

Approved for Reprint, 31st March, 1980.

**WESTERN AUSTRALIA.**

**BULK HANDLING.**

**No. 15 of 1967.<sup>1</sup>**

[As amended by Acts:

- No. 4 of 1971, assented to 13th September, 1971;
- No. 45 of 1972, assented to 24th August, 1972;
- No. 69 of 1973<sup>2</sup> assented to 6th December, 1973;
- No. 64 of 1974,<sup>3</sup> assented to 9th December, 1974;
- No. 29 of 1976, assented to 9th June, 1976;
- No. 13 of 1979, assented to 30th August, 1979,

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

**AN ACT to make better provision for the Bulk Handling of Grain by the Company registered as Co-operative Bulk Handling Limited, and for incidental and other purposes.**

[Assented to 20th October, 1967.]

**BE** it enacted—

**PART I—PRELIMINARY.**

**1.** This Act may be cited as the *Bulk Handling Act, 1967-1979*.

Short title.  
Amended by  
No. 13 of  
1979, s. 1.

**2.** This Act shall come into operation on a date to be fixed by proclamation.<sup>1</sup>

Commence-  
ment.

<sup>1</sup> Came into operation on 4th January, 1968; see *Government Gazette* 4/1/68, p. 1.

<sup>2</sup> Came into operation on 18th January, 1974; see *Government Gazette* 18/1/74, p. 124.

<sup>3</sup> Came into operation on 13th December, 1974; see *Government Gazette* 13/12/74, pp. 5320-1.

Arrangement.  
Amended by  
No. 4 of  
1971, s. 2.

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

PART I—PRELIMINARY—Ss. 1-5.

PART II—OBLIGATIONS OF THE COMPANY—Ss.  
6-19.

PART III—FACILITIES TO BE PROVIDED BY  
THE COMPANY—Ss. 20-24.

PART IV—SHIPPERS' DELIVERY BOARD—Ss. 25-  
30.

PART V—TOLLS AND CHARGES—Ss. 31-35.

PART VA—APPLICATION OF INCOME AND  
PROPERTY—S. 35A.

PART VI—WEIGHBRIDGE TICKETS AND  
WARRANTS—Ss. 36-38.

PART VII—RECEIVAL AND DELIVERY OF GRAIN  
BY THE COMPANY—Ss. 39-50.

PART VIII—MISCELLANEOUS—Ss. 50A-54.

SCHEDULE.

Repeal.

4. The Acts set out in the Schedule to this Act are repealed.

Interpreta-  
tion. S. 2.

5. In this Act, unless the contrary intention appears—

“bin” means any building, shed, silo or receptacle for the storage of grain, in bulk, pending transport or delivery, and includes any plant or equipment used in connection with the reception of grain in bulk;

“Board” means the Shippers' Delivery Board constituted under this Act;

“Company” means Co-operative Bulk Handling Limited, a company incorporated under the provisions of the Companies Act, 1893, and deemed to be registered under the Companies (Co-operative) Act, 1943-1959, and having its registered office at Wellington Street, Perth;

“dockage”, in respect of grain tendered to, or received by, the Company, means the amount by which the grain is devalued by reason of its inferiority or the admixture of foreign matter;

“grade”, in relation to grain or, where the case requires, other seeds, means the standard or standards from time to time prescribed under this Act, and until a standard is, or standards are, prescribed, means the standard or standards for the time being adopted by arrangement with the relevant marketing authority;

“grain” means the seeds of the cereal grasses wheat and barley;

“grain received in bulk” means grain in respect of which the Company renders a service;

“grower” includes the legal personal representative of a deceased person, a trustee, the liquidator of a company, a person entitled to a share of a crop, under a share farming agreement, and a corporation, organisation or body delivering grain to the Company;

“miller” means a person whose business includes the milling, other processing or use of grain;

“representative”, in relation to a grower, means a person acting under the express or implied authority of the grower and includes a person tendering grain to the Company on behalf of the grower;

“season”, in relation to grain, means the period extending from November 1st in any year, or, if grain is received prior to November 1st, then from the date of receipt of the grain, to October 31st in the following year;

“section” means a section of this Act;

“terminal elevator” means a silo or container maintained at a port for the handling of grain and includes machinery and buildings ancillary to such a silo or container.

## PART II—OBLIGATIONS OF THE COMPANY.

Company  
may be  
required to  
furnish  
bond.  
S. 13.

6. (1) The Minister may require the Company to enter into a bond conditioned on the performance by the Company of its obligations and duties under this Act and the bond shall be in such penal amount, not exceeding fifty thousand dollars, and in such form, and with such surety or sureties, as the Minister may approve.

(2) The Company shall, within one month after receiving a requisition of the Minister made pursuant to subsection (1) of this section, enter into the required bond.

Penalty: One thousand dollars.

Liability of  
Company for  
conversion.  
S. 14.

7. (1) Nothing in this Act relieves the Company from liability for conversion or other action in respect to grain delivered to the Company in the course of its operations, but the Company may create an assurance or indemnity fund to protect it against liability in that regard.

(2) Where the Company has, in good faith and without notice of the conversion, received grain in bulk from a person who has wrongfully converted it to his own use or in derogation of the right, title, claim or interest of another person, the Company may recover from the person wrongfully converting the grain any sum or sums and costs for which it may be liable in consequence of the receipt of the grain.

Company not  
to trade in  
grain.  
S. 9.

8. (1) The Company, its directors, officers, servants or agents shall not be directly or indirectly engaged in any business relating to the buying or selling of, or broking in, grain, but the Company may buy grain to make up losses or shortages in outturn and may sell grain that has become damaged, grain representing any excess of outturn resulting from time to time in its operations under this Act or grain remaining in its care after the thirtieth day of September next following the receipt of the grain.

Penalty: One thousand dollars.

