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**FRUIT BOARD AMENDMENT ACT 1980**


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**TABLE OF PROVISIONS**

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|--|---|
| <p>1. Short title.</p> <p>2. Commencement.</p> <p>3. Principal Act.</p> <p>4. Amendment of long title to Principal Act.</p> <p>5. Amendment of section 1 of Principal Act (Short title).</p> <p>6. Amendment of section 3 of Principal Act (Interpretation).</p> <p>7. Amendment of section 14C of Principal Act (Prohibition on use of land for production of fruit without licence).</p> <p>8. Insertion in Principal Act of new section 14EA.<br/>14EA—Conditions and restrictions of licences.</p> <p>9. Insertion in Principal Act of Part IIIB.<br/>PART IIIB—FRUIT CROP INSURANCE<br/>14G—Interpretation: Part IIIB.<br/>14H—Appointment of Fruit Crop Insurance Committee.<br/>14I—Determination and notification of premium rates and compensation rates.</p> | <p>14J—Condition of licence that holder will insure against certain risks.</p> <p>14K—Amount of premium recoverable by Board.</p> <p>14L—Fruit Crop Insurance Fund.</p> <p>14M—Payments to Insurance Fund Account out of Consolidated Revenue Fund.</p> <p>10. Amendment of section 29 of Principal Act (Returns by growers of fruit).</p> <p>11. Amendment of section 31 of Principal Act (Regulations).</p> <p>12. Amendments to Principal Act and <i>Apple and Pear Marketing Act (No. 2) 1977</i> by way of statute law revision.</p> <p>13. Repeal of <i>Apple and Pear Crop Insurance Act 1967</i>, &amp;c.</p> <p>14. Transitional provisions.</p> <p><b>SCHEDULE 1—AMENDMENTS TO PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION</b></p> |
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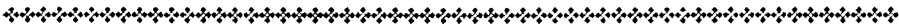


**FRUIT BOARD AMENDMENT ACT 1980**

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No. 58 of 1980

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**AN ACT to amend the Fruit Board Act 1934 for the purpose of making provision for the establishment of a compulsory insurance scheme with respect to commercially grown apple and pear crops and for other purposes, and to repeal the Apple and Pear Crop Insurance Act 1967 and the Apple and Pear Crop Insurance Act 1978.**

**[Royal Assent 16 September 1980]**

**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:—

**1**—This Act may be cited as the *Fruit Board Amendment Act* Short title. 1980.

**2**—(1) This section and sections 1 and 12 shall commence on Commence- the date of assent to this Act. ment.

(2) Except as provided in subsection (1), this Act shall commence on such date as may be fixed by proclamation.

(3) Where this Act (other than sections 1, 2, and 12) has not commenced and under a provision of the Principal Act regulations could be made if this Act had come into operation, such regulations may, for the purpose only of giving effect to the Principal Act when this Act (other than sections 1, 2, and 12) comes into operation, be made notwithstanding that this Act (other than sections 1, 2, and 12) has not commenced, but any such regulations shall not take effect until—

(a) the date fixed under subsection (2); or

(b) the date on which the regulations are, in accordance with the regulations, to take effect,

whichever is the later.

Principal Act.

**3**—In this Act, the *Fruit Board Act 1934\** is referred to as the Principal Act.

Amendment of long title to Principal Act.

**4**—The long title to the Principal Act is amended by omitting “for the establishment of a State Fruit Board”.

Amendment of section 1 of Principal Act (Short title).

**5**—Section 1 of the Principal Act is amended by omitting “*Fruit Board*” and substituting “*Apple and Pear Industry*”.

Amendment of section 3 of Principal Act (Interpretation).

**6**—Section 3 (1) of the Principal Act is amended as follows:—

(a) by inserting the following definition before the definition of “base figure”:—

“Authority” means the Tasmanian Apple and Pear Marketing Authority established under the *Apple and Pear Marketing Act 1977*;

(b) by inserting the following definition after the definition of “registrar”:—

“the regulations” means regulations made under this Act;

\* See 25 Geo. V No. 49. For the Act as amended to 1st April 1980, see the continuing Reprint of Statutes, Volume IV.

**7**—Section 14C (1) of the Principal Act is amended by omitting “\$500 and a further daily penalty of \$50” and substituting “\$1 000 and, in the case of a continuing contravention of this subsection, a further penalty of \$50 for each day during which the contravention continues”.

