

WHEAT MARKETING ACT.

Act No. 10, 1920.

George V, An Act to confer certain powers on the Government of New South Wales in regard to the marketing of the wheat harvest of the season 1920-1921 and certain other wheat, and the sale of wheat on account of the owners therof; to indemnify the Government of New South Wales, its officers, and certain other persons against any claims arising out of the refusal of the Railway Commissioners or such other persons to carry certain wheat or flour; to provide for the cancellation of certain contracts; to amend the Necessary Commodities Control Act, 1919, and certain other Acts; and for purposes consequent thereon or incidental thereto. [Assented to, 1st November, 1920.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Wheat Marketing Act, 1920."

Inter-
pretation.

2. In this Act, unless the context or subject-matter otherwise indicates or requires,—

"Australian Wheat Board" means the board comprised of representatives of all or some of the States appointed for the purpose of marketing the Australian wheat harvest of the season 1920-1921.

"Authorised

“Authorised agent” means any person (including firm or corporation) authorised by the board

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to take delivery of any wheat on its behalf in exercise of its powers under this Act, and includes any agent, employee, or servant of an authorised agent empowered by such authorised agent to act on his behalf in taking such delivery. Such authorised agent shall not be deemed to be a factor within the meaning of the Factors Act, 1899.

“Blended wheat” means wheat of the harvest of the season 1920-1921 with which has been blended or mixed any old wheat.

“Board” means the State Wheat Board appointed under the provisions of this Act.

“Certificate” means any document in the prescribed form issued by the board or its authorised agent as evidence of the delivery of wheat by a grower to the board.

“Deliver to the board” means deliver or tender or cause to be delivered or tendered to an authorised agent for acceptance on account of the board any wheat of which it is intended to yield possession to the board.

“Grower” means the person by whom any wheat was actually grown and, where such wheat was grown pursuant to any share farming agreement, includes the parties to such agreement; and “grown” has a corresponding interpretation.

“Minister” means the Minister of Agriculture or any Minister to whom the administration of this Act is for the time being committed by the Governor.

“Old wheat” means wheat harvested before the season 1920-1921.

“Person” includes any body of persons corporate or unincorporate.

“Prescribed” means prescribed by this Act or by any regulation made thereunder.

“Regulations” means regulations made under this Act.

“Sale”

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“Sale” includes barter and exchange, and “sell” has a corresponding interpretation.

“States” means the States of Victoria, South Australia, and Western Australia, and where not inconsistent with the context includes the State of New South Wales.

“This Act” includes any regulations made thereunder.

“Wheat” means wheat harvested during the season 1920-1921, and includes wheat harvested during any previous season which has not been delivered to any pool formed by the States for the purpose of marketing wheat of such harvest.

State Wheat
Board.

3. (1) (a) The Governor shall, as soon as practicable after the commencement of this Act, appoint a board of five persons, three of whom shall be wheat-growers and one shall be the Minister, who shall be chairman.

(b) The board shall be called the State Wheat Board and, subject to the approval of the Minister, shall have the powers and perform the duties conferred and imposed upon it by this Act. The members of such board shall be paid such remuneration as the Governor shall think fit.

(c) Any three members of the board shall be a quorum, and, subject to this section, shall have all the powers and authority conferred upon the board by this Act.

(d) In case of the illness, absence, or suspension of any member of the board, the Governor may appoint a deputy to act for such member during his illness, suspension, or absence; and every such deputy shall, while so acting, have all the powers and carry out all the duties of such member.

(e) If at any meeting of the board from which the Minister is absent the members present differ in opinion upon any matter, and are equally divided thereon, such difference of opinion shall be forthwith reported to the Minister, who may postpone the determination of such matter to a meeting at which he is present.

(f) The board shall cause minutes of its proceedings and decisions to be kept, and a copy of the minutes of any meeting from which the Minister is absent shall be forwarded to him forthwith after the close of such meeting.

(2)

(2) The board may appoint and may fix the remuneration of a secretary and such officers and authorised agents as it may think necessary for the purposes of this Act.

4. (1) The Minister may join with Ministers of the Crown representing the Commonwealth of Australia and the States in formulating any scheme or schemes for concerted action in the marketing of the Australian wheat harvest of the season 1920-1921 or any modification of any such scheme or schemes, and may on behalf of the Government agree to any scheme or modification as aforesaid and to any acts, matters, or things necessary or expedient to carry the same into operation.

(2) The Minister, whether in conjunction with Ministers of the Crown representing the Commonwealth and any or all of the States or otherwise, may arrange with any bank or banks, or with the Government of the Commonwealth of Australia, for financial accommodation.

