

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1932.

---

---

## A BILL

To provide for the adjustment of the debts of necessitous wheat farmers; and for purposes connected therewith.

---

---

**B**E 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 "Necessitous Wheat Farmers' Debts Adjustment Act, 1932." Short title.

274

*Necessitous Wheat Farmers' Debts Adjustment.*

(2) 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 provision of this Act or the application thereof to any person or circumstance is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

Construction.  
cf. W.A. No.  
49, 1930, s. 3.

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

Interpreta-  
tion.

“Director” means the Director appointed under this Act and includes any deputy director.

“Farmer” means any individual person who cultivates not less than one hundred acres of land in New South Wales for the production of wheat, whether on his own account or under a share-farming agreement, or who is the owner of any land which under a share-farming agreement is cultivated for the production of wheat, and includes the personal representatives of a deceased farmer.

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

3. (1) The Governor may, subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint a Director for the purpose of this Act upon such terms and at such salary as the Governor may determine.

Director.  
cf. *Ibid.* s. 4.

(2) The Governor may appoint a deputy director to act at any time when the Director is prevented by illness or absence from acting in his office or during any vacancy in his office.

(3) A deputy while acting under such appointment shall have the like powers and duties and be subject to the like provisions as if he were the Director.

4. The Director may, with the approval of the Minister administering the Department concerned and the Public Service Board, make use of the services of any officer or employee of the Public Service for the purposes of this Act.

Employment of  
officers and  
employees.  
Vict. No. 3962,  
s. 25.

5. (1) Any farmer or the creditor of any farmer may, by writing under his hand in the prescribed form, make application to the Director to call a meeting of the farmer's creditors under this Act.

Application to Director to call meeting of farmers and creditors.

W. A. No. 49, 1930, s. 5.

(2) The farmer shall, upon request in writing by the Director, furnish such information and such accounts, documents, and writings as the Director may require for the purpose of considering such application.

Farmer to furnish information.

(3) On receipt of such an application the Director may, for the purpose of considering the same, by notice in writing call upon any creditor of the farmer to furnish to him within such time as is specified in the notice an account specifying the goods supplied, the money lent, the services rendered by such creditor to the farmer, and such other information or particulars in connection with the account as may be specified in the notice.

Director may require creditor to furnish account.

(4) If any farmer without reasonable excuse (proof whereof shall be upon him) fails within the time specified by the Director to furnish such information, the Director shall thereupon reject his application, and any farmer who furnishes any information, accounts, documents, or writings required by the Director which is false to his knowledge shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding *one hundred* pounds or imprisonment for a period not exceeding *twelve* months.

(5) Any creditor 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 account or any information or particulars required by the notice which is false to his knowledge shall be liable on conviction to a penalty not exceeding *two hundred* pounds or imprisonment for a period not exceeding *twelve* months.

6. (1) The Director may after consideration of an application to call a meeting of creditors grant the farmer a stay order in the prescribed form. Any farmer who in his application makes any statement or gives any particular or information which is false to his knowledge

Director may grant a stay order.

Ibid. s. 5.

knowledge shall be guilty of an offence against this Act and shall be liable on conviction to a penalty not exceeding *two hundred* pounds or imprisonment for a period not exceeding *twelve* months.

(2) Such stay order shall be made in the first instance for a period not exceeding six months, but may be extended by the Director from time to time for such further period as it deems necessary in order to safeguard the interests of the farmer and his creditors.

(3) The Director shall cause to be published in the Gazette a notification that a stay order has been granted to the farmer and shall take reasonable steps to acquaint every creditor of the farmer to whom a stay order has been granted of the granting thereof and of any extension thereof and of the discharge thereof.

(4) The Director shall cause to be kept a register of such stay orders and such register shall be open for inspection by any person without fee.

Director to keep a register of stay orders.

Any such stay order may be registered in the office of the Registrar-General in the Register of Causes, Writs, and Orders affecting land.

Vict. No. 3962, s. 21(9).

(5) On a stay order being granted to a farmer under this section he shall be deemed to become subject to this Act.

No. 4, 1931, s. 4.

(6) On the publication in the Gazette of a notification of the granting of any stay order, and so long as the order remains in force,—

On gazettal of stay order actions, proceedings, executions, seizures, &c., against the farmer not to be commenced, &c., and pending ones stayed.

