

AGRICULTURAL PRODUCE COMMISSION AMENDMENT BILL 2021

EXPLANATORY MEMORANDUM

This Bill will amend the *Agricultural Produce Commission Act 1988*. It aims to:

- implement a number of changes as recommended by a 2006 review of the Act;
- redraft a number of sections to modernise, strengthen and clarify;
- enable better governance and responsiveness to, and on behalf of, producers' committees; and
- remove the exclusion of certain industries from use of the Act.

1 – Short title

The Act when passed will be the *Agricultural Produce Commission Amendment Act 2021*.

2- Commencement

The short title and commencement provisions will commence on assent and the rest of the Act on the day after. There is no need for any delay in the Act's commencement.

3 - Act Amended

The amendments in the Bill are to the *Agricultural Produce Commission Act 1988*.

4 – Section 3 amended

Subclause (1) inserts a definition of “authorised officer”, meaning “a person designated under section 19B”. Section 19B is a new provision dealt with later in this memorandum.

Subclause (1) also inserts a definition of “pastoral lease”, to clarify that it has “the meaning given in the *Land Administration Act 1997* section 3(1)”. This term is used in subclause (2).

Subclause (2) amends the definition of “agricultural industry” by deleting the exclusion of broadacre cropping and grazing industries and replacing this with “an industry that concerns livestock enterprises generally conducted on land on a pastoral lease”. This provides more clarity as to what is excluded, and provides certainty that pastoral activities cannot be included in an agricultural industry prescribed in the future.

5 – Section 5 amended

Currently the Agricultural Produce Commission (the Commission) consists of 4 members. With this amendment it can consist of either 3 or 4 members, as considered appropriate by the Minister. Three Commissioners can be adequate for the effective functioning of the Commission and this should be enabled where the Minister considers it appropriate, resulting in a saving on Commission costs.

6 – Section 6 amended

(1) This clause makes the following changes to the section setting out the functions of the Commission:

- (a) In referring to the “agricultural produce” with which a producers' committee is concerned, the term “with responsibility for” will be used instead of “in relation to”.
- (b) Two new functions are given to the Commission. These are (aa) the allocation of responsibility for agricultural produce to existing producers' committee. This will be an alternative to establishing a new committee when doing so is not otherwise necessary or desirable. The new paragraph (ab) allows the removal of responsibility for agricultural produce from producers' committees - the corollary of the power to allocate responsibility.

- (c) Two functions (d) and (e) are expanded into three. Function (d), the conduct of polls will no longer be only for the purposes of the establishment and operation of committees because new purposes for which polls will be conducted are added by this Bill. Function (e), the dissolution and winding up of committees is divided into two, (da) and (e). This clarity is in line with amendments made later in the Bill.
- (d) The function of providing persons to assist producers' committees is included. This relates to the removal of the power of producers' committees to employ people

(2) Section 6(2) specifies the broad categories of reasons for establishment of producers' committees, either for the whole State or part of the State. This provision is amended to incorporate the new terminology of "responsibility" for agricultural produce and the capacity for an existing committee to have additional produce allocated to it.

7 – Section 9 amended

Section 9 allows the Commission to employ or engage "such persons" as necessary to carry out its functions. There is no need for the reference to "officers and servants" as opposed to "other" people and it will be removed.

8 – Part 3 division 1 heading inserted

Part 3 of the Act, entitled "Producers' committees" deals with the specifics of the establishment of these committees. This Part is being expanded and divided into separate Divisions. Division 1 relates to "Establishing producers' committees".

9 – Section 10 amended

Section 10 sets out the preliminary requirements for the establishment of producers' committees. A number of amendments are made to this section.

- (1) Firstly, three new subsections will replace the current subsection (1).

The new subsection (1) makes it clear that a request from relevant producers (one or more or a body representing them) for the conduct of a poll for the purposes of establishing a committee is a necessary precursor to the conduct of such a poll.

The new subsection (1A) specifies certain requirements of the request. These are straightforward. The request must be in writing, specify the relevant produce, the objects to be effected and the particular part of the State involved.

Under subsection (1B), the Commission must publish notice of the proposal to establish a committee.

- (2) In this subclause, the paragraphs make various amendments to section 10(2) which sets out the requirements of the notice to be published:

- (a) Updates the language; "shall" becomes "must".
- (b) Inserts a new paragraph (aa) requiring the names of the producer, producers or body that made the request for the committee to be established.
- (c) Aligns the wording of the amendment with other amendments made.

- (3) Updates reference to "this Division" instead of just 2 sections.

- (4) Updates "shall" to "must".

- (5) Changes subsection (4) to a simpler, clearer, drafting style.

