

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 29 October 1981

(Minister for Primary Industry)

A BILL

FOR

**An Act relating to the underwriting of returns from the
production of dried sultanas, and for other purposes**

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

Short title

5 **1.** This Act may be cited as the *Dried Sultana Production Underwriting Act* 1981.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

0 **3. (1)** In this Act, unless the contrary intention appears—
 “Audit Act” means the *Audit Act* 1901;

“authorized person” means a person who is, by virtue of an appointment under section 22, an authorized person for the purposes of the provision in which the expression occurs;

“Corporation” means the Australian Dried Fruits Corporation established by the *Australian Dried Fruits Corporation Act 1978*;

“dried sultanas” means dried grapes of the following varieties:

(a) sultana;

(b) any other variety prescribed for the purposes of this definition;

“net proceeds”, in relation to a sale of packed dried sultanas, means the proceeds of that sale after deducting—

(a) all selling costs and charges; and

(b) all costs and charges associated with the transport of the packed dried sultanas from the packing house at which they were packed to their place of sale;

“packer”, in relation to dried sultanas, means the proprietor of the packing house into which the dried sultanas were received for packing;

“packing house” means any premises or place registered as a packing house or packing shed under a law in force in a State or Territory relating to dried sultanas;

“prescribed season” means the season commencing on 1 January 1982, or any of the next 4 succeeding seasons;

“published average return rate”, in relation to dried sultanas with respect to a season, means the amount per tonne specified in the relevant determination published in the *Gazette* under section 4;

“published guaranteed minimum return rate”, in relation to dried sultanas with respect to a season, means the amount per tonne specified in the relevant determination published in the *Gazette* under section 7;

“sale”, in relation to packed dried sultanas, means a sale of the packed dried sultanas as dried sultanas for human consumption or, if there are 2 or more such sales, the first of those sales;

“season” means the year that commenced on 1 January 1980, or a succeeding year;

“underwriting payment” means an underwriting payment under section 9;

“underwriting season” means a season that is an underwriting season by virtue of section 8.

(2) A reference in this Act to the weight of dried sultanas or of packed dried sultanas shall be read as not including a reference to the weight of any packaging.

Average return rate for season

4. (1) This section applies to—

(a) the season that commenced on 1 January 1980;

(b) the season that commenced on 1 January 1981; and

(c) each prescribed season.

(2) After the end of a season to which this section applies, the Minister shall, as soon as he considers it appropriate having regard to the volume of the sales of packed dried sultanas derived from dried sultanas received into packing houses during that season, determine, in accordance with section 5, an amount per tonne that is to be the average return rate for dried sultanas in respect of that season.

(3) When the Minister has determined an amount per tonne that is to be the average return rate for dried sultanas in respect of a season, he shall publish in the *Gazette* a notice setting out that determination.

Method of determination of average return rate

5. (1) For the purpose of determining an amount per tonne that is to be the average return rate for dried sultanas in respect of a season, the Minister shall—

- (a) ascertain the total amount of the net proceeds from the sales (being sales of which the Minister has been informed by the Corporation up to the time of the making of the determination) of packed dried sultanas derived from dried sultanas received into packing houses during the season; and
- (b) divide that amount by the number of tonnes of the packed dried sultanas the subject of those sales.

(2) For the purpose of determining an amount per tonne under sub-section (1), the Minister may, if he thinks it appropriate, have regard only to sales of packed dried sultanas derived from dried sultanas packed in packing houses selected by the Minister having regard to their representative character in relation to the industry as a whole.

Reduction factor for season

6. (1) The Minister shall, at the time at which he determines under section 4 an amount per tonne that is to be the average return rate for dried sultanas in respect of a prescribed season, determine, in accordance with this section, the reduction factor for dried sultanas in respect of that season.

(2) For the purpose of determining the reduction factor for dried sultanas in respect of a prescribed season, the Minister shall—

- (a) ascertain the total number of tonnes of dried sultanas received into packing houses during that season;
- (b) ascertain the total number of tonnes of packed dried sultanas packed for sale at those packing houses that were derived from the dried sultanas referred to in paragraph (a); and
- (c) divide the number referred to in paragraph (b) by the number referred to in paragraph (a).

