



## APPLE AND PEAR MARKETING

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No. 7 of 1977

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**AN ACT to establish an interim Apple and Pear Marketing Authority and to empower the Authority to market on overseas export markets the apples and pears vested in the Authority pursuant to the Act, being apples and pears harvested in the 1977 fruit season, to provide for rights of payment in respect of that vesting, and for incidental matters.**

[6 April 1977]

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

### PART I

#### PRELIMINARY

**1** This Act may be cited as the *Apple and Pear Marketing Act* Short title. 1977.

## Interpretation.

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

“ agent ” means an agent appointed by the Authority under section 10;

“ Authority ” means the Tasmanian Apple and Pear Marketing Authority established under this Act;

“ chairman ” means the chairman of the Authority;

“ Commonwealth Export Regulations ” means the *Exports (Fresh Fruit) Regulations* made under the *Commerce (Trade Descriptions) Act 1905* and the *Customs Act 1901* of the Commonwealth;

“ Executive Director ” means the Executive Director of the Authority;

“ fruit ” means apples and pears or either of them;

“ package ”, in relation to fruit, means the receptacle in which the fruit is enclosed on exportation to an overseas export market;

“ right of payment ” means a right of payment pursuant to section 11;

“ season ” means the 1977 fruit season;

“ seasonal advance ” means an advance made during the season to a grower of fruit to assist him in the production and harvesting of the fruit and its presentation for export;

“ Secretary ” has the meaning assigned to that expression by section 7 (1);

“ stabilization payment ” means a stabilization payment under the *Apple and Pear Stabilization Act 1971* of the Commonwealth;

“ supplementary assistance ” means supplementary financial assistance in respect of fruit granted by the Government of the Commonwealth or the Government of this State or both those Governments.

(2) In this Act, a reference to a Commonwealth Act includes a reference to that Act as amended from time to time and any Commonwealth Act passed in substitution for that Act.

## PART II

## THE TASMANIAN APPLE AND PEAR MARKETING AUTHORITY

*Division I—Establishment and proceedings of the Tasmanian Apple and Pear Marketing Authority*

**3**—(1) There shall be established a body, to be known as the Tasmanian Apple and Pear Marketing Authority.

Establishment  
of the  
Tasmanian  
Apple and Pear  
Marketing  
Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal.

(3) The Authority shall consist of 6 persons appointed by the Governor—

- (a) three of whom shall be appointed on the nomination of the Minister;
- (b) one of whom shall be appointed on the nomination of the Minister, after he has consulted the State Fruit Board; and
- (c) two of whom shall be growers of fruit appointed on the nomination of the State Fruit Board.

(4) Of the members of the Authority appointed as provided by paragraphs (a) and (b) of subsection (3)—

- (a) one shall be the chairman of the Authority;
- (b) one shall be an officer of the Treasury;
- (c) one shall be an officer of the Department of Agriculture; and
- (d) one shall be the Executive Director of the Authority who shall be the person appointed as provided by paragraph (b) of that subsection.

(5) If the State Fruit Board fails to make a nomination as required by subsection (3) (c) after being so requested by the Minister and within the period specified by the Minister in the request, the Governor may appoint as a member of the Authority such person as he considers suitable in the circumstances.

(6) The Executive Director shall be paid such salary as is specified in the instrument of his appointment.

(7) A member of the Authority (other than the Executive Director) shall be paid such remuneration (if any) as is specified in the instrument of his appointment.

(8) A member of the Authority is entitled to be paid such travelling and other allowances and expenses as the Governor may determine.

(9) An officer of the Public Service may hold office as a member of the Authority in conjunction with his office as an officer of the Public Service.

Term of office  
and removal of  
members of  
the Authority.

4—(1) A member of the Authority holds office in the terms and conditions of the instrument of his appointment.

(2) The Governor may remove a member of the Authority from office if he is satisfied that that member—

- (a) has become incapable of carrying out the duties of his office;
- (b) has misconducted himself in the performance of the duties of his office;
- (c) has failed to comply with the terms and conditions specified in the instrument of his appointment;
- (d) has, without leave of the Authority, been absent from 2 or more consecutive meetings of the Authority;
- (e) has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors;
- (f) has been convicted (whether in this State or elsewhere) of an offence of such a nature that, in the opinion of the Governor, renders it improper for him to continue to be a member of the Authority; or
- (g) being a member by reason of his holding a particular office, ceases to hold that office.

