

FARMERS' DEBTS ADJUSTMENT.

No. 49 of 1930.

(as amended by No. 4* of 1931.)

AN ACT for the adjustment of the Debts of Farmers and other Persons engaged in Rural Pursuits, and for other relative purposes.

[Assented to 30th December, 1930.]

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:—

1. This Act may be cited as the *Farmers' Debts Adjustment Act*, 1930. Short title.

2. In this Act, subject to the context—

Interpretation.
Amended by s. 2 of
No. 4 of 1931.

“Director” includes (except in section four) any Deputy Director.

“Farmer” means any individual person who is a resident of this State, and who is engaged in farming or agricultural or horticultural or grazing operations in the State.

“Farm” means the land on which such operations as aforesaid are carried on.

“Receiver” means a receiver appointed by the Director under this Act.

“Machinery” means machinery, implements, and vehicles used in connection with the business of a farmer.

“Stay order” means an order directing a stay of proceedings granted under section five of this Act.

3. (1.) This Act shall be construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the Parliament of the State, Construction of Act.

*Assented to 10/7/31, to take effect as from the commencement of the Principal Act.

Farmers' Debts Adjustment.

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to the intent that any portion thereof which may be held were in excess of that power shall (to the extent to which it is so in excess) be deemed to be severable from the other portion of the Act, and not to affect the validity or operation thereof.

(2.) This Act shall be construed so as to bind the Crown.

Director.

4. (1.) It shall be lawful for the Governor to appoint a Director for the purpose of this Act, and also to appoint any person or persons to be the deputy or deputies of the Director.

(2.) The Director may appoint officers whom he may deem necessary to enable the powers of the Director under this Act to be effectively exercised.

As amended by s. 3 of No. 4 of 1931.

(3.) The Director and other officers (except Deputy Directors) shall receive such remuneration as shall be determined by the Governor, which remuneration shall be payable out of such moneys as may be appropriated by Parliament for the purpose.

Amended by s. 3 of No. 4 of 1931.

(4.) Deputy Directors and persons appointed to act as receivers shall be remunerated only by payment of the prescribed fees for the work performed in respect of each estate, which fees shall be borne and paid out of the estate and property of the farmer concerned: Provided that, in addition to such fees, the receiver shall be entitled, with the sanction of a resolution of the creditors, to retain by way of emolument out of the proceeds of the farmer's business received by him an amount of ten pounds ten shillings, and any such percentage (not exceeding three per centum) of such proceeds as may be allowed by resolution of the creditors and approved by the Director: And provided further, that if the Deputy Director or receiver is a public servant in receipt of a salary, such fees and emolument shall be paid into Consolidated Revenue.

Amended by s. 3 of No. 4 of 1931.

(5.) Any expense or liabilities peculiar to the administration of the estate or property of any particular farmer, or incurred in connection with the calling, or holding of any meeting of his creditors, or the arrangement of his affairs under this Act, shall be defrayed and discharged out of such estate and property.

Inserted by s. 3, ss. 6 of No. 4 of 1931.

(6.) Such fees or emolument and percentage as aforesaid shall be deemed to be expenses within the meaning of

subsection (5), and the amount thereof shall, by virtue of this Act, be charged on the proceeds of the farmer's business in priority to any other charge, lien, or claim thereon.

(7.) No Deputy Director shall exercise any power or perform any act which the Director has by general or special order forbidden him to exercise or perform.

Inserted by s. 3,
ss. 7 of No. 4 of
1931.

5. (1.) Any farmer, or the creditor of any farmer, may by writing under his hand in the prescribed form, make application to the Director to call a meeting of the farmer's creditors under this Act: Provided that before acceding to a creditor's application the Director may require him to pay the prescribed application fee; but such fee shall be repayable to the creditor out of the estate and property of the farmer in accordance with provisions of section four.

Application to
Director to call
meeting of farmer's
creditors.
Amended by s. 4,
ss. 1 of No. 4 of
1931.

(2.) The Director shall thereupon grant the farmer a stay order in the prescribed form, and shall, by order in writing, appoint some fit and proper person to be the receiver of the rents, profits, and produce of the farmer's farm, and of all chattels, effects, and property used in connection with the business of the farmer or derived from such business: Provided that the Director may, in his discretion, reject an application made by any creditor under this section.