(a) no action or proceeding shall be commenced in any court against the farmer named in the order for the recovery of any debt incurred or to enforce any security given by him in connection with his farm, and if any such action or proceeding is, or before the commencement of this Act has been commenced, it is hereby stayed ;

cf. Vict. No. 3962, s. 21 (10).

(b) no proceeding in the nature of an execution of a judgment or order already obtained in respect of any such debt or security, whether before or after the commencement of this Act, and no proceeding in the nature of discovery in

in

*Necessitous Wheat Farmers' Debts Adjustment.*

in aid of execution shall be had or taken against the farmer, and every such judgment and order is hereby stayed for all purposes whatsoever;

- (c) no steps shall be taken by any mortgagee, vendor under any contract of sale of land, person entitled to the benefit of any charge (not being a charge creating and charging an annuity), lessor, grantee of any bill of sale, holder of a lien, owner under a hiring agreement or a hire-purchase agreement, purchaser under a contract of sale and of letting and hiring, or any other grantee of any form of security over any property of the farmer comprising or used in connection with his farm (whether the mortgage, charge, lease, bill of sale, lien, hiring agreement, hire-purchase agreement, contract, or other security has been executed or given or become operative before or after the commencement of this Act) to enforce (whether by entry into possession, the exercise of a power of sale, foreclosure, seizure, or otherwise howsoever) any remedy available to any such mortgagee, vendor, person, lessor, grantee of a bill of sale, holder of a lien, owner, purchaser, or other grantee, and all such remedies shall be and are hereby suspended;
- (d) no action, proceeding, or steps referred to in the foregoing provisions of this subsection shall be commenced, had, or taken against any guarantor of such farmer.

For the purposes of this paragraph "guarantor" means a person who has guaranteed or undertaken to answer for the debt or default of the farmer in respect of any bank overdraft or any goods supplied or moneys advanced to the farmer in connection with his farm and any person who has endorsed any promissory note given in respect of such goods or moneys by such farmer.

(7)

*Necessitous Wheat Farmers' Debts Adjustment.*

(7) If any action, proceeding, or step is commenced, had, or taken in contravention of the foregoing provisions of this section it shall be void.

Proceedings in contravention hereof to be void.

(8) This section shall not apply to any wool lien or crop lien registered in accordance with the provisions of the Liens on Crops and Wool and Stock Mortgages Act, 1898, prior to the first day of June, one thousand nine hundred and thirty-two, and in existence at the date of commencement of this Act.

7. (1) A meeting of creditors shall be called by the Director at such place and time as the Director shall direct, and the Director shall give notice by post to the creditors of the farmer in or to the effect of the prescribed form, provided that the Director may at any time before the holding of the meeting if he deems it necessary or expedient, or if from any cause whatsoever it is not convenient that the meeting be held at the time and/or place originally directed, alter the time and/or place of the meeting, and notice of such alteration shall be given by the Director to the creditors in the like manner.

Meetings of creditors.

W.A. No. 49, 1930, s. 6.

(2) The omission to give notice to any creditor shall not invalidate the meeting or any proceeding following thereon.

(3) At any such meeting any creditor may be represented by any person duly appointed in writing by such creditor.

(4) At any meeting of creditors some person elected by a majority in value and number of the creditors present in person or by proxy shall be chairman of the meeting.

(5) The farmer shall, unless prevented by sickness or other sufficient cause, attend the meeting, and shall submit a statement in writing signed by him of his assets and liabilities.

(6) For the purpose of voting any two or more joint creditors shall be treated as a single creditor, and, in calculating a majority of creditors for the purpose of any provision of this Act, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned on the majority in value but not on the majority in number.

(7)

*Necessitous Wheat Farmers' Debts Adjustment.*

(7) For the purpose of voting a secured creditor shall, unless he surrenders his security, state in writing the particulars of his security, the date when it was given, and the value at which he estimates it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the estimated value of his security. If he votes in respect of his whole debt, he shall, in the event of any adjustment or arrangement under this Act resulting from the meeting, be deemed for the purposes of this Act to have surrendered his security.

(8) If any dispute shall arise as to the right to vote, it shall be settled by the chairman, whose decision shall be final.

