

APPLE AND PEAR ORGANIZATION.

No. 58 of 1938.

An Act relating to the Marketing of Apples and Pears.

[Assented to 10th December, 1938.]

BE it enacted by the King's Most Excellent Majesty, the Senate, Preamble. and the House of Representatives of the Commonwealth of Australia, for the purpose of appropriating the grant originated in the House of Representatives, as follows:—

1. This Act may be cited as the *Apple and Pear Organization Act* 1938. Short title.

2. This Act shall commence on a date to be fixed by Proclamation. Commencement.

3. In this Act, unless the contrary intention appears— Definitions.

“approved growers' organizations” means such organizations of apple and pear growers as are approved by the Minister on the recommendation of the Minister administering the Department of Agriculture of the State in which the organizations are established;

“grower”, in relation to a poll of growers taken for the purpose of this Act, means the occupier of an orchard from which at least two hundred and fifty bushels of apples or pears were exported in each of at least two of the three years preceding the taking of the poll in relation to which the expression is used;

“member” means a member of the Board;

“the Chairman” means the Chairman of the Board;

“the Executive Committee” means the Executive Committee of the Board;

“the Board” means the Australian Apple and Pear Board constituted under this Act;

“the Fund” means the Apple and Pear Export Fund established under this Act.

4.—(1.) For the purposes of this Act, there shall be an Australian Apple and Pear Board. Australian Apple and Pear Board.

(2.) The Board shall consist of—

(a) one member (in this Act referred to as “the Government representative”) to represent the Commonwealth Government;

(b) four members to represent the growers of apples and pears in the State of Tasmania;

- (c) two members to represent the growers of apples and pears in the State of Victoria ;
- (d) one member to represent the growers of apples and pears in the State of New South Wales ;
- (e) one member to represent the growers of apples and pears in the State of Queensland ;
- (f) one member to represent the growers of apples and pears in the State of South Australia ;
- (g) two members to represent the growers of apples and pears in the State of Western Australia ; and
- (h) one member to represent exporters of apples and pears in each of the States of Victoria, South Australia, Western Australia and Tasmania :

Provided that if the Government representative is a resident of the State of Queensland no member shall be appointed under, or elected for the purposes of, paragraph (e) of this sub-section.

(3.) The members of the Board shall be appointed by the Governor-General or elected in accordance with the provisions of this section.

(4.) The member appointed as the Government representative shall be appointed by the Governor-General and shall hold office during the pleasure of the Governor-General.

(5.) Any member appointed to represent the growers in a State for the first period of three years from the date of the constitution of the Board shall be selected from a panel submitted by the approved growers' organizations in that State.

(6.) For the purposes of the last preceding sub-section, a panel shall contain the names of not less than twice the number of persons required to be appointed and shall be approved by the Minister administering the Department of Agriculture of the State concerned.

(7.) The members appointed to represent exporters of apples and pears shall be appointed upon the nomination of the Minister.

(8.) A panel submitted by approved growers' organizations shall be in writing, and shall be forwarded to the Minister so as to be received by him on or before a date fixed by the Minister in that behalf by notice in the *Gazette*.

(9.) Where any member is required by this section to be selected from a panel submitted by the approved growers' organizations in any State, and a panel is not received by the Minister on or before the date fixed in accordance with the last preceding sub-section, the Governor-General may appoint such person as he thinks fit to represent the growers concerned.

(10.) Members of the Board, other than the Government representative, appointed under the foregoing provisions of this section shall, subject to this section, hold office for a period of three years and shall be eligible for re-appointment or for election under the next succeeding sub-section.

(11.) After the expiration of the first period of three years from the date of the constitution of the Board each member of the Board (other

than the Government representative and the representative of exporters of apples and pears) representing the growers in any State shall be elected by a poll of growers taken in the prescribed manner in that State.

(12.) Members of the Board elected in pursuance of the last preceding sub-section shall subject to this section hold office for three years and shall be eligible for re-election.

(13.) Members of the Board, other than the Government representative, may be removed from office by the Governor-General on the recommendation of the Board.

(14.) On the occurrence of any vacancy in the membership of the Board by reason of the death, resignation or removal from office of any member prior to the expiration of the term for which he was appointed or elected, the Governor-General may appoint a person to fill the vacancy, and any person so appointed (other than the Government representative) shall hold office for the residue of the term of the member whose place became vacant :

Provided that, where the member whose place became vacant was selected from a panel submitted by the approved growers' organizations in any State, the person appointed to fill the vacancy shall, subject to sub-section (9.) of this section, be selected from a panel submitted for the purpose in accordance with the foregoing provisions of this section.

(15.) Subject to the requirements of this Act in respect of a quorum, the exercise by the Board of its powers and functions under this Act shall not be affected by reason only of there being a vacancy in the office of any member of the Board.

5. The Board shall be a body corporate with perpetual succession and a common seal, and shall be capable of suing and being sued and of holding real and personal property.

Incorporation
of Board.

6.—(1.) In the event of the illness or absence of a member of the Board, the Governor-General may appoint a person to be the deputy of that member, and the person so appointed shall, during the illness or absence of the member, exercise and perform all the powers and functions of a member of the Board.

Deputies of
members.

(2.) An appointment of a deputy of a member, and any act done by him as such, shall not be questioned in any proceedings on the ground that the occasion for his appointment had not arisen or had ceased.

7.—(1.) At the first meeting of the Board, which shall be held at a time and place notified by the Minister in the *Gazette*, the Board shall appoint one of its members to be the Chairman of the Board until the appointment of a Chairman in pursuance of the next succeeding sub-section.

Chairman of
the Board.

(2.) At a meeting of the Board, which shall be held in the month of July of each year, the Board shall appoint one of its members to be the Chairman of the Board until the appointment of his successor.

(3.) The Chairman of the Board shall hold office until the appointment of a successor in accordance with this section, and shall be eligible for re-appointment.

(4.) At any meeting of the Board at which the Chairman is not present, the members present shall elect one of their number to act as Chairman at that meeting.

Meetings of
the Board.

8.—(1.) Subject to this Act, meetings of the Board shall be held at such times and places within the Commonwealth as the Board from time to time determines.

(2.) The Chairman, or any three members representing growers or exporters in more than one State, may at any time call a special meeting of the Board.

(3.) At all meetings of the Board nine members, representing growers or exporters in not less than three States, shall form a quorum.

(4.) At any meeting of the Board, the Chairman shall, in respect of any question before the Board, have a deliberative vote only and, in the event of an equality of votes, the question shall pass in the negative.

(5.) Subject to the last preceding sub-section, all questions before a meeting of the Board shall be decided by a majority of votes.

(6.) The Board shall keep a record of its proceedings.

(7.) The Board may co-opt any person to attend such meetings of the Board as the Board determines, and any person so co-opted shall act in an advisory capacity only.

Executive
Committee of
Board.

9.—(1.) There shall be an Executive Committee of the Board consisting of the Chairman of the Board and not more than five other members of the Board who shall, subject to sub-section (2.) of this section, be elected by the Board in the month of July of each year, and shall hold office until the election of their successors :

Provided that the Executive Committee shall not be deemed to be constituted unless two members thereof are representatives of exporters of apples and pears and there is representation on the Committee of the growers or exporters in the States of Victoria, South Australia, Western Australia and Tasmania.

(2.) The members of the first Executive Committee (other than the Chairman of the Board) shall be elected by the Board at its first meeting held in pursuance of this Act and shall hold office until the election of their successors in the next following month of July.

(3.) The Chairman of the Board shall be the Chairman of the Executive Committee.

(4.) At any meeting of the Executive Committee at which the Chairman of the Committee is not present, the members present shall appoint one of their number to act as Chairman at that meeting.

(5.) If any member of the Executive Committee is unable to attend a meeting of the Committee, that member may appoint a proxy to represent him at that meeting.

(6.) Any person appointed to act as proxy for any member on the Executive Committee shall when so acting have all the powers and functions of the member of whom he is the proxy and shall be entitled to fees and expenses as if he were such member.

(7.) The Executive Committee shall have such powers and functions of the Board as the Board decides, but, notwithstanding any such decision, the Board may at any time exercise any of those powers and functions.

