

**MARKETING OF BARLEY.**

10° GEO. VI., No. XVII.

No. 17 of 1946.

**AN ACT** to make provision for the marketing, sale and disposal of barley, to control its production for sale, to constitute a **Western Australian Barley Marketing Board**, and for other relative purposes.

[Assented to 26th November, 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 Barley Act, 1946*, and shall come into operation on a day to be fixed by proclamation.

Act divided  
into parts.

2. This Act is divided into Parts as follows:—

PART I., SS. 1-5—PRELIMINARY.

PART II., SS. 6-19—THE WESTERN AUSTRALIAN BARLEY MARKETING BOARD.

*Division 1, ss. 6-17—Constitution and Proceedings of the Board.*

*Division 2, ss. 18-19—General Powers of the Board.*

PART III., s. 20—CONTROL OF PRODUCTION FOR  
SALE OF BARLEY.

PART IV., s. 21—LICENSED RECEIVERS.

PART V., SS. 22-33—MARKETING OF BARLEY.

PART VI., SS. 34-41—MISCELLANEOUS.

PART I.—PRELIMINARY.

3. Subject as hereinafter provided, this Act shall operate and have effect throughout the State: operation.

Provided that the Governor may, on the recommendation of the Minister, from time to time by proclamation exempt any part of the State defined in such proclamation from the operation of this Act, and may, on the like recommendation, by proclamation revoke or vary any such first-mentioned proclamation.

4. In this Act, unless the context otherwise requires—

“barley” includes a sample or parcel of cereal containing not less than sixty per centum of barley grain or seed;

“Board” means The Western Australian Barley Marketing Board constituted under this Act;

“closing date” means the day in any year prior to which barley produced for sale during any season may be delivered to the Board;

“licensed receiver” means a person licensed under this Act as an agent to receive barley on behalf of the Board;

“Minister” means the Minister for Agriculture;

“producer” means a person by whom or on whose behalf barley is actually grown or produced for sale; and where barley is grown or produced pursuant to any share-farming or partnership agreement (whether express or implied) includes any party or parties to such agreement;

“public notice” means a notice published in the *Government Gazette* and in a newspaper published at Perth;

Interpreta-  
tion.  
cf. Act No. 58  
of 1945, s. 5.

“season” means the period during which barley shall be grown and harvested between the first day of April in any one year and the 31st day of March in the next following year;

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

Construction.  
*Ibid.* s. 6.

5. 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 section, 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; and to the extent to which it is so in excess, or is repugnant to a law of the Commonwealth, be deemed to be severable from the other provisions of this Act, and not to affect the validity or operation thereof.

## PART II.—THE WESTERN AUSTRALIAN BARLEY MARKETING BOARD.

### *Division 1—Constitution and Proceedings of Board.*

Constitution  
of Board.  
*cf. ibid.*, s. 7.

6. (1) For the purposes of this Act, a Board to be known as The Western Australian Barley Marketing Board is hereby constituted.

(2) The Board shall consist of six members appointed by the Governor.

(3) Of the said six members,

- (a) two shall be persons who are producers and are elected by the producers for appointment by the Governor as members of the Board;
- (b) one shall be a person nominated by the Minister and who is a producer;
- (c) one shall be a person nominated by the Minister to represent the maltsters;
- (d) one shall be a person nominated by the Minister to represent the brewers; and
- (e) one shall be a person nominated by the Minister who is not engaged or financially interested in the business of growing or producing barley, or a person interested in the selling, malting or processing of barley, and who shall be Chairman of the Board.

7. (1) The election of the elective members of the Board shall be held and conducted in such manner and at such times as shall be prescribed by regulations.

Election of  
members.

(2) The expenses incurred in connection with the election of the elective members of the Board shall be a charge upon, and shall be paid out of moneys from time to time in the hands of the Board for the purposes of this Act.

8. The Board shall be a body corporate, with perpetual succession and a common seal, and may sue and be sued, and acquire and hold real and personal property under the name of the Western Australian Barley Marketing Board.

Board a body  
corporate.  
*Ibid.* s. 9.

9. The Board shall not, except in relation to any matter in which the Board is specially authorised by the Governor to act on behalf of the Crown, be the agent or servant or the representative of the Crown.

Board not to  
represent the  
Crown.  
*Ibid.* s. 10.

