

MARKETING OF LINSEED.

No. 115 of 1969.

AN ACT to establish the Western Australian Linseed Board and to provide for the marketing of linseed and for incidental purposes.

[Assented to 28th November, 1969.]

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 *Marketing of Linseed Act, 1969.* Citation.

2. This Act shall come into operation on a date to be fixed by proclamation. Commence-
ment.

Arrange-
ment.

3. This Act is divided into Parts as follows—

PART I, ss. 1-6—PRELIMINARY.

PART II, ss. 7-17—THE WESTERN AUSTRALIAN
LINSEED BOARD.

*Division 1, ss. 7-15—Constitution and Proceed-
ings of the Board.*

*Division 2, ss. 16-17—General Powers of the
Board.*

PART III, s. 18—LICENSED RECEIVERS.

PART IV, ss. 19-30—MARKETING OF LINSEED.

PART V, ss. 31-37—MISCELLANEOUS.

Governor
may exempt
part of State.

4. The Governor may by proclamation exempt any part of the State from the operation of this Act and may revoke or vary such a proclamation by a further proclamation.

Interpreta-
tion.

5. In this Act unless the contrary intention appears—

“advertisement” means an advertisement in at least three newspapers circulating generally in the State;

“appointed date” means the date fixed by proclamation, under section 19 of this Act, for the commencement of the marketing of linseed by the Board;

“Board” means the Western Australian Linseed Board established under this Act;

“certificate” means a certificate issued by the Board in respect of linseed received by the Board for a pool;

“chairman” means chairman of the Board;

“closing date” means the date on or before which linseed for a pool may be delivered to the Board or a licensed receiver;

“compensation” means compensation for linseed received by the Board for a pool;

“licensed receiver” means a person licensed under this Act to receive and deal in linseed on behalf of the Board;

“linseed” means the seed of *Linum usitatissimum* Linn. and includes any sample or parcel of seed containing not less than sixty per cent of linseed;

“member” means a member of the Board;

“pool” means a pool established under this Act for the marketing of linseed;

“producer” means a person by whom or on whose behalf linseed is grown, harvested or produced for sale and where the linseed is grown, harvested, or produced pursuant to any share-farming or partnership agreement, includes each party to such an agreement;

“season” means the period between the 1st April in any one year and the 31st March in the next following year; and

“sell” includes barter or exchange; and “sale” has a corresponding meaning.

6. This Act shall be read and construed subject to the limits of the legislative powers of the State and so as not to exceed those powers, to the intent that, where any provision thereof, but for this section, would be construed as being in excess of those powers, it shall nevertheless be a valid enactment to the extent to which it is not in excess of those powers.

Act to be construed subject to legislative powers of the State.

PART II.—THE WESTERN AUSTRALIAN LINSEED
BOARD.

Division 1—Constitution and Proceedings of Board.

Linseed
Board.

7. (1) For the purposes of this Act, there shall be established a Board, to be known as the Western Australian Linseed Board.

(2) The Board—

- (a) is a body corporate with perpetual succession and shall have a common seal;
- (b) is capable, in its corporate name, of acquiring, holding, and disposing of real and personal property and of suing and being sued; and
- (c) is capable of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

(3) All courts and persons acting judicially shall take judicial notice of the common seal of the Board affixed to any document and shall presume that it was duly affixed thereto.

Board not to
represent the
Crown.

8. When the Board is established it is not an agent or servant of the Crown.

Members.

