired by it under this Act.

(2) Where the net proceeds of the disposal of canned fruits are paid into an equalization pool under subsection (1) of this section, the Corporation shall pay, in respect of those canned fruits, out of the moneys standing to the credit of the equalization pool, an amount determined by the Corporation in accordance with subsection (3) of this section.

(3) The Corporation shall determine the amount payable under subsection (2) of this section, in respect of canned fruits referred to in that subsection—

(a) by setting aside, out of the moneys standing to the credit of the equalization pool concerned, an amount sufficient to pay any premiums in respect of any canned fruits, whether acquired by the Corporation under this Act, the Commonwealth Act or a State Act, the net proceeds of the disposal of which have been paid into the equalization pool;

(b) by apportioning the remainder of those moneys left after setting aside the amount referred to in paragraph (a) of this subsection among the canners who produced the canned fruits the net proceeds of the disposal of which have been credited to the equalization pool on the basis of the quantity of those canned fruits produced by each such canner;

and

(c) by adding to an amount resulting from that appointment the amount of any premium in respect of the canned fruits to which the amount so resulting relates.

(4) In this section—

“canned fruits” does not include canned fruits to which a notice under section 10 of this Act, or the corresponding provision of the Commonwealth Act or of a State Act, relates:

“canner” includes a person who is a canner for the purposes of the Commonwealth Act or of a State Act.

14. On the disposal by the Corporation during a season of canned fruits acquired by it under this Act, other than canned fruits the net proceeds of the disposal of which are required to be paid into an equalization pool by virtue of subsection (1) of section 13 of this Act, the Corporation shall pay in respect of those canned fruits the net proceeds of that disposal.

Payment for  
canned fruits  
otherwise than  
out of  
equalization  
pool.

15. (1) In this section, “canned fruits” does not include canned fruits that have been purchased by the Corporation.

Person entitled  
to payment for  
canned fruits,  
other than  
canned fruits  
acquired by  
purchase.

(2) Subject to this section, the amount payable by the Corporation under section 13 or 14 of this Act in respect of any canned fruits is payable to the person who would have been entitled to receive the price of the canned fruits if the canned fruits had been lawfully sold to the Corporation at the time when the canned fruits became the property of the Corporation.

(3) The same rights (if any) exist against the person receiving an amount paid by the Corporation under section 13 or 14 of this Act in respect of canned fruits as would exist if the moneys so paid were the proceeds of a sale or purported sale of the canned fruits by him, and any such rights may be enforced by action in any court that would have had jurisdiction if the moneys were the proceeds of such a sale or purported sale.

(4) Payment in good faith by the Corporation of any moneys payable by it under section 13 or 14 of this Act to the person appearing to the Corporation to be entitled to receive them discharges the Corporation from any further liability in respect of those moneys.

(5) An assignment of moneys payable by the Corporation under section 13 or 14 of this Act in respect of canned fruits is void as against the Corporation.

16. (1) In this section, “canned fruits” means canned fruits that have been purchased by the Corporation.

Person entitled  
to payment for  
canned fruits  
purchased by  
Corporation.

(2) Subject to subsection (3) of this section, the amount payable by the Corporation under section 13 or 14 of this Act in respect of canned fruits is payable to the person entitled to payment for the canned fruits in accordance with the contract of sale.

(3) An assignment of moneys payable by the Corporation under section 13 or 14 of this Act in respect of canned fruits is void as against the Corporation.

**Advance  
payments.**

17. (1) The Corporation is not bound to make a final payment in respect of canned fruits acquired by it under this Act until the disposal by the Corporation of the canned fruits or, where the net proceeds of the canned fruits so disposed of are required to be paid into an equalization pool by virtue of subsection (1) of section 13 of this Act, until the end of the season during which they are so disposed of, but the Corporation may, with the approval of the Commonwealth Minister, make from time to time such advance payments as it considers justified.

(2) An advance payment shall not be made in respect of canned fruits to which a notice under section 10 of this Act relates and, if an advance payment is made in respect of canned fruits that are subsequently made the subject of a notice under section 10 of this Act, that advance payment shall be repaid to the Corporation and, if not so repaid, may be recovered by the Corporation by set off against any advance payment payable to the canner in respect of other canned fruits.

(3) An advance payment made in respect of canned fruits shall be deducted from the final payment in respect of those canned fruits before that final payment is made to the person to whom it is payable.

(4) In ascertaining the amount of an advance payment for the purposes of subsection (3) of this section, the fact that an amount was set off by the Corporation under subsection (2) of this section against that advance payment shall be disregarded.

