

BULK HANDLING.

No. 15 of 1967.

AN ACT to make better provision for the Bulk Handling of Grain by the Company registered as Co-operative Bulk Handling Limited, and for incidental and other purposes.

[Assented to 20th October, 1967.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Bulk Handling Act, 1967.* Short title.
2. This Act shall come into operation on a date to be fixed by proclamation. Commencement.

Arrangement. 3. This Act is divided into Parts as follows:—

PART I—PRELIMINARY—Ss. 1-5.

PART II—OBLIGATIONS OF THE COMPANY—Ss. 6-19.

PART III—FACILITIES TO BE PROVIDED BY THE COMPANY—Ss. 20-24.

PART IV—SHIPPERS' DELIVERY BOARD—Ss. 25-30.

PART V—TOLLS AND CHARGES—Ss. 31-35.

PART VI—WEIGHBRIDGE TICKETS AND WARRANTS—Ss. 36-38.

PART VII—RECEIVAL AND DELIVERY OF GRAIN BY THE COMPANY—Ss. 39-50.

PART VIII—MISCELLANEOUS—Ss. 51-54.

SCHEDULE.

Repeal. 4. The Acts set out in the Schedule to this Act are repealed.

Interpretation. S. 2. 5. In this Act, unless the contrary intention appears—

“bin” means any building, shed, silo or receptacle for the storage of grain, in bulk, pending transport or delivery, and includes any plant or equipment used in connection with the reception of grain in bulk;

“Board” means the Shippers' Delivery Board constituted under this Act;

“Company” means Co-operative Bulk Handling Limited, a company incorporated under the provisions of the Companies Act, 1893, and deemed to be registered under the Companies (Co-operative) Act, 1943-1959, and having its registered office at Wellington Street, Perth;

- “dockage”, in respect of grain tendered to, or received by, the Company, means the amount by which the grain is devalued by reason of its inferiority or the admixture of foreign matter;
- “grade”, in relation to grain or, where the case requires, other seeds, means the standard or standards from time to time prescribed under this Act, and until a standard is, or standards are, prescribed, means the standard or standards for the time being adopted by arrangement with the relevant marketing authority;
- “grain” means the seeds of the cereal grasses wheat and barley;
- “grain received in bulk” means grain in respect of which the Company renders a service;
- “grower” includes the legal personal representative of a deceased person, a trustee, the liquidator of a company, a person entitled to a share of a crop, under a share farming agreement, and a corporation, organisation or body delivering grain to the Company;
- “miller” means a person whose business includes the milling, other processing or use of grain;
- “representative”, in relation to a grower, means a person acting under the express or implied authority of the grower and includes a person tendering grain to the Company on behalf of the grower;
- “season”, in relation to grain, means the period extending from November 1st in any year, or, if grain is received prior to November 1st, then from the date of receipt of the grain, to October 31st in the following year;
- “section” means a section of this Act;
- “terminal elevator” means a silo or container maintained at a port for the handling of grain and includes machinery and buildings ancillary to such a silo or container.

PART II—OBLIGATIONS OF THE COMPANY.

Company
may be
required to
furnish
Bond.
S. 13.

6. (1) The Minister may require the Company to enter into a bond conditioned on the performance by the Company of its obligations and duties under this Act and the bond shall be in such penal amount, not exceeding fifty thousand dollars, and in such form, and with such surety or sureties, as the Minister may approve.

(2) The Company shall, within one month after receiving a requisition of the Minister made pursuant to subsection (1) of this section, enter into the required bond.

Penalty: One thousand dollars.

Liability of
Company for
conversion.
S. 14.

7. (1) Nothing in this Act relieves the Company from liability for conversion or other action in respect to grain delivered to the Company in the course of its operations, but the Company may create an assurance or indemnity fund to protect it against liability in that regard.

(2) Where the Company has, in good faith and without notice of the conversion, received grain in bulk from a person who has wrongfully converted it to his own use or in derogation of the right, title, claim or interest of another person, the Company may recover from the person wrongfully converting the grain any sum or sums and costs for which it may be liable in consequence of the receipt of the grain.

Company not
to trade in
grain.
S. 9.

8. (1) The Company, its directors, officers, servants or agents shall not be directly or indirectly engaged in any business relating to the buying or selling of, or broking in, grain, but the Company may buy grain to make up losses or shortages in outturn and may sell grain that has become damaged, grain representing any excess of outturn resulting from time to time in its operations under this Act or grain remaining in its care after the thirtieth day of September next following the receipt of the grain.

Penalty: One thousand dollars.

