



Canned Fruits Marketing Amendment Act 1984

No. 148 of 1984

An Act to amend the *Canned Fruits Marketing Act 1979*

[Assented to 25 October 1984]

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

Short title, &c.

1. (1) This Act may be cited as the *Canned Fruits Marketing Amendment Act 1984*.

(2) The *Canned Fruits Marketing Act 1979*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on 1 January 1985.

Interpretation

3. Section 3 of the Principal Act is amended—

(a) by inserting before the definition of “Advisory Committee” in sub-section (1) the following definition:

“‘acting Chairperson’ means a person acting as Chairperson by virtue of an appointment under paragraph 24 (1) (b);”;

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- (b) by inserting after the definition of “Advisory Committee” in sub-section (1) the following definition:
 - “ ‘annual operational plan’ means a plan developed by the Corporation and approved by the Minister in accordance with Division 2 of Part IVA;”;
- (c) by omitting from sub-section (1) the definition of “Chairman” and substituting the following definitions:
 - “ ‘Chairperson’ means the Chairperson of the Corporation;
 - ‘corporate plan’ means the plan developed by the Corporation and approved by the Minister in accordance with Division 1 of Part IVA;”;
- (d) by inserting after the definition of “Corporation” in sub-section (1) the following definition:
 - “ ‘Deputy Chairperson’ means the Deputy Chairperson of the Corporation;”;
- (e) by inserting after the definition of “equalization pool” in sub-section (1) the following definition:
 - “ ‘insurance account’ means the insurance account maintained under section 11A;”;
- (f) by omitting “4” from the definition of “season” in sub-section (1) and substituting “7”;
- (g) by omitting from paragraph (3) (a) “and”;
- (h) by omitting paragraph (3) (b) and substituting the following paragraphs:
 - “(b) where the Corporation was fully or partly insured against relevant risks (within the meaning of section 11) in respect of the canned fruits, an amount calculated in respect of the canned fruits at the insurance reimbursement rate in force under sub-section 11A (3), or under the corresponding provision of a State Act, at the time of that disposal; and
 - (c) where the Corporation was not fully insured against those risks, an amount calculated in respect of the canned fruits at the insurance account reimbursement rate in force under sub-section 11A (6), or under the corresponding provision of a State Act, at the time of that disposal.”;
- (j) by inserting after sub-section (4) the following sub-section:
 - “(4A) For the purposes of sub-section (3), any money paid out of the insurance account in accordance with paragraph 11A (7) (a) in respect of canned fruits shall be deemed to be proceeds of the disposal of those canned fruits.”; and
- (k) by adding at the end thereof the following sub-section:
 - “(7) For the purposes of this Act—
 - (a) the Chairperson may be referred to as the Chairman or the Chairwoman, as the case requires;

- (b) the Deputy Chairperson may be referred to as the Deputy Chairman or the Deputy Chairwoman, as the case requires; and
- (c) the Chairperson of the Advisory Committee may be referred to as the Chairman of the Advisory Committee or the Chairwoman of the Advisory Committee, as the case requires.”.

Powers of Corporation

4. Section 10 of the Principal Act is amended—

- (a) by inserting after sub-section (1) the following sub-section:

“(1A) To the extent that it is practicable to do so, the Corporation shall endeavour to ensure that the exercise, at any time, of the powers conferred on it by this Act is consistent with, and designed to give effect to—

- (a) where the corporate plan is in force at that time—the provisions of that plan; and
- (b) where an annual operational plan is in force at that time—the provisions of that annual operational plan.”; and

- (b) by omitting sub-section (3).

5. After section 11 of the Principal Act the following section is inserted:

Insurance

“11A. (1) In this section, ‘relevant risk’ means the risk of loss or deterioration of, or damage to, canned fruits acquired by the Corporation under this Act.

“(2) The Corporation may insure against relevant risks.

“(3) The cost to the Corporation of the insurance permitted by sub-section (2) shall be met out of 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.

“(4) So long as the Corporation is not fully insured by policies of insurance against all relevant risks, the Corporation shall maintain an account, to be known as the ‘insurance account’, for the purpose of making provision against relevant risks so far as they are not covered by insurance.

“(5) The Corporation shall pay into the insurance account such amounts as, in the opinion of the Corporation, ensure that the amount from time to time standing to the credit of the insurance account is sufficient for the purpose of making adequate provision against relevant risks so far as those risks are not covered by insurance.

“(6) Payments by the Corporation into the insurance account in accordance with sub-section (5) shall be reimbursed, or paid, out of the proceeds of the disposal by the Corporation of canned fruits, being canned fruits against relevant risks in respect of which the Corporation was not fully

insured, and, for that purpose, the Corporation shall, from time to time, fix an insurance account reimbursement rate.

- “(7) Money in the insurance account may be applied only in payment of—
- (a) where the Corporation suffers loss, not fully covered by insurance, by reason of a relevant risk—such amount in respect of that loss as the Corporation considers appropriate having regard to the provisions made under this section in lieu of insurance against that risk; and
 - (b) such amounts as, in the opinion of the Corporation, are appropriate to make provision for expenses or other liabilities that have been or will be incurred by the Corporation in maintaining the insurance account or otherwise in or in connection with making provision against relevant risks so far as they are not covered by insurance.
- “(8) The Minister may, by determination in writing—
- (a) set guidelines for the purpose of the exercise by the Corporation of its powers under this section; and
 - (b) revoke or vary guidelines set for that purpose or set new guidelines for that purpose,

and shall give the Corporation a copy of each determination made under this sub-section.

“(9) The Corporation shall not exercise its powers under this section otherwise than in accordance with any guidelines having effect from time to time under sub-section (8).”.

Repeal of section 16

6. Section 16 of the Principal Act is repealed.

7. After section 17 of the Principal Act the following section is inserted:

Excess proceeds

“17A. Where—

- (a) the Corporation has determined a minimum price for which particular canned fruits are to be disposed of (whether or not the relevant determination applies to other canned fruits); and
- (b) those canned fruits are disposed of by a marketing agent at a price higher than the price so determined,

then, unless the Corporation, by instrument in writing, otherwise directs, the amount of the difference between the amount of the proceeds of the disposal of those canned fruits by the marketing agent and the amount that would have been the amount of the proceeds of their disposal if they had been disposed of by the marketing agent at the price determined by the Corporation—

- (c) shall be disposed of in accordance with arrangements between the marketing agent and the person to whom the amount payable by the Corporation under section 17 or 18 in respect of those relevant canned fruits is to be paid in accordance with section 19; and

(d) for the purposes of sub-section 3 (3), shall not be taken to be part of the proceeds of the disposal of those canned fruits.”.

8. After Part IV of the Principal Act the following Part is inserted:

“PART IVA—DEVELOPMENT OF CORPORATE AND ANNUAL OPERATIONAL PLANS

“Division 1—Corporate Plan

Corporation to develop corporate plan

“21A. (1) The Corporation shall develop, for the period of 3 years commencing on 1 January 1985, for the purposes of the more effective performance by the Corporation of its functions, a plan defining the principal objectives of the Corporation and giving a broad outline of the strategies to be pursued by the Corporation in achieving those objectives.

“(2) The plan prepared in accordance with this Division shall be prepared in written form and, in addition to the matters referred to in sub-section (1), shall contain a statement assessing, for the period to which the plan relates, the market outlook and the economic outlook for the canned fruits industry in Australia.

Approval of corporate plan

“21B. (1) The plan prepared in accordance with this Division shall be submitted to the Minister for approval before 1 April 1985 and shall not come into force until the date of its approval by the Minister.

“(2) Where a plan is submitted to the Minister in accordance with sub-section (1) and the Minister is of the opinion that, in the interests of the canned fruits industry in Australia, or of a particular sector of that industry, the plan should be revised in some regard, the Minister may request the Corporation to revise the plan appropriately and shall include in such a request a statement setting out the reasons for making the request.

