

# TOBACCO LEAF STABILIZATION ACT.

## New South Wales



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

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Act No. 34, 1967.

An Act to make provisions with respect to the stabilization of the tobacco leaf industry; to validate certain matters; and for purposes connected therewith. [Assented to, 30th March, 1967.]

**B**E it enacted by the Queen'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 : —

### PART I.

#### PRELIMINARY.

1. This Act may be cited as the "Tobacco Leaf Stabilization Act, 1967".

Short title.

2.

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- No. 34, 1967**      **2.** The Governor may, by order published in the Gazette,  
 Suspension of Act.      suspend the operation of—  
     (a) section seven of this Act at any time; or  
     (b) the whole of this Act where the State Board is being or has been wound up or dissolved under section five of the Marketing of Primary Products Act.
- Validation.**      **3.** Any act, matter or thing done before the commencement of this Act which would have been valid had this Act been in force at the time the act, matter or thing was done is hereby validated.
- Division into Parts.**      **4.** This Act is divided into Parts as follows :—  
     PART I.—PRELIMINARY—ss. 1–6.  
     PART II.—POWERS OF COMMONWEALTH BOARD—s. 7.  
     PART III.—THE STATE BOARD—ss. 8–10.  
     PART IV.—TOBACCO QUOTAS—ss. 11–17.  
     PART V.—ALLOCATION OF SHORTFALLS AND DETERMINATION OF ADJUSTED QUOTAS—ss. 18, 19.  
     PART VI.—APPEALS—s. 20.  
     PART VII.—MISCELLANEOUS—ss. 21–28.
- Interpretation.**      **5.** In this Act, unless the context or subject matter otherwise indicates or requires—  
     “Australian tobacco quota” means the quantity of tobacco leaf of the grade or grades stipulated by the Commonwealth Board, which the Commonwealth Minister declares from time to time to be the Australian tobacco quota.  
     “Commonwealth Act” means the Tobacco Marketing Act 1965 of the Parliament of the Commonwealth of Australia or any Act of that Parliament amending or replacing that Act.  
     “Commonwealth Board” means the Australian Tobacco Board established under the Commonwealth Act.  
     “Commonwealth

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"Commonwealth Minister" means the Minister of State of the Commonwealth of Australia for the time being administering the Commonwealth Act, or another Minister of State of the Commonwealth of Australia acting for and on behalf of that Minister. No. 34, 1967

"Grower's adjusted quota" means a grower's adjusted quota determined by the State Board in accordance with this Act.

"Grower's basic quota" means a grower's basic quota allocated by the State Board in accordance with this Act.

"Local land board" means a local land board constituted under the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, or under the Western Lands Act of 1901, as amended by subsequent Acts.

"Marketing of Primary Products Act" means the Marketing of Primary Products Act, 1927, or any Act amending or replacing that Act.

"Person" includes any partnership or firm and any body of persons corporate or unincorporate.

"Prescribed" means prescribed by this Act.

"Quota tobacco leaf" means any tobacco leaf within the Australian tobacco quota.

"Regulations" means regulations made under this Act.

"Seasonal year" means any period of twelve consecutive months, commencing on the first day of July.

"Shortfall" means—

- (a) the amount in any one seasonal year by which a grower's basic quota exceeds the quantity of tobacco leaf available for delivery by him as quota tobacco leaf;
- (b) the amount in any one seasonal year by which the State tobacco quota of any State exceeds the quantity of tobacco leaf available within that State for delivery as quota tobacco leaf; or

(c)

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(c) the amount in any one seasonal year by which the Australian tobacco quota exceeds the quantity of tobacco leaf available in Australia as quota tobacco leaf.

“State Board” means the Tobacco Leaf Marketing Board for the State of New South Wales constituted under the Marketing of Primary Products Act.

“State tobacco quota” means the quantity of tobacco leaf which may from time to time be agreed upon by the Australian Agricultural Council as the quantity of tobacco leaf which shall be New South Wales’ share of the Australian tobacco quota, as adjusted from time to time by reason of the transfer of quotas to or from New South Wales under the provisions of this Act.