(2) A person is not deemed to be directly or indirectly engaged in carrying on any business such as is mentioned in subsection (1) of this section by reason only of his being a Trustee of the Grain Pool of Western Australia, a member of the Western Australian Barley Marketing Board or a member of any other marketing authority constituted under any law of the Commonwealth or of the State for the compulsory marketing of any type of grain, or of being a Director of a company carrying on a business of which the primary purpose is not the buying or selling of, or broking in, grain but in the course of which, for its own purposes, it buys or sells, or acts as a broker in, grain.

9. (1) The Company, or a director, officer, servant or agent of the Company shall not—

- (a) discriminate against, or give any preference to, a person wishing to avail himself of the services of the Company;
- (b) tout or canvass on behalf of any grain buyer having business relations with the Company; or
- (c) disclose anything relating to the business or transactions of any person having business relations with the Company, so as to afford an advantage to any other person.

Company not to give preference or show favouritism.  
S. 11.

Penalty: One thousand dollars.

(2) The Company shall, on becoming aware that any officer, servant or agent of the Company has committed an offence under this section, forthwith terminate his service or contract, notwithstanding the terms of any agreement of service or contract to the contrary.

10. The memorandum or articles of association of the Company shall not be altered, except with the express approval of the Governor.

Company not to alter memorandum or articles without Governor's consent.  
S. 12.

Company to  
insure  
grain.  
s. 17.

11. (1) The Company shall, at its own expense, insure all grain from time to time in its custody or under its control to its full insurable value with a public insurance company that has, or underwriters who have, complied with the provisions of the Insurance Act, 1932 of the Commonwealth, as from time to time amended, against loss or damage by fire, explosion, storm, tempest or flooding and against such other insurable risks as may from time to time be prescribed.

(2) The Company is authorised to receive and give a good discharge for all moneys payable under, and in respect of, and to settle, adjust, and compromise all claims under, a policy of insurance.

(3) Where any loss or damage occurs to any grain in the custody, or under the control, of the Company that is covered by insurance, the Company may apply the insurance moneys recovered in or towards the purchase of grain to replace that destroyed or damaged, or, at its discretion, may pay those moneys to a reserve fund to meet any liability for shortages under the provisions of section sixteen.

Company to  
furnish  
balance  
sheet and  
revenue  
account to  
Minister  
and to keep  
prescribed  
records.  
s. 18.

12. (1) The Company shall in every year, not later than the prescribed date, take out a balance sheet, showing its assets and liabilities and making due allowance for depreciation and for such other reserves as are usual for undertakings similar to that carried on by the Company, together with a revenue account for the preceding twelve months, and shall, on or before the date prescribed for that purpose, forward the balance sheet and revenue account to the Minister who shall cause a copy of both to be laid before both Houses of Parliament, as soon as may be practicable after their receipt.

(2) Any officer of the Auditor General nominated by him shall, at all times, have free access to the books and records of the Company and be at liberty to make such copies of, or extracts from, them as he thinks fit.

(3) The Company shall keep all such other records of its transactions as may, from time to time, be prescribed; and such records shall at all times be open for inspection as provided by subsection (2) of this section.

13. Notwithstanding the provisions of section one hundred and seventy-four of the Companies (Co-operative) Act, 1943-1959, or any provision contained in the memorandum or articles of association of the Company, the Company may purchase, out of its reserve funds, any shares of a member of the Company, but to the extent only that the shares so purchased and not sold or disposed of do not, at any one time, exceed one-fifth part of the paid up capital of the Company; and the shares so purchased are not deemed to be cancelled or to be purchased in reduction of capital, but may be sold or disposed of by the Company, in accordance with its articles of association.

Power of  
Company to  
purchase  
shares.  
S. 18A.

14. All moneys arising from any excess of outturn in respect of each class of grain received by the Company, in any particular season, shall be paid to, and retained by, the Company in a special reserve account, as a fund to meet, from time to time, any shortages resulting in its operations or in the outturn of grain of any particular season or seasons; but where the reserve at any time exceeds the sum of two hundred thousand dollars, the excess may be transferred to, and applied as part of, the general funds of the Company.

Application  
of moneys  
received  
from excess  
of outturn.  
S. 10.

15. (1) The Company is not liable to any person in respect of loss sustained by him by reason of failure or delay in delivery of grain received in bulk in the course of its operations, where the failure or delay arises out of a riot, industrial dispute, civil commotion, war or act of God, or is occasioned by any unforeseen cause not attributable to the negligence of the Company.

Company not  
liable for  
act of God  
or  
unforeseen  
damage.  
S. 15.

(2) In the event of any loss or damage arising to grain the Company shall apportion the loss of, or damage to, the grain rateably, as nearly as practicable, among those entitled to obtain delivery of grain at the time the loss or damage occurs and, to that extent, the Company shall be discharged from its obligation to deliver grain to the persons entitled to obtain delivery of it.

Company's  
liability  
for shortages  
in stocks.  
S. 16.

16. (1) Where the Company is unable to give delivery of grain on account of loss or shortages in stocks of grain, other than losses or shortages arising from any cause for which it is relieved of liability under section fifteen, the Company shall pay to every person entitled to, and unable to obtain, delivery of grain the value of that quantity which it is unable to deliver at the time the request for delivery is made, or, where no request is made prior to the thirtieth day of September next following the date of receipt of the grain, the Company shall pay the value of an equal quantity of grain on that day.

(2) For the purposes of subsection (1) of this section, the value of the grain undelivered is deemed to be the value of an equal quantity of grain at—

- (a) the average buying price paid by merchants, published in *The West Australian* newspaper at the material time or published at the thirtieth day of September, as the case may be; or
- (b) where the price is not ascertainable under paragraph (a) of this subsection, the price quoted on the Liverpool Corn Exchange or such other exchange as may be operating, with due allowance for costs of transport and insurance; or
- (c) at the election of the Company, the price determined by the Minister,

but nothing in this subsection precludes the recovery by a person entitled to delivery of grain of any further damages to which he may be lawfully entitled by reason of the Company not delivering the grain.

