

RURAL INDUSTRY ASSISTANCE (SPECIAL PROVISIONS) ACT, 1971-1972

SUMMARY OF PROVISIONS

PART I

PRELIMINARY

- Section
- 1 Short title.
 - 2 Commencement.
 - 3 Division of Act.
 - 4 Definitions.
 - 5 This Act binds the Crown.

PART II

ASSISTANCE FOR RURAL INDUSTRY

- 6 State Government may give effect to agreement and scheme.
- 7 Minister to be the Authority.
- 8 Financial provision.
- 9 Functions of committee.
- 10 The Fund.

PART III

PROTECTION CERTIFICATES

- 11 Grant of protection certificate.
- 12 Matters to be considered by Minister before granting protection certificate.
- 13 Abandonment of farm.
- 14 Records of certificates.
- 15 Effect of protection certificate.
- 16 Applications by creditors for leave to proceed.
- 17 Duration of certificates.
- 18 Cancellation of certificate.
- 19 Continuation of proceedings when certificate cancelled.
- 20 Delivery of cancelled protection certificate.
- 21 Protection of property.
- 22 Directions of Minister.
- 23 Continuance of protection certificate.
- 24 Exclusion from scope of protection certificate.

PART IIIA

REHABILITATION LOANS

- 24a Interpretation.
- 24b Protection of rehabilitation loans.

PART IV

MISCELLANEOUS

- 25 Delegation by the Minister.
- 25a Exemption from stamp duty and registration fees.
- 26 Moneys for administration of Act, etc.
- 27 Summary procedure.
- 28 Regulations.

THE SCHEDULE

RURAL INDUSTRY ASSISTANCE (SPECIAL PROVISIONS) ACT, 1971-1972

being

Rural Industry Assistance (Special Provisions) Act, 1971, No. 35 of 1971 [Assented to 22nd April, 1971]¹;

as amended by

Rural Industry Assistance (Special Provisions) Act Amendment Act, 1972, No. 17 of 1972 [Assented to 30th March, 1972]²;

and

Rural Industry Assistance (Special Provisions) Act Amendment Act (No. 2), 1972, No. 117 of 1972 [Assented to 23rd November, 1972]³.

An Act to make Special Provision for carrying out and giving effect to an Agreement for a Scheme of Assistance for Rural Industry that Provides, amongst other things, for the Giving of Financial Assistance for the Purpose of Discharging all or any of the Debts of Farmers and for other purposes.

Long Title amended by 117, 1972, s. 3.

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

PART I

PRELIMINARY

1. This Act may be cited as the "Rural Industry Assistance (Special Provisions) Act, 1971-1972".

Short title.
Citation amended by 117, 1972, s. 1 (3).

2. This Act shall come into operation on a day to be fixed by proclamation¹.

Commencement.

3. This Act is divided as follows:—

Division of Act.
S. 3 amended by 17, 1972, s. 3.

PART I—PRELIMINARY.

PART II—ASSISTANCE FOR RURAL INDUSTRY.

PART III—PROTECTION CERTIFICATES.

PART IIIA—REHABILITATION LOANS.

PART IV—MISCELLANEOUS.

4. (1) In this Act unless the contrary intention appears—

Definitions.

* * * * *

Def. of "agreement" struck out by 117, 1972, s. 4 (a).

¹ Came into operation 27th May, 1971: *Gaz.* 27th May, 1971, p.2622.

² Came into operation 13th April, 1972: *Gaz.* 13th April, 1972, p.1430.

³ Came into operation 7th December, 1972: *Gaz.* 7th December, 1972, p.2534.

“company” means a company as defined in the Companies Act, 1962, as amended¹:

“declared company” means a company for the time being declared by notice in writing to be included in the definition of “farmer” for the purposes of this Act:

“farm” in relation to a farmer means any land within the State on which the farmer engages in rural industry:

“farmer” means—

(a) any individual person who is a resident of, and personally engaged in rural industry in this State whether on his own account or under a sharefarming agreement;

(b) the personal representative of any such individual person;

(c) a firm or partnership at least one of the members of which is a resident of, and personally engaged in, rural industry in this State;

or

(d) a declared company,

but does not include any person eligible for assistance under any Act relating to the reconstruction of marginal dairy farms whether that Act was enacted before or is enacted after this Act:

“protected farmer” means a farmer in respect of whom or in respect of which a protection certificate has been granted being a protection certificate that has not expired or been cancelled pursuant to this Act:

“protection certificate” or “certificate” means a protection certificate granted pursuant to section 11 of this Act:

“rural industry” includes the business of agriculturist, pastoralist, grazier, dairy farmer, fruit grower, vegetable grower or producer of other primary products not being minerals, metals or fish:

Def. inserted by
117, 1972,
s. 4 (b).

