

MARKETING OF ONIONS.

2° and 3° GEO. VI., No. LII.

No. 52 of 1938.

AN ACT to make provision for the marketing, sale and disposal of onions, and to constitute an **Onion Marketing Board**, and for other relative purposes.

[Assented to 31st January, 1939.]

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*, 1938, and shall come into operation on a day to be fixed by proclamation.
- Definitions.** 2. In this Act, subject to the context—
- “Authorised agent” means any person lawfully authorised by the Board to take delivery of onions on its behalf and includes any person lawfully acting on behalf of any authorised agent.
- “Board” means the Onion Marketing Board constituted under this Act.
- “Certificate” means a document in the prescribed form issued by the Board as evidence of delivery by a grower to the Board of any quantity of onions.

“Grower” means a person by whom or on whose behalf onions are actually grown or produced for sale on any area not less than a quarter of an acre; and where onions are grown or produced pursuant to any share-farming or partnership agreement (whether express or implied) includes any party or parties to such agreement.

“Minister” means the Minister for Agriculture.

“Public notice” means a notice published in the *Gazette* and in one newspaper circulating in the districts in which onions are grown or produced.

3. (1) The Governor may, whenever requested so to do by a petition signed by not less than fifty growers carrying on the business of growing or producing onions, issue a proclamation fixing the day for the taking of a poll of the growers so carrying on business in Western Australia, on the question whether a Board shall be constituted. The issue of such proclamation shall be conclusive evidence of the validity and regularity of the petition.

Appointment
and constitu-
tion of the
Board.

(2) If on the taking of such poll more than three-fifths of the votes polled are in favour of the constitution of a Board, the Governor may by a subsequent proclamation declare that a Board to be known as “The Western Australian Onion Marketing Board” shall be constituted, and may thereby appoint a day for the election by growers of the elective members who shall sit on the Board.

(3) No grower shall be entitled to join in any such petition, or take part in any such poll as aforesaid, or in any election under this Act, unless he is of the full age of twenty-one years and be a natural born or a naturalised British subject and during the preceding growing season has harvested at least a quarter of an acre of onions.

(4) The number of elective members who shall sit on the Board shall be two, both of whom shall be growers.

(5) The Board shall consist of the members elected under this section and of three additional members to be nominated by the Governor in the prescribed manner one of whom shall represent the consumers and one at

least of such additional members shall be a person of mercantile and commercial experience.

(6) Provision for the expenses of any such poll as aforesaid and for the first election of the members of the Board shall be made by the signatories of the petition pursuant to which the poll was ordered; but the Board shall, on receipt of a notice in writing signed by the Minister specifying such expenses, reimburse such signatories out of the proceeds of sales of onions to be made by the Board as hereafter in this Act provided.

(7) Regulations made under this Act may provide for—

- (a) the forms of petitions;
- (b) the compilation of lists of persons entitled to vote at polls and elections, the conduct of polls and elections, and the manner of voting thereat, and the ascertainment and announcement of the result thereof;
- (c) the qualifications (subject to subsections (4) and (5) of this section) and tenure of office of members of the Board;
- (d) the holding of periodical elections and the number of members to be elected at any periodical election;
- (e) the vacation of office by members of the Board, and the filling of casual vacancies by election or nomination, as the case may require, and (subject to the conditions laid down in section ten) the dissolution of the Board.

Acquisition of
onions by
Board.

4. (1) The Governor may at any time, on the application of the Board, provide and declare by proclamation that the property in all onions belonging to growers shall forthwith, upon the date of publication of the proclamation, or on or from some other date specified therein, be divested from the growers thereof and become vested in and be the absolute property of the Board as the owner thereof and that any onions belonging to growers thereafter coming into existence within a time specified in the proclamation shall become vested in and be the absolute property of the Board, and may by such proclamation make such further provision as will enable the Board effectively to obtain possession of such onions,

and to deal with the same, as may be deemed necessary or convenient, in order to give full effect to the objects and purposes for which the Board has been constituted.

(2) The effect of the proclamation shall be to vest the property in such onions in the Board in accordance with its tenor, freed from all mortgages, charges, liens, pledges, interests, and trusts affecting the same, and the rights and interests of every person in or against such property shall be deemed to be converted into a claim to or against the amount to be paid therefor in accordance with the provisions of this Act.

(3) Such proclamation shall not affect or extend to any onions which are the subject of trade or commerce between the States of the Commonwealth, or as are required by the growers thereof for the purposes of trade or commerce between the States, or intended by the producers thereof to be used for such trade or commerce.

