

Queensland



**FRUIT MARKETING  
ORGANISATION  
AMENDMENT ACT 1991**

**Act No. 69 of 1991**



# FRUIT MARKETING ORGANISATION AMENDMENT ACT 1991

## TABLE OF PROVISIONS

Section	Page
1	Short title . . . . . 2
2	Amended Act . . . . . 2
3	Amendment of long title . . . . . 2
4	Amendment of s.2 (Definitions) . . . . . 2
5	Amendment of s.6 (Constitution of Committee of Direction) . . . . . 3
6	Omission of ss.6A, 6B, 6C, 6D, 6E and 6F . . . . . 4
7	Insertion of new ss.6A to 6W . . . . . 4
6A	Appointment of administrator . . . . . 4
6B	Persons who are not to act as administrators . . . . . 5
6C	Powers of administrator . . . . . 6
6D	Duties of administrator with respect to bank accounts and accounting records . . . . . 7
6E	Reports by administrator . . . . . 8
6F	Administrator has qualified privilege in certain circumstances . . . . 9
6G	Chairperson and secretary to submit report . . . . . 9
6H	Administrator may inspect books . . . . . 10
6I	Vacation of office . . . . . 10
6J	Completion of winding up referred to in s.6A(1)(a) . . . . . 10
6K	COD not to act . . . . . 11
6L	COD may be wound up . . . . . 11
6M	Poll of growers . . . . . 11
6N	Approved association or corporation may acquire COD property . . 12
6O	Duty to facilitate transfer of property, etc. . . . . 14

6P	Winding up of COD . . . . .	14
6Q	Liquidation . . . . .	15
6R	Custody and vesting of COD's property on winding up . . . . .	16
6S	Report as to COD's affairs to be submitted to liquidator . . . . .	16
6T	Powers of liquidator . . . . .	17
6U	Release of liquidator and dissolution of COD . . . . .	19
6V	Orders for release or dissolution . . . . .	19
6W	Application of amounts remaining after winding up . . . . .	20
8	Omission of s.7B (Committee of Direction may function under voluntary agreement) . . . . .	22
9	Amendment of s.8 (General function of Committee of Direction) . . . . .	22
10	Insertion of new s.8A . . . . .	22
	8A Minister's power to direct COD . . . . .	23
11	Amendment of s.9A (Constitution of Cannery Board) . . . . .	24
12	Amendment of s.10 (Constitution of local associations and their functions) . . . . .	25
13	Amendment of s.11 (Constitution of sectional group committees) . . . . .	25
14	Insertion of new ss.13 and 13A . . . . .	25
	13 COD to sell or otherwise dispose of businesses . . . . .	25
	13A Powers under s.13 . . . . .	26
15	Amendment of s.15 (Regulations) . . . . .	27
16	Validation of Cannery Agreement . . . . .	27

Queensland



# **Fruit Marketing Organisation Amendment Act 1991**

**Act No. 69 of 1991**

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**An Act to amend the *Fruit Marketing Organisation Act 1923*, and for  
another purpose**

*[Assented to 6 November 1991]*

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

### **Short title**

1. This Act may be cited as the *Fruit Marketing Organisation Amendment Act 1991*.

### **Amended Act**

2. The *Fruit Marketing Organisation Act 1923* is amended as set out in this Act.

### **Amendment of long title**

3. Long title—  
*omit* ‘Queensland Fruit’, *insert* ‘certain fruit and vegetables’.

### **Amendment of s.2 (Definitions)**

4.(1) Section 2 (Definitions “**Marketing**” and “**Minister**”)—  
*omit*.

(2) Section 2  
*insert*—

‘**“approved association”** means a primary producers’ co-operative association registered under the *Primary Producers’ Co-operative Associations Act 1923* that is prescribed by regulation as being representative of fruit growers and vegetable growers;

**“approved corporation”** means a corporation registered under the Corporations Law that is prescribed by regulation as being representative of fruit growers and vegetable growers;

**“COD”** means the Committee of Direction;

**“grower services”** means—

(a) providing consultancy and advisory services to growers of

- horticulture; or
- (b) conducting research into the production of horticulture; or
  - (c) providing insurance services as agent for growers of horticulture; or
  - (d) organising or funding conferences and education programs for growers of horticulture; or
  - (e) publishing for growers information concerning matters that affect the horticultural industry; or
  - (f) providing assistance to growers within the part of the State comprised by the Shires of Glengallan, Inglewood, Rosenthal, Stanthorpe and the City of Warwick by arranging rail transport for fruit and vegetables by what is commonly known in that part of the State as the fruit train; or
  - (g) providing such other services that may benefit growers of horticulture as are prescribed by the regulations;’.

