

SOUTH AUSTRALIA

FARMERS ASSISTANCE ACT, 1933

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being

Farmers Assistance Act, 1933, No. 2134 of 1933
[Assented to 5 December 1933]¹

as amended by

Farmers Assistance Act Amendment Act, 1936, No. 2330 of 1936 [Assented to 3 December 1936]
Farmers Assistance (Extension) Act, 1938, No. 2418 of 1938 [Assented to 15 December 1938]
Farmers Assistance Act Amendment Act, 1939, No. 33 of 1939 [Assented to 14 December 1939]
Primary Producers Assistance Act, 1943, No. 26 of 1943 [Assented to 16 December 1943]²

¹ Came into operation 1 January 1934: *Gaz.* 21 December 1933, p. 1239.

² Came into operation 1 January 1944: *Gaz.* 23 December 1943, p. 810.

2.

An Act to provide for the constitution of a board to be known as the Farmers Assistance Board, to invest the board with certain powers for the assistance and relief of farmers, to transfer to the board the administration of certain Acts relating to drought relief and farmers' relief, to enact certain provisions relating to drought relief charges and for purposes incidental thereto.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the *Farmers Assistance Act, 1933*, and shall come into operation on a day to be fixed by the Governor by proclamation.

Arrangement of Act

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

PART I—Preliminary: ss. 1-3.

PART II—Administration: ss. 4-10.

PART III—Provisions for finance of farmers: ss. 11-26.

PART IV—Debt Adjustment: ss. 27-57.

PART V—Drought Relief Charges: ss. 58-63.

PART VI—Supplementary Provisions: ss. 64-80.

Interpretation

3. (1) In this Act, unless the context otherwise requires—

"Director" means the Director for the time being in office under section 4:

"board" means the Farmers Assistance Board appointed under section 5:

"member" means member of the board.

(2) Notwithstanding the provisions of *The Real Property Act, 1886*, this Act applies in respect of land and interests in land whether subject to the provisions of *The Real Property Act, 1886*, or not.

(3) This Act shall be construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State to the intent that if any provision of this Act or the application thereof to any person or circumstance is invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected.

(4) This Act shall bind the Crown.

3.

PART II

ADMINISTRATION

Appointment of Director

4. (1) The Governor may appoint a Director for the purposes of this Act upon such terms, at such salary, and to hold office for such period as the Governor determines at or prior to the time of such appointment.

(2) The Director shall be the chairman and the principal administrative officer of the board.

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Officers and employees

7. (1) The Governor may on the recommendation of the board appoint any supervisors and other officers or employees necessary for the administration of this Act.

(2) Such supervisors and other officers or employees may be appointed in accordance with the provisions of the *Public Service Act, 1967*, or on any special terms and conditions approved by the Governor.

(3) The board may with the approval of the Minister administering the department concerned make use of the services of any officer or employee of the Public Service for the purposes of this Act, and with the approval of the State Bank may make use of the services of any officer or employee of the Bank. Any such officer or employee shall, whilst his services are so used, be subject to the control and directions of the board as if he were an officer or employee thereof.

Delegation

8. The board may delegate any of its powers, duties, or functions except the making of orders for the reduction of farmers' liabilities, to any person, firm, or company on any terms and conditions and subject to any restrictions which the board thinks proper, and may at its discretion terminate such delegation.

Administrative districts

9. The board may divide the State into administrative districts for the purpose of this Act and may appoint a supervisor for each district to exercise and perform within that district such of the powers, duties, and functions of the board, except the making of orders for the reduction of farmers' liabilities, as the board directs.

Financial provision

10. The remuneration of the members of the board, and of the Director, supervisors, officers, and employees appointed under this Act shall be payable out of moneys appropriated by Parliament for the purpose.

PART III

PROVISIONS FOR FINANCE OF FARMERS

Interpretation

11. In this Part, unless the context otherwise requires:—

"applicant" means a person who has submitted an application to the board under this Part and whose application has not been refused, cancelled, or withdrawn:

"crop" means crop of wheat, barley, oats, rye, or field peas, and all hay, grain, and other produce harvested from any such crop, and, in relation to a party to a share-farming agreement, means his share of a crop, and where necessary, means part of any such crop or share:

"farmer" means any person who otherwise than as an employee is engaged in the cultivation of land for the production of a crop, or any party to a share-farming agreement under which land is cultivated for such production:

"wheat merchant" means any person or body of persons other than a pool to whom a crop is sold or delivered for sale.

Applications

12. (1) Any farmer who intends to put, or has put, land in a proclaimed area under crop for a proclaimed season may apply to the board for advances under this Part.

(2) Advances under this Part may be made at the discretion of the board for the purpose of providing a reasonable living allowance for the applicant and his dependents and for defraying the necessary expenditure of the applicant in connection with the working and maintenance of his farm, and the marketing of his produce, and any other expenditure for which the board deems it proper that an advance should be made.

(3) Every application shall be in the form fixed by the board and contain all particulars reasonably required by the board.

(4) In this section—

"proclaimed area" means a part of the State to which the Governor by proclamation directs that this Act shall apply:

"proclaimed season" means a season to which the Governor by proclamation directs that this Act shall apply.

Every proclamation directing that this Act shall apply to a part of the State shall specify the period for which the proclamation remains in force and such period shall not exceed two years.

Assignment of crops

13. (1) Every applicant shall execute and forward to the board with his application an assignment to the board of all crops grown or to be grown by him in the State during the season in respect of which the application is made or such portion of those crops as the board may in any special circumstances approve.

