

Tobacco Marketing

No. 85 of 1965

An Act relating to the Marketing of Tobacco Leaf.

[Assented to 4 December, 1965]

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

PART I.—PRELIMINARY.

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| Short title. | 1. This Act may be cited as the <i>Tobacco Marketing Act 1965</i> . |
| Commence-
ment. | 2. This Act shall come into operation on the day on which it receives the Royal Assent. |
| Parts. | 3. This Act is divided into Parts, as follows:—
Part I.—Preliminary (Sections 1–4).
Part II.—The Australian Tobacco Board (Sections 5–14).
Part III.—Functions and Powers of the Board (Sections 15–17).
Part IV.—Export Control (Section 18).
Part V.—Finance (Sections 19–25).
Part VI.—Miscellaneous (Sections 26–29). |
| Definitions. | 4. In this Act, unless the contrary intention appears—
“approved bank” means the Reserve Bank of Australia or another bank approved by the Treasurer for the purposes of the provision in which the expression is used;
“member” means member of the Board;
“State Board”, in relation to a State, means the authority, if any, constituted by or under the law of the State, whether before or after the commencement of this Act, that is empowered to perform functions in relation to the marketing of tobacco;
“the appropriate Minister”, in relation to a State, means the Minister of State of the State administering the Department of the State dealing with agricultural matters, and includes a Minister of State of that State acting on behalf of that Minister;
“the Auditor-General” means the Auditor-General for the Commonwealth; |

- “ the Board ” means the Australian Tobacco Board established under this Act;
- “ the Chairman ” means the Chairman of the Board;
- “ the Deputy Chairman ” means the Deputy Chairman of the Board;
- “ tobacco leaf ” means leaf of the tobacco plant that has been cured, but has not been subjected to any process of manufacture other than drying or re-drying.

PART II.—THE AUSTRALIAN TOBACCO BOARD.

5.—(1.) For the purposes of this Act, there is hereby established a board by the name of the Australian Tobacco Board. Establishment of Board.

(2.) The Board—

- (a) is a body corporate, with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(3.) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed.

6.—(1.) The Board shall consist of twelve members, namely:— Membership of the Board.

- (a) one member to represent the Commonwealth;
- (b) one member to represent the State of New South Wales;
- (c) one member to represent the State of Victoria;
- (d) one member to represent the State of Queensland;
- (e) one member to represent tobacco growers in the State of New South Wales;
- (f) one member to represent tobacco growers in the State of Victoria;
- (g) one member to represent tobacco growers in the State of Queensland;
- (h) one other member to represent tobacco growers; and
- (i) four members to represent tobacco manufacturers.

(2.) The members referred to in paragraphs (a), (h) and (i) of the last preceding sub-section shall be appointed by the Minister.

(3.) A member representing a State shall be appointed by the Minister on the nomination of the appropriate Minister of the State.

(4.) A member representing tobacco growers in a State shall be appointed in the following manner:—

- (a) if there is a State Board in the State—he shall be appointed by the Minister from amongst the members of the State Board on the nomination of the appropriate Minister of the State; or
- (b) if there is no State Board in the State—he shall be appointed by the Minister on the nomination of the appropriate Minister of the State.

(5.) Subject to this Act, a member holds office for such period as is specified in the instrument of appointment, being a period not exceeding four years.

(6.) A member appointed in accordance with paragraph (a) of sub-section (4.) of this section ceases to hold office if he ceases to be a member of the State Board.

(7.) Where, after the appointment of a member in accordance with paragraph (b) of sub-section (4.) of this section, a State Board is constituted in the relevant State, that member ceases to hold office on the day on which the State Board is constituted.

(8.) If a member ceases to hold office before the expiration of his term of office, a person may be appointed, in accordance with this section, to hold the vacant office for the remainder of the term of office of the member.

(9.) The appointment of a member is not invalidated, and shall not be called in question, by reason of a defect or irregularity in connexion with his appointment.

(10.) The exercise of a power or the performance of a function of the Board is not invalidated by reason only of a vacancy or vacancies in the membership of the Board.

(11.) A member is eligible for re-appointment.

Chairman.

7. The member representing the Commonwealth is Chairman of the Board.

Deputies of members.

8.—(1.) There shall be a deputy of each member of the Board.

(2.) The deputy of a member shall be appointed in the same manner as the member of whom he is the deputy.

(3.) The deputy of a member holds office during the pleasure of the Minister, but the Minister shall not remove from office the deputy of a member referred to in paragraph (b), (c), (d), (e), (f) or (g) of sub-section (1.) of section 6 of this Act unless he has consulted the appropriate Minister of the relevant State with respect to the removal.