(3) Without prejudice to the generality of the provisions of subsection (2) (b), a member of the Authority shall be deemed to have misconducted himself in the performance of the duties of his office if—

- (a) he votes on a matter before the Authority in which he has a direct pecuniary interest; or
- (b) he takes part in, or is present at, the discussion of any such matter before the Authority,

without disclosing his direct pecuniary interest to the members of the Authority present.

(4) In the case of married persons living together, a pecuniary interest of one spouse shall, if known to the other, be deemed for the purposes of this section to be also a pecuniary interest of that other spouse.

(5) A member of the Authority shall not be removed from office otherwise than in accordance with this section.

**5**—(1) Subject to this section, the Governor may appoint <sup>a</sup> Deputies of members. a deputy of a member of the Authority.

(2) A deputy of a member of the Authority shall, in the case of—

(a) a member referred to in paragraph (a) or paragraph (b) of section 3 (3), be appointed on the nomination of the Minister; or

(b) a member referred to in paragraph (c) of section 3 (3), be appointed on the nomination of the State Fruit Board.

(3) A person who is appointed as the deputy of a member of the Authority may act as a member of the Authority during the illness, absence, or inability to act of the member for whom he is appointed deputy, and while so acting has all the powers, and may perform all the functions, of the member for whom he is appointed deputy.

(4) The Governor may remove a deputy of a member of the Authority if he is satisfied that, if the deputy were such a member, he would be liable to be removed under section 4.

**6**—(1) The chairman, or if he is absent or there is no chairman, <sup>Proceedings of the Authority.</sup> the Executive Director, shall preside at meetings of the Authority.

(2) The person presiding at a meeting of the Authority has a deliberative vote.

(3) Any question arising at a meeting of the Authority shall be decided by a majority of the votes of the members present and voting on the question and, in the event of an equality of votes on a question, the person presiding at the meeting has a second or casting vote.

(4) Four members of the Authority constitute a quorum at a meeting of the Authority.

(5) Subject to this section, the Authority may regulate its own proceedings.

Appointment  
of secretary  
and officers.

**7**—(1) Subject to this section, the Authority may appoint a person to be the secretary of the Authority (in this Act referred to as “the Secretary”) and such other officers as it may think necessary for the purposes of the administration of this Act, and may pay to the Secretary and those other officers such remuneration as the Authority, with the approval of the Minister, determines.

(2) The Authority may, with the approval of the Minister and the Public Service Board, appoint an officer of the Public Service to be the Secretary or any other officer for the purposes of this Act and a person so appointed may hold office with the Authority in conjunction with his office in the Public Service.

*Division II—Functions and powers of the Authority*

Principal  
functions and  
powers of the  
Authority.

**8**—(1) The principal functions of the Authority are—

- (a) to market the fruit vested in it pursuant to section 11 on such overseas export markets as it determines; and
- (b) to make payments in accordance with section 13 to the persons who are entitled to those payments under section 11.

(2) The exercise by the Authority of the function referred to in subsection (1) (a) is subject to the Authority’s obtaining the necessary licences and permits required under the *Apple and Pear (Conditions of Export) Regulations* made under the *Australian Apple and Pear Corporation Act 1973* of the Commonwealth or its making such other arrangements as the situation requires.

(3) The Authority has such other functions and such powers as are conferred or imposed on it by this Act.

General powers  
as to fruit.

**9** Without limiting any of the powers conferred or imposed on it by this Act, the Authority has full authority to make and carry out such arrangements and give such directions as it thinks proper for any of the following purposes:—

- (a) For the handling, transport, and storage of all fruit vested in the Authority pursuant to section 11;
- (b) For the shipment of that fruit to overseas export markets on such terms and in such quantities as the Authority thinks fit;

- (c) For the insurance against loss of that fruit, both in this State and overseas, including the assignment to the Authority of policies of insurance against loss of that fruit; and
- (d) Generally for all such matters as are necessary for the exercise of the functions and powers of the Authority.

**10**—(1) The Authority may appoint an agent or agents to perform on its behalf any of the functions and powers conferred or imposed on it by this Act. Performance of functions by agents on behalf of the Authority.

(2) An agreement appointing an agent under subsection (1) may authorize him to retain such part of the moneys paid to him on account of fruit sold by him on behalf of the Authority as is required to reimburse the agent for the expenses properly incurred by him in relation to the sale and for seasonal advances made by the agent to growers within the limits fixed in the agreement in relation to those advances.