### **Amendment of s.6 (Constitution of Committee of Direction)**

**5.(1)** Section 6(5)(vi)—

*omit, insert—*

‘(vi) to market any horticultural produce that is surplus to its requirements for research activities;’.

**(2)** Section 6(5)(viii)—

*omit, insert—*

~~(viii)~~ to conduct any nursery business that the COD is conducting at the date of commencement of the *Fruit Marketing Organisation Amendment Act 1991*;’.

**(3)** After section 6(5)(viii)—

*insert—*

‘(ix) to cease such of its businesses as it considers appropriate or as the Minister directs.’.

**(4)** Section 6(7)—

*omit.*

**Omission of ss.6A, 6B, 6C, 6D, 6E and 6F**

**6.** Sections 6A, 6B, 6C, 6D, 6E and 6F—

*omit.*

**Insertion of new ss.6A to 6W**

**7.** After section 6—

*insert—*

**‘Appointment of administrator**

**‘6A.(1)** An administrator may be appointed, by order in council—

- (a) to wind up any business carried on by the COD; or
- (b) to carry out the provisions of section 6N.

**‘(2)** An administrator is to be appointed under subsection (1)(a) only if the Governor in Council is satisfied that the appointment is necessary for the proper administration of the COD.

**‘(3)** An appointment under subsection (1) may be revoked at any time by order in council.

**‘(4)** An administrator appointed under subsection (1)(a) is to be paid such remuneration by the COD as is fixed by, or determined under, the order in council.

**‘(5)** An administrator appointed under subsection (1)(b) is to be paid such remuneration by the approved association or approved corporation specified in the order in council, as is fixed by, or determined under, the order in council.

**‘(6)** An administrator appointed under subsection (1) must carry out the administrator’s functions as such in accordance with any reasonable direction given by the Minister.

**‘Persons who are not to act as administrators**

**‘6B.(1)** A person mentioned in subsection (2) is not qualified to be appointed under section 6A(1).

**‘(2)** A person must not act as an administrator under section 6A if the person—

- (a) is a mortgagee of any property of the COD; or
- (b) is an auditor or officer of the COD; or
- (c) is an officer of a body corporate that is a mortgagee of property of the COD; or
- (d) is not a registered liquidator; or
- (e) has at any time, within one year before the appointment, been an officer of the COD; or
- (f) is an undischarged bankrupt or takes advantage of the laws relating to bankruptcy; or
- (g) has been convicted of an offence against this Act, or has been convicted in Queensland of an indictable offence or elsewhere of an offence that if committed in Queensland would have been an indictable offence, unless the Minister is satisfied that the circumstances of the offence do not warrant disqualification from office and certifies accordingly; or
- (h) is admitted into and detained in hospital, as a patient or otherwise, for treatment for mental illness under the *Mental Health Services Act 1974*; or
- (i) becomes a protected person within the meaning of Part 6 of the *Public Trustee Act 1978*.

**‘(3)** In subsection (2)—

**“officer”** does not include a receiver appointed under an instrument (whether before or after the commencement of this section), of property of the COD;

**“registered liquidator”** means a person registered as a liquidator under section 1282(2) of the Corporations Law or taken to be registered as a liquidator under Part 9.2 of that Law.

**‘Powers of administrator**

**‘6C.(1)** Subject to this section, an administrator appointed under section 6A has power to do all things necessary or convenient to be done for or in connection with, or incidental to, the winding up of the business for which the administrator was appointed or the carrying out of the provisions of section 6N.

**‘(2)** Without limiting subsection (1), but subject to any provision of the order in council appointing the administrator, the administrator has, in addition to any powers specifically conferred by the order in council, power—

- (a) to enter into and take control of—
  - (i) property involved in the business concerned; or
  - (ii) all property of the COD;in accordance with the terms of the order in council; and
- (b) to dispose of property of the COD; and
- (c) to grant options over property of the COD on such conditions as the administrator considers appropriate; and
- (d) to insure property of the COD; and
- (e) to convert property of the COD into money; and
- (f) to carry on any activity or undertaking connected with the business concerned or the businesses of the COD, as the case may be; and
- (g) to take on lease or hire, or to acquire, any property necessary or convenient in connection with the carrying on of the business concerned or the businesses of the COD, as the case may be; and
- (h) to execute a document, bring or defend a proceeding or do any other act or thing in the name of and on behalf of the COD; and
- (i) to draw, accept, make and indorse a bill of exchange or promissory note; and
- (j) to use the official seal of the COD; and
- (k) to engage or discharge employees on behalf of the COD; and
- (l) to appoint a solicitor, accountant or other professionally qualified

- person to assist the administrator; and
- (m) to appoint an agent to do any business that the administrator is unable to do or that it is unreasonable to expect the administrator to do in person; and
  - (n) if a debt or liability is owed to the COD—
    - (i) to prove the debt or liability in any bankruptcy, insolvency or winding up and to receive dividends in the bankruptcy, insolvency or winding up; and
    - (ii) to assent to a proposal for a composition or scheme of arrangement; and
  - (o) to refer to arbitration any question affecting the business or the COD, as the case may be.

