



# Apple and Pear Export Underwriting Act 1981

No. 14 of 1981

---

## An Act relating to the underwriting of returns from the export from Australia of apples and pears

[Assented to 25 March 1981]

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

### Short title

1. This Act may be cited as the *Apple and Pear Export Underwriting Act* 1981.

### Commencement

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—

“Audit Act” means the *Audit Act* 1901;

“authorized person” means a person who is, by virtue of an appointment under section 20, an authorized person for the purposes of the provision in which the expression occurs;

“average export return rate”, in relation to a relevant season in respect of a kind of fruit, means the amount per reputed box determined by the Minister under section 6 to be the average export return rate for that season in respect of that kind of fruit;

“container”, in relation to fruit, means the receptacle in which the fruit is enclosed on export, but does not include a receptacle that contains one or more smaller receptacles;

“Corporation” means the Australian Apple and Pear Corporation established by the *Australian Apple and Pear Corporation Act 1973*;

“export” means export from Australia;

“exported fruit” means—

(a) fruit that, having been sold in Australia for delivery to a place outside Australia or for delivery to a ship or aircraft for export, has been exported in pursuance of the contract of sale; or

(b) fruit (not being fruit referred to in paragraph (a) ) that has been exported for the purpose of sale outside Australia and has been so sold before the end of the season in which it was so exported;

“export sale”, in relation to exported fruit, means the sale of that fruit by virtue of which it became, or became on export, exported fruit;

“fruit” means apples and pears;

“guaranteed minimum export return rate”, in relation to a relevant season in respect of a kind of fruit, means the amount per reputed box determined by the Minister under section 5 to be the guaranteed minimum export return rate for that season in respect of that kind of fruit;

“relevant season” means the season that commenced on 1 October 1980, and each of the next 4 succeeding seasons;

“reputed box” means 18 kilograms;

“season” means a period of 12 months commencing on 1 October in any year;

“underwriting payment” means an underwriting payment under section 8.

(2) In this Act, a reference to a kind of fruit shall be read as a reference to apples only or pears only.

(3) For the purposes of this Act—

(a) a container that contains not more than five-eighths of a reputed box of fruit shall be deemed to contain one-half of a reputed box of the fruit;

(b) a container that contains more than five-eighths, but not more than seven-eighths, of a reputed box of fruit shall be deemed to contain three-quarters of a reputed box of the fruit; and

(c) a container that contains more than seven-eighths of a reputed box of fruit but not more than one and one-quarter reputed boxes of fruit shall be deemed to contain one reputed box of the fruit.

#### **Act to bind Crown**

**4. (1)** This Act binds the Crown in right of each of the States and of the Northern Territory, but does not bind the Crown in right of the Commonwealth.

(2) Nothing in this Act shall be deemed to subject the Crown in right of a State or of the Northern Territory, or any person in the employment of the Crown in right of a State or of the Northern Territory, to liability to be prosecuted for an offence.

**Guaranteed minimum export return rates for apples and pears**

5. (1) As soon as practicable after the commencement of this Act, the Minister shall, for the purposes of this Act, determine, in accordance with this section, in respect of each kind of fruit, the amount per reputed box that is the guaranteed minimum export return rate for the relevant season that commenced on 1 October 1980 in respect of that kind of fruit.

(2) As soon as practicable after the end of a relevant season (other than the season commencing on 1 October 1984), the Minister shall, for the purposes of this Act, determine, in accordance with this section, in respect of each kind of fruit, the amount per reputed box that is the guaranteed minimum export return rate for the next succeeding relevant season in respect of that kind of fruit.

(3) The amount per reputed box that is the guaranteed minimum export return rate for a relevant season in respect of a kind of fruit shall be determined by—

- (a) ascertaining the aggregate of the amounts of the net proceeds of export sales of exported fruit of that kind exported during the 4 seasons immediately preceding that season;
- (b) dividing the amount so ascertained by a number equal to the number of reputed boxes of exported fruit of that kind exported during those 4 seasons; and
- (c) deducting from the amount calculated in accordance with paragraph (b) an amount equal to 5% of the amount so calculated.

(4) Where the Minister has determined the guaranteed minimum export return rate for a relevant season in respect of a kind of fruit, he shall publish in the *Gazette* a notice specifying the rate so determined.

**Average export return rate**

6. (1) As soon as practicable after the end of a relevant season, the Minister shall, for the purposes of this Act, determine, in respect of each kind of fruit, the amount per reputed box that is the average export return rate for that season in respect of that kind of fruit by—

- (a) ascertaining the aggregate of the amounts of the net proceeds of export sales of exported fruit of that kind exported during that season; and
- (b) dividing the amount so ascertained by a number equal to the number of reputed boxes of exported fruit of that kind exported during that season.

(2) Where the Minister has determined the average export return rate for a relevant season in respect of a kind of fruit, he shall publish in the *Gazette* a notice specifying the rate so determined.

**Amount of net proceeds of export sale**

7. (1) For the purposes of paragraph 5 (3) (a) and 6 (1) (a), the amount of the net proceeds of an export sale of exported fruit shall be taken to be—

- (a) in the case of fruit exported in pursuance of a guaranteed advance contract—the amount, or the aggregate of the amounts, payable, under the contract, to the owner of the fruit so exported in respect of that fruit; or
- (b) in any other case—the amount of the proceeds of that sale,

less an amount equal to the amount of any costs, charges or expenses that, in the opinion of the Minister, were necessarily incurred in respect of that sale by reason of the carriage of the fruit from the port or airport of export to a place outside Australia, including—

- (c) the insuring of the fruit in respect of any period after it was placed on board a ship or aircraft for export; and
- (d) any moving, handling or processing of, or any dealing in, the fruit after it was placed on board a ship or aircraft for export.