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(2) If the applicant is a party to a share-farming agreement he shall assign to the board the whole of his share of any crops grown or to be grown in the State during the said season, or such portion of the said share as the board may in any special circumstances approve.

(3) The assignment shall be in a form to be fixed by the board.

(4) Every assignment shall pass both at law and in equity the ownership of the crops mentioned therein (whether growing or sown or not yet sown at the time of the assignment) to the board free from all rights, claims, and remedies of all persons except those provided for in this Part and shall be valid and effectual for all purposes, and no other disposition of or interest created in the crops or the land on which the crops exist or come into existence shall affect the board's ownership of the crops.

(5) If any applicant fails to assign to the board any crops which he is by this section required to assign, this Part shall operate as an assignment to the board as from the date of the application of any crops which the applicant so failed to assign.

(6) *The Bills of Sale Act, 1886*, shall not apply to any assignment under this section.

(7) If the application of any applicant is refused or withdrawn, or cancelled the assignment of his crops shall be void.

(8) Nothing in this section shall affect the rights of any person under any bill of sale if such bill of sale—

(a) was given by an applicant before he made his application; and

(b) was registered (whether before or after the making of the application) within the time prescribed by *The Bills of Sale Act, 1886*.

(9) In addition to the assignment provided for in the previous subsections of this section the applicant shall, if required to do so by the Treasurer, give further security for any advance made to him, in such form and upon such terms and conditions as the Treasurer directs. The Treasurer may reimburse himself for any advance and the interest thereon out of any income of the applicant which is at any time held by the Treasurer.

Withdrawal of applications

14. An application may be withdrawn in accordance with the following provisions, but not otherwise:—

(a) The applicant shall apply to the board for consent to the withdrawal;

(b) If the board is satisfied either that—

(i) no money is or will become payable to any person out of the proceeds of any crops assigned by the applicant; or

(ii) that all persons to whom any such moneys are or will become payable consent to the withdrawal—

it shall consent to the withdrawal, but not otherwise;

6.

- (c) For the purpose of ascertaining the matters specified in the last preceding paragraph the board may at the expense of the applicant by advertisement in a daily newspaper published in Adelaide fix a date not earlier than twenty-one days from the date of the advertisement on or before which all persons objecting to the withdrawal must give notice in writing to the board of their objections. No person who does not give the board notice in writing of his objection in accordance with this paragraph shall have any claim against the board in respect of the withdrawal of any application, or in respect of any consequences resulting therefrom to himself:
- (d) The board shall give notice in the *Gazette* that it has given its consent to the withdrawal, and shall in the notice fix a date as from which the application shall be deemed to be withdrawn, and as from the date so fixed, the application shall be deemed to be withdrawn and the assignment shall for all purposes be void.

Cancellation of applications by board of its own motion

15. Where the board is of opinion that it is desirable to cancel any application it may, in its discretion, and as an administrative act, by notice in the *Gazette*, cancel the application: Provided that before cancelling any application the board shall give not less than fourteen days' notice in writing to the applicant of its intention to do so.

Record of applications

16. (1) The board shall keep at the principal office of the Director at Adelaide a record of every application, showing—

- (a) the name and address of the applicant:
- (b) the section and hundred of the land on which his crops are growing or are to be grown:
- (c) the acreage sown or to be sown, so far as known to the board:
- (d) the date of the application and assignment:
- (e) whether the application has been granted or not, and if it has been granted, the date on which it was granted:
- (f) the amount of any advances made to the applicant:
- (g) if the application is refused, withdrawn, or cancelled, the date of refusal, withdrawal, or cancellation.

(2) The said record shall be open to inspection by the public without fee at all times when the office of the board is open to the public.

(3) The board upon payment of a fee of ten cents shall supply to any member of the public a certified copy of such record or a certificate that no such application has been made by a particular farmer.

(4) The board shall—

- (a) as soon as practicable after an application is made publish in the *Gazette* the name and address of the applicant:

7.

- (b) as soon as practicable after an application is dealt with, publish in the *Gazette* a statement showing whether the application was approved or refused, and the date of approval or refusal.

(5) Any creditor of an applicant or any person acting on behalf of a creditor may inspect at the office of the board the application of such applicant.

Decision on applications

17. (1) The board shall consider every application and shall have an unfettered discretion to grant or refuse any application or to grant any application in part only.

(2) No refusal of an application shall be effective until seven days after service by post on the applicant of a notice stating that his application has been refused.

Repayment of cost of commodities supplied or moneys paid on behalf of applicant

18. (1) Every applicant to whom an advance is made shall repay the amount thereof together with simple interest thereon at the rate fixed by the board (being as nearly as practicable the average rate paid by the State on money borrowed for purposes of this Part) on or before the thirty-first day of March next after the harvesting of the crop for which the advance was made. The interest shall be computed from the date when the board made the advance until the time of repayment.

(2) The board may in any case which it considers to be one of special hardship extend from time to time the date of repayment of any moneys due by any applicant.

Applications by farmers financed by persons other than the board

19. (1) Where any person (in this section referred to as "the lender") has advanced or is about to advance money, or has supplied or is about to supply commodities, to a farmer for all or any of the purposes for which an advance may be made by the board under this Part, the farmer may, by application to the board in the form fixed by the board, request the board to distribute the proceeds of his crops for the current season in accordance with the provisions of this Part. The board shall not grant any such application unless the lender consents thereto and unless the board is satisfied with the conditions of the advance or supply of commodities, and that it is desirable that the applicant should obtain the protection afforded to applicants under this Act and that there is no collusion between the applicant and the lender for the purpose of securing preferential treatment for any person.