9. (1) The Board shall consist of five members appointed by the Governor namely—

- (a) two persons who are producers elected by producers;
- (b) one person who is a producer nominated by the Minister;
- (c) one person nominated by the Minister to represent commercial and industrial users of linseed or linseed products in the State; and

- (d) one person nominated by the Minister who is a person not commercially involved in the linseed industry as a producer, user, merchant, agent, or processor and who shall be chairman of the Board.
- (2) The Minister shall appoint a returning officer for each election of elective members. Returning officer.
- (3) The election of the elective members of the Board shall be held and conducted in such manner and at such times as may be prescribed. Elections.
- (4) The Board shall pay, out of the moneys held by it for the purposes of this Act, the expenses incurred in connection with the election of the elective members. Election expenses.
- (5) Subject to this Act, each member shall hold office for a period of three years from the date of his appointment and, where he is an elective member, is eligible for re-election and re-appointment and, where he is not an elective member, is eligible for re-appointment. Term of office of members.
- (6) Each member may be, at any time, removed from office by the Governor for disability, insolvency, neglect of duty, or misconduct or if he ceases to be a producer. Removal of members.
- (7) Each member may, at any time, resign his office by writing addressed to the Minister. Resignation.
- (8) If any member dies, resigns, or is removed from office, the vacancy in the office of member so vacated shall be filled in the manner in which the appointment to the vacant office was originally made and the person appointed to that office shall be appointed for the residue of the term for which his predecessor was appointed. Casual vacancy.
- (9) The Governor may, in respect of each member, appoint a person representative of the same interests as that member to be his deputy. Deputies.

Leave of
absence of
member.

(10) The Board may grant leave of absence to a member upon such terms and conditions as the Board determines and during the absence of that member his place may be taken by his deputy.

Powers,
entitlements,
protection
of deputy.

(11) While taking the place of a member a deputy has all the powers and entitlements of, and all the protection given to, the member under this Act.

Vacancy not
to affect
proceedings.

(12) The powers of the Board are not affected by any vacancy in the membership thereof, and if a quorum is present all acts and proceedings of the Board are valid and effectual notwithstanding the vacancy.

Saving.

(13) All acts and proceedings of the Board are, notwithstanding any defect in the appointment of any member or deputy, or that any member or deputy was disqualified or not entitled to act, as valid as if the member or deputy had been duly appointed and was qualified to act and had acted as a member or deputy and as if the Board had been duly and fully constituted.

Business of
Board.

10. Subject to this Act, the business of the Board shall be conducted in such manner as the Board determines.

Meetings of
the Board.

11. The first meeting of the Board after the coming into operation of this Act shall be convened by the chairman and thereafter meetings shall be held at the times and places determined by the Board but the chairman, or any three members, may, on reasonable notice to all members, call a meeting at any time.

Proceedings
of the
Board.

12. (1) At a meeting of the Board, three members constitute a quorum.

(2) The chairman shall preside at every meeting of the Board at which he is present but if the chairman or his deputy is not present at a meeting the other members present shall select one of their number to act as chairman.

(3) Questions arising at a meeting of the Board shall be decided, in open voting, by a majority of the votes of members present thereat and voting.

(4) The chairman has a deliberative vote only and, if the votes of members present at a meeting and voting on a question are equally divided, the question shall be decided in the negative.

(5) The Board shall keep a record of its proceedings.

13. (1) The Board may appoint any number of members to be its Executive Committee and may, subject to directions by the Minister, delegate to that committee such of its powers and functions, except this power of delegation, as the Board may determine.

Executive
Committee.

(2) The Board may revoke a delegation given under subsection (1) of this section and a delegation so given does not prevent the exercise or discharge by the Board of any of its powers or functions.

(3) The Executive Committee shall report to the Board on its activities at such times as the Board directs.

14. The Board shall pay to the members, out of the money held by it for the purposes of the Act, such remuneration and expenses as are approved by the Governor.

Remuneration
and
expenses of
members.

15. A member is not personally liable for any act done in good faith by the Board or by him acting as a member.

Protection of
members.

Division 2—General Powers of the Board.

16. (1) The Board may appoint a manager to be chief executive officer of the Board and may appoint a secretary and may dismiss the manager or secretary.

Officers and
servants of
the Board.

(2) The Board may appoint such other officers and servants as the Minister approves as necessary for the purposes of this Act and the Board may dismiss any of those officers and servants.

(3) All persons appointed under subsection (1) or (2) of this section are subject to the control of the Board.

