

TASMANIA.

THE STATE ADVANCES ACT (No. 2) 1936.

ANALYSIS.

- | | |
|---|---|
| <p>1. Short title and commencement.</p> <p>2. Amendment of Part IV. of 26 Geo. V. No. 41.</p> <p style="padding-left: 20px;">Section 33.</p> <p style="padding-left: 20px;">New sections 34 to 34B.</p> <p style="padding-left: 40px;">Board may guarantee payment of debts of farmer.</p> <p style="padding-left: 40px;">Security for advances.</p> <p style="padding-left: 40px;">Postponement of security.</p> <p style="padding-left: 20px;">New sections 42A to 42V.</p> <p style="padding-left: 20px;">Stay orders.</p> <p style="padding-left: 40px;">Incorporation of certain provisions of 1 Edw. VIII. No. 48.</p> <p style="padding-left: 40px;">Appointment of supervisors.</p> <p style="padding-left: 40px;">Supervisors to account to the Board.</p> <p style="padding-left: 40px;">Application of sections 42F to 42L and 42P to 42V.</p> <p style="padding-left: 40px;">Powers of Board in respect of farmer's affairs.</p> <p style="padding-left: 40px;">Application of moneys received by Board.</p> <p style="padding-left: 40px;">Stay order to be discharged in certain events.</p> <p style="padding-left: 40px;">Capital realisation of farmer's assets.</p> <p style="padding-left: 40px;">Farmer to pay moneys received by him to Board.</p> | <p>Board may recover moneys payable to farmer.</p> <p>Concealment of property.</p> <p>Failure to disclose information.</p> <p>False claim or account.</p> <p>General penalty.</p> <p>False representation by farmer.</p> <p>Stay order to be disclosed by farmer.</p> <p>Discharge of stay order not to prevent prosecution for offence.</p> <p>Application to judge by Board.</p> <p>Application by farmer or creditor.</p> <p>Stay order not to affect operation of certain agreements entered into under 26 Geo. V. No. 32.</p> <p>Restriction of operation of stay orders in respect of mortgages, &c., given after the commencement of this section.</p> <p>Restriction of stay orders in respect of mortgages, &c., given after commencement of 26 Geo. V. No. 32.</p> <p>3. Limitation of period of operation of amendments.</p> |
|---|---|



TASMANIA.

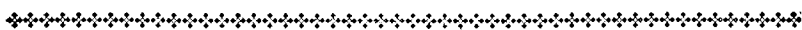


1936.

ANNO PRIMO

EDWARDI VIII. REGIS ET PRIMO GEORGII VI. REGIS.

No. 50.



AN ACT to amend the *State Advances Act* 1935. A.D. 1936.
[23 December, 1936.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 This Act may be cited as the *State Advances Act* (No. 2) 1936, and shall come into force on a day to be fixed by proclamation.

Short title
and com-
mencement.

State Advances (No. 2).

A.D. 1936.

Amendment
of Part IV.
of 26 Geo.
V. No. 41.**2** Part IV. of the Principal Act is hereby amended—

I. By inserting in the heading thereto (after “Department”) “And Rehabilitation of Farmers”:

II. By inserting immediately before section thirty-one the sub-heading “Division I.—Rural Credits Department.”:

Section 33.

III. As to section thirty-three—

(a) By deleting “on the prescribed security” in the first and second lines of subsection (1) thereof: and

(b) By deleting “within a period of ten years from the making thereof” in the first and second lines of subsection (7) thereof, and substituting therefor “within such period after the making thereof as the Board shall, in the particular case, determine”:

IV. By repealing section thirty-four and substituting therefor the following new sections thirty-four to thirty-four B:—

“**34**—(1) The Board may guarantee to any person the payment of any rent payable by a farmer, or the price of any land, live-stock, chattel, commodity, or thing whatsoever purchased by or on behalf of the farmer with the consent of the Board, or the payment for any act, service, or work done, rendered, or performed by any person for or on behalf of the farmer with such consent, or the repayment of moneys advanced to the farmer with such consent, for any of the purposes mentioned in subsection (1) of section thirty-three, with interest if any such is reserved in respect of such moneys.

(2) Such moneys as the Board shall be called upon to pay in pursuance of a guarantee given under subsection (1) hereof shall be deemed to be an advance to the farmer by the Board under subsection (1) of section thirty-three.

(3) For the purposes of this Part ‘farmer’ means a person engaged in any rural industry as defined by subsection (10) of section thirty-three.

New sections
34 to 34B.
Board may
guarantee
payment of
debts of
farmer.

State Advances (No. 2)

“**34A**—(1) The Board may, at the time an advance is made under this Part to a farmer, or at any time thereafter, require the farmer to give security or further security, as the case may be, for the repayment thereof.

A.D. 1936.

Security for advances.

(2) Such security may comprise—

i. A mortgage of or charge upon—

(a) Freehold land or a credit holding :

or

(b) Crops, wool, stock, poultry, plant, machinery, or implements —

the property of the farmer :

ii. A guarantee approved by the Board : or

iii. Such other security as may be prescribed, or as may be determined by the Board in any particular case.

(3) If a farmer, to or in respect of whom a stay order has been issued under section forty-two A, and who has obtained an advance under this Part, fails or refuses, when required by the Board so to do, to give the security required by the Board in respect of such advance, the supervisor of his affairs, if any, appointed by the Board under section forty-two C may, as the statutory attorney of the farmer, execute all such mortgages, charges, or other instruments as may be necessary for giving the security required by the Board for such advance.

(4) Any instrument so executed by the supervisor aforesaid shall be as valid and effectual as if the same had been executed by the farmer.

“**34B** The Board may, if it thinks desirable in the interests of a farmer so to do, consent to the postponement of any security given by the farmer to the Board under this Part, in favour of any person who has agreed with the Board in writing, in consideration of such postponement, to make an advance to the farmer for any purpose approved by the Board.”:

Postponement of security.

A.D. 1936.

New sections
42A to 42V.

Stay orders.

1 Edw. VII
No.Incorporation
of certain
provisions
of 1 Ed.
VIII. No. 48.

V. By inserting after section forty-two the following Division II., comprising sections forty-two A to forty-two V :—

“ *Division II.—Rehabilitation of Farmers.*

“ **42A**—(1) A stay order may be issued by the Board under this Part—

I. To or in respect of any farmer who has obtained an advance under this part subsequently to the coming into operation of this section—

(a) Upon application to the Board by the farmer :

(b) In any case in which the Board is of opinion that, in the interests of the farmer such stay order should be issued :

II. In respect of any farmer who has been required by the Board, under section sixty-two of the *Farmers' Debt Adjustment Act 1936* (hereinafter called ‘the said Act’), to submit his affairs to rehabilitation under this Part.

(2) An application by a farmer for a stay order shall be made in such manner and form, and shall contain such particulars, as may be prescribed.

“ **42B** The following provisions of the said Act shall be incorporated in this Act :—

I. Subsections (1), (2), and (3) of section nineteen :

II. Subsections (1), (2), and (4) of section twenty :

III. Sections twenty-one to twenty-three :

IV. Section fifty-four : and

V. