

Canned Fruits Marketing Act 1979

No. 160 of 1979

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SCHEDULE

Canned Fruits Marketing Act 1979

No. 160 of 1979

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

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

- Short title 1. This Act may be cited as the *Canned Fruits Marketing Act 1979*.¹
- Commencement 2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.¹
- (2) Part IX shall come into operation on 1 January 1980.
- Interpretation 3. (1) In this Act, unless the contrary intention appears—
- “Advisory Committee” means the Australian Canned Fruits Industry Advisory Committee established by section 36;
- “appoint” includes re-appoint;
- “canned fruits” means fruits preserved by sterilization and enclosed (with or without syrup, water or other liquid) in air-tight containers, being fruits that are or consist of—
- (a) apricots, peaches or pears; or
- (b) a mixture of fruits not less than 55% of which consists of one or more of the fruits specified in paragraph (a),
- and includes the containers containing the fruits and any contents of the containers that are not fruits, but does not include goods that, having regard to their characteristics, may be described as “fruit pulp”, “solid pack”, “pie pack”, “jam”, “jelly” or “conserve”;
- “canner” means the proprietor of a factory in a Territory at which canned fruits are produced;
- “Chairman” means the Chairman of the Corporation;
- “Corporation” means the Australian Canned Fruits Corporation established by section 4;
- “equalization market”, in relation to a season, means the market formed by Australia and the other countries specified by the notice published in the *Gazette* under section 6 that relates to that season;

“equalization pool” means an equalization pool set up and maintained under section 7;

“marketing agent” means a person who is an agent of the Corporation under an agreement in force under section 12 or under the corresponding provision of a State Act;

“member” means a member of the Corporation;

“premium” means a premium fixed by the Corporation in accordance with section 8;

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

“season” means the period of 12 months commencing on 1 January 1980, and each of the next 4 succeeding periods of 12 months;

“State Act” means any State Act relating to the marketing of canned fruits;

“Territory” means an internal Territory.

(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 12 of this Act or under the corresponding provision 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 16, or under the corresponding provision of a State Act, at the time of that disposal.

(4) For the purposes of sub-section (3), 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) A reference in this Act to canned fruits acquired by the Corporation under an Act (whether this 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.

PART II—ESTABLISHMENT OF AUSTRALIAN CANNED FRUITS CORPORATION

Establishment of Corporation

4. (1) There is established by this section a corporation by the name of the Australian Canned Fruits Corporation.

- (2) The Corporation—
 - (a) is a body corporate;
 - (b) shall have a common seal;
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue or be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Corporation affixed to a document and shall presume that it was duly affixed.

PART III—EQUALIZATION MARKET

Interpretation

5. In this Part, a reference to canned fruits acquired by the Corporation shall be read as a reference to canned fruits so acquired under this Act or a State Act.

Equalization market

6. Where, in respect of a season, the Corporation is of the opinion that the quantity of canned fruits of a particular kind or of each of two or more particular kinds that will be available for disposal by the Corporation during that season (whether acquired by the Corporation during that season or at an earlier time) is likely to exceed the quantity of canned fruits of that kind, or of each of those kinds, that will be sold for consumption in Australia during that season, the Corporation shall, by notice in the *Gazette*, specify the countries that are, together with Australia, to form the equalization market in respect of that season for the purpose of the disposal of canned fruits of that kind or of those kinds.

Equalization pool

7. Where, in respect of a season, there is an equalization market for the purpose of the disposal of canned fruits of a particular kind or of particular kinds, the Corporation shall, in respect of that season, set up and maintain a separate account, to be known as an equalization pool, for canned fruits of that kind or of each of those kinds that are disposed of by the Corporation in the equalization market during that season.

8. (1) Where, in respect of a season, there is an equalization market for the purpose of the disposal of canned fruits of a particular kind or of particular kinds, the Corporation may, in respect of that season, by notice published in the *Gazette*, fix rates of premium to be paid by the Corporation in respect of canned fruits of that kind or of those kinds that are in light syrup, heavy syrup, extra-heavy syrup or any other medium, having regard to the additional costs incurred in producing those canned fruits in the medium concerned.

Premiums
for
additional
costs of
canner

(2) A premium the rate of which is fixed under sub-section (1) is payable in respect of canned fruits of the relevant kind that are disposed of by the Corporation during the season in respect of which the rate is fixed (whether the canned fruits are acquired by the Corporation during that season or at an earlier time).

