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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

CANNED FRUITS MARKETING BILL 1979

EXPLANATORY MEMORANDUM

(Circulated by the Minister for Primary Industry,
the Hon. P.J. Nixon, M.P.)

CANNED FRUITS MARKETING BILL 1979EXPLANATORY MEMORANDUMGeneral

This Bill provides for new marketing arrangements for the canned fruits industry (covering canned apricots, peaches and pears and mixtures of these fruits). The scheme provides for equalisation of the market returns received from sales of such canned fruits on the domestic and certain export markets, with canner quotas for sales to such markets being determined each season.

The Bill also provides for the reconstitution of the Australian Canned Fruits Board to be known as the Australian Canned Fruits Corporation with revised membership, powers and functions.

The Corporation is given power, with complementary legislation to be passed by most States, to enable it to be vested with ownership of the canned fruits produced in a Territory or the States concerned, and to manage the selling of these fruits in Australia and overseas. There will be no restriction on the quantity of fruit the industry may produce, but it will not receive equalised returns on non-Pool fruit sales.

The following is a more detailed outline of the legislation, and needs to be read in conjunction with the papers covering the associated Bills, viz. the Canned Fruits Levy Bill 1979 and the Canned Fruits Levy Collection Bill 1979.

PART I - PRELIMINARY

Short title

Clause 1 provides for the Act to be cited as the Canned Fruits Marketing Act 1979.

Commencement

Clause 2 relates to sub-section 5(1A) of the Acts Interpretation Act 1901 which provides that every Act shall come into operation on the 28th day after the day on which the Act receives Royal Assent unless the contrary intention appears in the Act. The scheme is to commence from the beginning of the 1980 fruit season, viz 1 January 1980.

Interpretation

Clause 3 defines terms used in the Bill. The definitions are generally self explanatory except:-

Clause 3 (3) defines net proceeds as the amount left after the deduction of agents' selling expenses and commission, as determined under Section 12, and charges for insuring canned fruits under clause 16

Clause 3 (4) defines monies received by the Corporation under insurance policies as proceeds of disposal

Clause 3 (5) defines disposal of canned fruit by the Corporation as the sale in Australia, whether for consumption in Australia or overseas.

PART II - ESTABLISHMENT OF AUSTRALIAN CANNED FRUITS CORPORATION

Establishment of Corporation

Clause 4 establishes the Australian Canned Fruits Corporation as a body corporate.

PART III - EQUALIZATION MARKET

Interpretation

Clause 5 is self explanatory

Equalization market

Clause 6 provides for the Corporation to determine, each season, by notice in the Gazette countries including Australia which will make up the equalization market for that season.

Equalization pool

Clause 7 provides for maintenance by the Corporation of separate accounts to be known as equalization pools for each type of canned fruit sold on the equalization market each season.

Premiums for additional costs of canner

Clause 8 provides that the Corporation may by notice in the Gazette, fix premiums to be paid by it for a particular kind of canned fruit or fruits, involving additional costs, when there is an equalization market for a season.

Quotas

Clause 9 defines quotas for canners, which the Corporation is willing to sell on the equalization market each season, and requires the Corporation to operate a scheme for allocating such quotas.

PART IV - MARKETING OF CANNED FRUITS

Powers of Corporation

Clause 10 empowers the Corporation to purchase and sell canned fruits, manage and control all associated matters, promote such sales in Australia and overseas and do such things as it thinks fit to improve the methods of production, storage, transport and marketing of canned fruits. Such powers relate to the export of canned fruits, the interstate marketing of canned fruits and marketing in the Territories.

The Corporation is required to seek Ministerial approval before entering into a contract connected with the purchase of property, not being canned fruits, exceeding \$100,000, unless a higher amount is prescribed by regulation.

In addition, this clause provides for the Corporation to insure canned fruits acquired by it.

Directions by Minister

Clause 11 provides that the Minister may give directions to the Corporation concerning the performance of its functions and that the Corporation is to comply with those directions.

Agents

Clause 12 empowers the Corporation to engage agents to act on its behalf in respect of the marketing of canned fruits.

Acquisition by Corporation of canned fruits produced in a Territory

Clause 13 provides that a canner may, or be requested by the Corporation to, set aside and identify as the property of the Corporation any canned fruits that are produced by him in a season. Penalties of \$1,000 or \$2,000 are provided should a canner, without reasonable excuse, fail or refuse to take action under this clause as requested by the Corporation.

Any canned fruits produced become the property of the Corporation freed from mortgages, charges, etc. A penalty of \$500 is provided should a canner fail to notify the Corporation of canned fruits produced.