- (6) Subsections (5) and (6) are reworded for clarity and in order to fit better with other amendments. Subsection (7) is replaced to clarify, and make consistent with other amendments, the provision that prevents the commission establishing a producers' committee unless a poll is conducted and is in favour. A similar amendment is made to the provision (formerly subsection (9) but will become subsection (8)) allowing the

Commission to refuse or defer establishment of a producers committee despite a poll being in favour.

10 – Section 11 amended

Section 11 sets out the process for establishment of a producers' committee. This section is amended simply to make its reference to the relevant agricultural produce consistent with the change in terminology and to correct a minor error.

11 – Part 3 Divisions 2 and 3 inserted

The new Division 2 is headed "Allocating responsibility for agricultural produce to an existing producers' committee". It includes new sections 11A, 11B, 11C and 11D.

Essentially the procedure is the same when produce is allocated to an existing committee as it is for the establishment of a new committee.

The new Division 3 – "Appointment of non-producers to producers' committees" contains just one section with the same heading.

This section (section 11E) allows the nomination for appointment to a committee of a person who would not be eligible to stand for or vote in a poll; that is, a person who is not a producer of the relevant produce. The Commission may do this if it is of the opinion that it would be desirable and practical; if the person has relevant experience; and if there will be a majority of producers on the committee.

A non-producer may take part in consideration and discussion of any matter at a meeting but cannot vote.

12 – Division 4 heading inserted

The new Division 4 is headed "Functions of producers' committees".

13 – Section 12 amended

Section 12 sets out the functions of a producers' committee. Subsection (1) provides that a committee may provide any one or more of the listed services as are prescribed in relation to the relevant agricultural produce. There are 14 listed services. Five amendments are made to these:

- (a) The change in terminology ("with responsibility for") is made.
- (b) Paragraph (d), allowing the conduct of educational or instructional programmes, is broadened. Rather than refer only to programmes "relating to the production of agricultural produce" it will refer to programmes "that, in the opinion of the producers' committee, may be of advantage to producers of the agricultural produce". There are many areas – finance, safety and marketing, for example – where education and training would be useful to producers, but which might not be said, strictly, to "relate to production". With this amendment, such programmes can be conducted if the committee sees the advantage to producers.
- (c) Paragraph (k) allows the support of certain schemes or activities. It will be broadened to cover those capable, in the Commission's opinion, of assisting in the "production, promotion or sale" of the relevant agricultural produce, rather than just the "promotion or sale". Improving production output and quality and reducing the cost of production are areas where significant benefits to producers can be delivered.
- (d) Paragraph (la) allows the establishment of a compensation scheme for producers. This will be amended to allow a scheme to operate where produce is destroyed by a pest or disease, rather than just where produce is destroyed as a result of action taken to control a pest or disease.

- (e) This amendment just changes the spelling of “organization” to “organisation”, as now standard in WA statutes.

Section 12(2) is to be deleted. This allows a producers’ committee, with the approval of the Commission, to employ people. This is not appropriate, as committees are not established as legal entities. Instead, (as happens in practice even now) the Commission may provide people to assist a committee – see clause 6(1)(d) of the Bill.

Section 12(3) is amended to modernise the language and make it consistent with the rest of the amended Act.

A new subsection 12(5) is added to specify that a producers’ committee may communicate, consult or liaise with, and hold meetings with, producers of agricultural produce. Consultation with and reporting back to producers is vital to the transparent functioning of committees.

14 – Section 12A amended

Section 12A is amended to change the reference to persons employed by a committee to a reference to persons employed or engaged by the Commission to assist a committee, in line with the amendments made to section 12.

This provision relates to fruit fly baiting schemes. It allows persons to enter and bait or spray orchards where a scheme applies. The other amendment to the provision will enable the carrying out of other control measures determined by the Committee – baiting and spraying may not be all that is required.

15 – Section 13 amended

This provision allows the Commission, for the purpose of facilitating the establishment or operation of a committee, to require a producer to furnish prescribed statistical information. The amendment to this provision will allow the Commission to obtain prescribed statistical information from prescribed persons as well as producers. This is included because it is necessary for the Commission to obtain information from people who have obligations under the regulations for the collection and remittance of charges for services.

Subsection 13(2) is replaced with an updated style of penalty provision, with reference to false or misleading information removed because this is now covered by a different provision – see clause 19G.

16 – Section 14 amended

Section 14 provides for the determination by the Commission of charges for the services provided by producers’ committees. Three new subsections are to be inserted:

The new subsection (2A) states that the estimated cost or cost of providing a service, which is relevant to the determination of the charge for that service, includes any cost or estimated cost associated with the communications with producers, now specifically referred to in section 12.

The new subsection (4) provides that a charge is held on trust for the producers’ committee providing the service by a person to whom that charge is paid, or by whom it is collected, until it is paid to the commission in accordance with the regulations.