(2) A person is not deemed to be directly or indirectly engaged in carrying on any business such as is mentioned in subsection (1) of this section by reason only of his being a Trustee of the Grain Pool of Western Australia, a member of the Western Australian Barley Marketing Board or a member of any other marketing authority constituted under any law of the Commonwealth or of the State for the compulsory marketing of any type of grain, or of being a Director of a company carrying on a business of which the primary purpose is not the buying or selling of, or broking in, grain but in the course of which, for its own purposes, it buys or sells, or acts as a broker in, grain.

9. (1) The Company, or a director, officer, servant or agent of the Company shall not—

Company not to give preference or show favouritism.
S. 11.

- (a) discriminate against, or give any preference to, a person wishing to avail himself of the services of the Company;
- (b) tout or canvass on behalf of any grain buyer having business relations with the Company; or
- (c) disclose anything relating to the business or transactions of any person having business relations with the Company, so as to afford an advantage to any other person.

Penalty: One thousand dollars.

(2) The Company shall, on becoming aware that any officer, servant or agent of the Company has committed an offence under this section, forthwith terminate his service or contract, notwithstanding the terms of any agreement of service or contract to the contrary.

10. The memorandum or articles of association of the Company shall not be altered, except with the express approval of the Governor.

Company not to alter memorandum or articles without Governor's consent.
S. 12.

Company to
insure
grain.
S. 17.

11. (1) The Company shall, at its own expense, insure all grain from time to time in its custody or under its control to its full insurable value with a public insurance company that has, or underwriters who have, complied with the provisions of the Insurance Act, 1932 of the Commonwealth, as from time to time amended, against loss or damage by fire, explosion, storm, tempest or flooding and against such other insurable risks as may from time to time be prescribed.

(2) The Company is authorised to receive and give a good discharge for all moneys payable under, and in respect of, and to settle, adjust, and compromise all claims under, a policy of insurance.

(3) Where any loss or damage occurs to any grain in the custody, or under the control, of the Company that is covered by insurance, the Company may apply the insurance moneys recovered in or towards the purchase of grain to replace that destroyed or damaged, or, at its discretion, may pay those moneys to a reserve fund to meet any liability for shortages under the provisions of section sixteen.

Company to
furnish
balance
sheet and
revenue
account to
Minister
and to keep
prescribed
records.
S. 18.

12. (1) The Company shall in every year, not later than the prescribed date, take out a balance sheet, showing its assets and liabilities and making due allowance for depreciation and for such other reserves as are usual for undertakings similar to that carried on by the Company, together with a revenue account for the preceding twelve months, and shall, on or before the date prescribed for that purpose, forward the balance sheet and revenue account to the Minister who shall cause a copy of both to be laid before both Houses of Parliament, as soon as may be practicable after their receipt.

(2) Any officer of the Auditor General nominated by him shall, at all times, have free access to the books and records of the Company and be at liberty to make such copies of, or extracts from, them as he thinks fit.

(3) The Company shall keep all such other records of its transactions as may, from time to time, be prescribed; and such records shall at all times be open for inspection as provided by subsection (2) of this section.

13. Notwithstanding the provisions of section one hundred and seventy-four of the Companies (Co-operative) Act, 1943-1959, or any provision contained in the memorandum or articles of association of the Company, the Company may purchase, out of its reserve funds, any shares of a member of the Company, but to the extent only that the shares so purchased and not sold or disposed of do not, at any one time, exceed one-fifth part of the paid up capital of the Company; and the shares so purchased are not deemed to be cancelled or to be purchased in reduction of capital, but may be sold or disposed of by the Company, in accordance with its articles of association.

Power of
Company to
purchase
shares.
S. 18A.

14. All moneys arising from any excess of outturn in respect of each class of grain received by the Company, in any particular season, shall be paid to, and retained by, the Company in a special reserve account, as a fund to meet, from time to time, any shortages resulting in its operations or in the outturn of grain of any particular season or seasons; but where the reserve at any time exceeds the sum of two hundred thousand dollars, the excess may be transferred to, and applied as part of, the general funds of the Company.

Application
of moneys
received
from excess
of outturn.
S. 10.

15. (1) The Company is not liable to any person in respect of loss sustained by him by reason of failure or delay in delivery of grain received in bulk in the course of its operations, where the failure or delay arises out of a riot, industrial dispute, civil commotion, war or act of God, or is occasioned by any unforeseen cause not attributable to the negligence of the Company.

Company not
liable for
act of God
or
unforeseen
damage.
S. 15.

(2) In the event of any loss or damage arising to grain the Company shall apportion the loss of, or damage to, the grain rateably, as nearly as practicable, among those entitled to obtain delivery of grain at the time the loss or damage occurs and, to that extent, the Company shall be discharged from its obligation to deliver grain to the persons entitled to obtain delivery of it.