‘(3) The conferring by this section on an administrator of powers in relation to property of the COD does not affect any rights of a person (other than the COD) in relation to the property.

‘(4) In this section, a reference to property of the COD is, unless the contrary intention appears, a reference to the property of the COD in relation to which the administrator was appointed.

### **‘Duties of administrator with respect to bank accounts and accounting records**

‘6D.(1) An administrator appointed under section 6A must—

- (a) open and maintain a bank account bearing the administrator’s own name and the title “administrator of Committee of Direction”; and
- (b) within 3 business days after money of the COD comes under the administrator’s control, pay that money into the account; and
- (c) ensure that the account does not contain any amounts other than the amounts of the COD that come under the administrator’s control; and
- (d) keep such accounting records as correctly record and explain all transactions entered into by the administrator as administrator.

‘(2) The Minister, a person authorised in writing by the Minister or a

member of the COD may inspect records kept by the administrator for the purposes of subsection (1)(d).

‘(3) In subsection (1)(b)—

“**business days**” means days that are not Saturdays, Sundays, public holidays or bank holidays in the place where the relevant act is to be done.

### ‘**Reports by administrator**

‘**6E.(1)** An administrator appointed under section 6A must give to the Minister a report on the administration—

- (a) at least every 3 months; and
- (b) at such other times as the Minister requires.

‘(2) The administrator may at any time give to the Minister reports on any matter that, in the administrator’s opinion, it is desirable to report to the Minister.

‘(3) If it appears to the administrator that—

- (a) a past or present officer, or a member, of the COD may have committed an offence in relation to the COD; or
- (b) a person who has taken part in the administration or management of the COD or of a business of the COD—
  - (i) may have misapplied or retained, or may have become liable or accountable for, money or other property of the COD; or
  - (ii) may have been guilty of negligence, default, breach of duty or breach of trust in relation to the COD;

the administrator must—

- (c) as soon as practicable, give the Minister a report on the matter; and
- (d) give to the Minister such information, and such access to and facilities for inspecting and taking copies of documents, as the Minister requires.

**‘Administrator has qualified privilege in certain circumstances**

**‘6F.** An administrator appointed under section 6A has qualified privilege in respect of—

- (a) a matter contained in a report given by the administrator under section 6E; or
- (b) a comment that the administrator makes under section 6G(5).

**‘Chairperson and secretary to submit report**

**‘6G.(1)** If an administrator is appointed under section 6A the administrator must, as soon as practicable after the appointment, serve notice of the appointment on the COD.

**‘(2)** Within 14 days after service of the notice, the chairperson and secretary of the COD must make out and submit to the administrator a report about the affairs of the COD as they relate to the business concerned or generally to the COD, as the case requires, as at the day of the administrator’s appointment.

**‘(3)** The chairperson or secretary of the COD may apply to the administrator to extend the period within which the report under subsection (2) is to be submitted.

**‘(4)** If the administrator believes that there are special reasons for so doing, the administrator may, by written notice given to the chairperson or secretary, extend the period until a specified day.

**‘(5)** The administrator must, within one month after receipt of the report under subsection (2), give the Minister a copy of the report and a notice setting out any comments the administrator wishes to make relating to the report or, if the administrator does not wish to make any comment, a notice to that effect.

**‘(6)** Subsections (1), (2), (3), (4) and (5) do not apply in relation to the appointment of an administrator to act in place of an administrator who has died or ceased to act, except that, where subsection (1) applies to an administrator who dies or ceases to act before that subsection has been complied with, the references in subsections (2), (3), (4) and (5) include references to the administrator’s successor and to any continuing administrator.

**‘Administrator may inspect books**

**‘6H.(1)** An administrator appointed under section 6A is entitled to inspect, at any reasonable time, any relevant books of the COD.

**‘(2)** A person who has possession or control of books referred to in subsection (1) must allow the administrator to inspect the books at any reasonable time.

**‘Vacation of office**

**‘6I.** A person appointed under section 6A vacates the office of administrator if the person—

- (a) dies; or
- (b) resigns the office by signed writing given to the Minister; or
- (c) ceases to be qualified to be administrator; or
- (d) has the appointment revoked under section 6A(3).

**‘Completion of winding up referred to in s.6A(1)(a)**

**‘6J.(1)** On completion of the winding up referred to in section 6A(1)(a)—

- (a) the net proceeds of the winding up are to be paid to the COD; or
- (b) if there are no net proceeds but there are debts that arise from the winding up—the debts remain debts of the COD.