“This Act” includes the regulations made under this Act.

“Tobacco leaf” means leaf of the tobacco plant that has been cured, but has not been subjected to any process of manufacture other than drying or re-drying.

**Construction  
of Act.**

6. (1) 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 extent that where any enactment thereof 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.

(2) If, by reason of the Commonwealth of Australia Constitution Act, a provision of this Act, or an instrument under a provision of this Act, cannot validly apply in relation to any particular tobacco leaf or class of tobacco leaf, that provision or instrument shall be construed as intended to operate in relation to all tobacco leaf in relation to which it purports to apply, being tobacco leaf in relation to which it can validly apply.

(3)

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(3) Subject to the foregoing provisions of this section No. 34, 1967 and the provisions of the Marketing of Primary Products Act referred to in section eight of this Act, this Act applies in relation to tobacco leaf grown in New South Wales.

## PART II.

## POWERS OF COMMONWEALTH BOARD.

7. For the purpose of giving effect to such policy with respect to the marketing of Australian tobacco leaf as is from time to time agreed upon between the Commonwealth, the State of New South Wales and any other States that are declared by the Commonwealth Minister to be tobacco-growing States, the Commonwealth Board may, by instrument in writing, give directions to the State Board with respect to the sale or other disposal by the State Board of Australian tobacco leaf and, in particular but without limiting the generality of the foregoing provisions of this section, may direct the State Board not to sell Australian tobacco leaf of a grade specified in the instrument at a price less than such price as is specified in the instrument in relation to that grade, and, while the instrument remains in force, the State Board shall comply with the directions contained in the instrument.

## PART III.

## THE STATE BOARD.

8. (1) Except where the provisions of the Marketing of Primary Products Act and proclamations and regulations made thereunder are inconsistent with the express provisions of this Act, the provisions of this Act relating to the State Board and to tobacco leaf shall be in addition to and not in derogation of the provisions of the Marketing of Primary Products Act, and proclamations and regulations made thereunder, so far as that Act, or those proclamations or those regulations, or anything done or made thereunder, relate to the State Board or to tobacco leaf.

(2)

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(2) Subject in all respects to this Act, the powers, authorities, duties and functions conferred and imposed on the State Board by this Act shall be deemed to have been conferred on the State Board by the Marketing of Primary Products Act.

Powers  
of Board.

9. The State Board may take such action as is necessary to exercise and carry out all the powers, authorities, duties and functions conferred and imposed on it by this Act, and, without limiting the generality of the foregoing provisions of this section, may, for the purpose of exercising and carrying out those powers, authorities, duties and functions—

- (a) obtain all information which it deems necessary or expedient for that purpose; and
- (b) obtain the assistance or advice of any person for that purpose.

Member  
not to  
act when  
interested.

10. No member of the State Board shall at any time exercise his vote at a meeting of the State Board in respect of any matter affecting a grower's basic quota concerning which he has a direct pecuniary interest, and if he does so vote, his vote shall not be counted. A member holding such interest shall divulge it to the Board and leave the meeting during the discussion relating to that basic quota.

## PART IV.

## TOBACCO QUOTAS.

Determina-  
tion of  
grower's  
basic quota.

11. Any person who desires to be allocated a grower's basic quota may make application therefor to the Chairman of the State Board.

After consideration of the application, the Board may—

- (a) refuse the application; or
- (b) allocate to the applicant a grower's basic quota.

12.

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**12.** (1) A grower's basic quota shall attach to both the person to whom it is allocated and to the land specified by the State Board when making the allocation of the quota. **No. 34, 1967**

Grower's  
basic quota  
to attach  
to land  
and holder.

(2) Tobacco leaf—

(a) produced on that land but not by that person; or

(b) produced by that person on any other land,

shall not form part of the grower's basic quota or grower's adjusted quota.

**13.** (1) A person shall not be qualified to be allocated or to hold a grower's basic quota unless—

Qualifica-  
tions  
of quota  
holders.

