

HAIL INSURANCE.

No. 91 of 1957.

AN ACT to make better provision for insurance of
fruit against damage by hail.
[23 December 1957.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title and commencement.

1—(1) This Act may be cited as the *Hail Insurance Act* 1957.

(2) This Act shall be deemed to have commenced on the thirty-first day of October 1957.

Interpretation.

25 Geo. V No. 49, s. 3.

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

“assessed damage” means the quantity in bushels of hail damaged fruit determined in accordance with subsection (4) of section six;

“authorized agent” means a person carrying on in this State the business of fire, accident, or marine insurance who is appointed by the General Manager his agent for the purposes of this Act;

“base figure”, used in relation to an orchard, means the base figure for that orchard estimated in accordance with section five;

“fruit” means apples and pears or either of them;

“fruit grower” means a person who is the occupier of an orchard and who is engaged in the production of fruit from that orchard;

“General Manager” means the manager of the Office;

“hail damage” means damage by hail causing fruit—

- (a) to be destroyed;
- (b) to become unmarketable; or
- (c) to become marketable only in a grade below that in which it would have been marketable but for the hail;

“Office” means the Tasmanian Government Insurance Office established under the *Tasmanian Government Insurance Act* 1919;

“orchard” means an orchard in which fruit is grown from trees not less than seven years old and which comprises an area of, or exceeding, two acres;

“year” means a period of twelve months commencing on the first day of July.

(2) All orchards owned beneficially by the same person the boundaries of which are not more than one mile apart shall be deemed to be one orchard for the purposes of this Act.

3—(1) Every person who insured or ought to have insured the fruit grown by him under section twenty-four A of the *Fruit Board Act* 1934 on or before the thirty-first day of January 1957 in respect of the fruit season then current shall be deemed to have registered his orchard as prescribed with the General Manager for the purposes of this Act.

Registration of orchards. Cf. *ibid.*, s. 24A.

(2) A person who becomes a fruit grower shall forthwith register his orchard as prescribed with the General Manager for the purposes of this Act.

(3) A fruit grower shall as prescribed on or before the prescribed date in every year in which the productive capacity of his orchard differs from its productive capacity on the prescribed date in the last preceding year amend the registration of his orchard.

(4) A person who contravenes the provisions of this section is liable to a penalty of one hundred pounds.

4—(1) Every year, including the year commencing on the first day of July 1957, a fruit grower—

Hail insurance. Cf. *ibid.*, s. 24b (1) (a)-(g), (m), (2).

- (a) is liable to pay the General Manager on demand, a contribution of twopence per bushel on the base figure for his orchard;
- (b) is entitled to compensation as provided in subsection (3) of this section for hail damage to fruit growing in his orchard from its formation after the falling of the blossom in that year until it is harvested; and
- (c) shall notify the General Manager of hail damage for which he is entitled to compensation within seven days, or such further time as the General Manager may allow, of its happening.

(2) The General Manager may delay a demand under paragraph (a) of subsection (1) of this section until the last day of October in the next succeeding year, on which day any contributions not before demanded shall be paid.

(3) Compensation shall be paid on so much of the assessed damage as—

- (a) exceeds one-fifth of the base figure; and
- (b) does not exceed the base figure,

for the orchard at the rate set forth in subsection (4) of this section.

(4) The rate of compensation shall be—

- (a) where the quantity on which compensation is payable does not exceed half the base figure for the orchard, a sum per bushel varying between two

shillings and three shillings and sixpence in proportion as the assessed damage varies between one-fifth and seven-tenths of the base figure; and

- (b) where the quantity on which compensation is payable equals or exceeds half the base figure for the orchard, three shillings and sixpence per bushel.

(5) Hail damaged fruit remains the property of the fruit grower.

Estimation of
base figure.

5—(1) The General Manager shall calculate the base figure for each orchard registered under section three.

(2) A base figure shall be the number of bushels of fruit that the General Manager considers that the orchard will yield in a normal year, estimated upon the production of the orchard for the last five years, as shown by the records of the General Manager and such other information about its past and probable future production as the General Manager thinks relevant.

(3) Having estimated a base figure the General Manager shall forthwith notify it to the fruit grower in writing.

(4) A base figure shall continue to apply to an orchard but is subject to variation on review by the General Manager.