(4) The Minister shall, subject to any award or agreement in force under the Industrial Arbitration Act, 1912, determine the salaries and allowances of the officers and servants of the Board.

(5) The Board shall pay the salaries and allowances of its officers and servants out of the moneys held by the Board for the purposes of the Act.

(6) Any person appointed, employed, or engaged by the Board is not subject to the provisions of the Public Service Act, 1904 or of the Government Employees (Promotions Appeal Board) Act, 1945.

(7) With the consent of the Minister administering a Department of the Public Service of the State, the Board may, on such terms and conditions as are agreed between it and that Minister, use the services of a person employed in that Department.

17. The Board may, for the purposes of this Act—

- (a) buy and sell any property;
- (b) enter into any contract;
- (c) borrow money;
- (d) mortgage or charge any of its property as security for the repayment of any money borrowed;
- (e) establish or maintain premises, machinery, plant, or other equipment for receiving, handling, classifying, storing, protecting,

purifying, treating, processing, packing, or selling linseed;

- (f) act as shipping agent; and
- (g) do all other things which are necessary or convenient to be done by the Board for giving effect to the Act.

PART III.—LICENSED RECEIVERS.

18. (1) For the purposes of this Act, where a person makes application in writing giving such information as the Board requires, the Board may, on such conditions as the Board thinks fit, grant to that person a licence to receive and deal in linseed on behalf of the Board.

Licensed receivers on behalf of Board.

(2) A licensed receiver shall hold on behalf of the Board all linseed received and shall not deal in or dispose of it except as directed by the Board.

(3) A licensed receiver may, in addition to receiving and dealing in linseed, exercise, in respect of the linseed, such other functions on behalf of the Board as the Board directs.

(4) The Board shall, out of the moneys held by the Board for the purposes of the Act, pay to a licensed receiver, for the services performed and the facilities provided by him on behalf of the Board, such remuneration and expenses as the Board determines and the Minister approves.

PART IV.—MARKETING OF LINSEED.

19. (1) A date shall be fixed by proclamation for the commencement of the marketing of linseed by the Board.

Appointed date for commencement of the marketing of linseed by the Board.

(2) The appointed date shall be not less than one month after the proclamation fixing it has been published in the *Government Gazette*.

(3) On and after the appointed date the Board is the sole marketing authority for linseed.

(4) Within the period of fourteen days after the proclamation fixing the appointed date has been published in the *Government Gazette* the Board shall, by advertisement, give notice of the appointed date and of the marketing arrangements for linseed on and after that date.

(5) If, at any time after the appointed date, it appears to the Board that there is likely to be a surplus of linseed that would adversely affect its marketing, the Board may, with the consent of the Minister, control production of linseed on such terms and conditions as may be prescribed.

(6) Where, under subsection (5) of this section, the Board controls production of linseed and a person is adversely affected by the operation of the terms and conditions referred to in that subsection he may, in the prescribed time and manner, make an application to the Minister for an exemption from those terms and conditions.

(7) Where a person makes an application under subsection (6) of this section, the Minister may, if he thinks fit, exempt that person from all or any of the terms and conditions referred to in subsection (5) of this section, and the Minister may vary the terms and conditions in whole or in part.

Prohibition
on sale or
delivery to
persons other
than the
Board.

20. (1) Subject to subsection (2) of this section, a person shall not, on or after the appointed date, sell or deliver linseed to any other person except the Board.

(2) Subsection (1) of this section does not apply to linseed that has previously been purchased from the Board or that is sold or delivered with the written approval of the Board.

Pool or pools
for
marketing
linseed.

21. (1) The Board shall, on such terms and conditions as it thinks fit, establish and maintain a pool or separate pools for the marketing of linseed produced in a season.

(2) Within the period of fourteen days after a pool is established the Board shall, by advertisement, give notice of the pool and its terms and conditions.

(3) For each pool the Board shall fix a date on or before which linseed for the pool may be delivered to the Board or a licensed receiver and may vary that date.