### *Division III—Vesting of fruit in the Authority: Rights of payment*

**11**—(1) Subject to subsection (3), fruit harvested in the season vests in, and becomes the property of, the Authority when it is accepted for shipment to an overseas export market. Vesting of fruit in the Authority.

(2) If any question arises as to whether fruit has been accepted as mentioned in subsection (1), that question shall be determined by the Authority and its determination thereon is final.

(3) On and after its acceptance as mentioned in subsection (1) or section 23, fruit harvested in the season, other than fruit exempted pursuant to subsection (4), becomes the absolute property of the Authority, freed from all mortgages, charges, liens, pledges, interests, trusts, and any other encumbrances of whatever kind affecting the fruit, and all rights and interests of any person in the fruit so vested shall, subject to section 12, thereupon be deemed to be converted into a right of payment therefor in accordance with section 13.

(4) The Authority may, by instrument under the hand of the chairman, exempt from the vesting provisions of subsection (1) fruit harvested in the season the sale of which is subject to an f.o.b. contract and such other fruit (if any) so harvested as the Authority determines.

Person having  
right to  
payment under  
encumbrance  
required to  
give notice.

**12** Where any fruit vested in the Authority under section 11 is, immediately before its vesting, subject to a bill of sale, mortgage, charge, lien, or other encumbrance over, of, or on that fruit, a person does not have a right of payment under that section in relation to the encumbrance, unless he gives to the Authority a written notice containing particulars of the encumbrance before the Authority makes a payment under section 13 in relation to the fruit.

Payment for  
fruit vested  
in the  
Authority.

**13**—(1) Subject to this section and to sections 16, 17, and 18, the Authority shall, at such times as it determines, make payments to the persons who have rights of payment.

(2) The last of the payments referred to in subsection (1) shall be made not later than 14 days after the receipt by the Authority of final stabilization payments and all supplementary assistance for the season.

(3) Subject to this section, payments by the Authority for the purposes of this section shall be made out of funds provided by the pooling by the Authority of the moneys received from the sale on all overseas export markets of the fruit vested in it and as provided in subsection (5).

(4) The distribution of moneys from the funds referred to in subsection (3) shall be made—

(a) on the basis of the varieties of fruit vested in the Authority that have been sold in the relevant overseas export markets and the packages in which they have been sold;  
or

(b) on such other basis as the Authority considers appropriate, being a basis that has been approved, in writing, by the Minister before the pooling of those moneys is made under that subsection.

(5) Subject to subsection (7) and to section 18, the Authority shall make payments under this section to growers of fruit out of—

(a) the stabilization payments granted to the Authority as the owner of that fruit; and

(b) the supplementary assistance (if any) so granted to the Authority, but subject to the terms and conditions on which that assistance is granted.

(6) Before the Authority makes a payment under this section in relation to the fruit divested from a grower, it shall deduct from the funds referred to in subsection (3) such amount for every pack-



age of fruit in respect of which the payment is to be made as it considers sufficient to defray the costs and expenses of and incidental to the marketing by the Authority of that fruit and the administrative costs of the Authority in relation thereto.

(7) In making payments out of the funds referred to in subsection (3) and the moneys referred to in subsection (5) in relation to the fruit divested from a grower, the Authority—

- (a) shall first pay, in order of priority, those persons whose rights of payment are by virtue of encumbrances referred to in section 12 and, if two or more of those persons have equal priority in relation to those rights, shall pay those persons ratably; and
- (b) shall then pay to the grower or his legal personal representative the balance (if any) of the moneys payable in relation to the fruit out of those funds and those moneys.

(8) Notwithstanding anything in the preceding provisions of this section, where the Authority is satisfied that any fruit vested in the Authority has, after being shipped to an overseas export market, been found to be below the appropriate standard prescribed by the Commonwealth Export Regulations, the Authority may withdraw the proceeds of the sale of fruit from the relevant pool and, if it does so—

- (a) shall deduct from those proceeds such amount for every package of fruit so sold as it considers sufficient to defray costs and expenses and administrative costs of the same kind as are referred to in subsection (6); and
- (b) shall pay the net proceeds in the same order as if it were making payments under subsection (7).