Excluded from the provisions of this clause by definition of "canned fruits" are canned fruits destroyed, unfit for human consumption or used by a canner for his domestic requirements.

A "notice" by a canner to the Corporation is to be in accordance with a form approved by the Corporation setting out kind and quantity of canned fruits, date of production and other information required by the Corporation.

The complementary legislation to be passed by the States concerned will give the Corporation the same acquisition powers in respect to canned fruits produced in those States.

Canned fruits unfit for human consumption

Clause 14 provides for the Corporation to be protected from having unmarketable fruit of poor quality being foisted on it by canners. In such case the Corporation may serve notice to that effect on the canner and the canner is then required to set aside such canned fruit.

Unauthorized dealings with canned fruits

Clause 15 provides that a canner shall not, except with the written consent of the Corporation, move or sell canned fruits produced by him. Penalties of \$1,000 and \$2,000 are provided for non-compliance. Sub-section 5(2) of the Canned Fruits Levy Bill refers to canned fruits destroyed, deemed unfit for human consumption, or used by the canner for his domestic requirements.

The purpose of the clause is, of course, to prevent evasion of control of canned fruits by the Corporation.

Insurance reimbursement rate

Clause 16 empowers the Corporation to fix an insurance reimbursement rate for the cost of insurance of canned fruits acquired by the Corporation.

Payment into and out of, equalization pools

Clause 17 specifies that the Corporation shall pay net proceeds from sales of canned fruits in the equalization market into the equalization pool. The Corporation determines payments to canners from the pool on the basis of each canner's contribution to the pool of canned fruits, taking into consideration provisions for payment of premiums. This clause also provides for exclusion of canned fruit from the provisions of this clause if it is subject to a notice by the Corporation under clause 14.

Payment for canned fruits otherwise than out of equalization pool

Clause 18 specifies that, with respect to sales of canned fruits of a season on markets outside the equalization market, the Corporation shall pay canners net proceeds of such non-pool sales.

Person entitled to payment for canned fruits, other than canned fruits acquired by purchase

Clause 19 refers to canned fruits acquired, but not purchased by the Corporation. Under this clause the person entitled to payment of proceeds of sales by the Corporation is that person who was in possession of the canned fruits at the time of acquisition by the Corporation. Payment of moneys by the Corporation discharges the Corporation from further liability in respect of those moneys.

Person entitled to payment for canned fruits purchased by Corporation

Clause 20 refers to canned fruits purchased by the Corporation. Under this clause the person entitled to the payment of proceeds of sales is that person named in the contract of sale.

Advance payments

Clause 21 provides that the Corporation is not bound to make final payments until it has disposed of the canned fruits at the end of the season, but advance payments may be made to canners by the Corporation, with Ministerial approval, prior to the end of the season if the Corporation considers this justified. An advance payment shall not be made to a canner in respect of canned fruit the subject of a notice under clause 14, and if such an advance payment is made the advance shall be repaid, or set off against other advance payments.

PART V - MEMBERSHIP AND ORGANISATION OF AUSTRALIAN
CANNED FRUITS CORPORATION

Membership of Corporation

Clause 22 provides for the Corporation to consist of a maximum of eleven members. All members shall be appointed by the Minister. Members representing canners shall be nominated by canners and members representing growers shall be nominated by the Australian Canning Fruitgrowers' Association. The Chairman and the "other member" shall be qualified for appointment by reason of their experience in commerce, finance or economics.

Term of office of members

Clause 23 provides for each member, excepting the Commonwealth representative, to be appointed for a period of 3 years and to be eligible for reappointment. The Commonwealth representative holds office during the pleasure of the Minister. Provision is made for the appointment of a replacement member during a current membership term.

Acting Chairman

Clause 24 empowers the Minister to appoint a person to act as Chairman of the Corporation when a vacancy in the office occurs or when the Chairman is absent or unable to perform his duties. Where a person is appointed to act during a vacancy this person shall not continue to act for more than twelve months.

The Minister may also determine the terms and conditions of any such appointment and may terminate it at any time. A resignation is to be in writing and delivered to the Minister.

Remuneration and allowances

Clause 25 provides for members of the Corporation to be paid such remuneration as is determined by the Remuneration Tribunal under the Remuneration Tribunals Act 1973 or such remuneration as is prescribed in the absence of such a determination.

Resignation of members and deputies

Clause 26 specifies that a member or deputy may resign his office by informing the Minister in writing.