Company's
liability
for shortages
in stocks.
S. 16.

16. (1) Where the Company is unable to give delivery of grain on account of loss or shortages in stocks of grain, other than losses or shortages arising from any cause for which it is relieved of liability under section fifteen, the Company shall pay to every person entitled to, and unable to obtain, delivery of grain the value of that quantity which it is unable to deliver at the time the request for delivery is made, or, where no request is made prior to the thirtieth day of September next following the date of receipt of the grain, the Company shall pay the value of an equal quantity of grain on that day.

(2) For the purposes of subsection (1) of this section, the value of the grain undelivered is deemed to be the value of an equal quantity of grain at—

- (a) the average buying price paid by merchants, published in *The West Australian* newspaper at the material time or published at the thirtieth day of September, as the case may be; or
- (b) where the price is not ascertainable under paragraph (a) of this subsection, the price quoted on the Liverpool Corn Exchange or such other exchange as may be operating, with due allowance for costs of transport and insurance; or
- (c) at the election of the Company, the price determined by the Minister,

but nothing in this subsection precludes the recovery by a person entitled to delivery of grain of any further damages to which he may be lawfully entitled by reason of the Company not delivering the grain.

(3) A person entitled to receive grain that is lost or damaged is, notwithstanding that he has not received it, obliged to pay such toll or other charges as would have been payable, under the provisions of this Act, had he received the grain on the day on which the loss or damage occurred.

17. (1) Where, for any purpose under, or relating to, the provisions of this Act or the regulations, a poll of growers is taken, then, notwithstanding any provision of the memorandum or articles of association of the Company to the contrary, the poll shall be taken by secret ballot.

Polls of growers to be taken by secret ballot.
S. 11A.

(2) The person conducting a poll of growers may take such action and give such directions as he considers necessary to ensure that the poll is taken by secret ballot and that no irregularity occurs in, or in connection with, the ballot.

(3) Every person who—

(a) refuses or fails to comply with a direction given pursuant to subsection (2) of this section; or

(b) obstructs or hinders—

(i) the person conducting, or a person carrying out the directions of the person conducting, the ballot; or

(ii) the taking of any action pursuant to subsection (2) of this section,

commits an offence.

Penalty: Forty Dollars.

(4) The Company shall take such steps as may be necessary to ensure that ballot papers, envelopes, counterfoils, lists and other documents used in connection with, or relating to, a ballot under this section are prepared and kept at such place, and for such period after the completion of the ballot, as the Minister may direct.

Title to
grain in
Company's
care.
S. 21.

18. (1) The receipt of grain in bulk by the Company does not confer on the Company any proprietary right or interest in the grain or render the grain liable to seizure or attachment, as against the Company.

(2) As regards grain, the position of the Company at law is that of a custodian for reward.

(3) The proprietary interest in grain is vested in the person who, for the time being, is entitled to obtain it from bulk stocks held by the Company or under its control.

Company to
allow use of
port
facilities.
S. 26B (5).

19. Subject to this Act and the regulations, the Company shall allow a person, on payment of the prescribed charges, the use of any bulk handling facilities and equipment controlled by it, at ports in the State.

PART III—FACILITIES TO BE PROVIDED BY THE COMPANY.

Further
installations
to be
approved by
Minister.
S. 4.

20. After the coming into operation of this Act, a fixed bin or bulk handling equipment shall not be installed by the Company for the reception of grain from growers, without the consent of the Minister.

Facilities to
be provided
when
Minister so
requires.
S. 5.

21. The Company is, when so required by the Minister, obliged to instal, maintain, and operate a bin for the reception and handling of grain in bulk, at any point in respect of which the Minister is satisfied that the average annual receipt of grain can reasonably be expected to exceed two hundred thousand bushels for a period of at least five years; but the Minister shall not require the installation of a bin within twenty-five miles of an existing bin.

Plans and
specifica-
tions of
installations
to be
approved by
Minister.
S. 6.

22. (1) Before proceeding to instal a bin, the Company shall prepare, and submit, plans and specifications of the bin to the Minister, for his approval.

(2) If the Minister is satisfied with the plans and specifications of a bin, he may approve them, otherwise he may cause the plans and specifications to be altered and approve them, as altered.

(3) A bin shall be installed in accordance with the plans and specifications as finally approved by the Minister.

23. Where, in the opinion of the Minister, a bin or any equipment provided by the Company in connection with a bin is inadequate for the needs of the district that it serves or is intended to serve, the Minister may, by notice in writing, require the Company to make such alterations or additions or to provide such further equipment for the operation of the bin as the Minister thinks necessary, and the Company shall comply with any such requisition.

Minister may require Company to alter inadequate facilities.
S. 7.

