

**FRUIT-GROWING
RECONSTRUCTION
SCHEME.**

No. 99 of 1972.

AN ACT to approve and give effect to an agreement between the Commonwealth and the State providing for the establishment and operation of a scheme of financial assistance to persons engaged in fruit-growing in the State; and for incidental purposes.

[Assented to 6th December, 1972.]

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:—

1. This Act may be cited as the *Fruit-growing Reconstruction Scheme Act, 1972.* Short title.
2. This Act shall come into operation on a date to be fixed by proclamation. Commencement.

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Scheme.

Definitions.

3. In this Act unless the contrary intention appears—

“Agreement” means the agreement between the Commonwealth and the State a copy of which is set forth in the Schedule to this Act;

“Authority” means The Rural Reconstruction Authority established under the Rural Reconstruction Scheme Act, 1971;

“Fund” means the Fruit-growing Reconstruction Fund established under this Act;

“grower” means—

(a) a natural person who being a resident of the State and an owner, lessee or occupier of land therein is personally engaged, otherwise than as an employee, in fruit-growing on that land, whether on his own account or under a share farming agreement; or

(b) a personal representative of any such individual person,

and includes a company to which assistance may be granted under the terms of The Schedule to the Agreement;

“Scheme” means the Fruit-growing Reconstruction Scheme mentioned in section 6 of this Act and referred to in clause 4 of the Agreement as a scheme of financial assistance to persons engaged in fruit-growing in the State.

Crown bound.

4. This Act binds the Crown in right of the State.

Agreement approved.

5. (1) The Agreement is approved and the doing or performance of all such acts, matters or things as are necessary to give effect thereto is hereby authorized.

(2) Without affecting the operation of subsection (1) of this section, all acts, matters and things that, by the Agreement, are agreed, directed, authorized or permitted to be made, done or executed by or on behalf of the State, its authorities and instrumentalities or by the Minister or any other person specified therein, whether named as a party to the Agreement or not, are hereby sanctioned, authorized and confirmed.

6. There shall be a Fruit-growing Reconstruction Scheme as provided for in the Agreement.

Fruit-growing
Reconstruction
Scheme.

7. The Rural Reconstruction Authority shall administer the Scheme on behalf of the State as the Authority under the Agreement.

Administra-
tion of the
Scheme.

8. (1) The function of the Authority under and for the purposes of this Act is to operate the Scheme and for that purpose the Authority has all such powers, rights and privileges as may be reasonably necessary to enable it to carry out that function.

Functions
and powers
of the
Authority.

(2) The Authority may carry out, subject to the Agreement, such other functions as may be prescribed.

(3) For the purposes of enabling the Authority to carry out its functions under this Act and to operate the Scheme, the provisions of sections 12, 13 and 14, and subsection (3) of section 15 of the Rural Reconstruction Scheme Act, 1971 shall be deemed to be incorporated in this Act, but so that any reference, however expressed, in those provisions to the Rural Reconstruction Scheme Act, 1971 or the Rural Reconstruction Scheme established by that Act shall be construed as a reference to this Act or the Scheme, as the case requires.

Fruit-growing
Reconstruction
Fund.

9. (1) For the purposes of this Act there shall be established in a special account in the Treasury a fund to be known as "the Fruit-growing Reconstruction Fund" and that fund shall, subject to such directions as may be given by the Minister, be administered and controlled by the Authority.

(2) There shall be paid into the Fund—

- (a) the payments made by the Commonwealth to the State provided for in the Agreement;
- (b) all moneys received from time to time for the repayment of advances made under the Scheme and interest from time to time paid on such advances; and
- (c) all other payments that may be lawfully paid into the Fund.

(3) There shall be paid out of the Fund—

- (a) all moneys granted under the Scheme as financial assistance in whatever form to persons engaged in fruit-growing in the State; and
- (b) all moneys that under the Agreement are to be repaid to the Commonwealth.

(4) The Fund may be operated upon in such manner as the Authority by resolution from time to time determines.

(5) Each payment out of the Fund shall be authorised by prior resolution of the Authority or shall be submitted to the Authority for authorization at its next meeting.

(6) The Authority shall cause to be kept in such manner and form as the Treasurer approves, records relating to the operation of the Fund.

(7) The records referred to in subsection (6) of this section shall be subject to the Audit Act, 1904.

10. (1) The Authority shall, as soon as practicable after each thirtieth day of June, prepare and furnish to the Minister, a report in writing of its operations under this Act during the year ended on that date, together with financial statements in respect of that year in such form as the Treasurer approves. Reports.