5. The Board shall be a body corporate, with perpetual succession and a common seal, and may sue and be sued, and hold and dispose of real and personal property.

Board to be
body corpor-
ate

6. The Board shall not be deemed to represent the Crown for any purpose whatsoever.

Board not to
represent
Crown.

7. The members of the Board (other than a nominated member who may be in the public service) shall be paid such remuneration and allowed such expenses from the funds of the Board as may be fixed by the Governor.

Payment of
members.

8. No proceedings of the Board, and no act done by or on behalf of the Board, shall be invalidated by reason of any defect in the appointment or election of the chairman or any member of the Board, or of the chairman or any member being disqualified, or by reason of there being any vacancy in the number of the members of the Board.

Informality
or vacancy
not to invali-
date proceed-
ings.

9. (1) All powers vested in the Board may be exercised by a majority of the members present at any meeting duly held at which a quorum is present, and all questions shall be decided by a majority and by open voting.

Powers of
Board, how
exercised.

(2) The chairman (who shall be elected by the members of the Board in the prescribed manner) shall have a vote, and, if the numbers are equally divided, he shall have a second or casting vote.

(3) Three members of the Board shall form a quorum.

**Dissolution
of Board.**

10. (1) Upon the request of not less than fifty growers carrying on the business of production and having the qualifications required to take part in any poll for the constitution of a Board or in any election under this Act, the Governor may issue a proclamation fixing a day for the taking of a poll of the growers so carrying on business and so qualified on the question whether the Board shall be dissolved. The issue of the proclamation shall be conclusive evidence of the validity of the request.

(2) No such poll shall be directed within two years after the constitution of the Board or within three years after any similar poll upon which a similar question has been answered in the negative.

(3) If at any such poll more than three-fifths of the votes polled are in favour of the dissolution of the Board, the Board shall be deemed to be dissolved accordingly as from the date of the formal announcement of the result of the poll.

**All onions to
be delivered
to Board.**

11. (1) When a proclamation has been issued under section four, then all onions to which it extends shall, save as hereinafter provided, be delivered by the growers to the Board, or its authorised agents, within such times, at such places, and in such manner as the Board may by public notice, or in a particular case in writing, direct.

(2) Any person who, save as hereinafter provided, sells or delivers any such onions to, or buys or receives any such onions from, any person other than the Board, shall be liable on summary conviction to a penalty not exceeding fifty pounds: Provided that this subsection shall not apply to the sale, delivery, purchase, or receipt of any onions which have been tendered to and the receipt of which has been refused by the Board.

(3) The Board may, in such cases and on such terms and conditions as may be prescribed, exempt (either generally or in any particular case) from the operation of this section—

- (a) such small growers as the Board think fit;
- (b) sales direct to local consumers or to retail vendors:

(c) such onions as the producer may require for his own use;

(d) such other sales, purchases, or transactions as may be prescribed,

and may at any time revoke such exemption.

(4) The Board's decision as to whether any specified person or article falls within the limits of any such exemption shall be final.

(5) The Board shall not refuse to accept from any grower any such onions which are of the prescribed quality or which conform to the prescribed standard: Provided that delivery is tendered in accordance with this Act within such reasonable time as may be fixed by the Board.

(6) As soon as practicable after the receipt of any onions, the Board shall issue to the grower a certificate in the prescribed form: Provided that the Board, if it has received notice of any mortgage, charge, lien, encumbrance or contract affecting such onions, may, in its discretion, refuse or withhold the issue of such certificate.

(7) The Board may make or arrange for advances on account of onions delivered, and any payment made 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.

12. (1) Subject to this Act every contract (whether made before or after the issue of the proclamation under section four) not dealing solely with onions under and pursuant to any exemption under the last preceding section so far as it relates to delivery of onions in Western Australia, or to the sale of onions for delivery in Western Australia, shall when specified by the Board in a notice published in the *Gazette*, be null and void as from the date upon which it was made so far as such contract had not been completed by delivery at the date of such notice, and for the purposes of this section every such contract shall be deemed to be severable.

Contracts for
sale of
onions.

(2) Any transaction or contract with respect to any onions which are the subject-matter of any contract declared by this section to be void shall also be void; and any money paid in respect of any contract or part of a contract hereby made void, or of any such transaction as aforesaid, shall, to the extent to which such contract or transaction is made void, be repaid.

Liens, mortgages, etc.

13. (1) Every person delivering any onions to the Board shall give notice of any lien, mortgage, charge, encumbrance or other claim affecting the same.

