

SOUTH AUSTRALIA

**PRIMARY PRODUCERS' DEBTS ACT, 1935**

## **PRIMARY PRODUCERS' DEBTS ACT, 1935**

being

Primary Producers' Debts Act, 1935, No. 2200 of 1935  
[Assented to 14 March 1935]

as amended by

Primary Producers' Debts Act Amendment Act, 1935, No. 2247 of 1935 [Assented to 19 December 1935]  
Primary Producers' Debts Act Amendment Act, 1936, No. 2313 of 1936 [Assented to 26 November 1936]  
Primary Producers' Debts Act Amendment Act, 1937, No. 2358 of 1937 [Assented to 17 November 1937]  
Primary Producers' Debts Act Amendment Act, 1939, No. 5 of 1939 [Assented to 14 September 1939]  
Primary Producers' Debts Act Amendment Act, 1941, No. 30 of 1941 [Assented to 13 November 1941]  
Primary Producers Assistance Act, 1943, No. 26 of 1943 [Assented to 16 December 1943]<sup>1</sup>  
Statute Law Revision Act (No. 2), 1974, No. 84 of 1974 [Assented to 21 November 1974]

<sup>1</sup> Came into operation 1 January 1944: *Gaz.* 23 December 1943, p. 810.

**An Act to make further and better provision for the adjustment of the debts of primary producers, and for other purposes.**

WHEREAS the Commonwealth has agreed to grant to the States the sum of twelve million pounds to be used for the purpose of assisting in the financial rehabilitation of primary producers: AND WHEREAS at the commencement of this Act the sum of two hundred and twenty-five thousand pounds is available for the State of South Australia for this purpose and other moneys may thereafter become available: AND WHEREAS it is expedient that the said moneys should be used for the purpose of procuring for primary producers a release from some portions of their indebtedness: Now therefore be it enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

**Short title**

1. This Act may be cited as the *Primary Producers' Debts Act, 1935*.

**Interpretation**

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

"applicant" means a person who has made an application for debt adjustment under this Act, and whose application has not been withdrawn or dismissed and who has not been released from the operation of section 25 of the *Farmers Assistance Act, 1933*, pursuant to section 12 of this Act:

"board" means the Farmers Assistance Board constituted under the *Farmers Assistance Act, 1933*:

"debt" means any debt or liability which would be provable against the estate of the applicant in the event of his bankruptcy:

"primary producer" means any person or body corporate engaged in business within the State as an agriculturalist, pastoralist, grazier, dairy farmer, fruit-grower, vegetable grower, or producer of other primary products, not being metals, minerals, or fish; the term shall also include the legal representatives of any such primary producer.

(2) If any question arises as to whether any person is a primary producer within the meaning of this Act, the board shall determine the matter and its decision shall be binding on all persons and without appeal.

*Administration*

\* \* \* \* \*

**Staff**

4. The Governor may, at the request of the board, appoint any officers, servants, or other employees necessary for the administration of this Act.

**Power to delegate**

5. The board may delegate any of its powers, duties, or functions under this Act 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 any delegation.

**Finance**

6. (1) The expenses incurred by the board in administering this Act (other than the moneys required for paying dividends to creditors of applicants) shall be paid out of moneys provided by Parliament for the purpose.

(2) The dividends payable to creditors of applicants under this Act shall be paid out of the moneys granted to the State by the Commonwealth as mentioned in the preamble to this Act, and this Act shall be sufficient authority for the Treasurer to apply those moneys towards payment of those dividends.

*Applications*

**Applications**

7. (1) Any primary producer may apply to the board for debt adjustment under this Act.

(2) The application shall be in the form fixed by the board.

(3) An application shall be deemed to be made when it is received in the office of the board.

**Applications by persons under schemes of arrangement, etc.**

8. A primary producer whose business is at the commencement of this Act being carried on pursuant to a scheme of arrangement, deed of inspectorship, letter of licence, or other agreement or instrument under Part XI or XII of the *Commonwealth Bankruptcy Act, 1924*, may, if such scheme, deed, letter, or other agreement or instrument is lawfully annulled or terminated and the primary producer has not assigned his estate or been made bankrupt, apply for debt adjustment under this Act.

\* \* \* \* \*

\* \* \* \* \*

**Information by applicants**

11. The board may refuse to consider any application, if the applicant does not furnish the board with all information required by the board for the purpose of dealing with the application.