24. The Company shall, at all times—

- (a) keep all bins and bulk handling equipment used by it or under its control in good repair and condition and in safe working order;
- (b) take and use proper precautions in the operation of bins and bulk handling equipment, so as to protect all grain received and handled from weather, vermin and fungus; and
- (c) take and use all proper precautions in the receipt, handling, transport and delivery of grain, so as to ensure that all types of grain are kept separate from one another.

Company to keep bins in good condition.
S. 8.

PART IV—SHIPPERS' DELIVERY BOARD.

25. (1) A Board, called "The Shippers' Delivery Board", is constituted.

Shippers' Delivery Board.
S. 28.

(2) The Board shall consist of four members, including the Chairman.

(3) The members of the Board shall be—

- (a) the Commissioner of Railways, by virtue of his office, or, in the absence of the Commissioner, the Chief Traffic Manager of the Western Australian Government Railways;
- (b) a person appointed by the Governor to represent the various port authorities through whose ports bulk grain is shipped;
- (c) a person elected, in the prescribed manner, by those merchants operating in the State who are shippers of grain; and
- (d) a person appointed by the Company.

(4) The members of the Board shall elect one of their number as chairman.

(5) The Minister shall, as the occasion requires, by notice in writing to the merchants mentioned in paragraph (c) of subsection (3) of this section require them to elect a person as a member of the Board, in the prescribed manner, and, by like notice to the Company, require it to appoint a member of the Board, both within such period, being not less than one month, as may, in each case, be stipulated in the notice and if, upon the expiration of the period so stipulated or such extension of that period as the Minister may grant, the required election has not been held or the required appointment has not been made, the Minister shall nominate such person as, having regard to the interest the person is to represent, he thinks fit; and the Governor may appoint a person so nominated to be a member of the Board.

Meetings
of Board.
s. 29.

26. (1) The Board shall meet together from time to time as may be necessary for the transaction of business.

(2) A special meeting of the Board may at any time be called in the prescribed manner by two members of the Board.

(3) The Board may appoint a secretary.

27. (1) Three members of the Board constitute a quorum. Quorum.
S. 30.

(2) The chairman of the Board shall have a deliberative, as well as a casting vote.

28. The members of the Board are not entitled to any remuneration for their services as such. No fees payable to members.
S. 31.

29. It is the duty of the Board to take such action as may be practicable— Duties of Board.
S. 32.

- (a) to prevent any disorganisation of, or congestion in, the transport of grain; and
- (b) to ensure that adequate supplies of grain are transported to the ports to meet the demands of shippers and charterers of vessels in accordance with the provisions of sections thirty and forty-six.

30. (1) The Board shall, from time to time, on the information furnished to it and having regard to the facilities available for the handling, transport, storage and delivery of the grain,— Board to compile shipping rosters.
S. 34.

- (a) draw up shipping rosters; and
- (b) specify the quantities of grain that the Company is, from time to time, to transport to any port, to meet shippers' requirements.

(2) It is the duty of the Company to ensure that grain is transported to the ports, and that ships arriving to load bulk grain are kept supplied, in accordance with the specifications of the Board.

PART V—TOLLS AND CHARGES.

31. (1) There shall be paid to the Company, in respect of all grain received in bulk, a toll, to be known as the foundation toll, of five cents per bushel or such lesser toll as the Governor may, from time to time, fix by Order in Council. Payment of Foundation Toll.
S. 26A.

(2) The foundation toll shall be paid to the Company by every holder of a warrant upon his surrendering it to the Company.

(3) The Company shall keep a register containing the names and address of every grower and shall, on or before the prescribed date in each year, enter in the register against the name of every grower whose grain has been delivered to, or handled by, the Company, during the preceding season, a credit for the amount of the foundation tolls received by the Company in respect of grain delivered to, or handled by, the Company, for the grower.

(4) The amount of each foundation toll received by the Company, in respect of a grower, is deemed to be an advance to the Company by the grower to whom it is, in accordance with subsection (3) of this section, credited in the register and, subject to any set off or deduction made under subsection (6) of this section, is a debt owing, by the Company to the grower, and that debt shall be satisfied by the issue to the grower of a foundation debenture.

(5) The foundation debentures of every issue are deemed to have been issued on the footing that the Company may redeem them at any time and those to be redeemed in any year shall be selected by ballot or in such other manner as the Company may, from time to time, determine.

(6) The Company shall cause one fully paid up two-dollar share in its capital to be issued or transferred to every grower whose name is entered in the register and who is not, at the time of that entry, the registered holder of a share in the capital of the Company and who is credited with foundation tolls received by the Company exceeding the amount of

two dollars, and, in payment for that share, the Company shall set off the amount of two dollars from the foundation tolls credited to the grower.

