

MARKETING OF PRIMARY PRODUCTS (AMENDMENT) ACT.

Act No. 3, 1930.

An Act to amend the Marketing of Primary Products Act, 1927, as amended by the Marketing of Primary Products (Amendment) Act, 1928, and certain other Acts; to ratify certain agreements made between the Egg Marketing Board for the Counties of Cumberland and Northumberland and the Shires of Nattai and Wollondilly and the Colonial Treasurer respecting advances to the said Board by the Colonial Treasurer; to validate certain proclamations; and for purposes connected therewith or incidental thereto. [Assented to, 11th March, 1930.]

George V.
No. 3, 1930.

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:—

1. (1) This Act may be cited as the "Marketing of Primary Products (Amendment) Act, 1930," and shall come into operation on a day to be appointed by the Governor and notified by proclamation published in the Gazette. Short title.

(2) The Marketing of Primary Products Act, 1927, as amended by the Marketing of Primary Products (Amendment) Act, 1928, is in this Act referred to as the Principal Act, and this Act shall be construed with the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the Marketing of Primary Products Act, 1927-1930.

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Amendment of

Act No. 34, 1927.

Sec. 4.

"Certificate."

"Producer."

Sec. 5 (1).

Sec. 5 (2) (3).

Sec. 5 (3).

Sec. 5 (4) (12).
(Penalty.)**2.** The Principal Act is amended as follows:—

- (a) (i) by inserting after the word "issued" in the definition of "Certificate" in section four the words "under this Act"; by omitting from the same definition the words "by a producer";
- (ii) by omitting from the definition of "Producer" in section four the words "and includes a son or daughter of twenty-one years of age and upwards of a producer working on his parents' farm, not for wages but for his keep and pocket money only" and by inserting at the end of the same definition the words "The term 'Producer' shall, for the purpose of any such petition or poll, include a son or daughter of twenty-one years of age and upwards of a producer working on his parents' farm, not for wages but for his keep and pocket money only";
- (b) (i) by omitting from subsection one of section five the words "engaged in producing the product";
- (ii) by omitting from subsections two and three of the same section the words "resident or carrying on the business of production" and by inserting in their stead in each subsection the words "producing it";
- (iii) by adding at the end of both subsection two and subsection three of the same section the words "The Governor may by proclamation alter the said day for the poll to be taken to a subsequent day";
- (iv) by omitting from the proviso to subsection three of the same section the words "engaged in producing the commodity" and by inserting in their stead "entitled to vote at the poll";
- (v) by omitting from subsections four and twelve of section five the words "not less than two pounds" and inserting in their place in each subsection the words "not more than two pounds";

(vi)

- (vi) by inserting in subsection (4c) of the same section after the words “ preferential voting ” the words “ or proportional representation as prescribed ” ; No. 3, 1930.
Sec. 5 (4c).
- (vii) by omitting from subsection five of the same section all the words after the word “ Minister ” where lastly occurring and by inserting in their stead the words “ out of the proceeds of the commodity or other moneys of the board that may be applied thereto ” ; Sec. 5 (5).
- (viii) by omitting from subsection seven of the same section the words “ the classes of persons deemed to be producers and ” ; Sec. 5 (7).
- (ix) by omitting subsection ten of the same section ; Sec. 5 (10).
- (x) by inserting after subsection eleven of the same section the following new subsection :— Sec. 5 (11A).

(11A) When requested so to do by a petition signed by such number as the Governor considers sufficient of producers of a product within an area mentioned in the petition which is not, as regards such product, in an area controlled by a board, the Governor may by proclamation appoint a day for a poll to be taken of the producers of such product within the area mentioned in the petition on the question whether such last-mentioned area shall be added to the area controlled by a board. If more than two-thirds of the votes polled are in favour of such addition and the votes polled are given by at least two-thirds of the producers entitled to vote at such poll, the Governor shall by proclamation declare that on and after the day specified therein the area referred to in the proclamation shall become part of the area controlled by the board and (if the product is not a commodity within the area referred to in the

the

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the proclamation) that the product shall within such area be a commodity under and for the purposes of this Act.

