

FARMERS' DEBTS ADJUSTMENT.

25° GEO. V., No. XLV.

No. 46 of 1934.

AN ACT to amend the Farmers' Debts Adjustment Act, 1930-1933.

[Assented to 5th January, 1935.]

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:—

1. This Act may be cited as the *Farmers' Debts Adjustment Amendment Act, 1934*, and shall be read as one with the Farmers' Debts Adjustment Act, 1930-1933, hereinafter called "the principal Act," as reprinted with amendments in the Sessional Volume of Statutes for the year 1933-1934. Short title.

2. Section five of the principal Act is hereby amended by inserting in subsection (2) the following words, after the word "shall," in the second line of the subsection:—"subject to the provisions of subsection (9) of section eleven." Amendment of s. 5 of the principal Act.

3. Section six of the principal Act is hereby amended by inserting in line four in subsection (1), after the word "days," the following:—"or such further time as the Director may determine." Amendment of s. 6 of the principal Act.

4. Section seven of the principal Act is hereby amended as follows:— Amendment of s. 7 of the principal Act.

(a) by inserting at the end of subsection (1) the following further proviso:—

Provided further, that the creditors may by resolution passed at a meeting of which at least seven

days' notice in writing has been given specifying the purpose of the meeting, resolve that any particular asset which does not come within the category of a farming asset, and which is not needed for the purpose of carrying on the farmer's business, may be excluded as from the date of the resolution from the operation of the stay order.

- (b) by striking out all words after the word "until," in line four of subsection (2) of the section, and inserting in lieu thereof the words, "cancelled by the Director under subsection (3) of section six, or until rescinded by resolution passed at a meeting of the creditors of the farmer, in which latter case the stay order shall lapse twenty-one days after the passing of the resolution, or on such later date as the creditors may determine at the time of the passing of the resolution."

5. Section ten of the principal Act is amended—

- (a) by inserting, in line one of subsection (1), the words "or his nominee" after the word "Director";
- (b) by inserting a new subsection after subsection (1), as follows:—

1 (a). Whenever at any meeting a quorum of the creditors is not present, the Director may, if he considers it advisable, adjourn the meeting to some convenient date with a view to getting the attendance of a quorum;

- (c) by inserting, at the beginning of subsection (4), the words "subject to the express provisions of subsection (7) of section eleven."

6. Section eleven of the principal Act is hereby repealed and the following substituted therefor:—

- (1) A farmer may, at the time of making application for a stay order under this Act, or at any time thereafter, submit a scheme for the writing-down or suspension, or for both the writing-down and suspension, of his debts and liabilities.

- (2) If in the opinion of the Director the scheme as submitted by the farmer is impracticable or inequitable in the circumstances, the Director may, with the consent of the farmer, modify its provisions in such

Amendment of s. 10 of the principal Act.

Amendment of s. 11 of the principal Act.

Farmers may apply for writing-down or suspension.

Director may modify scheme.

manner as will be calculated in the opinion of the Director to meet with the approval of all parties concerned.

- (3) Whenever the Commissioners of the Agricultural Bank of Western Australia, in exercise of the powers vested in the Commissioners under the Agricultural Bank Act, 1934, have agreed (whether conditionally or otherwise) to a writing-down or suspension of the debts of any farmer due to the Commissioners, the Commissioners may request the Director to draw up a scheme for the writing-down or suspension, or both the writing-down and suspension, of the debts of the farmer other than the debts due by the farmer to the Commissioners. On such request being made the Director shall issue a stay order under the provisions of this Act.
- Commissioners of Agricultural Bank may request Director to frame scheme.
- (4) The scheme submitted by the farmer shall be considered by the Director in the light of the productive capacity of the farmer's farm and his ability to pay his debts and liabilities as based thereon, and any scheme drawn up by the Director at the request of the Commissioners shall be based on similar considerations.
- The basis of scheme to be productive capacity of farm.
- (5) In examining any scheme submitted by a farmer, or in formulating any scheme at the request of the Commissioners, the Director shall have access to any files and records of the Commissioners or any Government files and records relating to the farmer's business, and may also, with the approval of the said Commissioners, or of the Minister controlling any Government Department, make use of the services of any officer of the Commissioners or in any Government Department, as the case may be.
- Director to have access to files, etc.
- (6) The Director shall submit the scheme of the farmer (subject to any modification made by the Director, with the consent of the farmer), or the scheme formulated by the Director (as the case may be), to a meeting of the farmer's creditors under this Act.
- Director submit scheme to meeting.
- (7) The creditors may by resolution passed by a majority of at least four-fifths of the creditors in value (but not necessarily in number) sanction the said scheme, or an amendment or modification thereof, but no amendment or modification shall
- Majority of four-fifths in value for writing-down scheme.

be made to the same by the creditors without the consent of the Director, and no resolution affecting the security of any first mortgagee shall be of any effect unless and until the consent of such first mortgagee is obtained: Provided, however, that subject to the aforesaid majority a resolution suspending the liability of the farmer on a personal covenant or contract in relation to any security, or whereby the farmer is released wholly or partly from his liability on a personal covenant or contract in relation to any security, may be passed by the creditors, and shall be valid and effective, notwithstanding that the first mortgagee does not consent thereto.

