

FLOUR ACQUISITION ACT.

Act No. 10, 1931.

An Act to vest certain flour in New South Wales in His Majesty; to authorise the compulsory acquisition on behalf of His Majesty of flour in New South Wales; to provide for the payment of compensation in respect of flour so vested and acquired, and for its sale and disposal; to provide for the varying or cancellation of certain contracts for the sale and delivery of flour; to provide for the regulation of prices of certain products of wheat sold in New South Wales; and for purposes connected therewith. [Assented to, 17th March, 1931.]

George V,
No. 10, 1931.

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 “Flour Acquisition Act, 1931.” Short title.

(2) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State to the intent that where any enactment herein would but for this subsection have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power. Construction.

(4)

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(4) Notwithstanding any provisions of this Act which may be construed to the contrary, but without affecting the generality of subsection three of this section, such provisions shall not impair freedom of trade, commerce, and intercourse among the States of the Commonwealth of Australia, whether by means of internal carriage or ocean navigation, and this Act shall be read and construed accordingly.

Interpreta-
tion

2. In this Act, unless inconsistent with the context or subject-matter,—

“Commodity” means flour, bran, pollard, and bread gristed, manufactured, or prepared from wheat, and includes any other product of wheat which is declared a commodity under this Act.

“Declared maximum price” in relation to any commodity means the price declared in pursuance of this Act.

“Flour” means flour gristed from wheat, and includes self-raising flour.

“Person” includes any partnership or firm or company or society formed under any Act and any body of persons corporate or unincorporate.

“Prescribed” means prescribed by this Act or by the regulations.

“Regulations” means regulations made under this Act.

“Wheat” means wheat of the harvest of 1930-1931, or of any previous harvest.

Vesting of
flour.

3. (1) All flour in New South Wales which at the commencement of this Act is in the possession of or held by any person on behalf of any miller, baker, storekeeper, biscuit manufacturer, or other prescribed person shall, on such commencement, by virtue of this Act vest in His Majesty.

This subsection shall not extend to parcels of flour in the possession of or held by any person on behalf of a baker or storekeeper of less quantity than one ton.

(2) All flour other than self-raising flour coming into existence in New South Wales after the commencement of this Act and before the first day of January, one thousand nine hundred and thirty-two, shall by virtue of this Act forthwith vest in His Majesty.

(3)

(3) Upon a vesting under this section the flour shall become the absolute property of His Majesty, free from any mortgage, charge, lien, pledge, interest, trust, or encumbrance affecting the same, and the rights and interests of every person in the flour at the date of such vesting shall, subject to this Act, be converted into a claim for compensation in pursuance of the provisions of this Act.

(4) Every miller, baker, storekeeper, biscuit manufacturer, or other prescribed person shall, within seven days after the commencement of this Act, furnish to the Minister for Agriculture a return of the flour in his possession or held by any person on his behalf at the commencement of this Act.

The return shall set out the quantity and grade of the flour, and the premises upon which the flour is stored.

The return to be furnished by a baker, storekeeper, biscuit manufacturer, or other prescribed person shall also include the following additional particulars, namely, the price paid for the flour, the date of purchase, and the name and address of the person from whom the flour was purchased.

This subsection shall not extend to a storekeeper who at such commencement held less than one ton of self-raising flour or less than one ton of any other flour.

(5) Every miller shall at the prescribed times furnish the prescribed return of flour in his possession which comes into existence after the commencement of this Act.

(6) Any person authorised by the Minister may either take possession of any flour vested in His Majesty under this section or arrange with the previous owner or the person having the disposal or control thereof for its delivery at a time and place agreed upon to some person on behalf of His Majesty.

Possession
may be taken
of flour.

(7) If any person hinders or obstructs the person so authorised in the exercise of his powers under this section or if the previous owner or the person having the disposal or control of any flour wilfully neglects or refuses to carry out any arrangement made as aforesaid for the delivery of any flour, he shall be liable to a penalty not exceeding two hundred pounds.

No. 10, 1331.

(8) Until the power conferred by subsection six of this section is exercised, or until the flour is sold or disposed of in accordance with this Act, the person in whose possession the flour is at the date of the vesting shall hold it on behalf of His Majesty, but until possession of the flour is taken in pursuance of subsection six of this section, or until the flour is sold or disposed of under this Act, the flour shall be at the risk of the previous owner, and in the event of loss or destruction no compensation shall be payable, and in the event of damage compensation shall be payable only as if the flour had been damaged prior to its vesting in His Majesty.