**Protection and control of applicants**

12. (1) If the Treasurer so directs by order published in the *Gazette* in relation to any applicant, section 25 (except the words in that section defining the period of the operation thereof) of the *Farmers Assistance Act, 1933*, shall as from the day of the order apply to and in respect of the applicant and the property owned or held by him as if he were an applicant for assistance under Part III of that Act; and the said section shall continue so to apply—

- (a) until the application is dismissed or withdrawn; or
- (b) if the application is granted, until the applicant is released from the operation of the said section by the board.

(2) Whilst section 25 of the *Farmers Assistance Act, 1933*, applies to an applicant—

- (a) he shall not, without leave of the board, sell, lease, mortgage or otherwise dispose of or encumber any of his land or chattels or any interest therein:

4.

(b) he shall give to the board such information as to his affairs generally as the board requires.

(3) If any applicant sells, leases, mortgages or otherwise disposes of or encumbers any property in contravention of this section, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars, and any transaction entered into by him in contravention of this section shall be void.

### **Decision on application**

**13.** (1) The board shall on receipt of an application consider whether the applicant has a reasonable prospect, in the event of his debts being adjusted under this Act, of becoming able within a reasonable time to carry on his operations as a primary producer without loss. In making a decision under this subsection the board shall assume that the amount (including bounties, bonuses, and other similar payments) realised for wheat will, at all material times, be not less than thirty cents per bushel at overseas shipping ports in the State.

(2) If the board is of opinion that the applicant has such a prospect, it shall proceed with the application; if it is not of that opinion it shall dismiss the application.

### **Valuation**

**14.** (1) If the board decides to proceed with the application it shall forthwith cause a valuation to be made of all the assets of the applicant.

\* \* \* \* \*

### **Power to refuse application after valuation**

**15.** The board may at any time after a valuation has been made, and notwithstanding any previous decision, dismiss any application if it is satisfied, after taking into consideration the possible effect of debt adjustment under this Act, that the applicant has no reasonable prospect of becoming able to carry on his operations as a primary producer without loss.

### **Dismissal of application**

**16.** When the board decides to dismiss an application it shall by post give the applicant notice in writing of its decision and fix a date not earlier than fourteen days from the time when the notice would be received in the ordinary course of post on which the dismissal will become effective; and the application shall be deemed to be dismissed on the date so fixed.

### **Records and notices of applications and schemes**

**17.** (1) The board shall keep at its head office 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 he carries on business as a primary producer:
- (c) the date of his application:
- (d) a statement whether the application has been withdrawn, dismissed, or proceeded with, and in the case of withdrawal or dismissal, the date thereof:

5.

- (e) the date when any scheme for adjusting the applicant's debts comes into operation:
- (f) the date when the applicant is released or is to be released from protection under section 25 of the *Farmers Assistance Act, 1933*.

(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 any entries therein or a certificate that no application has been made by a particular person.

(4) The board shall—

- (a) as soon as practicable after an application has been made publish in the *Gazette* the name and address of the applicant:
- (b) as soon as practicable after an application has been withdrawn or dismissed, or after a scheme has come into operation, publish in the *Gazette* a statement of the fact of such withdrawal, dismissal, or coming into operation, and the date thereof.

(5) The board shall keep a copy of every scheme at its head office at Adelaide.

(6) Any person who satisfies the board that he has had or is likely to have dealings with any applicant or any person acting on behalf of any such person may, without fee, inspect at the office of the board the application of such applicant or a copy of any scheme which has come into operation, and the board shall on payment of a fee of thirty cents supply to any member of the public a copy of any such scheme.

### *Debt Adjustment and Schemes*

#### **Adjustment by agreement**

**18.** Upon proceeding with any application, the board shall, where practicable, endeavour in the first instance in an informal way to secure the agreement of the creditors to an equitable scheme for adjusting the debts of the applicant.

#### **Meetings of creditors**

**19.** If an adjustment is not made by agreement under the preceding section the board shall call a meeting of the applicant's creditors.

#### **Provision as to meetings**

**20.** (1) Any meeting of the applicant's creditors shall be held at a place convenient to the majority in value of the creditors. The decision of the chairman that a meeting has been held at such a place shall be conclusive as to that fact.

(2) Notice of the meeting shall be given to every creditor known to the board by circular delivered at or posted to his residence or place of business.

(3) The notice shall state in general terms the object of the meeting.

6.

(4) The meeting shall be held not less than seven nor more than twenty-one days after the delivery or posting of the notices.