On and after the day so specified the board shall be deemed to be appointed in respect of the commodity within the combined areas, and no reconstitution of the board shall be necessary, and all the provisions of this Act and of any regulation or proclamation made thereunder shall, so far as they are or may be applicable within the area controlled by the board immediately prior to such day apply within the combined areas.

Sec. 5 (12).
Dissolution
of board.

- (xi) by omitting from subsection twelve of the same section the words "the board shall be dissolved by proclamation" and by inserting in place thereof the following words: "the Governor shall by proclamation order that the board shall be wound up, and thereupon the board shall proceed to wind up, and shall exercise its powers and authorities only for such purpose: Provided that the Governor may by that or any subsequent proclamation appoint any person to be liquidator for the purpose of winding-up the affairs of the board at such remuneration as the Governor shall fix, and such liquidator may for that purpose on behalf and in the name and as the act and (where necessary) under the seal of the board bring and defend such proceedings, and do and execute such acts, deeds, and things as may be necessary. When the Governor is of opinion that the affairs of the board are wound up he may by proclamation dissolve the board, and upon the dissolution of any board all moneys and other assets of the board shall become the property of His Majesty, and shall be dealt with and disposed of as the Governor may direct";

(xii)

- (xii) by omitting from subsection twelve of the same section the words "engaged in producing a product" and by inserting in their stead the words "of producers";
- (xiii) by omitting from the same subsection the words "of any particular product" and by inserting in their stead the words "producing the commodity";
- (xiv) by inserting in the same subsection after the words "a poll of the producers" the words "producing it";
- (xv) by inserting in subsection thirteen of section five before the words "in such newspapers" the words "a statement that such proclamation has been so published shall be published";
- (xvi) by inserting in section five to follow subsection thirteen the following new subsection:—

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(14) Notwithstanding the provisions of section four or any other provision of this Act, the regulations may prescribe in respect of any product or commodity the persons or classes of persons who shall or shall not be deemed to be producers for the purpose of any petition or poll under this Act, or for any other purpose of this Act.

3. The Principal Act is further amended—

- (a) by inserting after subsection five of section seven the following new subsection:—

Further amendment of Act No. 34, 1927.
Sec. 7.

(5A) (a) The Governor may with the consent of the board by proclamation change the official name of any board.

Change of name of board.
Companies Act, 1899, s. 225.

(b) No such alteration of name shall affect any rights or obligations of the board or render defective any legal proceedings instituted or to be instituted by or against the board, and any legal proceedings may be continued or commenced by or against the board by its new name that might have been continued or commenced by or against the board by its former name.

(b)

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Sec. 10.

Delivery of
commodity
produced
outside
board's area.

(b) by inserting in section ten after paragraph (iv) the following new paragraph :—

(v) arrange with a producer producing any of the commodity outside the area controlled by the board for the delivery of his commodity so produced to the board for such period and on such terms and conditions as the board may think fit, and, subject to such arrangement, the board and the producer shall mutually have the same rights, duties, powers, and obligations (including in respect of levies) in reference to the commodity so arranged to be delivered as would be applicable if such commodity were produced within the area controlled by the board.

Sec. 11 (1).

(c) (i) by omitting from subsection one of section eleven the words "hereinafter prescribed" and by inserting in their stead the words "prescribed by or under this Act";

Sec. 11 (2).

(ii) by omitting from subsection two of section eleven the words "so delivered" and inserting in lieu thereof the words "delivered by the producers thereof to";

Sec. 11 (3).

(iii) by omitting subsection three of the same section and inserting in lieu thereof the following new subsection :—

(3) Every producer who, save as prescribed by or under this Act, sells or delivers any of the commodity to a person other than the board, and every person other than the board who, save as aforesaid, buys or receives any of the commodity from a producer, shall be guilty of an offence and liable on summary conviction to a penalty not exceeding one hundred pounds. This subsection shall not apply to the sale, delivery, purchase, or receipt of such of a commodity as has been tendered to the board in conformity with this Act, and the acceptance of which has been refused by the board.