Notification
that flour is
acquired by
the Crown.

4. (1) The Governor by notification published in the Gazette may declare that any flour therein described or referred to is acquired by His Majesty.

The power conferred by this subsection shall not be exercised after the thirty-first day of December, one thousand nine hundred and thirty-one.

What
notification
sufficient.

(2) In such notification it shall be sufficient to describe the flour so acquired as flour in a certain locality or place or owned by or in the control or disposal of a certain person or in any other manner by which the flour may be identified.

Flour to
vest in His
Majesty.

(3) Upon such publication the flour shall become the absolute property of His Majesty, free from any mortgage, charge, lien, pledge, interest, trust, or encumbrance affecting the same, and the rights and interests of every person in the flour at the date of such publication shall, subject to this Act, be converted into a claim for compensation in pursuance of the provisions of this Act.

Evidence.

(4) The production of a copy of the Gazette containing any such notification shall be conclusive evidence that on the date appearing on such copy the flour therein described or referred to was the absolute property of His Majesty.

Notice.

(5) The Minister shall as soon as practicable after the publication of any such notification in the Gazette cause notice thereof to be given in the manner prescribed to any person who to his knowledge had any interest in the flour before the date of such publication, and shall also cause notice thereof to be published in
one

one or more newspapers circulating in the locality in which the flour described or referred to in such notification was situate at the date of the publication of such notification in the Gazette.

(6) Failure to give or publish any such notice shall not give any right of action against the Crown or the Minister or against any other person acting on the authority of either of them.

(7) Upon the publication of any such notification in the Gazette any person authorised by the Minister may either take possession of the flour therein described or referred to or arrange with the previous owner or the person having the disposal or control thereof for its delivery at a time and place agreed upon to some person on behalf of His Majesty.

Possession
may be take
of flour.

(8) If any person hinders or obstructs the person so authorised in the exercise of his powers under this section, or if the previous owner or the person having the disposal or control of any flour wilfully neglects or refuses to carry out any arrangement made as aforesaid for the delivery of any flour, he shall be liable to a penalty not exceeding two hundred pounds.

(9) Until the power conferred by subsection seven of this section is exercised, or until the flour acquired has been sold or disposed of in accordance with this Act, the person in whose possession the flour is at the date of acquisition shall hold it on behalf of His Majesty, but until possession of the flour is taken in pursuance of subsection seven of this section, or until the flour is sold or disposed of under this Act, the flour shall be at the risk of the previous owner, and in the event of loss or destruction no compensation shall be payable, and in the event of damage compensation shall be payable only as if the flour had been damaged prior to its vesting in His Majesty.

5. (1) Subject to this Act, the compensation to be paid for any flour acquired by or vested in His Majesty under this Act shall be the fair and reasonable price of flour of a similar grade or quality at the date of vesting or acquisition as fixed by a committee (in this Act referred to as "the Committee").

Compensa-
tion for
flour.

(2)

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(2) The committee shall consist of the Minister, together with a member appointed by the executive of the Flour Millowners' Association of New South Wales, a member appointed by the executive of the Master Bakers' Association, and two officers of the Department of Agriculture appointed by the Minister. The Minister shall be the chairman, and the decision of a majority, consisting of at least three, shall be deemed the decision of the committee.

If either of the executives of the said associations does not, within seven days after the commencement of this Act, notify to the Minister the name of the member elected by it to serve on the committee, the Governor may appoint a member of such association so failing to notify to so serve. Any vacancy occurring by death or resignation shall be filled in the prescribed manner.

(3) For the purposes of this section any person authorised by the Minister in that behalf may determine the grade or quality of any flour vested in or acquired by His Majesty under this Act.

Any such determination shall be subject to appeal to the prescribed authority whose decision shall be final.

(4) Claims for compensation shall be made as prescribed.

Such compensation shall be paid at such times and intervals as the Minister may by notice published in the Gazette declare.

(5) The Minister may pay the compensation to the claimants, so far as their claims agree and are consistent with each other; but so far as such claims do not agree, or if any claimant is incapable of giving a valid discharge for payment, or if no claim is made, he may pay the whole or any part of the compensation in dispute to the Master in Equity, or where the amount does not exceed four hundred pounds, into a district court.

(6) Money so paid to the Master in Equity may, upon order of the Chief Judge in Equity, made in court or in chambers, be applied as the said judge thinks just. Application for such order may be made by summons or motion.