(2) Before furnishing the financial statements to the Minister the Authority shall submit them for examination to the Auditor General appointed under the Audit Act, 1904.

(3) The Minister shall cause the report and financial statements, together with the report of the Auditor General thereon, to be laid before each House of Parliament within twelve sitting days of that House after their receipt by the Minister.

(4) In addition to the report to be prepared by the Authority under subsection (1) of this section, the Authority shall, as soon as practicable after the end of each month, furnish to the Minister a written report of its operations under this Act during that month.

11. (1) A grower who considers himself eligible for financial assistance under the Scheme may apply to the Authority for such assistance. Application
for
assistance
under the
Scheme.

(2) Applicants shall apply to participate under the Scheme in such form and manner as the Authority requires.

(3) The Authority may require any statement in such an application to be verified by statutory declaration.

(4) The applicant, upon request in writing by the Authority, shall furnish such further information and such accounts, documents and papers as the Authority may require for the purpose of considering the application.

(5) Subject to the Agreement the Authority may—

- (a) grant the application on such conditions as are necessary to accord with The Schedule to the Agreement and on such additional conditions as it thinks fit; or
- (b) refuse the application.

(6) Without affecting the provisions of subsection (7) of this section, where the Authority proposes to grant financial assistance under the Scheme to a grower and it appears to the Authority that a mortgage has been granted over any land on which the grower is engaged in fruit growing, the Authority shall cause to be sent to the mortgagee a notice informing him that the Authority proposes to grant such financial assistance in respect of that land, and the Authority shall not grant the financial assistance within twenty-one days after the day on which it so caused the notice to be sent.

(7) Where—

- (a) a grower has applied for assistance under the Scheme;
- (b) any land on which the grower is engaged in fruit-growing is encumbered by a mortgage; and
- (c) the mortgagee satisfies the Authority that it would be a breach of any covenant in or term or condition of the mortgage if the grower or any other person were to remove fruit trees standing on that land,

the Authority shall not grant financial assistance under the Scheme to the grower except with the prior consent of the mortgagee.

Security for
advances.

12. (1) Repayment of advances made under the Scheme and interest thereon shall be secured in any manner which accords with The Schedule to the Agreement.

(2) The security for the repayment of the advances and interest thereon referred to in subsection (1) of this section may be taken in favour of the Authority.

13. The costs and expenses incurred in the administration of this Act shall be defrayed out of moneys to be provided by Parliament for that purpose.

Cost of
administra-
tion.

14. (1) A grower who wilfully makes any false statement or wilfully furnishes any false information—

False
statements.

- (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.

Penalty: Two hundred dollars or three months' imprisonment.

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

Penalty: Two hundred dollars or three months' imprisonment.

15. (1) A grower who has applied for assistance under the Scheme or a creditor of such grower shall upon request in writing by the Authority produce such documents, including any document of title, and furnish such information and such accounts as the Authority may require for the purposes of this Act.

Production
of
documents.

(2) Any grower or creditor to whom such a request is made who fails or refuses, without reasonable excuse, to comply with the request within the time specified therein commits an offence.

Penalty: Two hundred dollars.

Regulations.

16. (1) The Authority may, with the approval of the Governor make regulations not inconsistent with this Act prescribing all matters necessary or convenient to be prescribed for the carrying out of or giving effect to this Act and the Scheme, including prescribing fees to be paid in respect of anything done under this Act, the procedure to be adopted in regard to any application or proceeding under this Act and the duties and conduct of applicants for financial assistance under the Scheme, and for prescribing penalties not exceeding one hundred dollars for offences against the regulations.

(2) Any such regulation may confer upon a specified person or body a discretionary authority and may require any matter or thing to be verified by statutory declaration.

SCHEDULE.

AN AGREEMENT made between—

THE COMMONWEALTH OF AUSTRALIA (in this Agreement called 'the Commonwealth') of the first part,

THE STATE OF NEW SOUTH WALES of the second part,

THE STATE OF VICTORIA of the third part,

THE STATE OF QUEENSLAND of the fourth part,

THE STATE OF SOUTH AUSTRALIA of the fifth part,

The STATE OF WESTERN AUSTRALIA of the sixth part, and

THE STATE OF TASMANIA of the seventh part.

WHEREAS—

- (a) the Commonwealth and the States recognize that there is need to provide assistance to persons engaged in fruitgrowing industries throughout Australia in the interest of those industries and of Australia generally;

- (b) Ministers of the Commonwealth and of the States have agreed upon the Outline of Proposals for Fruitgrowing Reconstruction set out in the Schedule to this Agreement as constituting a Scheme under which assistance could be provided to assist in removing surplus trees;
- (c) the carrying out of the said Scheme is dependent upon financial assistance being granted by the Parliament of the Commonwealth to the States for that purpose;
- (d) the Parliament of the Commonwealth has authorized the execution of this Agreement by and on behalf of the Commonwealth and the provision of financial assistance to the States as provided in this Agreement.

