

**CANNED FRUITS MARKETING ACT, 1979, No. 195**

**New South Wales**



ANNO VICESIMO OCTAVO

**ELIZABETHÆ II REGINÆ**

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**Act No. 195, 1979.**

An Act with respect to a scheme for the marketing of certain  
canned fruits. [Assented to, 21st December, 1979.]

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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 :—

**PART I.**

**PRELIMINARY.**

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|-----------------|---|
| Short title.    | <b>1.</b> This Act may be cited as the "Canned Fruits Marketing Act, 1979".   |
| Arrangement.    | <p><b>2.</b> This Act is divided as follows :</p> <p style="padding-left: 40px;">PART I.—PRELIMINARY—<i>ss.</i> 1–4.</p> <p style="padding-left: 40px;">PART II.—MARKETING OF CANNED FRUITS—<i>ss.</i> 5–16.</p> <p style="padding-left: 40px;">PART III.—MISCELLANEOUS—<i>ss.</i> 17–23.</p>   |
| Interpretation. | <p><b>3.</b> (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—</p> <p style="padding-left: 40px;">"Advisory Committee" means the Australian Canned Fruits Industry Advisory Committee established by the Commonwealth Act;</p> <p style="padding-left: 40px;">"canned fruits" means fruits preserved by sterilisation and enclosed (with or without syrup, water or other liquid) in air-tight containers, being fruits that are or consist of—</p> <p style="padding-left: 80px;">(a) apricots, peaches or pears; or</p> <p style="padding-left: 80px;">(b) a mixture of fruits not less than 55 per cent of which consists of one or more of the fruits specified in paragraph (a),</p> |

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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 a proprietor of a factory at which canned fruits are produced;

"Commonwealth Act" means the Canned Fruits Marketing Act 1979 of the Parliament of the Commonwealth as that Act is amended from time to time;

"Commonwealth Minister" means the Minister of State of the Commonwealth administering the Commonwealth Act, or another Minister of State of the Commonwealth acting for and on behalf of that Minister;

"Corporation" means the Australian Canned Fruits Corporation established by the Commonwealth Act;

"equalization market" and "equalization pool" have the same respective meanings as in the Commonwealth Act;

"marketing agent" means a person who is an agent of the Corporation under an agreement in force under section 7 or under the corresponding provision of the Commonwealth Act or of a State Act;

"premium" has the same meaning as in the Commonwealth Act;

"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 1st January, 1980, and each of the next 4 succeeding periods of 12 months;

"State Act" means an Act of the Parliament of another State relating to the marketing of canned fruits.

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(2) In this Act, a reference to canned fruits of a season shall be construed 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 7, or under the corresponding provision of the Commonwealth Act or 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 11, or under the corresponding provision of the Commonwealth Act or of a State Act, at the time of that disposal.

(4) For the purposes of subsection (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 construed 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

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- (b) a reference to the disposal by the Corporation of canned fruits shall be construed as a reference to such disposal, whether in the equalization market or otherwise.

(6) In this Act, a reference to canned fruits acquired by the Corporation under an Act (whether this Act, the Commonwealth Act or a State Act) shall be construed 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.

4. (1) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that, where any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected.

Act to apply  
subject to  
Common-  
wealth  
Constitution.

(2) If, by reason of the Commonwealth of Australia Constitution Act, a provision of this Act or a notice under a provision of this Act cannot validly apply in relation to any particular canned fruits or kind of canned fruits, that provision or notice shall be construed as intended to operate in relation to all canned fruits to which it purports to apply, being canned fruits in relation to which it can validly apply.

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## PART II.

## MARKETING OF CANNED FRUITS.

Powers of  
Corporation.

5. (1) On or after 1st January, 1980, the Corporation may—

- (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 Commonwealth 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 by regulations in force under the Commonwealth Act for the purposes of the provision of that Act that corresponds to this subsection, 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.

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6. The Commonwealth 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. Directions by Commonwealth Minister.

7. For the purpose of the exercise of its powers under this Act, Agents. 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.