(iv)

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- (iv) by omitting from paragraph (c) of subsection four of section eleven the words "as seed or for food for his family or his livestock" and by inserting in their stead the words "for food for his family or his livestock, or for seed, or for other purposes prescribed";
- (v) by inserting in subsection six of the same section after the word "Gazette" the words "or by a notice in writing to the exempted producer, signed by the secretary or other authorised officer of the board";
- (vi) by inserting in section eleven to follow subsection six the following new subsection:—
- (7) Where by or under a proclamation any of the commodity has become vested in the board such of the commodity so vested—
- (a) as the board refuses to accept after tender of delivery to it in accordance with this Act shall on such refusal, or
- (b) as is subject to such exemption as aforesaid shall on its becoming so exempted
- revest in the persons who would have held the same had the commodity not been so vested in the board but subject to all mortgages, charges, liens, pledges, interests, and trusts that would have affected the same had the commodity not been so vested.
- (d) by omitting from section twelve all words down to and including the words "such producer or society" and by inserting in their stead the words "all the commodity delivered to a board shall be delivered in the name of the producer thereof, and if so prescribed such producer."
- (e) (i) by omitting from subsection two of section fourteen the words "and sold by";
- (ii) by adding at the end of the same subsection the words "and regard being had to the other circumstances (if any) that affect the amount of the payment to the producer";
- (iii)

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Sec. 11 (4).
(c).

Sec. 11 (6).

Sec. 11 (7).

Revesting of such of the commodity as board refuses to accept or as is exempt.

Sec. 12.

Sec. 14 (2).

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- (iii) by omitting subsection three of section fourteen and by inserting in that section the following new subsections:—

(3) The board may deduct from the proceeds of sale of the commodity the expenditure incurred in and about the marketing of the commodity, the costs, charges, and expenses of the administration by the board of this Act and any sums necessary to repay any advances made to the board and interest thereon. Deductions made before the enactment of this subsection that would have been authorised by this subsection had it then been in force are hereby validated.

(4) For the purposes of ascertaining the net price to be paid to a producer of any of the commodity delivered to the board, or to any person interested therein, and generally for the purposes of this Act, the board's decision as to quality, standard, or grade of any of the commodity delivered to the board (whether quality, standard, or grade is prescribed or not), the method of determining the dockages and deductions to be made and the amounts thereof respectively, cost of freight, and other charges, and the amounts to be deducted under subsection three of this section, shall be final and conclusive.

Further amend-
ment of Act
No. 34, 1937.

Sec. 16.

Sec. 24.

4. The Principal Act is further amended—

- (a) by omitting subsection three of section sixteen ;
- (b) (i) by inserting in subsection one of section twenty-four after the word "Governor" where first occurring the words "and by notification in the Gazette" ;
- (ii) by inserting in the same subsection after the word "amount" where first occurring the words "or at such rate on and to be paid by such persons and on such basis for such period or otherwise" ;

(iii)

- (iii) by adding at the end of the same subsection the words "In case no period for or during which the levy is to be made is specified, the levy shall continue to be made until otherwise directed by the board with the approval of the Governor";
- (c) by omitting paragraph (ii) of subsection two of the same section;
- (d) by inserting in section twenty-four to follow subsection three the following new subsections:—
 - (4) Except in the case of a levy made for the purposes of paragraph (iv) of subsection two no poll of producers shall be requested or taken in respect of any levy made under this section.
 - (5) Levies made after the commencement of the Marketing of Primary Products (Amendment) Act, 1930, for any of the purposes of paragraphs (iv) and (v) of subsection two of this section shall be made separately.
- (e) (i) by inserting in subsection one of section twenty-nine after the word "commodity" first occurring the words "or any person or class of persons";
(ii) by inserting in the same subsection after the word "held" the words "or under his control";
- (f) (i) by omitting from section thirty-three the words "for any offence against this Act" and inserting in their stead the words "whatsoever, whether at Law or in Equity";
(ii) by omitting from subsection three of the same section the words "in any complaint";
(iii) by omitting from subsection four of the same section the words "charged with the offence" and by inserting in their stead the words "who is a defendant or respondent or is charged with an offence."