(2) Every such application shall be accompanied by an assignment to the board of all crops grown or to be grown by the applicant during the season current at the time of the application or of such part of those crops as the board may, in any special circumstances, approve.

(3) If the board approves of the said application it shall notify the lender of its approval, and all amounts advanced by him with the approval of the board and the cost of all commodities supplied by him with the approval shall be paid out of the proceeds of the crops assigned by the applicant in the order of priority in which amounts advanced by the board are usually repaid under this Part.

(4) The other provisions of this Part shall apply to every applicant, application, and assignment under this section.

Insurance of crop

20. The board may insure any crop assigned to it against such risks as it thinks proper and shall deduct and retain the cost of such insurance from the proceeds of the sale of that crop.

Duty of applicant to sow and harvest crop

21. (1) An applicant whose application has been granted under this Part shall duly—

- (a) sow, care for, harvest, and render marketable every crop assigned by him to the board:
- (b) within one month after harvesting, deliver the said crop on behalf of, and in the name of, the board to a wheat merchant or pool, nominated by the applicant and approved by the board: Provided that, with the approval of the board in writing—
 - (i) the crop may be delivered in portions to different pools or merchants:
 - (ii) the applicant may retain a reasonable amount of the said crop for seed and fodder, or for milling into flour for food for himself and his family:
- (c) forthwith upon receipt of any cartnote or other document issued on or in respect of the delivery of such crop forward such cartnote or document to the board.

(2) If any applicant fails to comply with any requirement of this section, or if the board has reasonable cause to believe that any applicant is likely so to fail, the board may—

- (a) do the act or carry out the operations in which default has been made or is likely to be made:
- (b) reimburse itself for any expenditure incurred in so doing out of the proceeds of the sale of the applicant's crop:
- (c) for the purposes aforesaid by its servants, agents, or any person authorized by it enter and remain upon any land or premises upon which the crop is.

(3) If an applicant retains an amount of his crop for the purposes specified in subsection (1) of this section and the board is subsequently satisfied that the whole or any part of the amount retained has not been and will not be used for those purposes, it may direct the applicant to deliver the whole or such part of the said amount to a merchant for immediate sale or to a pool. The applicant shall obey the said direction and the provisions of sections 22, 23, and 24 of this Act with the necessary modifications shall thereupon apply to the amount so delivered.

(4) If any such applicant neglects or refuses to comply with any requirement of this section he shall without prejudice to any other liability incurred be guilty of an offence.

Disposal of crop

22. (1) Subject to the preceding section any applicant may, on behalf of the board—

- (a) sell the crop grown by him or any part thereof at any time before delivery:
- (b) sell the crop or any part thereof on delivery:

9.

(c) deliver the crop or any part thereof to a merchant on storage or on some other contract for the future sale thereof:

(d) deliver the crop to a pool.

If the crop or any part thereof is delivered on storage or some other contract for future sale the board may whenever it thinks fit complete the sale of the crop.

(2) Whenever any moneys become due by a merchant in respect of the price of any crop delivered by an applicant the merchant shall forthwith pay those moneys to the board.

If the proceeds are not so paid, the board may recover them from the wheat merchant by action in any court of competent jurisdiction as a debt due to the board.

(3) If the applicant delivers the crop to a pool he shall forthwith notify the manager of the pool, or its secretary, or its agent who takes delivery of the crop, that the crop is delivered on behalf of the board, and the pool shall pay all moneys due, or which become due, by the pool in respect of the crop to the board.

If the said moneys are not so paid, the board may recover the amount thereof from the pool as a debt by action in any court of competent jurisdiction.

(4) If any proceeds of the sale of any crop are paid to the applicant, or any other person, such applicant or person shall forthwith pay the amount thereof to the board, and if the amount is not so paid the board may recover it as a debt by action in any court of competent jurisdiction.

(5) Any person who is required by this section to pay to the board the proceeds of the sale of any crop, shall do so without the production or delivery of any wheat receipt, cartnote, storage warrant, or other document.

The receipt given by the board to such person for the proceeds of the sale of any crop shall be a complete discharge to the merchant or pool for whom he acts against the claims of any other person to or in respect of the said proceeds.

(6) If any person fails to comply with any requirement of this section he shall, without prejudice to any civil liability, be guilty of an offence.

Disposal of proceeds of sale of crop

23. (1) The board shall apply the proceeds of the sale of each applicant's crop in such manner as the board having regard to the interests of the farmer and his creditors deems equitable.

(2) The board shall at a convenient time determined by it publish in the *Gazette* a notice setting out the name and address of every applicant who has assigned any crop under this Part, and may by the notice fix a date on or before which any person claiming payment of any debt payable out of the proceeds of any crop pursuant to this section is to forward to the board particulars of his claim in the form fixed by the board. The board shall also publish in a daily newspaper published in Adelaide an advertisement calling attention to the notice in the *Gazette*. At any time after the date so fixed the board may distribute the proceeds of any crop, having regard only to those debts of which particulars have been forwarded to the board in accordance with this section and within the time fixed as aforesaid.

(3) The board shall not incur any liability with respect to any amount paid to any person pursuant to this section, whether such person was legally entitled to payment or not, unless it is shown that the board acted negligently or in bad faith.