(a) he is the owner or lessee of the land to which the quota is to be attached; or

(b) he satisfies the State Board that his interest in that land is such that the holding by him of a grower's basic quota would be fair and reasonable.

(2) Where the holder of a grower's basic quota ceases to be the owner or lessee of the land to which that quota is attached or where his interest in that land ceases or changes, he shall notify the State Board accordingly, in the prescribed manner.

(3) The State Board may cancel a grower's basic quota if it is satisfied that the person who holds it is no longer qualified to do so.

**14.** (1) Subject to the regulations, a grower's basic quota shall not be transferred—

Transfer  
of grower's  
basic quota.

(a) from one person to another person; or

(b) from land in respect of which that quota is held to other land,

without the prior approval of the State Board.

(2) A grower's basic quota transferred in accordance with the provisions of subsection one of this section shall be deemed to have been allocated by the State Board to that other person, or in respect of that other land, or both, as the case may require.

(3)

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(3) Where the authority administering growers' quotas, or the equivalent of such quotas, in another State has approved of the transfer of a person's grower's basic quota, or the equivalent of such a quota, from that State to the State of New South Wales, the State Board may approve of the allocation of a grower's basic quota to that person.

(4) A grower's basic quota shall not be transferred from the State of New South Wales to another State unless the Minister has first approved of the transfer.

Cancellation  
or reduction  
of grower's  
basic quota.

**15.** (1) Subject to this section and except where the regulations otherwise provide, the State Board may, where it is satisfied that—

- (a) a person who holds a grower's basic quota has failed in any seasonal year to plant a sufficient acreage to tobacco to produce that quota;
- (b) a person who holds a grower's basic quota has failed for two consecutive seasonal years to produce that quota; or
- (c) a grower's basic quota was allocated or transferred to a person erroneously or in consequence of any false document, statement or representation or any fraudulent document, statement or misrepresentation,

cancel or reduce that grower's basic quota.

(2) Before cancelling or reducing a grower's basic quota pursuant to this section the State Board shall give notice in writing to the holder of the quota stating that on a day specified in the notice (being a day not less than fourteen days after the giving of the notice) the Board, for the reasons specified in the notice, proposes to consider cancelling or reducing his grower's basic quota.

(3)



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(3) A notice referred to in subsection two of this section shall state that the person to whom it is given may submit reasons in writing for opposing cancellation or reduction of his grower's basic quota and—

- (a) where the Board's reason for considering cancellation or reduction of a grower's basic quota is that referred to in paragraph (a) or (b) of subsection one of this section, shall be given within a reasonable time after the reason arises; or
- (b) where the Board's reason for considering cancellation or reduction of a grower's basic quota is that referred to in paragraph (c) of subsection one of this section, may be given at any time.

(4) A notice referred to in subsection two of this section may be given by sending it by post addressed to the person to whom it is to be given at the address given by him when applying for his grower's basic quota or, where he has given some other address for the service of notices, at that address.

(5) On the day specified in the notice referred to in subsection two of this section or on some later day specified by the Board at the request of the person to whom the notice was given the Board may, after considering any reasons submitted in opposition thereto, exercise the powers conferred on it by subsection one of this section.

(6) Upon the cancellation of a grower's basic quota under this or any other section of this Act it may, subject to this Act, be allocated or otherwise disposed of as the Board thinks fit.

**16.** (1) A holder of a grower's basic quota who desires an increase in that quota may make application therefor to the Chairman of the State Board.

Increase of  
grower's  
basic quota.

After consideration of the application, the Board may—

- (a) refuse the application; or
- (b) grant the application by increasing the grower's basic quota by such amount as it thinks fit.

(2)

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No. 34, 1967 (2) The Board may, at any time, whether or not an application has been made under subsection one of this section, increase any grower's basic quota.

Reduced or increased quota to be grower's basic quota. 17. The quota to which the grower's basic quota of any person has been reduced or increased pursuant to section fifteen or sixteen of this Act shall thereupon be the grower's basic quota of that person.