(9) A person with a right of payment who is paid by the Authority in accordance with subsection (7) or subsection (8) has no further claim against the Authority and no right of action against it in respect of that right of payment and, on the Authority's paying that person in accordance with the appropriate subsection, the liability of the Authority ceases and is absolutely extinguished in relation to that right.

(10) Where a person—

- (a) whose right of payment is by virtue of an encumbrance referred to in section 12; and

(b) who, on being paid in accordance with subsection (7) or subsection (8),

does not receive the full amount which he would have been entitled to receive from the grower of the encumbered fruit on the discharge of the encumbrance if it had not been converted into such a right, the balance of the amount which he would have been so entitled to receive is, by virtue of this subsection, converted into a debt from the grower to the first-mentioned person and is recoverable by that person in a court of competent jurisdiction.

*Division IV—Financial provisions relating to marketing fruit in the United Kingdom*

Interpretation.

**14** In this Division—

“accommodation advance” means an advance made in relation to any fruit by an importer to the owner of the fruit that, unless it is repaid from the proceeds of the sale of the fruit, is required to be paid, in part or in full, by that owner;

“guaranteed advance” means a minimum guaranteed advance made in relation to any fruit by an importer to the owner of the fruit that cannot be reduced but may be increased on the sale of the fruit;

“prescribed market” means the export market from this State to the United Kingdom;

“reputed bushel unit”, in relation to fruit, means a filled bushel package of fruit that complies with the appropriate provisions of the Commonwealth Export Regulations.

Advances by the Treasurer.

**15**—(1) Subject to this section, the Treasurer may make advances to the Authority of such sums as he considers necessary to provide working capital to enable the Authority to have fruit vested in it shipped to, and marketed on, the prescribed market.

(2) In addition to the advances referred to in subsection (1), the Treasurer may make advances to the Authority of such sums as he considers necessary to defray the administrative expenses of the Authority.

(3) An advance under subsection (1) or subsection (2)—

(a) shall be made out of the Loan Fund (which, to the necessary extent, is appropriated accordingly);

(b) is subject to the payment of interest on the amount from time to time remaining due to be repaid at the same rate payable for the longest period of the last preceding loan sought by the Commonwealth from the public of the State, along with others, for cash; and

(c) is subject to such other terms and conditions as may, subject to subsection (4) be determined by the Treasurer.

(4) The aggregate of all advances made under subsections (1) and (2) shall not at any one time exceed the amount of \$1 000 000.

(5) The Authority shall repay to the Treasurer an advance made to it under subsection (1) as soon as it receives from the importers of fruit vested in the Authority under section 11 that is shipped to the prescribed market the amount of guaranteed advances and accommodation advances paid by the importers in respect of the shipment of that fruit to the prescribed market.

(6) The Authority shall repay to the Treasurer an advance made to it under subsection (2) out of moneys deducted by it in accordance with subsections (6) and (8) of section 13.

**16—**(1) For the purpose of marketing on the prescribed market fruit vested in it, the Authority may, with the approval of the Treasurer, borrow by way of overdraft any sums of money not exceeding in the aggregate the sum of \$1 000 000 and the Treasurer may, on such terms and conditions as he determines, guarantee the repayment of the whole or any part of the principal moneys so borrowed and the whole or any part of the interest and other charges payable by the Authority in respect of those moneys.

Power of  
Authority to  
borrow by way  
of overdraft:  
Guarantees by  
Treasurer.

(2) The Authority shall not make any payments under section 13 during the period that it owes any moneys in respect of an overdraft obtained by it pursuant to subsection (1).

(3) The Treasurer may, on such terms and conditions as he determines, guarantee the repayment of the whole or any part of any principal moneys borrowed by the Authority pursuant to subsection (1) and the whole or any part of the interest and other charges payable in respect of those moneys.

(4) Before a guarantee is given by the Treasurer under this section the Authority shall give to the Treasurer such security (if any) as he may require and shall execute all such instruments as may be necessary for the purpose.

(5) If the Treasurer is called on to make a payment to a bank in consequence of giving a guarantee under this section, the Treasurer shall, on the demand of the bank, and without any authority other than this section, make that payment to the bank and such payment shall be made out of the Consolidated Revenue (which, to the necessary extent, is appropriated accordingly).

(6) Where, in pursuance of a guarantee given under this section, the Treasurer is required under subsection (5) to make a payment to a bank, the Authority shall, on demand being made on it by the Treasurer, pay to the Treasurer any amount so paid by him to the bank, together with interest thereon at the same rate of interest as the rate payable by the Authority to the bank in respect of the principal moneys lent to the Authority by that bank.