(7) Shares that have not previously been issued by the Company shall not be issued for the purposes of subsection (6) of this section, if any shares previously issued by the Company that have reverted to, or have otherwise been acquired by, the Company are available for re-issue or transfer.

(8) All foundation toll payments received by the Company, less any amounts set off or deducted under subsection (6) of this section, may be applied by the Company for additional capital expenditure, for repayment of moneys borrowed for that purpose and for replacing losses incurred by the Company in the conduct of its business and, subject to their being so applied, the toll payments shall be applied by the Company, at annual intervals, on, or as soon as convenient after, the prescribed date in each year, in redeeming the debentures of its then current issue or, alternatively, in payment, during each year of the term of the foundation debentures, of such part of the amount of them as is proportionate to that term.

(9) On each occasion that an issue of foundation debentures is redeemed in full, a further issue of foundation debentures shall be made by the Company to the growers or their respective assigns, for the amounts then standing respectively to their credit in the foundation debenture register kept pursuant to this section.

(10) The foundation debentures of each further issue made pursuant to subsection (9) of this section shall be in the same form as that of the issue of foundation debentures current at the date of the coming into operation of this Act, but the term of those debentures shall be ten years computed from the prescribed date of the year of issue.

Payment of
Port
Equipment
Tolls.
S. 26B.

32. (1) Without affecting the provisions of section thirty-one, there shall be paid to the Company, in respect of all grain received in bulk, a toll to be known as the port equipment toll of two cents per bushel or such lesser toll as the Governor may from time to time fix by Order in Council.

(2) Subsections (2) and (3) of section thirty-one apply *mutatis mutandis* to the port equipment toll as though they were set out in this section.

(3) The amount of each port equipment toll received by the Company, in respect of a grower is deemed to be an advance to the Company by the grower to whom it is credited in the port equipment toll register and is a debt owing by the Company to the grower and that debt shall be satisfied by the issue to the grower of a port equipment debenture.

(4) All port equipment toll payments received by the Company may be applied by it for or towards the capital cost of providing and installing bulk handling facilities and equipment at ports in the State and in repaying moneys borrowed for that purpose, together with interest and other charges, and subject to their being so applied, they shall be applied by the Company at annual intervals on, or as soon as convenient after, the prescribed date in each year, in redemption of the issue of the port equipment debentures then current or, alternatively, in payment, during each year of the term of the port equipment debentures, of such part of the amount of them as is proportionate to that term.

(5) The debentures to be paid off each year shall be selected by ballot or in such other manner as the Company may, from time to time, determine.

(6) On each occasion that an issue of port equipment debentures is redeemed in full, a further issue of port equipment debentures shall be made by the

Company to the growers or their respective assigns, for the amounts then standing respectively to their credit in the port equipment toll register kept pursuant to this section.

(7) The port equipment debentures of each further issue made pursuant to subsection (6) of this section shall be in the same form as that of the issue of port equipment debentures current at the date of the coming into operation of this Act, but the term of those debentures shall be ten years, computed from the prescribed date of the year of issue.

33. Where the Company is under obligation, in any year, to make a further issue of debentures in respect of foundation tolls, pursuant to the provisions of section thirty-one, and, in the same year, a further issue of debentures in respect of port equipment tolls, pursuant to the provisions of section thirty-two, the liability of the Company to the growers in respect of each toll shall be merged and one issue only of debentures shall be made by the Company to the growers or their respective assigns in satisfaction of the aggregate of the amounts then standing respectively to the credit of the growers in the foundation toll register and in the port equipment toll register, and one debenture, only, comprising the aggregate amount of both tolls shall be issued to each grower or his assign.

Merger of
Debenture
in one issue.
S. 260.

34. (1) In return for the services of the Company in the receipt, handling, storage and delivery of grain, the Company is authorised to make such charges as are from time to time fixed by the Governor.

Charges by
Company to
be approved
by
Governor.
S. 26 (2).

(2) The Company shall not make any other levies or charges for, or in respect of, the bulk handling of grain except such as are fixed pursuant to this section or are, by this Act, expressly authorised.

(3) No alteration which may be made from time to time in the levy or charges authorised under this section affects the holder of a warrant issued prior to the alteration.

Company to have lien in priority for tolls and charges.
S. 27.

35. (1) The Company has a lien, in priority to all other claims, over any grain received by it, in respect of the tolls and other charges payable in respect of that grain under the authority of this Act.

(2) A person obtaining delivery of grain from the Company is authorised to pay the toll and charges in respect of the grain and to set off any amount so paid against any moneys payable by him in respect of the grain, or of any equivalent quantity of grain, of which he may obtain delivery.