9. (1) In this section, “quota”, in relation to a canner in respect of canned fruits of a kind in respect of which there is an equalization pool for a season, means the quantity of canned fruits of that kind produced by the canner that the Corporation is willing to offer for sale during the season—

Quotas

- (a) for consumption in Australia;
- (b) for delivery to a place in the equalization market outside Australia; or
- (c) for delivery to a ship or aircraft for export from Australia to a place in the equalization market.

(2) Where, in respect of a season, there is an equalization market for the purpose of the disposal of canned fruits of a particular kind or of particular kinds, the Corporation shall prepare and operate a scheme for allocating amongst canners quotas in respect of that season in relation to canned fruits of that kind or of each of those kinds.

(3) A scheme referred to in sub-section (2) may make provision—

- (a) for and in relation to—
 - (i) applications from canners for quotas;
 - (ii) the method of allocating quotas; and
 - (iii) the transfer of a quota, or of part of a quota, from the canner to whom the quota is allocated to another canner; and
- (b) for the surrender or cancellation of a quota or of part of a quota.

(4) In this section, “canner” includes a person who is a canner for the purposes of a State Act.

PART IV—MARKETING OF CANNED FRUITS

Powers of Corporation

10. (1) On or after 1 January 1980, the Corporation may, for the purposes of the export of canned fruits from Australia, the interstate marketing of canned fruits and the marketing of canned fruits in the Territories, or for the purposes of, or purposes incidental to, an international agreement to which Australia is a party—

- (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 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 for the purposes of this sub-section, 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 Minister

11. The 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

12. For the purpose 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 in a Territory

13. (1) On the production of canned fruits of a season in a Territory 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, in a Territory, not being canned fruits previously set aside under sub-section (1); or
- (b) any canned fruits of a season that are produced by him in a Territory 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 sub-section (2).

Penalty: \$1,000 in the case of a canner not being a body corporate, or \$2,000 in the case of a canner being a body corporate.

(4) On the setting aside by a canner of canned fruits in accordance with sub-section (1) or with a requirement under sub-section (2), 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 sub-section (1) or with a requirement under sub-section (2) shall, within fourteen days after so setting aside the canned fruits, serve, by post, on the Corporation a notice of that action.

Penalty: \$500.

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

“canned fruits” does not include canned fruits to which a certificate under sub-section 5 (2) of the *Canned Fruits Levy Act 1979* relates;

“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 sub-section (1) or with a requirement under sub-section (2), as the case may be; and
- (d) such other information with respect to those canned fruits as is required by the notice.

14. (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,

Canned
fruits unfit
for human
consumption

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.

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

Penalty: \$1,000 in the case of a canner not being a body corporate, or \$2,000 in the case of a canner being a body corporate.

Unauthorized
dealings with
canned fruits

15. (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 in a Territory—

- (a) move those canned fruits, or cause or permit those canned fruits to be moved, from the place in which they were produced; or
- (b) sell or deliver or part with the possession of, or otherwise deal with, those canned fruits.

Penalty: \$1,000 in the case of a canner not being a body corporate, or \$2,000 in the case of a canner being a body corporate.

(2) In sub-section (1), “canned fruits” does not include canned fruits to which a certificate under sub-section 5 (2) of the *Canned Fruits Levy Act* 1979 relates.

Insurance
reimburse-
ment rate

16. The cost to the Corporation of the insurance required by sub-section 10 (3) 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

17. (1) Where, in respect of a season, an equalization pool is set up and maintained under section 7 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 sub-section (1), 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 sub-section (3).

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

- (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 or under 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) amongst 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 such canned fruits produced by each such canner; and
- (c) by adding to an amount resulting from that apportionment 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 14, or the corresponding provision of a State Act, relates;

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

18. 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 sub-section 17 (1), there is payable in respect of those canned fruits the net proceeds of that disposal.

Payment for
canned fruits
otherwise
than out of
equalization
pool

19. (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 17 or 18 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 17 or 18 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 17 or 18 in respect of canned fruits 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 17 or 18 in respect of canned fruits is void as against the Corporation.

Person
entitled to
payment for
canned fruits
purchased
by
Corporation

20. (1) In this section, "canned fruits" means canned fruits that have been purchased by the Corporation.