Amendment of section 14C of Principal Act (Prohibition on use of land for production of fruit without licence).

**8**—After section 14E of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 14EA.

14EA—(1) A licence is subject to—

Conditions and restrictions of licences.

- (a) the condition imposed by section 14J;
- (b) such conditions and restrictions as are imposed by the regulations; and
- (c) such conditions or restrictions as the Authority imposes when granting the licence or at any time while the licence is in force.

(2) The Authority may, at any time, revoke or vary a condition or restriction imposed under subsection (1) (c).

(3) If the holder of a licence contravenes, or fails to comply with, a condition or restriction of a licence, he is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000 and, in the case of a continuing offence, to a further penalty not exceeding \$50 for each day during which the offence continues.

**9**—After section 14F of the Principal Act, the following Part is inserted:—

Insertion in Principal Act of Part IIIB.

### PART IIIB

#### FRUIT CROP INSURANCE

14G—In this Part—

Interpretation: Part IIIB.

“Board” means the Tasmanian Government Insurance Board established under the *Tasmanian Government Insurance Act 1919*;

“Committee” means the Fruit Crop Insurance Committee appointed under section 14H;

“fruit crop insurance policy” means an insurance policy entered into in accordance with section 14J;

“Insurance Fund Account” means the Fruit Crop Insurance Fund Account established under section 14L.

Appointment of  
Fruit Crop  
Insurance  
Committee.

14H—(1) For the purposes of this Part, there shall be a committee, appointed by the Minister, to be known as the “Fruit Crop Insurance Committee”.

(2) Subject to subsection (5), the Committee shall comprise—

- (a) two persons, nominated by the Minister for Finance, who are members of, or officers employed by, the Tasmanian Government Insurance Board;
- (b) a person, nominated by the Authority, who is a member of, or an officer employed by, the Authority; and
- (c) if there is for the time being established a body of the kind referred to in section 24 (2) (d) of the *Apple and Pear Marketing Act 1977*, a person nominated by that body, but if there is no such body or such a body fails to make a nomination within 28 days after being requested to do so by the Minister, a person who, in the opinion of the Minister, represents the interests of fruit growers.

(3) One of the persons referred to in subsection (2) (a) shall, in the instrument by which he is appointed or in a subsequent instrument, be appointed as chairman of the Committee.

(4) The members of the Committee shall hold office at the pleasure of the Minister.

(5) Until the Minister appoints a committee constituted as provided by subsection (2), the advisory committee appointed under section 5 of the *Apple and Pear Crop Insurance Act 1967*, as in force immediately before the commencement of section 13, shall be deemed to be the committee appointed under subsection (1), and the person who was, immediately before that commencement, chairman of that committee shall be deemed to be the person appointed under subsection (3).

(6) The quorum for meetings of the Committee shall be 3 members.

(7) At a meeting of the Committee, the chairman of the Committee shall, in relation to any matter to be decided by the Committee, have a casting vote as well as a deliberative vote.

(8) Except as provided in the regulations, the Committee may regulate its procedure in such manner as it thinks fit.

(9) The functions of the Committee are—

- (a) to make recommendations to the Governor with respect to premium and compensation rates for the purposes of section 141; and
- (b) to undertake for the purposes of this Part such other activities as may be prescribed in the regulations or as the Minister may from time to time direct.

(10) In recommending rates of premiums in accordance with subsection (9) (a), the Committee shall endeavour to ensure that, taking one year with another, the income of the Insurance Fund Account from fruit crop insurance policies is sufficient to satisfy the amounts required to be paid out of that Account, but is not significantly more than that necessary for that purpose.

141—(1) Subject to this section, the Governor shall, not later than the prescribed date in each calendar year, make an order determining with respect to the year beginning 1st July in that calendar year—

Determination and notification of premium rates and compensation rates.

- (a) the rates of premiums payable in respect of fruit crop insurance policies;
- (b) the date by which the premiums in respect of fruit crop insurance policies are to be paid or tendered to the Board;
- (c) the rate of compensation payable in respect of fruit to which fruit crop insurance policies relate where that fruit is damaged or destroyed in circumstances contemplated by those insurance policies; and
- (d) such other matters relating to fruit crop insurance policies as may be prescribed in the regulations, and cause that order to be published in the *Gazette*.

(2) In making an order under subsection (1), the Governor shall have regard to any recommendation of the Committee made in relation to the year in respect of which the Governor is required to make the order under that subsection.