10. (1) The members of the Board shall be entitled to be paid such remuneration and expenses as are approved by the Governor.

Remuneration  
of members of  
the Board.  
*Ibid.* s. 11.

(2) Such remuneration and expenses shall be paid out of the moneys from time to time in the hands of the Board for the purposes of this Act.

11. (1) All members other than the elective members of the Board shall hold office during the pleasure of the Governor.

Term of  
office.  
*Ibid.* s. 12.

(2) Subject as hereinafter provided, the elective members of the Board shall each hold office subject to good behaviour for a period of two years from the date of their respective appointment by the Governor, and shall be eligible for re-election and re-appointment.

Provided that, of the first two elective members first elected after the passing of this Act, one of them shall hold office for one year only, and the other for two years. The elective member to retire first shall be that one who received the lower number of votes at the election. If both the said elective members received the

same number of votes at the election, or if there were no ballot, they shall determine by lot which one of them shall retire first.

Casual vacancies.

12. (1) The Minister may, in respect of each member of the Board, appoint a person representative of the same interests as the member, to be the deputy of that member.

(2) Any person so appointed shall, in the event of the illness or absence of the member of whom he is the deputy, have all the powers of that member during his illness or absence.

(3) No such appointment of a deputy and no acts done by him as such, shall in any proceedings, be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

(4) The office of a member shall become vacant by reason of his death, his written resignation delivered to the Minister or by his removal from office by the Governor.

Proceedings of the Board not invalidated by vacancies or defects.  
*Ibid.* s. 14

13. (1) No act or proceeding of the Board shall be invalid or illegal in consequence only of the number of members of the Board not being complete at the time of such act or proceeding.

(2) All acts and proceedings of the Board shall, notwithstanding the subsequent discovery of any defect in the appointment or qualification of any member thereof, be as valid as if such member had been properly appointed and qualified.

Powers of Board: how exercised.  
*Ibid.* s. 15.

14. (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.

(2) The chairman shall preside at every meeting of the Board at which he is present. If neither the chairman nor his deputy as appointed by the Minister, is present at a meeting, the other members of the Board present shall select one of their number to act as chairman at that meeting.

(3) The chairman shall have a deliberative vote, and, if the numbers are equally divided on any question, it shall be decided in the negative.

(4) Four members of the Board shall form a quorum.

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

15. The Board may appoint any number of its members to be an Executive Committee, and may delegate to that Committee such of its powers and functions as the Board, subject to any direction by the Minister, determines: Provided that—

**Executive  
Committee.**

(a) no such delegation shall prevent the exercise of any power or function by the Board, and

(b) the delegation may be revoked at any time and from time to time.

16. A member of the Board shall not be personally liable for any act done in good faith by the Board or by the member acting as such.

**Protection of  
members.**

17. (1) The first meeting of the Board after the passing of this Act shall be convened by the chairman, and thereafter meetings shall be held at the times and places determined by the Board: Provided that the chairman, or any three members of the Board, may, on reasonable notice to members of the Board, call a meeting at any time.

**Meetings of  
the Board.  
*Ibid.* s. 16.**

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

#### *Division 2—General Powers of Board.*

18. (1) The Board may appoint a manager to be the chief executive officer of the Board, a secretary and such clerks and other officers and employees as it requires and as the Minister may approve to assist the Board in carrying out its duties and functions under this Act.

**Officers of  
Board.**

(2) Persons appointed in pursuance of the preceding subsection of this section or otherwise employed or engaged shall not be subject to the provisions of the

Public Service Act, 1904-1935, or of the Government Employees (Promotions Appeal Board) Act, 1945, and the persons appointed under subsection (1) of this section shall hold office during the pleasure of the Board.

(3) The salaries and allowances of persons appointed employed or engaged in pursuance of this section shall be as directed by the Minister, and shall be charged upon and be payable out of the moneys from time to time in the hands of the Board for the purposes of this Act.

(4) With the consent of the Minister administering any Department of the Public Service of the State, the Board may, on any terms agreed between itself and the Minister, make use of the services of any person employed in that Department.

General  
powers of  
Board.  
*Ibid.* s. 18.