(5) The General Manager—

(a) shall review a base figure every third year—

(i) from its first estimation; or

(ii) if it has been varied, from its last variation; and

(b) may review a base figure upon any change affecting the productive capacity of the orchard,

and shall forthwith notify any variation made on his review to the fruit grower in writing.

(6) If a fruit grower is dissatisfied with—

(a) the General Manager's estimation of a base figure;

(b) his decision on a review of a base figure; or

(c) his refusal to review a base figure under paragraph (b) of subsection (5) of this section when asked to do so by the fruit grower,

he may tender to the General Manager a submission to arbitration in the prescribed form signed by himself of the matter in dispute, which the General Manager shall also sign.

(7) In the arbitration consequent upon a submission under subsection (6) of this section the arbitrator shall, where the matter of the arbitration arises under paragraph (c) of that subsection, if he decides that the General Manager ought to have reviewed the base figure, go on to decide what variation, if any, the General Manager should have made on that review.

(8) The General Manager shall vary a base figure in accordance with the result of an arbitration under this section.

6—(1) The Minister shall appoint sufficient fit persons to be official assessors for the purposes of this section.

Assessment of
damage.
Ibid., s. 24d
(1) (h)-(l).

(2) When a fruit grower gives notice as provided in paragraph (c) of subsection (1) of section four, the General Manager shall cause the hail damage to be assessed by an official assessor.

(3) An assessment under this section shall not be made before the twenty-first day of January in the year for which compensation is payable.

(4) An official assessor shall inspect the orchard concerned and assess the quantity in bushels of hail damaged fruit therein.

(5) An official assessor shall forward his assessment under subsection (4) of this section to the General Manager in the prescribed form.

(6) As soon as practicable after receipt of an assessment under subsection (5) of this section the General Manager shall notify the fruit grower in writing thereof, and may in the same notification notify the fruit grower that he disputes the assessment.

(7) A fruit grower may within seven days (or such further time as the General Manager, in any particular case, may allow) after receipt of notification of the assessment notify the General Manager in writing that he disputes the assessment.

(8) If the General Manager or the fruit grower disputes an assessment, the assessment shall be null and void and the dispute shall be referred to two independent assessors, one to be appointed by the General Manager and one by the fruit grower within seven days (or such further time as the General Manager may allow) after a request for the appointment of an independent assessor is made to the fruit grower, in writing, by the General Manager.

(9) Independent assessors appointed under subsection (8) shall, before proceeding with their assessment, appoint, by mutual agreement, an umpire and shall then proceed as provided in subsections (4) and (5).

(10) If the two independent assessors appointed under subsection (8) agree together, their assessment shall be the assessment for the purposes of this section.

(11) If the two independent assessors appointed under subsection (8) are unable to agree together, the matter shall be referred to the umpire, whose assessment shall be the assessment for the purposes of this section.

(12) The reasonable costs of all assessments under subsection (4) shall be borne by the General Manager.

(13) The costs of all references under subsections (8) and (11) shall be borne by the General Manager, but shall not include any legal costs or fees incurred by the fruit grower.

(14) If hail damage occurs in an orchard more than once before the fruit is harvested, any pending assessment or proceedings upon an assessment shall be null and void and an assessment shall be made under this section in respect of all hail damage which has occurred in the orchard before the assessment.

(15) Where compensation has been made on an assessment made null and void by the operation of subsection (14) of this section, the payments shall be deemed part payment of the compensation due on the subsequent assessment.

Financial
provisions.
Ibid., s. 24F.

7—(1) For the purposes of this Act, an account shall be established in the books of the Office, to be known as the "Hail Insurance Fund" (in this section referred to as "the fund").

(2) All contributions and other moneys received by the General Manager under this Act, and all penalties imposed in respect of contraventions of this Act, shall be paid into the fund.

(3) All moneys received by an authorized agent, except for any deduction as provided in subsection (4) of this section, shall be paid to the General Manager within fifteen days after the commencement of the month following that in which those moneys were received, and the receipt of the General Manager therefor shall be a full discharge for all moneys so paid.

(4) An authorized agent may deduct from any contributions received by him a sum not exceeding five per cent of the amount of each contribution.

(5) Every authorized agent shall keep proper records and accounts of all contributions received and shall supply to the General Manager returns of such transactions as may be required by him within twenty-one days after being required by the General Manager so to do.

(6) All payments of compensation and for expenses incurred by the General Manager in the administration of this Act, shall be paid out of the fund.