(2) Subject to this section, the amount payable by the Corporation under section 17 or 18 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 17 or 18 in respect of canned fruits is void as against the Corporation.

Advance
payments

21. (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 sub-section 17 (1), until the end of the season during which they are so disposed of, but the Corporation may, with the approval of the 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 14 relates and, if an advance payment is made in respect of canned fruits that are subsequently made the subject of a notice under section 14, 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 concerned 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 sub-section (3), the fact that an amount was set off by the Corporation under sub-section (2) against that advance payment shall be disregarded.

PART V—MEMBERSHIP AND ORGANIZATION OF AUSTRALIAN CANNED FRUITS CORPORATION

Membership
of
Corporation

22. (1) The Corporation shall consist of the following members:

- (a) the Chairman;
- (b) such number of members, not exceeding five, as is prescribed from time to time to represent canners;
- (c) three members to represent the growers of apricots, peaches and pears used in the production of canned fruits;
- (d) one member to represent the Commonwealth; and
- (e) one other member.

(2) The members shall be appointed by the Minister.

(3) The members referred to in paragraph (1)(b) shall be appointed from among persons nominated by canners for the purpose, each canner nominating one person.

(4) The members referred to in paragraph (1)(c) shall be appointed on the nomination of the body known as the Australian Canning Fruitgrowers' Association.

(5) The member referred to in paragraph (1)(a) or (1)(e) shall be a person qualified for appointment by reason of his experience in commerce, finance or economics.

(6) The performance of the functions or the exercise of the powers of the Corporation is not affected by reason of there being a vacancy or vacancies in the membership of the Corporation.

(7) The appointment of a member is not invalidated, and shall not be called in question, by reason of a deficiency or irregularity in, or in connection with, his nomination or appointment.

(8) In this section, "canner" includes a person who is a canner for the purposes of a State Act.

23. (1) Subject to this section, a member shall be appointed for a period of 3 years, but is eligible for re-appointment. Term of office of members

(2) The member referred to in paragraph 22 (1) (d) holds office during the pleasure of the Minister.

(3) If a member ceases to hold office before the expiration of the period of his appointment, another person may, in accordance with section 22, be appointed in his place until the expiration of the period.

(4) The term of office of a member shall not commence before 1 January 1980.

24. (1) Subject to sub-section (3), the Minister may appoint a person to act as Chairman— Acting Chairman

(a) during a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) A person shall not be appointed to act as Chairman unless he is qualified, in accordance with sub-section 22 (5), to be appointed as Chairman.

(4) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Chairman; and

(b) terminate such an appointment at any time.

(5) Where a person is acting as Chairman in accordance with paragraph (1) (b) and the office of Chairman becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months after the date on which the vacancy occurred expires, whichever first happens.

(6) The appointment of a person to act as Chairman ceases to have effect if he resigns his appointment by writing signed by him delivered to the Minister.

(7) While a person is acting as Chairman, he has and may exercise all the powers, and shall perform all the functions, of the Chairman under this Act.

(8) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Remuneration and allowances

25. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973.

(4) If a member is also a member of, or is a candidate for election to, the Parliament of the Commonwealth or of a State, he is not entitled to be paid any remuneration or allowances under sub-section (1) or (2), but shall be reimbursed such expenses as he reasonably incurs by reason of his attendance at meetings of the Corporation or of his engagement (whether in Australia or overseas), with the approval of the Corporation, on business of the Corporation.

26. A member or a deputy of a member may resign his office by writing signed by him delivered to the Minister. Resignation
of members
and deputies

27. (1) The Minister may terminate the appointment of a member by reason of the misbehaviour, or the physical or mental incapacity, of the member. Termination
of
appointments

(2) If a member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) fails to comply with his obligations under section 28; or
- (c) not being the member representing the Commonwealth, is absent, without the prior consent of the Corporation, from 3 consecutive meetings of the Corporation otherwise than on business of the Corporation undertaken with the approval of the Corporation,

the Minister shall terminate the appointment of the member.

28. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Corporation, otherwise than as a member of, and in common with the other members of, an incorporated company which consists of more than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Corporation. Disclosure of
interests by
members

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Corporation.

(3) Where a matter in respect of which a disclosure has been made to the Corporation by a member under sub-section (1) is being considered, or is about to be considered, at a meeting of the Corporation, then, except by leave of the members present at the meeting who do not have any direct or indirect pecuniary interest in the matter, the member—

- (a) shall not take part in any deliberation or decision of the Corporation with respect to the matter; and
 - (b) shall be disregarded for the purpose of constituting a quorum of the Corporation for any such deliberation or decision.
- (4) In this section, “member” includes an acting Chairman.

29. (1) Subject to this section, meetings of the Corporation shall be held at such times and places as the Corporation from time to time determines. Meetings of
Corporation

(2) The Chairman may at any time convene a meeting of the Corporation.

(3) At a meeting of the Corporation, such number of members as is prescribed from time to time constitutes a quorum.

(4) The Chairman shall preside at all meetings of the Corporation at which he is present.

(5) If neither the Chairman nor an acting Chairman is present at a meeting of the Corporation, the members present shall elect one of their number to preside at the meeting.

(6) A question arising at a meeting of the Corporation shall be decided by a majority of the votes of the members present and voting.

(7) The member presiding at a meeting of the Corporation has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(8) The Corporation may invite a person to attend a meeting of the Corporation for the purpose of advising or informing the Corporation on any matter.

(9) A person referred to in sub-section (8) shall be paid such fees, allowances and expenses as the Minister determines in respect of his attendance at a meeting of the Corporation.

(10) In this section, "member" includes an acting Chairman.

**Deputies of
members**

30. (1) This section applies to members referred to in paragraphs 22 (1) (b), (c) and (d).

(2) The Minister may appoint a person to be the deputy of a member to whom this section applies during the pleasure of the Minister.

(3) The appointment of a person to be the deputy of a member to whom this section applies (other than the member referred to in paragraph 22 (1) (d)) shall be on the nomination of the member.

(4) A person appointed to be the deputy of a member to whom this section applies shall, in the event of the absence of the member from a meeting of the Corporation, be entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Corporation.

(5) A deputy of a member shall be paid such fees, allowances and expenses as the Minister determines.

Indemnity

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

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

32. (1) The Corporation may engage such employees as it thinks necessary for the purposes of this Act. Staff

(2) The terms and conditions of employment (other than in respect of matters provided for by this Act) of persons engaged under this section are such as are, subject to the approval of the Public Service Board, determined by the Corporation.

33. Where an employee of the Corporation was, immediately before his engagement by the Corporation under section 32, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928* applied— Rights of public servants employed under this Act

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and
- (c) that Act applies as if this Act and this section had been specified in the Schedule to that Act.

34. (1) The Corporation may, with the approval of the Public Service Board, engage persons having suitable qualifications and experience as consultants to the Corporation. Corporation may engage consultants

(2) The terms and conditions of the engagement of a person under sub-section (1) are such as are, subject to the approval of the Public Service Board, determined by the Corporation.

PART VI—AUSTRALIAN CANNED FRUITS INDUSTRY ADVISORY COMMITTEE

35. In this Part, “appointed member”, in relation to the Advisory Committee, means a member of the Advisory Committee referred to in paragraph 38 (1) (b). Interpretation

36. There is established by this section a committee by the name of the Australian Canned Fruits Industry Advisory Committee. Establishment of Australian Canned Fruits Industry Advisory Committee

37. 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

38. (1) The Advisory Committee shall consist of the following members: Membership of Advisory Committee

- (a) the member of the Corporation referred to in paragraph 22 (1) (e), who shall be the Chairman of the Advisory Committee; and
- (b) such number of members, not exceeding five, as is prescribed from time to time to represent canners.

(2) The members referred to in paragraph (1) (b)—

- (a) shall be appointed by the Minister from among persons nominated by canners for the purpose, each canner nominating one person; and
- (b) subject to sub-section (4), shall be appointed for a period of 3 years but are eligible for re-appointment.

(3) The term of office of a member referred to in paragraph (1) (b) shall not commence before 1 January 1980.

(4) If an appointed member ceases to hold office before the expiration of the period of his appointment, another person may, in accordance with paragraph (2) (a), be appointed in his place until the expiration of the period.

(5) In this section, “canner” includes a person who is a canner for the purposes of a State Act.

Remuneration and allowances of members of Advisory Committee

39. (1) An appointed member of the Advisory Committee shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) An appointed member of the Advisory Committee shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973.

(4) If an appointed member of the Advisory Committee is also a member of, or is a candidate for election to, the Parliament of the Commonwealth or of a State, he is not entitled to be paid any remuneration or allowances under sub-section (1) or (2), but shall be reimbursed such expenses as he reasonably incurs by reason of his attendance at meetings of the Advisory Committee.

Meetings of Advisory Committee

40. (1) Subject to this section, meetings of the Advisory Committee shall be held at such times and places as the Advisory Committee from time to time determines.

(2) The Chairman of the Advisory Committee may at any time convene a meeting of the Advisory Committee.

(3) At a meeting of the Advisory Committee, such number of members as is prescribed from time to time constitutes a quorum.

(4) The Chairman of the Advisory Committee shall preside at all meetings of the Advisory Committee at which he is present.

(5) In the event of the absence of the Chairman of the Advisory Committee from a meeting of the Advisory Committee, the members present shall elect one of their number to preside at that meeting.

(6) A question arising at a meeting of the Advisory Committee shall be decided by a majority of the votes of members present and voting.

(7) The member presiding at a meeting of the Advisory Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

41. An appointed member or the deputy of an appointed member may resign his office by writing signed by him delivered to the Minister. Resignation of appointed members and deputies

42. (1) A person nominated by the Australian Canning Fruitgrowers' Association for the purpose is entitled to attend any meeting of the Advisory Committee for the purpose of advising or informing the Advisory Committee on any matter and, to enable a person so nominated to be present at a meeting of the Advisory Committee, the Chairman of the Advisory Committee shall ensure that the person so nominated is given reasonable notice of each meeting of the Advisory Committee. Nominee of Australian Canning Fruitgrowers' Association entitled to attend meetings of Advisory Committee

(2) A person nominated by the Australian Canning Fruitgrowers' Association for the purposes of sub-section (1) shall be paid such fees, allowances and expenses as the Minister determines in respect of his attendance at a meeting of the Advisory Committee.

43. (1) The Minister may appoint a person to be the deputy of an appointed member during the pleasure of the Minister. Deputies of appointed members

(2) The appointment of a person to be the deputy of an appointed member shall be on the nomination of the appointed member.

(3) A person appointed to be the deputy of an appointed member shall, in the event of the absence of the member from a meeting of the Advisory Committee, be entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Advisory Committee.

(4) A deputy of an appointed member shall be paid such fees, allowances and expenses as the Minister determines.

PART VII—FINANCE

44. (1) There shall be paid to the Corporation out of the Consolidated Revenue Fund, which is appropriated accordingly, amounts equal to the amounts of levy received by the Commonwealth by virtue of the *Canned Fruits Levy Act 1979*. Payments to Corporation

(2) In this section, “levy” includes a penalty under section 5 of the *Canned Fruits Levy Collection Act 1979*.

Borrowing

- 45.** (1) The Corporation may, with the approval of the Treasurer—
- (a) borrow moneys for the purpose of the performance of its functions or the exercise of its powers under this Act or a State Act; and
 - (b) give security over the whole or any part of its assets for the repayment of amounts borrowed under this section and the payment of interest on amounts so borrowed.

(2) The Treasurer may, on behalf of the Commonwealth, guarantee the repayment of amounts borrowed under this section and the payment of interest on amounts so borrowed.

(3) The Corporation shall not borrow moneys except in accordance with this section.

Application of moneys of Corporation

46. Subject to section 63E of the *Audit Act 1901* and to section 59 of this Act, moneys of the Corporation may be applied only—

- (a) in payment or discharge of the debts, expenses, charges, obligations and liabilities incurred or undertaken by the Corporation in or in connection with the performance of its functions, or the exercise of its powers, under this Act or a State Act;
- (b) in payment of any remuneration or allowances, or reimbursement of expenses, payable under this Act; and
- (c) in making any other payments that the Corporation is authorized or required to make under this Act or a State Act.

Liability to taxation

47. (1) The Corporation is subject to taxation (other than income tax) under the laws of the Commonwealth.

(2) Subject to sub-section (3), the Corporation is not subject to taxation under a law of a State or Territory.

(3) The regulations may provide that sub-section (2) does not apply in relation to taxation under a specified law.

Application to Corporation of Division 2 of Part XI of Audit Act

48. (1) It is hereby declared that the Corporation is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

(2) The application to and in relation to the Corporation of Division 2 of Part XI of the *Audit Act 1901* is subject to the following modifications:

- (a) the reference in sub-section 63D (1) of that Act to an approved bank or approved banks shall be read as including a reference to the Reserve Bank of Australia;
- (b) sub-section 63H (1) of that Act is omitted and the following sub-sections are substituted:

“(1) The authority shall, by 30 June in the year 1981 and in each succeeding year, prepare and submit to the appropriate Minister a report of its operations during the year that ended on the preceding 31 December, together with financial statements in respect of that year in such form as the Minister administering this Act approves.

“(1A) The report shall set out all directions given by the appropriate Minister to the authority during the year to which the report relates.”;

- (c) for the purposes of the operation of section 63H of that Act, as modified by paragraph (b) of this sub-section, the year ending on 31 December 1980 shall be deemed to include the period commencing on the date on which this Act receives the Royal Assent and ending on the commencement of that year.

PART VIII—MISCELLANEOUS

49. (1) It is hereby declared to be the intention of the Parliament that the operation of a provision of a law of a State that confers a power, right or function, or imposes a liability or duty, that is also conferred or imposed by this Act is not prevented or limited by reason of the provisions made by this Act. Operation of State laws

(2) It is also declared to be the intention of the Parliament that, except as otherwise directed by the Minister, the Corporation or the Advisory Committee shall have and be subject to powers, rights, functions, liabilities and duties conferred or imposed on it by a State Act that are additional to those conferred or imposed by this Act.

50. (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 any State Act, relating to canned fruits of any season produced in a Territory 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 sub-section (1).

(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 sub-section (1) 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 sub-section (4).

(4) A person shall not furnish to the Corporation information that is false or misleading in a material particular.
Penalty: \$500.

Delegation **51.** (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.

(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.

Proper care to be taken of canned fruits owned by Corporation **52.** A person having canned fruits the property of the Corporation in his possession, or under his care, in a Territory 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.

Penalty: \$200.

Access to premises **53.** (1) An authorized person may, with the consent of the occupier of any premises in a Territory, 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 in a Territory canned fruits of any season; or

(b) there are on any premises in a Territory 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 purpose of exercising the functions of an authorized person under this section.

(3) If, on an application under sub-section (2), 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 sub-section (2); 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 of 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 sub-section (3) shall specify a date after which the warrant ceases to have effect.

(5) Where an authorized person has entered any premises in pursuance of sub-section (1) or in pursuance of a warrant granted under sub-section (3), 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 sub-section (3) or in pursuance of sub-section (5).

Penalty: \$500.

(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 sub-section (2);
- (b) to take possession of and remove canned fruits to which a requirement under sub-section 13 (2) relates; and
- (c) to take extracts from and make copies of books, documents or papers referred to in sub-section (2).

(8) On the taking possession, under sub-section (7), 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 sub-section 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.

54. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to this Act and, in particular, providing for penalties not exceeding a fine of \$200 for offences against the regulations. Regulations

PART IX—REPEAL OF CERTAIN ACTS AND CONSEQUENT TRANSITIONAL PROVISIONS

55. In this Part—

“Board” means the Australian Canned Fruits Board established by the *Canned Fruits Export Marketing Act 1963*;

“commencing date” means the date of commencement of this Part.

Interpretation

Repeal of
certain Acts

56. (1) The Acts set out in the Schedule are repealed.

(2) Notwithstanding the repeals effected by sub-section (1), the *Canned Fruits Export Charges Act 1926*, as in force immediately before the commencing date, continues to apply in relation to canned fruits, within the meaning of that Act, exported from Australia before the commencing date.

Rights, &c.,
of Board to
vest in
Corporation,
&c.

57. (1) Upon the commencing date—

- (a) any rights, property or assets that, immediately before that date were vested in the Board are, by force of this sub-section, vested in the Corporation; and
- (b) the Corporation becomes, by force of this sub-section, liable to pay and discharge any debts, liabilities or obligations of the Board that existed immediately before that date.

(2) The reference in sub-section (1) to rights, property or assets that, immediately before the commencing date, were vested in the Board shall be read as including a reference to—

- (a) any moneys and investments that, immediately before the commencing date, constituted the Canned Fruits Export Fund continued in existence under the *Canned Fruits Export Marketing Act 1963*; and
- (b) any moneys and investments that, immediately before the commencing date, constituted the Canned Fruits Excise Fund established under the *Canned Fruits Export Marketing Act 1963*.

(3) An arrangement or contract entered into by or on behalf of the Board as a party and in force immediately before the commencing date continues in force notwithstanding the repeal of the Acts specified in the Schedule, but that arrangement or contract has effect, on and after the commencing date, as if—

- (a) the Corporation were substituted for the Board as a party to the arrangement or contract; and
- (b) any reference in the arrangement or contract to the Board were (except in relation to a matter that occurred before that date) a reference to the Corporation.

(4) Where, immediately before the commencing date, proceedings to which the Board was a party were pending in any court, the Corporation is, by force of this sub-section, substituted for the Board as a party to the proceedings and has the same rights in the proceedings as the party for which it is substituted.

Instrument,
&c., not
liable to
stamp duty
or other tax

58. An instrument or document that the Secretary to the Department of Primary Industry or an officer of that Department authorized by him in writing for the purposes of this section certifies to have been made,

executed or given by reason of, or for a purpose connected with or arising out of, the operation of this Part is not liable to stamp duty or other tax under a law of the Commonwealth or of a State or Territory.

59. The moneys of the Corporation may be applied in payment or discharge of the debts, liabilities or obligations referred to in paragraph 57 (1) (b). Application of moneys of Corporation

60. There shall be paid to the Corporation out of the Consolidated Revenue Fund, which is appropriated accordingly, an amount equal to the aggregate of the following amounts: Moneys to be paid to Corporation in respect of charge and excise

- (a) any amount of charge received by the Commonwealth, before the commencing date, under the *Canned Fruits Export Charges Act* 1926 that has not been taken into account in making a payment to the Board under sub-section 25 (3) of the *Canned Fruits Export Marketing Act* 1963;
- (b) any amount of charge received by the Commonwealth after the commencing date under the *Canned Fruits Export Charges Act* 1926 as continued in force by sub-section 56 (2);
- (c) any amount of excise received by the Commonwealth, before the commencing date, under item 22 in the Schedule to the *Excise Tariff* 1921 that has not been taken into account in making a payment to the Board under sub-section 27 (2) of the *Canned Fruits Export Marketing Act* 1963;
- (d) any amount of excise received by the Commonwealth after the commencing date under Part VIIB of the *Excise Act* 1901.

61. (1) A person who, immediately before the commencing date, was employed by the Board shall, by virtue of this sub-section, be deemed to be, on that date, engaged as an employee of the Corporation under section 32. Employees of Board

(2) Terms and conditions of employment applicable to a person referred to in sub-section (1) immediately before the commencing date shall, by virtue of this sub-section, be deemed to be terms and conditions of employment determined under sub-section 32 (2), but those terms and conditions may, at any time after the commencing date, be varied under that sub-section.

62. (1) The Corporation shall, by 30 June 1980, prepare and submit to the Minister a report of the operations of the Board during the year that commenced on 1 January 1979 and ended immediately before the commencing date (in sub-section (2) referred to as “the final year”), together with financial statements in respect of that year in such form as the Minister for Finance approves. Report of operations of Board

(2) Before submitting financial statements to the Minister under sub-section (1), the Corporation shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether, in his opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records, and, in his opinion, show fairly the financial transactions and the state of the affairs of the Board;
- (c) whether, in his opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Board during the final year were in accordance with the *Canned Fruits Export Marketing Act 1963*; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Minister shall cause copies of the report and financial statements together with a copy of the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

(4) The persons who, immediately before the commencing date, were members of the Board shall furnish to the Corporation such information as is necessary to enable the Corporation to prepare the report and financial statements.

SCHEDULE

Section 56

ACTS REPEALED

Canned Fruits Export Charges Act 1926
Canned Fruits Export Charges Act 1929
Canned Fruits Export Charges Act 1935
Canned Fruits Export Charges Act 1938
Canned Fruits Export Charges Act 1952
Canned Fruits Export Charges Act 1963
Canned Fruits Export Charges Act 1965
Canned Fruits Export Charges Act 1966
Canned Fruits Export Marketing Act 1963
Canned Fruits Export Marketing Act 1966
Canned Fruits Export Marketing Act 1968
Canned Fruits Export Marketing Act 1970

NOTE

1. Act No. 160, 1979; assented to 29 November 1979.