Power to postpone distribution of certain moneys

24. If—

- (a) on the first day of October next after the delivery of any crop to a merchant or pool, the board has in hand any undistributed balance of the proceeds of the sale of such crop which is sufficient to pay a dividend of five cents in the dollar on any outstanding debts payable from such proceeds; or
- (b) the board receives any part of the proceeds of the sale of any crop after the first day of October next after delivery for sale of such crop,

the board may postpone for such time as it deems proper the distribution of the whole or any part of such amounts.

Suspension of certain liabilities of applicant

25. (1) Notwithstanding any enactment, rule of law, or agreement to the contrary, the following provisions shall, subject to subsections (2) and (6) hereof, apply with respect to every applicant on and from the day when he makes his application until the thirty-first of August next after the harvesting of the crops assigned by him to the board in connection with his application:—

- I. No proceeding shall be commenced or continued in any court for the recovery of any debt, demand, or damages or for any other relief, legal or equitable, against the applicant or to enforce any security alleged to have been given by him:
- II. No proceedings in the nature of an execution of any judgment or order whenever obtained, and no proceedings in the nature of discovery in aid of execution, shall be had or taken against the applicant. This Act shall operate as a stay of execution on every such judgment or order:
- III. No garnishee proceedings shall be commenced or continued against the applicant:
- IV. No steps shall be taken by any mortgagee, grantee of any bill of sale, holder of a lien, or any other holder or grantee of any form of security over any property of the applicant, or over the farm on which the applicant carries on farming operations, or over any chattel used for the production or marketing of that crop to realise his security or put the same into force whether by entry into possession, the exercise of a power of sale, seizure, or otherwise howsoever:
- V. No steps shall be taken by the vendor under any agreement for sale and purchase of the farm on which the applicant carries on farming operations to terminate the agreement, nor shall any such agreement become void or determined by reason of any breach thereof:
- VI. No steps shall be taken by any lessor of the farm on which the applicant carries on farming operations to determine the lease, nor shall any such lease become void or determined by reason of any breach thereof:

VII. No person shall distrain or take out of the possession of the applicant without his consent any chattel which came into his possession lawfully and with the consent of the owner:

VIII. No mortgagee in possession of any land of the farmer when the application is granted, and who entered into such possession after the first day of November, 1933, shall remain in possession: Provided that nothing in this section shall affect the title of any person who has acquired the land or any interest therein *bona fide* and for value from the mortgagee.

(2) The board may, upon the application of any person, order in writing that any provisions of this section shall not apply to any specified land, interest in land, or chattels, and upon such declaration the provisions of this section shall cease to apply accordingly: Provided that before making any such order the board shall give at least fourteen days notice in writing of the application to the applicant farmer, and shall consider any oral or written representation made or evidence submitted within the said period by or on behalf of such farmer.

(3) If any proceedings are commenced or steps taken in contravention of subsection (1) they shall be void, and if any proceedings are continued in contravention of subsection (1) every step in the proceedings taken after the making of the application shall be void.

(4) If any person takes possession of any chattels contrary to the provisions of subsection (1) hereof, he shall, in addition to any other liability, be guilty of an offence against this Part. Where the board suspects that any offence against this section has been committed, it may take proceedings therefor.

(5) In computing the time within which according to law any proceedings must be commenced or any step in any proceedings taken, no account shall be taken of the period during which an applicant is protected against proceedings under this section.

(6) Any creditor or person claiming against the applicant whose right of action or other right or remedy is stayed or suspended under this section may apply to a special magistrate for leave to proceed. The magistrate shall give notice of the application in writing to the board and the applicant at least seven clear days before the hearing. Every such application shall be heard in a summary way, and the magistrate may receive evidence by affidavit or *viva voce* or otherwise as he thinks fit. The magistrate—

(a) shall have an absolute discretion as to granting or refusing any leave:

(b) shall take into consideration the circumstances of the debtor and of the creditor or claimant, the right or claim relied on by the creditor or claimant, and the objects of this Act.

(7) An application may be made under subsection (6) notwithstanding that an application has previously been made under subsection (2) of this section in relation to the same applicant and the same matter.

(8) The jurisdiction conferred by this section shall be exercised by a special magistrate exercising jurisdiction in the local court nearest to the applicant's place of abode.

The magistrate shall have all the powers of the local court for the purpose of dealing with the application, and his decision shall be final.

False statements

26. Any person who wilfully makes any false statement in any application, declaration, assignment, or other document made or executed in connection with anything done or proposed under this Part, or wilfully neglects to disclose fully any matter required by this Act to be disclosed shall be guilty of an offence.

PART IV

DEBT ADJUSTMENT

Interpretation

27. In this Part, unless the context otherwise requires—

"certificate" means a protection certificate granted under this Part or to any person who is subject to this Part by virtue of section 28:

"farmer" means—

- (a) any individual person who is a resident of, and personally engaged in farming or pastoral operations in the State, whether he be farming on his own account or under a share-farming agreement:
- (b) the personal representative of any such individual person:
- (c) any company which is engaged in farming or pastoral operations in the State.

Holders of existing debt adjustment certificates to come under this Part

28. Every farmer to whom a certificate has been issued under the *Debt Adjustment Acts, 1929 to 1932*, and whose certificate is in force at the commencement of this Act shall be subject to this Part in all respects as if he were the holder of a certificate issued under this Part.

Application by farmer for protection

29. (1) Any farmer may by writing in the form fixed by the board apply to the board for a certificate.

(2) Upon receipt of such an application the board may, in its discretion, after enquiry into the financial position of the farmer, issue to the farmer a certificate in the Form A in the Schedule to this Act, and shall file a copy thereof in the Lands Titles Registration Office, at Adelaide, and insert a notice in the *Gazette* to the effect that the certificate has been issued.