**‘(2)** Within a reasonable time after completion of the winding up, the administrator must give to the Minister—

- (a) a report on the administration; and
- (b) such other information or documents as the Minister requests so as to account fully in respect of the administration to the satisfaction of the Minister.

**‘(3)** The Minister must lay a copy of the report before the Legislative Assembly within 14 sitting days of receipt of the report.

**‘(4)** After complying with subsection (2), the administrator is, in the absence of fraud or dishonesty, released from any further liability to account

in respect of the administration and ceases to be administrator.

**‘COD not to act**

**‘6K.(1)** If an administrator is appointed under section 6A and the administrator has served under section 6G(1) notice of the appointment, the COD must not exercise any of its powers in relation to any business or property relevant to the administration.

Penalty—1 000 penalty units.

**‘(2)** Section 17(2) so far as it provides for persons who are to make complaints does not apply to an offence against subsection (1).

**‘COD may be wound up**

**‘6L.** The COD may be wound up by the Supreme Court if—

- (a) authority is granted under section 6M(13) for the winding up of the COD; or
- (b) an order in council has not been made under section 6N(1) within 6 months after the granting of the authority under section 6M(13).

**‘Poll of growers**

**‘6M.(1)** An order in council may declare that the Minister is empowered to receive a petition from fruit growers and vegetable growers who are members of local associations requesting that a poll be taken to determine if the growers wish the COD to be wound up.

**‘(2)** The petition must be received by the Minister within 30 days from the date the order in council is gazetted.

**‘(3)** If the petition is signed by 30% of the fruit growers and vegetable growers on the rolls of all local associations, an order in council may direct that a poll be taken.

**‘(4)** The order in council is to specify—

- (a) the date the poll is to close; and
- (b) the day and time the rolls of the local associations are to close for the purpose of the poll.

‘(5) All growers registered on the rolls of the local associations as at the closure of the rolls are entitled to vote in the poll.

‘(6) The department is to conduct the poll.

‘(7) The Minister is to appoint an officer of the department to be the returning officer of the poll.

‘(8) Costs of the poll, as certified by the returning officer, are to be paid by the COD.

‘(9) Local associations must forward their rolls of members to enable the returning officer to determine the growers who are entitled to vote in the poll.

‘(10) The returning officer must forward a ballot paper to growers that are entitled to vote in the poll.

‘(11) Any ballot paper received after 5 p.m. on the day the poll closes is not to be considered or counted by the returning officer.

‘(12) Subject to this section, the poll is to be conducted, as is prescribed by the order in council.

‘(13) If—

- (a) at least 50% of growers entitled to vote, do vote; and
- (b) at least 60% of the votes counted by the returning officer are in favour of the winding up of the COD;

the poll gives authority for the COD to be wound up by the Supreme Court or for the property of the COD to be disposed of to an approved association or approved corporation.

#### **‘Approved association or corporation may acquire COD property**

‘6N.(1) If authority has been given under section 6M(13), an order in council may appoint a day (in this section called the “appointed day”) on which—

- (a) all property of the COD is divested from the COD and vested in the approved association or approved corporation specified in the order; and
- (b) all liabilities of the COD cease to be liabilities of the COD and

become liabilities of the approved association or approved corporation specified in the order.

‘(2) All amounts in any fund or account of the COD immediately before the appointed day, together with interest accrued or due on the amounts, vest in the approved association or approved corporation on the appointed day.

‘(3) All amounts and claims (liquidated and unliquidated) that immediately before the appointed day are payable or enforceable by the COD, become payable to or enforceable by the approved association or approved corporation as its property on the appointed day.

‘(4) The approved association or approved corporation may pursue such remedies to recover the amounts or enforce the claims as might have been pursued by the COD.

‘(5) On the appointed day—

- (a) all contracts and agreements entered into by or on behalf of the COD; and
- (b) all guarantees, undertakings and securities given by or on behalf of the COD;

and in force immediately before that day are taken to have been entered into, or given by or to, the approved association or approved corporation and may be enforced against or by the association or corporation.

‘(6) All actions, suits and proceedings pending immediately before the appointed day at the suit of the COD, may be continued or discontinued by the approved association or approved corporation.

‘(7) All debts due and owing and amounts payable and claims (liquidated and unliquidated) enforceable against the COD and in existence immediately before the appointed day become debts due and owing or amounts payable by or claims enforceable against the approved association or approved corporation.

‘(8) When this section has been complied with, an order in council is to be made specifying a day on which—

- (a) the COD is dissolved; and
- (b) the members of the COD go out of office.