(3) When the Minister has determined the reduction factor for dried sultanas in respect of a prescribed season, he shall publish in the *Gazette* a notice setting out that determination.

Guaranteed minimum return rate for prescribed season

7. (1) The Minister, at the appropriate time in relation to each prescribed season, shall, in accordance with this section, determine an amount per tonne that is to be the guaranteed minimum return rate for dried sultanas in respect of that season. 5

(2) For the purpose of determining an amount per tonne that is to be the guaranteed minimum return rate for dried sultanas in respect of a prescribed season, the Minister shall—

(a) calculate the average of the following 3 amounts:

- (i) the amount per tonne that the Minister estimates will be the average return rate for dried sultanas in respect of the prescribed season; 10
- (ii) the amount per tonne that is the published average return rate for dried sultanas in respect of the season immediately preceding the prescribed season; 15
- (iii) the amount per tonne that is the published average return rate for dried sultanas in respect of the season immediately preceding the season to which sub-paragraph (ii) applies; and

(b) deduct from that average an amount equal to—

- (i) where the prescribed season commences on 1 January 1984 or an earlier date—10%; or 20
- (ii) in any other case—5%,
of the amount of that average.

(3) For the purpose of making an estimate under sub-paragraph (2) (a) (i) in respect of a prescribed season, the Minister shall— 25

- (a) estimate the total number of tonnes that are likely to be sold of packed dried sultanas derived from dried sultanas received into packing houses during the season;
- (b) estimate the total amount of the net proceeds from those sales; and
- (c) divide the amount estimated under paragraph (b) by the number estimated under paragraph (a). 30

(4) In making estimates for the purposes of sub-section (3), the Minister shall have regard to any relevant advice or information furnished to him by the Corporation or by the Bureau of Agricultural Economics.

(5) For the purposes of sub-section (1), the appropriate time in relation to a prescribed season is the earliest time, after the publication of the amounts referred to in sub-paragraphs (2) (a) (ii) and (iii), that the Minister considers to be the appropriate time in relation to that season having regard to the progress of the production of dried sultanas during that season. 35

(6) When the Minister has determined an amount per tonne that is to be the guaranteed minimum return rate for dried sultanas in respect of a prescribed season, he shall publish in the *Gazette* a notice setting out that determination. 40

Underwriting seasons

8. Where the published average return rate for dried sultanas in respect of a prescribed season is less than the published guaranteed minimum return rate for dried sultanas in respect of that season, that season is an underwriting season for the purposes of this Act.

Underwriting payments to producers

9. (1) Where—

- (a) a prescribed season is an underwriting season; and
- (b) dried sultanas produced by a producer were received into a packing house during that season,

an underwriting payment is payable to that producer in respect of those dried sultanas.

(2) The rate of an underwriting payment under sub-section (1) is an amount per tonne equal to the amount by which the amount per tonne that constitutes the published average return rate for dried sultanas in respect of the underwriting season is less than the amount per tonne that constitutes the published guaranteed minimum return rate for dried sultanas in respect of the underwriting season.

(3) The amount of an underwriting payment under sub-section (1) is an amount equal to the product of—

- (a) the amount per tonne that is the rate of the underwriting payment;
- (b) the number of tonnes of the dried sultanas; and
- (c) the reduction factor, calculated in accordance with section 6, for dried sultanas in respect of the underwriting season.

Assignment of underwriting payment to be void

10. An assignment of an underwriting payment is void as against the Commonwealth.

Advance on account of underwriting payment

11. (1) An advance on account of an underwriting payment may be made to a person on such terms and conditions as are approved by the Minister.

(2) If a person receives by way of advances in respect of an underwriting payment in respect of any dried sultanas an amount that exceeds the amount of the underwriting payment payable in respect of those dried sultanas, he is liable to repay to the Commonwealth the amount of the excess, and the Commonwealth may recover the amount of the excess as a debt due to the Commonwealth by action in a court of competent jurisdiction.

Payment of underwriting payments to the Corporation for distribution

12. (1) The Minister may, on behalf of the Commonwealth, enter into an arrangement with the Corporation to perform the function of making underwriting payments on behalf of the Commonwealth and, while such an arrangement is in force, the Corporation may do all things that are necessary or convenient to be done by it in pursuance of the arrangement.