(3) The Governor may, on the recommendation of the Committee, amend an order referred to in subsection (1) in relation to the year in respect of which the order was made for any purpose other than the alteration of premiums specified in the order.

(4) An amendment made under subsection (3) shall be by order and any such order shall be published in the *Gazette*.

(5) Different rates of premium may be determined according to such factors as may be prescribed in the regulations for the purpose of this subsection.

(6) As soon as practicable after the rates of premium have been determined and published in accordance with subsection (1), the Board shall send to every holder of a licence a proposal form in the prescribed form, which shall include or be accompanied by a list of those rates, but failure by the Board to comply with this subsection shall not absolve the holder of a licence from liability for non-compliance with the condition imposed on him by virtue of section 14J (1).

(7) For the purpose of subsection (1), the prescribed date in a calendar year may be a date in that year that is before, on, or after 1st July in that year but may not be a date after 30th September in that year, and different dates may be prescribed for that purpose for different calendar years.

Condition of licence that holder will insure against certain risks.

14J—(1) It is a condition of a licence that the holder of the licence, not later than the date determined under section 14I (1) (b), shall—

(a) in a proposal in the prescribed form apply to the Board for an insurance policy for the purpose of providing him with compensation in the event of—

(i) the fruit grown on the land to which the licence relates becoming damaged or destroyed as a result of occurrences prescribed in the regulations; or

(ii) where so provided in the regulations, such class or description of that fruit as may be so prescribed becoming damaged or destroyed as a result of such occurrences; and



(b) in respect of the insurance policy applied for, pay or tender to the Board the premium calculated by reference to the appropriate rate for that policy determined under section 14I (1).

(2) On receipt of an application and premium in accordance with the condition imposed by subsection (1), the Board shall forthwith issue to the applicant an insurance policy in the appropriate form prescribed in the regulations.

(3) Where in respect of any year the holder of a licence has complied with the condition imposed on him by subsection (1) and during that year the land to which the licence relates is transferred or transmitted by operation of law to any other person, that other person—

(a) shall be deemed to have complied with that condition for that year; and

(b) shall have the rights and benefits conferred, and shall be subject to the obligations and liabilities imposed, by the fruit crop insurance policy entered into in relation to that land for that year.

14K—(1) Where the holder of a licence fails to pay or tender payment of a premium in accordance with the condition imposed on him by section 14J (1), the Board may, by proceedings brought in a court of competent jurisdiction, recover from him the amount of that premium.

Amount of premium recoverable by Board.

(2) Where a person is convicted of an offence against section 14C, the Board may, by proceedings brought in a court of competent jurisdiction, recover from him the amount of premium that would have been payable if he had been the holder of a licence.

(3) The fact that an amount is recovered under subsection (1) from the holder of a licence or that proceedings are brought for the recovery of such an amount does not preclude proceedings being taken against him for an offence under section 14EA in relation to a failure to comply with a condition of the licence.

(4) Where the holder of a licence is convicted of an offence against section 14EA in relation to the failure to comply with the condition imposed on him by virtue of section 14J, or a person is convicted of an offence against section 14C, the provisions of section 140 of the *Justices Act* 1959 apply so

as to enable a claim to be made under those provisions in respect of an amount that would, but for this subsection, be recoverable from that licence holder under subsection (1) or, as the case may be, from that person under subsection (2), and for the purpose of that application—

(a) that amount shall be regarded as a loss as referred to in those provisions; and

(b) the Board shall be regarded as a person who has suffered such a loss.

Fruit Crop  
Insurance  
Fund.

14L—(1) The Board shall establish in the Commonwealth Trading Bank an account to be known as the “Fruit Crop Insurance Fund Account”, and the account so established shall be operated only by cheque signed by such persons as are authorized for the purpose by the Board.

(2) All money paid to or received by the Board, or any person on behalf of the Board, for the purposes of or in connection with this Part shall be paid into the Insurance Fund Account.

(3) There shall be payable out of the Insurance Fund Account—

(a) all amounts required to be paid under fruit crop insurance policies as compensation;

(b) the expenses incurred in the administration of this Part; and

(c) any other amounts that, under this Part, are required to be paid out of that Account.

(4) Notwithstanding the provisions of the *Tasmanian Government Insurance Act 1919*, the Insurance Fund Account shall be maintained separately from the other accounts of the Board.

(5) Sections 26 and 28 of the *Tasmanian Government Insurance Act 1919* apply to and in respect of the Insurance Fund Account in the same way as they apply to and in respect of the Tasmanian Government Insurance Account under that Act.