(2) In this section, “guaranteed advance contract”, in relation to fruit, means a contract or arrangement between the owner of the fruit and another person under which—

- (a) the owner agrees to supply the fruit for sale outside Australia by the other person on commission on behalf of the owner; and
- (b) the other person agrees—
  - (i) to endeavour to sell the fruit in accordance with the contract or arrangement; and
  - (ii) whether or not he does so sell the fruit and irrespective of the price received on any such sale of the fruit, to pay to the owner an advance payment in respect of the fruit at a rate fixed by the contract or arrangement.

**Underwriting payments**

8. (1) Where the average export return rate for a relevant season in respect of a kind of fruit is less than the guaranteed minimum export return rate for that season in respect of that kind of fruit, an underwriting payment is payable in respect of exported fruit of that kind exported during that season.

(2) An underwriting payment in respect of fruit shall be calculated separately in respect of the fruit contained in each container.

(3) The rate of an underwriting payment in respect of exported fruit exported during a relevant season is an amount per reputed box, or part of a reputed box, in each container of the fruit equal to the amount by which the amount per reputed box that constitutes the average export return rate for that season in respect of the kind of fruit in which the exported fruit is included is less than the amount per reputed box that constitutes the guaranteed minimum export return rate for that season in respect of that kind of fruit.

(4) Where a container of fruit contains one-half or three-quarters of a reputed box of the fruit, the underwriting payment in respect of that fruit is an amount equal to one-half or three-quarters, as the case may be, of the amount forming part of the rate of underwriting payment that would, but for this sub-section, be applicable in relation to the fruit under this section.

**To whom underwriting payments payable**

9. An underwriting payment in respect of exported fruit is payable to—

- (a) where the fruit was exported in pursuance of a sale of the kind referred to in paragraph (a) of the definition of “exported fruit” in sub-section 3 (1)—the person who was the owner of the fruit immediately before that sale; or
- (b) in any other case—the person who was the owner of the fruit at the time of export.

**Assignment of underwriting payment to be void**

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

**Payment of underwriting payments to the Corporation for distribution**

11. (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
- (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.

(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.

**Payments to exporter as agent**

**12. (1)** For the purpose of making underwriting payments in respect of fruit that was exported by a person (in this section referred to as the “exporter”) on behalf of other persons who are entitled to those payments, the Commonwealth or the Corporation may arrange for the exporter to pay, as agent of the Commonwealth or of the Corporation, as the case may be, to each of those other persons the underwriting payment payable to him, and payment may be made by the Commonwealth or by the Corporation, as the case may be, to the exporter in accordance with the arrangement.

**(2)** The Audit Act does not apply in relation to amounts of underwriting payments in the hands of an exporter.

**(3)** Moneys paid to an exporter 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.

**(4)** Notwithstanding section 10, where—

- (a)** an arrangement has been made between the Commonwealth or the Corporation and an exporter 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 exporter as an underwriting payment that is payable to a person in respect of any fruit; and
- (c)** the person is indebted to the exporter by reason of a loan or advance made to the person by the exporter and the person has authorized the exporter to retain moneys payable by the exporter to the person in respect of the fruit concerned in or towards the discharge of that indebtedness,

the exporter 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 exporter in or towards the discharge of that indebtedness and, where the exporter so applies an amount, the amount so applied shall, for the purposes of this Act, be deemed to have been received by the person from the exporter as an underwriting payment in respect of the fruit concerned.

**Appropriation**

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

**Directions by Minister with respect to overseas price of fruit**

**14.** Where regulations in force under the *Australian Apple and Pear Corporation Act 1973* authorize the Corporation, or a person authorized by the Corporation, to determine the price at which fruit may be sold overseas, the Corporation—

- (a)** shall comply with any direction of the Minister with respect to the making of any such determination in respect of fruit picked during a relevant season; and

- (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 fruit to which the determination relates is not sold for export at a price less than the price applicable under the determination.

#### **Furnishing of returns**

15. (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.

(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).

(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**

16. (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—

(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,

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.

(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.

### **Overpayments**

17. Where a person has received, in respect of an underwriting payment, a payment that was not payable to him or 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.

### **Exporter to keep proper books and accounts, &c.**

18. (1) A person who exports fruit shall—

- (a) maintain, in respect of each relevant season, proper books and accounts in respect of his operations, receipts and expenditure in relation to the export of fruit picked during that season, and enter promptly in those books and accounts full and correct particulars of all such operations, receipts and expenditure;
- (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.

Penalty: \$1,000.

(2) A prosecution for an offence against paragraph (1) (a) may be commenced at any time within 3 years after the commission of the offence.

### **Access to premises**

19. (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 other papers relating to the export, the sale for export or the sale after export of fruit picked during a relevant 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 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 by information on oath or affirmation—

- (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,

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.

(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).

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

#### **Appointment of authorized persons**

20. 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.

#### **Regulations**

21. 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—

- (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.