19. The Board may, for the purposes of carrying out the duties and functions imposed on it by the other provisions of this Act—

- (a) buy or sell any property;
- (b) enter into any contract;
- (c) borrow money and mortgage or charge any of its property as security for the repayment of any money borrowed;
- (d) delegate any of its functions and revoke any such delegation;
- (e) establish or maintain premises for receiving, handling, classification, treatment, storage, protection or sale of barley;
- (f) purchase, hire, construct, erect and maintain any premises, machinery, plant and equipment required for any treatment, packing or processing which the Board has the power to carry out;
- (g) undertake printing and publishing, transport and carrying services;
- (h) exercise the functions usually exercised by shipping agents;
- (i) by public notice, to define and declare the closing date for any season specified in the notice;
- (j) do all other matters and things which it is required by this Act to do, or which are necessary or convenient to be done by the Board for giving effect to this Act.

PART II.—CONTROL OF PRODUCTION FOR SALE OF  
BARLEY.

20. (1) Any person may apply to the Board for a license to produce barley for sale and delivery to the Board, and shall supply such information as the Board requires. No person shall be entitled to any such license as of right.

Power to control production for sale of barley.

(2) For the purposes of this Act, but subject to any directions of the Minister, the Board may, at its discretion, grant or refuse such application and may grant such license subject to such conditions as the Board may think fit and as may be specified in the license. A person to whom such license has been granted shall thereupon become and be deemed to be a producer within the meaning of this Act, and such license shall be personal to the grantee.

(3) Every license granted under this section shall specify the maximum quantity of barley which the applicant is permitted to produce for sale and delivery to the Board from crops grown during any specified season.

(4) No producer shall without the consent in writing of the Board produce barley for sale or for delivery to the Board in contravention of the conditions of his license.

(5) A license under this section may be cancelled by the Board, but unless or until so cancelled shall continue in force until the thirty-first day of March next following the granting of the license.

(6) No person other than a producer licensed under this section shall produce barley for sale.

(7) The Board may refuse to accept delivery of any barley licensed to be produced for sale but not delivered to the Board prior to the closing date.

(8) On the recommendation of the Board, the Minister may, at any time and from time to time, by public notice suspend the operation of all or any of the provisions of this section, and may on the like recommendation and by the like notice revoke or vary any such suspension.



## PART IV.—LICENSED RECEIVERS.

Licensed  
Receivers of  
Board.

21. (1) For the purposes of this Act the Board may at its discretion license, subject to such conditions as may be attached by the Board, suitable persons and firms and State instrumentalities as its agents, and may cancel or suspend any such license.

(2) An applicant for a license as an agent of the Board shall apply in writing to the Board for such license, and give to the Board such information relative to his application as the Board requires.

(3) Every licensed receiver shall be entitled to receive and deal with barley on behalf of the Board, and shall perform such other duties and functions on behalf of the Board as the Board directs. He shall hold all barley the property of the Board, which is at any time in his possession, on behalf of the Board, and shall not use or part with the possession of such barley, except in accordance with permission or instruction from the Board.

(4) Every licensed receiver shall be entitled to receive as remuneration for his services and for any facilities made available by him for the classification, storage, protection, handling, transfer and shipping of barley, and as reimbursement for any expenses properly incurred by him, such amount as the Board, with the Minister's approval, determines.

## PART V.—MARKETING OF BARLEY.

Duty to sell  
and deliver  
barley to  
Board.  
*Ibid.* s. 21.

22. (1) The Board may by public notice fix a day (in this section called "the appointed day") on and after which every producer shall comply with the requirements of this Act as to the sale and delivery of barley.

(2) On or after the appointed day a producer shall not, subject to subsection (4) of this section, sell or deliver any barley to any person other than the Board and a person other than the Board shall not purchase or take delivery of any barley from a producer.

(3) The Board shall accept delivery of all barley tendered to it pursuant to this Act if such barley is of merchantable quality and complies with all requirements prescribed.

(4) Nothing in this section shall apply to—

- (a) barley retained by the producer for use on the farm where it is grown;
- (b) barley which has already been purchased from the Board; or
- (c) barley sold or delivered to any person with the written approval of the Board.

23. (1) All barley delivered to the Board by producers and accepted by the Board shall thereupon be vested in and become the absolute property of the Board freed and discharged from all mortgages, charges, liens, pledges, interests, trusts, contracts and encumbrances affecting them; and the rights and interests of every person to or in the barley shall thereupon be converted into a claim for compensation therefor in accordance with the provisions of this Act.

Effect of  
delivery of  
barley to  
Board. Com-  
pensation.  
*Ibid.* s. 22 and  
s. 32.