(7) The fund shall not be incorporated in the accounts of the Tasmanian Government Insurance Office under the *Tasmanian Government Insurance Act 1919*.

(8) All moneys in the fund which, in the opinion of the General Manager, are not immediately required for the purposes of the fund, may be invested in such manner and on such securities as may be prescribed under the *Tasmanian Government Insurance Act 1919*, but any such securities may be realized, hypothecated, or otherwise disposed of as the General Manager thinks fit.

(9) Any sum which the Treasurer may at any time certify to be required to meet any compensation payable under this Act, so far only as it cannot be met out of the fund, shall be paid out of the Consolidated Revenue without any further appropriation than this Act.

(10) Any sum so appropriated shall be deemed to be an advance to the fund, and shall be repaid on demand by the Treasurer out of moneys at any time available in the fund.

8 Except as provided in this Act, no remission or rebate shall be allowed to any person in respect of any registration or the receipt or adjustment of any contribution or claim under this Act.

No remission, &c., to be allowed in respect of contributions, &c., under this Act.

9 An assessment for the purpose of section six which was made in good faith and which has not been avoided by that section is binding on the General Manager and the fruit grower whose hail damage was so assessed his executors and administrators, and unchallengeable in any court.

Ibid., s. 24E.
Finality of assessments.
Cf. *ibid.*, s. 24D (1) (i).

10—(1) Every fruit grower shall, within such time as may be fixed by the General Manager, with the approval of the Minister, forward to the General Manager, such returns containing such information with respect to the fruit grown or to be grown by him as the General Manager requires, and verified by a statutory declaration where prescribed.

Returns.
Ibid., s. 24C.

(2) Every fruit grower shall, not later than the thirty-first day of July in each year, in the prescribed form, notify the General Manager of the number of bushels of fruit actually produced by him during the preceding twelve months verified by a statutory declaration.

(3) A person who contravenes this section is liable to a penalty of fifty pounds.

11 A person to whom a fruit grower has disposed of fruit from an orchard registered under this Act shall answer truthfully to the best of his knowledge and ability any questions put to him in writing by the General Manager for the purposes of this Act.

Information by fruit merchants.

Penalty: Fifty pounds.

12 The General Manager shall supply on demand to fruit growers who have registered under section three tables showing in rises of five per cent how much compensation is payable under this Act per bushel of the assessed damage in proportion to the base figure of an orchard.

Information to fruit growers.

13—(1) Except as provided in subsection (2) of this section, where a fruit grower ceases otherwise than by death to occupy his orchard wholly or in part—

Transfer of orchard.

- (a) his rights and obligations under this Act continue until the end of the current year in respect of the whole of his orchard or the part left by him, as the case may be; and
- (b) another fruit grower, or a person who thereby becomes a fruit grower, entering into occupation of his orchard or the part left by him has no

new rights and obligations under this Act, until the end of the current year in respect of that orchard or part, notwithstanding any new registration or amendment of a registration under section three.

(2) Where the parties to an assignment of an orchard give a notice of assignment in the prescribed form to the General Manager, he may notify the parties that he will as from the date of the notice treat the assignee as the fruit grower occupying the orchard in place of the assignor, and, if he does so, the assignee has the rights and obligations of the assignor under this Act in respect of that orchard on that date to the exclusion and exoneration of the assignor.

Saving.

Ibid., s. 24G.

14 Except as expressly provided, this Act does not affect the operation of any provisions of the *Tasmanian Government Insurance Act 1919*.

Regulations.

15 The Governor may make regulations for the purposes of this Act.

LEGAL PRACTITIONERS.

No. 92 of 1957.

AN ACT to amend the *Legal Practitioners Act 1896*.
[23 December 1957.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled as follows:—

Short title
and citation.

1—(1) This Act may be cited as the *Legal Practitioners Act 1957*.

(2) The *Legal Practitioners Act 1896*, as subsequently amended, is in this Act referred to as the Principal Act.

2 After Part IV of the Principal Act the following Part is inserted:—

“PART IVA.

SOLICITORS’ GUARANTEE FUND.

“47A In this Part, unless the contrary intention appears—

‘Commencing date’ means the first day of January in any year declared by proclamation to be the commencing date for the purposes of this Part:

Interpreta-
tion.

1931, No. 46
(N.Z.), ss.
71, 72.