

## DEBT ADJUSTMENT ACT, 1929-1932.

BEING

DEBT ADJUSTMENT ACT, 1929, No. 1939 of 1929 [ASSENTED TO  
12TH DECEMBER, 1929.]

AS AMENDED BY

DEBT ADJUSTMENT ACT AMENDMENT ACT, 1930, No. 1980 OF 1930  
[ASSENTED TO 20TH NOVEMBER, 1930.]

DEBT ADJUSTMENT ACT AMENDMENT ACT, 1932, No. 2068 of 1932  
[ASSENTED TO 8TH SEPTEMBER, 1932.]

AND

DEBT ADJUSTMENT ACT, 1932, No. 2087 OF 1932 [ASSENTED TO  
23RD NOVEMBER, 1932.]

### An Act to facilitate the adjustment of agricultural debts.

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

1. This Act may be cited as the "Debt Adjustment Act, 1929-1932."

Short title.  
Cf. 21 & 22,  
Geo. 5 c. 48.

2. In this Act, unless the context otherwise requires—

Interpreta-  
tion.

"Director" means the Director of Debt Adjustment appointed under this Act:

"farmer" means—

- (a) any individual person who is a resident of, and personally engaged in farming or grazing operations in the State, whether he be farming on his own account or under a share-farming agreement;
- (b) the personal representatives of any such individual person;
- (c) any company registered under the Companies Act, 1892, which is engaged in farming or grazing operations in the State:

Amended by  
2087, 1932,  
s. 2.

"special magistrate" means a special magistrate exercising the jurisdiction of the local court nearest to the

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s. 2. The Companies Act, 1892, has been repealed and superseded by the Companies Act, 1934.

farm of the particular farmer, and as regards the local court of Adelaide includes the Local Court Judge.

Construction  
of Act.

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 where any provision hereof would, but for this section, be construed as being in excess of that power it shall, nevertheless, be a valid enactment to the extent to which it is not in excess of that power.

Application of  
Act.  
Inserted by  
1980, 1930,  
s. 3.

3a. Notwithstanding the provisions of The Real Property Act, 1886, this Act shall apply in relation to land which is subject to the provisions of that Act as well as in relation to other land.

#### *Administration.*

Appointment  
of Director.

4. The Governor may appoint a fit and proper person to hold the office of Director of Debt Adjustment, and may appoint one or more Assistant Directors of Debt Adjustment for the whole or any part or parts of the State, and may appoint such other officers as are necessary for the proper administration of this Act.

Application  
of Public  
Service Act,  
1936.

5. Every Director, Assistant Director, or other officer appointed under this Act shall, unless the Governor otherwise determines, be subject to the provisions of the Public Service Act, 1936.

Powers of  
Assistant  
Directors.

6. All the powers, duties, and functions conferred by this Act upon the Director shall be deemed to be conferred upon every Assistant Director also, and may, subject to the control of the Director, be exercised by any Assistant Director throughout the whole State, or that part of the State for which he is appointed, as the case may be.

#### *Debt Adjustment.*

Duty of  
Director to  
endeavour to  
settle debts  
without  
protection  
certificate.

7. (1) Upon application being made to the Director by or on behalf of any farmer or any creditor of a farmer the Director shall confer with and advise the farmer or his creditor and shall endeavour to bring about an amicable arrangement for the payment of the farmer's indebtedness without recourse being had to legal proceedings.

s. 5. The expression "Public Service Act, 1936," has been substituted for "Public Service Act, 1916," pursuant to the Acts Republication Act, 1934.

(2) For the purpose aforesaid the Director shall inquire into the validity of all claims made against the farmer and the ability or prospective ability of the farmer to pay his just debts, and shall endeavour to effect an agreement between the farmer and his creditors to provide for the settlement of the farmer's debts either in full or by a composition.

8. (1) Any farmer may by writing in the form A in the schedule of this Act apply to the Director for a protection order as hereinafter mentioned. The application shall be signed by the applicant and attested and accompanied by a declaration by the attesting witness as to the execution thereof.

Application  
by farmer  
for pro-  
tection.

(2) Upon receipt of such an application the Director may, if from inquiries made by him he is satisfied that it is in the interests of the farmer and his creditors so to do, issue to the farmer a certificate in the form B 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 a certificate has been issued by him in respect of the farmer in pursuance of the provisions of this Act.

(3) 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 subsection (2), and shall produce the list for inspection by any person without fee.

(4) On the issue of a certificate by the Director as aforesaid—

(a) No action shall be commenced in any court of law 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. If any such action is commenced it shall be and is hereby declared to be stayed:

Amended by  
1980 of 1930,  
s. 4, and  
2068, 1932,  
s. 3.