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Further amend-
ment of Act
No. 34, 1927.
New ss. 33A, 33B.
Board's cer-
tificate prima
facie evidence
of certain
facts.

Service of
notices.

Further amend-
ment of Act
No 34, 1927.
Sec. 34.

5. The Principal Act is further amended by inserting after section thirty-three the following new sections:—

33A. In any action or proceeding the production by the board or on its behalf of a certificate under the seal of the board that a certain sum is the amount of levy payable by any person under this Act or the regulations and that such sum has become due and payable on a certain day shall be prima facie evidence of the facts so certified.

33B. Any notice that is required to be given or that may be given by a board under this Act or the regulations shall be deemed to have been duly given if sent by post in a letter addressed to the person to be served at his place of abode or business in New South Wales last known to the board, and such notice shall be deemed to have been given at the time when a letter so posted should in the ordinary course be delivered.

6. The Principal Act is further amended—

- (a) (i) by omitting from paragraph (ii) of subsection one of section thirty-four the words “boards, all regulations shall be as recommended by the board and may provide for all or any of the following matters” and by inserting in lieu thereof the words “any board”;
- (ii) by omitting subparagraph (f) of paragraph (ii) of the same subsection;
- (iii) by omitting from subparagraph (g) of paragraph (ii) of the same subsection all words down to and inclusive of the words “section twenty-four of this Act”;
- (iv) by omitting from the same subparagraph (g) the words “provided that before any particular levy is made in any industry, at the request in writing of at least one hundred producers in that industry, or such less number of such producers as may be prescribed, a poll of such producers shall be taken as prescribed, and if upon such poll the majority of votes is against the

- the making of such levy no such levy shall be made upon the producers in that industry" and by inserting in lieu thereof the following words: "Provided that before any particular levy is made, if at least one hundred producers in the particular industry, section of industry, area or locality (or such less number as may be prescribed) so request in writing, the Minister shall cause a poll of such producers to be taken as prescribed, and if upon such poll the majority of votes is against the making of such levy it shall not be made";
- (v) by omitting from the same subparagraph (g) the words "imposing fines" and inserting in lieu the words "providing for the imposition by a board (by way of addition to the levy or other moneys) of a fine";
- (vi) by inserting at the end of paragraph (ii) of the same subsection the following new subparagraphs:—
- (i) requiring the producers of a commodity produced within the area controlled by a board to register and re-register with the board at the prescribed times their names and such other particulars as may be prescribed, and requiring a producer on ceasing to produce as aforesaid, to notify the board thereof;
 - (j) regulating within the area controlled by the board the marketing, sale, and branding of any of the commodity produced outside the State or within the State, but outside the said area, or the packages containing such commodity;
 - (k) the duties of care or precaution to be taken and methods to be used by any person in the display of any of the commodity for sale or in storage or custody of any of the commodity held

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held or offered for sale whether in any of such cases the commodity is owned by the board or not ;

(vii) by adding at the end of paragraph (ii) of subsection one of section thirty-four the following words :—

“ Provided that if the Minister is of opinion that a proposed regulation relates to any of the matters in respect of which this paragraph (ii) authorises the making of regulations, the regulation shall only be made on the recommendation of the board.”

Validation of proclamations under the Principal Act set out in Schedule hereto.

7. (1) The proclamations referred to in the Schedule to this Act shall be and be deemed to have been validly made under the Principal Act, and shall be and be deemed to have been effective for the ends, purposes, and objects in the said proclamations respectively mentioned.

(2) Nothing in this Act shall affect the right, if any, of the parties in a Suit in Equity No. 8012 of 1929, instituted by Statement of Claim filed in the Supreme Court in Equity on the twelfth day of November, one thousand nine hundred and twenty-nine, to their costs of the said suit.

Validation of loans by Colonial Treasurer to Egg Marketing Board for counties of Cumberland, &c.

8. (1) The Colonial Treasurer shall be deemed to have been empowered to make to the Egg Marketing Board for the counties of Cumberland and Northumberland and the Shires of Nattai and Wollondilly (hereinafter called the Egg Board) and the Egg Board to obtain from the Colonial Treasurer the respective advances mentioned in the agreements under seal made between the Egg Board of the one part and the Colonial Treasurer of the other part dated respectively the ninth day of August, one thousand nine hundred and twenty-nine, and the ninth day of October, one thousand nine hundred and twenty-nine.

