

HONEY POOL.

No. 73 of 1978.

AN ACT to establish the Honey Pool of Western Australia to provide for the marketing of honey and for related purposes.

[Assented to 20th October, 1978.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Honey Pool Act*, Short title.
1978.

2. This Act shall come into operation on a date Commence-
to be fixed by proclamation. ment.

Repeal.

3. The Honey Pool Act, 1955-1970 is repealed.

Interpre-
tation.

4. In this Act unless the contrary intention appears—

“Board” means the Board of the Honey Pool;

“Chairman” means the Chairman of the Board;

“Corporation” means the body corporate known as Westralian Farmers Co-operative Limited registered under the Companies (Co-operative) Act, 1943-1976;

“Director” means a Director of the Board and includes the Chairman;

“honey” means honey that conforms to the prescribed quality;

“Honey Pool” means the Honey Pool of Western Australia established under section 5;

“participant” means a person who voluntarily delivers honey to the Board for a pool or on whose behalf honey is so delivered, and where honey is so delivered on behalf of any partnership agreement, includes each party to such an agreement;

“pool” means a honey pool formed by the Board to facilitate the marketing of honey;

“prescribed participant” means a participant who is one of a class of participants prescribed by the regulations;

“section” means a section of this Act;

“subsection” means a subsection of the section wherein that term is used.

Establish-
ment.

5. (1) For the purposes of this Act, there is hereby established the Honey Pool of Western Australia.

(2) The Honey Pool of Western Australia—

- (a) is a body corporate with perpetual succession and shall have a common seal;
- (b) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued;
- (c) is capable of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

(3) All courts and persons acting judicially shall take judicial notice of the common seal of the Honey Pool of Western Australia affixed to any document and shall presume that it was duly affixed thereto.

6. The Honey Pool is not an agent or servant of the Crown.

Honey Pool
not to
represent
the Crown.

7. Subject to the Minister, the Honey Pool shall carry out the administration of this Act.

Adminis-
tration of
this Act.

8. (1) The governing authority of the Honey Pool is the Board of Directors.

Board of
Directors.

(2) The Board shall consist of six Directors appointed by the Governor, namely—

- (a) one person shall be a person who is nominated for appointment by the Minister on the nomination of the Corporation; and
- (b) five persons, each of whom is a prescribed participant elected for nomination for appointment in the prescribed manner by prescribed participants.

(3) Subject to this section, prior to the first occasion on which appointments are to be made of Directors pursuant to subsection (2) of this section and thereafter whenever the Minister considers it necessary, the Minister shall—

- (a) where the Director is to be appointed pursuant to paragraph (a) of subsection (2), request the Corporation in writing to submit a name of a person who is willing to be appointed as a Director;
- (b) where the Director is to be appointed to an office of Director pursuant to paragraph (b) of subsection (2), request the Board in writing to hold an election in the prescribed manner for the purpose of nominating a prescribed participant for appointment to the Board pursuant to that paragraph.

(4) Where a request under paragraph (b) of subsection (3) of this section is made the Board shall conduct an election in the prescribed manner amongst prescribed participants for the purpose of determining the name or names, as the case requires, of the persons to be nominated for appointment to the office of Director.

(5) Where the Minister has made a request pursuant to subsection (3) calling for a nomination or nominations, as the case may be, the Minister may, if no nomination or no sufficient nomination is made within the prescribed time, nominate for appointment to the office of Director such person or persons, as the case requires, as he thinks fit.

(6) Each Director shall be appointed for a term of five years but of the persons who are declared to be elected at the first election held for the purposes of paragraph (b) of subsection (2) the person secondly declared to be elected shall be appointed for a term of four years, the person thirdly declared to be elected shall be appointed for a term of three years, the person fourthly declared to be elected

shall be appointed for a term of two years and the person fifthly declared to be elected shall be appointed for a term of one year.

(7) Subject to this Act, where the term of office of any Director expires by effluxion of time, the Director is eligible for re-election and re-appointment or re-nomination and re-appointment, as the case requires.

(8) The Governor may at any time terminate the appointment of any Director for disability, insolvency, neglect of duty or misconduct or—

- (a) if the Director is appointed under paragraph (a) of subsection (2), upon a request by the Corporation addressed to the Minister to terminate the appointment;
- (b) if the Director is appointed under paragraph (b) of subsection (2), the Director ceases to be a prescribed participant.

(9) Each Director may, at any time, resign his office by writing addressed to the Chairman.