(3) The Treasurer of New South Wales, on behalf of the Government of New South Wales, may arrange with the Government of the Commonwealth of Australia for guaranteeing to the Commonwealth a refund of any shortage for which the Government of New South Wales is liable in respect of any operations pursuant to this Act, and which has been made good by the Commonwealth, or for repayment of any moneys provided by the Government of the said Commonwealth pursuant to subsection two of this section, for which the Government of New South Wales is liable. Any moneys payable by the Government of New South Wales under such arrangement shall be provided out of moneys to be appropriated by Parliament for the purpose.

5. (1) Save as prescribed, all wheat shall be delivered to the board within such times, at such places, and in such manner as may be prescribed.

(2) All wheat so delivered shall be deemed to have been delivered to the board for sale by the board on behalf of the owners thereof.

(3) Any person who, save as hereinafter prescribed, sells or delivers any wheat to or buys the same from any person other than the board, shall be liable to a penalty not exceeding five hundred pounds.

(4) See Vict. No. 2812, s. 6.

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(4) See Vict. No. 2812, s. 6.

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(4) The board may in such cases and on such terms and conditions as may be prescribed exempt (either generally or in any particular case) from the operation of this section—

- (a) sales or purchases of wheat grown by the vendor and intended for bona fide use as seed wheat by the purchaser in his own farming operations; and
- (b) such other sales and purchases as may be prescribed.

(5) The board's decision as to whether any specified wheat falls within the limits of any such exemption shall be final.

(6) The board may at any time by notification published in the Gazette revoke any such exemption.

6. (1) Wheat delivered to the board under the provisions of this Act shall be disposed of in the manner following and not otherwise:—

- (a) wheat intended by the board for sale within the State shall be sold at such times, at such places, and in such manner as the board shall direct, and at such price as may be determined by the Australian Wheat Board: Provided that the price of any such wheat which is under fair average quality may be determined by the board; and
- (b) wheat intended by the board for export shall be sold at such time or times, price or prices, and in such manner as may be determined by the Australian Wheat Board.

(2) Any price so determined shall apply to wheat which has been delivered to the board and is in the possession of any miller for gristing purposes.

7. For the purpose of ascertaining the price to be paid to the owners of wheat delivered to the board for sale, and generally for the purposes of this Act, the board's decision as to the quality of such wheat, dockages, and all expenditure incurred in and about the marketing of the wheat shall be final.

Conditions relating to disposal of wheat by board.

Board's decision as to quality of wheat, &c., to be final.

Issue of certificates and payment in connection with wheat delivered to board.

8. (1) As soon as practicable after the receipt of any wheat, the board shall issue to the grower thereof a certificate in the prescribed form: Provided that the board, if it has received notice of any mortgage, charge, lien

lien or encumbrance over or contract relating to such wheat, may in its discretion refuse or withhold the issue of such certificate.

(2) Where the wheat is grown under a share-farming agreement the board may, in its discretion, issue a separate certificate to each of the parties to such agreement.

(3) Such certificate shall not be transferable without the consent of the board.

(4) The board may make advances on account of wheat delivered to it, and any such advances and any payment made on account of such wheat may be made at such time or times, and on such terms and conditions, and in such manner as the board may think fit.

9. Any person who, save in such quantities and upon such conditions as are prescribed, grists any wheat (whether into flour or other product of wheat) for any other person after the commencement of this Act and before the first day of December, one thousand nine hundred and twenty-one, shall be liable to a penalty not exceeding five hundred pounds, and any contract entered into (whether before or after the commencement of this Act) in contravention of or inconsistent with the provisions of this section shall be void and of no effect.

10. (1) Every contract made in or outside of New South Wales, whether before or after the commencement of this Act, so far as it relates to the sale of wheat or flour, of New South Wales wheat or flour or other products of wheat for delivery in or out of New South Wales shall, when so declared by the Minister in a notification published in the Gazette, be and is hereby declared to be and to have been void and of no effect as from the date upon which it was made, so far as such contract has not been completed by delivery at the date of such notification: Provided that for the purposes of this section such contract shall be deemed to be severable.

(2) Any transaction or contract with respect to any wheat or flour or other product of wheat which is the subject-matter of any contract or part of a contract declared by this section to be void shall also be void and of no effect, and any money paid in respect of any contract hereby made void or of any such transaction shall, to the extent to which the said contract or transaction is made void, be repaid.

(3)

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(3) This section shall apply to all wheat harvested in New South Wales whether during the season 1920-1921 or during any season prior thereto, and whether such wheat has been delivered into any pool or not.

No action
against
board
except for an
account.
Vict. 2846,
s. 7.

