

Dried Fruits (Repeal) Act 1997

As at 17 December 1997

Long Title

An Act to provide for the winding up and abolition of the New South Wales Dried Fruits Board; to end the regulation of certain sectors of the dried fruits industry; to provide for the continued regulation of the dried prunes industry and to amend the *Marketing of Primary Products Act 1983* with respect to that industry; to repeal the *Dried Fruits Act 1939* and certain other enactments; to amend certain other Acts consequentially; to validate certain matters; and for other purposes.

Part 1 - Preliminary

1 Name of Act

This Act is the *Dried Fruits (Repeal) Act 1997* .

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) Sections 5-8, section 13 and Schedule 1 [1] and [3] commence on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

Board means the New South Wales Dried Fruits Board established under the *Dried Fruits Act 1939* as in force immediately before 1 September 1997.

Department means the Department of Agriculture.

Director means the Director of Marketing, as referred to in the definition of **Director** in the *Marketing of Primary Products Act 1983* .

Director-General means the Director-General of the Department of Agriculture.

exercise a function includes perform a duty.

function includes a power, authority or duty.

funds of the Board means funds standing from time to time to the credit of the account referred to in section 6 (1) (b) (i).

interim period means the period commencing on 1 September 1997 and ending immediately before the commencement of section 13.

liquidator means the person referred to in section 5.

(2) Words and expressions used in this Act (that are not otherwise defined in this Act) have the same meaning as they have in the *Dried Fruits Act 1939* as in force immediately before the date of assent to this Act but are subject to the modifications made by

subsection (3) and to the operation of that subsection.

(3) On and from the date of assent to this Act, a reference in the *Dried Fruits Act 1939* or the *Dried Fruits (General) Regulation 1993* to the person in whose name a packing house is registered, or to a packer, is to be read as a reference to the person in charge of a packing house. For the purposes of this subsection, the occupier of a packing house is presumed to be the person in charge of a packing house in the absence of evidence to the contrary.

Part 2 - Membership of Board

4 Termination of membership

(1) Each person holding office as a member of the Board immediately before 1 October 1997 is taken to have ceased to hold that office on that date.

(2) No elections of persons as members are taken to be possible on or after 1 August 1997.

(3) No appointments of persons as members are taken to be possible on or after 1 October 1997.

(4) A person is not entitled to any remuneration or compensation because of the operation of this section.

Part 3 - Winding up of Board

5 Appointment of liquidator

(1) The Minister may, by notice published in the Gazette, appoint a person to be liquidator for the purpose of winding up the affairs of the Board.

(2) The reasonable costs and expenses (including remuneration) incurred by or in connection with the appointment and exercise of the functions of the liquidator, as certified from time to time by the Director, are payable from funds of the Board.

6 Functions of Director

(1) The Director has the following functions under this Act:

(a) during the winding up of the affairs of the Board, to manage the continuing affairs of the Board (which includes, but is not limited to, the payment out of funds of the Board of money for the purposes specified in section 17 of the *Dried Fruits Act 1939* or for costs and expenses (including remuneration) properly incurred in connection with the winding up),

(b) to ensure that:

(i) any money received by the Director, that immediately before 1 September 1997 was required to be paid by the Board into the Dried Fruits Account referred to in section 16 of the *Dried Fruits Act 1939*, is paid to the credit of an account established by the Director-General to hold the funds of the Board, and

(ii) funds of the Board are used only for the purposes specified in section 17 of the *Dried Fruits Act 1939* or for the payment of costs and expenses (including remuneration) properly incurred in connection with the winding up,

(c) to return to persons who paid contributions under section 15 of the *Dried Fruits Act 1939* for the year commencing on 1 January 1997, in proportion to the contributions paid by those persons for that year, any funds of the Board that remain after:

(i) the liquidator has submitted the report referred to in section 7 (2) (e), and

(ii) the costs and expenses (including remuneration) properly incurred in connection with the winding up have been paid,

(d) to report to the Minister on the exercise of the Director's functions under this Act in the Director's report required under section 126 of the *Marketing of Primary Products Act 1983* that is first prepared after the Director has exercised the function under paragraph (c).