(3) A person entitled to receive grain that is lost or damaged is, notwithstanding that he has not received it, obliged to pay such toll or other charges as would have been payable, under the provisions of this Act, had he received the grain on the day on which the loss or damage occurred.

17. (1) Where, for any purpose under, or relating to, the provisions of this Act or the regulations, a poll of growers is taken, then, notwithstanding any provision of the memorandum or articles of association of the Company to the contrary, the poll shall be taken by secret ballot.

Polls of growers to be taken by secret ballot. S. 11A.

(2) The person conducting a poll of growers may take such action and give such directions as he considers necessary to ensure that the poll is taken by secret ballot and that no irregularity occurs in, or in connection with, the ballot.

(3) Every person who—

- (a) refuses or fails to comply with a direction given pursuant to subsection (2) of this section; or
- (b) obstructs or hinders—
  - (i) the person conducting, or a person carrying out the directions of the person conducting, the ballot; or
  - (ii) the taking of any action pursuant to subsection (2) of this section,

commits an offence.

Penalty: Forty Dollars.

(4) The Company shall take such steps as may be necessary to ensure that ballot papers, envelopes, counterfoils, lists and other documents used in connection with, or relating to, a ballot under this section are prepared and kept at such place, and for such period after the completion of the ballot, as the Minister may direct.

Title to  
grain in  
Company's  
cars.  
S. 21.

18. (1) The receipt of grain in bulk by the Company does not confer on the Company any proprietary right or interest in the grain or render the grain liable to seizure or attachment, as against the Company.

(2) As regards grain, the position of the Company at law is that of a custodian for reward.

(3) The proprietary interest in grain is vested in the person who, for the time being, is entitled to obtain it from bulk stocks held by the Company or under its control.

Company to  
allow use of  
port  
facilities.  
S. 26B (5).

19. Subject to this Act and the regulations, the Company shall allow a person, on payment of the prescribed charges, the use of any bulk handling facilities and equipment controlled by it, at ports in the State.

#### PART III—FACILITIES TO BE PROVIDED BY THE COMPANY.

Further  
installations  
to be  
approved by  
Minister.  
S. 4.

20. After the coming into operation of this Act, a fixed bin or bulk handling equipment shall not be installed by the Company for the reception of grain from growers, without the consent of the Minister.

Facilities to  
be provided  
when  
Minister so  
requires.  
S. 5.  
Amended by  
No. 69 of  
1973, s. 4.

21. The Company is, when so required by the Minister, obliged to instal, maintain, and operate a bin for the reception and handling of grain in bulk, at any point in respect of which the Minister is satisfied that the average annual receipt of grain can reasonably be expected to exceed five thousand five hundred tonnes for a period of at least five years; but the Minister shall not require the installation of a bin within forty kilometres of an existing bin.

Plans and  
specifica-  
tions of  
installations  
to be  
approved by  
Minister.  
S. 6.

22. (1) Before proceeding to instal a bin, the Company shall prepare, and submit, plans and specifications of the bin to the Minister, for his approval.

(2) If the Minister is satisfied with the plans and specifications of a bin, he may approve them, otherwise he may cause the plans and specifications to be altered and approve them, as altered.

(3) A bin shall be installed in accordance with the plans and specifications as finally approved by the Minister.

23. Where, in the opinion of the Minister, a bin or any equipment provided by the Company in connection with a bin is inadequate for the needs of the district that it serves or is intended to serve, the Minister may, by notice in writing, require the Company to make such alterations or additions or to provide such further equipment for the operation of the bin as the Minister thinks necessary, and the Company shall comply with any such requisition.

Minister may require Company to alter inadequate facilities.  
S. 7.

24. The Company shall, at all times—

- (a) keep all bins and bulk handling equipment used by it or under its control in good repair and condition and in safe working order;
- (b) take and use proper precautions in the operation of bins and bulk handling equipment, so as to protect all grain received and handled from weather, vermin and fungus; and
- (c) take and use all proper precautions in the receipt, handling, transport and delivery of grain, so as to ensure that all types of grain are kept separate from one another.

Company to keep bins in good condition.  
S. 8.

#### PART IV—SHIPPERS' DELIVERY BOARD.

25. (1) A Board, called "The Shippers' Delivery Board", is constituted.

Shippers' Delivery Board.  
S. 28.

(2) The Board shall consist of four members, including the Chairman.

(3) The members of the Board shall be—

- (a) the Commissioner of Railways, by virtue of his office, or, in the absence of the Commissioner, the Chief Traffic Manager of the Western Australian Government Railways;
- (b) a person appointed by the Governor to represent the various port authorities through whose ports bulk grain is shipped;
- (c) a person elected, in the prescribed manner, by those merchants operating in the State who are shippers of grain; and
- (d) a person appointed by the Company.

(4) The members of the Board shall elect one of their number as chairman.

(5) The Minister shall, as the occasion requires, by notice in writing to the merchants mentioned in paragraph (c) of subsection (3) of this section require them to elect a person as a member of the Board, in the prescribed manner, and, by like notice to the Company, require it to appoint a member of the Board, both within such period, being not less than one month, as may, in each case, be stipulated in the notice and if, upon the expiration of the period so stipulated or such extension of that period as the Minister may grant, the required election has not been held or the required appointment has not been made, the Minister shall nominate such person as, having regard to the interest the person is to represent, he thinks fit; and the Governor may appoint a person so nominated to be a member of the Board.

Meetings  
of Board.  
S. 29.

26. (1) The Board shall meet together from time to time as may be necessary for the transaction of business.

(2) A special meeting of the Board may at any time be called in the prescribed manner by two members of the Board.

(3) The Board may appoint a secretary.

27. (1) Three members of the Board constitute a quorum. Quorum.  
S. 30.

(2) The chairman of the Board shall have a deliberative, as well as a casting vote.

28. The members of the Board are not entitled to any remuneration for their services as such. No fees payable to members.  
S. 31.