(2) The amount of compensation to be paid shall be such as the Minister, after taking into consideration the recommendation of the Board, determines. The recommendation of the Board in respect of compensation to be paid for barley received by the Board before the closing date after each season shall be based upon the rate or rates per bushel arrived at by reference to the nett proceeds from the disposal of the barley and the quantities and qualities of barley delivered to the Board before the closing date following that season. Claims for compensation shall be in the form prescribed by regulation under this Act.

(3) It shall not be necessary for the Minister to make a determination in pursuance of subsection (2) of this section until, in his opinion, a sufficient quantity of any barley acquired by the Board has been disposed of to enable the Board to make a just recommendation, but the Minister may, in his absolute discretion, make any payment on account of any claim, notwithstanding that no determination in respect of that claim has been made.

(4) Subject to this Act, the Board shall, out of the proceeds of barley disposed of by it under this Act, defray all costs and expenses of administering this Act, and make all payments in respect of compensation and claims and any other payments authorised to be made by this Act.

(5) For the purpose of ascertaining the compensation to be paid to the producers of barley delivered to the Board, and generally for the purpose of this Act, the Board's decision as to the quality or standard of such barley, 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 barley and the administration of this Act shall be final.

(6) The accounts of the Board shall show separately the receipts and payments in respect of the different grades of barley.

Mode of delivery to Board.

24. Delivery of barley to the Board shall be effected by delivering the barley to a store or warehouse operated by the Board, or to a licensed receiver of the Board.

Certificate to producer upon delivery.  
*Ibid.* s. 26.

25. (1) As soon as practicable after the receipt of any barley the Board shall issue to the producer a certificate in the prescribed form, certifying the quantity and quality of barley delivered and that compensation therefor is to be made to such person or his assignee.

(2) The person entitled to a certificate under this section shall be—

(a) the producer by whom the barley was delivered; or

(b) if the producer has notified the Board in writing that the certificate is to be issued to any other person, that other person.

Issue of certificate to producers on account of price.  
*Ibid.* s. 27.

26. A producer may prior to or at the time of delivering barley to the Board notify the Board that the barley is delivered on behalf of some other person and that the certificate for the barley is to be issued to that person.

Advances to producers on account of price.  
*Ibid.* s. 28.

27. With the consent of the Minister, the Board may make or arrange for advances on account of barley delivered and any payment made on account of such barley may be made at such time or times and on such terms and conditions and in such manner as the Board may think fit.

Liens, Mortgages, etc.  
*Ibid.* s. 29.

28. 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 barley delivered to the Board, shall have any claim against the Board on account thereof.

29. (1) Subject to this Act, the Board may sell or arrange for the sale of all barley of which it becomes the owner, to such persons and at such prices and on such terms as it deems proper.

*Sale of barley  
by Board.  
Ibid. s. 30.*

(2) In arranging for the selling of barley the Board may, in particular, but without limiting the generality of the foregoing powers in this section—

- (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 barley 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 consignment to other countries or States;
- (e) become, by the acquisition of shares, a shareholder in any incorporated company, or enter into any agreement with any Commonwealth authority, or person, any association of persons, whether corporate or unincorporate, or with barley marketing boards or corporations of any other States of the Commonwealth established under the laws of those States relating to the marketing of barley with a view to procuring, or joining with others in procuring, the co-ordination and regulation of the control of the marketing of barley both within and outside the Commonwealth.

Provided that the power conferred by this paragraph shall not be exercised without the approval of the Governor.

Classification.  
*Ibid.* s. 31.

30. (1) The Board shall, unless in any case it is inconvenient or impracticable to do so, classify or cause to be classified all barley delivered to it.

(2) Subject to this Act, the compensation to be paid by the Board to producers for barley which has been classified, shall vary according to the classification of the barley.

Contracts for  
sale of barley.  
(cf. Act No.  
52 of 1938,  
s. 12.)

31. (1) Subject to this Act, every contract (whether made before or after the issue of the public notice under section twenty-two of this Act) so far as it relates to the sale or delivery in Western Australia of barley which has been acquired by the Board, 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 was not 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.

(2) Any transaction or contract with respect to any barley which is 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.