“the agreement” means the agreement between the Commonwealth and the States relating to rural reconstruction entered into on the fourth day of June, 1971:

“the committee” means the committee provided for by regulations under this Act:

“the Fund” means the Fund kept pursuant to section 10 of this Act:

Def. substituted
by 117, 1972,
s. 4 (c).

“the scheme” means the scheme of financial assistance to persons engaged in rural industries in this State, referred to in the agreement.

(2) The Minister may by notice in writing declare a company, that is engaged in rural industry in the State, to be included within the definition of “farmer” for the purposes of this Act and may by notice in writing revoke or amend any such declaration.

(3) If any question arises as to whether a person is a farmer within the meaning of this section, the Minister shall determine the matter and his decision shall be binding on all persons and without appeal.

This Act binds
Crown.

5. This Act binds the Crown.

¹ Now Companies Act, 1962-1974.

PART II

PART II

ASSISTANCE FOR RURAL INDUSTRY

6. The Government of the State may do all things necessary, convenient or expedient to carry out and give effect to the agreement and the scheme.

State Government may give effect to agreement and scheme.
S. 6 substituted by 117, 1972, s. 5.

7. (1) For the purposes of carrying out and giving effect to the agreement and the scheme the Minister shall be the Authority within the meaning of the agreement.

Minister to be the Authority.

(2) The Minister may do all things that he is authorized, empowered or required to do or as may be necessary, convenient or expedient for him to do for the purposes of carrying out and giving effect to the agreement and the scheme.

8. The moneys required for the purposes of giving effect to this Act shall, except where they are provided from other sources, be payable out of the moneys appropriated by Parliament for the purpose.

Financial provision.

9. (1) The functions of the committee shall be to make recommendations to the Minister in the exercise of his powers, duties and functions as an Authority within the meaning of the agreement.

Functions of committee.

(2) In the exercise of his powers, duties and functions as an Authority within the meaning of the agreement the Minister shall not act except upon the recommendation of the committee.

10. (1) There shall be kept in the Treasury a fund to be called the Rural Industry Assistance Fund.

The Fund.

(2) The Fund shall consist of—

(a) the balance to the credit of the fund kept in the Treasury and known as the Primary Producers Debts Adjustment Fund;

(b) all moneys received by the State from the Commonwealth pursuant to the agreement or pursuant to the scheme;

(c) all moneys received by the Treasurer in repayment of advances or loans and interest thereon made pursuant to the scheme;

and

(d) such other moneys as are appropriated by Parliament for the purpose.

(3) There shall be paid out of the Fund—

(a) all advances, loans or grants that may be made pursuant to the scheme;

and

(b) all moneys and interest thereon required to be repaid to the Commonwealth pursuant to the agreement.

PART III

PART III

PROTECTION CERTIFICATES

Grant of
protection
certificate.

11. (1) Subject to section 12 of this Act the Minister may grant a protection certificate to a farmer.

(2) A protection certificate shall be in Form A in the schedule to this Act and upon the grant of such a certificate the Minister shall—

(a) cause a copy thereof to be filed with the Registrar-General;

and

(b) cause a notice to be inserted in the *Gazette* to the effect that such a protection certificate has been granted.

Matters to be
considered by
Minister before
granting
protection
certificate.

12. The Minister shall not grant a protection certificate to a farmer unless he is satisfied that—

(a) the farmer has applied for assistance under the scheme;

(b) there is some prospect that the farmer will be eligible for such assistance;

(c) there is a substantial risk that unless such a protection certificate is granted the farmer will—

(i) be unable to carry on his farming or pastoral operations;

or

(ii) be unable to benefit from assistance under the scheme,

as a consequence of an action for the recovery of a debt due from the farmer whether or not such an action has been commenced;

and

(d) it is otherwise proper and desirable that a protection certificate should be granted.