(b) No proceeding in the nature of an execution of a judgment or order already obtained and no proceeding in the nature of discovery in aid of execution shall be had or taken against the farmer named in the certificate. Every such judgment or order shall be and is hereby declared to be stayed for all purposes whatsoever:

(c) No steps shall be taken by any mortgagee, grantee of any bill of sale, holder of a lien or any other

grantee of any other form of security over any property of the said farmer 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, but all the remedies available to any such mortgagee, grantee, holder of a lien, or other grantee shall be and the same are hereby declared to be suspended:

(d) No chattel of the farmer shall be distrained for any purpose.

The provisions of this subsection are subject to sections 10, 11, and 13 of this Act.

(5) If any proceedings are commenced in contravention of subsection (4) they shall be void, and if any proceedings are continued in contravention of subsection (4) every step in the proceedings taken after the publication of the notice shall be void.

(6) As soon as possible after the certificate has been issued the Director shall take all reasonable steps to acquaint the creditors with the financial position of the farmer.

Inserted by  
2068, 1932,  
s. 3.

(7) At any time during the currency of a certificate the Director may on the application of any person declare in writing that the provisions of paragraph (b) or paragraph (c) of subsection (4) of this section or of both the said paragraphs shall not apply to any specified land, interest in land, or chattel of the farmer named in the certificate, and upon such declaration the said provisions shall cease to apply accordingly.

Power of  
creditors to  
object to  
certificate.

9. A certificate issued under this Act shall be void if before the expiration of ten days after the creditors of the farmer have been served by post with a statement of the financial position of the farmer, as required by subsection (6) of section 8, a majority in number of all the creditors and a majority in value of the unsecured creditors of the farmer object in writing addressed to the Director to the issue of the certificate. In calculating a majority of creditors for the purpose of this section any unsecured creditor whose debts amount to a sum not exceeding Ten Pounds shall be reckoned in the majority in value but not in the majority in number.

Limitations  
of Act.

10. (1) Nothing in this Act shall prevent any creditor from commencing or prosecuting any proceedings, whether in a Court or extrajudicial, in respect of any secured debt contracted after the thirty-first day of December, nineteen hundred and twenty-nine.

Provided that this subsection shall not render lawful or valid any such proceedings taken against a farmer during the currency of his certificate in respect of any debt contracted before the said thirty-first day of December, nineteen hundred and twenty-nine, for which a security is given or renewed after that date, or in respect of an advance made on security to the farmer after the said date by a creditor for the purpose of paying a debt due to that creditor and contracted before that date.

Proviso  
inserted by  
2068, 1932,  
s. 4.

(2) Certificates under this Act may be issued at any time not later than the thirtieth day of June, nineteen hundred and thirty-three; and every certificate shall, unless sooner cancelled under sections 11 or 13 of this Act, remain in force until the Director having regard to the interests of the farmer and his creditors in his discretion terminates it by notice in the *Gazette*.

Amended by  
2068, 1932,  
s. 4.

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

Applications  
by creditors  
for leave to  
proceed.

(2) Every such application shall be made to a special magistrate exercising jurisdiction in the local court nearest to the farmer's place of abode.

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

(4) The special magistrate—

- (a) shall have an absolute discretion as to granting or refusing any leave:
- (b) shall take into consideration the circumstances of the farmer and of the creditor and the objects of this Act:
- (c) may make any order he thinks proper for the interim preservation of the 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 issued under this Act be cancelled:

(f) may at the time of granting any leave or by subsequent order give all requisite directions for the removal and sale of the whole or any part of the 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.

Notice of  
cancellation  
of certificate  
by magistrate.

12. When a special magistrate orders that any certificate be cancelled he 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.

Cancellation  
of certificate  
by Director.

13. If it is made to appear to the Director that it is advisable to cancel any certificate the Director may, in his discretion, cancel the certificate by filing with the Registrar-General of Deeds a notice of cancellation in the form C 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.

Continuation  
of proceed-  
ings when  
certificate  
cancelled.

14. When a certificate ceases to have any effect any proceedings, which were pending against the farmer at the time of the publication in the *Gazette* of notice of the issue of the certificate, may be continued, and in computing the time for taking any step in those proceedings no account shall be taken of the period during which the certificate was operative.

Duty to  
deliver up  
cancelled  
certificates.

15. When a certificate is cancelled under this Act the farmer to whom it was issued shall at the request of the Director or any Assistant Director forthwith deliver the certificate to the Director or Assistant Director. Any farmer contravening this section shall be guilty of an offence punishable summarily, and liable to a penalty not exceeding fifty pounds.

