

MARKETING OF ONIONS.

9° and 10° GEO. VI., No. XIII.

No. 13 of 1945.

AN ACT to amend the Marketing of Onions Act, 1938.

[Assented to 9th January, 1946.]

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

Short title.

1. This Act may be cited as the *Marketing of Onions Act Amendment Act, 1945*, and shall be read as one with the Marketing of Onions Act, 1938 (No. 52 of 1938), hereinafter referred to as the principal Act.

Amendment of s. 11.
Repeal and new section.

2. Section eleven of the principal Act is repealed and a new section is inserted in lieu thereof as follows:—

Provisions relating to onions acquired by the Board.

11. Whenever a proclamation is issued under section four of this Act, the following provisions shall apply, that is to say:—

(a) By virtue of such proclamation every grower shall become and continue to be a bailee in possession on behalf of the Board of all onions produced by him and to which the proclamation applies until such time as the Board requests in writing served on the grower, delivery of such onions either to the Board or its agent or to a purchaser from the Board of such onions.

- (b) While a grower continues to be a bailee in possession of onions as aforesaid he shall be responsible to the Board for the safe keeping, storage and protection of such onions.
- (c) Subject to paragraph (d) hereof, any grower who, while he continues to be bailee in possession of any onions, sells or delivers any of such onions to any person other than the Board, except with the authority in writing of the Board, and any person, other than the Board, who buys or receives from a grower, who is bailee in possession of onions as aforesaid, any of such onions except as a purchaser from or authorised agent of the Board shall be guilty of an offence.
- Penalty—Fifty pounds.

(d) The Board may in such cases and on such terms as the Board may think fit exempt (either generally or in any particular case) from the operation of this section—

(i) Such small growers as the Board may think fit;

(ii) Sales direct to local consumers or to retail vendors;

(iii) Such onions as the grower may require for his own use;

(iv) Such other sales, purchases, or transactions as may be prescribed—

and may at any time revoke any such exemption.

(e) The Board's decision as to whether any specified person or quantity of onions or transaction falls within the limits of any exemption granted under paragraph (d) hereof shall be final.

(f) As soon as reasonably may be after the issue of the proclamation the Board shall, by public notice or by notice in writing direct served upon each grower, as the Board may elect, fix a date, which shall not be less than fourteen days after the date of the publication of the

public notice or of the service of the notice in writing direct to the grower as the case may be, on or before which growers shall furnish to the Board the statement and declaration required by paragraph (g) of this section.

- (g) (i) Within the time specified by a public notice or other notice in writing published or served as provided for in paragraph (f) hereof, every grower affected thereby shall furnish to the Board in writing in the prescribed form and verified by the statutory declaration of such grower a statement of the estimated quantity and of the variety or varieties of the onions which have been or are in course of being produced by such grower, and which are or will be by virtue of the said proclamation the property of the Board.
- (ii) Subject as in this subparagraph hereafter provided, every grower shall be bound by the statement furnished by him to the Board as aforesaid to account to the Board for the quantity of onions stated in such statement or for the value thereof.

Provided that—

(a) If a grower accounts to the Board for not less than ninety per centum of the quantity of onions specified in his said statement, he shall be deemed to have accounted satisfactorily for the whole of the estimated quantity specified in such statement; and

(b) Where a grower fails to account for ninety per centum of the quantity of onions specified in his said statement and he can prove positively that such failure is due to an occurrence for which the grower was not in any way responsible or over which he had no control and is not due to a deliberate or reckless over-estimation by the grower or his servant or agent of the quantity of onions produced by the grower, such grower shall not incur any liability to the Board in respect of the quantity of onions for which he has failed to account as aforesaid.

- (iii) When in the opinion of the Board a grower has in any statement furnished by him in accordance with subparagraph (1) of this paragraph deliberately or recklessly over-estimated the quantity of onions produced or in course of being produced by him the Board may for any purposes relating to sales of onions by the Board or the distribution of proceeds from sales of onions under section fifteen of this Act or for any other purposes material to the administration of this Act itself determine and fix such estimate of the quantity of onions produced or in the course of being produced by such grower as to the Board appears to be warranted by the information available to it, and thereafter may use and apply such estimate for all or any of the purposes aforesaid.
- (h) (i) A grower when estimating the quantity of onions produced or in course of being produced by him for the purposes of the statement to be furnished by him in accordance with subparagraph (i) of paragraph (g) of this section shall exclude from such estimate onions which are not or are not likely to be of the prescribed quality or which do not or are not likely to conform to the prescribed standard.
- (ii) Whenever the Board is of the opinion from any information available to it that a grower has included in his estimate of onions produced or in course of being produced by him any onions which in accordance with subparagraph (i) of this paragraph such grower should have excluded from such estimate the Board may reduce the said estimate of the grower by excluding therefrom the quantity of onions which the grower should have excluded therefrom as aforesaid.
- (i) As soon as practicable after the receipt from a grower of the statement and declaration furnished by him to the Board in accordance with subparagraph (i) of paragraph (g) of this section, and after the Board is satisfied as to

the reasonableness of the estimate of the quantity of onions produced or in course of being produced by such grower specified in such statement or, where in its opinion necessary, the Board has varied such estimate as authorised so to do by this section, the Board shall issue to the grower a certificate in the prescribed form stating the estimate of the quantity of onions produced or in course of being produced by such grower of which the Board approves or which otherwise the Board has determined and fixed as authorised by this section.

