



ANALYSIS

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1970-71, No. 31

An Act to establish a Primary Produce Marketing Board to control the sale and export of certain produce and to promote the industry in connection therewith

(23 March 1971
Price 40c

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and division into Parts - (1) This Act may be cited as the Primary Produce Marketing Board Act 1970-71.

(2) This Act is divided into Parts, as follows:

- Part I - Establishment of Board (Sections 3 to 7)
- Part II - General Provisions (Sections 13 to 19)
- Part III - Financial Provisions (Sections 20 to 30)
- Part IV - Miscellaneous (Sections 31 to 34).

2. Interpretation - In this Act, unless the context otherwise requires, -

"Board" means the Primary Produce Marketing Board established under this Act;

"Controlled produce" means and includes only citrus, bananas, pineapples, tomatoes, copra and coffee;

"Financial year" means the period from the first day of April in any year to the thirty-first day of March in the following year;

"Minister" means the Minister charged with the responsibility of Economic Development.

PART I - ESTABLISHMENT OF BOARD

3. Establishment of Primary Produce Marketing Board -

(1) There is hereby established for the purposes of this Act a Board, to be known as the Primary Produce Marketing Board.

(2) The Board shall be a body corporate with perpetual succession and a common seal, and shall be capable of purchasing or otherwise acquiring, holding, disposing of, and alienating real and personal property, and of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

(3) The members of the Board shall be jointly charged with the responsibility of carrying out the provisions of this Act, and of acting in the best interests of the industry in respect of controlled produce.

4. Membership of the Board - (1) The Board shall consist of -

(a) Two persons appointed by the Minister who shall hold office at the pleasure of the Minister;

(b) One person representing the growers and producers of controlled produce in the Cook Islands.

(2) The person to hold office under paragraph (b) of subsection (1) of this section shall be appointed by the representatives attending the annual conference under subsection (2) of section 7 of this Act.

(3) The Minister shall appoint one of the members of the Board to be Chairman.

(4) The members of the Board shall be paid such sums by way of salaries and allowances as may be determined by the Minister with the approval of the Minister responsible for Finance.

5. Vacancies on the Board - (1) In the event of any vacancy occurring in the office of any appointed member of the Board by death, resignation or otherwise that vacancy shall be filled in the same manner prescribed for the original appointment to that office.

(2) The powers of the Board shall not be affected by any vacancy in the membership.

6. Meetings of the Board - (1) The first meeting of the Board shall be held at a time and place to be appointed by the Chairman.

(2) Subsequent meetings of the Board shall be held at such times and places as the Board may from time to time appoint.

(3) At any meeting two members shall form a quorum.

(4) The Chairman shall preside at all meetings of the Board at which he is present. In the absence of the Chairman from any meeting the members present shall select one of their number to be the Chairman for the purposes of that meeting.

(5) The Chairman at any meeting shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.

(6) At any meeting the decision of a majority of the members present shall be the decision of the Board.

(7) No member shall vote or take part in the discussion of any matter before a meeting of the Board in which such member has directly or indirectly any pecuniary interest apart from an interest in common with growers of controlled produce.

(8) Subject to the provisions of this Act, the Board may regulate its own procedure.

7. Annual conference - (1) The Board shall hold a conference to be known as the annual conference in Rarotonga in the month of August of each year.

(2) In addition to the members of the Board the following representatives shall have the right to attend the annual conference:-

(a) One representative of each of the three districts of Rarotonga who shall be appointed at general meetings of the respective Growers' Associations in the said districts representing the growers and producers of controlled produce in those said districts;

(b) Two representatives of each of the islands of Mangaia, Aitutaki and Atiu who shall be appointed at general meetings of the respective Growers' Associations on the said islands representing the growers and producers of controlled produce on those said islands;

(c) One representative of each of the islands of Waikato, Mitiaro, Manihiki, Penrhyn, Rakahanga, Pukapuka and Palmerston who shall be appointed at general meetings of the respective Growers' Associations on the said islands representing the growers and producers of controlled produce on those said islands.

(3) In the event of any dispute as to the representatives under subsection (2) of this section the Chairman of the Board shall determine the dispute and his decision shall be final.

(4) The annual conference shall discuss the general activities of the Board including the accounts and financial statements relating to the previous financial year and matters of policy.