**‘Duty to facilitate transfer of property, etc.**

**‘6O.** Between the making of the order in council under section 6N(1) and the day appointed by the order in council, the COD and all persons connected with the operations of the COD must do all acts and things necessary or desirable to facilitate—

- (a) the transfer to the approved association or approved corporation specified in the order of property and liabilities of the COD; and
- (b) the delivery to the approved association or approved corporation, or its nominee, on that day of—
  - (i) all contracts, agreements, guarantees, undertakings and securities entered into by or given by or to the COD; and
  - (ii) all documents, writings and other records relating to the operation of the COD;

that refer to the property and liabilities mentioned in paragraph (a).

**‘Winding up of COD**

**‘6P.(1)** If—

- (a) authority has been given under section 6M(13); or
- (b) an order in council has not been made under section 6N(1) within 6 months after the giving of the authority under section 6M(13);

the Minister may direct the chief executive of the department to make application to the Supreme Court for the COD to be wound up.

**‘(2)** On the hearing of the application, the Supreme Court may—

- (a) dismiss the application with or without costs; or
- (b) adjourn the hearing conditionally or unconditionally; or
- (c) make any interim or other order that it considers appropriate.

**‘(3)** The Supreme Court may, on the application coming on for hearing or at any time at the request of the chief executive, or any person who has given notice of intention to appear on the hearing of the application—

- (a) direct that any notices be given or any steps be taken before or after the hearing of the application; or

- (b) dispense with any notices being given or steps being taken that are required by any previous order of the court; or
- (c) direct that oral evidence be taken on the application or any matter relating to the application; or
- (d) direct a speedy hearing or trial of the application or of any issue or matter; or
- (e) allow the application to be withdrawn or amended; or
- (f) give such directions as to the proceedings as the court considers appropriate.

‘(4) An order for winding up the COD operates in favour of all the creditors of the COD as at the day of the winding up as if it had been made on the joint application of all the creditors.

### **‘Liquidation**

‘6Q.(1) On an order being made to wind up the COD, the Supreme Court may appoint a person registered as an official liquidator under section 1283 of the Corporations Law or taken to be registered as an official liquidator under that Law to be liquidator of the COD.

‘(2) The Supreme Court may appoint an official liquidator provisionally at any time—

- (a) after the filing of a winding up application and before the making of a winding up order; or
- (b) if there is an appeal against a winding up order before a decision in the appeal is made.

‘(3) A liquidator appointed provisionally has such functions and powers—

- (a) as are conferred on the liquidator by rules of the Supreme Court; or
- (b) as the court specifies in the order of appointment.

‘(4) The liquidator may resign or, on cause shown, be removed by the Supreme Court.

‘(5) A liquidator is entitled to receive such remuneration as is determined

by the Supreme Court.

‘(6) A vacancy in the office of liquidator may be filled by the Supreme Court.

‘(7) Anything done by or in relation to a winding up by a liquidator is not invalid merely because of a defect in or in relation to the liquidators appointment.

### **‘Custody and vesting of COD’s property on winding up**

‘6R.(1) On the making of a winding up order, the liquidator or, if a provisional liquidator has been appointed, the provisional liquidator must take into the liquidator’s custody or under the liquidator’s control all the property to which the COD is or appears to be entitled.

‘(2) If there is no liquidator, all the property of the COD is in the custody of the Supreme Court.

‘(3) The Supreme Court may, on the application of the liquidator, by order, direct that all or any part of the property of the COD vests in the liquidator.

‘(4) The liquidator may, after giving such indemnity (if any) as the Supreme Court directs, bring, or may defend, an action or other legal proceeding—

- (a) that relates to property mentioned in subsection (3); or
- (b) that it is necessary to bring or defend;

for the purpose of effectually winding up the COD and recovering its property.

### **‘Report as to COD’s affairs to be submitted to liquidator**

‘6S.(1) The persons who were—

- (a) on the date of making of the winding up order; or
- (b) if the liquidator specifies an earlier date, the earlier date;

the chairperson and secretary of the COD must make and verify by a written statement a report as to the affairs of the COD as at that date.

‘(2) The report mentioned in subsection (1) must, subject to subsection

(5), be submitted to the liquidator not later than 14 days after the making of the winding up order.

‘(3) The liquidator may, by written notice served on the persons mentioned in subsection (1), specify information that the liquidator requires as to the affairs of the COD.

‘(4) Information required under subsection (2) must, subject to subsection (5), be given to the liquidator not later than 14 days after service of the notice.

‘(5) If the liquidator believes there are special reasons for so doing, the liquidator may, on written application made before the end of the period mentioned in subsection (3) or (4), extend the period.