29. It is the duty of the Board to take such action as may be practicable— Duties of Board.  
S. 32.

- (a) to prevent any disorganisation of, or congestion in, the transport of grain; and
- (b) to ensure that adequate supplies of grain are transported to the ports to meet the demands of shippers and charterers of vessels in accordance with the provisions of sections thirty and forty-six.

30. (1) The Board shall, from time to time, on the information furnished to it and having regard to the facilities available for the handling, transport, storage and delivery of the grain— Board to compile shipping rosters.  
S. 34.

- (a) draw up shipping rosters; and
- (b) specify the quantities of grain that the Company is, from time to time, to transport to any port, to meet shippers' requirements.

(2) It is the duty of the Company to ensure that grain is transported to the ports, and that ships arriving to load bulk grain are kept supplied, in accordance with the specifications of the Board.

#### PART V—TOLLS AND CHARGES.

31. (1) There shall be paid to the Company, in respect of any type of grain or seed received in bulk, a toll, in this section referred to as "the foundation toll" fixed under this section in relation to grain or seed of that type. Payment of foundation toll.  
S. 26A.  
Amended by No. 69 of 1973, s. 5; No. 29 of 1976, s. 2.

(1a) The Governor may by Order in Council from time to time fix the foundation toll to be paid under this section in relation to grain or seed of any type, but so that—

- (a) in relation to wheat, the foundation toll shall not exceed the amount of \$2.94 per tonne; and
- (b) in relation to any other grain or seed, the foundation toll fixed from time to time shall be that ascertained by varying the foundation toll then fixed in relation to wheat by such amount as represents the relative densities of wheat and that other grain or seed.

(2) The foundation toll shall be paid to the Company by every holder of a warrant upon his surrendering it to the Company.

(3) The Company shall keep a register containing the names and address of every grower and shall, on or before the prescribed date in each year, enter in the register against the name of every grower whose grain has been delivered to, or handled by, the Company, during the preceding season, a credit for the amount of the foundation tolls received by the Company in respect of grain delivered to, or handled by, the Company, for the grower.

(4) The amount of each foundation toll received by the Company, in respect of a grower, is deemed to be an advance to the Company by the grower to whom it is, in accordance with subsection (3) of this section, credited in the register and, subject to any set off or deduction made under subsection (6) of this section, is a debt owing, by the Company to the grower, and that debt shall be satisfied by the issue to the grower of a foundation debenture.

(5) The foundation debentures of every issue are deemed to have been issued on the footing that the Company may redeem them at any time and those to be redeemed in any year shall be selected by ballot or in such other manner as the Company may, from time to time, determine.

(6) The Company shall cause one fully paid up two-dollar share in its capital to be issued or transferred to every grower whose name is entered in the register and who is not, at the time of that entry, the registered holder of a share in the capital of the Company and who is credited with foundation tolls received by the Company exceeding the amount of two dollars, and, in payment for that share, the Company shall set off the amount of two dollars from the foundation tolls credited to the grower.

(7) Shares that have not previously been issued by the Company shall not be issued for the purposes of subsection (6) of this section, if any shares previously issued by the Company that have reverted to, or have otherwise been acquired by, the Company are available for re-issue or transfer.

(8) All foundation toll payments received by the Company, less any amounts set off or deducted under subsection (6) of this section, may be applied by the Company for additional capital expenditure, for repayment of moneys borrowed for that purpose and for replacing losses incurred by the Company in the conduct of its business and, subject to their being so applied, the toll payments shall be applied by the Company, at annual intervals, on, or as soon as convenient after, the prescribed date in each year, in redeeming the debentures of its then current issue or, alternatively, in payment, during each year of the term of the foundation debentures, of such part of the amount of them as is proportionate to that term.

(9) On each occasion that an issue of foundation debentures is redeemed in full, a further issue of foundation debentures shall be made by the Company to the growers or their respective assigns, for the amounts then standing respectively to their credit in the foundation debenture register kept pursuant to this section.

(10) The foundation debentures of each further issue made pursuant to subsection (9) of this section shall be in the same form as that of the issue of foundation debentures current at the date of the coming into operation of this Act, but the term of those debentures shall be ten years computed from the prescribed date of the year of issue.

Payment of  
port  
equipment  
tolls.

S. 26B.

Amended by  
No. 69 of  
1973, s. 6.

32. (1) Without affecting the provisions of section thirty-one, there shall be paid to the Company, in respect of all grain received in bulk, a toll, in this section referred to as "the port equipment toll" fixed under this section in relation to grain or seed of that type.

(1a) The Governor may by Order in Council from time to time fix the port equipment toll in relation to grain or seed of any type but so that—

(a) in relation to wheat, the port equipment toll shall not exceed the amount of seventy-three cents per tonne;

(b) in relation to any other seed, the foundation toll fixed from time to time shall be that ascertained by varying the port equipment toll then fixed in relation to wheat by such an amount as represents the relative densities of wheat and that other grain or seed.

(2) Subsections (2) and (3) of section thirty-one apply *mutatis mutandis* to the port equipment toll as though they were set out in this section.

(3) The amount of each port equipment toll received by the Company, in respect of a grower is deemed to be an advance to the Company by the grower to whom it is credited in the port equipment toll register and is a debt owing by the Company to the grower and that debt shall be satisfied by the issue to the grower of a port equipment debenture.

(4) All port equipment toll payments received by the Company may be applied by it for or towards the capital cost of providing and installing bulk handling facilities and equipment at ports in the State and in repaying moneys borrowed for that

purpose, together with interest and other charges, and subject to their being so applied, they shall be applied by the Company at annual intervals on, or as soon as convenient after, the prescribed date in each year, in redemption of the issue of the port equipment debentures then current or, alternatively, in payment, during each year of the term of the port equipment debentures, of such part of the amount of them as is proportionate to that term.

(5) The debentures to be paid off each year shall be selected by ballot or in such other manner as the Company may, from time to time, determine.