“(3) Upon the Corporation receiving a request under sub-section (2), it shall consider the request and statement of reasons and shall make such revision of the plan as it considers to be appropriate and shall then resubmit the plan, as so revised, to the Minister for approval.

Variation of corporate plan by Corporation

“21C. (1) The corporate plan, whether or not it has come into force, may be varied by the Corporation with the approval of the Minister.

“(2) When requesting the Minister’s approval for a variation of a corporate plan, the Corporation shall provide the Minister with a statement of its reasons for making the request and shall provide the Minister with such other information as the Minister requests.

“(3) The Minister may, after considering the request and statement of reasons and such other information (if any) as has been provided at the request of the Minister, approve or reject the requested variation or may approve such lesser variation as the Minister thinks fit.

Variation of corporate plan at request of Minister

“21D. (1) The corporate plan, whether or not it has come into force, may be varied by the Corporation at the request, and with the approval, of the Minister.

“(2) When requesting the Corporation to vary a corporate plan, the Minister shall include in the request a statement setting out reasons for making the request.

“(3) Upon the Corporation receiving a request under sub-section (2) to vary a corporate plan, it shall consider the request and statement of reasons and shall make, and submit to the Minister for the approval of the Minister, such variation of the plan as it considers to be appropriate.

Date of commencement of corporate plan as varied

“21E. Where a variation of a corporate plan is approved by the Minister in accordance with section 21C or 21D after the plan has come into force, the plan as so varied shall continue in force on and after the date on which the variation is so approved as if the plan had originally been approved by the Minister as so varied.

“Division 2—Annual Operational Plans

Corporation to develop annual operational plans

“21F. (1) The Corporation shall develop, and prepare in written form, for each successive period of one year, a further plan setting out particulars of the strategies to be pursued by the Corporation, for the duration of each such period, in giving effect to the corporate plan.

“(2) The first plan prepared in accordance with this Division shall be expressed to relate to the period of one year commencing on 1 January 1985 and each subsequent plan shall be expressed to relate to the period of one year commencing on the expiration of the period to which the immediately preceding annual operational plan relates.

Approval of annual operational plans

“21G. (1) The first plan prepared in accordance with this Division shall be submitted to the Minister for approval before 1 April 1985 and a later such plan shall be so submitted at least one month prior to the intended date of commencement of the period to which the plan relates.

“(2) A plan prepared in accordance with this Division shall not come into force until—

- (a) the date of its approval by the Minister; or

(b) the date of commencement of the period to which it relates, whichever is the later.

“(3) Where a plan is submitted to the Minister in accordance with sub-section (1) and the Minister is of the opinion that the plan is inconsistent with the provisions of the corporate plan or the intended corporate plan, the Minister may request the Corporation to revise the first-mentioned plan appropriately and shall include in the request a statement setting out the reasons for making the request.

“(4) Upon the Corporation receiving a request under sub-section (3), it shall consider the request and statement of reasons and shall make such revision of the plan as it considers to be appropriate and shall then re-submit the plan, as so revised, to the Minister for approval.

“(5) Where, if a proposed variation of the corporate plan were to be approved by the Minister, an annual operational plan would not be consistent with the provisions of the corporate plan, the Corporation shall, at the time of submitting to the Minister for approval the variation of the corporate plan, also submit to the Minister for approval such a variation of the annual operational plan as it considers to be appropriate.

“(6) The Minister shall approve an annual operational plan submitted under sub-section (1) or re-submitted under sub-section (4), or a variation of such a plan submitted under sub-section (5), unless the Minister is of the opinion that it is inconsistent with the provisions of the corporate plan.

“(7) Where a variation of an annual operational plan is approved by the Minister in accordance with sub-section (6) after the plan has come into force, the plan as so varied shall continue in force on and after the date on which the variation is so approved as if the plan had originally been approved by the Minister as so varied.”