Amended by s. 4,
ss. 2 of No. 4 of
1931.

(3.) The receiver shall forthwith, after his appointment, take possession of such farm, chattels, effects, and property, and shall retain possession thereof as long as the farmer is subject to this Act.

(4.) If in the books of any bank or branch of a bank, or of any firm, person, or company, any sum of money is standing to the credit of the farmer, then the receiver may, by notice in writing, require the manager of such bank or branch, or such firm, person, or company, to transfer such sum to the credit of the receiver, and the manager, firm, person or company shall forthwith so transfer it accordingly.

Inserted by s. 4,
ss. 3 of No. 4 of
1931.

(5.) Notwithstanding the appointment of a receiver under this section, any payment of money or delivery of any security or negotiable instrument made to or by the order or direction of the farmer by his banker (whether at the principal or any branch establishment of the banker), in good faith and without negligence on the part of the banker, or notice of the appointment of the receiver on the part of the

Inserted by s. 4,
ss. 3 of No. 4 of
1931.

manager of the establishment concerned, shall be as valid and effectual as if no such appointment had been made.

Inserted by s. 4,
ss. 3 of No. 4 of
1931.

(6.) On a stay order being granted to a farmer under this section he shall be deemed to become subject to this Act.

Meetings of
creditors, how
called.

6. (1.) A meeting of creditors under this Act shall be called forthwith by the Director by circulars delivered at or posted to the address of each of the creditors not less than five and not more than fourteen days before the day on which the meeting is to be held, and by advertisement as prescribed.

(2.) The omission to give notice to any creditor shall not invalidate the meeting or any proceeding following thereon.

Inserted by s. 5
of No. 4 of 1931.

(3.) If at any time before the holding of the meeting it shall appear to the Director that no good purpose will be served by the holding of such meeting he may, by notice published or given as prescribed, cancel the notice calling the meeting and discharge the stay order and the appointment of the receiver, and the farmer shall thereupon cease to be subject to this Act.

Stay of proceedings.
Amended by s. 6,
ss. 1 of No. 4 of
1931.

7. (1.) A stay order shall direct that no action, execution, distress for rent, proceedings on default or breach of covenant under any mortgage or other security for money, or under an agreement of sale and purchase of land, or other process or proceeding, shall be commenced or proceeded with or put in force against the farmer or his estate or effects during the operation of such stay order: Provided that by leave of a judge, any action may, notwithstanding the stay order, be instituted and/or carried on against the farmer, but not beyond judgment.

Amended by s. 6,
ss. 1 of No. 4 of
1931.

(2.) Provided, every such order or short particulars thereof shall be published in the *Gazette*, and shall be further advertised as prescribed, and shall have effect according to its tenor, and shall remain in force until the expiry of twenty-one days after the meeting and any adjournment thereof, whether any resolution is passed at the meeting or not, and on the expiry of the order the farmer shall cease to be subject to this Act.

Inserted by s. 6,
ss. 2 of No. 4 of
1931.

(3.) In this section the expression "proceedings" shall, in relation to any mortgage, and agreement for sale and purchase of land, be deemed to extend to the exercise of any

power of sale the obtaining or keeping of possession of the property comprised in the mortgage or agreement, the taking of any measures to obtain foreclosure, and the exercise of any power to cancel or terminate any rights of the farmer in respect of such property: Provided that a stay order shall not affect the right of any person to continue in possession of any such property if he had taken possession thereof at least one month before the date of the stay order, or if the Director consents to him continuing in possession.

8. (1.) An order appointing a receiver under this Act shall remain in force as long as the stay order granted in connection with the affairs of the same farmer and no longer: Provided that the Director may at any time remove a receiver from his office and appoint another person in his place.

Powers and duties of receiver.

(2.) The receiver shall be deemed to be the agent of the farmer, but so that the farmer shall have no power to revoke or abrogate the receiver's authority.

Amended by s. 7, ss. 1, of No. 4 of 1931.