Money

Money so paid into a district court may, upon order of the judge of such court, made in court or in chambers, be applied as the said judge thinks just.

(7) The payment of compensation in pursuance of this Act shall discharge the Crown and the Minister and all persons acting under the authority of either of them from all claims to compensation for any flour vested by or acquired under this Act, and it shall not be necessary in any case for the Minister to see to the application of any compensation moneys paid hereunder or to see to the performance of any trusts.

Nothing in this subsection shall affect any claim which may be made against any person who has received such compensation or any part thereof, and if any compensation money is paid by the Minister to any person not entitled to the same it may be recovered from such person by the person who but for such payment would have been entitled to such compensation.

6. (1) The Minister shall for and on behalf of His Majesty sell in accordance with the provisions of this section any flour vested by or acquired under this Act.

Disposal of flour vested or acquired.

(2) The owner of the flour immediately prior to such vesting or acquisition shall have the first right to purchase the flour in his possession at the time of the vesting or acquisition or held at such time by any person on his behalf.

(3) The sale or disposition of the flour by such person shall be deemed to be an exercise of such right, and if made he shall be liable to pay the Minister for the flour in accordance with this section.

(4) The price to be paid to the Minister by such person for any such flour sold or disposed of by him shall be—

- (a) in the case of flour for human consumption in New South Wales, the standard price in force at the date of the vesting by or acquisition under this Act of the flour;
- (b) in the case of flour for any other purpose, a price equal to the compensation fixed by the committee, for flour of a similar grade or quality.

In

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In this subsection standard price means a price fixed from time to time by the Governor and notified by proclamation published in the Gazette.

(5) Any compensation payable in respect of the vesting or acquisition of the flour shall be set off against the price payable to the Minister under subsection four of this section, and the balance of the purchase money shall be paid to the Minister in the manner and at the times prescribed.

(6) Any flour in respect of which an owner does not within the prescribed time exercise his right to purchase under this section may be sold by the Minister at such times, at such prices, and on such terms as to payment or otherwise as to the Minister seem proper. The price of the flour as fixed by the committee, or the amount realised from such sale, less all expenses properly incurred, whichever is the lesser amount, shall be deemed to be the compensation payable in respect of the flour, and such compensation shall not become payable until fourteen days after the sale by the Minister has been completed by payment of the whole of the purchase price.

(7) The proceeds of any sale received by the Minister under this section shall be paid into the Treasury and carried to a special account.

The moneys at credit of such account shall be applied—

- (a) for the payment of any compensation under this Act;
- (b) for the payment of the expenses of any sale by the Minister and of the administration of this Act; and
- (c) any balance after such payments to be carried to the credit of the Relief to Necessitous Farmers and Graziers Working Capital Account in Special Deposits Account to be applied for the relief of necessitous farmers in such manner and subject to such conditions and stipulations as are prescribed.

Any moneys repaid to such last mentioned account shall from time to time be applied for the like purposes.

7. Any contract made in New South Wales before the commencement of this Act for the sale of flour or bread for delivery in New South Wales shall as from such commencement be void so far as it relates to flour or bread which, under the contract, is to be delivered after such commencement.

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Avoidance of certain contracts.

For the purposes of this section any such contract shall be severable.

8. Any member of the police force or any officer of the Public Service duly authorised in writing by the Minister in that behalf, may, at any time in the day or night, enter and search any premises or part thereof where any flour which is vested in or acquired by His Majesty under this Act, or as to which a return is required under this Act, is, or is supposed to be, and if necessary for that purpose, may break into and use force to enter such premises or part.

Power to enter and search for flour.

cf. Act No. 27, 1914, s.13.

9. The Governor may, by notice in the Gazette, declare any product of wheat to be a commodity for the purposes of this Act.

Power to declare commodities.

10. (1) The Governor, by notice in the Gazette, may from time to time—

Power to declare highest selling prices of any commodity.

- (a) declare the maximum price at which any commodity may be sold in New South Wales;
- (b) fix and declare different maximum prices for any commodity, having regard to differences in quality or to the sale or supply thereof, wholesale or retail, or to market conditions, or to localities of delivery or to circumstances or conditions of production, or to any other fact or circumstance which he thinks it proper to take into consideration;
- (c) vary any price previously fixed by him, but so as to apply only to future transactions;
- (d) cancel or rescind any such notice.

(2) The Governor shall appoint an advisory committee or committees to assist in the administration of this section, and may by the regulations prescribe the powers and duties of any such committee.