(9) For the purposes of this Act, every question at a meeting of creditors shall, subject to this section, be decided by the majority in value and number of those present or represented and voting at the meeting, and every resolution carried by such majority shall be deemed to be a resolution of the creditors.

(10) If at any time before the holding of the meeting it shall appear to the Director that no good purpose will be served by the holding of such meeting, the Director may by notice published or given as prescribed cancel the notice calling the meeting and discharge the stay order, and the farmer shall thereupon cease to be subject to this Act.

(11) As soon as practicable after the opening of the meeting the chairman shall invite the creditors to ascertain by consultation amongst themselves whether it is not possible to adjust or arrange the affairs of the farmer to advantage, and the creditors may by a majority in value and number of those present or represented and voting at the meeting or any adjournment pass any resolution for the adjustment or arrangement of the farmer's affairs which may appear to them to be practical and expedient.

Amicable arrangements to be attempted.

In making any such adjustment or arrangement the creditors shall be entitled to take into consideration any adjustment or arrangement made by any creditor subsequent to the thirty-first day of December, one thousand nine hundred and thirty.

(12) The chairman of the meeting shall cause minutes of the meeting to be kept. Minutes of meetings to be kept.

The names of the creditors voting for and against each motion moved at the meeting shall be stated in the minutes.

As soon as practicable after the meeting the chairman shall forward to the Director a copy of such minutes together with a statement showing the names and addresses of the creditors present at the meeting and full particulars of their debts.

**8.** Subject to the approval of the Director a resolution so passed shall be binding on the farmer and his creditors and may be given effect to provided that its provisions are such as the farmer and his creditors might lawfully have embodied in an agreement made between themselves. Resolution to be binding on farmer and creditors.

The Director shall thereupon make an order in the prescribed form giving effect to the resolution, and the provisions of subsection two of section nine shall apply in respect of such order.

**9.** (1) If the creditors do not pass any resolution for the adjustment or arrangement of the farmer's affairs, or if they do pass a resolution which is not approved by the Director, the Director may order that the affairs of the farmer shall be adjusted or arranged in such manner as the Director shall determine. Director may arrange farmer's affairs.

(2) Such order shall be in the prescribed form, and a notification that such order has been made shall be published in the Gazette and shall be further advertised as the Director may determine.

Upon such gazettal the order shall be binding upon the farmer and his creditors, and the property of the farmer shall be dealt with by the Director for the benefit of the farmer and his creditors as provided by this Act.

A copy of such order shall be served upon each creditor and upon the farmer.

The omission to serve any such notice upon any creditor shall not invalidate the order or any proceeding following thereon.

**10.** (1) The farmer shall not, whilst subject to this Act, charge, pledge, or create any lien upon or otherwise encumber or transfer, assign, or part with the possession or control of any part of his real or personal property, credits, or effects without the consent in writing of the Director. The consent may be general or restricted to particular properties, credits, or effects.

Farmer not to encumber or part with his property.  
W.A. No. 49, 1930, s. 12.

Any farmer who contravenes any of the provisions of this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding *two hundred* pounds or imprisonment for a period not exceeding *twelve* months.

(2) Any mortgage, charge, pledge, lien, encumbrance, transfer, assignment, or delivery given, executed, or made contrary to this section after the registration of a stay order in the office of the Registrar-General and during the period for which it remains in force shall be void and of no effect.

**11.** (1) In any case where an order under section eight or section nine has been made in respect of any farmer, and so long as the stay order granted to such farmer remains in force, all moneys (other than advances granted with the consent of the Director in accordance with this Act) payable by any person to the farmer shall be paid to the Director or as the Director may direct, and the Director shall have full control over the farmer's income, and shall apportion such income in accordance with this Act.

Control by Director of income of farmer where order made.  
Vict., No. 3962, s. 32.

(2) All such moneys shall be paid into a special account to be called the "Necessitous Wheat Farmers' Debts Adjustment Account."

**12.** The farmer shall as soon as practicable after the end of each month forward to the Director a true and correct statement in writing of the sales of the produce of his farm during such month.

Statement to Director as to sales of produce.  
*Ibid.* s. 28 (2).

**13.** (1) The farmer may apply to the Director for his consent to the purchase by the farmer of superphosphate, cornsacks, household commodities, and any other commodities, whether of the same kind as above-mentioned or not, required by the farmer in order to enable him to carry on his farming operations.