(2) Within one month from the commencement of the Marketing of Primary Products (Amendment) Act, 1930, the Egg Board shall repay to the Colonial Treasurer the said advances, together with interest thereon

thereon (or on the amount thereof for the time being unpaid) at the rate of six pounds per centum per annum, such interest to be computed from the date or respective dates on which the said moneys or part thereof shall have been advanced to the Egg Board by the Colonial Treasurer, and to accrue from day to day until the said advances are fully repaid, and to be added to the principal at the expiration of every period of six months after the date or respective dates on which the said moneys or part thereof shall have been so advanced as aforesaid, and thereafter such interest shall be deemed to have become and to become part of the principal moneys, and shall bear interest accordingly at the rate aforesaid.

(3) The charges upon the assets of the Egg Board contained or referred to in the said agreements under seal of the payment to the Colonial Treasurer of the principal and interest moneys hereinbefore mentioned, and all the powers, rights, and remedies in favour of the Colonial Treasurer contained or referred to in the said agreements, shall be and be deemed to have been valid and enforceable as if the same were herein enacted and set forth at length with such alterations (if any) as may be required by the terms of this section.

SCHEDULE.

Date of Proclamation.	Published in Government Gazette of—	Description.
FIRST AS TO EGGS.		
18 July, 1928...	20 July, 1928	Proclaiming eggs to be a commodity under and for the purposes of the Marketing of Primary Products Act, 1927, within the counties of Cumberland and Northumberland and the shires of Wollondilly and Nattai, and declaring that on the 21st September, 1928, a poll shall be taken of the producers resident or carrying on the business of production of eggs within the said area on the question whether a marketing board shall be constituted in relation to the said commodity.
25 September, 1928.	28 September, 1928.	Declaring that a board shall be constituted in relation to eggs produced in the said area, and extending the provisions of the said Act to eggs, and appointing the 31st October, 1928, for a poll to be taken of the producers of eggs resident or carrying on the business of production within the said area for the election in the prescribed manner of three representatives of egg producers to be members of an Egg Marketing Board.
14 November, 1928.	16 November, 1928.	Appointing an Egg Marketing Board in relation to eggs produced within the said area, such board to consist of the persons therein named.
14 May, 1929...	17 May, 1929	Declaring— (1) That eggs within the said area shall on and from the 27th May, 1929, be divested from the producers thereof and become absolutely vested in and be the property of the said board ; (2) that upon any of the commodity coming into existence after the 27th May, 1929, and before the 16th November, 1931, it shall become vested in and become the property of the said board ;

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SCHEDULE—*continued.*

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Date of Proclamation.	Published in Government Gazette of—	Description.
FIRST AS TO EGGS— <i>continued.</i>		
14 May, 1929...	17 May, 1929	Declaring— (3) that every person or corporation in whose possession or control any of the said commodity existing at the 27th May, 1929, shall be, shall within seven days from such date, and every person or corporation in whose possession or control any of the said commodity coming into existence after such date and before the 16th November, 1931, shall be, shall within seven days from the same coming into existence, give notice as therein provided; and (4) that unless exempted by or under the said Act as amended, every producer of any of the said commodity (whether existing at the 27th May, 1929, or coming into existence thereafter) which shall become vested in the said board shall grade, pack, brand, store, and deliver the same to the board or its authorized agents in accordance with the said Act as amended and the regulations for the time being in force thereunder.
SECOND AS TO HONEY.		
6 November, 1928.	9 November, 1928.	Proclaiming honey to be a commodity under and for the purposes of the said Act within the State of New South Wales, and declaring the 11th February, 1929, as the day for a poll to be taken of the producers of honey resident or carrying on the business of production within the said State on the question whether a Marketing Board shall be constituted in relation to the said commodity.
20 February, 1929.	22 February, 1929.	Declaring that a board shall be constituted in relation to honey produced in the said State and extending the provisions of the said