Membership of Corporation

9. (1) Section 22 of the Principal Act is amended—

(a) by omitting paragraph (1) (a) and substituting the following paragraphs:

“(a) a Chairperson;
(aa) a Deputy Chairperson;”;

(b) by omitting paragraph (1) (e) and substituting the following paragraph:

“(e) 2 other members.”; and

(c) by omitting sub-section (5) and substituting the following sub-section:

“(5) The Chairperson, the Deputy Chairperson and the members referred to in paragraph (1) (e) shall be persons qualified for appointment by reason of their experience in commerce, finance or economics.”

(2) The person who was, immediately before the commencement of this Act, the Chairman of the Australian Canned Fruits Corporation becomes, on the commencement of this Act, the Chairperson of the Australian Canned Fruits Corporation as if the person had been appointed as the Chairperson under the Principal Act as amended by this Act and holds office, subject to the Principal Act as amended by this Act, for the remainder of the period of his or her appointment under the Principal Act.

(3) A person who held office as a member of the Australian Canned Fruits Corporation other than the Chairman immediately before the commencement of this Act continues to hold office as a member as if the person had been appointed as a member under the Principal Act as amended by this Act, and, if the person was appointed for a specified period, holds office, subject to the Principal Act as amended by this Act, for the remainder of the period of the appointment under the Principal Act.

(4) Notwithstanding sub-section 23 (1) of the Principal Act, the first Deputy Chairperson shall be appointed for such period, not exceeding 3 years, as is specified in the instrument of appointment of that Deputy Chairperson.

10. Section 24 of the Principal Act is repealed and the following section is substituted:

Acting Chairperson

“24. (1) Where there is no Chairperson or the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of Chairperson—

- (a) the Deputy Chairperson shall act as Chairperson; or
- (b) if there is no Deputy Chairperson or the Deputy Chairperson is absent from duty or from Australia or is, for any other reason, unable to act as Chairperson, the Minister may appoint a person to act as Chairperson, but any such appointment ceases to have effect if—
 - (i) where there is no Deputy Chairperson—a person is appointed as Deputy Chairperson; or
 - (ii) where the Deputy Chairperson is absent from duty or from Australia or is, for any other reason, unable to act as Chairperson—the Deputy Chairperson ceases to be so absent or becomes able to act as Chairperson.

“(2) A person shall not be appointed to act as Chairperson unless the person is qualified, in accordance with sub-section 22 (5), to be appointed as Chairperson.

“(3) The appointment of a person under paragraph (1) (b) ceases to have effect if the person resigns the appointment by writing signed by the person delivered to the Minister.

“(4) While a person is acting as Chairperson that person has and may exercise all the powers, and shall perform all the functions and duties, of the Chairperson under this Act.

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

Meetings of Corporation

11. Section 29 of the Principal Act is amended by omitting sub-section (5) and substituting the following sub-sections:

“(5) If—

- (a) the Chairperson is not present at a meeting of the Corporation; and
- (b) neither the Deputy Chairperson nor another person is acting as Chairperson,

then—

- (c) if the Deputy Chairperson is present at the meeting—the Deputy Chairperson shall preside at the meeting; or
- (d) if the Deputy Chairperson is not present at the meeting—the members present shall elect one of their number to preside at the meeting.

“(5A) If—

- (a) the Deputy Chairperson or another person is acting as Chairperson; and
- (b) the person so acting is not present at a meeting of the Corporation,

then the members present shall elect one of their number to preside at the meeting.”.

Interpretation

12. Section 35 of the Principal Act is amended by inserting “or (c)” after “paragraph 38 (1) (b)”.

Membership of Advisory Committee

13. (1) Section 38 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) the Deputy Chairperson of the Corporation, who shall be the Chairperson of the Advisory Committee;”;

- (b) by adding at the end of sub-section (1) the following word and paragraph:

“; and (c) one member to represent the growers of apricots, peaches and pears used in the production of canned fruits.”;

(c) by omitting sub-section (3) and substituting the following sub-section:

“(3) The member referred to in paragraph (1) (c)—

(a) shall be appointed by the Minister from among persons nominated by the Australian Canning Fruitgrowers’ Association; and

(b) subject to sub-section (4), shall be appointed for a period of 3 years but is eligible for re-appointment.”; and

(d) by inserting in sub-section (4) “or (3) (a), as the case requires” after “paragraph (2) (a)”.