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## PART III

## PART III

## MISCELLANEOUS

18. (1) The Corporation may, by notice in writing given, or sent by post, to a person, require the person to furnish, within such time as is specified in the notice, such information, in addition to any other information that he is required to furnish under this Act or any other Act or the Commonwealth Act or a State Act, relating to canned fruits of any season as is specified in the notice.

Corporation  
may require  
information.

(2) A person shall not, without reasonable excuse, fail or neglect duly to furnish information that he is required to furnish by virtue of a notice given, or sent by post, to him under subsection (1) of this section.

(3) A person is not excused from furnishing information that he is required to furnish by virtue of a notice given, or sent by post, to him under subsection (1) of this section on the ground that the information might tend to incriminate him or make him liable to a penalty, but any information so furnished is not admissible in evidence against him in proceedings other than proceedings for an offence against subsection (4) of this section.

(4) A person shall not furnish to the Corporation information that is false or misleading in a material particular.

Penalty: Five hundred dollars.

19. (1) The Corporation may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a person any of its powers under this Act, other than this power of delegation.

Delegation.

(2) A power so delegated when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Corporation.

(3) A delegation under this section does not prevent the exercise of a power by the Corporation.

20. (1) A member of the Corporation is not personally liable for an act of the Corporation or of the member acting as such.

Indemnity.

(2) In this section, "member of the Corporation" includes an acting Chairman and a deputy of a member.

21. The function of the Advisory Committee shall, at the request of the Corporation, consult with, and furnish advice to, the Corporation in connection with the performance of the functions, or the exercise of the powers, of the Corporation under this Act.

Function of  
Advisory  
Committee.

22. A person having canned fruits the property of the Corporation in his possession or under his care shall exercise proper care and take all proper and reasonable precautions and do all things necessary to preserve and safeguard those canned fruits and to keep them free from damage or deterioration.

Proper care to  
be taken of  
canned fruits  
owned by  
Corporation.

Penalty: Two hundred dollars.

## PART III

Access to  
premises.

23. (1) An authorized person may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an authorized person under this section.

(2) Where an authorized person has reason to believe that—

(a) there are on any premises canned fruits of any season;

or

(b) there are on any premises books, documents or other papers relating to canned fruits of any season,

the authorized person may make application to a Justice of the Peace for a warrant authorizing the authorized person to enter the premises for the purposes of exercising the functions of an authorized person under this section.

(3) If, on an application under subsection (2) of this section, the Justice of the Peace is satisfied by information on oath or affirmation—

(a) that there is reasonable ground for believing that there are on the premises any canned fruits, or any books, documents or papers, referred to in subsection (2) of this section;

and

(b) that the issue of the warrant is reasonably required for purposes of, or related to the operation of, this Act,

the Justice of the Peace may grant a warrant authorizing the authorized person, with such assistance as he thinks necessary, to enter the premises during such hours or the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an authorized person under this section.

(4) A warrant under subsection (3) of this section shall specify a date after which the warrant ceases to have effect.

(5) Where an authorized person has entered any premises in pursuance of subsection (1) of this section or in pursuance of a warrant granted under subsection (3) of this section, he may exercise the functions of an authorized person under this section.

(6) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting in pursuance of a warrant granted under subsection (3) of this section or in pursuance of subsection (5) of this section.

Penalty: Five hundred dollars.

(7) The functions of an authorized person under this section are—

(a) to search for and inspect canned fruits, or books, documents or papers, referred to in subsection (2) of this section;

(b) to take possession of and remove canned fruits to which a requirement under subsection (2) of section 9 of this Act relates;

and

(c) to take extracts from and make copies of books, documents or papers referred to in subsection (2) of this section.

(8) On the taking possession, under subsection (7) of this section, of canned fruits that, immediately before such taking, were not the property of the Corporation, those canned fruits become the absolute property of the Corporation, freed from all mortgages, charges, liens, pledges, interests and trusts, but the operation of this subsection does not affect the liability of a person for an offence.

(9) In this section—

“authorized person” means a person appointed by the Corporation or the Chairman of the Corporation to be an authorized person for the purposes of this section:

“occupier”, in relation to premises, includes the person in charge of the premises.

24. Proceedings for an offence against this Act shall be disposed of summarily. Proceedings.

25. The Governor may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, making provision for penalties not exceeding a fine of two hundred dollars for offences against the regulations. Regulations.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

K. D. SEAMAN, Governor