NOW IT IS HEREBY AGREED as follows:—

I.—INTRODUCTORY.

1. (1) This Agreement, as between the Commonwealth and a State, shall come into force when it has been entered into by the Commonwealth and the State and, upon coming into force, shall, if the Commonwealth and the State so agree, be deemed to have commenced on a date prior to its execution having been authorized as aforesaid but not, in any case, earlier than the fourteenth day of July, 1972.

Operation of Agreement.

(2) Notwithstanding that all the States of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania are named as parties to this Agreement, this Agreement shall operate as an Agreement between the Commonwealth and each State in respect of which it has come into force as fully and effectually as if the State or States in respect of which it has come into force were the only State or States named as a party or as parties to the Agreement.

(3) In this Agreement, each State in respect of which the Agreement has come into force is referred to as a "State", and the expression "the States"

means, except where the context otherwise requires, all of the States in respect of which for the time being the Agreement is in force.

Performance
of
Agreement.

2. The Commonwealth will provide for or secure the performance by it and its authorities of the obligations of the Commonwealth under this Agreement and each of the States will provide for or secure the performance by the State and its authorities and instrumentalities of the obligations of the State under this Agreement.

Interpreta-
tion.

3. (1) In this Agreement, unless the contrary intention appears—

‘the Authority’ means in relation to a State, the authority or authorities of the State that has or have the administration of the Scheme on behalf of the State and, in a case where there is more than one authority, refers, where the context requires reference to one authority, to the relevant authority of the State;

‘the Scheme’ means the scheme to be established and operated by a State in accordance with clause 4 of this Agreement;

‘the Treasurer’ means the Treasurer of the Commonwealth; and

‘trees’ means fruit trees and includes grapevines.

(2) References in this Agreement to a Minister of the Commonwealth or of a State shall include a reference to a Minister for the time being acting for or on behalf of the Minister referred to.

II.—ADMINISTRATION OF SCHEME.

State to
operate
Scheme.

4. (1) Each State will, by using the financial assistance provided by the Commonwealth in accordance with this Agreement, establish and operate a scheme of financial assistance to persons engaged in fruitgrowing industries in that State.

(2) The Scheme shall consist of the assistance described in, and shall be established and operated in conformity and in accordance with the general principles and the provisions set out in, the Outline of Proposals for Fruitgrowing Reconstruction contained in the Schedule to this Agreement, as amended at any time in pursuance of clause 6 of this Agreement.

5. Each State will provide from its own budget the administrative costs incurred in and in connexion with the establishment and operation of the Scheme.

Administra-
tion Costs.

6. (1) The provisions of the Schedule to this Agreement may be amended from time to time by agreements between the Minister of the Commonwealth and the Ministers of the States for the time being responsible for the administration of the Scheme.

Amendment
of
Schedule.

(2) Where so agreed between the Commonwealth Minister and the Minister or Ministers of the relevant State or States, the amendments to the provisions of the Schedule to this Agreement may be made and take effect as between the Commonwealth and one or more of the States without affecting the operation of this Agreement as between the Commonwealth and a State the Minister of which has not so agreed.

III.—FINANCIAL ASSISTANCE.

7. Subject to, and to the performance by the State of, the provisions of this Agreement, the Commonwealth will make available to a State for the purposes of the Scheme out of a sum of Four Million six hundred thousand dollars (\$4,600,000) available to all the States, financial assistance consisting of amounts equal to amounts committed by the Authority in respect of applications by growers for assistance for removal of trees received by the Authority after the fourteenth day of July, 1972 and not later than the thirtieth day of June, 1973.

Provision of
Financial
Assistance.

Total
Financial
Assistance
to States.

8. Notwithstanding anything contained in this Agreement, the Commonwealth shall not be obliged to make payments of financial assistance to a State under this Agreement if the making of the payment would mean that payments by the Commonwealth under this Agreement would exceed in total the said sum of Four million six hundred thousand dollars (\$4,600,000).

Advances.

9. (1) The Treasurer may, at such times and in such amounts as he thinks fit, make advances on account of the payments that may be made by the Commonwealth under clause 11 of this Agreement.

(2) An amount or part of an amount advanced by the Treasurer under this clause may be deducted by the Commonwealth from an amount that subsequently becomes payable under clause 11 of this Agreement or, if no further amounts will become payable under that clause, shall be refunded by the State to the Commonwealth at the request of the Treasurer.