(4.) The deputy of a member is entitled, in the event of the absence of the member from a meeting of the Board, to attend that meeting and, when so attending, shall be deemed to be a member.

(5.) The deputy of the member representing the Commonwealth shall be the Deputy Chairman of the Board.

9.—(1.) Members and deputies of members shall be paid such remuneration and allowances as the Governor-General determines. Remuneration and allowances.

(2.) If a member or a deputy of a member is a member of, or a candidate for election to, the Parliament of the Commonwealth or of a State, he shall not be paid remuneration or allowances under the last preceding sub-section, but shall, subject to the approval of the Minister, be reimbursed such expenses as he reasonably incurs by reason of his attendance at meetings of the Board or of his engagement (whether in Australia or overseas), with the approval of the Board, on business of the Board.

(3.) A person invited by the Board to attend a meeting of the Board may be paid in respect of that attendance such fees and allowances as the Minister determines.

10.—(1.) The Board shall hold meetings at such times and places as the Board determines. Meetings of the Board.

(2.) The Chairman or, when the Chairman is outside Australia or the office of Chairman is vacant, the Deputy Chairman, may, at any time, convene a meeting of the Board and shall do so upon the request in writing of not less than five members.

(3.) The Chairman shall preside at all meetings of the Board at which he is present.

(4.) In the absence of the Chairman from a meeting of the Board, the Deputy Chairman, if he is present, shall preside.

(5.) In the event of the absence of both the Chairman and the Deputy Chairman from a meeting of the Board, the members present shall elect one of their number to preside at that meeting.

(6.) At a meeting of the Board, seven members constitute a quorum.

(7.) A question arising at a meeting of the Board shall be determined by a majority of votes of the members present and voting.

(8.) The member presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9.) The Board shall keep a record of its proceedings.

(10.) The Board may invite a person to attend a meeting of the Board for the purpose of advising or informing the Board on any matter.

Leave of
absence.

11. The Board may grant leave of absence to a member upon such terms and conditions—

- (a) as to remuneration as the Governor-General determines; and
- (b) as to other matters as the Board determines.

Removal of
members.

12. The Minister may remove a member from office for misbehaviour or inability to carry out the duties of his office.

Vacation of
office.

13. If a member of the Board—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
 - (b) is absent, except on leave granted by the Board, from three consecutive meetings of the Board; or
 - (c) is convicted of an offence punishable under a law of the Commonwealth, a State or a Territory of the Commonwealth by imprisonment for one year or longer,
- the Minister shall, by notice published in the *Gazette*, remove the member from office.

Resignation.

14. A member of the Board, or the deputy of a member, may resign his office by notice under his hand delivered to the Minister.

PART III.—FUNCTIONS AND POWERS OF THE BOARD.

Functions.

15. The functions of the Board are—

- (a) to make recommendations to the Minister with respect to the making of regulations for the purposes of section 18 of this Act;
- (b) to make reports and suggestions to, and to formulate plans for the consideration of, the Minister with respect to the interstate marketing, and the export and the marketing overseas, of Australian tobacco leaf;
- (c) with the consent of the Minister, to advise any State Board or other authority or person with respect to the interstate marketing, or the export and the marketing overseas, of Australian tobacco leaf; and
- (d) such other functions as are conferred on the Board by or under this Act.

16.—(1.) The Board has power to do all things that are necessary or convenient to be done for or in connexion with the performance of its functions. Powers generally.

(2.) Nothing in this Act prevents the Board from exercising or performing, unless the Minister otherwise directs, a power, function or duty in relation to the marketing of tobacco leaf, whether in Australia or elsewhere, conferred or imposed on it by a State Act.

17.—(1.) Subject to this section, the Board may employ such persons as it thinks necessary to assist the Board in carrying out its functions and exercising any of its powers. Staff.

(2.) The terms and conditions of employment of persons employed under this section are such as are, subject to the approval of the Public Service Board, determined by the Board.

(3.) Where a person in the employment of the Board under this section was, immediately before his employment under this section, an officer of the Public Service of the Commonwealth—

(a) he retains his existing and accruing rights;

(b) for the purpose of determining those rights, his service as a person employed by the Board shall be taken into account as if it were service in the Public Service of the Commonwealth; and

(c) the *Officers' Rights Declaration Act* 1928–1959 applies as if this Act and this section had been specified in the Schedule to that Act.