(6) Section 29 of the *Tasmanian Government Insurance Act 1919* applies to and in respect of the financial operations of the Board under this Part.

14M—(1) Where the Treasurer, on the application of the Board, is satisfied that any payment required to be made out of the Insurance Fund Account cannot be made because of insufficient funds, he shall pay into that Account an amount sufficient to enable that payment to be made.

Payments to  
Insurance  
Fund Account  
out of  
Consolidated  
Revenue Fund.

(2) The amount payable by the Treasurer under subsection (1) shall be a charge on the Consolidated Revenue Fund and is payable out of that Fund without further appropriation than this subsection.

(3) Where any amount previously paid into the Insurance Fund Account has not previously been repaid, the Treasurer may make a demand in writing for the repayment of that amount or such part of it as the Treasurer specifies in the demand, together with interest at such rate (if any) as may be prescribed in the regulations, and, on receipt of any such demand, the Board shall, if the Insurance Fund Account then contains sufficient funds, pay into the Consolidated Revenue Fund the amount specified in the demand.

(4) A demand under subsection (3) shall not be made in respect of the repayment of an amount paid under subsection (2) after the expiration of 6 years after that amount was paid into the Insurance Fund Account.

**10**—(1) Section 29 (1) of the Principal Act is amended as follows:—

Amendment of  
section 29 of  
Principal Act  
(Returns by  
growers of  
fruit).

(a) by inserting “, and if requested in writing to do so by the Board shall,” after “ at any time may ”;

(b) by inserting “ in accordance with subsection (4) ” after “ returns ”.

(2) Section 29 (2) of the Principal Act is amended by omitting “ any such requirement ” and substituting “ a requirement under subsection (1) ”.

(3) Section 29 (3) of the Principal Act is amended by inserting “ in accordance with subsection (4)” after “ returns ”.

(4) Section 29 of the Principal Act is further amended by omitting subsection (4) and substituting the following subsection:—

(4) A return furnished in accordance with a requirement under subsection (1), or furnished under subsection (3), shall be in the prescribed form, and the particulars set out in the return shall be verified by a statutory declaration of the grower concerned.

(5) Section 29 of the Principal Act is further amended by omitting subsection (6) and substituting the following subsections:—

(6) The Board may, by notice in writing, request the Director of Agriculture to provide it, within such time as may be specified in the notice, with—

(a) copies of returns furnished to him under this section; or

(b) such information with respect to matters contained in those returns as may be so specified,

and it is the duty of the Director of Agriculture to comply with that request.

(7) If—

(a) any grower of fruit—

(i) fails to comply with a requirement made of him under subsection (1) within such time as may be specified in the requirement; or

(ii) fails to comply with subsection (3); or

(b) a member or officer of a committee or association referred to in section 14E (5) fails to comply with a requirement made of him under subsection (5),

he is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$200.

**11**—Section 31 (2) of the Principal Act is amended as follows:— Amendment of section 31 of Principal Act (Regulations).

- (a) by omitting from paragraph (a) “ and ”;
- (b) by omitting from paragraph (b) “ prescribe.” and substituting “ prescribe;”;
- (c) by inserting after paragraph (b) the following paragraphs:—
  - (c) prescribe the procedure to be followed by the Fruit Crop Insurance Committee established under Part III B, and activities of that Committee for the purpose of section 14H (9);
  - (d) provide for the payment of fees and allowances to members of that Committee for the purposes of any meeting or business of that Committee;
  - (e) prescribe the factors to be taken into account in determining rates of premium under section 14I; and
  - (f) prescribe classes or descriptions of fruit in respect of which insurance policies are to be entered into under section 14J.

**12**—(1) The following provisions of the Principal Act are repealed:— Amendments to Principal Act and Apple and Pear Marketing Act (No. 2) 1977 by way of statute law revision.

- (a) section 18;
- (b) Part V;
- (c) section 28.

(2) The Principal Act is amended in the manner specified in Schedule 1.

(3) Section 24 (2) (d) of the *Apple and Pear Marketing Act 1977* is amended by inserting “ and operation ” after “ establishment ”.

(4) The Schedule to the *Apple and Pear Marketing Act (No. 2) 1977* is amended by omitting paragraph 3.

**13**—The *Apple and Pear Crop Insurance Act 1967* and the *Apple and Pear Crop Insurance Act 1978* are repealed. Repeal of Apple and Pear Crop Insurance Act 1967, &c.