11. (1) If any person sells or offers for sale any commodity at a price higher than the declared maximum price he shall be liable to a penalty not exceeding one hundred pounds or imprisonment for a period not exceeding

Penalty for offering for sale at higher than declared maximum price.

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exceeding six months, and in case of sale shall be liable to refund to the purchaser the difference between the declared maximum price and the price at which the commodity was sold.

Refusal to
sell at
declared
price.

(2) If any person refuses to sell except at a price higher than the declared maximum price thereof any commodity—

(i) which he is entitled to sell; and

(ii) which is in excess of what is required for the use of himself and his dependants for a period of one month from the date of refusal,

he shall be liable to a penalty not exceeding one hundred pounds or imprisonment for a period not exceeding six months.

Aiders and
abettors.

(3) Any person who aids, abets, counsels, procures, or is in any way knowingly concerned in the commission of an offence under this section shall be deemed to have committed that offence, and shall be punishable accordingly.

Burden of
proof.

(4) (a) In any proceedings for an offence under this section the burden of proof that any commodity is not in excess of what is required for the use of the defendant and his dependants for a period of one month from the date of any refusal to sell any commodity shall be on the defendant.

(b) In any proceedings under this section evidence that any commodity is in the possession or under the control of any person shall be prima facie evidence that such person is entitled to sell such commodity.

(c) In any proceedings under this section, the averment of the prosecution that the article which is the subject matter of the charge is the product of wheat shall, in the absence of evidence to the contrary, be deemed to be proved.

No action to
lie against
Minister, &c.

12. No action, claim, or demand whatsoever shall lie or be made or allowed by or in favour of any person whomsoever against His Majesty or the Minister or any officer or person acting in the execution of this Act for or in respect of any damage, loss, or injury sustained or alleged to be sustained by reason of the passing of this Act or of its operation or of anything to be done or purporting to be done under this Act.

13.

13. (1) The Minister may, from time to time, by notice published in the Gazette and in a newspaper circulating in the locality, require all or any persons having within a locality therein mentioned any commodity owned by them or in their disposal or under their control, to furnish at the times specified in the notice returns of such commodity.

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Returns.

Such returns shall be in the form, shall contain the particulars, and shall be made to the persons prescribed, and shall be verified as prescribed.

(2) Any person who fails to comply fully and sufficiently with any of the requirements of such notice, or who wilfully furnishes any false or misleading return, or who fails to comply with any regulation relating thereto, shall be liable to a penalty not exceeding one hundred pounds or imprisonment for a period not exceeding six months.

(3) For the purpose of ascertaining whether any offence has been committed against the provisions of this section the Minister may by writing under his hand authorise any officer of the Public Service to inspect and take copies of any books, vouchers, account sales, return sales, or other documents or writings owned by or in the possession of any person required to furnish a return in accordance with the provisions of subsection one of this section, or owned by or in the possession of his agent, and for that purpose to enter any premises where he has reason to believe the books, vouchers, account sales, return sales, or other documents or writings are.

Inspection of books, &c.

14. (1) The Minister may by notice in writing call upon any person to furnish to him within such time as is specified in the notice such books and documents and such information in relation to flour as the Minister thinks necessary.

Power to call for information.

(2) Any person who without reasonable excuse (proof whereof shall be upon him) fails after receipt of a notice under the last preceding subsection to comply with the requirements of the notice, or who furnishes any information required by the notice which is false to his knowledge, shall be liable to a penalty not exceeding one hundred pounds or imprisonment for a period not exceeding six months.

15.

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Appointment
of officers.

15. The Minister may appoint such officers and persons as he thinks fit for the purpose of carrying out the provisions of this Act.

Penalties.

16. (1) Every person guilty of an offence against this Act shall for every such offence be liable, if no other penalty or punishment is imposed, to a penalty not exceeding fifty pounds.

(2) Penalties imposed by this Act or by any regulation made thereunder may be recovered in a summary manner before a stipendiary or police magistrate or any two justices in a court of petty sessions.

Regulations.

17. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing penalties not exceeding fifty pounds for any breach of the regulations.

(2) The regulations may provide that after a date to be specified therein no person shall deal in flour, otherwise than by retail, unless licensed in that behalf; and may provide for the term, conditions, renewal, and cancellation of any license, and for a fee not exceeding two pounds to be charged for the issue or renewal thereof.

(3) Such regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in such regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

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