(10) Where a vacancy occurs in the office of Director referred to in paragraph (a) of subsection (2) other than by effluxion of time the Corporation shall submit to the Minister for nomination for appointment as a Director the name of a person willing to be appointed as Director and the person so appointed shall be appointed for the residue of the term for which his predecessor was appointed.

(11) Where a vacancy in the office of Director referred to in paragraph (b) of subsection (2) occurs other than by effluxion of time the following provisions apply—

(a) if—

- (i) the vacancy occurs before the prescribed period before the next election occasioned by effluxion of time; and

- (ii) the person who so vacated office would have had a residue of a term of office to be served had he continued in office after the next election occasioned by effluxion of time,

an election to fill the vacancy shall be jointly held with the next election occasioned by an effluxion of time;

(b) if—

- (i) the vacancy occurs within the prescribed period before the next election occasioned by effluxion of time; and

- (ii) the person who so vacated office would have had a residue of a term of office to be served had he continued in office after the election following the next election occasioned by an effluxion of time,

an election to fill the vacancy shall be jointly held with the election following the next election occasioned by an effluxion of time;

- (c) the person elected at a joint election held pursuant to paragraph (a) or paragraph (b) of this subsection shall be nominated for appointment as Director for the residue of the term of the person with respect to whose office an election was jointly held pursuant to paragraph (a) or paragraph (b) of this subsection, as the case requires;
- (d) notwithstanding anything in paragraph (a) to paragraph (c) (inclusive) of this subsection but subject to any direction of the Minister (which he is hereby authorized to give), the Board shall with respect to any vacancy submit to the Minister for nomination for appointment as a Director a panel of names of persons willing to act as Director and the person so appointed shall be appointed until the next election held pursuant to paragraph (a) or paragraph (b) of this subsection, as the case requires.

(12) The Board may grant leave of absence to a Director upon such terms and conditions as it determines.

(13) The powers of the Board are not affected by any vacancy in the membership thereof and if a quorum is present all acts and proceedings of the Board are valid and effectual notwithstanding the vacancy.

9. Subject to this Act, the meetings of the Board shall be conducted in such manner as the Board determines. Conduct of meetings.

10. The first meeting of the Board after the coming into operation of this Act shall be convened by the Minister and thereafter meetings shall be held at the times and places determined by the Board but the Chairman, or any two Directors, may, on reasonable notice to all Directors, call a meeting at any time. Time of meetings.

11. (1) At a meeting of the Board, four Directors shall form a quorum. Proceedings of the Board.

(2) The Chairman shall preside at every meeting of the Board at which he is present but if the Chairman is not present at a meeting the other Directors present shall select one of their number to act as Chairman.

(3) Questions arising at a meeting of the Board shall be decided, in open voting, by a majority of the votes of the Directors present thereat.

(4) The Chairman has a deliberative vote only and, if the votes of the Directors present at a meeting and voting on a question are equally divided, the question shall be decided in the negative.

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

Remuneration of Directors.

12. Directors shall receive such remuneration as is approved by the Governor.

Protection of Directors.

13. A Director is not personally liable for any act done in good faith by the Board or by him acting as a Director.

Officers and employees of the Honey Pool.

14. (1) The Board may appoint such officers and employees of the Honey Pool as are necessary for the purposes of this Act.

(2) On the date of the coming into operation of this Act, all officers and employees who were employed immediately prior to that date by The Honey Pool of Western Australia constituted by the Honey Pool Act, 1955 and who are willing and able to be employed by the Honey Pool of Western Australia established under this Act, shall be deemed to be appointed officers and employees of the Honey Pool of Western Australia under this Act on the same terms and conditions, including the salary payable, as they were employed by The Honey Pool of Western Australia under the Honey Pool Act, 1955 immediately prior to that date.

(3) Where any officer or employee is deemed to be appointed in pursuance of subsection (2) he retains his existing and accruing rights and for the purpose of determining those rights, his service as an officer or employee of The Honey Pool of Western Australia under the Honey Pool Act, 1955 shall be taken into account as if it were service with the Honey Pool of Western Australia under this Act.

Terms and conditions of service.

15. Subject to any relevant award or industrial agreement under the Industrial Arbitration Act, 1912, and subject to section 14, the terms and conditions of officers of the Honey Pool, including the salary payable, are such terms and conditions as the Board determines.

16. On the date of the coming into operation of this Act—

Transfer of
property
rights,
obligations
and
liabilities.

