

Hon Dr Sally Talbot MLC
Chairperson, Standing Committee on Legislation
Legislative Council
Parliament House
Perth WA 6000

16 July 2020

Dear Dr Talbot,

Agricultural Produce Commission Amendment Bill 2020

Thank you for your letter, dated 17 June 2020, inviting the Agricultural Produce Commission (APC or the Commission) to provide a written submission on your inquiry into the *Agricultural Produce Commission Amendment Bill 2019* (the bill).

The Commission welcomes the Legislative Committee's review of the bill, including this opportunity to provide an understanding of the Commission and the APC producers' committees' operations.

This submission will provide context into the intention of the amendments and for ease of understanding has been structured into sections as follows:

- The establishment of the APC and its current operations
- The proposed amendments, focussing on the topics
 - Administrative and operational amendments
 - The removal of the exclusion on establishing producers' committees for broadacre cropping and grazing industries (section 3(2))
 - Ability to waive or refund the charge (section 14(5))
 - Weighted voting (section 16A)
 - Compliance (Part 3A) and the charge (section 14)
 - Allocating or removing responsibility for a commodity to/from a producers' committee (Part 3 Divisions 2,3, and 5)

THE ESTABLISHMENT OF THE APC AND ITS CURRENT OPERATIONS

The Horticultural Produce Commission was first established under the *Horticultural Produce Commission Act 1988*. The Act was amended in 2001, broadening the scope of the Act to include agricultural producers and resulting in the *Agricultural Produce Commission Act 1988* (the Act).

The Commission was established under the Act.

The 2001 amendment process also saw the inclusion of the section 3(1) exclusion on establishment of producers' committees for the broadacre cropping and grazing industries.

As of 30 June 2020 the Commission comprises four Commissioners, appointed by the Minister, and 2.6 full time equivalent staff. The Commission also employs a number of other staff but these staff are employed specifically for secondment to producers' committees where those producers' committees have requested that the Commission perform this function.

The Commission believes that the APC legislation is a valuable, and valued, tool for the Western Australian agricultural industry. However, where the Commission is hindered by out-dated or ineffective sections of the legislation this results in inefficiencies which place the Commission's necessary governance and operational abilities at risk.

The Commission's work with its producers' committees is funded by the producers' committees themselves, from the charge collected by the producers' committee. This provides further imperative that the Commission is able to provide targeted and timely service to producers' committees.

The more efficiently the Commission and its producers' committees are able to operate, the lower costs to producers.

Agriculture as an industry is a success story from which all Australians benefit. The growers and producers within the APC producers' committees, by taking initiative and accepting responsibility on behalf of their industry demonstrate their commitment to meeting the challenges, and taking advantage of the opportunities of their industries. This is often done with a greater public good benefit in mind – providing nutritious local produce to feed Australians.

The benefit derived through the collaborative work of APC producers' committees is not only reflected in the actual work itself, but also in the fostering of industry leadership, development of industry collaboration, sharing of resources and information and the generation of productive relationships with state government and other industry stakeholders.

The achievements of APC producers' committees are a source of pride for these producers and their industries. The members on APC producers' committees are all growers themselves. They give generously of their time and expertise on behalf of their industries and fellow producers.

The amendments sought in the *Agricultural Produce Commission Amendment Bill 2019* are intended to improve and ensure governance and protection for producers who have established, or seek to establish, APC producers' committees.

To provide more background on producers committee two tables are attached to this submission. These provide a view of the current APC producers' committees, their abilities under the Act, their focus and their producers.

How are APC producers' committees activities funded?

Section 14 of the Act enables the imposition of charges for services to be provided by a producers' committee.

This cost is determined by the Commission with the advice of the producers' committee and approved by the Minister.

Not every producers' committee decides to collect a charge.

The level of charge collected by a producers' committee (if any) is not reflective of the size or value of the industry but rather of the producers' committee and industry's agreed focus at that particular time – the services that are to be provided. The charge can be varied as activities and industry priority change. A request to vary the charge is made by the producers' committee, considered by the Commission and finally must be approved by the Minister.

A producers' committee can have a primary focus – the Carnarvon Banana producers' committee focusses on maintaining a compensation fund to assist Carnarvon banana growers in the event of defined weather events. This is the only charge currently collected by this producers' committee. The compensation fund is governed by Scheme Rules which are proposed by the grower members of the producers' committee and approved by the Commission.

Other producers' committees have a more diversified approach where biosecurity, promotion, research or marketing might be undertaken.

The decision on services or activities undertaken, and therefore the charge imposed, is that of the producers' committee, working with the industry.