**PART V.****ALLOCATION OF SHORTFALLS AND DETERMINATION OF ADJUSTED QUOTAS.**

Allocation of shortfalls. 18. The holder of a grower's basic quota shall be entitled to share in the allocation by the State Board of any shortfalls on such basis as may from time to time be prescribed, or, in the event of such basis not being prescribed, on a basis determined by the Board.

Determination of adjusted quotas. 19. Except as provided in the regulations, the State Board may from time to time during any seasonal year in relation to a holder of a grower's basic quota, determine a grower's adjusted quota for that holder for that seasonal year by taking into consideration—

- (a) the grower's basic quota;
- (b) subject to section eighteen of this Act, any shortfalls; and
- (c) any allocations of growers' basic quotas in excess of the State tobacco quota,

and the quota as so adjusted shall for that seasonal year be the grower's adjusted quota for that holder.

**PART**

## PART VI.

## APPEALS.

## Appeals.

20. (1) Any person who is aggrieved by a decision of the State Board under section eleven, subsection three of section thirteen, section fourteen, section fifteen, section sixteen or section nineteen of this Act, may appeal against the decision to the local land board for the land district or administrative district, as the case may be, in which is situated the land to which is attached the grower's basic quota concerned.

(2) An appeal shall not be heard under this section unless—

- (a) it is limited to one or more of the following grounds of appeal, namely :—
  - (i) that the decision of the State Board was not in accordance with this Act;
  - (ii) that the decision of the State Board was unfair;
  - (iii) that the decision of the State Board would cause unreasonable personal hardship to the appellant;
- (b) it is made in the prescribed form and is accompanied by the prescribed fee or, if no fee is prescribed, a fee of twenty dollars; and
- (c) it is made in the prescribed manner and within the prescribed time.

(3) Subject to subsection two of this section, the local land board shall hear and determine every appeal under this section and may by its decision confirm, vary or reverse the decision of the State Board.

Any appeal which the local land board considers frivolous or vexatious shall be dismissed by the local land board.

(4) Where the local land board does not consider that an appeal is frivolous or vexatious, the fee referred to in paragraph (b) of subsection two of this section shall be refunded to the appellant.

(5)

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(5) The decision of the local land board on an appeal under this section shall be final and conclusive and, subject to the provisions of this Act (subsection one of this section excepted) shall have and take effect as if it were a decision of the State Board.

(6) The provisions of any Act relating to appeals from decisions of local land boards shall not apply to or in respect of a decision of a local land board made on an appeal under this Act.

(7) A copy of any portion of the minutes kept under subsection eleven of section seven of the Marketing of Primary Products Act, may—

- (a) insofar as that portion relates to decisions made in respect of matters under this Act; and
- (b) when a certificate of the accuracy of the portion and of the copy has been signed by the Chairman of the State Board,

be tendered, together with that certificate, by the State Board as evidence in an appeal under this section, and shall be prima facie evidence of the contents thereof, without proof of the signature of the Chairman of the State Board.

(8) An appeal may be heard under this section notwithstanding that the decision of the State Board which is the subject of the appeal was made before the commencement of this Act, provided the appeal could have been heard had this Act been in force at the time the decision was made.

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**PART VII.****MISCELLANEOUS.**

Delivery  
of tobacco  
to Board.

**21.** (1) A person who holds a grower's basic quota shall deliver to the State Board or its agent for sale, at any sale declared by the Board to be a sale for quota tobacco leaf, such proportion of his current quota as the Board may from time to time determine, and any such leaf so delivered shall be offered for sale by the Board as quota tobacco leaf subject to the provisions of this Act.

(2)

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(2) Any person who tenders, or causes or suffers to be tendered, to the State Board as the whole, or a part, of the proportion of his current quota referred to in subsection one of this section, any tobacco leaf which is not and which he knows or has reason to believe is not part of his current quota, whether by reason of quantity or because it was grown by another person or on other land, or for any other reason, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one thousand dollars. No. 34, 1967

(3) Any payment made by the State Board to any person referred to in subsection two of this section in respect of any tobacco leaf referred to in that subsection shall be recoverable in any court of competent jurisdiction from the person to whom it was paid as if it were a debt due to the Board.