(5) A member of the board or some person appointed by the board shall be chairman at every meeting.

(6) The chairman shall decide who is entitled to vote at the meeting and the amount in respect of which any creditor may vote.

(7) Any creditor entitled to vote may vote personally or by proxy.

(8) The chairman may adjourn the meeting from time to time.

(9) The practice, procedure, and the power of the chairman at a meeting shall, except where this Act makes some other provision, be the same as at a meeting held under Part XI of the *Commonwealth Bankruptcy Act, 1924*, and its amendments.

#### **Creditors under sixty dollars**

**21.** A creditor whose unsecured debt does not exceed sixty dollars shall in computing the votes at any meeting be counted in value but not in number.

#### **Voting by secured creditors**

**22.** A secured creditor may vote at any meeting in respect of the whole or any part of his secured debt; and if he does so, and a scheme for the adjustment of the applicant's debts results from that meeting or any adjournment thereof, the secured creditor shall thereafter be deemed for all purposes to be an unsecured creditor for the amount in respect of which he voted, and shall be entitled to rely on his security for the balance only (if any) of his debt, and the amount of debt in respect of which he so voted shall thereafter for all purposes be deemed to be an unsecured debt: Provided that, without affecting his rights of ranking and being treated as an unsecured creditor for any amount, no vote of a secured creditor shall be counted in respect of a sum greater than the amount by which his debt exceeds the value, as determined under section 14, of the assets which are security for that debt.

#### **Submission of schemes**

**23.** The board, or the chairman of the meeting, or the applicant or any creditor may submit to the meeting any scheme for the adjustment of the applicant's debts.

#### **Contents of scheme**

**24.** (1) In any scheme provisions for all or any of the following matters may be included:—

- (a) Payment on behalf of the applicant out of moneys granted to the State by the Commonwealth, of a dividend on the unsecured debts of the applicant (not being debts due to the Commonwealth or the State) of an amount not exceeding twenty-five cents in the dollar:
- (b) The release of the applicant from the whole or any part of any unsecured debts due to persons other than the State:

7.

- (c) The release of the applicant from the whole or any part of any debt, secured or unsecured, accrued or accruing due to the State: Provided that an applicant shall not be released from any such accruing debt or part thereof except with the approval of the Minister in charge of the department whose duty it is to recover such debt or in the case of a debt accruing due to the State Bank of South Australia, with the approval of the Board of Management of that Bank:
- (d) The waiver by or on behalf of the State of any security or part thereof so that the whole or any part of any secured debt due to the State shall become unsecured and any property be freed from such debt or part of a debt:
- (e) A release of the applicant from any arrears of interest on any secured debt in excess of an amount computed at five per centum per annum:
- (f) A reduction of the interest payable on any unsecured debt to any rate which the board deems proper, or a provision that such debt shall not bear interest:
- (g) A provision that any debt (not being an advance by a bank on overdraft, or some other advance approved by the board of a like nature) bearing compound interest shall for the future bear simple interest only:
- (h) A release of the applicant from any arrears of interest on any unsecured debt:
- (i) A loan by the board to the applicant from moneys granted to the State by the Commonwealth, for the purpose of adjusting debts of the applicant: Provided that the following conditions shall apply to every loan so made:—
  - I. The loan shall be made in the name of and be repayable to the board, and shall be upon such terms and conditions, and shall bear interest at such rate not exceeding two and a half per cent. per annum, and shall be for such period as the board determines in each case;
  - II. All moneys repaid on account of any loan made under this paragraph shall be used for the purposes of this Act, and shall be deemed to be moneys granted to the State by the Commonwealth.

(2) In paragraph (a) of subsection (1) of this section the expression "the Commonwealth or the State" includes the Commonwealth or the State or any authority or body corporate or unincorporate constituted by or under the law of the Commonwealth or the State, whose funds have been provided wholly or in part by the Commonwealth or by the State or whose obligations are wholly or in part guaranteed by the Commonwealth or the State.

In paragraphs (b), (c), and (d) of subsection (1) of this section the expression "the State" includes any authority or body corporate or unincorporate, being an agent or servant of the State and includes the State Bank of South Australia.

(3) The Treasurer shall reduce the amount owing by the State Bank of South Australia to the Treasurer, by half of the amount by which any debts owing to the State Bank are reduced pursuant to schemes under this Act.

(4) Any such balance as mentioned in subsection (5) of section 27 of the *Public Finance Act, 1936*, may be applied by the Treasurer in making reductions in the indebtedness of the State Bank to the Treasurer, pursuant to subsection (3) of this section.