PART VI—WEIGHBRIDGE TICKETS AND WARRANTS.

Company to issue weigh-bridge ticket on receipt of grain.
S. 22.

36. (1) On receipt of grain, the Company shall cause it to be weighed, its standard to be determined and a weighbridge ticket to be issued for the grain.

(2) Every weighbridge ticket issued pursuant to this section shall set out—

- (a) the type of grain in respect of which it is issued;
- (b) the name of the person in whose name the grain is delivered;
- (c) the weight and quantity of grain delivered;
- (d) where determined at the time of delivery, its standard and dockage; and
- (e) such other particulars as may be prescribed.

(3) All weighbridge tickets issued for any one type of grain shall be consecutively numbered and the Company shall not issue two weighbridge tickets bearing the same number, for the same type of grain, in any one season.

37. (1) The Company shall issue a warrant in respect of grain received, setting out such particulars as may be prescribed, as soon as practicable after being so required by the grower and, where the grower does not, within a reasonable period, require the issue of a warrant, the Company may issue it of its own motion.

Company to
issue
warrants.
S. 22.

(2) Every warrant shall be serially numbered and the Company shall not issue two warrants bearing the same number for the same type of grain, in any one season.

38. (1) Where a person delivers grain to the Company and the delivery is made in derogation of the right, title or interest of another person—

Liability of
persons for
conversion.
S. 23.

- (a) the person in whose name the grain is delivered;
- (b) the person to whom a warrant is issued in respect of the grain; and
- (c) the holder of a warrant issued in respect of the grain,

is liable to the person whose right, title or interest is so affected.

(2) Subject to the provisions of subsection (1) of this section, every warrant is a negotiable instrument transferable by endorsement; but every person to whom a warrant is negotiated or transferred accepts and holds it subject to any lien over, and the right, title or interest of any person to or in, the grain in respect of which the warrant was issued.

(3) An endorsement of a warrant may be general or special.

PART VII—RECEIVAL AND DELIVERY OF GRAIN BY
THE COMPANY.

Company
granted
sole right of
receiving
and
delivering
grain.
s. 3.

39. (1) Subject to this Act, the Company has the sole right, until the thirty-first day of December, one thousand nine hundred and eighty-five, of receiving grain in bulk and of handling, transporting and delivering grain received in bulk and a person who, within the period limited by this subsection, does any of those things commits an offence.

Penalty: One thousand dollars.

(2) A court convicting a person of an offence under this section shall, whether imposing any penalty or not, order the person to pay to the Company an amount equal to the tolls that would have been payable to it in respect of the grain received, handled, transported or delivered in contravention of this section and the amount so ordered to be paid may be recovered as though it were a penalty imposed pursuant to this section.

(3) Notwithstanding the provisions of subsection (1) of this section—

- (a) the grower of a grain crop may transport a quantity of the grain not exceeding one-tenth of the marketable portion of the crop, by rail;
- (b) a miller may receive, in bulk, any wheat having a special milling quality, whether by reason of its having been grown in any particular part of the State or not;
- (c) a person may receive, handle, transport, and deliver grain in bags; and
- (d) the Commissioner of Railways and his officers or servants do not commit an offence by reason only of receiving, handling, or carrying in bulk any grain that may be delivered to him or them by any person, in contravention of the provisions of this section.

40. The Company shall make available to a grower requiring it, at any point at which it is operating, a statement showing the prescribed terms, conditions and charges under which grain is received in bulk by the Company and then in force.

Statement showing handling conditions. S. 19.

41. Notwithstanding any contract or agreement to the contrary, the terms and conditions provided by, or prescribed under, this Act apply to every receipt, handling and delivery of grain by the Company.

Company to handle in accord with Act. S. 20.

42. (1) Subject to subsection (2) of this section, the Company shall receive all grain that is tendered to it in bulk.

Company to receive all bulk grain tendered. S. 24 (1).

(2) Notwithstanding the provisions of subsection (1) of this section, the Company—

(a) shall not receive, as and when tendered, any grain that is unsound or that is inferior to the lowest grade then in force, but shall make arrangements to receive the grain at such time or place, or subject to such conditions, as it may require;

(b) is not obliged to receive any grain except at a reasonably convenient time and place nominated by it nor, unless the Minister so directs, at any terminal elevator to which the grain tendered has been transported more than sixty miles by road.

(3) Where the Minister is of the opinion that the arrangements made by the Company under paragraph (a) of subsection (2) of this section are, or that the time or place nominated by the Company under paragraph (b) of that subsection is, onerous, he may require the Company to make other arrangements or to nominate some other time or place, as the case may require, to his satisfaction.

Determina-
tion of
grade of,
and dockage
applicable
to, grain.
S. 25.