The new subsection (5) provides that the regulations prescribing how a charge is payable may provide for the circumstances in which a charge imposed may be waived, refunded or reduced. The capacity for waiver, refund or reduction will enable charging for services to be more tailor-made to the different requirements of different producers and categories of producers as the number of industries that choose to take advantage of the Act increases.

17 – Part 3 Division 5 inserted.

This clause inserts the new Part 5 – “Removing responsibility for agricultural produce from, or dissolving producers’ committees”.

The new section 14A allows the Commission to conduct a poll of producers of agricultural produce for which a committee has responsibility and if the poll is in favour of doing so, remove responsibility for that agricultural produce from the committee. The removal of the responsibility is achieved by publication of a notice in the *Gazette*.

This capacity is a corollary of the capacity to assign responsibility for produce to a committee.

The new section 14B allows the Commission to remove responsibility for produce without a poll if the producers committee is operating in a manner materially to the financial detriment of a producer or producers of the agricultural produce or is no longer providing any service it is authorised to provide. Again, removal of responsibility is achieved by publication of a notice in the *Gazette*.

18 – Section 15 amended

Section 15 provides for the dissolution of a producers’ committee. Dissolution takes place if a poll of the producers concerned is in favour of the dissolution. Subsections (1) to (3) are to be replaced by subsections (1) to (3B). These amendments set out the requirements for dissolution more clearly and succinctly than the provisions replaced and allow the option for a committee to be wound up by the Commission or an appointed liquidator. The Act currently requires the appointment of a liquidator.

Subsection (8), in one long sentence, provides for the dissolution of a producers’ committee without a poll if it is operating to the financial detriment of a person who is a producer. This is to be deleted and replaced with a new section 15A.

19 – Section 15A inserted

This new provision for dissolution of a producers’ committee without a poll will replace the deleted section 15(8). A committee may be dissolved without a poll being held if the Commission is satisfied that the committee –

- (a) Is operating in a manner that is materially to the financial detriment of a producer or producers of agricultural produce for which it has responsibility; or
- (b) Is no longer providing any service it is authorised to provide.

Paragraph (b) is clearly an appropriate ground for dissolution of a committee but was not referred to in the replaced subsection 15(8).

As where a producers’ committee is wound up after a poll, subsection (2) provides for commencement of wind-up by the Commission or a liquidator on publication of a notice in the *Gazette*. Subsection (3) applies the appropriate provisions of section 15 to dissolution under section 15A (producers’ committee to cease to act; functions performed by commission or liquidator; liquidators remuneration, notice of declaration of dissolution; vesting of money and other assets of dissolved committee in the Commission; these to be dealt with as Minister directs for the benefit of the producers’ concerned).

20 – Part 3 Division 6 heading inserted

A separate Division relating to “Conducting polls” is created.

21 – Section 16 amended

Section 16 requires the compilation of a list of producers. Subsection (1) is to be replaced by a subsection clearly specifying, in paragraphs (a) and (b) the requirement to compile either a list of producers in the whole of the State or in a particular part of the State, depending on the responsibility the producers' committee has, or is proposed to have.

22 – Sections 16A and 16B inserted

The new **section 16A** allows weighted voting in certain circumstances.

Weighted voting will take the form of the Commission determining, in writing, the number of votes each producer is to have in a poll.

In determining the number of votes a producer is to have, the Commission must ensure that each producer:

- (a) has at least one vote; and
- (b) has the number of votes that is proportionate to the percentage of the relevant agricultural produce that was produced by that producer in the preceding three years. (This refers to agricultural produce produced in the whole state, or the relevant part of the State, as applicable).

Subsection (3) restricts the use of weighted voting to when the commission is satisfied that –

- (a) there is sufficient industry data available to make the determination; and
- (b) it is in the best interests of the agricultural industry to do so.

A copy of the determination is to be given to each producer concerned as soon as practicable after it is made (subsection (3)). Producers will then vote in the poll in accordance with the determination (subsection (4)).

The new **section 16B** relates to the Commission's costs of conducting polls. Previously this was dealt with in section 17(2). Rather than relying on regulations, the new subsection (1) is straightforward: the commission is entitled to recover from the funds of the producers' committee its costs of conducting a poll.

Subsection (2) deals specifically with two different polls –

- (a) A poll under section 10 or 11 (for establishment of a producers' committee or election of members). The commission can recover the amount by which the costs of the poll exceed the sum deposited under section 10(5) for the purposes of establishing the producer' committee.
- (b) A poll under section 11B (to allocate responsibility for produce to an existing committee). The Commission can recover the amount by which the costs of the poll exceed the sum deposited under section 11B(4) for the purposes of the poll.

23 – Section 17 amended

This section deals with the conduct of polls. These are to be conducted in accordance with the regulations.

Subsection (2), which allows the regulations to provide that “the costs of and expenses relating to a poll shall be recovered by the Commission from the funds of a producers' committee” is to be deleted. The recovery of the Commission's costs is now more fully dealt with in the new section 16B (see above).

