

Apple and Pear Stabilization Export Duty Collection

No. 83 of 1971

**An Act relating to the Collection of Export Duty imposed by
the *Apple and Pear Stabilization Export Duty Act 1971*.**

[Assented to 20 October 1971]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and
the House of Representatives of the Commonwealth of Australia,
as follows:—

This Act may be cited as the *Apple and Pear Stabilization Export
Duty Collection Act 1971*.

**Commence-
ment.**

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

Interpretation.

3.—(1.) In this Act, unless the contrary intention appears—

“month” means one of the twelve months of the year;

“provisional export duty” means an amount of the provisional
export duty imposed by the Export Duty Act;

“the Secretary” means the Secretary to the Department of Primary
Industry.

(2.) Section 3 of the *Apple and Pear Stabilization Act 1971* shall, for
the purposes of the interpretation of this Act, be read as one with this Act.

4.—(1.) This section applies only so long as provisional export duty is imposed by the Export Duty Act. Provisional export duty.

(2.) The purpose of this section is to secure the collection of export duty that may become payable, and the powers of the Minister under this section shall be exercised only to such extent and in such manner as appear to him to be necessary for that purpose.

(3.) Before, or at any time during, a season, the Minister may, by notice published in the *Gazette*, declare that provisional export duty is payable on the exportation on consignment, on or after a date specified in the notice (not being a date earlier than the date on which the notice is published in the *Gazette*), of fruit picked during that season that is of a specified variety and, thereupon, provisional export duty is payable, in respect of any fruit to which the notice is applicable, at a rate applicable in accordance with sub-sections (5.) and (6.) of this section.

(4.) Provisional export duty in respect of fruit shall be calculated separately in respect of the fruit contained in each container.

(5.) The regulations may, for the purposes of sub-section (3.) of this section, fix a rate of provisional export duty in respect of fruit that is exported on consignment on or after a specified date (not being a date earlier than the date of notification in the *Gazette* of the regulation by which the rate is fixed), and the rate so fixed is, subject to the next succeeding sub-section, the rate of provisional export duty applicable to the fruit.

(6.) A rate of provisional export duty fixed by a regulation in force under the last preceding sub-section ceases to apply to fruit if another rate of provisional export duty applies to the fruit by virtue of a later regulation made under that sub-section.

(7.) Provisional export duty in respect of any fruit is payable by the person who will, if any export duty becomes payable in respect of the fruit, be liable to pay that export duty.

(8.) Provisional export duty in respect of any fruit becomes due and payable at the expiration of fifteen days after the end of the month next succeeding the month in which the fruit is exported.

(9.) The Secretary may extend the time for payment of provisional export duty in respect of any fruit in order that the proceeds of the sale of the fruit may be available for payment of the provisional export duty or for any other reason that appears to him to be sufficient.

(10.) Unpaid provisional export duty in respect of any fruit ceases to be payable when export duty in respect of the fruit becomes due and payable.

(11.) Where a person has made arrangements that, in the opinion of the Minister or of an authorized person, are adequate to ensure that any export duty that may become payable by that person will be duly paid, the Minister or the authorized person may, by writing under his hand, exempt that person from liability to pay provisional export duty.

(12.) The Board may, at any time, make recommendations to the Minister with respect to—

- (a) the payment of provisional export duty in respect of any fruit;
- (b) the rate of provisional export duty in respect of any fruit; or
- (c) the granting of exemptions from liability to pay provisional export duty,

and any recommendation so made shall be taken into consideration before action or further action is taken under this section with respect to a matter to which the recommendation relates.

(13.) A reference in sub-section (3.), (5.), (6.) or (12.) of this section to the rate of provisional export duty in respect of any fruit shall be read as including a reference to the amount of provisional export duty payable in respect of the fruit if in a container containing one-half or three-quarters of a reputed bushel of the fruit.

Adjustment of
provisional
export duty.

5.—(1.) Where—

- (a) a person has paid provisional export duty in respect of any fruit; and
 - (b) export duty is not payable in respect of that fruit,
- any provisional export duty so paid shall be refunded to the person.

(2.) Where—

- (a) export duty becomes due and payable on any fruit; and
 - (b) the person liable to pay that export duty has paid provisional export duty in respect of the fruit that exceeds that export duty,
- that export duty shall be deemed to have been paid and the excess shall be refunded to the person.

(3.) Where—

- (a) export duty becomes due and payable in respect of any fruit; and
- (b) the person liable to pay that export duty has paid provisional export duty in respect of the fruit that is equal to, or less than, that export duty,

that export duty shall be deemed to have been paid or paid to the extent of an amount equal to that provisional export duty, as the case may be.

Declaration
that export
duty is
payable.

6. Where export duty is found to be payable in respect of any fruit picked during a season, the Minister shall, by notice published in the *Gazette*, declare that export duty is so payable and shall specify in the notice the rate of that export duty.

Time for
payment of
export duty.

7. Export duty in respect of any fruit becomes due and payable upon the expiration of fifteen days after the end of the month next succeeding the month in which a notice under the last preceding section that is applicable to the fruit is published.

Manner of
payment of
export duty,
&c.

8. Subject to this Act, export duty and provisional export duty shall be paid to the Secretary at Canberra.

9.—(1.) Where the liability of a person to pay export duty or provisional export duty is not discharged on or before the time when it is payable, there is payable by that person to the Commonwealth by way of penalty, in addition to that export duty or provisional export duty, as the case may be, an amount calculated at the rate of ten per centum per annum upon that export duty or provisional export duty, as the case may be, or upon that part of it from time to time remaining unpaid, to be computed from the time when it became payable.