**Assent to schemes**

**25.** (1) No scheme shall come into operation until it has been assented to by creditors as required by this section, and has been approved by the board; but when such assents and approval have been given, the scheme shall come into operation and be binding upon and enforceable by and against the applicant and his creditors.

(2) The assents of creditors required for a scheme to come into operation shall be as follows:—

- (a) If the scheme does not provide for payment of a cash dividend, or provides for payment of a cash dividend but does not comply with the next succeeding section, at least three-quarters in number and value of the creditors present personally or by proxy and voting at a duly called meeting or any adjournment thereof must vote in favour of it:
- (b) If the scheme provides for payment of a cash dividend and complies with the next succeeding section at least one-half in number and value of the creditors present personally or by proxy and voting at a duly called meeting or any adjournment thereof must vote in favour of it.

(3) A meeting shall not be duly called within the meaning of this section unless a copy of the proposed scheme has been sent to each creditor known to the board and whose debt is affected by the scheme, at the time when the notice of the meeting is sent.

(4) A scheme may be amended by a meeting called to consider it, if the amendment does not place any creditor in a worse position than if the amendment were not made.

**Contents of schemes providing for cash dividends**

**26.** A scheme for payment of a cash dividend shall be deemed to comply with this section if it contains the following provisions (whether with or without other provisions not inconsistent with the said provisions):—

- (a) A statement of the amount in the dollar (as estimated by the chairman to the nearest cent) equal to the ratio which the value of the unencumbered assets of the applicant bears to his unsecured debts:
- (b) If the amount so stated is more than twenty-five cents in the dollar, the scheme shall contain a provision for payment by the board on behalf of the applicant of a cash dividend of twenty-five cents in the dollar on the unsecured debts, and a provision that the applicant will remain liable only for an amount in the dollar equal to the difference between twenty-five cents and the amount stated as aforesaid or for some less amount fixed by the board:
- (c) If the amount so stated is not more than twenty-five cents in the dollar the scheme shall contain a provision for payment by the board on behalf of the applicant of a cash dividend of the amount so stated in the dollar on the said unsecured debts:

- (d) In either case the scheme shall contain a provision that the amount in the dollar by which the value of the applicant's unencumbered assets falls short of his unsecured debts shall be written off those debts, and that the applicant shall not be under any further liability in respect thereof.

**Saving of liability of guarantors and others**

27. Nothing in this Act, or in any scheme under this Act, shall affect the liability of any person (other than the applicant), who is liable in any way in respect of any debt or default of the applicant.

**Method of computing unencumbered assets**

28. (1) In computing the value of the applicant's unencumbered assets there shall be included the excess amount of the value of any encumbered assets as estimated by the board over and above the amount of the debt for which it is security.

(2) A policy of life assurance or endowment effected by a primary producer on his own life shall not form part of his assets for the purposes of this Act.

**Debts under certain agreements to be secured debts**

29. A debt due under an agreement for the sale and purchase of land or a hire purchase agreement shall be treated for all purposes under this Act as a secured debt, unless the creditor votes in respect of the whole or some part thereof in which case the whole or that part shall be an unsecured debt.

**Determination of amount of debt**

30. For the purposes of this Act the amount of any debt shall be its amount or value as determined by the chairman of the meeting at which the matter is being considered.

**Non-liability of applicants to repay board**

31. No applicant shall be under any liability to the board or the Crown in respect of any dividend paid by the board on his behalf.

**Annulment of scheme**

32. (1) The board may—

- (a) annul a scheme at any time on the ground of fraud:
- (b) annul a scheme at any time within twelve months after it becomes operative, on the ground that material facts as to the applicant's affairs were not disclosed to the board.

(2) The board shall publish in the *Gazette* notice of every annulment of a scheme giving the date thereof.

(3) Any moneys paid under a scheme prior to the annulment may notwithstanding the annulment be retained by the *bona fide* creditors to whom they are paid, and shall be deemed to have been accepted by them on account of the debts in respect of which they were paid.

**Reconsideration of schemes**

33. (1) The board may at any time not later than one month after any scheme has come into operation call a meeting of the creditors bound by the scheme for the purpose of reconsidering it.

(2) The provisions of sections 20 and 21 of this Act shall apply to the meeting.

(3) At the meeting or any adjournment thereof the creditors may, by a similar majority to that which was required to bring the scheme into operation—

(a) annul the scheme; or

(b) amend the scheme.