‘(6) The liquidator must, within 7 days after receiving the report under subsection (1), file a copy of the report in the Supreme Court and give a copy of the report to the chief executive of the department.

### **‘Powers of liquidator**

‘6T.(1) The liquidator may, with the approval of the Supreme Court—

- (a) continue to exercise the functions, and carry on a business, of the COD for the purpose of winding up the COD; and
- (b) pay a class of creditors in full; and
- (c) make a compromise or arrangement with creditors or persons claiming to be creditors or having or alleging that they have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the COD or by which the COD may become liable; and
- (d) compromise—
  - (i) debts, liabilities capable of resulting in debts and claims (present or future, certain or contingent, ascertained or sounding only in damages) existing, or supposed to exist between the COD and a debtor or person apprehending liability to the COD; and
  - (ii) all questions relating to or affecting property of or the winding up of the COD;

on such terms as are agreed; and

- (e) take security for the discharge of and give a complete discharge in respect of, any debt, liability or claim mentioned in paragraph (d).

‘(2) The liquidator may—

- (a) bring or defend legal proceedings in the name and on behalf of the COD; and
- (b) appoint a legal representative to assist the liquidator; and
- (c) sell or otherwise dispose of property of the COD; and
- (d) do acts in the name of the COD, and execute in the name of the COD deeds, receipts and other documents, and, for that purpose, use the COD’s official seal; and
- (e) subject to the *Bankruptcy Act 1966* of the Commonwealth, prove in the bankruptcy of a debtor of the COD or under any deed executed under that Act; and
- (f) draw, accept, make and indorse a bill of exchange or promissory note in the name of the COD; and
- (g) obtain credit, whether on the security of the COD’s property or otherwise; and
- (h) take out letters of administration of the estate of a deceased debtor, and do anything else necessary for obtaining payment of an amount due from a debtor, or the estate of a debtor, that cannot be conveniently done in the name of the COD; and
- (i) compromise a debt due to the COD, other than a debt if the amount claimed to be due is more than \$20 000; and
- (j) appoint an agent to do any business that the liquidator is unable to do, or that it is unreasonable to expect the liquidator to do in person; and
- (k) do all such other things as are necessary for winding up the affairs of the COD and distributing its property.

‘(3) The liquidator is entitled to inspect at any reasonable time any books of the COD.

‘(4) A person who fails to allow the liquidator to inspect any books of the COD at a reasonable time commits an offence against this Act.

‘(5) The authority of the Supreme Court is not required for the carrying on of any business of the COD by the liquidator under subsection (1)(a) within 4 weeks after the making of the winding up order.

‘(6) For the purpose of enabling the liquidator to take out letters of administration or recover amounts as mentioned in subsection (2)(h), amounts due to the COD are taken to be due to the liquidator.

‘(7) The exercise by the liquidator of the powers conferred by this section is subject to the control of the Supreme Court, and any creditor may apply to the court with respect to any exercise or proposed exercise of any of those powers.

### **‘Release of liquidator and dissolution of COD**

‘6U. When the liquidator—

- (a) has realised all the property of the COD or so much of it as can in the liquidator’s opinion be realised without needlessly protracting the winding up, and has distributed a final dividend (if any) to the creditors among themselves and made a final return (if any) to them; or
- (b) has resigned or been removed from office;

the liquidator may apply to the Supreme Court—

- (c) for an order of release; or
- (d) for an order of release and an order dissolving the COD.

### **‘Orders for release or dissolution**

‘6V.(1) The Supreme Court—

- (a) may cause a report on the accounts of the liquidator to be prepared by a person appointed by the Court who is registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law; and
- (b) on the liquidator complying with all the requirements of the Court must take into consideration the report and any objection against the release of the liquidator that is made by the person appointed under paragraph (a), any creditor or other person interested; and

(c) must either grant or refuse to grant an order of release.

‘(2) If the Supreme Court—

(a) refuses to grant an order of release; and

(b) is satisfied that the liquidator has been guilty of default, negligence, breach of trust or breach of duty;

the Court may—

(c) order the liquidator to make good any loss that the COD has sustained because of the default, negligence, breach of trust or breach of duty; and

(d) make such other order as it considers appropriate.

‘(3) An order of release discharges the liquidator from all liability for any act done or default made by the liquidator—

(a) in the administration of the affairs of the COD; or

(b) otherwise in relation to the liquidator’s conduct as liquidator.

‘(4) The order of release may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

‘(5) If the liquidator has not previously resigned or been removed, the order of release operates to remove the liquidator from office.

‘(6) If the Supreme Court—

(a) makes an order of release; or

(b) makes an order of release and an order dissolving the COD;

the liquidator must, within 14 days, deliver a copy of the order or orders to the chief executive of the department.