(3) Certificates under this Part may be issued at any time not later than the thirtieth day of June, 1940.

Records of certificates

30. The Master of the Supreme Court and the clerk of every local court shall keep in the office of the court a list of all certificates notified in the *Gazette* under the last preceding section, and shall produce the list for inspection by any person without fee.

Effect of certificate

31. (1) Notwithstanding any enactment, rule of law, or agreement to the contrary, when a certificate has been issued by the board as aforesaid and during the currency thereof the following provisions shall apply:—

- (a) No proceeding shall be commenced or continued in any court for the recovery of any debt, demand, or damages or for any other relief legal or equitable against the farmer named in the certificate nor to enforce any security alleged to have been given by him:

- (b) No proceeding in the nature of an execution of any judgment or order whenever obtained, and no proceedings in the nature of discovery in aid of execution shall be had or taken against the farmer named in the notice. This Act shall operate as a stay of execution on every such judgment or order:
- (c) No garnishee proceedings shall be commenced or continued against the said farmer:
- (d) No steps shall be taken by any mortgagee, grantee of any bill of sale, holder of a lien, or any other holder or grantee of any form of security over any property of the said farmer or the land on which he carries on farming or pastoral operations to realise his security or put the same into force whether by entry into possession, the exercise of a power of sale, seizure, or otherwise howsoever:
- (e) No steps shall be taken by the vendor under any agreement for sale and purchase of any land of the farmer or the land on which he carries on farming or pastoral operations to terminate the agreement, nor shall any such agreement become void by reason of any breach thereof:
- (f) No steps shall be taken by any lessor of any land held by the farmer or the land on which he carries on farming or pastoral operations under lease to determine the lease, nor shall any such lease become void or determined by reason of any breach thereof:
- (g) No person shall distrain or take out of the possession of the farmer any chattel which came into his possession lawfully and with the consent of the owner:
- (h) No mortgagee in possession of any land of the farmer when the certificate is issued and who entered into such possession after the first day of November, 1933, shall be entitled to remain in possession: Provided that nothing in this section shall affect the title of any person who has acquired the land or any interest therein *bona fide* and for value from the mortgagee.

The provisions of this subsection are subject to sections 33 and 35 of this Act.

(2) If any proceedings are commenced in contravention of this section they shall be void, and if any proceedings are continued in contravention of this section, every step in the proceedings taken after the issue of the certificate shall be void.

(3) As soon as possible after the certificate has been issued the board shall serve by post on the creditors of the farmer so far as the board can ascertain them a statement of the financial position of the farmer.

(4) At any time during the currency of a certificate the board may, on the application of any person order that all or any of the paragraphs of subsection (1) of this section shall not apply to any specified land, interest in land, or chattel of the farmer named in the certificate, and upon such order the said provisions shall cease to apply accordingly.

Provision as to debts incurred after 1929

32. Nothing in this Part shall prevent any creditor from commencing or prosecuting any proceedings, whether in a court or not, in respect of any secured debt contracted after the thirty-first day of December, 1929: Provided that no proceedings shall be taken against a farmer during the currency of his certificate in respect of a loan made on security to the farmer after the said date by a creditor, in renewal of a loan made before the said date, or for the purpose of paying a debt due to that creditor and contracted before that date or any interest on any such debt.

Applications by creditors for leave to proceed

33. (1) At any time after notice of a certificate has been published in the *Gazette* any creditor of or person claiming against the farmer may apply to a special magistrate for leave to proceed. Notice of the application shall be given in writing to the board and the farmer at least seven clear days before the date of hearing mentioned in the notice.

(2) Every such application shall be heard in a summary manner and the magistrate may receive evidence by affidavit or *viva voce* or otherwise as he thinks fit.

(3) The magistrate—

- (a) shall have an absolute discretion as to granting or refusing any leave:
- (b) shall take into consideration the financial position of the farmer and of the creditor, or claimant, the right or claim relied on by the creditor or claimant, and the objects of this Act:
- (c) may make any order he thinks proper for the interim preservation of any property of the farmer situated within the State:
- (d) may, as a condition of refusing leave, impose upon the farmer any terms and conditions he deems advisable as to the disposition or sale of any property of the farmer, and the application of the proceeds of any such sale:
- (e) may make it a term of granting any leave that the certificate of the farmer be cancelled:
- (f) may at the time of granting any leave or by subsequent order give directions for the removal and sale of any property of the farmer situated in the State which may become liable to seizure and sale in consequence of the granting of such leave or the cancellation of the certificate, and for the distribution of the proceeds of sale thereof.

(4) When the magistrate orders that any certificate be cancelled the magistrate shall forthwith file with the Registrar-General of Deeds a copy of the order, and shall publish a copy of the order in the *Gazette*, and thereupon the certificate shall cease to have any effect whatever.

(5) The jurisdiction conferred by this section shall be exercised by a special magistrate exercising jurisdiction in the local court nearest to the farmer's place of abode.

(6) The magistrate shall have all the powers of the local court for the purpose of dealing with the application, and his decision shall be final.

Duration of certificates

34. Every certificate shall, unless sooner cancelled under this Part, remain in force until the board in its discretion determines it by notice filed with the Registrar-General of Deeds and published in the *Gazette*.

Cancellation of certificate

35. If the board considers that it is advisable to cancel any certificate the board may, in its discretion, cancel the certificate by filing with the Registrar-General of Deeds a notice of cancellation in the Form B in the Schedule to this Act, and publishing a copy of the said notice in the *Gazette*, and thereupon the certificate shall cease to have any effect whatsoever: Provided that before cancelling any certificate the board shall give not less than fourteen days' notice in writing to the farmer of its intention to do so.