- (a) all right, title and interest to and in any property, including any reserve fund, that was immediately prior thereto vested in or held by The Honey Pool of Western Australia constituted under the Honey Pool Act, 1955 (in this section referred to as "the former body") is, by force of this section and without further assurance, transferred to, and vested, for the purposes of this Act, in the Honey Pool of Western Australia established under this Act;
- (b) all rights, obligations, and liabilities of the former body existing immediately prior thereto are, by force of this section, vested in or imposed on, the Honey Pool of Western Australia established under this Act;
- (c) in any agreement, whether in writing or not, and in every deed, contract, or other instrument to which the former body was a party or by which it was affected, a reference to the former body shall take effect as a reference to the Honey Pool of Western Australia established under this Act;
- (d) any proceedings pending immediately prior thereto to which the former body was a party shall be continued as if the Honey Pool of Western Australia established under this Act was a party thereto in lieu of the former body.

17. The Honey Pool shall have, for the purposes of this Act, the following powers—

General
powers of
the Honey
Pool.

- (a) to buy and sell any property;
- (b) to enter into any contract;
- (c) to borrow money;
- (d) to mortgage or charge any of its property as security for the repayment of any money borrowed;

- (e) to establish or maintain premises, machinery, plant, or other equipment for receiving, handling, classifying, storing, protecting, purifying, treating, processing, packing, or selling honey and any other product of a hive;
- (f) to act as shipping agent;
- (g) to undertake and carry on business transactions, and to do all other things, which are necessary or convenient to be done by the Honey Pool for giving effect to this Act;
- (h) to act as trustee of reserve funds vested in the Honey Pool by the operation of section 16, to amalgamate for the purpose of deposit and investment all or any of such reserve funds if the Board considers it necessary or convenient so to do and from time to time, to invest any moneys forming part of any such reserve funds or the accumulations thereof in any investments or securities which the Board considers appropriate or in the purchase of real estate with power as to real estate to sell, transfer, improve, manage, develop, exchange, let, mortgage, or otherwise dispose of, deal with, or turn to account, the same;
- (i) to accept contributions to any of such reserve funds from participants of honey whether such contributions are made in cash or by delivery of honey or by deductions authorized by participants from compensation payable for honey delivered to the Honey Pool or otherwise howsoever;
- (j) to apply all reserve funds vested in the Honey Pool and any accumulations thereof, and any investments representing the same in such manner as the Board may in its absolute discretion consider beneficial to the system of the co-operative marketing of honey, to participants or to all of them and in such manner as the Honey Pool may be authorized to do by contracts made with contributors to any fund or funds;

- (k) to apply all reserve funds vested in the Honey Pool in accordance with the trusts on which they were held immediately prior to the date of the coming into operation of this Act.

18. The Honey Pool shall, on such terms and conditions as it thinks fit, establish and maintain a pool or separate pools for the marketing of honey.

Pool or pools for marketing honey.

19. (1) In this section "final date" in relation to a pool established by the Honey Pool means the date fixed by the Board pursuant to subsection (3) as the date after which the Board will not accept honey for inclusion in the pool to which that final date relates.

Final date for a pool.

(2) Where the Honey Pool has established a pool pursuant to section 18 the Board shall within fourteen days of the establishment of the pool give notice of that fact.

(3) The Board may at any time during the operation of a pool established under section 18 fix a final date after which it will not accept honey for inclusion in that pool and where the board so fixes a final date it shall not accept honey for inclusion in that pool after the final date.

(4) Where the Board has fixed a final date any honey delivered to the Honey Pool after that date may, at the option of the Board, be returned to the sender at the expense of the sender or be accepted by the Board for inclusion in the next following pool established by the Honey Pool under section 18.

20. Any honey accepted by the Honey Pool for inclusion in a pool commenced after the coming into operation of this Act, is vested in the Honey Pool freed and discharged from all trusts and encumbrances, and all previous rights and interests of any person in respect of the honey are converted into a claim for compensation under this Act by a person to whom a certificate is issued or his assignee.

Honey vests in the Honey Pool.

Classification
and
certificate.

21. (1) As soon as practicable after the Honey Pool accepts honey for a pool commenced after the coming into operation of this Act, the Board—

- (a) shall appraise each lot of honey or cause each lot of honey to be appraised;
- (b) shall determine or cause to be determined the dockages (if any) on each lot of honey;
- (c) shall issue an appraisement certificate in the prescribed form to the person by whom or on whose behalf that lot of honey was delivered, or if he authorizes the Board in writing, before or at the time of delivery, to issue the certificate to another person, issue it to that other person;
- (d) shall, in the appraisement certificate, certify in respect of that lot—
 - (i) its quantity and its appraised value or values and the dockages (if any) thereon; and
 - (ii) that the appraised value payable for the lot is payable to the person with respect to whom the certificate is issued or his assignee.