11. (1) No action for damages for conversion or for detention of any wheat shall be brought against the board or any person acting under its authority by any person claiming to be entitled to any mortgage, charge, lien (including any lien on crops under the Liens on Crops and Wool and Stock Mortgages Act, 1898) or other encumbrance whatsoever of or upon or over such wheat or any crop from which such wheat was harvested or claiming to be the true owner of such wheat: Provided that any person who but for this subsection might have brought any such action may adopt the delivery of such wheat to the board as a delivery thereof by him to the board, and may claim accordingly for an account of the payments due in respect thereof.

(2) Notwithstanding anything in the Liens on Crops and Wool and Stock Mortgages Act, 1898, or any other Act, or any rule of law to the contrary, a person claiming to be entitled to any such mortgage, charge, lien, or other encumbrance, or claiming to be the true owner of such wheat, shall not be entitled to claim as aforesaid for the amount payable in respect of such wheat, or any part of such amount, unless he has given notice in writing in the form and containing the particulars prescribed to the board of such mortgage, charge, lien, or other encumbrance or claim of ownership, and then only for such portion of such amount as has not been paid to other persons at the time of the receipt by the board of such notice.

Duty of
grower to
notify encum-
brances, &c.,
on delivery of
wheat to
board.

Ibid. s. 8.

12. (1) Every grower of wheat which is subject to any mortgage, charge, lien, or encumbrance referred to in the last preceding section, or in respect of which or of the crop from which the same was harvested he has entered into any contract in derogation of his title to sell such wheat as the absolute owner thereof (and whether such mortgage, charge, lien, or encumbrance or contract was made before or after the commencement of this Act), shall, when delivering or causing to be delivered such wheat to the board, give to the person receiving such wheat

wheat on behalf of the board a notice in writing in George V,
the prescribed form of every such mortgage, charge,
lien, encumbrance or contract.

(2) A notice given in respect of a delivery made to any person receiving wheat on behalf of the board at one railway station or place of delivery shall not be deemed to be a compliance with this section in respect of a delivery made to any other person receiving wheat on behalf of the board at the same or any other railway station or place of delivery.

(3) Any person wilfully guilty of a contravention of or failure to comply with any of the provisions of this section shall be liable to a penalty not exceeding one hundred pounds.

13. Where the board in good faith and without negligence has made any payments—

- (a) to a grower delivering or causing to be delivered any wheat to the board or any person acting under the authority of the board ; or
- (b) to any person entitled or claiming to be entitled through such grower ; or
- (c) to any person on the order of any grower or of any person entitled or claiming to be entitled through such grower,

the board shall not be answerable to any other person in respect of such payment for such wheat or for any part thereof.

14. (1) Where in connection with any transfer of a certificate issued to a grower and the acceptance and allowance by the board of such transfer the board has acted in good faith and without negligence it shall not incur any liability to—

- (a) the grower ; or
- (b) the transferee ; or
- (c) any party claiming through, under, or in trust for either of them—

for any loss, damage, or prejudice to such grower or transferee or party accrued or accruing by reason of the acceptance and allowance of such transfer.

14.2 (2) If prior to receiving notice of claim to any certificate or to the chose-in-action or any part thereof the

George V. the subject-matter of a certificate the board has in good **No. 10.** faith and without negligence adjusted and settled with the person named in such certificate for the money payable thereunder, the board shall not incur any liability to the true owner of such chose-in-action, or any part thereof, or to any party claiming through, under, or in trust for him: Provided that the board shall not be entitled to the protection of this subsection in respect of any moneys remaining in its hands at the time of receipt by it of notice of such claim, or thereafter coming to its hands in respect of a chose-in-action the subject-matter of such a claim.

(3) This section shall not in any way prejudice or affect any rights inter se of any parties claiming adversely to one another to be entitled whether at law or in equity to the chose-in-action the subject-matter or part of the subject-matter of any certificate.

(4) The board may plead this section in absolute bar of any proceeding (whether at law or in equity) by any grower, transferee, or party aforesaid to enforce any claim against the board in respect of such chose-in-action or any part thereof.

(5) In this section unless inconsistent with the context or subject-matter—

“Transfer” means any instrument in writing made or purporting to be made between the transferor of a certificate named therein and a purchaser from such transferor for valuable consideration, and being or purporting to be an absolute transfer of such certificate (but not a transfer by way of security), and appearing to be regular on its face, and to be duly signed by the transferor; and the verb “transfer” has a corresponding meaning.

Old wheat or blended wheat. **15.** (1) Old wheat and blended wheat shall be delivered to the board in accordance with the following provisions, but not otherwise:—
cf. Vict. 2969, s. 5.