(3) All parties to any contract relating to the sale or delivery of any barley, whether entered into prior to or after the issue of the public notice under section twenty-two of this Act, and which has not prior to such issue been completed by delivery, shall, within fourteen days of such issue, or of entering into the contract, whichever is the later date, furnish to the Board a return giving details of such contract and in the form prescribed by regulations under this Act.

Power to enter  
and search.

32. (1) Any member of the Police Force authorised so to do by the Board may, at any time of the day or night, enter and search any place, premises or vessel, or part thereof, where any barley acquired by the Board is, or is suspected to be.

(2) For the purposes of this Act, any person thereunto authorised by the Board may, at all reasonable times, enter any place or premises where barley may be and inspect any stocks of barley and any accounts, books and documents relating to any barley.

(3) Any person who hinders or prevents any entry or inspection by any person duly authorised under this section, shall commit an offence against this Act.

33. Any person having any barley the property of the Board in his possession or under his care or control shall exercise proper care and take all reasonable and proper precautions and do all things necessary to preserve and safeguard such barley free from any damage or deterioration whatsoever.

Protection of  
barley.

#### PART VI.—MISCELLANEOUS.

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

Non-liability  
of Board.  
*Ibid.* s. 33.

- (a) to a producer delivering or causing to be delivered any barley to the Board or to any person on its behalf;
- (b) to any person entitled or claiming to be entitled through such producer; or
- (c) to any person on the order of such producer 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 producer, shall be deemed to be such producer.

(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.

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

Accounts and  
Audit.  
*Ibid.* s. 34.

(2) The Auditor-General shall at least annually audit the accounts of the Board and every member and officer of the Board shall give the Auditor-General and his officers all the information relating to such accounts which he or they require and shall upon request produce to the Auditor-General and his officers any books, vouchers, or other documents relating to such accounts and do all things necessary to enable the audit to be made.

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

Guarantee of  
bank ad-  
vances.

36. The Minister may, with the consent of the Treasurer of the State, arrange with a trading bank for the making by that bank of advances to the Board for use on its behalf by the Board for the purposes of this Act, and may guarantee to such bank the repayment out of consolidated revenue of the State of advances made by the bank in pursuance of the arrangement.

Reports.  
*Ibid.* s. 36.

37. The Board shall at least annually make and submit a report of its proceedings to the Minister together with a true copy of the accounts as then last audited and with a copy of the Auditor-General's report thereon; and on receipt of same the Minister shall cause copies of such report and of such accounts with the Auditor-General's report to be laid before both Houses of the Parliament.

Offences and  
penalties.  
*Ibid.* s. 37.

38. (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act.

(2) Any person guilty of any offence against this Act shall be liable to a fine not exceeding one hundred pounds.

(3) Proceedings for offences against this Act shall be heard and determined summarily.

How legal  
proceedings  
taken.  
*Ibid.* s. 38.

39. (1) Any proceedings, whether civil or penal, may be taken in the name of the Board by the secretary or by any officer of the Board authorised in that behalf by the Board.

(2) No proof shall be required of the appointment of the secretary or any officer as an officer of the Board,

or of the authority of the secretary or officer to take civil or penal proceedings in the name of the Board but the averment in the process that the secretary or officer aforesaid is so authorised shall be deemed to be conclusive proof of the fact.

40. (1) The Governor may make regulations under this Act 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.

Regulations.  
*Ibid.* s. 39.

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

- (a) regulating or prohibiting the production, supply, distribution, transport, purchase, sale or other disposal of barley either unconditionally or subject to such conditions as are specified or imposed in or in pursuance of this Act;
- (b) requiring producers, or persons dealing or trafficking in barley as owners or agents or licensed receivers, or concerned in the transport or having the custody of barley, to furnish returns containing such information as the Board may consider necessary;
- (c) for enabling the Board or any person authorised by it to inspect any records or accounts relating to barley or to premises on which barley is stored, graded or otherwise treated;
- (d) for prescribing the duties, functions and conduct of licensed receivers;
- (e) the regulation and control of the supply, classification, grading, storage, distribution, marketing, sale, purchase, use and consumption of barley;
- (f) the issue and cancellation of permits;
- (g) defining the functions, authorities and duties of the officers of the Board;



(h) any other matter which in the opinion of the Minister is incidental to carrying out the functions and duties imposed on the Board by this Act.

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

**Duration of  
Act,  
*Ibid.* s. 40.**

41. This Act shall continue in operation for three years after the date of its proclamation, and no longer.

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