(2) Without prejudice to the generality of sub-section (1), an arrangement under that sub-section may provide for—

- (a) the keeping by the Corporation of accounts and records in relation to underwriting payments received and distributed by the Corporation;
- (b) the inspection and audit of the accounts and records referred to in paragraph (a); and 5
- (c) the furnishing by the Corporation to the Minister of information with respect to anything done by the Corporation in pursuance of the arrangement.

(3) An underwriting payment to which an arrangement under this section relates may be paid to the Corporation for distribution in accordance with the arrangement. 10

(4) The Audit Act does not apply in relation to amounts of underwriting payments in the hands of the Corporation.

(5) Moneys paid to the Corporation under this section shall, until they are distributed in accordance with the arrangement under which they are paid, be deemed to be moneys held in trust for the Commonwealth. 15

Payments to packer as agent

13. (1) For the purpose of making underwriting payments in respect of dried sultanas, the Commonwealth or the Corporation may arrange for the packer of the dried sultanas to pay, as agent of the Commonwealth or of the Corporation, as the case may be, to each of the producers of the dried sultanas the underwriting payment payable to that producer, and payment may be made by the Commonwealth or by the Corporation, as the case may be, to the packer in accordance with the arrangement. 20 25

(2) The Audit Act does not apply in relation to amounts of underwriting payments in the hands of a packer.

(3) Moneys paid to a packer under this section shall, until they are distributed in accordance with the arrangement under which they are paid, be deemed to be moneys held in trust for the Commonwealth. 30

(4) Notwithstanding section 10, where—

- (a) an arrangement has been made between the Commonwealth or the Corporation and a packer in accordance with sub-section (1);
- (b) moneys are paid, in accordance with the arrangement, by the Commonwealth or by the Corporation, as the case may be, to the packer as an underwriting payment that is payable to the producer of any dried sultanas; and 35
- (c) the producer is indebted to the packer—
 - (i) for any costs or charges payable by the producer to the packer in connection with the packing of the dried sultanas; or 40
 - (ii) by reason of a loan or advance made to the producer by the packer,

and the producer has authorized the packer to retain moneys payable by him to the producer in respect of the dried sultanas concerned in or towards the discharge of that indebtedness,

5 the packer may apply the whole or a part of the moneys so paid by the Commonwealth or by the Corporation, as the case may be, to the packer in or towards the discharge of that indebtedness and, where the packer so applies an amount, the amount so applied shall, for the purposes of this Act, be deemed to have been received by the producer from the packer as an underwriting payment in respect of the dried sultanas concerned.

10 **Appropriation**

14. Underwriting payments are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

Directions by Minister with respect to export prices

15 15. Where any regulations in force under the *Australian Dried Fruits Corporation Act* 1978 authorize the Corporation to determine, or to determine the manner of calculation of, minimum prices that may be required by the Corporation to be observed in respect of the sale of packed dried sultanas to be exported or for the sale overseas of exported packed dried sultanas, the Corporation—

20 (a) shall comply with any direction of the Minister with respect to the making of any such determination in respect of packed dried sultanas derived from dried sultanas received for packing during a prescribed season; and

25 (b) if such a determination is made shall, except as otherwise approved by the Minister, take all action that the Corporation can lawfully take with a view to ensuring that packed dried sultanas derived from dried sultanas received for packing during a prescribed season are not sold to be exported, or sold overseas after export, at a price less than the price applicable under the determination.

30 **Furnishing of returns**

16. (1) An authorized person 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 return or information in relation to matters relevant to the operation of this Act as is specified in the notice.

35 (2) A person shall not, without reasonable excuse, fail or neglect duly to furnish a return or information that he is required to furnish by virtue of a notice given, or sent by post, to him under sub-section (1).

40 (3) A person is not excused from furnishing a return or information that he is required to furnish by virtue of a notice given, or sent by post, to him under sub-section (1) on the ground that the return or information might tend to incriminate him or make him liable to a penalty, but any return or information so furnished is not admissible in evidence against him in proceedings other than proceedings for an offence against sub-section (4).

(4) A person shall not furnish a return or information that, to his knowledge, is false or misleading in a material particular.