(2a.) The receiver may realise and convert into money all property coming to his hands and derived from the business of the farmer, and he shall have power (between the date of the stay order and the date fixed for the meeting of the farmer's creditors), with the approval of the Director, to make such disbursements (not exceeding altogether thirty pounds) out of the moneys of the farmer in his hands as may be necessary to provide and pay for stores needed by the farmer or his family, or to enable the business of the farmer to be carried on and continued, or to pay the farmer's personal expenses in connection with attending the meeting of his creditors, and any disbursements authorised by this subsection may be made out of any crop proceeds notwithstanding that such proceeds may be subject to any lien or charge in favour of any person.

Inserted by s. 7, ss. 2 of No. 4 of 1931.

(3.) A receiver shall, whenever called upon by the Director, and on the termination of his receivership, furnish the Director with full and accurate accounts verified by his statutory declaration of all moneys and other property received by virtue of or in connection with his office.

Amended by s. 7, ss. 3 of No. 4 of 1931.

(4.) The Supreme Court or a judge may, on application by a receiver, make such orders as may be necessary to facilitate and ensure the exercise of any of the powers of the receiver, and may also at any time, on application by the Director, or any person interested, make such orders for the taking

of the accounts of a receiver as may be deemed to be expedient.

(5.) The Director may at any time require a receiver to deliver to him any moneys or other property in his hands as such receiver, and the Supreme Court or a judge may, on the application of the Director, make such order as shall be necessary to compel compliance with the requisition.

(6.) Any application under this section may be made by motion or summons.

Continuation of proceedings when order ceases to operate.

9. (1.) When a stay order has ceased to operate, any proceeding or process pending, or in course of being put into operation against the farmer or his estate or effects at the time when the stay order was made, may be continued and proceeded with, and in computing the time for taking any further step in connection therewith, no account shall be taken of the period which has elapsed since the making of the order.

(2.) Such period as aforesaid shall not be taken into account in connection with any claim affected by the order, for the purposes of any statute of limitation.

Meetings of creditors. Amended by s. 8, ss. 1 of No. 4 of 1931.

10. (1.) At any meeting of creditors the Director shall preside.

Amended by s. 8, ss. 2 of No. 4 of 1931.

(2.) For the purposes of voting, any two or more joint creditors shall be treated as a single creditor, and in calculating a majority of creditors, for the purposes of any provision of this Act, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value, but not in the majority in number.

Amended by s. 8, ss. 3.

(3.) If any dispute shall arise as to the right to vote, it shall be settled by the chairman, whose decision shall be final.

Inserted by s. 8, ss. 4 of No. 4 of 1931.

(4.) For the purposes of any provision of this Act, every question at a meeting of creditors shall, subject to this section, be decided by the majority in value and number of those present, or represented and voting at the meeting, and every resolution carried by such majority shall be deemed to be a resolution of the creditors.

Amicable arrangements to be attempted. Amended by s. 9, ss. 1 of No. 4 of 1931.

11. As soon as practicable after the opening of the meeting, the chairman shall invite the creditors to ascertain by consultation amongst themselves whether it is not possible

to arrange the affairs of the farmer to advantage, and the creditors may, by a majority in value and number of those present or represented and voting at the meeting or any adjournment thereof, pass any resolution for the adjustment or arrangement of the farmer's affairs, which may appear to them to be expedient.

(2.) Subject to this Act, a resolution so passed shall be binding on the farmer and his creditors, and may be given effect to: Provided, that its provisions are such as the farmer and his creditors might lawfully have embodied in an agreement made between themselves: And provided further, that the Supreme Court or a judge thereof may, on an application being made, within four weeks after passing of the resolution, by the Director, or any other person concerned, rescind the resolution on the grounds that it is manifestly unjust to the farmer or any creditor, and order another meeting of the farmer's creditors to be convened by the Director, and held at such time and place as the Director shall determine.

Inserted by s. 9,
ss. 2 of No. 4 of
1931.

(3.) Sections three to thirteen (both inclusive) of Act No. 13 of 1906 shall not apply to any security given pursuant to any such resolution as aforesaid.

Inserted by s. 9,
ss. 2 of No. 4 of
1931.

(4.) Notwithstanding anything in section seven or eight, the creditors may from time to time by resolution extend the operation of the stay order and the order appointing the receiver.

Inserted by s. 9,
ss. 2 of No. 4 of
1931.