(5) The representatives, other than the members of the Board, attending the annual conference shall be paid such sums by way of allowances and expenses as may be determined by the Board from time to time.

Functions and powers of Board

8. Functions of Board - The principal functions of the Board shall be -

- (a) To promote and encourage the marketing and sale of controlled produce outside the Cook Islands;
- (b) To control the export of controlled produce from the Cook Islands;
- (c) To control the sale of controlled produce within the Cook Islands to any produce processor;
- (d) To utilise to full economic advantage the assets and staff of the Board.

9. General powers of the Board - The Board shall have all such powers, rights, and authorities as may reasonably be necessary or expedient to enable it to carry out its functions.

10. Particular powers of Board - Without limiting the general powers conferred on the Board herein, the Board shall have authority from time to time -

- (a) To determine the maximum quantity of any class of controlled produce which any grower or district or island shall be permitted to deliver to the Board for export in any particular shipment or season;
- (b) To take delivery of, handle, process, grade, pack, store and transport any controlled produce intended for export;
- (c) To ship controlled produce on such terms and in such quantities as it thinks fit;
- (d) To sell and grant options for the sale or otherwise dispose of controlled produce in such manner and upon such terms as to price, payment, delivery, transport, rejection and other matters in connection therewith as it thinks fit;
- (e) To insure controlled produce against any insurable risk or to create reserve funds for such purpose;
- (f) Generally to do all such things as in its opinion are necessary for, or incidental to, the due discharge of its functions in handling, distributing and disposing of controlled

produce or otherwise in exercising control over such produce as an absolute owner of any produce might do.

11. Further powers of Board - The Board shall be further authorised from time to time -

- (a) to acquire by lease or purchase or by grant from the Crown any land, other than the fee simple, building or easement and to dispose by sale, lease or otherwise any such land, building or easement;
- (b) To purchase and resell manures, sprays, spraying implements, fencing material, tools and any other stores or equipment, and to negotiate agencies in connection therewith;
- (c) To acquire, establish, maintain and operate adequate plant, machinery, equipment, stores, supplies of implements, packing materials, manures, sprays or any other facilities whatever the Board thinks necessary or desirable for the efficient performance of any of its functions or powers under this Act;
- (d) To advance on terms and conditions at its discretion any amount or amounts of money for any of the following purposes:-
 - (i) The purchase of trees, plants or seeds;
 - (ii) The purchase of building construction or maintenance materials, machinery, equipment, tools, stores or packing materials;
 - (iii) The payment of any service, including labour.

Officers and employees

12. Officers and employees of the Board - (1) The Board shall appoint a General Manager who shall be the principal officer of the Board, a Secretary, and such other officers and employees as it deems necessary for the efficient carrying out of its functions under this Act.

(2) The Board may pay to its officers and employees such salaries, wages, and allowances as may be determined by the Minister with the approval of the Minister responsible for finance.

PART II - GENERAL PROVISIONS

13. Contracts of the Board - (1) Any contract which, if made between private persons, must be by deed shall, if made by the Board, be in writing under the seal of the Board.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith, shall, if made by the Board, be in writing either under the seal of the Board or signed by any person acting on behalf of and under the express or implied authority of the Board.

(3) Any contract which if made between private persons, may be made verbally may, when made by the Board, be made verbally by any person acting on behalf of and under the express or implied authority of the Board, but no verbal contract shall be made of a value exceeding twenty dollars.

14. Committees of the Board - (1) The Board may from time to time appoint any committee to inquire into and report upon such matters as the Board may think fit.

(2) Any person may be appointed to be a member of any committee, notwithstanding that he is not a member of the Board:

Provided that each committee shall include at least one member of the Board.

(3) Members of such committees shall be paid such sums by way of salaries and allowances as the Minister from time to time determines.

15. Board to comply with general policy of Government - In carrying out its functions and the exercise of its powers under this Act the Board shall comply with the general policy of the Government of the Cook Islands in relation to controlled produce and shall comply with any general or special directions given by the Minister pursuant to the policy of the Government in relation thereto.

16. Government Departments may provide services for Board - The Crown, acting through any Government Department, may from time to time, at the request of the Board, enter into contracts or arrangements for the execution or provision by the Department for the Board of any work or services, or for the supply to the Board of any personnel, goods, stores, or equipment on and subject to such terms and conditions as may be agreed upon.