Continuation of proceedings when certificate cancelled

36. When a certificate ceases to have any effect any proceedings which were pending against the farmer at the time of the issue of the certificate, may be continued, and in computing the time within which according to law any proceedings must be commenced or any step in proceedings taken, no account shall be taken of the period during which the certificate was operative.

Duty to deliver up cancelled certificates

37. When a certificate is cancelled the farmer to whom it was issued shall at the request of the board forthwith deliver or send the certificate to the board. Any farmer contravening this section shall be guilty of an offence.

Protection of property

38. (1) If the board is satisfied that any property of any farmer holding a certificate is being or likely to be unlawfully dealt with, the board may, by writing under the hand of any member or authorized officer thereof directed to the bailiff of the local court situated nearest to such property, require the bailiff to seize the property, and to hold and deal with it in such manner as the board in writing directs.

(2) Thereupon the bailiff shall forthwith seize the property and deal with it in the manner directed from time to time by the board by writing under the hand of any member or officer of the board.

(3) The proper fees and expenses incurred by the bailiff in respect of such property shall be a charge upon the property.

Provisions applicable where applicant has assigned crop under Part III

39. Where any person to whom a certificate has been issued has assigned the whole or any part of his crops under Part III of this Act, or under any other Act relating to farmers' relief, the said Part III or the said other Act shall continue to apply to the growing, harvesting, sale, and distribution of the proceeds of the said crops or part thereof, subject, however, to any reduction of the applicant's liabilities effected under this Part.

Penalty for disobedience to directions and orders

40. If any farmer in respect of whom a certificate has been issued makes default in complying with any direction given by the board he shall be guilty of an offence.

Power of board to make advances to holders of certificates

41. (1) The board may out of moneys to be provided by Parliament, make advances to any farmer holding a certificate for any of the purposes for which advances may be made under Part III of this Act, and may reimburse itself for such advances and the interest thereon out of any income of the farmer which is in or comes into the hands of the board.

(2) The board may require any farmer to whom an advance is made to give such security therefor, and in such form, as the board deems advisable.

(3) Every applicant for an advance under this section shall make a written application for the advance; and the provisions of section 13 of this Act, *mutatis mutandis*, shall extend and apply in relation to every such applicant and his application, and in relation to the assignment executed by him as security for the advance.

Reduction of Liabilities

* * * * *

PART V

DROUGHT RELIEF CHARGES

Definitions

58. In this Part—

"Crown lease" means lease of or agreement for the sale of Crown lands:

"Drought Relief Acts" means *Drought Relief Act, 1914, Drought Relief Act, 1919, Drought Relief Act, 1923, Drought Relief Act, 1926, Drought Relief Act, 1927, Drought Relief Act, 1928, Drought Relief (Extension) Act, 1929, and Frost Relief Act, 1927*:

"drought relief charge" means a charge created on any land by any Drought Relief Act to secure any advance under any such Act:

"pre-existing mortgage" means any mortgage, encumbrance, lien, or charge—

- (a) affecting land which is subject to a drought relief charge; and
- (b) given before the advance for drought relief was made.

All the payments made to the same person for drought relief advances for the same season shall be regarded as one advance and the advance shall be regarded as having been made when the last such payment was made.

"rights of the mortgagee" means rights of the mortgagee in respect of any amounts outstanding under the mortgage at the time when the application for the order is made, but not exceeding the amount outstanding at the time when the drought relief advance was made:

"mortgagee" means mortgagee under a pre-existing mortgage.

Orders relating to drought relief charges

59. The board may on the application of any person interested make any of the following orders, and may include in any order any conditions or directions which are necessary to do justice as between the Crown and the mortgagee, or to protect third parties, or to secure the due carrying out of any order made under this Part:—

- (a) Ordering that the whole or any part of the rights of the Crown under any drought relief charge shall be postponed either to the whole or any part of the rights of the mortgagee under any pre-existing mortgage:
- (b) Ordering that any drought relief charge and pre-existing mortgage shall be regarded as one mortgage owned by the mortgagee and the board in shares proportionate to their respective interests; and ordering the execution and registration of any instrument for giving effect to such order:
- (c) Apportioning any drought relief advance secured on two or more parcels of land between those parcels and discharging any such parcel from any part of the advance:

- (d) Discharging any part of the land on which a drought relief advance is charged from the whole or any part of such advance: Provided that no order under this paragraph shall be made unless the remainder of the land is a sufficient security:
- (e) Permitting the alienation of any land subject to a charge for a drought relief advance upon payment of part only of the advance or without any payment being made on account of the advance:
- (f) Declaring that any order under the previous paragraphs shall be conditional upon reduction of interest upon the drought relief advance or the moneys secured by the pre-existing mortgage, or both.

Duties and powers of the board as to orders

60. (1) Where—

- (a) the pre-existing mortgage was given as a security for an actual loan or actual loans in cash made at the rate of interest current at the time of the loan on similarly secured loans of the same kind; and
- (b) the board is satisfied that the owner of the mortgaged land has not made before the first day of March, 1934, any application under Part IV,

the board shall, on application, make an unconditional order that the rights of the Crown under the drought relief charge shall be postponed to the rights of the mortgagee.

(1a) Where the pre-existing mortgage was given as a security for the balance of purchase-money owing on a sale of the land, the board shall make an order of the kind prescribed in paragraph (b) of section 59 of this Act.