Termination of appointments

Clause 27 empowers the Minister to terminate the appointment of members of the Corporation by reason of misbehaviour, or physical or mental incapacity. The Minister shall also terminate the appointment of any member of the Corporation who becomes bankrupt, fails to disclose the nature of any pecuniary interest at a meeting of the Corporation or who is absent from three consecutive meetings without leave of absence or approval of the Corporation on Corporation business.

Disclosure of interests by members

Clause 28 provides that a member of the Corporation shall disclose any pecuniary interest in a matter being considered by the Corporation, other than his interest as a member of an incorporated company which consists of more than 25 persons and of which he is not a director.

Should such a disclosure be made, it shall be recorded and that member shall not take part in any deliberation or decision of the Corporation with respect to the matter and that member shall be disregarded when a quorum is constituted for any such deliberation or decision.

Meetings of Corporation

Clause 29 relates to procedural matters of Corporation meetings. Provision under this clause is also made for the payment of fees, allowances and expenses as determined by the Minister to persons invited to attend meetings of the Corporation.

Deputies of members

Clause 30 empowers the Minister to appoint deputy members of the canner, grower and Commonwealth representatives on the Corporation during the Minister's pleasure. Appointment of deputies, other than Commonwealth member's deputy, shall be on the nomination of the appointed member. A deputy shall attend and be deemed a member at Corporation meetings when the member is absent.

A deputy shall be paid such fees, allowances and expenses as the Minister determines.

Indemnity

Clause 31 determines that a member of the Corporation is not personally liable for an act of the Corporation or a member acting on the Corporation's behalf.

Staff

Clause 32 empowers the Corporation to employ staff as it thinks fit with the terms and conditions of employment subject to Public Service Board approval.

Rights of public servants employed under this Act

Clause 33 determines that public service employees or those to whom the Officers' Rights Declaration Act 1928 applies employed immediately prior to engagement with the Corporation shall retain existing and accruing rights. For the purpose of determining these rights, service will be taken into account as though it were service in the Australian Public Service.

Corporation may engage consultants

Clause 34 provides that the Corporation may engage consultants under terms and conditions determined by the Corporation, subject to Public Service Board approval.

PART VI - AUSTRALIAN CANNED FRUITS INDUSTRY ADVISORY COMMITTEE

Interpretation

Clause 35 defines "appointed member" in relation to the Advisory Committee as a canner member of that Committee.

Establishment of Australian Canned Fruits Advisory Committee

Clause 36 provides for the establishment of the Australian Canned Fruits Advisory Committee

Function of Advisory Committee

Clause 37 specifies the function of the Advisory Committee as consulting with and furnishing advice to the Corporation, on its request, in the performance of its functions and exercise of its powers.

Membership of Advisory Committee

Clause 38 provides for the membership of the Advisory Committee to consist of the "other member" referred to in 22(1)(e) of the Corporation as Chairman and representatives of canners, the number to be prescribed from time to time but not exceeding five.

The canner members shall be appointed by the Minister for a three year period and are eligible for reappointment. Provision is made for the appointment of replacement members during a current membership term.

Remuneration and allowances of members of Advisory Committee

Clause 39 provides for members of the Advisory Committee to be paid such remuneration as is determined by the Remuneration Tribunal under the Remuneration Tribunals Act 1973, or as is prescribed. Should a member of the Advisory Committee be a member or candidate for the election to Federal or State Parliament he is not entitled to be paid any remuneration or allowance, but shall be reimbursed for meeting expenses.

Meetings of Advisory Committee

Clause 40 relates to procedural matters for Advisory Committee meetings and is self explanatory.

Resignation of appointed members and deputies

Clause 41 specifies that a member or deputy may resign his office by informing the Minister in writing.

Nominee of Australian Canning Fruitgrowers' Association
entitled to attend meetings of Advisory Committee

Clause 42 provides that a representative of the Australian Canning Fruitgrowers' Association may attend any meeting of the Advisory Committee for the purpose of offering information or advice. The Chairman of the Advisory Committee shall ensure that the aforementioned representative is given reasonable notice of each Advisory Committee meeting. That person shall be paid such fees, allowances and expenses as the Minister determines.

Deputies of appointed members

Clause 43 empowers the Minister to appoint deputy members on the Advisory Committee during the Minister's pleasure. Appointment of a deputy shall be on the nomination of the appointed member. A deputy shall attend and be deemed a member at Advisory Committee meetings when the member is absent.

A deputy shall be paid such fees, allowances and expenses as the Minister determines.

PART VII - FINANCE

Payments to Corporation

Clause 44 provides for the appropriation of moneys received under the Canned Fruits Levy Act 1979 as the income of the Corporation.