Rights of first mortgagee.

- (8) The Director may of his own motion, if he considers that the meeting is not representative of the majority of creditors, or that through inadvertence the majority of creditors have not had an opportunity of being present or represented at the meeting, adjourn the meeting to such convenient date as the Director may think fit, or the Director may adjourn the meeting with a view to giving the Director an opportunity to communicate with any absent creditors or creditors not so represented, and to obtain their consents in writing to the scheme within a stipulated time, in which event consents obtained and forwarded to the Director within that time shall be as valid and effectual as if the creditors concerned had personally attended and voted at the meeting. If at such adjourned date the creditors, subject to the provisions of this and the preceding subsection, agree to the scheme, either by attending and voting in person or by their representatives, or by filing their consents as hereinbefore provided, then the scheme shall become effective.

- (9) In any case where a farmer makes application under the foregoing provisions of this section for the writing-down or suspension, or both the writing-down and suspension, of his debts and liabilities, it shall not be necessary for the Director to appoint a receiver pursuant to subsection (2) of section five of this Act, unless he considers it advisable to do so: Provided, however, that a receiver shall be appointed by the Director immediately upon the sanctioning of any scheme which provides for the fur-

Director may adjourn meeting in certain cases and endeavour to get consent of absent creditors.

Receiver not necessary, except where seasonal credit provided.

nishing of seasonal credits by the creditors, or any of them.

- (10) Subject to the foregoing provisions of subsections (1) to (8) of this section, as soon as practicable after the opening of any meeting, the chairman shall invite the creditors to ascertain by consultation amongst themselves whether it is possible to 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 thereof, pass any resolution for the adjustment and arrangement of the farmer's affairs which may appear to them to be expedient, and the creditors may further determine that the meeting shall stand adjourned to some date to be specified, with a view to further consideration of the farmer's affairs. General provisions applicable to all meetings.
- (11) Subject to the provisions of subsections (1) to (8) of this section, any 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: Provided, however, that the Supreme Court, or a Judge thereof, may on an application being made by the Director, or any other person interested, within four weeks after the passing of the resolution, rescind the resolution on the ground that it is manifestly unjust to the farmer or any creditor, and order another meeting of the farmer's creditors to be convened by the Director and held at such time and place as the Director shall determine. Aggrieved creditor may apply to a Judge to set aside scheme or resolution.
- (12) Sections three to thirteen, both inclusive, of Act No. 13 of 1906, shall not apply to any security given pursuant to any such resolution as aforesaid. No notice of intention to register bill of sale necessary etc.
- (13) If for any reason it shall appear to the Director that it is expedient for the creditors to meet at a date earlier than that to which any meeting has been adjourned, pursuant to any resolution of the creditors, he may, by circulars delivered or posted in manner specified in section six, summon the creditors to meet at an earlier date. Director may call creditors together at any time.
- (14) Where any moneys secured by any mortgage are also secured by guarantee, the liability of the guarantor Liability of guarantors.

on his personal covenant or contract under the guarantee shall in any case where the mortgage debt is written down, be also written down proportionately. The creditors may also determine by resolution that the personal liability of any guarantor under a guarantee shall be suspended during such time as the debts of the farmer are suspended pursuant to any resolution passed under this section.

Statute of
Limitation

(15) The period during which payment of any debt or liability is suspended under this section shall not be taken into account for the purpose of any Statute of Limitation.

(16) In this section the term "mortgage" means any mortgage, charge, lien, or other security over property for the payment of money, and includes an equitable charge by deposit of title deeds; and the term "mortgagee" has a corresponding meaning.

Penalty for false
statements.

7. A new section is inserted after section sixteen of the principal Act, as follows:—

16A. (1.) Any farmer who wilfully makes any false statement or furnishes any false information for the submission to his creditors for the purpose of this Act—

(a) in connection with any application under this Act;
or

(b) as to the amount or nature of any assets belonging to him or in regard to any debt due by him, or any claim against him or his estate,

commits an offence.

(2.) Any person who is knowingly concerned in the preparation of any such false statement, or in the furnishing of such false information, commits an offence.

(3.) Any person who commits an offence under either of the last two preceding subsections shall be liable to a penalty not exceeding fifty pounds, or to imprisonment with hard labour for six months.

Amendment of
s. 19 of the
principal Act.

8. Section nineteen of the principal Act is hereby amended by substituting the word "thirty-eight" for the word "thirty-five," in line two.

Citation of
principal Act
as amended

9. The principal Act as amended by this Act may be cited as the Farmers' Debts Adjustment Act, 1930-1934.