

**CANNED FRUITS MARKETING (AMENDMENT) ACT, 1984,
No. 146**

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 146, 1984.

An Act to amend the Canned Fruits Marketing Act, 1979, to make further provision with respect to the scheme for the marketing of certain canned fruits under that Act, and for related purposes. [Assented to, 4th December, 1984.]

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

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

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Schedules 1–4, and section 5 in its application to those Schedules—

(a) shall commence on 1st January, 1985; or

(b) in the event that the date of assent to this Act is later than 1st January, 1985—shall be deemed to have commenced on 1st January, 1985.

Principal Act.

3. The Canned Fruits Marketing Act, 1979, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

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SCHEDULE 3.—INSERTION OF PART IIA INTO THE PRINCIPAL ACT.

SCHEDULE 4.—AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

SCHEDULE 5.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION.

Amendment of Act No. 195, 1979.

5. The Principal Act is amended in the manner set forth in Schedules 1-5.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

- (1) (a) Section 3 (1), definition of "annual operational plan"—
After the definition of "Advisory Committee", insert:—
"annual operational plan" means a plan developed by the
Corporation and approved by the Commonwealth
Minister in accordance with Division 2 of Part IIA;
- (b) Section 3 (1), definition of "corporate plan"—
After the definition of "Commonwealth Minister", insert:—
"corporate plan" means the plan developed by the Corpora-
tion and approved by the Commonwealth Minister in
accordance with Division 1 of Part IIA;
- (c) Section 3 (1), definition of "insurance account"—
After the definitions of "equalization market" and "equalization
pool", insert:—
"insurance account" means the insurance account maintained
under section 6A;
- (d) Section 3 (1), definition of "season"—
Omit "4", insert instead "7".

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SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

(2) (a) Section 3 (3) (a)—

Omit “and”.

(b) Section 3 (3) (b), (c)—

Omit section 3 (3) (b), insert instead:—

(b) where the Corporation was fully or partly insured against relevant risks in respect of the canned fruits—an amount calculated in respect of the canned fruits at the insurance reimbursement rate in force under section 6A (3), or under the corresponding provision of the Commonwealth Act or 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 section 6A (6), or under the corresponding provision of the Commonwealth Act or of a State Act, at the time of that disposal.

(3) Section 3 (4)—

Omit the subsection, insert instead:—

(4) For the purposes of subsection (3)—

(a) “relevant risk” has the meaning ascribed to it in section 6A;

(b) any money 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; and

(c) any money paid out of the insurance account in accordance with section 6A (7) (a) in respect of canned fruits shall be deemed to be proceeds of the disposal of those canned fruits.

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SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

(1) (a) Section 5 (1A)—

After section 5 (1), insert:—

(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.

(b) Section 5 (3)—

Omit the subsection.

(2) Section 5A—

After section 5, insert:—

Futures contracts.

5A. (1) Subject to subsection (4), the Corporation may, for the purpose of the performance of its functions or the exercise of its powers under this Act, the Commonwealth 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.

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(2) Subject to subsection (4), the Corporation may, for the purpose of the performance of its functions or the exercise of its powers under this Act, the Commonwealth 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 Commonwealth Minister may, by determination in writing—

- (a) set guidelines for the purpose of the exercise by the Corporation of its powers under subsections (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 subsection.

(4) The Corporation shall not enter into or deal with any futures contracts otherwise than in accordance with any guidelines having effect from time to time under subsection (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

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(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 contract” 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.

(3) Section 6A—

After section 6, insert:—

Insurance.

6A. (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 subsection (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.

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SCHEDULE 2—*continued*.

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued*.

(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 subsection (5) shall be reimbursed, or paid, out of the proceeds of the disposal by the Corporation of canned fruits, being canned fruits in respect of which the Corporation was not fully insured against relevant risks, 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 Commonwealth 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 to the Corporation a copy of each determination made under this subsection.

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SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(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 subsection (8).

(4) (a) Section 8 (3)—

Omit "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.", insert instead "Penalty for a contravention of this subsection: \$2,000 in the case of a canner not being a body corporate, or \$10,000 in the case of a canner being a body corporate."

(b) Section 8 (5)—

Omit "Penalty: \$500.", insert instead "Penalty for a contravention of this subsection: \$1,000."

(5) Section 9 (2)—

Omit "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.", insert instead "Penalty: \$2,000 in the case of a canner not being a body corporate, or \$10,000 in the case of a canner being a body corporate."

(6) Section 10 (1)—

Omit "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.", insert instead "Penalty: \$2,000 in the case of a canner not being a body corporate, or \$10,000 in the case of a canner being a body corporate."

(7) Section 11—

Omit the section.

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(8) Section 13A—

After section 13, insert:—

Excess proceeds.

13A. 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 12 or 13 in respect of those relevant canned fruits is to be paid in accordance with section 14; and
 - (d) for the purposes of section 3 (3), shall not be taken to be part of the proceeds of the disposal of those canned fruits.
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SCHEDULE 3.

(Sec. 5.)