Penalty: \$1,000

Offences in relation to underwriting payments

17. (1) A person who receives, in respect of an underwriting payment, a payment that, to his knowledge, is not payable to him, or exceeds the amount payable to him, shall, as soon as practicable, inform— 5

(a) where the payment was made by the Corporation—the Corporation; or

(b) in any other case—the Department that deals with matters arising under this Act, 10

accordingly.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(2) Where a person is convicted of an offence under sub-section (1), the court may, in addition to imposing a penalty under that sub-section, order the person to repay to the Commonwealth the amount of the payment in respect of an underwriting payment or the amount by which the payment in respect of an underwriting payment exceeded the amount properly payable, as the case may be. 15

(3) Where a court has made an order under sub-section (2), a certificate under the hand of the clerk or other appropriate officer of the court specifying the amount ordered to be repaid and the person by whom the amount is payable may be filed in a court having civil jurisdiction to the extent of that amount and is thereupon enforceable in all respects as a final judgment of the last-mentioned court. 20 25

Overpayments

18. Where a person has received, in respect of an underwriting payment, a payment that was not payable to him or that exceeds the amount that was payable to him, the amount of the payment, or of the excess, as the case may be, if not otherwise recovered, may be recovered by the Commonwealth from the person, as a debt due to the Commonwealth, by action in a court of competent jurisdiction. 30

Packer to keep proper books and accounts, &c.

19. (1) A packer of dried sultanas shall—

(a) maintain, in respect of a packing house owned by him, proper books and accounts in respect of his operations, receipts and expenditure in relation to— 35

(i) the receipt into the packing house of dried sultanas during each prescribed season;

(ii) the packing of dried sultanas derived from those dried sultanas; and 40

(iii) the transport for sale, and the sale, of those packed dried sultanas,

and enter promptly in those books and accounts full and correct particulars of all such operations, receipts and expenditure;

- 5 (b) retain those books and accounts for a period of 3 years after the end of that season; and
- (c) upon demand by an authorized person at any time during that season or within the period of 3 years referred to in paragraph (b) produce to the authorized person all or any of those books or accounts.

10 Penalty: \$1,000.

(2) A prosecution for an offence against paragraph (1) (a) may be commenced at any time before the expiration of 3 years after the end of the relevant prescribed season.

Access to premises

15 **20.** (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 is of the opinion that there is reasonable ground for believing that there are on any premises books, documents or papers relating to—

- 20 (a) the receipt into a packing house of dried sultanas during a season;
- (b) the packing of dried sultanas derived from those dried sultanas; or
- (c) the transport for sale, or the sale, of those packed dried sultanas,

25 the authorized person may make application to a Justice of the Peace for a warrant authorizing the authorized person to enter the premises for the purpose of exercising the functions of an authorized person under this section.

(3) If, on an application under sub-section (2), the Justice of the Peace is satisfied on oath or affirmation—

- 30 (a) that there is reasonable ground for believing that there are on the premises any books, documents or papers referred to in sub-section (2); and
- (b) that the issue of the warrant is reasonably required for the purposes of this Act,

35 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.

40 (4) A warrant under sub-section (3) shall specify a date after which the warrant ceases to have effect.

(5) Where an authorized person has entered any premises in pursuance of sub-section (1) or in pursuance of a warrant under sub-section (3), he may exercise the functions of an authorized person under this section.

(6) The functions of an authorized person under this section are to search for, inspect, take extracts from and make copies of books, documents or papers referred to in sub-section (2). 5

(7) In this section, "occupier", in relation to premises, includes the person in charge of the premises.

Information with respect to sales of packed dried sultanas

21. The Corporation shall furnish to the Minister such information as the Minister requires with respect to sales of packed dried sultanas derived from dried sultanas received into packing houses during a season. 10

Appointment of authorized persons

22. The Minister may, by writing signed by him, appoint a person, or persons included in a class of persons, to be an authorized person, or authorized persons, as the case may be, for the purposes of a specified provision of this Act. 15

Regulations

23. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular— 20

- (a) providing that an underwriting payment is not to be payable, or that payment of an underwriting payment may be withheld, where a provision of the regulations has not been complied with; and
- (b) prescribing penalties, not exceeding a fine of \$200, for offences against the regulations. 25