17. Members of Board not personally liable - No member of the Board or of any committee appointed by the Board shall be personally liable for any act or default done or made by the Board or the committee or by any member thereof in good faith in the course of the operations of the Board or the committee.

18. Contracts for carriage and sale of controlled produce - (1) No person shall make or be a party to or enter into either as a principal or agent any contract to which the Board is not a party or to which the Board's written consent is not given, of the kinds following, namely -

- (a) For the carriage of controlled produce by sea or air from any part of the Cook Islands to any place outside the Cook Islands;
- (b) For the export of controlled produce from the Cook Islands to any place outside the Cook Islands;
- (c) For the sale or other disposal of any controlled produce to any produce processor.

(2) Any contract made in breach of this section shall be void and unenforceable.

19. Recovery of debt where controlled produce sold or disposed of otherwise than through the Board - Where controlled produce is sold or disposed of otherwise than to or through the Board in accordance with this Act, the Board may require the purchaser or re-seller of such controlled produce to pay to the Board a proportion not exceeding fifty percent of the net proceeds of such sale or disposition in reduction of the debt to the Board of the grower or producer so selling or disposing of the controlled produce.

PART III - FINANCIAL PROVISIONS

20. Assets and liabilities of the Board - (1) All assets and liabilities held and owned by the Government of the Cook Islands for and under the Fruit Control Scheme operated pursuant to the provisions of the Cook Islands Fruit Control Regulations 1937 shall, on the coming into force of this Act, without further authority than this section, be vested in the Board.

(2) All assets and liabilities held and owned by the Rarotonga Tomato Export Control Board for and under the Scheme operated pursuant to the provisions of the Rarotonga Tomato Export Control Board Bylaw 1966 shall, on the coming into force of this Act, without further authority than this section, be vested in the Board.

(3) The Board shall from time to time have the right to revalue its assets.

21. Appropriation by Legislative Assembly - There shall be paid to the Board such sums of money as may be appropriated by the Legislative Assembly from time to time for the purposes of the Board.

22. Levy - (1) For the purpose of providing funds to enable the Board to carry out its functions and to exercise the powers conferred on the Board by this Act there shall be paid to the Board, by way of a general levy on all controlled produce exported from the Cook Islands or sold to any produce processor such charges as may from time to time be fixed by the Board, not exceeding in any case the maximum charges that may be prescribed by regulations under this Act.

(2) Differential charges may be proscribed in respect of different kinds of controlled produce.

(3) Any charges under this section may be fixed in relation to the weight or quantity of the controlled produce exported or in relation to the export price thereof.

(4) The rates of those charges shall be fixed from time to time by the Board, by notice in the Gazette.

(5) Any levy in force pursuant to this section may be deducted from moneys due to any person from the Board.

(6) All charges payable under this section shall be payable to the Board by such persons as are specified by the Board and shall be recoverable as a debt due to the Board in the High Court.

23. Primary Produce Marketing Board Account - (1) For the purposes of this Act there is hereby established at the Treasury of the Cook Islands an account to be known as the Primary Produce Marketing Board Account.

(2) Subject to the approval of the Minister in charge of Finance, the Board may establish such further account or accounts that it deems necessary at any recognised banking institution in the Cook Islands or elsewhere.

(3) The Board shall from time to time by resolution authorise any person or persons to operate its accounts and may from time to time by resolution fix the maximum amount that may be drawn by such person or persons at any one time.

24. Money payable into accounts of the Board - There shall from time to time be paid into the accounts of the Board -

- (a) All moneys paid to the Board pursuant to section 21 of this Act;
- (b) The proceeds of any levy imposed by the Board under section 22 of this Act;
- (c) Any other money derived from operations of the Board under this Act or otherwise payable into the accounts of the Board.