(2) Where there is more than one participant of a particular lot of honey the Board may grant separate appraisement certificates in accordance with the respective interests of the participant.

Sale of
honey by the
Honey Pool.

22. (1) The Honey Pool may sell honey vested in it and any other product of the hive to such persons, at such prices, and on such terms as the Board thinks fit.

(2) Without limiting the generality of subsection (1) the Honey Pool may, for the purposes of that subsection—

- (a) employ agents;
- (b) sell honey and any other product of the hive within the State;

- (c) export honey and any other product of the hive, or sell honey and any other product of the hive for export to other countries or States; and
- (d) become a shareholder in any incorporated company or enter into any agreement relating to the marketing of honey with a Commonwealth authority, a honey marketing board or corporation of another State, any person, or any association of persons.

(3) Out of the proceeds of the sale of honey the Honey Pool shall pay all amounts payable in respect of claims for compensation under this Act and out of those proceeds and the proceeds of any other product of the hive sold by it the Honey Pool—

- (a) shall pay all costs and expenses of administering this Act; and
- (b) shall make all other payments authorized by this Act.

23. (1) A claim for compensation shall be in the prescribed form. Compensation.

(2) The Board shall determine the amount of compensation to be paid on claims in respect of honey in a pool and shall base its determination on the rate or rates per tonne computed by reference to the nett proceeds expected to be received by it from the sale of the honey, the quantity of the honey, the appraisalment of the honey and the dockages thereon.

(3) The Board may at such times and on such terms and conditions as it thinks fit, advance payment or payments on account of a claim.

24. The Honey Pool shall not make or attempt to make any profits on the sale of honey accepted by it for a pool and no dividend shall be declared to any person from the funds or assets of the Honey Pool. Honey Pool not to make profits from pooled honey.

Accounts
and audit.

25. (1) The Honey Pool shall keep full accounts of all moneys received and paid by it and of the purposes for which the money was so received or paid.

(2) The Honey Pool shall at least annually have its accounts audited and certified by a person who is a registered company auditor within the meaning of the Companies Act, 1961.

(3) Directors, officers, employees and agents of the Honey Pool shall, to the extent of their knowledge, give to the auditor appointed by the Honey Pool and to any employee of the auditor appointed by the auditor for that purpose all information relating to such accounts which he or they require and shall upon request produce to the auditor and any such employee all books, vouchers, and other documents relating to the accounts and do all things necessary to enable the audit to be made.

Liquidation.

26. (1) In any liquidation of the Honey Pool a participant from whom the Honey Pool has accepted honey for a pool in operation, at the time of liquidation shall receive in the liquidation in respect of that honey only the amount of advances then due to the participant.

(2) After the payment of the amounts referred to in subsection (1) any surplus funds in the hands of the liquidator after the payment of all debts and expenses of the winding up shall be distributed only to participants who have pooled honey in the Honey Pool at any time in the five financial years immediately preceding the date of the liquidation and in proportion to the honey accepted from them by the Honey Pool for any pool in operation during that time.

Official
management
winding up.

27. Subject to this Act, the Honey Pool shall be deemed to be an unregistered company for the purposes of Part X of the Companies Act, 1961 and shall be liable to be wound up in accordance with the provisions of that Part.

28. (1) The Board shall at least annually make and submit a written report of the activities of the Honey Pool to the Minister with a true copy of its accounts as last audited and a copy of the report of the auditor appointed pursuant to section 25 on those accounts. Reports.

(2) As soon as practicable after receiving the documents referred to in subsection (1), the Minister shall cause copies of them to be laid before both Houses of Parliament.

29. (1) The Governor may make regulations which appear to him to be necessary or convenient for effectually carrying out the objects and purposes of this Act. Regulations.

(2) Without derogating from the generality of subsection (1) of this section regulations may be made under this section prescribing—

- (a) the form of the common seal of the Honey Pool and the manner of the affixing thereof;
 - (b) the persons who may be prescribed participants;
 - (c) the voting entitlements of prescribed participants at any election conducted for the purpose nominating persons for the purposes of paragraph (b) of subsection (2) of section 8 and the time and manner of such elections;
 - (d) providing for voting entitlements of participants to be related to quantities of honey accepted from them by the Honey Pool;
 - (e) a maximum penalty not exceeding one hundred dollars for any breach of a regulation.
-