(4) If the scheme is annulled, any moneys paid thereunder prior to the annulment may be retained by the *bona fide* creditors to whom they were paid and shall be deemed to have been received by them on account of the debts in respect of which they were paid, and shall in the event of another scheme coming into operation in substitution for the annulled scheme be deemed to have been received under such other scheme.

(5) The board shall publish in the *Gazette* notice of every annulment of a scheme, giving the date thereof.

#### **Schemes in substitution for annulled scheme**

**34.** When a scheme is annulled under this Act a new scheme complying with this Act may be submitted to a meeting of creditors called for the purpose under this Act and the provisions of this Act relating to schemes generally shall apply to such new scheme.

#### **Provision as to death of applicant**

**34a.** (1) If an applicant dies or has died (and whether before or after the enactment of this section), before his debts have been adjusted under this Act, and the Board is satisfied—

(a) that the executors or administrators of the deceased applicant or any other persons entitled to his land in succession to him *bona fide* intend to carry on operations as primary producers on that land; and

(b) that if the debts of the deceased applicant were adjusted under this Act, there would be a reasonable prospect that his executors or administrators or the other persons aforesaid would be able to carry on such operations without loss,

the Board may in its discretion direct that the application shall be proceeded with as if it had been made in the first instance by the executors, administrators, or other persons aforesaid.

(2) If such a direction is given the application shall be proceeded with accordingly; and the executors, administrators, or other persons aforesaid shall be deemed for all purposes to be applicants within the meaning of this Act.

#### **Trustees**

**35.** No trustee shall be chargeable with breach of trust by reason only of his consent to, or failure to object to any agreement or scheme approved by the board under this Act.

\* \* \* \* \*

**Supplementary assistance**

**36a.** (1) Where the debts of an applicant have been adjusted, whether before or after the enactment of this section, under the other provisions of this Act and the board for any reason considers it just that the applicant should receive further assistance, the board may—

- (a) out of the moneys granted to the State by the Commonwealth, make a loan or grant of money to the applicant for the purpose of enabling him to pay or compound any of his debts:
- (b) release the applicant from the whole or any part of any debt, secured or unsecured, accrued due to the State:

Provided that no assistance shall be granted under this subsection to any applicant unless the board is satisfied that the other creditors of the applicant have also released the applicant from such parts (if any) of the debts due to them as the board considers just.

(2) Any loan made under this subsection shall be made in the name of and be repayable to the board and shall be upon such terms and conditions and shall bear interest at such rate, not exceeding two and a half per centum per annum, and shall be for such period, as the board determines in each case.

(3) All moneys repaid on account of any such loan shall be used for the purposes of this Act and shall be deemed to be moneys granted to the State by the Commonwealth.

*Supplementary Provisions***False statements**

**37.** Any person who wilfully makes any false statement in any application or other document made or executed in connection with anything done or proposed under this Act, or wilfully neglects to disclose fully any matter required by this Act to be disclosed shall be guilty of an offence punishable summarily and liable to imprisonment for not more than six months or a fine not exceeding two hundred dollars.

**Restriction on publication of certain particulars**

**38.** (1) No person shall publish in any newspaper, not being a trade gazette as defined in this section, any particulars of any application or scheme under this Act; and any person contravening this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding forty dollars: Provided that nothing in this section shall prevent the board or any person authorized by it from publishing in any manner which it deems necessary any notice required for the due administration of this Act.

(2) In this section "trade gazette" means any newspaper, circular, or other document published for the sole or main purpose of affording to persons engaged in trade, business, or manufacture information as to the financial position and dealings of members of the public.

**Power to summon and examine witnesses**

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

12.

- (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 the board 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 and liable to a fine not exceeding one hundred dollars.

### **Regulations**

**40.** The Governor may at the request of the board make any regulations necessary or convenient for the due administration of this Act and may impose penalties recoverable summarily and not exceeding fifty dollars for breach of any regulation.

### *Drought Relief Advances*

#### **Power to remit Drought Relief advances**

**41.** On the recommendation of the Primary Producers Assistance Committee appointed under the *Primary Producers Assistance Act, 1943*, the Treasurer may, if he considers that circumstances justify him in doing so, release any person from the obligation to repay the whole or any part of any moneys owing by that person on account of the principal of, or interest on, any advance under any Act relating to drought relief, and may discharge any real or personal property from any charge securing repayment of such moneys.