(4.) The *Commonwealth Employees' Compensation Act* 1930–1964 applies to persons employed under this section as if they were employees within the meaning of that Act and as if references in that Act to the Commonwealth were references to the Board.

PART IV.—EXPORT CONTROL.

18.—(1.) For the purpose of enabling the Board effectively to control the export, and the sale and distribution after export, of tobacco leaf, the regulations may prohibit the export from Australia of tobacco leaf by a person other than the Board unless— Regulations may prohibit export except on conditions.

(a) the Board has issued a permit to the person to export the tobacco leaf and any conditions contained in the permit are complied with; and

(b) the export is in accordance with such conditions and restrictions as are prescribed.

(2.) Regulations prescribing conditions or restrictions for the purposes of paragraph (b) of the last preceding sub-section shall not be made unless the conditions or restrictions, as the case may be, have been recommended to the Minister by the Board.

(3.) A person shall not export tobacco leaf from Australia in contravention of the regulations.

Penalty: Five hundred pounds.

PART V.—FINANCE.

Payments to
the Board.

19. There shall be paid to the Board out of the Consolidated Revenue Fund such amounts as are appropriated by the Parliament for the purposes of the Board.

Bank accounts.

20.—(1.) The Board shall open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

(2.) The Board shall pay all moneys of the Board into an account referred to in this section.

Application of
moneys by
Board.

21. The moneys of the Board may be applied—

(a) in payment or discharge of the expenses, charges and obligations of the Board; and

(b) in payment of any remuneration, allowances or fees payable to any person under this Act,

but not otherwise.

Investment of
moneys of the
Board.

22. Moneys of the Board not immediately required for the purposes of the Board may be invested—

(a) in securities of or guaranteed by the Commonwealth or a State;

(b) on fixed deposit with an approved bank; or

(c) in such other manner as the Treasurer approves.

Proper accounts
and records to
be kept.

23. The Board shall keep proper accounts and records of its transactions and affairs and shall do all things necessary to ensure that all payments of moneys under its control are properly authorized and correctly made and that adequate control is maintained over its assets and the incurring by it of liabilities.

Audit.

24.—(1.) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Board and shall forthwith draw the Minister's attention to any irregularity revealed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his so doing.

(2.) The Auditor-General or an officer of the Public Service of the Commonwealth authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Board relating directly or indirectly to the receipt or payment of moneys by the Board or to the acquisition, receipt, custody or disposal of assets of the Board.

(3.) The Auditor-General or an officer of the Public Service of the Commonwealth authorized by him may make copies of or take extracts from any such accounts, records, documents or papers.

(4.) The Auditor-General or an officer of the Public Service of the Commonwealth authorized by him may require a member of the Board or a member of the staff of the Board to furnish him with such information in the possession of that person or to which that person has access as the Auditor-General or authorized officer considers necessary for the purposes of an inspection or audit under this Act, and that person shall comply with the requirement.

25.—(1.) Subject to this section, the Board is subject to taxation (other than taxes on income) under the laws of the Commonwealth, but is not subject to taxation under a law of a State or Territory to which the Commonwealth is not subject. Taxation.

(2.) Stamp duty imposed by or under the law of a State or Territory is payable by the Board in respect of instruments and documents executed by or on behalf of the Board.

PART VI.—MISCELLANEOUS.

26.—(1.) The Board shall, as soon as practicable after each thirty-first day of December, prepare and furnish to the Minister a report on the operation of this Act during the year ended on that date, together with financial statements in respect of that year in such form as the Treasurer approves. Annual report
of Board.

(2.) Before furnishing the financial statements to the Minister, the Board shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and show fairly the financial operations and state of the affairs of the Board;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Board during the year have been in accordance with this Act; and

- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3.) The Minister shall cause the report and financial statements of the Board, together with the report of the Auditor-General, to be laid before each House of the Parliament within fifteen sitting days of that House after their receipt by the Minister.

Operation of
certain Acts not
restricted.

27. Nothing in this Act or the regulations restricts the operation of the *Customs Act* 1901–1965 or the *Commerce (Trade Descriptions) Act* 1905–1950 or the regulations in force under either or both of those Acts.

Indemnity.

28. A member of the Board or the deputy of a member of the Board, or the Deputy Chairman, is not personally liable for an act of the Board or for his act when acting as a member of the Board, as the deputy of a member of the Board, or as Deputy Chairman, as the case may be.

Regulations.

29. 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 and, in particular, prescribing penalties not exceeding a fine of Fifty pounds for offences against the regulations.