(2) Notwithstanding the amendment made by paragraph (1) (a), until the appointment of the first Deputy Chairperson of the Corporation, the member of the Corporation referred to in paragraph 22 (1) (e), or, if there are 2 such members, the first of those members to have been appointed a member, shall be a member, and the Chairperson, of the Advisory Committee.

Repeal of section 42

14. Section 42 of the Principal Act is repealed.

Borrowing

15. Section 45 of the Principal Act is amended—

(a) by omitting from sub-section (1) “Treasurer” and substituting “Minister”; and

(b) by inserting after sub-section (1) the following sub-section:

“(1A) The powers of the Corporation under sub-section (1) extend to obtaining finance by issuing, discounting or otherwise dealing with promissory notes or other securities.”.

16. After section 45 of the Principal Act the following section is inserted:

Futures contracts

“45A. (1) Subject to sub-section (4), the Corporation may, for the purpose of the performance of its functions or the exercise of its powers under this Act or a State Act, in relation to—

(a) the sale or proposed sale of canned fruits by the Corporation; or

(b) a borrowing or raising of money by the Corporation or a proposed borrowing or raising of money by the Corporation (including a borrowing or raising of money by the Corporation by dealing with securities),

enter into and deal with futures contracts for hedging purposes at a futures market at a place in Australia.

“(2) Subject to sub-section (4), the Corporation may, for the purpose of the performance of its functions or the exercise of its powers under this Act or a State Act in relation to—

(a) the sale or proposed sale of canned fruits by the Corporation; or

(b) a borrowing or raising of money by the Corporation or a proposed borrowing or raising of money by the Corporation (including a

borrowing or raising of money by the Corporation by dealing with securities),
enter into and deal with futures contracts for hedging purposes at a futures market at a place outside Australia.

“(3) The Minister may, by determination in writing—

- (a) set guidelines for the purpose of the exercise by the Corporation of its powers under sub-sections (1) and (2); and
- (b) revoke or vary guidelines set for that purpose or set new guidelines for that purpose,

and shall give to the Corporation a copy of each determination made under this sub-section.

“(4) The Corporation shall not enter into or deal with futures contracts otherwise than in accordance with any guidelines having effect from time to time under sub-section (3).

“(5) A futures contract shall be taken to be entered into or dealt with for hedging purposes if, and only if, the contract is entered into or dealt with—

- (a) for the purpose of minimizing the risks of variations in the return for canned fruits under a contract for the sale of canned fruits that has been, or is to be, entered into by the Corporation; or
- (b) for the purpose of minimizing the risks of variations in the costs of a borrowing or raising of money by the Corporation or a proposed borrowing or raising of money by the Corporation (including a borrowing or raising of money or a proposed borrowing or raising of money by dealing with securities).

“(6) In this section—

‘futures contracts’ means a currency futures contract or a financial futures contract;

‘futures market’ means a market, exchange or other place at which futures contracts are regularly made or traded.”.

Application of Money of Corporation

17. Section 46 of the Principal Act is amended—

- (a) by omitting “to section 63E of the *Audit Act 1901* and”; and
- (b) by adding at the end thereof the following sub-sections:

“(2) Money of the Corporation not immediately required for the purposes of the Corporation and money in the insurance account may be invested—

- (a) in securities of, or guaranteed by, the Commonwealth or a State;
- (b) on deposit with an approved bank; or
- (c) in any other manner approved by the Treasurer.

“(3) In sub-section (2) ‘approved bank’ means a trading bank as defined in sub-section 5 (1) of the *Banking Act 1959* or another bank declared by the Treasurer or a person authorized by the Treasurer to give approvals under this section to be an approved bank in relation to the Corporation.”.