(5.) If for any reason it shall appear to the Director that it is expedient for the creditors to meet at a date earlier than that to which the meeting stands adjourned, he may, by circulars delivered as set out in section six, summon the creditors to meet at the earlier date, and that date shall then be deemed to be the date to which the meeting was adjourned.

Inserted by s. 9,
ss. 2 of No. 4 of
1931.

12. (1.) The farmer shall not, while subject to this Act, mortgage, charge, pledge, or create any lien upon or otherwise encumber or transfer, assign, or part with the possession or control of any part of his real or personal property, credits, or effects without the consent of the receiver.

Farmer not to en-
cumber or part
with his property.

Penalty: One hundred pounds or six months imprisonment.

(2.) Any mortgage, charge, pledge, lien, encumbrance, transfer, assignment or delivery given, executed or made contrary to this section shall be void and of no effect.

Inserted by s. 10 of No. 4 of 1931.

(3.) Nothing in this section or in any resolution of the creditors shall prevent the holder of any mortgage or other security from making to or on account of a farmer any advance or payment which it is necessary to make for the preservation of the security or any property comprised therein.

Policies of Insurance protected. Inserted by s. 11 of No. 4 of 1931.

12A. The property and interest of any farmer in any policy effected on his own life shall, to the extent to which it is protected against legal process under section two of the Life Assurance Companies Amendment Act, 1905, be unaffected by any stay order or resolution of creditors under this Act.

Hire-purchase agreements. Amended by s. 12 of No. 4 of 1931.

13. (1.) The owner of any machinery which is in possession of the farmer under hire-purchase agreement shall not during the operation of a stay order, except with the consent of the Director, take any steps to terminate the agreement, or to take the machinery out of the possession of the farmer.

Inserted by s. 12 of No. 4 of 1931.

(2.) The owner of the machinery may, subject as herein-after provided, at any time and from time to time, make application to the Director for such consent, and the Director shall accede to the application unless in his opinion it will be necessary to use the machinery for the purpose of taking off or putting in a crop on the farm during the current or next ensuing season, in which case he may refuse the application, and the owner shall thereupon become entitled to the rights hereinafter defined.

Inserted by s. 12 of No. 4 of 1931.

(3.) The said owner shall, in such case as aforesaid, have the right to prove against the proceeds of the said crop when received for an amount equal to the whole balance unpaid and due or to become due under the hire-purchase agreement (including interest accrued due under the agreement on any overdue instalment at the date of the application) if such amount does not exceed the sum of fifteen pounds, but if it does exceed that sum, he shall be entitled to prove for fifteen pounds, or a sum equal to one quarter of the said balance (including interest as aforesaid) whichever is the greater sum: Provided that, in no case shall the said owner be entitled to prove for more than seventy-five pounds.

(4.) No claim (not being a claim for fertilisers or bags or twine supplied, or for money advanced to pay the price thereof, or to pay for the insurance of the farmer's crops, or advanced pursuant to any resolution of the creditors with or without interest on any sum so advanced at a rate not exceeding current bank rate) shall be payable out of the said crop proceeds in priority to the claim of the owner of the said machinery.

Inserted by s. 12 of No. 4 of 1931.

(5.) In case an application is so refused as aforesaid, no further similar application shall be made, except at the instance of the Director, or pursuant to a resolution of the creditors, until the relative crop has been taken off or put in, as the case may be.

Inserted by s. 12 of No. 4 of 1931.

13A. (1.) Subject to subsection (6) of section four to section seven, to subsection (2A) of section eight to section thirteen and to this section, any creditor who holds any mortgage, lien, pledge, charge, or other security on or over any property of a farmer shall, notwithstanding any resolution of the creditors, be entitled to take the full benefit thereof:

Certain bills of sale and orders invalidated. Inserted by s. 13 of No. 4 of 1931.