Application for the supply of commodities.  
S.A. No. 1996, s. 4.

In

282

In the application there may also be included a request for the Director's consent for the farmer to obtain an advance of money to pay for any labour required for the preparation and cultivation of land, seeding, and harvesting, or to pay any fees or expenses incurred in or necessary for the farming operations.

(2) The application shall—

- (a) be in the prescribed form;
- (b) set out the commodities required by the applicant, the persons by whom the applicant desires the commodities to be supplied, an estimate of the amount of money (if any) required for labour or other purposes, and the source of the advance of money therefor.

**14.** The Director shall consider such application and may in his direction grant or refuse any application or may grant an application as to part only. Consideration of applications.

**15.** (1) The Director shall notify the farmer of his decision as to the application, and if an application is approved wholly or in part, shall from time to time issue to the farmer orders in the prescribed form authorising the farmer to obtain the goods herein mentioned from the persons therein mentioned. Authority to obtain goods applied for by farmer.

(2) Every such order shall state the total price (as estimated by the Director) of all the commodities the supply of which to the farmer has been approved by the Director, but a mistake in the estimate shall not invalidate any such order, or any other transaction or document relating to or arising from the supply of goods under this Act: Provided that the Director or the farmer shall not be liable for any amount in excess of the total price specified in such order.

**16.** (1) When the Director is satisfied that any person has supplied goods to a farmer pursuant to an order under section fifteen he shall issue to that person a certificate in the form prescribed. Issue of certificates to suppliers of goods.

(2) Every certificate shall—

- (a) state the price payable for the commodities in respect of the supply of which it was issued, and, if interest is payable on the price of the commodities, may state the rate of such interest and

and the date from which it is computed, but shall not include any interest at a rate in excess of five per centum per annum ;

- (b) when endorsed by the issuee be deemed a negotiable instrument ;
- (c) confer on the issuee or the holder in due course thereof a preferential claim to be paid by the Director the amount specified therein for the price of commodities with interest computed in accordance therewith out of the moneys payable to the farmer and paid to the Director in pursuance of section eleven of this Act ; but, if such moneys are insufficient to pay in full the amounts specified in all the certificates issued in respect of the supply of commodities to that applicant, the said amounts shall abate in equal proportions between themselves ;
- (d) be signed by the Director or by some person authorised by the Director.

**17.** (1) Where the Director is satisfied that any person (in this section referred to as "the lender") is willing to advance money—

Procedure when farmer financed by a bank or other person.

- (a) to pay cash for the commodities, the supply of which is approved by the Director ; or
- (b) for the purpose of hiring in any case approved by the Director labour for sowing or harvesting a crop upon the land occupied by the farmer ;
- (c) for any other purpose approved by the Director,

the Director may in lieu of issuing orders as mentioned in section fifteen notify the lender in the prescribed form of his approval.

(2) Upon being satisfied that the lender has advanced the money to pay cash for any such commodities, to pay the said cost of hiring labour or for any other purpose approved by the Director, and that such commodities have been supplied and paid for or that the said money for hiring labour has been paid to the persons hired, or that the money has been applied for the purpose approved by the Director, as the case may be, the Director shall issue to the lender a certificate or certificates in the prescribed form.

- (3) Every such certificate shall—
- (a) state the amount advanced by the lender, the date of the advance, and the rate of interest payable thereon;
  - (b) when endorsed by the lender be deemed to be a negotiable instrument;
  - (c) confer on the lender or holder in due course a preferential claim to be paid by the Director the amount of the advance and interest specified in the certificate out of the moneys payable to the farmer and paid to the Director in pursuance of section eleven of this Act, but if such moneys are insufficient to pay in full the amounts specified in all the certificates issued in respect of advances by the lender to the farmer, the said amounts shall abate in equal proportions between themselves;
  - (d) be signed by the Director or some person authorised by the Director.