Use of
Advances.

10. A State shall ensure that an amount or any part of an amount, advanced to the State and not refunded under the last preceding clause is not used or applied except for the establishment or operation of the Scheme.

Payments of
Financial
Assistance.

11. The Commonwealth shall, from time to time, at the request of a State and subject to the provisions of this Agreement make payments to the State of the financial assistance to be provided to the State under this Agreement in amounts equal to the expenditure incurred by the State (other than administrative expenses) in the establishment and operation of the Scheme.

Supporting
Financial
Evidence.

12. (1) A State shall furnish to the Treasurer such documents and other evidence to justify the making of an advance under clause 9 of this Agreement or in support of a request by the State for a payment to it by the Commonwealth under the last

preceding clause as the Treasurer may from time to time reasonably request, whether the request by the Treasurer is made before or after the Commonwealth has made the advance or a payment pursuant to the request by the State.

(2) Any statement of expenditure by a State furnished to the Treasurer in connexion with a request by the State for a payment under clause 11 of this Agreement shall be certified by the Auditor-General of the State as to its correctness in accordance with the books and documents of the Authority.

13. A State shall repay to the Commonwealth amounts equal to any amounts received by the State by way of interest on, or in repayment of, loans made under the Scheme. Repayments by States.

14. (1) The accounts, books, vouchers, documents and other records of a State relating to the operation of the Scheme shall be subject to audit by the Auditor-General of the State. Audit.

(2) A report on the audits of the operation of the Scheme shall be furnished by the Auditor-General of the State to the Treasurer as soon as possible after the completion of the audits.

IV.—GENERAL.

15. (1) The provision of assistance under the Scheme will not preclude the person who receives the assistance from also receiving assistance under the Rural Reconstruction Scheme to the extent the person is eligible for that assistance. Rural Reconstruction Agreement.

(2) Where a person has applied for assistance under both Schemes, the provisions of the Rural Reconstruction Scheme will not operate to prevent the Authority negotiating with the applicant and

the creditors of the applicant to take over the property, remove all the trees and dispose of the land, whether under the farm build-up provisions of that Scheme or otherwise, and in that event—

(a) the net amount that may be brought to account as expenditure for the purposes of clause 15 of the Rural Reconstruction Agreement will not exceed—

(i) the amount of finance provided under that Scheme to an incoming purchaser of the cleared land; or

(ii) the amount by which the sum of the costs of clearing and the purchase price paid to the out-going farmer exceeds the sum of the tree removal assistance and the incoming purchaser's cash deposit,

whichever is the lesser amount; and

(b) the amount of the tree removal assistance may be less than but will not be greater than the amount that would have been provided if the farmer were responsible for removing the trees.

(3) In this clause "the Rural Reconstruction Agreement" means the Agreement entered into by the Commonwealth in pursuance of the States Grants (Rural Reconstruction) Act 1971 and references to "the Rural Reconstruction Scheme" refer to the scheme of financial assistance being operated by the relevant State in accordance with that Agreement.

Review.

16. (1) The operation of the Scheme in relation to all of the States will be reviewed from time to time as appropriate by the Commonwealth and the States in the light of experience in its administration.

(2) A review under sub-clause (1) of this clause shall be carried out early in February, 1973.

17. The State Authorities will supply to the Commonwealth from time to time such information regarding the operation of the Scheme as may be reasonably requested by the Commonwealth, and will participate in periodic reviews of the effectiveness of the Scheme.

Supply of
Information.

THE SCHEDULE.

FRUITGROWING RECONSTRUCTION—OUTLINE OF PROPOSALS.

Part I.—Eligibility for Assistance.

1.1 A fruitgrowing industry will qualify for financial assistance under the Scheme—

- (a) if there is generally accepted to be a period of at least five years between planting of its trees and the trees reaching the stage of full bearing;
- (b) if its trees are generally accepted as having a commercial bearing life of at least ten years after the commencement of full bearing; and
- (c) if the Commonwealth and the States agree that there is a chronic over-supply of the commodity produced from its trees,

and shall be so qualified during such time as the Commonwealth and the State are agreed that subparagraph (c) continues to apply.

1.2. The canning peach and canning pear and fresh apple and fresh pear industries shall be regarded as having qualified for financial assistance as from the commencement of the Scheme.