(4) Where a person tenders to the State Board or its agent (whether in contravention of subsection two of this section or otherwise) any tobacco leaf which by reason of quantity or for any other reason whatsoever does not form part of the proportion, referred to in subsection one of this section, of his current quota, the Board may accept delivery thereof and may, subject to the provisions of this Act and to any directions given to the Board pursuant to section seven of this Act, dispose of that tobacco leaf and, if it is sold, of the proceeds of the sale thereof, in such manner as the Board, after having due regard to the purposes of this Act and to all the circumstances of the case, may determine.

(5) In this section—

“Current quota” means, in relation to a person who in a seasonal year holds a grower’s basic quota—

- (a) where he does not have a grower’s adjusted quota determined in respect of that year—his grower’s basic quota;
- (b) where he has a grower’s adjusted quota determined in respect of that year—his grower’s adjusted quota.

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- No. 34, 1967** **22.** No action, claim or demand whatsoever shall lie or be made or allowed by or in favour of any person whomsoever against—
- When no action shall lie.
- (a) Her Majesty;
  - (b) the Minister;
  - (c) the State Board, or any member thereof; or
  - (d) the local land board to which an appeal has been made under section twenty of this Act, or any member thereof,
- for anything done for the purpose of carrying out or giving effect to this Act.
- Costs in respect of appeals.** **23.** That part of the costs of administration of local land boards that relates to the hearing of appeals under section twenty of this Act shall be a charge against and recoverable from the State Board.
- Penalty.** **24.** Except as is expressly provided by this Act, any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding two hundred dollars.
- Proceedings.** **25.** All proceedings for offences against this Act shall be disposed of summarily before a stipendiary magistrate or any two justices of the peace in petty sessions.
- Period of limitation.** **26.** A prosecution for an offence against this Act shall not, without the written permission of the Minister, be instituted more than twelve months after the commission of the offence.
- Offences by companies, and joint offenders.** **27.** The provisions of section thirty-two of the Marketing of Primary Products Act shall apply to and in respect of offences under this Act.
- Act No. 34,  
1927, s. 32.

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28. (1) The Governor may make regulations, not No. 34, 1967  
inconsistent with this Act, for or with respect to— Regulations.

- (a) the powers, authorities, duties and functions of the State Board under this Act, and, without limiting the generality of the foregoing provisions of this paragraph, for or with respect to—
  - (i) the basis of allocation or re-allocation of growers' basic quotas to be adopted by the State Board;
  - (ii) fixing the maximum growers' basic quotas that may be allocated by the State Board;
- (b) matters concerning or facilitating the determination of growers' adjusted quotas;
- (c) matters concerning the transfer, cancellation or reduction of a grower's basic quota and the disposal of cancelled quotas;
- (d) forms to be used for the purposes of this Act, and in particular for applications made under sections eleven and sixteen of this Act;
- (e) the manner in which applications shall be made under this Act, and in particular under sections eleven and sixteen of this Act;
- (f) any matter relating to information, statistics, data, and the persons who shall furnish or receive such information, statistics and data;
- (g) 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.

(2) The regulations may prescribe a penalty not exceeding two hundred dollars for any contravention of, or failure to comply with any provision of, the regulations, or any instruction, order, direction or requirement given, or made under, or in force by virtue of, the regulations.

(3) The power to make, with respect to any persons or any matters or things whatsoever, any regulation shall include power to make that regulation so that it may be of general

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**No. 34, 1967** general or specially limited application according to time, place, purposes, class, description or circumstances, or otherwise, and so that any regulation of specially limited application may or may not differ from any other regulation of specially limited application with respect to the same persons, matters or things.

The power to make regulations with respect to any matter or thing shall include the power to make regulations prohibiting that matter or thing either generally or to meet particular cases.

- (4) The 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 the regulations; and
  - (c) be laid before both Houses of Parliament within fourteen sitting days after publication thereof if Parliament is then 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 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.

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