(2) Without limiting subsection (1) (d), the Director is, in the report referred to in that subsection, to account for the expenditure of any funds of the Board occurring on or after 1 October 1997.

(3) The Director may do all things necessary for the purpose of exercising the Director's functions under this Act.

(4) The Director may do all things that are supplementary or incidental to the exercise of those functions.

7 Functions of liquidator

(1) The liquidator has the function of winding up the affairs of the Board.

(2) Without limiting subsection (1), the liquidator is to do the following:

(a) to report, as required by the Director, on the progress of the winding up,

(b) if the Director determines it necessary for the purposes of the winding up:

(i) to call for payment on a specified date of the whole or any part of the outstanding balance of contributions payable under section 15 of the *Dried Fruits Act 1939* for the year commencing on 1 January 1997, and

(ii) to recover as a debt any amount of contribution under that section that remains unpaid:

â€¢ for the year commencing on 1 January 1997 after the date specified by the liquidator under subparagraph (i), or

â€¢ for any previous year commencing on 1 January, and

(iii) to permit the writing off of any amount of contribution under that section that remains unpaid (irrespective of when the liability to pay arose), and

(iv) to compromise with debtors of the Board,

(c) as required by the Director, to deliver to the Director, or such other person as the Director may approve, all records and papers of the Board under the control of the liquidator,

(d) to account to the Director for all assets of the Board,

(e) to prepare and submit to the Minister any report of the Board that, immediately before 1 September 1997, remained outstanding under the *Annual Reports (Statutory Bodies) Act 1984* .

(3) Despite the *Annual Reports (Statutory Bodies) Act 1984* , the report referred to in subsection (2) (e) is to relate to the period from 1 January 1997 to the date specified in that report by the liquidator as the date on which the winding up of the affairs of the Board was completed.

(4) For the purposes of subsection (3), a reference in the *Annual Reports (Statutory Bodies) Act 1984* to the financial year for a statutory body in its application to the Board includes a reference to the period referred to in that subsection.

(5) The liquidator may do all things necessary for the exercise of the liquidator's functions under this Act.

(6) The liquidator may do all things that are supplementary or incidental to the exercise of those functions.

8 Consultation with industry representatives

(1) The Director, and the liquidator with the approval of the Director, may consult with persons having expertise relevant to the dried fruits industry in connection with the winding up of the affairs of the Board.

(2) Those persons may be paid such fees and allowances by the Director as are determined from time to time by the Minister out of funds of the Board for any services

provided by them in connection with the winding up.

Part 4 - Limited application of Dried Fruits Act 1939 and regulation

9 Application of Dried Fruits Act 1939 and Dried Fruits (General) Regulation 1993

(1) The *Dried Fruits Act 1939* and the *Dried Fruits (General) Regulation 1993* are taken to have ceased on 1 September 1997 to apply to and in respect of dried fruits other than dried prunes.

(2) Despite subsection (1), the following provisions remain in force in respect of dried fruits until the date of the laying before the Legislative Assembly of the report of the Director referred to in section 6 (1) (d):

- (a) section 15 (Estimate of expenditure etc) of the *Dried Fruits Act 1939* ,
- (b) clauses 15 (Basis of calculation of annual contributions by packers) and 16 (Payment of contribution by instalments) of the *Dried Fruits (General) Regulation 1993* .

(3) For the purposes of subsection (2), failure to make due payment of any instalment in respect of a contribution payable under section 15 of the *Dried Fruits Act 1939* for the year commencing on 1 January 1997 does not render, and is taken never to have rendered, payment of the outstanding balance of the contribution immediately payable. Payment of the whole or any part of the outstanding balance becomes instead immediately payable on the date specified under section 7 (2) (b) (i).

(4) Subsection (2) does not operate to require a person to pay a contribution under section 15 of the *Dried Fruits Act 1939* in respect of any year after the year commencing on 1 January 1997.

(5) Any act or omission occurring between 1 September 1997 and the date of assent to this Act (both dates inclusive) that would have constituted an offence under the *Dried Fruits Act 1939* or the *Dried Fruits (General) Regulation 1993* in respect of dried fruits other than dried prunes is taken not to constitute such an offence.