(6) On each occasion that an issue of port equipment debentures is redeemed in full, a further issue of port equipment debentures shall be made by the Company to the growers or their respective assigns, for the amounts then standing respectively to their credit in the port equipment toll register kept pursuant to this section.

(7) The port equipment debentures of each further issue made pursuant to subsection (6) of this section shall be in the same form as that of the issue of port equipment debentures current at the date of the coming into operation of this Act, but the term of those debentures shall be ten years, computed from the prescribed date of the year of issue.

33. Where the Company is under obligation, in any year, to make a further issue of debentures in respect of foundation tolls, pursuant to the provisions of section thirty-one, and, in the same year, a further issue of debentures in respect of port equipment tolls, pursuant to the provisions of section thirty-two, the liability of the Company to the growers in respect of each toll shall be merged and one issue only of debentures shall be made by the Company to the growers or their respective assigns in satisfaction of the aggregate of the amounts then standing respectively to the credit of the growers in the foundation toll register and in the port equipment toll register, and one debenture, only, comprising the aggregate amount of both tolls shall be issued to each grower or his assign.

Merger of  
debentures  
in one issue.  
S. 260.

Charges by Company to be approved by Governor. S. 26 (2).

34. (1) In return for the services of the Company in the receipt, handling, storage and delivery of grain, the Company is authorised to make such charges as are from time to time fixed by the Governor.

(2) The Company shall not make any other levies or charges for, or in respect of, the bulk handling of grain except such as are fixed pursuant to this section or are, by this Act, expressly authorised.

(3) No alteration which may be made from time to time in the levy or charges authorised under this section affects the holder of a warrant issued prior to the alteration.

Special object charges. Added by No. 64 of 1974, s. 3.

34A. Subject to this Act, the Company may from time to time in respect of any type of grain or seed received in bulk make a charge fixed under section 34B or 34C as the case requires, in relation to grain or seed of that type for the purpose of establishing and maintaining a fund for effecting any special object which the Company may determine to be in the common interest of growers.

Special object charges for 1973-1974 season. Added by No. 64 of 1974, s. 3.

34B. The Governor may, by Order in Council, fix the charge to be paid to the Company under section thirty-four A in respect of deliveries of grain or seed in the 1973-1974 season, but so that the amount of the charge—

- (a) in relation to wheat, is 75 cents per tonne; and
- (b) in relation to any other grain or seed, shall be that amount as is ascertained by varying the charge then fixed in relation to wheat by such an amount as represents the relative densities of wheat and that other grain or seed.

Special object charges for seasons subsequent to 1973-1974 season. Added by No. 64 of 1974, s. 3.

34C. (1) The charge referred to in section thirty-four A shall not be imposed in respect of deliveries of grain or seed in a season subsequent to the 1973-1974 season unless in respect of that season the Company has submitted to its shareholders a proposal setting out the amount thereof and the special object to which the charge is to

be applied and has ascertained in accordance with the provisions of this section that they have agreed to the charge.

(2) For the purpose of ascertaining whether its shareholders agree to the imposition of a charge under section thirty-four A in respect of deliveries of grain or seed in a season subsequent to the 1973-1974 season the Company shall in respect of that season, in accordance with its articles of association, call a meeting in at least two places in each district from which a Director is elected under its articles of association, and submit the proposal referred to in subsection (1) of this section to each meeting so called.

(3) The shareholders shall be considered as having agreed to a charge imposed under section thirty-four A in respect of deliveries of grain or seed in respect of a season subsequent to the 1973-1974 season if, and only if, in a majority of the districts a majority of the shareholders of the Company attending the meetings called under this section agree to a proposal in terms of subsection (1) of this section and if a majority of all the shareholders attending those meetings also agree to the proposal.

(4) For the purpose of ascertaining whether a proposal to impose a charge under section thirty-four A in respect of deliveries of grain or seed in respect of a season subsequent to the 1973-1974 season has been agreed to by the shareholders of the Company, the votes cast in each district shall be totalled and the votes cast in all the districts from which Directors are elected to the Company shall also be totalled.

(5) The Governor, upon being satisfied that the requirements of subsections (1) to (4) (both inclusive) of this section have been complied with, may by Order in Council fix the charge to be paid to the Company under section thirty-four A in respect of deliveries of grain or seed in a season subsequent to the 1973-1974 season, but so that the amount of the charge—

- (a) in relation to wheat shall not exceed \$1.10 per tonne; and

- (b) in relation to any other grain or seed, shall be that amount as is ascertained by varying the charge then fixed in relation to wheat by such an amount as represents the relative densities of wheat and that other grain or seed.

Company authorized to pay Skeleton Weed Fund contributions.

Added by No. 64 of 1974, s. 4.

**34D.** (1) The Company is authorized, without further warrant than this section, to pay to the Skeleton Weed Eradication Fund established under the Skeleton Weed (Eradication Fund) Act, 1974 the amount of any contribution which appears to the Company to be payable to that Fund by a grower who has delivered grain or other seeds to the Company and any amount so paid by the Company to that Fund—

- (a) shall operate to discharge the grower in respect of whom it is paid from liability to pay the contribution; and
- (b) is a debt due to the Company from the grower in respect of whom it is paid.

(2) The amount of the contribution paid by the Company pursuant to subsection (1) of this section shall be a first charge in priority to all claims, other than a charge created under any other section, on the moneys payable to a grower in respect of grain or seed.

Company to have lien in priority for tolls and charges.  
S. 27.

**35.** (1) The Company has a lien, in priority to all other claims, over any grain received by it, in respect of the tolls and other charges payable in respect of that grain under the authority of this Act.

(2) A person obtaining delivery of grain from the Company is authorised to pay the toll and charges in respect of the grain and to set off any amount so paid against any moneys payable by him in respect of the grain, or of any equivalent quantity of grain, of which he may obtain delivery.

## PART VA.—APPLICATION OF INCOME AND PROPERTY.

Heading added by No. 4 of 1971, s. 3.