Penalty for
non-payment.

(2.) The Minister or, subject to the next succeeding sub-section, an authorized person may, in a particular case, for reasons that the Minister or the authorized person, as the case may be, in his discretion thinks sufficient, remit the whole or a part of an amount payable under this section.

(3.) A remission granted under the last preceding sub-section by an authorized person shall not exceed Ten dollars.

10.—(1.) For better securing the payment of export duty and the administration of this Act, the Minister may, on behalf of the Commonwealth, enter into an arrangement with the Board with respect to—

Arrangement
for collection
of export duty,
&c., by the
Board.

- (a) the collection of export duty and provisional export duty and penalties under the last preceding section; and
- (b) the making of refunds under section 5 and section 15 of this Act, by the Board on behalf of the Commonwealth and, while such an arrangement is in force, the Board 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 the last preceding sub-section, an arrangement under that sub-section may provide for—

- (a) the payment by the Board to the Commonwealth of amounts collected by the Board in pursuance of the arrangement;
- (b) the keeping by the Board of accounts and records in relation to—
 - (i) the amounts referred to in the last preceding paragraph; and
 - (ii) refunds under section 5 or section 15 of this Act made by the Board on behalf of the Commonwealth;
- (c) the inspection and audit of the accounts and records referred to in the last preceding paragraph; and
- (d) the furnishing by the Board to the Minister of information with respect to anything done by the Board in pursuance of the arrangement.

11.—(1.) While an arrangement under the last preceding section is in force, payment of export duty or provisional export duty may be made to the Board.

Collection of
export duty,
&c., by the
Board.

(2.) Where, under the last preceding sub-section, a person pays export duty or provisional export duty to the Board, the person is, to the extent

of the amount so paid, discharged from his liability to pay the export duty or the provisional export duty to the Commonwealth.

(3.) Money collected by the Board under this section shall, until it is paid to the Commonwealth in accordance with the arrangement under which it was collected, be deemed to be money held in trust for the Commonwealth.

Application of
Audit Act.

12.—(1.) The Audit Act does not apply in relation to—

- (a) export duty or provisional export duty or penalties under section 9 of this Act collected by the Board; or
- (b) refunds under section 5 or section 15 of this Act made by the Board,

in accordance with an arrangement entered into under section 10 of this Act.

(2.) The last preceding sub-section shall not be construed as affecting the operation of the Audit Act in relation to moneys paid by the Board to the Commonwealth.

Recovery of
export duty,
&c.

13.—(1.) The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:—

- (a) export duty and provisional export duty that is due and payable;
- (b) an amount payable by way of penalty under section 9 of this Act; and
- (c) an amount payable to the Commonwealth by the Board under an arrangement entered into under section 10 of this Act.

(2.) In proceedings for the recovery of an amount referred to in the last preceding sub-section, an averment or statement in the complaint, claim or declaration of the plaintiff is evidence of the matter so averred or stated.

Exporter may
recover export
duty from
owner.

14. Where an exporter has paid export duty in respect of fruit of which he is not the owner, he is entitled to recover an amount equal to that export duty from the owner of the fruit as a debt due to the exporter from the owner.

Refund of
duty paid.

15.—(1.) Subject to this section, where any export duty or provisional export duty has been overpaid, the amount overpaid shall be refunded.

(2.) A refund shall not be made to an exporter in respect of any fruit of which the exporter is not the owner unless the Minister is satisfied that the exporter has not recouped himself to the extent of the amount of the refund from the owner or, if he has so recouped himself, that he has since paid the amount to the owner.

Power to call
for returns.

16. An authorized person may, by notice in writing, require a person to furnish to him, within the time specified in the notice, such return or information in relation to matters relevant to the operation of this Act or

the Export Duty Act as is specified in the notice, including a return or information verified by statutory declaration.

17.—(1.) A person shall not—

- (a) fail or neglect duly to furnish a return or information that he is required under this Act or the regulations to furnish; or
- (b) furnish, in pursuance of this Act or the regulations, a return or information that is false or misleading in a material particular.

Offences in relation to returns.

Penalty: Two hundred dollars.

(2.) A prosecution for an offence against this section may be commenced at any time within three years after the commission of the offence.

18.—(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.

Access to premises.

(2.) Where an authorized person has reason to believe that there are on any premises books, documents or papers relating to the exportation of fruit in respect of which export duty is, or may be, payable, 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 the last preceding sub-section, the Justice of the Peace is satisfied, by information on oath—

- (a) that there is reasonable ground for believing that there are on the premises to which the application relates any books, documents or papers relating to the exportation of fruit in respect of which export duty is, or may be, payable; and
- (b) that the issue of a warrant is reasonably required for the purposes of this Act,

the Justice of the Peace may grant a warrant, in accordance with the prescribed form, 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.

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

(5.) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting in pursuance of a warrant granted under sub-section (3.) of this section or in pursuance of the last preceding sub-section.

Penalty: Two hundred dollars.

(6.) The functions of an authorized person under this section are to search for, inspect, take extracts from and make copies of any books, documents or papers relating to the exportation of fruit in respect of which export duty is, or may be, payable.

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

Regulations.

19. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act or for facilitating the collection or recovery of any debt due to the Commonwealth under this Act and, in particular—

- (a) providing for the manner of payment of export duty, provisional export duty and other moneys payable to the Commonwealth under this Act;
 - (b) requiring exporters of fruit in respect of which export duty is, or may be, payable to keep records relating to, and to furnish, to such persons as are prescribed, returns or information relating to, the exportation of that fruit; and
 - (c) prescribing penalties, not exceeding a fine of Two hundred dollars, for offences against the regulations.
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