If any question arises between the Crown and the pre-existing mortgagee as to the value of any land in negotiations arising out of or consequential on an order made under this subsection, the value of the land shall be deemed to be—

- (a) the price realised at a sale of the land by auction; or
- (b) the value of the land as fixed under the *Arbitration Act, 1891-1934*, by three arbitrators. One arbitrator shall be appointed by each party and the third by the two appointed by the parties.

(2) In any other case the boards shall have a discretion as to the order to be made and in deciding whether to make any order and what order to make it shall have regard to the following matters:—

- (a) the nature of the transaction giving rise to the debt for which the pre-existing mortgage was given:
- (b) whether and to what extent the mortgagee's security benefited by the drought relief advance:
- (c) how far the existence of the drought relief charge affects the extent to which the mortgagee's debt is secured:

- (d) the rate of interest charged or to be charged under the mortgage:
- (e) whether and to what extent the mortgagee has reduced or is willing to reduce the amounts due to him under the mortgage:
- (f) any other circumstances which the boards thinks relevant.

Registration of orders

61. (1) No order affecting the rights of the Crown or any other person under any instrument registered under *The Real Property Act, 1886*, shall be effectual until registered.

(2) The board shall deliver to the Registrar-General of Deeds a copy of every such order made under this Part certified under the hand of a member or officer of the board and the Registrar-General of Deeds shall register the same by making such entries on such instruments as he thinks proper and shall also arrange for the making of any entry necessary to be made on any copy of a Crown lease in the Land Office.

Relief from the obligation to repay certain advances

62. Where any farmer—

- (a) was supplied with seed wheat or superphosphate under the *Drought Relief Acts, 1928 and 1929*, and used the said seed wheat or superphosphate for the purpose of growing a crop during the season 1930-1931; and
- (b) did not harvest in that season an amount of grain equal to the amount of seed used for sowing the crop,

the board shall, upon being satisfied of the facts, wholly discharge the farmer from his obligation to repay the cost of the said seed wheat and/or superphosphate.

Fees for orders and registration

63. Every applicant for any order shall pay to the board a fee of twenty-five cents together with the proper fees for registration of the order calculated as if the order were an order discharging a mortgage. If the board does not make any order requiring registration, the fees for registration shall be refunded.

PART VI

SUPPLEMENTARY PROVISIONS

Transfer to the board of the administration of certain Acts

64. (1) The administration of the following Acts, namely:—*Drought Relief Act, 1914; Drought Relief Act, 1919; Drought Relief Act, 1923; Drought Relief Act, 1926; Drought Relief Act, 1927; Drought Relief Act, 1928; Drought Relief (Extension) Act, 1929; Farmers Relief Act, 1931; Farmers Relief Act Extension Act, 1931; and Farmers Relief Act, 1932*, is hereby transferred to the board.

(2) All rights, powers, functions, duties, liabilities, and obligations of any Minister of the Crown or of the State Bank of South Australia under any of the said Acts or under any document executed pursuant to the said Acts are hereby transferred to the board.

(3) The said Acts and documents shall be construed as if every reference therein to a Minister of the Crown (other than the Treasurer) or to the State Bank of South Australia were a reference to the board.

Provision as to guarantees

65. (1) The board may order that throughout the period or part of the period during which any applicant is protected against proceedings by or on behalf of his creditors under Part III of this Act or during which any farmer is the holder of a certificate under Part IV of this Act all rights and remedies to which any person is entitled under any guarantee for the fulfilment of any obligation by such applicant or farmer shall be suspended.

(2) Where under any mortgage of land which is subject to *The Real Property Act, 1886*, and of which a farmer or applicant is the owner, any person other than the farmer or applicant is liable, the board may order that the rights and remedies of the mortgagee against every such other person shall be suspended throughout the period or part of the period specified in subsection (1) of this section.

(3) In computing the time fixed by law for commencing or taking any step in any proceedings, no account shall be taken of the period throughout which any rights or remedies are suspended under this section.

Restriction on grant of assistance

66. The board shall not—

- (a) grant any application made by an applicant or farmer for an advance; or
- (b) issue a protection certificate to any farmer; or
- (c) formulate or submit or bring into force any scheme for the reduction of the liabilities of any farmer,

unless it is satisfied that the applicant or farmer has a reasonable prospect of becoming able within a reasonable time to carry on his farming or pastoral operations, as the case may be, without loss. In considering whether the applicant or farmer has a reasonable prospect of becoming able to carry on his farming or pastoral operations without loss, the board shall have regard to the possibility that the applicant's or farmer's debts may be reduced under this Act.

Power to summon and examine witnesses

67. (1) The Director or the board, or any person authorized by the board to act under this section, may for purposes of this Act—

- (a) by summons under his hand, or in the case of the board, under the hand of any member or the secretary thereof, require any person to attend before him or it and give evidence, and may require answers or returns to any inquiry which that person or body thinks fit to make:
- (b) by notice in writing signed as aforesaid, order the production by any person of any books, papers, or documents in the custody or control of such person:
- (c) inspect any books, papers, and documents so produced:
- (d) examine witnesses on oath, affirmation, or declaration, and administer such oath, affirmation, or declaration.

(2) If any person—

- (a) who has been personally served with a summons to attend before any person or body, and whose reasonable expenses have been paid or tendered to him, does not attend in obedience to the summons; or
- (b) being called or examined as a witness, refuses to be sworn or to affirm or declare; or
- (c) fails to produce any books, papers, or documents mentioned in a notice under subsection (1) personally served upon him; or
- (d) prevaricates in his evidence, or refuses to answer any lawful question,

he shall be guilty of an offence.