Transitional  
provisions.

**14—(1)** In this section—

(a) a reference to the repealed Act is a reference to the *Apple and Pear Crop Insurance Act 1967*; and

(b) a reference to the Apple and Pear Crop Insurance Fund is a reference to the Apple and Pear Crop Insurance Fund established under the repealed Act.

(2) Where any amount, other than an amount referred to in subsection (5), would, if this Act had not been enacted, have been required to have been paid into or out of the Apple and Pear Crop Insurance Fund in respect of any period, or on the occurrence of any event, before the commencement of section 13, that amount shall be paid into or out of the Consolidated Revenue Fund, as the circumstances of the case require.

(3) An amount required to be paid out of the Consolidated Revenue Fund by virtue of subsection (2) shall be a charge on that Fund and may be so paid without further appropriation than this subsection.

(4) Except in relation to an amount referred to in subsection (5), amounts that, immediately before the commencement of section 13, formed part of the Apple and Pear Crop Insurance Fund, and all investments and securities in which, immediately before that commencement, any money belonging to that Fund was invested, shall, on that commencement, form part of the Consolidated Revenue Fund.

(5) Where the holder of a licence under the Principal Act, before the commencement of section 13, entered into a contract of insurance under section 3 (1) of the repealed Act in respect of the year commencing 1st July 1980 or lodged with the Tasmanian Government Insurance Board a proposal to enter into such a contract in respect of that year, any amount paid by that licence holder by way of premium under that contract or in relation to that proposal shall, at the option of that Board, be refunded to him or credited to him against any amount that is payable by him by way of a premium under a fruit crop insurance policy that he is required to apply for under Part IIIB of the Principal Act, as in force after that commencement.

**SCHEDULE 1** Section 12  
**AMENDMENTS TO PRINCIPAL ACT BY WAY OF STATUTE**  
**LAW REVISION**

| COLUMN 1<br>Provision of Principal Act amended       | COLUMN 2<br>Amendment   |
|--|---|
| (1) Section 3 (1), definition of "registrar"         | Omit "Board" and substitute "Authority".  |
| (2) Section 3 (1), definition of "returning officer" | Omit the definition.  |
| (3) Section 14D                                      | Omit "Board" wherever occurring and substitute "Authority".   |
| (4) Section 14E                                      | Omit "Board" wherever occurring and substitute "Authority".   |
| (5) Section 14F (1)                                  | Omit "Board" and substitute "Authority".  |
| (6) Section 15                                       | (a) Omit "Board" where firstly, secondly, fourthly, and fifthly occurring and substitute "Authority";<br>(b) Omit "Board" where thirdly occurring and substitute "Authority under this Act".  |
| (7) Section 21 (1)                                   | Omit "Board" wherever occurring and substitute "Authority".   |
| (8) Section 21 (2)                                   | (a) After "may" where firstly occurring insert ", in relation to fruit shipped or to be shipped into any other States,";<br>(b) Omit paragraph (j) and all the words following that paragraph and substitute the following:—<br>(j) such other matters as the Authority thinks necessary for the purposes of this Act (Part IIIB excepted). |
| (9) Section 24 (1)                                   | Omit "\$10" and substitute "\$100".   |
| (10) Section 24 (2) (b)                              | Omit "as aforesaid".  |
| (11) Section 26A (2)                                 | Omit "\$20" and substitute "\$500".   |
| (12) Section 27                                      | (a) Omit "Board" where firstly, thirdly, and fourthly occurring and substitute "Authority";<br>(b) Omit "Board," where secondly occurring and substitute "Authority under this Act,".   |

| COLUMN 1<br>Provision of Principal Act amended | COLUMN 2<br>Amendment   |
|--|---|
| (13) Section 29 (5)                            | Omit " Board " wherever occurring and substitute " Authority ".   |
| (14) Section 30 (1)                            | Omit " Board " and substitute " Authority ".  |
| (15) Section 30 (2)                            | Omit " as aforesaid ".  |
| (16) Section 31 (2)                            | Omit " Board " and substitute " Authority ".  |
| (17) Section 31 (5)                            | Omit " prescribe penalties not exceeding \$750 for breaches of the regulations " and substitute " provide for it to be an offence to contravene or fail to comply with any of the regulations and prescribe a penalty that may be imposed in respect of any such offence not exceeding \$750 ". |