(a) Delivery as aforesaid of such wheat shall be made only to a flour-miller who is also an authorised agent unless otherwise directed by the board.

(b)

- (b) Every bag of such wheat shall be clearly marked on both sides—
- (i) in the case of old wheat—with a brand being a circle not less than two inches and not more than four inches in diameter; and
 - (ii) in the case of blended wheat—with a brand being two circles as aforesaid in contact or with no greater space between them than two inches; and
- (c) The person tendering such wheat shall at the time of tender give notice in writing to such flour-miller that he tenders the same as old wheat or (as the case may be) as blended wheat, according as the bags are branded, and shall specify the number of bags of each brand tendered, and the name of the person for whose account the tender is made:

Provided that if such flour-miller is of opinion that such wheat or any proportion thereof is affected with weevil he may refuse to accept delivery of the same.

(2) An employee of, or a carrier, teamster or other person contracting with, another person (whether for reward or not) to deliver to the board any wheat as wheat of the season 1920–1921, who in good faith and in compliance with the instructions of such last-mentioned person delivers old wheat or blended wheat as wheat of the season 1920–1921 shall not be deemed guilty of a contravention of this section.

(3) Every person who, whether by himself or by any other person, delivers on his own account or on account of any other person any wheat in contravention of this section shall be liable to a penalty not exceeding twenty-five pounds or to imprisonment for a term not exceeding six months or both.

16. All wheat delivered to the board shall, if the bags containing the same are not branded as provided in the last preceding section, be deemed to have been delivered or tendered for delivery as wheat of the season 1920–1921.

17. All pecuniary penalties recovered under this Act shall be paid to the Minister and shall be applied towards the expenses of carrying this Act into execution.

Unbranded wheat deemed to be delivered as wheat of season 1920–1921.
Vict. 2969, s. 6.

Application of penalty money.
s. 8.
s. 8.

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Tender to be
evidence of
intention to
deliver.
cf. Vict. 2909,
s. 7.

Delivery to
be made in
name of
grower.

Accounts to
be kept and
audited.
cf. Vict. 2812,
s. 10.

Discretion of
board to
refuse
certificate to
grower who is
indebted to
Government.

18. The tendering of wheat by any person to an authorized agent for acceptance of delivery by him shall be *prima facie* evidence of an intention to deliver the tendered wheat to the board, to be by it disposed of in accordance with the provisions of this Act.

19. All wheat delivered to the board shall be delivered in the name of the grower of such wheat.

Any person failing to comply with the provisions of this section shall be liable to a penalty not exceeding one hundred pounds.

20. (1) The board shall cause books to be provided and kept, and true and regular accounts to be entered therein of all sums of money received and paid for or on account of this Act or pursuant thereto and of the several purposes for which sums of money have been received and paid.

(2) The accounts of all moneys received and paid as aforesaid shall be audited by the Auditor-General who shall have, with respect to such accounts, all the powers conferred upon him by the Audit Acts.

(3) The board shall furnish to the Governor a true copy of the accounts so audited as aforesaid, together with a particular statement of the moneys received by the board, and of the expenditure thereof.

(4) Copies of such accounts and of such statements shall be laid before both Houses of Parliament if then sitting, or if not then sitting, at the next ensuing session thereof.

(5) Statements of the position of the affairs under the control of the board as accurately as is practicable shall be furnished by the board once in each month, and shall be published in manner prescribed.

21. Where the grower of any wheat delivered to the board is indebted to the Government in respect of any advance made to him to assist him in fallowing wheat land or in securing seed wheat or for any other purpose of any nature whatsoever, or in respect of any assistance afforded to him by the Government, the board may in its absolute discretion withhold or refuse to issue any certificate in respect of wheat delivered by the said grower, or when such certificate has been issued may refuse to pay the whole or any part of the amount which would otherwise be payable in respect of such wheat, and may apply

apply such amount or part thereof in payment or part ^{George V,} payment of the said advance, and the foregoing powers ^{No. 10.} may be exercised notwithstanding any mortgage, charge, lien, or other encumbrance whatsoever existing over the said wheat or the crop from which the wheat has been harvested, provided that such mortgage, charge, lien, or encumbrance was executed after the making of the aforesaid advance.

22. (1) Notwithstanding anything in the Government Railways Acts of New South Wales or the law relating to common carriers, or any agreement to the contrary, the Railway Commissioners for New South Wales, and any common carrier, and any owner, charterer, master, or agent of any ship, may, on the request of the board, refuse to carry any wheat or flour ^{Power of Railway Commissioners, &c., to refuse to carry wheat or flour in certain cases. cf. Vict. 2812, s. 9.} from any place in New South Wales, or, except as prescribed, to deliver any such wheat or flour.