35A. Notwithstanding any of the provisions of the Companies (Co-operative) Act, 1943-1959 or of the memorandum or articles of association of the Company—

Manner of applying income and property of the Company. Added by No. 4 of 1971, s. 3.

- (a) no part of any income or property of the Company shall be, directly or indirectly, paid or transferred as a profit, by way of a dividend or bonus or otherwise, to any member of the Company;
- (b) all the income and property of the Company shall be applied, subject to this Act, towards the objects of the Company as set out in clause two of its memorandum of association and not otherwise;
- (c) the directors of the Company may set aside out of the profits of the Company such sums as they think fit as reserves for application, in the discretion of those directors, in meeting contingencies or in achieving any other purpose that is, under the memorandum or articles of association of the Company but subject to this Act, a proper purpose for the application of profits of the Company;
- (d) where any reserves set aside pursuant to paragraph (c) of this section are not immediately required for application in accordance with that paragraph, they may, in the discretion of the directors of the Company, be applied in the business of the Company or in furthering, subject to this Act, the objects of the Company as set out in clause two of its memorandum of association, paying off or reducing some or all of its debentures for the time being outstanding, or liquidating any other indebtedness of the Company or they may be invested in such investments as those directors think fit; and

- (e) if the Company is wound up and any surplus assets remain after payment of its debts and liabilities and the costs of the winding up and repaying to shareholders the capital paid upon their shares, those surplus assets shall not be distributed among the members of the Company but shall be distributed or applied in such other manner as shall be directed by the Treasurer of the State acting for and on behalf of the State.

PART VI—WEIGHBRIDGE TICKETS AND WARRANTS.

Company to  
issue  
weigh-  
bridge  
ticket on  
receipt of  
grain.  
S. 22.

36. (1) On receipt of grain, the Company shall cause it to be weighed, its standard to be determined and a weighbridge ticket to be issued for the grain.

(2) Every weighbridge ticket issued pursuant to this section shall set out—

- (a) the type of grain in respect of which it is issued;
- (b) the name of the person in whose name the grain is delivered;
- (c) the weight and quantity of grain delivered;
- (d) where determined at the time of delivery, its standard and dockage; and
- (e) such other particulars as may be prescribed.

(3) All weighbridge tickets issued for any one type of grain shall be consecutively numbered and the Company shall not issue two weighbridge tickets bearing the same number, for the same type of grain, in any one season.

Company to  
issue  
warrants.  
S. 22.

37. (1) The Company shall issue a warrant in respect of grain received, setting out such particulars as may be prescribed, as soon as practicable after being so required by the grower and, where the grower does not, within a reasonable period, require the issue of a warrant, the Company may issue it of its own motion.

(2) Every warrant shall be serially numbered and the Company shall not issue two warrants bearing the same number for the same type of grain, in any one season.

38. (1) Where a person delivers grain to the Company and the delivery is made in derogation of the right, title or interest of another person—

Liability of persons for conversion.  
S. 23.

- (a) the person in whose name the grain is delivered;
- (b) the person to whom a warrant is issued in respect of the grain; and
- (c) the holder of a warrant issued in respect of the grain,

is liable to the person whose right, title or interest is so affected.

(2) Subject to the provisions of subsection (1) of this section, every warrant is a negotiable instrument transferable by endorsement; but every person to whom a warrant is negotiated or transferred accepts and holds it subject to any lien over, and the right, title or interest of any person to or in, the grain in respect of which the warrant was issued.

(3) An endorsement of a warrant may be general or special.

#### PART VII—RECEIVAL AND DELIVERY OF GRAIN BY THE COMPANY.

39. (1) Subject to this Act, the Company has the sole right, until the thirty-first day of December, one thousand nine hundred and eighty-five, of receiving grain in bulk and of handling, transporting and delivering grain received in bulk and a person who, within the period limited by this subsection, does any of those things commits an offence.

Company granted sole right of receiving and delivering grain.  
S. 3.

Penalty: One thousand dollars.

(2) A court convicting a person of an offence under this section shall, whether imposing any penalty or not, order the person to pay to the Company an amount equal to the tolls that would have been payable to it in respect of the grain received, handled, transported or delivered in contravention of this section and the amount so ordered to be paid may be recovered as though it were a penalty imposed pursuant to this section.

(3) Notwithstanding the provisions of subsection (1) of this section—

- (a) the grower of a grain crop may transport a quantity of the grain not exceeding one-tenth of the marketable portion of the crop, by rail;
- (b) a miller may receive, in bulk, any wheat having a special milling quality, whether by reason of its having been grown in any particular part of the State or not;
- (c) a person may receive, handle, transport, and deliver grain in bags; and
- (d) the Commissioner of Railways and his officers or servants do not commit an offence by reason only of receiving, handling, or carrying in bulk any grain that may be delivered to him or them by any person, in contravention of the provisions of this section.

Statement showing handling conditions. S. 19.

40. The Company shall make available to a grower requiring it, at any point at which it is operating, a statement showing the prescribed terms, conditions and charges under which grain is received in bulk by the Company and then in force.

Company to handle in accord with Act. S. 20.

41. Notwithstanding any contract or agreement to the contrary, the terms and conditions provided by, or prescribed under, this Act apply to every receipt, handling and delivery of grain by the Company.

Company to receive all bulk grain tendered. S. 24 (1).

42. (1) Subject to subsection (2) of this section, the Company shall receive all grain that is tendered to it in bulk.

Amended by No. 69 of 1973, s. 7.

(2) Notwithstanding the provisions of subsection (1) of this section, the Company—

- (a) shall not receive, as and when tendered, any grain that is unsound or that is inferior to the lowest grade then in force, but shall make arrangements to receive the grain at such time or place, or subject to such conditions, as it may require;

(b) is not obliged to receive any grain except at a reasonably convenient time and place nominated by it nor, unless the Minister so directs, at any terminal elevator to which the grain tendered has been transported more than one hundred kilometres by road.