(8.) At any meeting of the Executive Committee three members shall form a quorum.

(9.) At any meeting of the Executive Committee the Chairman shall, in respect of any question before the Committee, have a deliberative vote and, in the event of an equality of votes, the question shall pass in the negative.

(10.) Subject to the last preceding sub-section, all questions before a meeting of the Executive Committee shall be decided by a majority of votes.

(11.) In the event of a vacancy occurring in the Executive Committee, the Board may elect one of its members to hold the vacant office for the residue of the term for which the member whose office is vacant was elected.

(12.) The Executive Committee may co-opt any person to attend such meetings of the Committee as the Committee determines.

(13.) Any person who is co-opted in pursuance of the last preceding sub-section shall act in an advisory capacity only, and, if a member is so co-opted, he shall, in respect of his attendance at meetings of the Executive Committee, be entitled to receive only such fees and expenses as are payable under this Act to a member of the Executive Committee.

10.—(1.) Members of the Board and of the Executive Committee of the Board, and the deputies of any such members while acting as such, shall be entitled to receive fees and expenses as provided in this section in respect of attendance at meetings or whilst engaged (whether in Australia or overseas) on such business of the Board as the Board determines. Fees and expenses.

(2.) If a member or his deputy is also a member of the Parliament of the Commonwealth or of any State, he shall not be entitled to receive any fees but shall be entitled to be reimbursed such expenses as he actually incurs by reason of such attendance or whilst engaged on such business.

(3.) If a member or his deputy is not a member of the Parliament of the Commonwealth or of any State, he shall be entitled to receive such fees and expenses as are prescribed.

11.—(1.) The Board may appoint persons approved by the Minister to represent the Board overseas. Overseas representative.

(2.) A person appointed under this section shall hold office upon such terms and conditions as the Board determines.

Appointment of
officers.

12.—(1.) The Board may appoint such persons as are necessary to assist the Board in carrying out its functions under this Act.

(2.) Persons appointed in pursuance of this section shall not be subject to the *Commonwealth Public Service Act 1922–1937* and shall hold office during the pleasure of the Board.

(3.) The salaries and conditions of employment of persons appointed in pursuance of this section shall be as prescribed.

(4.) If an officer of the Public Service of the Commonwealth is appointed by the Board under this section, his service in pursuance of the appointment shall, for the purpose of determining his existing and accruing rights, be taken into account as if it were service in the Public Service of the Commonwealth, and the *Officers' Rights Declaration Act 1928–1933* shall apply to him in like manner as if this Act and section were specified in the Schedule to that Act.

Powers and
functions of
Board.

13.—(1.) The Board may—

- (a) make recommendations to the Minister in relation to the making of regulations for the purpose of regulating the export of apples and pears from Australia ;
- (b) make reports and suggestions to the Minister on such matters as the quality, standards and grading of any particular class or kind of apples and pears to be exported from Australia ;
- (c) advise, and make recommendations to, the Minister in respect of matters arising in connexion with any programme for the export from Australia of apples and pears ;
- (d) advise, and make representations to, the Minister or to any other authority on matters affecting the welfare of the apple and pear industry ; and
- (e) either on its own behalf or in collaboration with any other Board or Authority, take, or arrange for the taking of any action which, in the opinion of the Board, is likely—
 - (i) to lead to the improvement of the quality of, or the prevention of deterioration, before or during transport from Australia, of apples and pears ; or
 - (ii) to expand existing markets or to secure new markets for apples and pears,

and shall have such other powers and functions as are conferred by this Act.

(2.) Except as otherwise expressly provided, nothing in this Act shall be deemed to empower the Board to buy or sell apples or pears or to engage in trade.

Power to control
export of apples
and pears.

14.—(1.) The Board may—

- (a) determine the total quantity of apples and pears, harvested in any year, which may be exported from the Commonwealth ; and

- (b) determine, upon a basis applied uniformly throughout the Commonwealth, the quantity of apples and pears harvested in any State in that year which may be exported from the Commonwealth.