(6) Nothing in this section prevents, during the interim period, the amendment or repeal of a provision (other than clause 15 or 16) of the *Dried Fruits (General) Regulation 1993* in its application to and in respect of dried prunes.

10 Existing directions and guidelines for dried prunes

A direction, or any guidelines, of the Board in force under the *Dried Fruits Act 1939* immediately before 1 September 1997 continue to apply (unless sooner revoked) during the interim period in so far as the direction or the guidelines relate to dried prunes.

Part 5 - Regulation of dried prunes under the Marketing of Primary Products Act 1983 for limited period

11 Amendment of Marketing of Primary Products Act 1983 No 176

Schedule 1 has effect.

Part 6 - Repeal of Dried Fruits Act 1939 and regulations

12 Repeal of certain provisions of Dried Fruits Act 1939 and regulations

(1) The following provisions of the *Dried Fruits Act 1939* are taken to have been repealed on 1 September 1997:

- (a) Part 2 (The Dried Fruits Board),
- (b) section 19 (Registration of packing houses),

- (c) section 20 (Certificate of registration),
 - (d) section 31 (Annual report),
 - (e) section 39 (1) (a), (h) and (aa).
- (2) The following provisions of the *Dried Fruits (General) Regulation 1993* are taken to have been repealed on 1 September 1997:
- (a) clause 13 (Registration of packing house (sec 19)),
 - (b) clause 14 (Endorsement on registration certificate of transfer of registration (sec 20)),
 - (c) Part 7 (The Board).
- (3) The *Dried Fruits (Elections) Regulation 1993* is taken to have been repealed on 1 September 1997.

13 Repeal of remaining provisions of Dried Fruits Act 1939 and Dried Fruits (General) Regulation 1993

The following are repealed:

- (a) *Dried Fruits Act 1939* ,
- (b) *Dried Fruits (General) Regulation 1993* .

Part 7 - Miscellaneous

14 Functions of Director-General

- (1) The Director-General may, until the commencement of section 13, exercise any function that the Board had, immediately before 1 September 1997, under the *Dried Fruits Act 1939* or the *Dried Fruits (General) Regulation 1993* in respect of dried prunes other than a function relating to the registration of packing houses or the report of the Board referred to in section 31 of that Act.
- (2) For the purposes of subsection (1), a reference to the Board in that Act or Regulation includes a reference to the Director-General.
- (3) The Director-General is not however to exercise any such function if to do so would be inconsistent with the exercise of a function under this Act by the Director or the liquidator.

15 Certain registration fees not refundable

The repeal of section 19 of the *Dried Fruits Act 1939* does not entitle a person to a refund of the prescribed fee paid before that repeal for an application for the registration, or the renewal or transfer of the registration, of a packing house for the year (or any part of the year) ending on 31 December 1997.

16 Immunity

Section 37 of the *Dried Fruits Act 1939* applies to the exercise of functions under this Act by the Director-General, the Director, the liquidator and any person acting under the direction of the Director-General, the Director or the liquidator in the same way as it applies or applied to the exercise of functions under that Act by the Crown, the Minister, the Ministerial Corporation, the Board and any member of the Board.

17 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

18 Validation

The following acts carried out between 1 September 1997 and the date of assent to this Act (both dates inclusive) are validated:

- (a) the payment to the Director-General of the proceeds of the Dried Fruits Account referred to in section 16 of the *Dried Fruits Act 1939* ,

- (b) the payment to the Director-General of any other money received under that Act,
- (c) the sale of any asset of the Board if the sale was approved by the Director,
- (d) the receipt by the Director of any contributions under section 15 of that Act,
- (e) the payment by the Director out of funds of the Board of money the payment of which would have been authorised by this Act had this Act been in force at the time the payment was made.

19 Subordinate Legislation Act 1989 does not apply

Part 3 (Staged repeal of statutory rules) of the *Subordinate Legislation Act 1989* does not apply to the *Dried Fruits (General) Regulation 1993* .

20 Savings and transitional regulations

- (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

21 Amendment of other Acts

Schedule 2 has effect.