(3) Where the Minister is of the opinion that the arrangements made by the Company under paragraph (a) of subsection (2) of this section are, or that the time or place nominated by the Company under paragraph (b) of that subsection is, onerous, he may require the Company to make other arrangements or to nominate some other time or place, as the case may require, to his satisfaction.

43. (1) The things giving rise to dockage, and the extent to which dockage is applicable, shall be such as may be prescribed.

Determina-  
tion of  
grade of,  
and dockage  
applicable  
to, grain.  
S. 25.

(2) When grain is tendered to the Company by, or on behalf of, a grower, an officer of the Company shall, subject to the succeeding provisions of this section, determine the grade of the grain and the dockage (if any) that is applicable to it and shall inform the person tendering the grain of his determination.

(3) If the grower consents, the officer mentioned in subsection (2) of this section may, instead of determining the grade of, or the dockage applicable to, the grain, receive it subject to the determination of those things or either of them at an office of the Company nominated by it and the grower shall be informed by the Company of a determination so made.

(4) Where the grade of, or dockage applicable to, grain is not to be determined by the officer at the place where it is tendered, he shall take, and deal with, a sample of the grain, in the manner prescribed by the regulations.

(5) A person who is dissatisfied with a determination made pursuant to subsection (2) of this section, may require the determination to be made by an officer of the Company at Perth or by the Department of Agriculture of the State and the determination shall, thereupon be made in the manner prescribed by the regulations.

(6) The regulations may provide for the payment of fees for, and expenses attendant upon, a determination made pursuant to subsection (5) of this section.

(7) Where the grower or his representative does not dispute the grade or dockage determined pursuant to subsection (2) of this section, the officer of the Company shall cause his determination to be entered on the weighbridge ticket.

Guarantee  
of quality  
and  
quantity.  
S. 36.

44. The holder of a warrant is, subject to any variations allowed by this Act or the regulations, entitled to receive an equivalent weight of grain of the type corresponding with, and of a grade at least equal to, that in respect of which the warrant was issued.

Company  
may sell if  
delivery not  
taken by  
30th Septem-  
ber.  
2nd  
Schedule  
(6).

45. (1) The holder of a warrant shall take delivery of the grain to which the warrant relates, on or before the thirtieth day of the month of September next following the receipt of the grain by the Company.

(2) In the event of a warrant holder not taking delivery as provided by subsection (1) of this section, the Company is relieved of its obligations to deliver the grain under the warrant and may, at any time and from time to time thereafter, sell the grain—

- (a) in one or more parcels;
- (b) in one or more different sales; or
- (c) separately or together with any other grain,

as may be prescribed, and shall, in the manner prescribed, pay the proceeds of the sale or sales to the warrant holder, making deductions for tolls, charges and expenses of the sale.

(3) Notwithstanding the foregoing provisions of this section, where the Governor is of the opinion that a state of emergency exists, he may, by Order in Council, extend the time limited by subsection (1) of this section for the taking of delivery of grain, by fixing such date subsequent to that provided by that subsection as he considers necessary.

46. (1) A holder of a warrant requiring grain from the Company for shipment, shall notify the Board and the Company of the requirement, forthwith after arranging the charter of a ship to carry the grain from a port at which the Company loads bulk grain, and shall furnish, with the notice, such other particulars as may be prescribed.

Shippers to give notice of charter.  
S. 33.

(2) Where the holder of a warrant who has given notice pursuant to subsection (1) of this section receives any notification of an alteration in the estimated date of arrival of a ship chartered by him, he shall forthwith notify the Board and the Company of that happening and shall, in any event and at least six days before the vessel is due to arrive, notify the Board and the Company of the then last port of call of the vessel and the date of departure therefrom and shall furnish such other particulars as may be prescribed.

47. (1) The holder of a warrant is entitled to receive a sample of grain that is in any bin, truck or container from or in which grain may be delivered to him.

Warrant holder's right to sample grain.  
S. 37.

(2) The holder of a warrant is not entitled to reject individual bins, trucks or containers, unless, in the case of grain being delivered for shipment, the running bulk sample of the shift being worked, or in the case of grain being delivered other than for shipment, the running bulk sample of the bin, truck or container is below the grade as specified in the warrant.

48. (1) In the event of any dispute as to the quality or condition of grain tendered by the Company to the holder of a warrant for shipment, the holder may require delivery operations to be dis-

Disputes as to quality of grain for shipment.  
S. 38.

continued and the Company and the holder of the warrant shall, thereupon, each appoint an arbitrator to determine the dispute.

(2) For the purposes of an arbitration under this section, a sealed sample of the grain that is the subject of dispute shall be taken jointly by the parties to the dispute and shall be supplied to the arbitrators, together with a standard sample, in such a manner that the identity of the samples is not known to the arbitrators.

(3) The arbitrators shall make their award with the least possible delay, and in any case not later than twenty-four hours after the reference, and the arbitration shall, subject to the express provisions of this Act, be conducted as, and have all the incidents of, a reference under the Arbitration Act, 1895.

Disputes as to quality of grain delivered for other than shipment.  
S. 39.

**49.** (1) In the event of any dispute as to the quality or condition of grain tendered by the Company to the holder of a warrant for delivery, other than at a port, the holder of the warrant may require the dispute to be submitted to arbitration.

(2) Sealed samples of the grain that is the subject of dispute under this section shall be taken in the prescribed manner.

(3) Upon payment of the prescribed fee on behalf of the holder of the warrant, the samples of the grain that is the subject of dispute shall be forwarded to the Department of Agriculture and there inspected in accordance with the regulations by an officer of that department nominated by the Minister, and the officer shall give his decision on the matter in dispute.

Costs of arbitration.  
S. 40.

**50.** The cost of arbitration pursuant to section forty-eight or forty-nine, together with any costs reasonably and directly incurred for demurrage, hauling, handling or otherwise arising out of the dispute shall be borne by the party against whom the award is given under the arbitration.