Neither the Commission, nor the Minister, instructs any producers' committee on what services they should be providing.

The Commission's purpose in this area is to ensure that services provided are allowed under section 12.1 of the Act, that the delivery of services is efficient and best value for money for producers who are paying the charge and that sound governance principles have been applied to address financial management and conflict of interest.

How is the Commission funded?

The Commission is funded via an administration charge to the producers' committees.

The charge is based on a broad user pays methodology, with some relief provided to smaller producers' committees which do not collect large amounts of money.

The charge to a producers' committee can be between 9 – 14% and is reviewed annually.

THE PROPOSED AMENDMENTS

Administrative and operational amendments

There are a number of amendments within the bill which update terminology, clarify meanings and strengthen existing sections.

Most of these are self-explanatory and necessary to modernise the Act in line with other Acts. Some were identified by the Commission during its review and considerations, others were identified by the drafters during the drafting phase. A few, such as the section 6 amendments to the functions of the Commission, relate to amendments made elsewhere in the bill.

Constitution of the Commission (section 5)

This allows for the Commission to consist of either three (3) or four (4) members appointed by the Minister. Currently four (4) is the required number.

The Commission believes that the Commission can operate effectively with three (3) members. This would reduce Commission costs and as all costs of the Commission's board are borne by the producers' committees this would ultimately provide a saving to producers' committees. It is the goal of the Commission to, wherever possible without reducing effectiveness, limit cost to producers' committees.

Functions of producers' committees (section 12)

All activities carried out by producers' committees are provided for in the section 12 functions. Functions are only utilised by producers' committees as the need becomes apparent so although most producers' committees have the ability to utilise all functions they might only utilise the one or two which are necessary for their industry at any given time.

Over time as producers' committees and industries have matured it has become clear that some of the functions should be broadened to increase the ability for producers to respond to industry needs.

This is particularly true with respect to biosecurity, which is a growing and significant area of concern for all industries. The amendment to function (la) which broadens the scope to allow for damage caused by a pest or disease rather than just as the result of action taken to control a pest or disease increases the ability of producers to use initiative and forward planning to assist and protect their livelihoods and industries in the event of damage by a pest or disease.

Functions (d) and (k) are broadened to improve the ability of producers' committees and producers to address matters such as capacity development, accelerating productivity and improving supply chain efficiencies.

As all services undertaken by producers' committees are to be on behalf of, and supported by, the producers paying the charge there is a necessity for producers' committees to communicate and liaise with producers. This is now addressed in the section 12 (5) and section 14 (2A).

Producers should be actively involved in the services that are to be provided and regularly updated on the outcomes of services undertaken.

Producers' committee membership (section 11E)

A change to the constitution of producers' committees is proposed to allow for a person to be nominated for appointment to a producers' committee even though they would not be eligible to vote in a poll (not a producer). If such a person is appointed they would not be able to vote on producers' committee matters, nor would there be allowed to be more non-producers on a producers' committee than producers.

This allows for a producers' committee to bring expertise in a particular area onto the producers' committee where the producers' committee might currently be lacking in that expertise. For example, if a producers' committee is seeking to expand export marketing but has no producers with knowledge in that area, they could use a marketing professional to guide and advise them.

The removal of the exclusion on establishing producers' committees for broadacre cropping and grazing industries (section 3 (2))

This amendment has generated the most discussion and misinformation within the proposed 2019 amendments.

The removal of the exclusion on broadacre cropping and grazing was considered as part of the 2006 Act Review with no clear recommendation reached at that time.

In the intervening years the Commission has considered this matter on a number of occasions and has reached the view that it is in favour of the removal of the exclusion.

A significant factor in this view is that by removing the exclusion on broadacre cropping and grazing these industries will be afforded the same ability to establish a producers' committee as any other WA agricultural industry. Under the current legislation the broadacre cropping and grazing industries are clearly discriminated against. An example of this might be where the oat growers of the upper Great Southern might want to work as a unified group to provide value adding to their product. As the current Act allow for establishment of a committee based on both region and product the only barrier in this case would be that oat growers fall into the excluded category of broadacre cropping and grazing.

Other industries can currently make this decision for themselves, and as agricultural industries and their participants have become more professional and educated over recent years, the Commission believes that all agricultural industries have the nous to be able to make the decision of establishing, or not establishing, a producers' committee for themselves.

The removal of the exclusion does not mean that a producers' committee can be automatically established.