1.3 A grower will be eligible to apply for assistance under the Scheme if the Authority is satisfied that the number of trees which the grower has, of the kind that qualified for assistance, constitutes a commercial operation and either—

- (a) the grower is predominantly a horticulturist who is in severe financial difficulties and intends to clear-fell his orchard and leave the fruitgrowing industry; or
- (b) the grower does not have adequate resources to withstand the short term effects on his economic viability of removing the trees without assistance, the surplus of the horticultural commodity concerned is threatening the long term viability of his property, and in the opinion of the Authority the enterprise has sound

prospects of long term commercial viability after removal of the surplus trees and taking into account other potential use of the land.

- 1.4 Companies will not be eligible for assistance unless the Authority, having considered the shareholdings and being satisfied that the shareholders are *bona fide* primary producers relying primarily on the income from the company for their livelihood and that the shareholders are in the financial position described in sub-paragraph (a) or (b) of the last preceding paragraph, considers it appropriate to provide assistance.
- 1.5 Whether an eligible grower is to receive assistance under the Scheme will be determined by the Authority upon consideration of the relevant application and following an inspection of the property to ensure that the grower is eligible and to assess the level of assistance that may be determined, but the Authority shall not be required to provide assistance in any case.

Part II.—Assistance.

- 2.1 The actual rate of assistance provided in each case will be determined, relative to the maximum rate, by the Authority, taking into account yield of the trees per acre, age, condition and variety, market access and other circumstances of the individual case deemed relevant by the Authority, including whether it is necessary for a composition of creditors to be arranged and for the rural reconstruction authority to take over the property.
- 2.2 The maximum rate of assistance will be \$500 per acre for canning peaches and canning pears and \$350 per acre for fresh apples and fresh pears.
- 2.3 The Authority will administer the Scheme so that the average rate of assistance does not exceed \$350 per acre for canning peaches and canning pears and \$200 per acre for fresh apples and fresh pears, respectively.
- 2.4 Maximum rates of assistance and maxima for average rates of assistance will be agreed between the Commonwealth and the States in respect of any other products to which assistance under the Scheme is accorded.
- 2.5 Financial assistance shall be allocated among qualifying fruitgrowing industries as from time to time agreed between the States and the Commonwealth, but the

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initial objective is that \$2.3 million will be applied for the removal of canning peach and canning pear trees and \$2.3 million for the removal of fresh apple and fresh pear trees. This allocation will be reviewed in the event that the Scheme is extended to other fruit-growing industries.

Part III.—Conditions.

- 3.1 A grower will be entitled to receive assistance payments only if the relevant trees are removed before a date specified by the Authority when approving the application. In any case, no assistance will be paid in respect of trees removed after 31st October, 1973.
- 3.2 It will be a condition of any assistance granted under the Scheme that the recipient undertakes not to plant within five years from receipt of the assistance any trees which may be specified by the Authority during that period, other than replacement trees as provided for under the next succeeding paragraph.
- 3.3 A grower who has been assisted under the Scheme to remove part of an orchard will not be in breach of the undertaking referred to in the last preceding paragraph by reason only of having planted trees in replacement of trees removed without assistance after the grower has been assisted, provided the number of specified trees the grower has at any one time does not exceed the number of specified trees the grower has immediately after the completion of the removal of trees with assistance under the Scheme.
- 3.4 The Commonwealth and the States will agree on which trees will be specified from time to time for the purposes of paragraph 3.2 above.
- 3.5 Assistance under the Scheme will be provided in the form of a loan bearing interest at such a rate as the Authority may determine, but the interest shall not be payable so long as the recipient observes the undertaking referred to in paragraph 3.2 above.
- 3.6 In the event that the recipient of the assistance breaches the undertaking referred to in paragraph 3.2 above the loan made to him and all interest that has accrued thereon become payable in full immediately.
- 3.7 Where the recipient observes the undertaking referred to in paragraph 3.2 above for the full period of five years the loan is not repayable and all interest will be rebated.

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Scheme.

- 3.8 The Authority shall ensure that an encumbrance is taken over the title to the land in respect of which assistance is provided under the Scheme to secure the observance of the undertaking referred to in paragraph 3.2 above and payment in the event of breach of the undertaking as referred to in paragraph 3.6 above.
- 3.9 The Authority will use its best endeavours to secure repayment of the loan and payment of interest in accordance with paragraph 3.6 above by enforcement of the obligation of the recipient of the assistance or by exercise of its rights under the security, or both, as appropriate.
- 3.10 A transfer of the property in respect of which assistance has been provided will not be permitted until the recipient is not liable for the repayment of the loan and payment of interest except with the consent of the Authority, which will upon transfer, or upon succession on the death of the recipient, have the right to review its arrangements in respect of the property.
- 3.11 The Authority may attach such additional conditions to the provision of assistance as it sees fit.
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