Protection of  
property.

16. (1) In any case where a certificate under this Act has been issued and any creditor satisfies the Director that the property of the farmer therein named is for any reason whatsoever in jeopardy, the Director may, by writing under his hand directed to the bailiff of the local court situated nearest to such property, require the bailiff to seize the said property, and to hold and deal with it in such manner as the Director may in writing direct.

(2) Thereupon the bailiff shall forthwith seize the property and deal with it in the manner directed by the Director by writing under his hand from time to time.

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

17. The Director may in any case where he has issued a certificate direct the farmer named in the certificate to deal with all or any part of his property in such manner as the Director may in his discretion deem expedient, and every such direction shall be in writing and signed by the Director, and the farmer shall comply with every such direction.

Duty of  
farmer to  
obey direc-  
tions of  
Director.

18. If any farmer in respect of whom a certificate has been issued under this Act makes default in complying with any direction given by the Director under the provisions of the last preceding section or in complying with any order, direction, or condition given or imposed by a special magistrate under this Act he shall be guilty of an offence and liable upon summary conviction to a fine not exceeding one hundred pounds.

Penalty for  
disobedience  
of directions  
and orders.

#### *Supplementary Provisions.*

19. (1) The Director or any special magistrate may—

Powers of  
Director to  
summon and  
examine  
witnesses.

(a) by summons under his hand require any person to attend before him and give evidence, and may require answers or returns to any enquiry which he thinks fit to make:

(b) by notice in writing signed as aforesaid require and compel the production of any books, papers, or documents:

(c) inspect any books, papers, and documents produced before him:

(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 the Director, and whose reasonable expenses have been paid or tendered to him, neglects to 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) refuses or neglects 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 upon summary conviction to a penalty not exceeding fifty pounds.

Duty of Registrar-General to file documents without fee.

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

Regulations.

**21.** The Governor may make regulations providing for any matter necessary or convenient to be provided for in order to carry this Act into effect, and may by any regulation create offences and impose penalties not exceeding fifty pounds.

Financial provision.

**22.** The moneys required for purposes of this Act shall be paid out of moneys provided by Parliament for those purposes.

Exemption of declarations from Stamp Duty.

**23.** Every declaration made for the purposes of this Act shall be exempt from stamp duty.

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## THE SCHEDULE.

## FORM A.

To the Director under the Debt Adjustment Act, 1929.  
I, the undersigned, do hereby certify—

1. That I reside at.....
2. That I am personally *bona fide* engaged in farming operations at.....
3. That I have or am farming the following, and no other land:—

Situation of Land. [Hundred, Section, Etc.]	Condition of Land. [Whether under crop, fallow, uncleared, Etc.]

4. For the purposes of this Act only and without any intention of giving notice to any creditors that I have suspended or am about to suspend payment of my debts, that I am indebted in the sum of £....., and am unable presently to pay such debts, and that I apprehend that I may be sued by one or more of my creditors.

Therefore I apply to you and request you to issue a certificate concerning me under the provisions of section 8 of the said Act.

And further, I undertake and agree that I will, upon the issue of a certificate, obey any direction which may be given by you as to the disposition of my property as may be given pursuant to section 17 of the said Act, and hold my property as bailee for you.

Dated at....., in the State of South Australia, this..... day of....., 19.....

Signed in the presence of—

AUSTRALIA,  
STATE OF SOUTH AUSTRALIA. }

I,..... of....., in the State of South Australia,..... solemnly and sincerely declare as follows:—

1. That..... of..... named in the above-written application is personally known to me.

2. That the said application was signed by him in my presence, and that the signature..... thereto is my signature, and that the same was signed as a witness thereto.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act, 1936.

Declared at.....  
in the State of South Australia, }  
this..... day of..... 19..... }

Before me,.....  
J.P.

## FORM B.

(Section 8.)

Debt Adjustment Act, 1929.

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 section 2 of the said Act, is a person entitled to the benefit of the provisions of section 8 of the said Act.

Dated at..... this..... day of..... 19.....

Director.

Form A. The expression "Oaths Act, 1936," substituted for "Statutory Declarations Act, 1915," pursuant to Acts Republication Act, 1934.

## FORM C.

(Section 13.)

*In the matter of the Debt Adjustment Act, 1929.*

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.

## Regulations.

The following regulations were in force under this Act on 22nd March, 1937:—

## GENERAL REGULATIONS—

*Gazette*—16th January, 1930, p. 83.