24 – Part 3 Division 7 heading inserted

Continuing the organisation of the Act's provisions into Parts and Divisions, Division 7 of Part 3 contains "Other matters". Only one small amendment is made to the provisions comprising this Part.

25 – Section 19 amended

This is a simple amendment to the provision for voluntary associations of producers so that the wording aligns with the rest of the Act, as amended.

26 – Part 3A inserted

This clause inserts a new Part 3A – "Compliance". It consists of four new sections in two Divisions:

Division 1 – Authorised officers

19B. Authorised officers

This is a straightforward provision for the designation of persons employed by the Commission as authorised officers for the purposes of this Part of the Act.

19C. Terms used

This section defines certain terms used in this Division.

The definition of "charge" is straightforward and unremarkable.

Three of the four aspects of the term "compliance purposes" involve "monitoring compliance" with a requirement to pay or collect a charge; to give information or produce a record; and to provide prescribed statistical information.

The fourth allows an investigation of a suspected non-compliance with any of these requirements.

The definition of "relevant person" covers:

- (a) producers of agricultural produce for which there is a committee;
- (b) a person required to pay or collect a charge.
- (c) a person required to give information or produce a record relating to the production, processing, sale or purchase of agricultural produce or the payment or collection of a charge; or
- (d) a person required to comply with a requirement in a notice under section 13 – the provision of prescribed statistical information.

The definition of "relevant record" is as might be expected, namely a record:

- (a) required to be kept or given under the Act; or
- (b) that relates to relevant aspect of agricultural produce in relation to which a charge is payable; or
- (c) that relates to a charge payable; or
- (d) that contains any information that is, or is likely to be, relevant for compliance purposes.

19D. Obtaining information and relevant records

Subsection (1) confers the power on an authorised officer, for compliance purposes, to direct a person to give information, answer a question, or produce records.

Subsection (2) allows examination and copying of a record produced, and its retention for as long as reasonably necessary.

Subsection (3) provides details about the manner, means and time by which a direction under subsection (1)(a), to give information or answer a question, may or must be given and followed: in writing or orally, at or within what time, if in writing by what means. Information or an answer may be required to be verified by statutory declaration.

Subsection (4) provides similar details about a direction under subsection (1)(b) to produce a record.

19E. Failure to comply with directions

A person must not fail to comply with a direction under section 19D(1), without reasonable excuse; penalty \$1000.

19F. Self-incrimination not an excuse

An individual is not excused from complying with a direction under section 19D on the ground that it might incriminate the individual or make them liable to a penalty. This could be, for example, in relation to an investigation for an offence relating to a requirement referred to in section 19C. However, by subsection (2), the incriminating answer provided cannot be used, for example, in proceedings for the offence being investigated, or for anything else except proceedings for perjury or giving false or misleading information.

27 – Section 19G inserted

A new section (19G) is inserted into Part 4 – “Miscellaneous”.

19G. False or misleading information

Subsection (1) applies the definition of “record” in section 19C.

Subsection (2) provides that a person must not give false or misleading information to –

- (a) an authorised officer pursuant to a direction under section 19D (to provide information);
- (b) the Commission pursuant to a notice under section 13 (to furnish prescribed statistical information).
- (c) any person pursuant to a requirement under the Act to give information, or produce a record, relating to the production, processing, sale or purchase of agricultural produce or the payment or collection of a charge imposed under the Act.

The penalty is \$1000.

Subsection (3) spells out the different ways in which a person can give false and misleading information. It makes clear that omissions from a statement that make it misleading are included in the concept of giving false or misleading information.

28 – Section 20A inserted

Section 20A provides for the giving of notices or other documents by email if an email address has been provided by a person in one of the ways specified. This section is in addition to the *Interpretation Act 1984*, section 76, which provides for service of documents generally. In other words, a document may, but does not have to be, given by email.

29 – Section 24 amended

Section 24 provides protection from personal liability for a person who is or was a member or an officer or employee of the Commission or a producers’ committee. A definition of “officer or employee” has been inserted in a new subsection (1). It covers a person engaged or employed

by the Commission, and includes an “authorised officer”. In relation to a producers’ committee, paragraph (b) preserves the immunity from personal liability of a person (should there be one) who was employed or engaged by a producers’ committee under the power that is being removed. This is perhaps over cautious as there is not known to be any such persons. By subclause (2), the subsection designation (2) is included and a reference to “him” becomes a reference to “the person”.

30 – Section 25 amended

Another updating of the spelling of “organisations”.

31 – Sections 26 and 27 deleted

To close off the Bill there is the deletion of two spent sections, the provision for review of the Act 5 years after its original enactment in 1988 and the long since made amendment to the Parliamentary Commissioner Act and the Constitution Acts Amendment Act.