The process for producers' committee establishment is detailed (see attachment 3), and has been further refined through some of the amendments in the bill such as in section 10 where it is made clear that a request to establish a new producers' committee must be made by a producer or producers or a body representing the interests of producers of the agricultural produce and that the request must meet certain requirements. This then makes it clear that a request to establish a producers' committee cannot come from the State Government or a government authority as has been questioned – the request must come from a person or body representing the interests of producers of the agricultural produce. The Commission is further required to publish notice of the intention to establish the producers' committee and invite submissions from producers who may be affected by the proposal.

In addition, the Commission recently considered the polling for the establishment of producers' committees and approved a new policy. This policy puts in place that a producers' committee cannot

be established unless a supportive vote of 60% or higher has been achieved from those that voted in the establishment poll. All producers in the specified industry must be included in the invitation to poll for establishment.

By excluding the entire broadacre cropping and grazing industries the ability for smaller niche growers, or growers in a specific locality, within these industries to use the APC legislation is also removed. It is possible that at some stage a group of these producers from a designated area might see value in working co-operatively to achieve a specified outcome – something for which an APC producers' committee could provide a cost effective and efficient mechanism. These growers are now effectively barred from this opportunity.

Enabling these industries to make their own decision on the establishment of APC producers' committees is seen by the Commission as an acknowledgement of the ability of the members in these industries to consider the leadership requirements of their industries and to make future focussed decisions on their own behalf.

Weighted voting (section 16A)

This allows the Commission under certain circumstances to allow weighed voting in an establishment poll.

Following discussion with some industries the Commission came to the view that this might be the most appropriate voting mechanism to use for industries where it could be demonstrated that if a producers' committee is established a significant proportion of the charge would be paid by the largest producers within that industry.

In this circumstance it would be appropriate that those producers have a weighted vote in the decision as to whether a producers' committee should or should not be established.

Ability to waive or refund the charge (section 14(5))

The ability for the regulations to provide for the circumstances in which a charge could be waived, refunded or reduced has been included to allow future producers' committees to include any, or all, of these options in their industry specific regulations if it should be deemed appropriate to that industry.

A primary driver of this ability came through discussion with the broadacre industry members or bodies where it was expressed that producers might require this ability before they would consider establishment of a producers' committee.

The Commission has been questioned as to why this ability could not be written into the Act, mainly predicated on the belief that this is an ability under the Biosecurity and Agriculture Management Act (BAM Act) for the Industry Funding Schemes (IFS). However, the ability to waive or refund for the IFS's is also written into the regulations. It is not in the BAM Act.

Further, under section 14(3) of the Act notice of a charge imposed under this section is to be published, and the charge is payable, *in accordance with the regulations*. Provisions relating to the payment of the charge are not set out in the Act but rather the regulations. It follows that any provisions for waiver, refund or reduction of a charge needs also to be dealt with in the regulations – not the Act.

The ability to waive, refund or reduce is also more appropriate within the regulations for each industry as the requirement is likely to vary between industries. Currently there are differences between how the charge is collected for the horticultural industry, the beekeeping industry and the wine industry – this allows for each industry to have a process appropriate to that industry.

Allocating or removing responsibility for agricultural produce to / from an existing producers' committee (Part 3 Divisions 2, 3 and 5)

In the course of its operations the Commission became aware that there was no instruction as to how the Commission should operate in the circumstance of a new commodity wanting to be added to an existing producers' committee or a commodity wanting to exit from a producers' committee.

It was considered appropriate that for the avoidance of doubt in future circumstances this should be addressed.

The procedure for allocating responsibility for agricultural produce is essentially the same as when a new producers' committee is established.

The procedure for removing responsibility requires the conduct of a poll of producers and the publication of notice of removal of the commodity from the producers' committee.

Having these procedures included within the Act provides a governance structure and safeguards to ensure that full grower consultation is carried out before such an inclusion or removal could be made.

Compliance (Part 3A) and the charge (section 14)

The successful collection of the section 14 charge from producers is pivotal for the effectiveness and fairness of a producers' committee.

The generally held view of the Commission's abilities to enforce compliance with respect to the collection of the section 14 charge is that the Commission does not have support within the current Act or regulations to enforce the requirements of the Act and regulations in this area.

This leads to unfairness within a system which is designed and expected, particularly by those producers who are paying, to be fair and equitable – that each value recipient has paid their fair share towards the provision of that value.

Compliance in this circumstance has three important factors

1. That all producers who should be paying the charge are paying the charge -

Once a charge has been set, this charge is currently payable by all producers in that industry.

When compliance is reduced it falls to those that are compliant to pay an increased cost, as ultimately the cost of the service is a set cost. For example commissioning research on a particular matter is going to cost what it costs – so if 20% of producers are not paying the fee then those that are paying have to bear an increased cost.