Schedule 1 Amendment of Marketing of Primary Products Act 1983

(Section 11)

[1] Section 4 Definitions

Omit "any dried fruits to which the *Dried Fruits Act 1939* for the time being applies or" from the definition of **primary product** in section 4 (1).

[2] Part 5, Division 7 (sections 102E-102H)

Insert after Division 6 of Part 5:

Division 7 - Special provisions relating to dried prunes industry marketing orders

102E Definition of "dried prunes" In this Division:

dried prunes means dried prunes produced from the following varieties of prunes only: D'Agén, Robe de Sargent, Splendour, Old French (sometimes known as Goulburn Valley), Fellemburg, Imperial, Sugar, and includes such dried prunes when packed in syrup.

102F Contents of marketing order

- (1) The Minister may, for the purposes of this Division, make a marketing order that deals with any or all of the following matters:

- (a) the establishment of a Dried Prunes Industry Marketing Committee and the membership of the Committee and the appointment of its members,
- (b) the establishment of the Committee as a committee having functions that relate solely to dried prunes,
- (c) the functions of the Committee,
- (d) the procedure of the Committee,
- (e) the financial year of the Committee,
- (f) the funding of the Committee by persons and bodies involved in the industry,
- (g) any matter in relation to dried prunes that may be included in the order under a provision of Divisions 2 and 3 except a provision referred to in section 102H (1),
- (h) making provision for or with respect to all acts, matters and things that are necessary or expedient to be done in connection with any of the matters specified in paragraphs (a)-(g).

(2) Such a marketing order is to expire at the end of 31 December 1999.

(3) The Minister may, on the recommendation of the Committee, revoke the marketing order with effect from an earlier date.

102G Prohibition on making of further marketing orders

(1) The Minister must not make a further marketing order (whether or not for the purposes of this Division) that deals with any of the matters referred to in section 102F after the first such order has been made for the purposes of this Division, except as provided by this section.

(2) The Minister may make a further marketing order but only if the further order merely amends or revokes the first such order made for the purposes of this Division.

(3) Nothing in this section enables the Minister to extend the duration of the first marketing order made for the purposes of this Division.

102H Application of other provisions to marketing orders made for the purposes of this Division

(1) A marketing order made for the purposes of this Division is taken to be a marketing order made under this Part. However, sections 77-82, 85, 86, 91 (2) and (3) and 93 do not apply to a marketing order made for the purposes of this Division.

(2) In the application of the other provisions of this Part to a marketing order made for the purposes of this Division:

(a) dried prunes are taken to be a commodity, and

(b) a reference in those provisions to the relevant committee is to be read as a reference to the committee established under the marketing order.

[3] Section 113A Definitions

Omit "milk, eggs or any dried fruits to which the *Dried Fruits Act 1939* for the time being applies" from the definition of **primary product** . Insert instead "milk or eggs".

[4] Schedule 4 Savings, transitional and other provisions

Omit "Acts" from clause 1A (1).

[5] Schedule 4, clause 1A (1)

Insert at the end of the subclause:

Schedule 1 to the *Dried Fruits (Repeal) Act 1997*

Schedule 2 Amendment of other Acts

(Section 21)

2.1 - First State Superannuation Act 1992 No 100

Schedule 1 Employers

Omit "New South Wales Dried Fruits Board" from Part 1.

2.2 - Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit "New South Wales Dried Fruits Board".

2.3 - State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 1 Employers

Omit "New South Wales Dried Fruits Board" from Part 1.

2.4 - State Authorities Superannuation Act 1987 No 211

Schedule 1 Employers

Omit "New South Wales Dried Fruits Board" from Part 1.

2.5 - Superannuation Act 1916 No 28

Schedule 3 List of employers

Omit "New South Wales Dried Fruits Board" from Part 1.

Historical notes

Table of Acts *Dried Fruits (Repeal) Act 1997 No 124* . Assented to 15.12.1997. Date of commencement (secs 5-8 and 13 and Sch 1 [1] and [3] excepted), assent, sec 2 (1); date of commencement of secs 5-8, 19.12.1997, sec 2 (2) and GG No 149 of 19.12.1997, p 10092; date of commencement of remainder, 1.7.2000, sec 2 (2) and GG No 66 of 2.6.2000, p 4501.