25. Moneys payable out of accounts of the Board - There shall from time to time be paid out of the accounts of the Board all money payable by the Board -

- (a) In payment of the expenses, commissions and other charges and claims arising from the administration of this Act;
- (b) In distribution to the growers of such amounts due to the growers from the sale or other disposal of controlled produce after all lawful deductions have been made;
- (c) In payment to the growers of such amounts as the Board may determine wherever controlled produce has been accepted by the Board but has not been exported, or purchased by any produce processor through no fault of the growers;
- (d) In the establishment of such reserves as the Board may from time to time deem necessary;
- (e) For the due repayment of any amount borrowed by the Board pursuant to section 28 of this Act;
- (f) In the performance of any other duties and the exercise of any other powers, authorities, and functions of the Board under this Act or in the administration of this Act.

26. Investment of money - Any money belonging to the Board may from time to time be invested -

- (a) On deposit in any bank or banks approved by the Minister in charge of Finance, or in the Post Office Savings Bank;
- (b) In any manner, or in any securities that may from time to time be authorised by the Minister in charge of Finance.

27. Unauthorized expenditure - In any financial year the Board may expend for purposes not authorised by this or any other Act any sum or sums not amounting in the aggregate to more than two hundred dollars.

28. Borrowing powers - The Board may from time to time, with the consent of the Minister in charge of Finance, and on and subject to such terms and conditions as he thinks fit, borrow money by way of overdraft or otherwise and issue debentures or mortgage or charge any of its real or personal property.

29. Accounts - (1) The Board shall keep full and correct accounts of all money received and expended by it.

(2) Such moneys and accounts shall be subject to audit by the Audit Office of New Zealand.

(3) The Board shall, as soon as possible after the end of every financial year, cause the accounts of the Board for that financial year to be balanced and prepare a statement of the assets and liabilities of the Board as at the end of that financial year, together with an account of income and expenditure showing the financial transactions for that year.

30. Exemption from income tax - The Board shall be exempt from income tax.

PART IV - MISCELLANEOUS

31. Annual report and accounts to be presented to Legislative Assembly - (1) The Board shall, as soon

as practicable after the end of each financial year, furnish to the Minister a balance sheet and such other statements of account as are necessary to show fully the financial position of the Board, and the financial results of its operations during that year, together with a report of its proceedings and operations for that financial year.

(2) A copy of the report and a copy of the accounts and balance sheet of the Board certified by the Audit Office of New Zealand shall be laid before the Legislative Assembly within twenty-eight days after the same have been furnished to the Minister if the Legislative Assembly is then in session, and, if not, shall be laid before the Legislative Assembly within twenty-eight days after the commencement of the next ensuing session.

32. Offences - (1) Any person making or becoming a party to or entering either as a principal or agent into any contract in contravention to this Act or acting under or seeking to carry out or enforce any contract declared by this Act to be void and unenforceable commits an offence and shall be liable on conviction to a fine not exceeding one hundred dollars.

(2) Any person who obstructs or impedes or attempts to obstruct or impede any member, officer, servant or agent of the Board or of any Committee of the Board in exercising any of the functions, powers, authorities or duties vested in or conferred by or under this Act commits an offence and shall be liable on conviction to a fine not exceeding one hundred dollars.

33. Regulations - (1) The High Commissioner may from time to time, by Order in Executive Council, after consideration of any recommendations thereon made to him by the Board, make all such regulations as may, in his opinion, be deemed necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) All regulations made under this section shall be laid before the Legislative Assembly within twenty-eight days after the date of the making thereof if the Legislative Assembly is then in session, and, if not, shall be laid before the Legislative Assembly within twenty-eight days after the date of the commencement of the next ensuing session.

34. Revocations and Savings - (1) The Regulations specified in the Schedule to this Act are hereby revoked.

(2) The Rarotonga Tomato Export Control Bylaw 1966 is hereby revoked.

(3) Without limiting the provisions of the Acts Interpretation Act 1924 it is hereby declared that the revocation of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so revoked or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the revocation and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

SCHEDULE

(s. 34)

REGULATIONS REVOKED

<u>Title</u>	<u>Serial No.</u>
The Cook Islands Fruit Control Regulations 1937	1937/136
The Cook Islands Fruit Control Regulations 1937, Amendment No. 1	1940/145
The Cook Islands Fruit Control Regulations 1937, Amendment No. 2	1946/32
The Cook Islands Fruit Control Regulations 1937, Amendment No. 3	1958/196
The Cook Islands Fruit Control Regulations 1937, Amendment No. 4	1961/147

This Act is administered by the Primary Produce Marketing Board.