43. (1) The things giving rise to dockage, and the extent to which dockage is applicable, shall be such as may be prescribed.

(2) When grain is tendered to the Company by, or on behalf of, a grower, an officer of the Company shall, subject to the succeeding provisions of this section, determine the grade of the grain and the dockage (if any) that is applicable to it and shall inform the person tendering the grain of his determination.

(3) If the grower consents, the officer mentioned in subsection (2) of this section may, instead of determining the grade of, or the dockage applicable to, the grain, receive it subject to the determination of those things or either of them at an office of the Company nominated by it and the grower shall be informed by the Company of a determination so made.

(4) Where the grade of, or dockage applicable to, grain is not to be determined by the officer at the place where it is tendered, he shall take, and deal with, a sample of the grain, in the manner prescribed by the regulations.

(5) A person who is dissatisfied with a determination made pursuant to subsection (2) of this section, may require the determination to be made by an officer of the Company at Perth or by the Department of Agriculture of the State and the determination shall, thereupon be made in the manner prescribed by the regulations.

(6) The regulations may provide for the payment of fees for, and expenses attendant upon, a determination made pursuant to subsection (5) of this section.

(7) Where the grower or his representative does not dispute the grade or dockage determined pursuant to subsection (2) of this section, the officer of the Company shall cause his determination to be entered on the weighbridge ticket.

44. The holder of a warrant is, subject to any variations allowed by this Act or the regulations, entitled to receive an equivalent weight of grain of the type corresponding with, and of a grade at least equal to, that in respect of which the warrant was issued.

Guarantee
of quality
and
quantity.
S. 36.

45. (1) The holder of a warrant shall take delivery of the grain to which the warrant relates, on or before the thirtieth day of the month of September next following the receipt of the grain by the Company.

Company
may sell if
delivery not
taken by
30th Septem-
ber.
2nd
Schedule
(6).

(2) In the event of a warrant holder not taking delivery as provided by subsection (1) of this section, the Company is relieved of its obligations to deliver the grain under the warrant and may, at any time and from time to time thereafter, sell the grain,—

- (a) in one or more parcels;
- (b) in one or more different sales; or
- (c) separately or together with any other grain,

as may be prescribed, and shall, in the manner prescribed, pay the proceeds of the sale or sales to the warrant holder, making deductions for tolls, charges and expenses of the sale.

(3) Notwithstanding the foregoing provisions of this section, where the Governor is of the opinion that a state of emergency exists, he may, by Order in Council, extend the time limited by subsection (1) of this section for the taking of delivery of grain, by fixing such date subsequent to that provided by that subsection as he considers necessary.

46. (1) A holder of a warrant requiring grain from the Company for shipment, shall notify the Board and the Company of the requirement, forthwith after arranging the charter of a ship to carry

Shippers to
give
notice of
charter.
S. 33.

the grain from a port at which the Company loads bulk grain, and shall furnish, with the notice, such other particulars as may be prescribed.

(2) Where the holder of a warrant who has given notice pursuant to subsection (1) of this section receives any notification of an alteration in the estimated date of arrival of a ship chartered by him, he shall forthwith notify the Board and the Company of that happening and shall, in any event and at least six days before the vessel is due to arrive, notify the Board and the Company of the then last port of call of the vessel and the date of departure therefrom and shall furnish such other particulars as may be prescribed.

Warrant holder's right to sample grain.
S. 37.

47. (1) The holder of a warrant is entitled to receive a sample of grain that is in any bin, truck or container from or in which grain may be delivered to him.

(2) The holder of a warrant is not entitled to reject individual bins, trucks or containers, unless, in the case of grain being delivered for shipment, the running bulk sample of the shift being worked, or in the case of grain being delivered other than for shipment, the running bulk sample of the bin, truck or container is below the grade as specified in the warrant.

Disputes as to quality of grain for shipment.
S. 38.

48. (1) In the event of any dispute as to the quality or condition of grain tendered by the Company to the holder of a warrant for shipment, the holder may require delivery operations to be discontinued and the Company and the holder of the warrant shall, thereupon, each appoint an arbitrator to determine the dispute.

(2) For the purposes of an arbitration under this section, a sealed sample of the grain that is the subject of dispute shall be taken jointly by the parties to the dispute and shall be supplied to the arbitrators, together with a standard sample, in such a manner that the identity of the samples is not known to the arbitrators.

(3) The arbitrators shall make their award with the least possible delay, and in any case not later than twenty-four hours after the reference, and the arbitration shall, subject to the express provisions of this Act, be conducted as, and have all the incidents of, a reference under the Arbitration Act, 1895.

49. (1) In the event of any dispute as to the quality or condition of grain tendered by the Company to the holder of a warrant for delivery, other than at a port, the holder of the warrant may require the dispute to be submitted to arbitration.