**18.** (1) The Director shall, after deducting as a contribution towards the cost of the administration of this Act an amount equivalent to two and one-half per centum of all moneys paid to the Director in pursuance of section eleven of this Act on account of any farmer, and apportion the balance of such moneys in the following order of priority :—

- (a) firstly, in payment to the farmer of an amount equivalent to seven and one-half per centum of such moneys for his personal expenditure;
- (b) secondly, in payment to all holders of certificates issued under this Act of the amounts specified therein or due thereunder;
- (c) thirdly, in payment of the following amounts specified in this paragraph ranking equally between themselves, namely—
  - (i) one year's simple interest due under any legal or equitable mortgage of the farm or any interest therein of the farmer at a rate in the case of a first mortgage not exceeding four per centum

*Necessitous Wheat Farmers' Debts Adjustment.*

- centum per annum, and in the case of a second mortgage not exceeding five per centum per annum;
- (ii) one year's rent of the farm of the farmer held under lease or one year's interest at a rate not exceeding five per centum outstanding of the purchase price of the farm of the farmer held under agreement to purchase;
- (iii) one year's rates and taxes on the farm ;
- (iv) payments due to the Crown upon the farm of the farmer ;
- (d) fourthly, in payment of the creditors of the farmer in accordance with the order of the Director made under sections eight or nine of this Act ;
- (e) fifthly, in payment of the remaining debts (if any) of the farmer other than principal moneys secured by mortgage ;
- (f) sixthly, the surplus (if any) shall be returned to the farmer.

(2) The debts or payments in each of the classes specified in subsection one of this section shall rank equally between themselves, and shall be paid in full unless the moneys paid to the Director are insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) For the purpose of ascertaining the amounts payable pursuant to paragraphs (c) and (e) of subsection one hereof in respect of any farmer the Director may, by notice published in a daily newspaper published in Sydney, call upon all persons claiming payment of any such amounts, to furnish particulars of their claims to the Director by a date fixed in the notice.

The Director shall be deemed to have complied with paragraphs (c) and (e) aforesaid if the Director duly pays the amounts claimed, the particulars of which are given to the Director on or before the date fixed as aforesaid.

(4)

(4) The Director shall not incur any liability with respect to any amount paid to any person pursuant to this section, whether such person was legally entitled to payment or not, unless it is shown that the Director acted negligently or in bad faith.

**19.** (1) When a stay order has been granted to any farmer the Director may advise the farmer with respect to his farming operations, and if the farmer fails or neglects to comply with such advice the Director may order the farmer to comply with such advice, and the farmer shall comply with such order. Director may advise farmer.

(2) If the farmer fails or neglects to comply with any such order to the satisfaction of the Director, the Director may discharge the stay order.

**20.** If any farmer to whom a stay order has been granted fails to comply with any provision of this Act or if it is made to appear to the Director that for any cause whatsoever it is advisable to discharge any stay order, the Director may discharge the stay order. Director may discharge stay order.

**21.** (1) When any stay order is discharged by the Director he shall cause to be published in the Gazette a notice of discharge, and on and after the date of such publication the stay order shall cease to have any effect whatsoever. Publication of notice of discharge of stay order.

(2) There shall be entered by the Director in the register of stay orders required by this Act to be kept a record of every discharge of a stay order notified in the Gazette under this section, and the Director shall notify the Registrar-General of the discharge of any stay order which is registered in the office of the Registrar-General. Record of discharges.

(3) When a stay order has ceased to operate, whether by effluxion of time or discharge by the Director, any process or proceeding pending or in course of being put into operation against the farmer or his estate or effects at the time when the order was made may be continued and proceeded with, and in computing the time for taking any further steps in connection therewith no account shall be taken of the period which has elapsed since the making of the order. Effect on proceedings pending at grant of stay order.

(4) Such period as aforesaid shall not be taken into account in connection with any claim affected by the order for the purpose of any Statute of Limitations.

**22.** (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. Penalties.

(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.

**23.** (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 the provisions of this Act, and in particular but without limitation of the foregoing power for— Regulations.

- (a) regulating the applications to the Director under this Act;
- (b) regulating the procedure of the Director exercising any jurisdiction conferred by this Act;
- (c) regulating the procedure of the creditors at any meeting held under this Act;
- (d) prescribing the forms to be used for the purpose of this Act.

(2) Such regulations may prescribe a penalty not exceeding *fifty* pounds for any breach 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

*Necessitous Wheat Farmers' Debts Adjustment.*

---

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 House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

**24.** No stay order or other order under this Act shall be made or extended so as to operate beyond the thirtieth day of June, one thousand nine hundred and thirty-four.

Restriction of operation of stay orders.

---