‘(7) If an order is made dissolving the COD—

(a) the COD is dissolved; and

(b) the members of the COD go out of office.

### **‘Application of amounts remaining after winding up**

‘6W.(1) On completion of the winding up of the COD under this Act—

(a) there is hereby constituted a trust to be called the Fruit and

Vegetable Growers Industry Trust (in this section referred to as the “**Trust**”); and

- (b) any amounts remaining to the credit of the COD must be placed to the credit of an industry trust fund established by the trustees for the purpose of the Trust.

‘(2) Amounts to the credit of the trust fund may be spent by the trustees appointed under subsection (3) in such way, and for such purposes, for the benefit of fruit growers or vegetable growers as are approved by order in council.

‘(3) There are to be 4 trustees of the Trust, appointed by order in council, who are to be—

- (a) 2 individuals who are fruit growers or vegetable growers; and
- (b) 2 other individuals.

‘(4) The Trust is a statutory body within the meaning of the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Administration and Audit Act 1977*.

‘(5) If amounts in the trust fund are fully spent, the trustees must close the fund and, on closing the fund, go out of office.

‘(6) If the trust fund still exists 5 years after it is established—

- (a) any amounts in the fund are to be spent for the benefit of fruit growers and vegetable growers in such way as is approved by order in council; and
- (b) the trustees must close the fund and, on closing the fund, go out of office.

‘(7) If an order in council authorises the continuation, the fund is to continue for a specified further period, and subsection (6) does not apply until the further period ends.

‘(8) Before an order in council is made under subsection (7), the Minister must consult with the trustees and such other persons as the Minister considers appropriate.’.

**Omission of s.7B (Committee of Direction may function under voluntary agreement)****8.** Section 7B—

*omit.*

**Amendment of s.8 (General function of Committee of Direction)****9.** Section 8(1)—

*omit, insert—*

**‘(1)** The functions of the COD are to—

- (a) provide opportunities for growers to be informed about matters affecting the horticultural industry; and
- (b) provide opportunities for growers to participate in discussions before the COD makes decisions on matters of policy concerning the horticultural industry; and
- (c) disseminate the views of growers on matters affecting the horticultural industry to persons and organisations whose operations involve the production, marketing or consumption of horticultural produce; and
- (d) promote horticulture and the adoption of improved methods of producing and marketing horticulture; and
- (e) provide financial assistance for research into producing and marketing of horticulture; and
- (f) co-operate with agencies concerned with the efficiency, and promotion, of the horticultural industry; and
- (g) provide grower services.’.

**Insertion of new s.8A****10.** After section 8—

*insert—*

**‘Minister’s power to direct COD**

**‘8A.(1)** The COD must exercise its powers and carry out its functions under this Act—

- (a) to the satisfaction of the Minister; and
- (b) in accordance with any written direction given to it by the Minister.

**‘(2)** The Minister may issue written directions to the COD—

- (a) on any matter concerning the functions and powers of the COD under this Act; and
- (b) on any matter concerning the performance by the COD of its functions and powers under this Act.

**‘(3)** Without limiting the Minister’s power of direction under subsection (2), the Minister may—

- (a) direct the COD that it is, or is not, to exercise its functions and powers under this Act in a specified way; and
- (b) direct the COD to exercise its functions and powers under this Act at a specified time or in respect of specified matters; and
- (c) direct the COD that it must not exercise its functions and powers under this Act at a specified time or in respect of a specified matter; and
- (d) require the COD to report to the Minister on any matter concerning the operations of the COD or the performance by the COD of its functions or the exercise of its powers; and
- (e) require the COD to supply documentary information to the Minister in respect of the operations of the COD and the performance by the COD of its functions or the exercise of its powers; and
- (f) direct the way in which the COD may continue to conduct any business that it may continue under section 13; and
- (g) require the COD to report to the Minister at such times as the Minister specifies in respect of—
  - (i) its business mentioned in section 13; or

(ii) any other matter under this Act that is within the functions or powers of the COD; and

(h) revoke or amend a direction.

‘(4) A direction under this section may—

(a) direct that the direction, or any requirement contained in the direction, must be complied with within a specified period; or

(b) specify the period for which the direction is to apply; or

(c) specify that the direction is to expire on a specified day, or at the end of a specified period, if anything specified to be done has been done to the satisfaction of the Minister.

‘(5) If the COD contravenes a direction under this section, it commits an offence against this Act.

Penalty—1 000 penalty units.

‘(6) Section 17(2) so far as it provides for persons who are to make complaints does not apply to an offence against this section.’.

### **Amendment of s.9A (Constitution of Cannery Board)**

**11.(1)** After section 9A(4)—

*insert—*

‘(4A) The Cannery Board is authorised to transfer its incorporation under this Act to the Corporations Law.’.