(7) Any amount received by the Treasurer as provided by subsection (6) shall be paid by the Treasurer into the Consolidated Revenue.

Guarantees by  
the Authority.

**17**—(1) Subject to subsection (2), the Authority may give guarantees to the importers of fruit who have paid accommodation advances to the Authority in respect of the shipment of fruit vested in it to the prescribed market for the purpose of guaranteeing the importers against losses in relation to those accommodation advances.

(2) The total losses guaranteed by the Authority under subsection (1) shall not exceed—

(a) the sum of \$600 000; or

(b) losses at the rate of \$1·15 for each reputed bushel unit of fruit to which the respective accommodation advances apply,

whichever is the less.

(3) Where the total amount received by importers in respect of the sale on the prescribed market of fruit vested in the Authority is insufficient to enable all accommodation advances guaranteed by the Authority under this section to be repaid in full, subject to section 18, the Treasurer shall, on the demand of the Authority and without any authority other than this section, pay to the Authority the amount of the deficiency out of the Consolidated Revenue (which, to the necessary extent, is appropriated accordingly).

**18**—(1) Before making any payments under section 13, the Authority shall, if necessary under a guarantee given by it under section 17, repay to the importers of fruit vested in the Authority and marketed on the prescribed market the whole or part of the amount of the accommodation advances respectively paid by them to the Authority in respect of the shipment of that fruit.

Repayment of accommodation advances.

(2) The repayment of accommodation advances pursuant to subsection (1) shall be made out of moneys received by or on behalf of the Authority for the sale of fruit on the prescribed market and from supplementary assistance received by the Authority.

#### *Division V—General provisions relating to the Authority*

**19**—(1) The Authority shall keep such accounts as the Treasurer directs.

Keeping and audit of accounts.

(2) Accounts for the purposes of subsection (1)—

(a) shall be in such form and contain such particulars as the Treasurer directs; and

(b) are subject to the provisions of the *Audit Act* 1918.

**20**—(1) As soon as practicable after it has distributed the whole of the funds referred to in subsection (3) of section 13 and the moneys referred to in subsection (5) of that section to persons who have rights of payment, the Authority shall submit to the Minister—

Reports of activities and accounts to be made to Minister and tabled by him.

(a) a report of its activities during the period commencing on the date of its establishment and ending on the date of its making that distribution; and

(b) a copy of the accounts of the Authority for that period.

(2) The Minister shall, as soon as practicable, lay before each House of Parliament a copy of the report and of the accounts submitted to him under subsection (1).

#### *Division VI—Dissolution of the Authority*

**21**—(1) After the Authority has complied with section 20 (1), the Governor may, by proclamation, dissolve the Authority.

Dissolution of the Authority.

(2) A proclamation under subsection (1) shall make provision for the disposal of any assets of the Authority and for the discharge of any liabilities of the Authority existing at the date of the issue of the proclamation and for any other matters relating to the Authority or to its acts as a body corporate as the Governor considers necessary.

- (3) On the issue of a proclamation under subsection (1)—
- (a) the appointment of the respective members of the Authority shall be deemed to be cancelled; and
- (b) any legal or other proceedings that might, but for the dissolution of the Authority, pursuant to the proclamation, have been continued or commenced by or against the Authority in its corporate name may be continued or commenced by or against the Crown as if the Crown were the Authority.

### PART III

#### MISCELLANEOUS

Indemnity.

**22** No action, claim, or demand lies or shall be made or allowed by or in favour of a person against the Crown, the Minister, the Authority, a member of the Authority, the Secretary, or any other officer of the Authority or other person acting in good faith in the execution of this Act, for or in respect of any damage, loss, or injury sustained, or alleged to be sustained, by reason of the operation of this Act, or anything done, or omitted to be done, in good faith in the execution, or purported execution, of this Act.

Vesting of fruit accepted for shipment before the commencement of this Act.

**23** Where any fruit is accepted for shipment to an overseas export market before the commencement of this Act, that fruit shall, subject to section 11 (4) be deemed to vest in, and become the property of, the Authority on that commencement.

Regulations.

**24—(1)** The Governor may make regulations for the purposes of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may make provision with respect to the information to be given to the Authority by growers of fruit and agents.