Abandonment
of farm.

13. Without limiting the generality of section 18 of this Act the Minister shall cancel the protection certificate if the farmer shall abandon his farm or fail to work or manage it to the satisfaction of the Minister.

Records of
certificates.

14. 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 protection certificates notified in the *Gazette* under section 11 of this Act and shall produce the list for inspection by any person without fee.

Effect of
protection
certificate.

15. (1) Notwithstanding any enactment, rule of law, or agreement to the contrary, when a protection certificate has been granted by the Minister under this Part and during the currency of that certificate the following provisions shall apply to and in relation to the protected farmer to whom the certificate has been granted—

(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 protected farmer 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

protected farmer and 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 protected 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 protected farmer or his farm to realize 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 protected farmer or his farm 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 protected farmer or the land on which he engages in rural industry under lease to determine the lease, nor shall any such lease become void or determined by reason of any breach thereof;

and

- (g) no person shall distrain or take out of the possession of the protected farmer any chattel which came into his possession lawfully and with the consent of the owner.

(2) The provisions of this section are subject to sections 16 and 18 of this Act.

(3) 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.

(4) At any time during the currency of a certificate the Minister may, on the application of any person or in his discretion 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 protected farmer, and upon such order the said provisions shall cease to apply accordingly.

16. (1) At any time after notice of a certificate has been published in the *Gazette* any creditor of or person claiming against the protected farmer may apply to a special magistrate for leave to proceed, notice of the application shall be given in writing to the Minister and the protected farmer 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 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 protected 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 protected farmer situated within the State;

(d) may, as a condition of refusing leave, impose upon the protected farmer any terms and conditions he deems advisable as to the disposition or sale of any property of the protected farmer, and the application of the proceeds of any such sale;

(e) may make it a term of granting any leave that the protection certificate of the farmer be cancelled;

and

(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 protected 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 protection certificate, and for the distribution of the proceeds of sale thereof.

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

(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.

17. Every protection certificate shall, unless sooner cancelled under this Part, remain in force until the Minister in his discretion cancels it by notice filed with the Registrar-General and published in the *Gazette*.

Cancellation of
certificate.

18. If the Minister considers that it is advisable to cancel any certificate the Minister may, in his discretion, cancel the certificate by filing with the Registrar-General 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 protection certificate shall cease to have any effect whatsoever; but before cancelling any protection certificate the Minister shall give not less than fourteen days' notice in writing to the protected farmer of his intention to do so.

Continuation of
proceedings
when certificate
cancelled.

19. When a protection certificate ceases to have any effect any proceedings which were pending against the farmer in respect of whom the certificate was granted at the time of the issue of the protection 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 protection certificate was operative.

Delivery of
cancelled
protection
certificate.

20. When a protection certificate is cancelled pursuant to this Act, the farmer in respect of whom that certificate was granted shall forthwith deliver or send that certificate to the Minister.

Penalty: One hundred dollars.

Protection of
property.

21. (1) If the Minister is satisfied that any property of a protected farmer is being or likely to be unlawfully dealt with or dealt with in contravention of any direction under this Act the Minister 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 property and to hold and deal with it in such manner as the Minister 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 Minister by writing under his hand.

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

22. (1) The Minister may by notice in writing give to any protected farmer such directions as to— Directions of Minister.

(a) the methods of farm management to be adopted by the protected farmer;

and

(b) the conduct of the business affairs of the farmer and without limiting the generality of the foregoing as to the incurring of liabilities by the protected farmer,

as to the Minister seems necessary or desirable.

(2) If a protected farmer makes a default in complying with any direction by the Minister the Minister may cancel the protection certificate granted to that farmer.

23. A protection certificate shall continue in operation notwithstanding the fact that the protected farmer— Continuance of protection certificate.

(a) dies;

or

(b) becomes a mentally defective person within the meaning of the Mental Health Act, 1935-1969¹.

24. A protection certificate granted under this Part shall not prevent any person— Exclusion from scope of protection certificate.