(2) With respect to the refusal of the Railway Commissioners for New South Wales or any common carrier or any owner, charterer, master or agent of any ship to carry or deliver any wheat or flour since the first day of December, one thousand nine hundred and fifteen, and before the commencement of this Act by or under the order or direction of or on behalf of the Government of New South Wales or any responsible Minister of the Crown—

- (a) all persons (including every responsible Minister of the Crown and the said Commissioners) by whom any act, matter, or thing was advised, commanded, ordered, directed, or done in connection with such refusal, shall be and are hereby freed, acquitted, discharged, released, and indemnified against every person whomsoever in respect thereof;
- (b) no action, claim, or demand whatsoever shall lie or be made or allowed by or in favour of any person whomsoever against the Government of New South Wales or any responsible Minister of the Crown, or the said Commissioners, or any officer, or any person for or in respect of any damage, loss, or injury sustained or alleged to be sustained by reason of such refusal; and ^{any}

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any such action pending at the commencement of this Act, and any such claim or demand made before the commencement of this Act, shall cease and abate.

Not to
prejudice
actions, &c.

23. Nothing in this Act shall affect or prejudice any action or suit commenced before the sixteenth day of September, one thousand nine hundred and twenty, or any claim in respect of which an application has been made before that date for the appointment of a nominal defendant or for leave to proceed.

Board may
fix prices of
wheat
products.

24. (1) Notwithstanding anything contained in the Necessary Commodities Control Act, 1919, or any other Act, the board may, as from the first day of December, one thousand nine hundred and twenty, by notice published in the Gazette, fix the prices of flour, bran and pollard, and any other product of wheat, and for such purpose may exercise the powers conferred by the aforesaid Act upon the Commission appointed thereunder.

(2) Upon the publication by the board of any notice fixing prices as aforesaid, but not otherwise, the effect of any order or notice issued by the Commission to the contrary shall, during the period of application of such first-mentioned notice, be void and of no effect.

(3) For the purposes aforesaid references to the Commission in the said Act or in the regulations thereunder shall be deemed to be references to the board.

(4) Any such notice may also require the holders of any specified commodity as aforesaid, or of any specified quantity thereof, to pay to the board within a specified time—

(a) a sum representing the difference between the price fixed by such notice and the fixed price relating to such commodity immediately prior to the issue of the said notice; or

(b) if there be no such last-mentioned fixed price, then a sum representing the difference between the price fixed by such notice and the price at which such commodity was purchased.

(5) This section shall cease to have effect on the first day of December, one thousand nine hundred and twenty-one.

25. Where the price of wheat has been fixed pursuant to section six of this Act the board may, by notice published in the Gazette, require the holders of any wheat, whether harvested in New South Wales or not, to pay to the board within a specified period—

- (a) a sum representing the difference between the price so fixed and the price previously fixed in respect of such wheat; or
- (b) where one price only has been so fixed, a sum representing the difference between such price and the price paid by such holders for such wheat after adding to such last-mentioned price the reasonable costs of freight and insurance during transit.

26. Any sums required to be paid to the board under the provisions of the last two preceding sections may be recovered by the board in any court of competent jurisdiction.

27. (1) The board may from time to time, by notice in the Gazette and two daily newspapers published in the State, require holders of wheat, or of any product thereof, to furnish a return in the form specified in such notice showing the quantity of wheat or of any or all products thereof held at any time specified in such notice, and setting forth such other particulars (if any) as may be specified therein.

(2) Any holder who fails to comply with any of the requirements of such notice or who wilfully furnishes any false or misleading return shall be liable to a penalty not exceeding one hundred pounds or to imprisonment for a term not exceeding six months or to both.

28. No action shall lie against any person for any act or thing done by him under any authority conferred or purporting to be conferred upon him by or under this Act.

29. (1) The Governor may make regulations prescribing—

- (a) the forms which may be used under this Act;
- (b) all matters required or permitted by this Act to be prescribed; and
- (c) generally all matters necessary or expedient for carrying out the provisions and the purposes of this Act.

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(2) In any such regulations a penalty not exceeding one hundred pounds may be imposed for the breach of any such regulation. Any such penalty may be recovered before a stipendiary or police magistrate, or any two justices of the peace in petty sessions.

(3) (a) All such regulations shall be published in the Gazette, and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting, and if Parliament is not then sitting then within fourteen days after the commencement of the next session.

(b) If either House of Parliament passes a resolution, of which notice has been given, at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.