Penalty: Ten pounds.

(2) No person claiming any right or title, whether as owner of or as being entitled to any lien, mortgage, charge, encumbrance, or other claim over any onions delivered to the Board shall have any claim against the Board on account thereof; but he may adopt the delivery to the Board as being made wholly or partly on his account, as the case may be, and claim accordingly the payment or a just proportion of the payments to be made in respect thereof.

Marketing powers, etc.

14. Subject to this Act, the Board may sell, or arrange for the sale of any onions delivered to it, and do all acts, matters, and things necessary or expedient in that behalf, and in particular, but without limiting the generality of the foregoing powers, may—

- (a) appoint and employ such agents, servants, and officers as may be necessary;
- (b) arrange with the Government of the Commonwealth, or the State, or with any bank, for financial assistance or accommodation, and give such security over its assets and property as it shall consider reasonable;
- (c) as far as practicable provide onions for consumption within the State, and for the supply thereof during any period of shortage to those places within the State where any shortage is experienced;
- (d) make such arrangements as may be deemed necessary with regard to sales for export or for over-sea ships' stores, or for consignment to other countries or States: Provided that the Minister may, by order under his hand, stop or prohibit any action or proposed action on the part of the Board which he considers is or would be detrimental to the public interests, or likely to affect the supply and distribution of onions at reasonable prices to consumers thereof, and may revoke any such order.

Payment to grower, etc.

15. (1) Subject to this Act the Board shall, out of the proceeds of onions disposed of by it under this Act, make payments to each grower of the onions delivered

to the Board, in respect to the onions delivered by him, on the basis of the net proceeds of the sale of all the onions of the same quality or standard delivered to and sold by the Board during or covering such periods of time as may be prescribed, and the proportion of such onions so delivered by such grower during such period.

(2) Any person by or on whose behalf onions are in fact delivered to the Board shall be deemed to be a grower.

(3) For the purpose of ascertaining the net price to be paid to the growers of onions delivered to the Board, and generally for the purpose of this 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) 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.

16. (1) Where a Board has in good faith and without negligence made any payment—

- (a) to a grower delivering or causing to be delivered any onions to the Board or to any person on its behalf;
- (b) to any person entitled or claiming to be entitled through such grower; or
- (c) to any person on the order of such grower or person,

the Board shall not be answerable to any other person in respect of such payment, or any part thereof, or to any action or proceeding whatsoever for damages or otherwise in respect thereof.

(2) For the purpose of this section any person who is believed by the Board or its representative, on reasonable grounds, to be the grower, shall be deemed to be such grower.

(3) This section shall not affect the rights *inter se* of any parties claiming adversely to one another in respect of any such payment or any part thereof.

Non-liability
of Board for
payments
made in good
faith without
negligence.

Accounts of Board.

17. The Board shall cause true and regular accounts to be kept, which shall be audited by the Auditor General, or by a chartered accountant approved by the Minister.

Offences.

18. Any offence against this Act for which no other penalty is provided shall be punishable on summary conviction by a fine not exceeding five pounds.

Regulations.

19. (1) The Governor may make regulations under this Act with respect to the matters mentioned in subsection (7) of section three, and the Board may make regulations prescribing all such matters as by this Act are required or permitted to be prescribed, or as may be necessary or convenient to be prescribed, for giving effect to or achieving the objects of this Act and facilitating the exercise of its powers by the Board.

(2) The power hereby given to the Board shall (without limiting its generality) be deemed to include power to make regulations—

- (a) empowering the Board to institute prosecutions under the Agricultural Products Act, 1929, in respect of onions;
- (b) requiring producers, or persons dealing or trafficking in onions as owners or agents, or concerned in the transport or having the custody of onions, to furnish returns containing such information as the Board may consider necessary;
- (c) for ascertaining whether onions are of the prescribed quality and prescribing a quality therefor and for an increase or decrease in the amount otherwise payable to any grower or other person for onions delivered by him or any other person to the Board or to an authorised agent of the Board according to the quality of the onions whether at the time of delivery or subsequently, and regulating the transport, treatment, grading, branding, packing, storage, marketing, selling, exporting and delivery of onions.

(3) Regulations made under this Act may prescribe penalties not exceeding twenty pounds in respect of any contravention of any of the regulations.

20. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative powers of the Parliament of this State, to the intent that, where any provision therein would, but for this subsection, be construed as being in excess of those powers, it shall nevertheless be deemed to be validly enacted to the extent to which it is not in excess of those powers.

Act to be construed subject to Federal Constitution and laws.