(4) Within the period of fourteen days after the closing date is fixed or varied the Board shall, by advertisement, give notice of that date or that date as varied.

22. (1) Subject to the terms and conditions of a pool, the Board shall receive for the pool all linseed—

Receipt of
linseed by
Board.

- (a) that is produced in the season to which the pool relates;
- (b) that is delivered to the Board or a licensed receiver on or before the closing date of the pool by or on behalf of the producer; and
- (c) that complies with any standards that apply to the pool.

(2) For the purposes of subsection (1) of this section where the Board has reasonable grounds to believe that a person is the producer of linseed he is deemed to be the producer.

23. Where the Board receives linseed for a pool, the linseed is vested in the Board freed and discharged from all trusts and encumbrances, and all previous rights and interests of any person in respect of the linseed are converted into a claim for compensation under the Act by a person to whom a certificate is issued or his assignee.

Linseed vests
in the Board.

24. (1) As soon as practicable after the Board receives linseed for a pool the Board—

Classification
and
certificate.

- (a) shall classify or cause to be classified each lot of the linseed unless it is inconvenient or impracticable to do so;

- (b) shall issue a certificate in the prescribed form to the person by whom or on whose behalf that lot was delivered or, if he authorises the Board in writing, before or at the time of delivery, to issue the certificate to another person, issue it to that other person; and
- (c) shall, in the certificate, certify in respect of that lot—
 - (i) its quantity and its classification or classifications, if any; and
 - (ii) that compensation for it is payable to the person to whom the certificate is issued or his assignee.

(2) Where there is more than one producer of a particular lot of linseed, the Board may grant separate certificates in accordance with the respective interests of the producers.

Sale of
linseed by
Board.

25. (1) The Board may sell linseed vested in it to such persons, at such prices, and on such terms as the Board thinks fit.

(2) Without limiting the generality of subsection (1) of this section the Board may, for the purposes of that subsection—

- (a) employ agents;
- (b) supply linseed for consumption in the State or those parts of the State where there is a shortage of linseed;
- (c) export linseed, or sell linseed for export, to other countries or States; and
- (d) subject to the approval of the Governor, to achieve co-ordination and regulation of the control of the marketing of linseed within and outside the Commonwealth, become a shareholder in any incorporated company or enter into any agreement relating to the marketing of linseed with a Commonwealth authority, a linseed marketing board or corporation of another State, any person, or any association of persons.

(3) The accounts of the Board shall show separately the receipts and payments in respect of the different classifications, if any, of linseed in a pool.

(4) Out of the proceeds of the sale of linseed the Board—

- (a) shall pay all costs and expenses of administering this Act;
- (b) shall pay all amounts payable in respect of claims for compensation under this Act;
- (c) shall make all other payments authorised by this Act;
- (d) shall pay to the Trustees of the Soil Fertility Research Fund, mentioned in the Soil Fertility Research Act, 1954, as contributions such sums as a person entitled to compensation directs in writing; and
- (e) shall retain and apply in such manner as the Board considers to be of benefit to the linseed industry such fractions of less than one tenth of a cent per pound realised by the Board on disposal of the linseed as a person entitled to compensation directs in writing.

26. (1) A claim for compensation shall be in the prescribed form. Compensa-
tion.

(2) The Board shall recommend to the Minister the amount of compensation to be paid on claims in respect of linseed in a pool and shall base their recommendation on the rate or rates per pound computed by reference to the nett proceeds from the sale of the linseed, the quantities of the linseed and the classifications, if any, of the linseed but shall not so recommend until, in the opinion of the Minister, the Board has sold a sufficient quantity of the linseed to make a just recommendation.

(3) After receiving the recommendation of the Board, the Minister shall determine the amount of compensation to be paid.

(4) Pending the determination of a claim, the Board may, with the consent of the Minister, make, at such time or times and on such terms and conditions as the Board thinks fit, advance payment or payments on account of the claim.

Board's
decision
final.