- (j) The Board may make or arrange for advances on account of onions produced or in course of being produced by a grower on the basis of the estimate of the quantity of such onions of such grower of which the Board has approved or which otherwise the Board has determined and fixed as aforesaid; and any payment made by the Board on account of such onions may be made at such time or times and on such terms and conditions and in such manner as the Board may think fit.

Amendment of
s. 13.

3. Section thirteen of the principal Act is amended as follows:—

- (a) by deleting subsection (1) and inserting in lieu thereof a subsection as follows:—

(1) Every grower when furnishing to the Board in accordance with paragraph (g) of section eleven of this Act the statement of the estimated quantity of onions produced or in course of being produced by him shall give to the Board notice of any lien, mortgage, charge, encumbrance or other claim affecting such onions.

Penalty—Ten pounds.

- (b) By deleting from subsection (2) the words “delivered to the Board” in line four of such subsection and inserting in lieu thereof the words “referred to in the statement furnished by a grower to the Board in accordance with paragraph (g) of section eleven of this Act.”

- (c) By deleting from subsection (2) the word “delivery” in line five of such subsection and inserting in lieu thereof the words “furnishing of such statement.”

4. Section fourteen of the principal Act is amended as follows:— Amendment of
s. 14.

- (a) by deleting the words “delivered to it” in line two of the section and inserting in lieu thereof the words “which are vested in and are the property of the Board within the meaning and for the purposes of this Act.”

- (b) By adding to the section a subsection as follows:—(2) Provided that when selling or arranging for sales of onions as authorised by this section the Board shall as far as practicable allocate to such sales the onions produced by the various growers respectively in the proportions which the quantities of onions mentioned in the certificates issued by the Board to such growers respectively under paragraph (i) of section eleven of this Act bear to the aggregate quantity of onions mentioned in all such certificates aforesaid, with the intent that there shall not be any unreasonable discrimination in favour of any grower in the disposal of such onions.

5. Section fifteen of the principal Act is repealed, and a new section is inserted in lieu thereof as follows:— Amendment of
s. 15.
Repeal and
new section.

15. (1) Subject to this Act the Board shall, out of the proceeds of sales of onions disposed of by it under this Act, make payments to each grower who has received from the Board a certificate issued by the Board under paragraph (i) of section eleven of this Act in respect of the quantity of onions specified in such certificate on the basis of the net proceeds of the sale of all the onions of the same quality or standard sold by the Board during or covering such periods of time as may be prescribed and the proportion which the quantity of onions specified in such certificate bears to the aggregate quantity of onions specified in all the certificates aforesaid issued by the Board to all the growers who received such certificates. Payments to
growers.

Provided that where after the issue of such a certificate to a grower and before any payment is made to such grower under this section the Board is satisfied by reason of any information available to it since the date of the issue of the certificate to such grower that the quantity of onions specified in the certificate exceeds the quantity of onions actually produced by such grower by more than ten per centum, the Board may, notwithstanding such certificate, make payment to such grower with respect to the quantity of onions actually produced by the grower.

(2) The Board may settle and adjust all conflicting claims in respect to payments to be made in respect of any onions under this section; but at the request of any party to a dispute regarding any such claim the dispute shall be referred in the prescribed manner for decision by the local court held nearest to the office of the Board.

(3) For the purpose of ascertaining the net proceeds of the sale of onions by the Board to be distributed among growers under this section and generally for the purposes of the Act the Board's decision as to the quality or standard of such onions, the method of determining the dockages or deductions, cost of freight and other charges, and all expenses incurred in or about the marketing of the onions and the administration of this Act shall be final.

(4) As and when the Board receives the proceeds of the sale of onions by the Board under this Act, it may deduct therefrom such amount not exceeding twelve and one half per centum of the amount of such proceeds as the Board may from time to time determine and place the same to the credit of an account to be kept by the Board and to be called "The Board Administration Account" for use by the Board for or on account of the administration expenses of the Board as they arise from time to time.

Amendment of
s. 16.

6. Section sixteen of the principal Act is amended by deleting paragraph (a) of subsection (1) and inserting in lieu thereof a paragraph as follows:—

(a) to a grower in respect of onions produced by him.

7. Section seventeen of the principal Act is amended by deleting paragraph (c) of subsection (2) and inserting in lieu thereof a paragraph as follows:—

Amendment of
s. 17.

- (c) for ascertaining whether onions are of the prescribed quality or standard, and prescribing a quality or standard for onions, and for an increase or decrease in the amount otherwise payable to any grower under section fifteen of this Act in respect of onions produced by him according to the quality of the onions whether at the time when such grower furnishes to the Board in respect of onions produced or in course of being produced by him the statement and declaration provided for in paragraph (g) of section eleven of this Act or subsequently; and for regulating the transport, treatment, grading, packing, storing, marketing, selling, exporting and delivery to purchasers from the Board of onions.

8. The principal Act as amended by this Act may be cited as the Marketing of Onions Act, 1938-1945.

Citation of
principal Act
as amended.