INSERTION OF PART IIA INTO THE PRINCIPAL ACT.

Part IIA—

After Part II, insert:—

PART IIA.

DEVELOPMENT OF CORPORATE AND ANNUAL OPERATIONAL PLANS.

DIVISION 1.—*Corporate Plan.*

Corporation to develop corporate plan.

16A. (1) The Corporation shall develop, for the period of 3 years commencing on 1st 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 subsection (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.

16B. (1) The plan prepared in accordance with this Division shall be submitted to the Commonwealth Minister for approval before 1st April, 1985, and shall not come into force until the date of its approval by the Commonwealth Minister.

(2) Where a plan is submitted to the Commonwealth Minister in accordance with subsection (1) and the Commonwealth 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

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SCHEDULE 3—*continued.*INSERTION OF PART IIA INTO THE PRINCIPAL ACT—*continued.*

plan should be revised in some regard, the Commonwealth 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) On receiving a request under subsection (2), the Corporation 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 Commonwealth Minister for approval.

Variation of corporate plan by Corporation.

16c. (1) The corporate plan, whether or not it has come into force, may be varied by the Corporation with the approval of the Commonwealth Minister.

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

(3) The Commonwealth 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 Commonwealth Minister, approve or reject the requested variation or may approve such lesser variation as the Commonwealth Minister thinks fit.

Variation of corporate plan at request of Commonwealth Minister.

16d. (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 Commonwealth Minister.

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SCHEDULE 3—*continued.***INSERTION OF PART IIA INTO THE PRINCIPAL ACT—*continued.***

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

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

Date of commencement of corporate plan as varied.

16E. Where a variation of a corporate plan is approved by the Commonwealth Minister in accordance with section 16C or 16D 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 Commonwealth Minister as so varied.

DIVISION 2.—*Annual Operational Plans.***Corporation to develop annual operational plans.**

16F. (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 1st 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.

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SCHEDULE 3—*continued*.

INSERTION OF PART IIA INTO THE PRINCIPAL ACT—*continued*.

Approval of annual operational plans.

16G. (1) The first plan prepared in accordance with this Division shall be submitted to the Commonwealth Minister for approval before 1st 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 Commonwealth 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 Commonwealth Minister in accordance with subsection (1) and the Commonwealth Minister is of the opinion that the plan is inconsistent with the provisions of the corporate plan or the intended corporate plan, the Commonwealth Minister may request the Corporation to revise the firstmentioned plan appropriately and shall include in the request a statement setting out the reasons for making the request.

(4) On receiving a request under subsection (3), the Corporation 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 Commonwealth Minister for approval.

(5) Where, if a proposed variation of the corporate plan were to be approved by the Commonwealth 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 Commonwealth Minister for approval the variation of the corporate plan, also submit to the Commonwealth Minister for approval such a variation of the annual operational plan as it considers to be appropriate.

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SCHEDULE 3—*continued.*INSERTION OF PART IIA INTO THE PRINCIPAL ACT—*continued.*

(6) The Commonwealth Minister shall approve an annual operational plan submitted under subsection (1) or re-submitted under subsection (4), or a variation of such a plan submitted under subsection (5), unless the Commonwealth 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 Commonwealth Minister in accordance with subsection (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 Commonwealth Minister as so varied.

SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

(1) (a) Section 17 (2)—

At the end of section 17 (2), insert "Penalty for a contravention of this subsection: \$1,000."

(b) Section 17 (4)—

Omit "Penalty: \$500.", insert instead "Penalty for a contravention of this subsection: \$1,000 or imprisonment for 6 months, or both."

(2) Section 21—

Omit "\$200", insert instead "\$500".

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SCHEDULE 4—*continued.*

AMENDMENTS TO PART III OF THE PRINCIPAL ACT—*continued.*

(3) Section 22 (6)—

Omit "\$500", insert instead "\$1,000 or imprisonment for 6 months, or both".

(4) Section 23—

Omit "\$200", insert instead "\$500".

SCHEDULE 5.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

(1) Section 2—

Omit the section.

(2) (a) Section 8 (2), (3)—

Omit "him" wherever occurring, insert instead "the canner".

(b) Section 8 (2) (a)—

Omit "his possession", insert instead "the possession of the canner".

(3) Section 10 (1)—

Omit "him", insert instead "the canner".

(4) Section 14 (3)—

Omit "him", insert instead "that person".

(5) (a) Section 17 (1), (2), (3)—

Omit "he" wherever occurring, insert instead "the person".

(b) Section 17 (2), (3)—

Omit "him" wherever occurring, insert instead "the person".

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SCHEDULE 5—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

(6) Section 19 (2)—

Omit "Chairman", insert instead "Chairperson".

(7) Section 21—

After "his" wherever occurring, insert ", her or its".

(8) (a) Section 22 (5)—

Omit "he", insert instead "the authorized person".

(b) Section 22 (9)—

Omit "Chairman", insert instead "Chairperson".

(9) Section 22A—

After section 22, insert:—

Proceedings for offences.

22A. Proceedings for an offence against this Act or the regulations made under this Act may be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.