(2.) In adopting a basis to be applied by the Board in accordance with paragraph (b) of the last preceding sub-section the Board shall take into consideration the average yearly exports overseas of apples and pears from each State during the period of three years immediately preceding the year in which the basis is adopted and such other factors relating to the production of apples or pears in each State and the available markets therefor as the Board thinks necessary.

(3.) For the purpose of enabling the Board effectively to control the export of Australian apples and pears, the Governor-General may make regulations prohibiting the export from the Commonwealth of any apples or pears—

- (a) except by persons who hold licences issued on the recommendation of the Board by the Minister or by any person authorized thereto in writing by the Minister; .
- (b) except in accordance with such conditions and restrictions as are prescribed after recommendation to the Minister by the Board; and
- (c) unless the Board has issued a permit to export those apples or pears.

(4.) Any person who exports apples or pears from the Commonwealth—

- (a) in contravention of the regulations made in pursuance of this section (including the prescribed conditions and restrictions); or
- (b) in respect of which a permit has not been issued under the last preceding sub-section.

shall be guilty of an offence.

Penalty: One hundred pounds.

(5.) Where the Minister is satisfied, on report by the Board, that any person to whom a licence under this section has been granted has contravened or failed to comply with the prescribed conditions and restrictions, the Minister may, on the recommendation of the Board, suspend or cancel the licence.

(6.) Where the Minister is satisfied, on report by the Board, that any person whose licence under this section has been suspended or cancelled, has given a satisfactory undertaking to comply with the prescribed conditions and restrictions, the Minister may, on the recommendation of the Board, remove the suspension or issue a fresh licence, as the case may be.

(7.) If the Board is unable to arrive at a unanimous decision in respect of any matter arising for determination under sub-section (1.) of this section, the Board shall request the Minister to refer the matter for decision to one or more independent arbitrators appointed by the Minister.

(8.) For the purpose of arriving at a decision upon any matter referred under the last preceding sub-section to an arbitrator the arbitrator shall take into consideration the average yearly exports overseas of apples or pears from each State during the period of three years immediately preceding the year in which the matter is so referred, and such other factors relating to the production of apples or pears in each State and the available markets therefor as he thinks necessary and shall decide the matter in such manner as not to affect the uniformity throughout the Commonwealth with which determinations of the Board under sub-section (1.) of this section are required to apply, and the Board shall give effect to any decision of the arbitrator made in accordance with this sub-section.

Contracts
relating to
shipment and
insurance of
apples and
pears.

15.—(1.) After such date as is notified in the *Gazette* by the Minister on the recommendation of the Board, a contract for—

- (a) the carriage by sea to any place beyond the Commonwealth of any apples or pears ; or
- (b) the insurance against loss or deterioration of such apples or pears whilst awaiting transport or in transit or until disposed of,

shall not be made except in conformity with conditions approved by the Board or by the Board acting as the agent of the owners of the apples or pears, or of other persons having authority to export them.

(2.) Every contract of the kind specified in the last preceding sub-section which is made otherwise than in accordance with this section shall be void.

(3.) A Collector or other officer of Customs may require any person who, after the date notified by the Minister in pursuance of this section, exports any apples or pears from the Commonwealth, on making entry thereof under the *Customs Act 1901–1936* and before the entry has been passed, to satisfy him that the contract for the carriage of the apples or pears has been approved by the Board, and the Collector or other officer of Customs may decline to pass the entry until the person has so satisfied him.

(4.) The application of this section shall extend to any contract, for either or both of the purposes specified in sub-section (1.) of this section, made before the date notified in pursuance of that sub-section (whether made before or after the commencement of this Act) but so as not to affect any obligation arising in respect of anything done under the contract prior to the date so notified :

Provided that the approval of the Board shall not be required for any contract made before the date so notified if the apples or pears to which it relates are exported from the Commonwealth not later than the thirtieth day of September, One thousand nine hundred and thirty-nine.

16. Upon the constitution, under this Act, of the Australian Apple and Pear Board, any reference, in any contract for the carriage of apples or pears to any place beyond the Commonwealth existing at the date of the constitution of the Board, to the Australian Apple and Pear Council shall be read as a reference to the Australian Apple and Pear Board.