Corporation may require information

18. Section 50 of the Principal Act is amended—

(a) by inserting after sub-section (2):

“Penalty for contravention of this sub-section: \$1,000.”; and

(b) by omitting from sub-section (4) “Penalty: \$500.” and substituting:

“Penalty for contravention of this sub-section: \$1,000 or imprisonment for 6 months, or both.”.

Penalties

19. The Principal Act is amended as set out in Schedule 1.

Consequential and formal amendments

20. The Principal Act is amended as set out in Schedule 2.

SCHEDULE 1

Section 19

AMENDMENTS RELATING TO PENALTIES

Provision amended	Omit—	Substitute—
Sub-section 13 (3)	(a) Penalty: \$1,000	Penalty for contravention of this sub-section: \$2,000
	(b) \$2,000	\$10,000
Sub-section 13 (5)	Penalty: \$500	Penalty for contravention of this sub-section: \$1,000
Sub-section 14 (2)	(a) \$1,000	\$2,000
	(b) \$2,000	\$10,000
Sub-section 15 (1)	(a) \$1,000	\$2,000
	(b) \$2,000	\$10,000
Section 52	\$200	\$500
Sub-section 53 (6)	\$500	\$1,000 or imprisonment for 6 months, or both
Section 54	\$200	\$500

SCHEDULE 2

Section 20

CONSEQUENTIAL AND FORMAL AMENDMENTS

Provision amended	Omit—	Substitute—
Section 6	two	2
Paragraph 13 (2) (a)	(a) him (b) his possession	the canner the possession of the canner
Paragraph 13 (2) (b)	him	the canner
Sub-section 13 (3)	him	the canner
Paragraph 22 (1) (b)	five	5
Paragraph 22 (1) (c)	three	3
Sub-section 22 (7)	his	the
Sub-section 23 (3)	(a) his appointment (b) his place	appointment of the member place of the member
Sub-section 25 (1)	he	the member
Sub-section 25 (4)	(a) he (wherever occurring) (b) his attendance (c) his engagement	the member the attendance of the member the engagement of the member
Section 26	(a) his office (b) him	the office of member or deputy of a member, as the case may be, the member or deputy, as the case may be,
Paragraph 27 (2) (a)	his (wherever occurring)	the member's
Sub-section 28 (1)	(a) he	the member

SCHEDULE 2—continued

Provision amended	Omit—	Substitute—
	(b) his (wherever occurring)	the member's
Sub-section 28 (4) . . .	Chairman	Chairperson
Sub-section 29 (2) . . .	Chairman	Chairperson
Sub-section 29 (4) . . .	(a) Chairman (b) he	Chairperson he or she
Sub-section 29 (9) . . .	his attendance	the attendance of the member
Sub-section 29 (10) . . .	Chairman	Chairperson
Sub-section 31 (2) . . .	Chairman	Chairperson
Paragraph 33 (a) . . .	(a) he (b) his	the employee the employee's
Paragraph 33 (b) . . .	his service	the service of the member
Paragraph 38 (1) (b) . . .	five	5
Sub-section 38 (4) . . .	(a) his (b) his place	the the place of the member
Sub-section 39 (1) . . .	he	the appointed member
Sub-section 39 (4) . . .	(a) he (wherever occurring) (b) his attendance	the appointed member the attendance of the appointed member
Sub-section 40 (2) . . .	Chairman	Chairperson
Sub-section 40 (4) . . .	Chairman	Chairperson
Sub-section 40 (5) . . .	Chairman	Chairperson
Section 41	(a) his office	the office of appointed member
	(b) him	the appointed member
Sub-section 50 (2) . . .	(a) he (b) him	the person the person
Sub-section 50 (3) . . .	(a) he (wherever occurring) (b) him (wherever occur- ring)	the person the person
Sub-section 53 (3) . . .	he	the authorized person
Sub-section 53 (9) . . .	Chairman	Chairperson

NOTE

1. No. 160, 1979, as amended. For previous amendments, see No. 19, 1982.