(4B) For the purposes of subsections (4A) and (5A)(viii), and despite the provisions of the Cannery Agreement, the Cannery Board may by resolution adopt any memorandum and articles of association (not inconsistent with this Act or the Cannery Agreement) which are to be its memorandum and articles of association under the Corporations Law upon the registration of the Cannery Board under that Law.

(2) After section 9A(5)(vii)—

*insert—*

(viii) make application for the Cannery Board to be registered as a company under Division 3 of Part 2.2 of the Corporations Law if—

- (a) transfer of its incorporation has been consented to by the holders of not less than 60%, in value, of certificates of subscription (as defined in the Cannery Agreement) in a ballot for the Cannery Board to be so registered; and
- (b) the Minister approves the making of the application.’.

**(3)** After section 9A(5)—

*insert—*

‘**(5A)** This Act ceases to apply to the Cannery Board on the day it is registered as a company under Division 3 of Part 2.2 of the Corporations Law.’.

**Amendment of s.10 (Constitution of local associations and their functions)**

**12.** Section 10(5)—

*omit.*

**Amendment of s.11 (Constitution of sectional group committees)**

**13.** Section 11(4)—

*omit ‘as to the marketing of fruit’.*

**Insertion of new ss.13 and 13A**

**14.** After section 12—

*insert—*

**‘COD to sell or otherwise dispose of businesses**

‘**13.(1)** On the commencement of the *Fruit Marketing Organisation Amendment Act 1991*, the COD must immediately take steps to sell or otherwise dispose of any business (other than a business that is conducted under section 6(5)(vi) or (viii)) that it was carrying on immediately before that commencement.

Penalty—1 000 penalty units.

‘(2) Even though the COD is no longer authorised to carry on any business mentioned in subsection (1), it may—

- (a) with the approval of the Minister; and
- (b) during the time it takes to sell or otherwise dispose of the business;

continue to carry on the business.

‘(3) The COD, in carrying on a business authorised under subsection (2)—

- (a) must not start to engage in an activity that it is no longer empowered to do; but
- (b) may continue to engage in an activity if—
  - (i) immediately before the commencement of the *Fruit Marketing Organisation Amendment Act 1991*, it was engaging in the activity; and
  - (ii) the activity is such that the COD was empowered to engage in it; and
  - (iii) the Minister approves of the COD continuing to engage in it.

‘(4) The Minister, in giving approval under subsection 2(a) or (3)(b)(iii), must ensure that the business or activity was being carried on, or the activity was being engaged in, immediately before the date of commencement of the *Fruit Marketing Organisation Amendment Act 1991*.

‘(5) Section 17(2) so far as it provides for persons who are to make complaints does not apply to an offence against subsection (1).

### ‘Powers under s.13

‘13A.(1) In exercising its powers under section 13(1), the COD may—

- (a) sell or otherwise dispose of a business as a going concern; or
- (b) cease carrying on a business and sell any property it acquired for the purpose of the business;

for such consideration as it considers appropriate.

‘(2) The consideration may include—

- (a) the acquisition of shares in a trading corporation or other body; or
- (b) any other property; or
- (c) a combination of anything mentioned in paragraphs (a) and (b);

in exchange for the business or property.

‘(3) If the COD, in respect of the proceeds of any sale or other disposition of a business, acquires shares in a trading corporation or other body it may, in addition to any other power it may exercise under this Act, make gifts of the shares to one or both of—

- (a) fruit growers and vegetable growers who are on the rolls of local associations on a day fixed by order in council; or
- (b) a trust established by the COD for the purpose of holding the shares for the benefit of growers mentioned in paragraph (a).

‘(4) If the COD makes gifts under subsection (3)(a) it must ensure, as far as practicable, that each of the growers referred to in that subsection, receives the same number of shares.’.

### **Amendment of s.15 (Regulations)**

**15.** Before section 15(1)(ii)—

*insert—*

- ‘(i) any matter that is required or permitted to be prescribed by this Act;’.

### **Validation of Cannery Agreement**

**16.** To settle any doubt and to validate the constitution and incorporation of the Cannery Board (if such validation is necessary), it is declared that—

- (a) the Deed of Agreement made on 2 June 1948, and mentioned in the definition “**Cannery Agreement**” in section 2 of the *Fruit Marketing and Organisation Act 1923*, constituted a valid agreement; and
- (b) each agreement amending the Deed of Agreement constituted a valid agreement; and

- (c) orders in council in relation to the Cannery Board published in the Gazette on—
- (i) 18 December 1948, at page 3143; and
  - (ii) 18 April 1964, at page 1423; and
  - (iii) 28 May 1966, at page 571; and
  - (iv) 17 December 1966, at page 1411;
- are valid.