



Western Australia

## **Growers Charge Act 1940**



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## Growers Charge Act 1940

**An Act to reserve to the grower of certain crops which are subject to a bill of sale or other security an interest in such crops by creating a charge in his favour, and for other purposes.**

**1. Short title**

This Act may be called the *Growers Charge Act 1940*<sup>1</sup>.

**2. Terms used in this Act**

In this Act and for the purposes thereof, if not inconsistent with the context —

*bill of sale* means a bill of sale within the meaning of the *Bills of Sale Act 1899*, and its amendments, by way of security, whether registered under the provisions of such Act or unregistered, and includes all assignments, transfers, declarations of trust without transfer, and other assurances of crops, powers of attorney, authorities, or licences to take possession of crops, as security for the payment of money or the performance of an obligation;

*crops* means wheat or oats marketed for grain.

**3. Subject to priorities charge created in favour of grower of certain crops**

Whenever crops are subject to a bill of sale then, notwithstanding the provisions of any other Act, there is hereby created in favour of the grower of such crops a charge on such crops to the extent of 30 cents per acre in respect of so much of the area sown with such crops as does not exceed 500 acres, and 10 cents per acre on so much of such area as exceeds 500 acres.

Provided that such charge in favour of the grower shall be subject to the following conditions:

- (a) It shall rank immediately after any other statutory charge and any advance for or towards the cost (as ascertained in the prescribed manner) of growing, harvesting, and carting such crops made under any bill of sale.
- (b) It shall be paid or satisfied in priority to all other moneys secured by any bill of sale.

*[Section 3 amended by No. 113 of 1965 s. 8.]*

**4. Grower's interest in crops under this Act not to be charged or assigned by way of security**

The interest conferred on the grower by this Act in respect of crops grown by him shall not be capable of being charged, assigned, or otherwise dealt with by way of security, or attached, and shall not pass by operation of law to any other person, except the personal representative of a deceased grower, not shall any claim be set off against such interest.

**5. Share-farmers**

- (a) Where crops are grown under a share-farming agreement and are affected by the charge created by this Act, any moneys accruing by reason of the charge shall be divided between the parties to the agreement in proportion to their respective interests thereunder in the crops or the proceeds thereof:

Provided that, where the agreement provides for the division of the crops or the proceeds thereof between the parties to the agreement on other than a proportionate basis, the moneys accruing by reason of the charge shall be divided between the parties and their respective interests in such moneys, determined in such manner as is prescribed.

- (b) For the purposes of this section crops shall not be deemed to be grown in pursuance of a share-farming agreement, unless 2 or more persons agree to contribute towards the growing of the crops by the provision of either land, labour, material, or plant,

and to divide among them in such shares and proportions as such persons may mutually agree, the proceeds of the crops so grown.

**6. Offences**

No person shall —

- (a) obtain payment of any moneys in pursuance of the provisions of this Act by means of any false or misleading statement; or
- (b) present to any grantee of a bill of sale or any authority or any person from or through whom any moneys in respect of the charge created by this Act are or might become payable, any document, or make to any such grantee, authority or person any statement which is false in any material particular.

Penalty: \$1 000.

*[Section 6 amended by No. 50 of 2003 s. 69(2).]*

**7. Regulations**

The Governor may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular —

- (a) for prescribing penalties not exceeding \$1 000 for any breach of the regulations; and
- (b) for prescribing from time to time the items of expenditure and matters which shall be taken into account in ascertaining for the purposes of section 3, the cost of growing, harvesting, and carting crops; and
- (c) for conferring upon any person any power or function incidental to or necessary or convenient for the effective operation of this Act; and

- (d) for prescribing the rate of commission or deduction to be allowed to holders of bills of sale or any person as compensation for expense incurred or services rendered when moneys are paid to growers by or through such holders of bills of sale, or persons in respect of the charge arising under this Act; and
- (e) for obtaining such books, documents and information as may be necessary in relation to compliance with this Act or any regulation made thereunder or any suspected contravention thereof.

*[Section 7 amended by No. 78 of 1995 s. 147.]*

**8. Contracting out prohibited**

From and after the commencement of this Act its provisions shall apply and have effect in every case notwithstanding any contract or agreement to the contrary heretofore and hereafter made or entered into.

**9. Application of Act**

This Act shall apply to all crops sown after 1 March 1941.



**Notes**

<sup>1</sup> This is a compilation of the *Growers Charge Act 1940* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Growers Charge Act 1940</i>	54 of 1940 (4 and 5 Geo. VI No. 54)	30 Dec 1940	30 Dec 1940
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Sentencing (Consequential Provisions) Act 1995 s. 147</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 69</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)

**Reprint 1: The *Growers Charge Act 1940* as at 22 Jun 2007** (includes amendments listed above)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011 Pt. 4 Div. 5<sup>2</sup></i>	42 of 2011	4 Oct 2011	Operative immediately before the registration commencement time as defined in the <i>Personal Property Securities Act 2009</i> (Cwlth) s. 306(2) (see s. 2(c))

- <sup>2</sup> On the date as at which this compilation was prepared, the *Personal Property Securities (Consequential Repeals and Amendments) Act 2011* Pt. 4 Div. 5 had not come into operation. It reads as follows:

**Division 5 — *Growers Charge Act 1940* amended**

**45. Act amended**

This Division amends the *Growers Charge Act 1940*.

**46. Long title amended**

In the long title delete “**bill of sale or other security**” and insert:

**security agreement**

**47. Section 2 amended**

- (1) In section 2 delete the definition of *bill of sale*.
- (2) In section 2 insert in alphabetical order:

*secured party* has the meaning given in the *Personal Property Securities Act 2009* (Commonwealth) section 10;

*security agreement* has the meaning given in the *Personal Property Securities Act 2009* (Commonwealth) section 10;

- (3) In section 2 in the definition of *crops* delete “grain.” and insert:

grain;

**48. Section 3 amended**

- (1) In section 3:
  - (a) delete “Whenever crops” and insert:

- (1) Whenever crops

- (b) delete “bill of sale then,” and insert:

security agreement then,

- (c) delete “bill of sale.” (first and second occurrence) and insert:

security agreement.

- (2) At the end of section 3 insert:

- (2) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 73(2)(a), it is declared that section 73(2) of that Act applies to a charge created under subsection (1).

**49. Section 6 amended**

In section 6(b):

- (a) delete “grantee of a bill of sale” and insert:

secured party

- (b) delete “grantee,” and insert:

secured party,

**50. Section 7 amended**

In section 7(d):

- (a) delete “holders of bills of sale” and insert:

a secured party

- (b) delete “holders of bills of sale,” and insert:

a secured party,