Directions by the board

68. (1) The board may give to any applicant or farmer whose affairs are being dealt with under Part III or Part IV of this Act any directions as to—

- (a) the disposition of any of his property or income:
- (b) his business transactions:
- (c) the better management and working of his farm.

(2) If any such applicant or farmer fails to obey any such direction the board may do any action, execute any document, or take any measures or proceedings necessary to carry out such direction and for that purpose shall be the agent of the applicant or farmer.

(3) Any disposition of property or income or any other transaction entered into by any such applicant or farmer in contravention of any direction of the board shall be void: Provided that in the case of an applicant under Part III, no such disposition or transaction shall be void by reason of this section if the applicant's name does not appear on the record of applications kept by the board under Part III.

(4) If any applicant or farmer fails to obey any direction of the board as to the disposition of any of his property or income, or any of his business transactions, he shall be guilty of an offence.

Legal assistance for farmers

69. The board, on behalf of any applicant or farmer whose affairs are being dealt with under Part III or Part IV may, where necessary, employ any solicitor or counsel, and may advance money to pay the solicitor or counsel, or any other legal expenses of the applicant or farmer.

Provision as to payment of certain liabilities

70. (1) The board shall not pay on behalf of any applicant or farmer under this Act any interest or penalty in respect of any rates, taxes, or charges for excess water imposed under any law of the State, and when the board has paid the amount of any such rates, taxes, or charges (exclusive of any interest or penalty) the person or authority entitled to payment of such rates, taxes, or charges shall have no further claim against any person for any interest or penalty in respect thereof.

(2) Any payment made by the board on behalf of an applicant or farmer, of interest on any moneys secured by a mortgage or payable under an agreement for the sale and purchase of land shall be at the lowest rate applicable when the interest is paid on the due date; and payment by the board of any interest at that rate shall be a full discharge of the interest in respect of the period for which the payment is made, notwithstanding that the interest was not paid on the due date.

(3) Where the existence or amount of any debt or liability alleged to be due by any applicant or farmer is in dispute, the board may, in its discretion, permit any creditor or claimant to institute and prosecute any legal proceedings in respect of such debt or liability up to the point of obtaining judgment in the court of first instance. No execution or other step shall be taken to put such judgment into force and no appeal shall be taken past the stage of filing and serving notice thereof except with the further permission of the board. The board may treat the amount for which any such judgment is obtained as the amount of the debt or liability for any purpose under this Act, but may reduce the rate of interest payable under such judgment by any amount which it deems proper.

Annual statements for creditors

71. The board shall, after distributing the income of each applicant or farmer under this Act for each season, send by post to each of his creditors who applies therefor, and who pays the prescribed fee, a written statement showing the details of the moneys received and expended by the board on account of the applicant or farmer in respect of that season's operations.

Regulations

72. The Governor may make any regulations necessary or convenient for carrying this Act into effect, including regulations prescribing fees to be paid in respect of anything done under this Act, the procedure to be adopted in regard to any application or proceeding under this Act, and the duties and conduct of applicants and farmers who are subject to this Act.

General penalty

73. Where any offence is created by this Act but no penalty is specifically provided therefor, the penalty for that offence shall be a fine not exceeding two hundred dollars, or imprisonment for any term not exceeding six months.

Summary proceedings for offences

74. All offences against this Act shall be disposed of summarily before a court of summary jurisdiction constituted by a special magistrate.

Forms

75. Any application, assignment, or other document used for the purposes of this Act may be in any form prescribed or fixed by this Act or by the regulations thereunder, or by the board, with any modifications, additions, or alterations which the board thinks fit.

Exemptions from stamp duties

76. Notwithstanding the provisions of any law relating to stamp duties, no stamp duty shall be payable upon any application, declaration, certificate, or assignment made pursuant to this Act.

Duty of Registrar-General to file documents without fee

77. The Registrar-General of Deeds shall without fee receive and file a copy of every certificate issued pursuant to Part IV of this Act, and of every order for, or notice of cancellation of any certificate and shall keep a record thereof.

Saving of rights under certain hire purchase agreements

78. Nothing in this Act shall prevent the owner of goods supplied to any person under a hire purchase agreement after the commencement of this Act from exercising (subject to the *Hire-Purchase Agreements Act, 1931*) any power to re-possess, sell, or otherwise deal with the goods.

Board's commission

79. The board may retain out of the income of any applicant or farmer whose affairs are being dealt with under Part III or Part IV of this Act a commission for its services in connection with the management of his affairs, at a rate to be fixed by the board, which rate shall be the same for all persons, shall not exceed two and a half per centum of the said income and shall be of such an amount as, in the board's opinion, will produce in the aggregate a sum sufficient to cover the actual cost of the administration of this Act.

* * * * *

THE SCHEDULE

FORM A

FARMERS ASSISTANCE ACT, 1933

To the Registrar-General of Deeds and to the Master of the Supreme Court and the Clerks of all Local Courts:

This is to certify that
of a farmer within the meaning
of Part IV of the said Act, is a person entitled to the benefit of the provisions of Part IV of the said Act.

Dated at this day of, 19

.....
Director

FORM B

In the matter of the *Farmers Assistance Act, 1933*.

To the Registrar-General of Deeds and to the Master of the Supreme Court and the Clerks of all Local Courts:

This is to certify that the certificate issued by me under the provisions of the above Act in respect of
....., of
on the day of, 19, is hereby cancelled.

Dated this day of, 19

.....
Director