8. (1) On the production of canned fruits of a season by a canner, the canner may set aside, and identify as the property of the Corporation, the canned fruits so produced. Acquisition by Corporation of canned fruits.

(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, not being canned fruits previously set aside under subsection (1); or
- (b) any canned fruits of a season that are produced by him 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 subsection (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.

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(4) On the setting aside by a canner of canned fruits in accordance with subsection (1) or with a requirement under subsection (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 subsection (1) or with a requirement under subsection (2) shall, within 14 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, except in so far as the context or subject-matter otherwise indicates or requires—

“canned fruits” does not include canned fruits in respect of which a certificate has been issued under section 5 (2) of the Canned Fruits Levy Act 1979 of the Parliament of the Commonwealth as that Act is amended from time to time;

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



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**9.** (1) Where the Corporation is of the opinion that canned fruits that—

Canned fruits unfit for human consumption.

- (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,

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 subsection (1), the canner shall set aside, and identify as canned fruits to which a notice under subsection (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.

**10.** (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—

Unauthorised dealings with canned fruits.

- (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 subsection (1), “canned fruits” does not include canned fruits in respect of which a certificate has been issued under section 5 (2) of the Canned Fruits Levy Act 1979 of the Parliament of the Commonwealth as that Act is amended from time to time.

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Insurance  
reimburse-  
ment rate.

**11.** The cost to the Corporation of the insurance required by section 5 (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.

**12.** (1) Where, in respect of a season, an equalization pool is set up and maintained under section 7 of the Commonwealth Act 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 subsection (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 subsection (3).

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

- (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, the Commonwealth Act or 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) among 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 those canned fruits produced by each such canner; and

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(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 9, or the corresponding provision of the Commonwealth Act or of a State Act, relates;

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

**13.** 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 section 12 (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.

**14.** (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 12 or 13 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.

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(3) The same rights (if any) exist against the person receiving an amount paid by the Corporation under section 12 or 13 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 12 or 13 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 12 or 13 in respect of canned fruits is void as against the Corporation.

Person  
entitled to  
payment for  
canned  
fruits  
purchased by  
Corporation.

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

(2) Subject to subsection (3), the amount payable by the Corporation under section 12 or 13 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 12 or 13 in respect of canned fruits is void as against the Corporation.

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**16.** (1) The Corporation is not bound to make a final <sup>Advance</sup> payment in respect of canned fruits acquired by it under this Act <sup>payments.</sup> 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 section 12 (1), until the end of the season during which they are so disposed of, but the Corporation may, with the approval of the Commonwealth 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 9 relates and, if an advance payment is made to a canner in respect of canned fruits that are subsequently made the subject of a notice under section 9, 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 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 subsection (3), the fact that an amount was set off by the Corporation under subsection (2) against that advance payment shall be disregarded.

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## PART III.

## MISCELLANEOUS.

Corporation  
may require  
information.

17. (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 the Commonwealth Act or a State Act, relating to canned fruits of any season as is specified in the notice.

(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 subsection (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 subsection (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 subsection (4).

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

Penalty : \$500.

Delegation.

18. (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.

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(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.

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

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

**20.** 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.**

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

Penalty : \$200.

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Access to  
premises.

**22.** (1) An authorized person may, with the consent of the occupier of any premises, 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 canned fruits of any season;  
or

(b) there are on any premises 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 purposes of exercising the functions of an authorized person under this section.

(3) If, on an application under subsection (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 subsection (2); and

(b) that the issue of the warrant is reasonably required for the 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.



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(4) A warrant under subsection (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 subsection (1) or in pursuance of a warrant granted under subsection (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 subsection (3) or in pursuance of subsection (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 subsection (2);
- (b) to take possession of and remove canned fruits to which a requirement under section 8 (2) relates; and
- (c) to take extracts from and make copies of books, documents or papers referred to in subsection (2).

(8) On the taking possession under subsection (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 subsection does not affect the liability of a person for an offence.

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(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.

**Regulations.** **23.** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter which by this Act is required or permitted to be prescribed, or that is 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.

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