## PART VIII—MISCELLANEOUS.

50A. (1) The Treasurer may, for and on behalf of the Crown in right of the State, guarantee the repayment of any principal moneys borrowed by the Company and interest thereon, whether those principal moneys were borrowed before or are borrowed after the commencement of this section.

Guarantees by the Treasurer in respect of moneys borrowed by the Company. Added by No. 45 of 1972, s. 2.

(2) A guarantee given by the Treasurer pursuant to subsection (1) of this section may be given on such terms and conditions as the Treasurer thinks fit but any liability of the Crown in right of the State arising out of the guarantee shall be paid out of the moneys in the Public Account as defined in the Audit Act, 1904, which Account to the necessary extent, is hereby appropriated accordingly.

(3) Where any moneys are received or recovered by the Treasurer from the Company or any other person in respect of any moneys paid out of the Public Account pursuant to subsection (2) of this section, the moneys so received or so recovered shall be paid into that Account.

51(1) Notwithstanding any other provisions of this Act, during the operation of any law, whether of the Commonwealth or the State, providing for compulsory marketing of any grain handled by the Company—

Compulsory marketing. Amended by No. 64 of 1974, s. 5.

- (a) the toll or tolls and charge or charges referred to in sections thirty-one, thirty-two, and thirty-four A shall be payable by, and recoverable from, the grower to whom it is or they are credited and the tolls or charges, including any arrears of tolls or charges, shall be a first charge in priority to all other claims on the moneys payable under the relevant compulsory marketing law in respect of the relative grain;
- (aa) the contribution paid by the Company in respect of a grower under the Skeleton Weed (Eradication Fund) Act, 1974 shall be a first charge in priority to all other claims, other than a charge created under the

sections referred to in paragraph (a) of this section, on the moneys payable under the relevant compulsory marketing law in respect of the relative grain;

- (b) the Company shall not be obliged to issue a warrant pursuant to section thirty-seven but shall, instead, issue such document or documents as may be agreed with the relevant marketing authority and approved by the Minister;
- (c) the Board shall not operate and its functions shall be carried out by a shippers' or other committee consisting wholly or partly of nominees of the Company and of the relevant marketing authority; and
- (d) instead of the remuneration elsewhere provided by this Act, the Company shall, for its services, be entitled to such remuneration, with the exception of the remuneration to which the Company is entitled pursuant to section thirty-four A, being not less in the aggregate than that provided by this Act, as may be negotiated by it with the relevant marketing authority.

Contracts  
for bulk  
handling  
of grains  
other than  
wheat or  
barley.  
S. 27B.

52. (1) The Company has the right of receiving, handling, transporting and delivering in bulk such seeds other than the seeds of wheat and barley as the Minister may approve.

(2) The Company shall at all times, take and use all reasonable precautions to ensure that seeds received by it under the authority of this section are kept segregated from one another and from the seeds of wheat and barley.

(3) The provisions of sections five, seven to nine inclusive, eleven, fourteen to sixteen inclusive, eighteen, thirty-one to thirty-three inclusive, thirty-five to thirty-eight inclusive, forty-three to fifty inclusive, and fifty-three apply, *mutatis mutandis*, to all seeds received under the authority of this section.

52A. (1) Notwithstanding the provisions of any other Act or anything done or purporting to be done under any other Act the water rate payable by the Company in respect of Area A shall be twenty-five per centum of the rate determined in accordance with the Metropolitan Water Supply, Sewerage, and Drainage Act, 1909, but nothing in this section shall apply to any portion of Area A which shall be occupied as a permanent residence or upon which a permanent residence shall be erected.

Company  
water rate.  
Added by  
No. 13 of  
1979, s. 2.

(2) Subsection (1) of this section is deemed to have come into operation on and from the commencement of the rateable year ending June 30, 1978.

(3) In this section Area A means all that piece or parcel of land contained in Rockingham Lot 1304 the subject of Special Lease 3116/5215.

53. (1) The Governor may make such regulations as are contemplated or required by this Act and may make such other regulations as may, in his opinion, be necessary or convenient for giving full effect to the provisions of, and for the due administration of, this Act.

Regulations  
S. 41.

(2) Without limiting the generality of subsection (1) of this section, the Governor may make regulations for—

- (a) the conduct of bulk handling by the Company;
- (b) the method and procedure to be followed and observed by the Company in the exercise of its powers and in the conduct of its business under this Act, the records to be kept by the Company and the audit of its books and accounts;
- (c) the fixing of grades and dockages for grain;
- (d) the delivery to, and receipt by, the Company of grain in bulk, the precautions to be taken in regard to the checking of the quality and weight of grain received and ensuring that the quality of grades of grain received by the Company are not below the limit of variations from the prescribed or adopted standards;

- (e) the protection of charges, liens or securities over grain offered or delivered to the Company;
- (f) the delivery of grain by the Company and ensuring that proper precautions are taken to check the weight and quality of the grain delivered;
- (g) the issue of warrants in place of warrants lost or destroyed, the conditions under which two or more warrants may be issued in exchange for one or under which one warrant may be issued in exchange for two or more;
- (h) the settlement by arbitration, subject to any specific provisions of this Act, of questions and disputes arising between the Company and the holders of warrants; and
- (i) the imposition of penalties not exceeding two hundred dollars for any breach of the regulations made pursuant to this section.

General  
penalty.

54. Every person guilty of an offence against this Act for which a penalty is not expressly provided is liable to a penalty not exceeding one hundred dollars.

8. 4.

#### SCHEDULE.

Title of Act.

Bulk Handling Act, 1935.  
 Bulk Handling Act Amendment Act, 1943.  
 Bulk Handling Act Amendment Act, 1946.  
 Bulk Handling Act Amendment Act, 1948.  
 Bulk Handling Act Amendment Act, 1950.  
 Bulk Handling Act Amendment Act, 1952.  
 Bulk Handling Act Amendment Act, 1953.  
 Bulk Handling Act Amendment Act, 1961.  
 Bulk Handling Act Amendment Act, 1963.