27. The Board's decision is final on the standard of linseed delivered to the Board, the classification of linseed received by the Board, the method of determining dockages and deductions in respect of linseed so received, and on the amount of all expenses incurred under the Act.

Certain
contracts for
the sale of
linseed void
and
severable.

28. (1) Where a contract relates wholly or partially to the sale or delivery of a quantity of linseed and is not completed by the delivery of all that quantity before the appointed date, the contract is, to the extent of the amount of that linseed not so delivered, void from the date it was made and is to that extent severable, and any other contract or any transaction in respect of that linseed is void and severable to the same extent.

(2) If any money has been paid in respect of linseed that is the subject of a contract or transaction that is void under subsection (1) of this section, the money shall be repaid in proportion to the extent to which the contract or transaction is so void.

(3) Each party to a contract or transaction that is void under subsection (1) of this section shall, within the period of fourteen days after the appointed date, submit to the Board in writing complete details of the contract or transaction.

Power to
enter and
search.

29. (1) Where there are reasonable grounds to believe that a provision of this Act has been or may have been contravened in respect of any linseed, a person authorised by the Board may at any time enter and search any place, premises or vessel where that linseed is or is suspected to be and may inspect any stocks of linseed and accounts, books and documents relating to linseed.

(2) A person shall not hinder any other person acting pursuant to the authority of the Board given for the purposes of subsection (1) of this section.

Protection
of linseed.

30. Where a person has possession, custody, or control of linseed that is vested in the Board he shall do all things necessary to prevent loss, damage, or deterioration of the linseed.

PART V.—MISCELLANEOUS.

31. (1) The Board shall keep full accounts of all moneys received and paid by it and of the purposes for which the money was so received or paid.

Accounts
and Audit.

(2) The Auditor-General shall at least annually audit the accounts of the Board.

(3) Members, officers, servants, and agents of the Board, and licensed receivers shall, to the extent of their knowledge, give to the Auditor-General and his officers all information relating to such accounts which he or they require and shall upon request produce to them all books, vouchers, and other documents relating to the accounts and do all things necessary to enable the audit to be made.

(4) The Board shall pay to the Treasurer of the State such reasonable sum for the audit as the Treasurer fixes.

32. (1) The Treasurer of the State is authorised to guarantee on behalf of the State, on such terms and conditions as he thinks fit, repayment of any money borrowed by the Board under this Act and the payment of interest thereon.

Guarantee of
money
borrowed.

(2) The Treasurer shall cause any money required for fulfilling any guarantee given by him pursuant to subsection (1) of this section, to be paid out of the Public Account, as defined in the Audit Act, 1904, which account is hereby to the necessary extent appropriated accordingly, and the Treasurer shall cause any sums received or

recovered by him from the Board or otherwise in respect of a sum so paid by the Treasurer to be paid into that account.

Reports.

33. (1) The Board shall at least annually make and submit a written report of its activities to the Minister with a true copy of its accounts as last audited and a copy of the Auditor-General's report on those accounts.

(2) As soon as practicable after receiving the documents referred to in subsection (1) of this section, the Minister shall cause copies of them to be laid before both Houses of Parliament.

Offences and penalties.

34. A person who contravenes any provision of this Act is guilty of an offence.

Penalty: Four hundred dollars.

How legal proceedings taken.
Cf. s. 4 No. 30 of 1918.

35. Proceedings for an offence under this Act and civil proceedings on behalf of the Board may be taken in the name of the Board by any officer of the Board authorised by it for that purpose and for the purposes of the proceedings the averment in the process that a person is such an officer is sufficient evidence of the fact until the contrary is proved.

Regulations.

36. The Governor may make regulations which appear to him to be necessary or convenient for effectually carrying out the objects and purposes of this Act and may prescribe as the maximum penalty for a breach of the regulations a penalty not exceeding one hundred dollars.

Duration of this Act.

37. This Act shall remain in force for a period of three years after the coming into operation of this Act, and no longer.