Borrowing

Clause 45 provides for the Corporation to borrow moneys with the approval of the Treasurer and the Treasurer may guarantee, on behalf of the Commonwealth, repayment of moneys borrowed.

Application of moneys of Corporation

Clause 46 provides for moneys of the Corporation to be applied by the Corporation to meet its liabilities and expenses under the Act.

Liability to taxation

Clause 47 provides that the Corporation is subject to Commonwealth taxation other than income tax, but is not subject to State or Territory taxation unless specified otherwise by law.

Application to Corporation of Division 2 of Part XI of Audit Act

Division 2 of Part XI of the Audit Act specifies that public authorities are required to keep accounts in accordance with commercial practice. Under the Act the Corporation will be required to open and maintain an account or accounts with a bank or banks including the Reserve Bank approved by the Treasurer. The Corporation shall invest moneys, not immediately required, in these accounts or in a manner approved by the Treasurer and shall keep proper financial accounts.

The Auditor-General shall inspect the accounts of the Corporation and report at least once each year the results of the inspection.

The Corporation shall by 30 June each year prepare an annual report for the previous year ending 31 December with financial statements for submission to the Minister. This is a modification of the usual requirement under the Audit Act which stipulates an annual report for the year ending 30 June. The Australian Canned Fruits Board has been keeping its accounts on a calendar year basis and the Corporation will do likewise.

This clause also provides for the Corporation's 1980 annual report to include a period of 1979, should the Act receive Royal Assent and be enacted prior to 1 January 1980.

PART VIII - MISCELLANEOUSOperation of State laws

Clause 49 provides for the intention that the application of State laws shall not be limited by the provisions of this Act, and for the Corporation to be subject to the proposed complementary State legislation.

Corporation may require information

Clause 50 empowers the Corporation to obtain information regarding canned fruits. A penalty of \$500 is provided where this information is not furnished without reasonable excuse.

Delegation

Clause 51 provides for the Corporation to delegate its powers.

Proper care to be taken of canned fruits owned by Corporation

Clause 52 provides for the safeguard of canned fruits acquired by the Corporation but not in its actual possession. A penalty of \$200 is provided for failure to comply with the provisions of this clause.

Access to premises

Clause 53 provides that an authorised person may enter premises with either the consent of the occupier or the issue of a warrant to search for and inspect canned fruits or related documents, take possession of and remove canned fruits, or take extracts or copies of related documents. Provision is made for the issue of a warrant of search to an authorised person in relation to the provisions of this clause.

On the authorized person taking possession, the canned fruits become the property of the Corporation.

An authorized person is defined as a person appointed by the Corporation or Chairman of the Corporation.

Regulations

Clause 54 provides for the Governor-General to make regulations under the Act. Regulations will be required under several sections of the Bill.

PART IX - REPEAL OF CERTAIN ACTS AND CONSEQUENTIAL
TRANSITIONAL PROVISIONS

Interpretation

Clause 55 is self explanatory.

Repeal of certain Acts

Clause 56 provides for the repeal of Acts as scheduled relating to the operation and functions of the Australian Canned Fruits Board. In respect of the Canned Fruits Export Charges Act 1926 canned fruits exported prior to the enactment of this legislation will still be subject to the provisions of that Act.

Rights etc, of Board to vest in Corporation etc.

Clause 57 provides for the Corporation to inherit all liabilities and assets of the Australian Canned Fruits Board. This provision includes contractual arrangements.

Instrument etc, not liable to stamp duty or other tax

Clause 58 provides that documentation under the authorization of the Secretary of the Department of Primary Industry or an officer of that Department will not be subject to stamp duty or other tax under Commonwealth, State or Territory law.

Application of moneys of Corporation

Clause 59 provides that Corporation moneys (other than from sales of canned fruits) may be used to discharge any debts, liabilities or obligations of the Australian Canned Fruits Board.

Moneys to be paid to Corporation in respect of charge under Canned Fruits Export Charges Act 1926 and Excise Act 1901

Clause 60 specifies that the Corporation shall be paid all outstanding moneys in respect of the Canned Fruits Export Charges Act 1926 and Excise Act 1901, including moneys collected after the enactment of this legislation.

Employees of Board

Clause 61 provides for employees of the Australian Canned Fruits Board employed by the Corporation to retain the same working terms and conditions.

Report of operations of Board

Clause 62 requires the Corporation to provide a report to the Minister on the Board's 1979 operations for tabling in Parliament; such a report to include financial statements which have been reported on by the Auditor-General.