2. That all charges which are collected from a producer by a dealer are remitted to the APC -

A significant proportion of the charge is collected through third parties (dealers) when produce is sold. This necessitates a trust relationship between the producers paying the charge, the dealers collecting the charge and the APC to which the charge is paid.

An ability for the Commission to better interrogate who has paid the charge, the collection of the charge and the subsequent payment to the producers' committee provides an improved audit ability and certainty that the requirements of the regulations have been complied with, and that all charges collected from producers have been remitted to the APC.

3. That the charge once collected is held on trust -

Where the charge is collected by a third party for remittance to the APC it needs to be clear that those funds do not form part of the third party's assets – they are monies held on trust. Should a third party experience financial difficulty or bankruptcy any charge held by that party must still be remitted to the APC.

Authorised Officers (19B) – designated as such so that the Commission can ensure that only persons with an understanding of the requirements of the Act carry out compliance activities thereby offering protections to both the Commission and those being requested to provide information or records that the process is compliant with the requirements of all relevant legislation.

Obtaining information and relevant records (19D) and prescribed statistical information (section 13)

Authorised officers are enabled to request information to be provided in a specified manner and/or in a specified time. This section does not provide powers of entry onto any property or any business and no power of entry is sought. The Commission is only seeking to have the ability to ensure that payments which should be made, or payments which have been deducted from producers, are paid and remitted in accordance with the relevant regulations.

The section 13 amendment works in conjunction with this, now enabling the Commission to request statistical information from prescribed persons as well as from producers. The information which can be requested is clearly defined and intended to assist in ensuring compliance with the regulations and ensuring that funds collected are remitted to the APC.

I trust that this submission has provided an understanding of the amendments sought in the bill and the intent of the amendments – which is to improve the operations of the Commission, support the producers' committees and their producers and encourage sustainability and leadership within the WA agricultural sector.

The Commission stands ready to answer any specific questions the Standing Committee may have and is available to meet with the Committee should this be required.

Yours sincerely



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Chairperson

Dr William Ryan
Agricultural Produce Commission

Attachments:

- Attachment 1 – APC producers' committees – individual producers' committee background
- Attachment 2 – APC producers' committees abilities under the current section 12.1 Functions of the Act
- Attachment 3 - Establishing an APC committee – the process followed by the Commission

Attachment 1 – APC producers' committees – individual producers' committee background

APC Producers' Committees - Individual producers' committee background							
APC Producers' Committee	Established	Collects a charge?	Producer Numbers (YTD 19/20 charge)	Funds collected 19/20 Unaudited	Funds expended 19/20 (excludes charge paid to the Commission, committee expenses) Unaudited	Producers funds held by the committee to protect and address BIOSECURITY matters. Unaudited	Comment
Avocado	1995	No	Unknown as no charge currently being collected	Nil	Nil		Previously collected a charge but at growers request and with grower support stopped collection in 2010.
Beekeepers	2003	Yes	2,195	104,335	52,235	105,672	
Carnarvon Banana	1999	Yes	44	116,026	26,977	94,108	Only Carnarvon banana growers who have joined the voluntary Scheme. Compensation fund level is maintained at an approximate level of being able to pay out for 2.5 industry wide events. In 2015 compensation of \$2,604,079 was paid to members of the scheme after Cyclone Olwyn.
Egg	2002	No	Unknown	Nil	35,000		Funds transferred from Poultry Industry Trust Fund 1948. Has never collected an APC charge
Pome, Citrus & Stone Fruit - POME	1994	Yes	137	499,531	544,731	316,555	
Pome, Citrus & Stone Fruit - CITRUS	1994	Yes	143	356,385	243,814	130,034	
Pome, Citrus & Stone Fruit - STONEFRUIT	1994	Yes	151	110,996	167,145	50,000	
Potato	2001	Yes	82	517,854	506,500		Original funds transferred from Potato Growing Industry Trust Fund 1947
Pork	2002	Yes	118	490,919	245,926		Original funds transferred from Pig Industry Compensation Fund 1942
Strawberry	1995	Yes	63	85,265	65,007	300,000	
Table Grape	1991	Yes	90	44,456	27,650	150,000	
Vegetable	2005	Yes	623	744,234	771,000	82,867	When establishment poll conducted Kununurra, herbs, mushrooms not included as these commodities did not wish to participate
Wine	2015	Yes	374	592,334	537,955	5,044	

Attachment 3 - Establishing an APC committee – the process followed by the Commission