(a) from instituting and proceeding to judgment in any suit or other proceeding against a protected farmer (but so that judgment shall not be entered nor any further proceeding taken therein) for the purpose of determining the liability of the protected farmer—

(i) for any tort committed by him;

(ii) for any injury suffered by a workman in the employ of the protected farmer;

(iii) under the Social Welfare Act, 1926-1965, as amended²;

(iv) in respect of any unliquidated demand not being such a demand arising out of default or for or upon a breach of covenant under any mortgage or other security for money or under an agreement for sale and purchase or lease of any real or personal property or under a hire-purchase agreement;

or

(b) from prosecuting any suit or other proceeding against a protected farmer for the administration of the trusts of any will, deed or

¹ Now Mental Health Act, 1935-1974.

² The Social Welfare Act, 1926-1965, was repealed by the Community Welfare Act, 1972 (Now Community Welfare Act, 1972-1975).

other instrument or for any breach of such trust or for the removal of the farmer from the position of executor, administrator or trustee.

PART IIIA

Part IIIA and
Heading enacted
by 17, 1972,
s. 4.

Interpretation
S. 24a enacted
by 17, 1972,
s. 4.

PART IIIA

REHABILITATION LOANS

24a. In this Part—

“rehabilitation loan” means a payment or advance of money by way of loan made pursuant to the agreement:

“recipient” means a person to whom a rehabilitation loan is granted.

24b. Any moneys comprised in a rehabilitation loan granted to a recipient—

Protection of
rehabilitation
loans.
S. 24b enacted
by 17, 1972,
s. 4.

(a) shall not pass to any person by virtue of an assignment made before they are paid or advanced to the recipient;

(b) shall not be subject to any lien, right of set off or appropriation or charge, which lien, right or charge exists or is claimed in respect of any debt incurred before they are paid or advanced to the recipient;

and

(c) shall not be taken or applied by virtue of any legal process in or towards satisfaction of any debt incurred before they are paid or advanced to the recipient.

PART IV

PART IV

MISCELLANEOUS

Delegation by
the Minister.

25. (1) The Minister may delegate to any person any of his powers and functions under this Act except—

(a) this power of delegation;

and

(b) the power to grant or cancel a protection certificate.

(2) Any delegated powers and functions shall be exercised in accordance with the instrument of delegation.

(3) The delegation of any powers and functions under this section shall not prevent the Minister acting personally in any matter.

Exemption
from stamp
duty and
registration
fees.
S. 25a enacted
by 17, 1972,
s. 5.

25a. Stamp duty shall not be payable upon—

(a) any document made or executed by any applicant for assistance under this Act or under the scheme in connection with an application for such assistance;

or

- (b) any document made or executed by any person for the purposes of giving security for the repayment of any advance under this Act or under the scheme,

and no fees shall be payable under any Act for the registration of any document in relation to which pursuant to this section stamp duty is not payable.

26. The moneys required for the purposes of the administration of this Act and the scheme shall be paid out of moneys appropriated by Parliament for the purpose.

Moneys for administration of Act, etc.

27. Proceedings for offences against this Act shall be disposed of summarily.

Summary procedure.

28. The Governor may make all such regulations as are contemplated by this Act, or as he deems necessary for the purposes of this Act, or as he deems necessary for the purposes of carrying out and giving effect to the agreement and the scheme and without limiting the generality of the foregoing, regulations—

Regulations.

- (a) providing for a committee to advise and make recommendations to the Minister in relation to the exercise and discharge of his powers, functions and duties as the Authority within the meaning of the agreement and providing for the remuneration of the members of that committee;

and

- (b) prescribing the penalties (recoverable summarily) not exceeding one hundred dollars, for breach of, or non-compliance with, the regulations.

THE SCHEDULE

FORM A

Section 11.

Rural Industry Assistance (Special Provisions) Act, 1971

PROTECTION CERTIFICATE

This is to certify that of a protected farmer within the meaning of the Rural Industry Assistance (Special Provisions) Act, 1971, is a person entitled to the benefits of the provisions of Part III of that Act.
Dated at this day of , 19.....

Minister

FORM B

Section 18.

Rural Industry Assistance (Special Provisions) Act, 1971

NOTICE OF CANCELLATION OF PROTECTION CERTIFICATE

This is to certify that the protection certificate granted under the Rural Industry Assistance (Special Provisions) Act, 1971, in respect of of on the day of 19....., is hereby cancelled.
Dated this day of , 19.....

Minister