Reference in existing contracts.

17. Nothing in this Act or the regulations shall affect the operation of the *Customs Act* 1901–1936, of the *Commerce (Trade Descriptions) Act* 1905–1933, or of any regulations made under either or both of those Acts.

Operation of Customs Act and Commerce (Trade Descriptions) Act not affected.

18.—(1.) There shall be an Apple and Pear Export Fund into which shall be paid, out of the Consolidated Revenue Fund, which is hereby appropriated accordingly, all moneys received by the prescribed officers under the *Apple and Pear Export Charges Act* 1938.

Apple and Pear Export Fund.

(2.) Where any account referred to in section twenty of this Act is opened, payment into that account of the moneys mentioned in the last preceding sub-section shall be held to be payment into the Fund.

(3.) Income derived from the investment of the Fund shall form part thereof.

(4.) The income of the Fund shall not be subject to taxation by the Commonwealth or a State.

19. The moneys paid into the Fund shall be applied by the Board—

Application of moneys paid into fund.

- (a) in payment of the expenses and other charges incurred by the Board, or for which the Board may become liable in the course of its business ;
- (b) in payment of the prescribed salaries and allowances of officers of the Board ;
- (c) in payment of travelling allowances, fees or other remuneration to members of the Board or of any overseas representative ;
- (d) in investment in any securities of, or guaranteed by, the Government of the Commonwealth or of a State ;
- (e) in payment of any costs or expenses incurred in connexion with the doing or undertaking of any act, matter or thing which, in the opinion of the Board, is likely to improve the quality or to promote the sale of apples and pears and in particular in connexion with the carrying out of any arrangement which the Board enters into with any authority constituted to extend the sale of products of the Commonwealth ; and
- (f) in payment of any expenses arising out of any action taken under section thirteen of this Act.

20. Moneys held in the Fund uninvested by the Board may be lodged in an account at call or on fixed deposit, or partly in an account at call and partly on fixed deposit, with the Commonwealth Bank, and while in such bank shall be held to be moneys of the Crown.

Moneys in fund uninvested may be lodged in bank.

How cheques
signed.

21. Cheques drawn on any account referred to in the last preceding section shall be signed as prescribed.

Power to call
for returns.

22.—(1.) The Board may call upon any person to furnish, within such time as is specified by the Board, such returns and information as are necessary for the purposes of carrying out this Act.

(2.) Any person who, being called upon in pursuance of this section to furnish any return or information in relation to any matter within his knowledge or under his control, fails to furnish the return or information within the time specified shall be guilty of an offence.

Penalty : One hundred pounds.

Audit.

23. The accounts of the Board shall be subject to inspection and audit by the Auditor-General for the Commonwealth.

Liability of
Board for its
acts.

24. The members of the Board shall not be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operations of the Board.

Annual report.

25.—(1.) The Board shall, not later than the thirtieth day of September in each year, report to the Minister generally as to the operation of the Act.

(2.) A copy of the report of the Board shall be laid before each House of the Parliament within seven days after its receipt by the Minister, if the Parliament is then sitting, and, if the Parliament is not then sitting, then within seven days after the next meeting of the Parliament.

(3.) The report shall be accompanied by a statement by the Minister regarding the operation of the Act.

Poll on
question of
continuance
of Act.

26.—(1.) If at any time within six months after the expiration of three years from the commencement of this Act, or within six months after the expiration of any subsequent period of three years, a request in writing signed by not less than five hundred growers is forwarded to the Minister asking that the question of the continued operation of this Act be submitted to a poll of growers, a poll of growers on that question shall be taken in the prescribed manner within six months of the date upon which the request is received by the Minister.

(2.) If, at a poll taken in pursuance of this section, a majority of the growers entitled to vote at the poll vote in favour of the discontinuance of the operation of this Act, this Act shall cease to have effect upon a date to be fixed by Proclamation not being later than the expiration of six months from the date of the taking of the poll.

Regulations.

27. The Governor-General 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 for prescribing penalties not exceeding Fifty pounds for any breach of the regulations, not being a breach for which a penalty is prescribed by this Act.