Disputes as to quality of grain delivered for other than shipment
S. 39.

(2) Sealed samples of the grain that is the subject of dispute under this section shall be taken in the prescribed manner.

(3) Upon payment of the prescribed fee on behalf of the holder of the warrant, the samples of the grain that is the subject of dispute shall be forwarded to the Department of Agriculture and there inspected in accordance with the regulations by an officer of that department nominated by the Minister, and the officer shall give his decision on the matter in dispute.

50. The cost of arbitration pursuant to section forty-eight or forty-nine, together with any costs reasonably and directly incurred for demurrage, hauling, handling or otherwise arising out of the dispute shall be borne by the party against whom the award is given under the arbitration.

Costs of arbitration.
S. 40.

PART VIII—MISCELLANEOUS.

51. Notwithstanding any other provisions of this Act, during the operation of any law, whether of the Commonwealth or the State, providing for compulsory marketing of any grain handled by the Company—

Compulsory marketing.

- (a) the toll or tolls referred to in sections thirty-one and thirty-two shall be payable by, and recoverable from, the grower to

whom it is or they are credited and the tolls, including any arrears of tolls, shall be a first charge in priority to all other claims on the moneys payable under the relevant compulsory marketing law in respect of the relative grain;

- (b) the Company shall not be obliged to issue a warrant pursuant to section thirty-seven but shall, instead, issue such document or documents as may be agreed with the relevant marketing authority and approved by the Minister;
- (c) the Board shall not operate and its functions shall be carried out by a shippers' or other committee consisting wholly or partly of nominees of the Company and of the relevant marketing authority; and
- (d) instead of the remuneration elsewhere provided by this Act, the Company shall, for its services, be entitled to such remuneration, being not less in the aggregate than that provided by this Act, as may be negotiated by it with the relevant marketing authority.

Contracts
for bulk
handling
of grains
other than
wheat or
barley.
S. 27B.

52. (1) The Company has the right of receiving, handling, transporting and delivering in bulk such seeds other than the seeds of wheat and barley as the Minister may approve.

(2) The Company shall at all times, take and use all reasonable precautions to ensure that seeds received by it under the authority of this section are kept segregated from one another and from the seeds of wheat and barley.

(3) The provisions of sections five, seven to nine inclusive, eleven, fourteen to sixteen inclusive, eighteen, thirty-one to thirty-three inclusive, thirty-five to thirty-eight inclusive, forty-three to fifty inclusive, and fifty-three apply, *mutatis mutandis*, to all seeds received under the authority of this section.

53. (1) The Governor may make such regulations as are contemplated or required by this Act and may make such other regulations as may, in his opinion, be necessary or convenient for giving full effect to the provisions of, and for the due administration of, this Act.

Regulations.
S. 41.

(2) Without limiting the generality of subsection (1) of this section, the Governor may make regulations for—

- (a) the conduct of bulk handling by the Company;
- (b) the method and procedure to be followed and observed by the Company in the exercise of its powers and in the conduct of its business under this Act, the records to be kept by the Company and the audit of its books and accounts;
- (c) the fixing of grades and dockages for grain;
- (d) the delivery to, and receipt by, the Company of grain in bulk, the precautions to be taken in regard to the checking of the quality and weight of grain received and ensuring that the quality of grades of grain received by the Company are not below the limit of variations from the prescribed or adopted standards;
- (e) the protection of charges, liens or securities over grain offered or delivered to the Company;
- (f) the delivery of grain by the Company and ensuring that proper precautions are taken to check the weight and quality of the grain delivered;
- (g) the issue of warrants in place of warrants lost or destroyed, the conditions under which two or more warrants may be issued in exchange for one or under which one warrant may be issued in exchange for two or more;

- (h) the settlement by arbitration, subject to any specific provisions of this Act, of questions and disputes arising between the Company and the holders of warrants; and
- (i) the imposition of penalties not exceeding two hundred dollars for any breach of the regulations made pursuant to this section.

General
penalty.

54. Every person guilty of an offence against this Act for which a penalty is not expressly provided is liable to a penalty not exceeding one hundred dollars.

S. 4.

SCHEDULE.

Title of Act.

Bulk Handling Act, 1935.
Bulk Handling Act Amendment Act, 1943.
Bulk Handling Act Amendment Act, 1946.
Bulk Handling Act Amendment Act, 1948.
Bulk Handling Act Amendment Act, 1950.
Bulk Handling Act Amendment Act, 1952.
Bulk Handling Act Amendment Act, 1953.
Bulk Handling Act Amendment Act, 1961.
Bulk Handling Act Amendment Act, 1963.