Provided that—

- (a) Except in so far as it was given in consideration of the supply of fertilisers or cornsacks, or bags or twine, or to secure the price thereof, or in consideration of or to secure money advanced to pay such price, or to pay for the insurance of the farmer's crops, with or without interest on any money so advanced at a rate not exceeding the current bank rate, every bill of sale given by a farmer who subsequently has a stay order granted to him, shall, to the extent that it would be void as against his trustee in bankruptcy, if he had been made bankrupt on a petition presented on the date of the stay order, be void against the farmer and his creditors; and
- (b) Except as aforesaid, no order, authority, or writing given at any time by a farmer which purports or is claimed or asserted to assign to any person the proceeds of any wheat, or of any other product of the farmer's business, not then delivered to such person or to the person to whom it is addressed, or to be communicated, or to entitle any

person to receive or be paid any such proceeds, or to give him any charge thereover, shall, if the farmer subsequently becomes subject to this Act, operate as a valid assignment of such proceeds or entitle the person in whose favour it was given to any charge or security on or over such proceeds, unless it was given before the date of the commencement of this Act, and for a valuable consideration executed more than six months before such date; but so that no person shall be hereby compelled to refund any part of such proceeds which he has actually received before the end of the month of March, one thousand nine hundred and thirty-one, or before the farmer became subject to this Act: Provided that nothing in this paragraph (b) shall prejudice the rights of the grantee of any duly registered bill of sale.

(2.) Nothing in this section shall affect any statutory lien or security.

Sections 3 to 13 of Act 13 of 1906 not to apply to certain bills of sale.

13B. If by reason of any creditor of a farmer (whether such farmer be under the operation of this Act or not) lodging any caveat against the registration of a bill of sale, given to any person for the purpose of securing advances agreed to be made to such farmer for the purpose of sowing or harvesting a crop on such farmer's land, or for the maintenance of the farmer and his family, or the purchase of necessaries in connection with the working of the farm, the person proposing to advance such moneys be unable to register such bill of sale, such person may apply to the Director for an order directing that the provisions of sections three to thirteen (both inclusive) of Act 13 of 1906 shall not apply to any such security. The Director shall thereupon have discretionary power either to grant such order or refuse the same. If the Director shall grant any such order, he shall cause the same to be served upon the Registrar of the Supreme Court, and the registrar shall thereupon register the bill of sale in respect whereof such order has been granted, and the said provisions of the said Act shall be deemed not to have been applicable to such bill of sale.

Bank account.

14. The receiver shall open a bank account in connection with the farmer's property or estate in respect of which he has been appointed, and shall pay and deposit at the bank

all such moneys and securities of the farmer as may be received by him.

14A. Any power of attorney given by a farmer to a receiver or any other person for the purposes of this Act or to facilitate the carrying into effect of any resolution of creditors, shall be exempt from stamp duty.

Exemption from stamp duty. Inserted by s. 14 of No. 4 of 1931.

15. (1.) If any question shall arise in the course of the administration of this Act, touching the right of any creditor or alleged creditor, or as to the validity of any proceeding or act which has been taken or done, or purports to have been taken or done under this Act, or as to the extent of the powers of the Director, such question may be referred by the Director or any person interested, to a judge for decision; the decision of the judge on the question shall be final and conclusive.

Power to refer to judge questions arising under this Act.

(2.) In any proceedings before a judge (whether under this or any other section of this Act) he may make such order as to costs as shall be just and reasonable.

(3.) Any order made by a judge under any section of this Act may be enforced as an order of the Supreme Court.

Costs and enforcement of orders.

16. Neither the Director nor any officer appointed by the Governor under this Act, nor the Crown, shall be under any liability to any farmer, whose affairs are being, or have been arranged or adjusted under this Act, or to any creditor of such farmer, for or in respect of any act or omission of any receiver, or for or in respect of any debt or obligation incurred by any receiver.

Exemption from liability for acts or omissions of receivers.

17. Any person who infringes or contravenes any provision of this Act by act or omission, shall be guilty of an offence and punishable on summary conviction by a fine not exceeding ten pounds or imprisonment for not exceeding one month, or any greater penalty provided by this Act for the offence.

Offences.

18. The Governor may make regulations for the ordering and regulation of such acts, matters, or things as it may be necessary or convenient to order or regulate for the purpose

Regulations.

of ensuring the effective operation of this Act and carrying out of the objects thereof.

Duration of Act.
Amended by No.
4 of 1931.

19. This Act shall continue in operation till the end of March, nineteen hundred and thirty-three, and no longer.