SCHEDULE

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SCHEDULE--*continued.*

Date of Proclamation.	Published in Government Gazette of—	Description.
<i>SECOND AS TO HONEY—continued.</i>		
20 February, 1929.	22 February, 1929.	Act to honey, and appointing the 2nd April, 1929, for a poll to be taken of the producers of honey resident or carrying on the business of production within the said State for the election in the prescribed manner of three representatives of honey producers to be members of a Honey Marketing Board.
30 April, 1929	3 May, 1929	Appointing a Honey Marketing Board in relation to honey produced within the said State, such board to consist of the persons therein named.
15 October, 1929.	18 October, 1929.	<p>Declaring—</p> <p>(1) that the said commodity, that is to say honey, within the said State shall on and from the 4th November, 1929, be divested from the producers thereof and become absolutely vested in and be the property of the last-mentioned board ;</p> <p>(2) that upon any of the commodity coming into existence after the 4th November, 1929, and before the 3rd May, 1932, it shall become vested in and become the property of the said board ;</p> <p>(3) that every person or corporation in whose possession or control any of the said commodity existing at the 4th November, 1929, shall be, shall, within seven days from such date, and every person or corporation in whose possession or control any of the said commodity coming into existence after such date and before the 3rd May, 1932, shall be, shall, within seven days from the same coming into existence, give notice as therein provided ; and</p>

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SCHEDULE—*continued.*

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Date of Proclamation.	Published in Government Gazette of—	Description.
SECOND AS TO HONEY— <i>continued.</i>		
15 October, 1929.	18 October, 1929.	Declaring— (4) that unless exempted by or under the said Act, as amended, every producer of any of the said commodity (whether existing at the 4th November, 1929, or coming into existence thereafter) which shall become vested in the said board shall store and deliver the same to the board or its authorised agents in accordance with the said Act, as amended, and the regulations for the time being in force thereunder.
THIRD AS TO RICE.		
6 July, 1928...	6 July, 1928...	Proclaiming rice to be a commodity under and for the purposes of the said Act within the said State, and declaring that on the 7th September, 1928, a poll shall be taken of the producers resident or carrying on the business of production of rice within the said State on the question whether a Marketing Board shall be constituted in relation to the said commodity.
25 September, 1928.	28 September, 1928.	Declaring that a board shall be constituted in relation to rice, and extending the provisions of the said Act to rice, and appointing the 31st October, 1928, for a poll to be taken of the producers of rice resident or carrying on the business of production within the said State for the election in the prescribed manner of five representatives of rice-producers to be members of a Rice Marketing Board, and appointing the Willimbong and Wade Shires respectively to be electoral districts, and declaring that the former shall be entitled to elect three representatives, and that the latter shall be entitled to elect two representatives.

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SCHEDULE—*continued.*

Date of Proclamation.	Published in Government Gazette of—	Description.
<i>THIRD AS TO RICE—continued.</i>		
6 November, 1928.	9 November, 1928.	Appointing a Rice Marketing Board in relation to rice produced within the said State, such board to consist of the persons therein named.
26 February, 1929.	8 March, 1929	Appointing the person therein named to be a member of the Rice Marketing Board of New South Wales.
26 February, 1929.	1 March, 1929	Declaring— <ol style="list-style-type: none"> <li data-bbox="842 853 1265 1059">(1) that upon any of the commodity (thereby meaning rice) coming into existence after the date of publication of this proclamation, and before the 9th November, 1931, it shall become vested in and become the property of the last-mentioned board; <li data-bbox="842 1059 1265 1294">(2) that every person or corporation in whose possession or control any of the said commodity coming into existence after the date of publication of this proclamation, and before the 9th November, 1931, shall be, shall within seven days from the same coming into existence give notice as therein provided ; <li data-bbox="842 1294 1265 1603">(3) that unless exempted by or under the said Act, as amended, every producer of any of the said commodity which comes into existence after the publication of this proclamation shall harvest, grade, brand, and deliver the same to the board or its authorised agents in accordance with the said Act, as amended, and the regulations for the time being in force thereunder.

CROWN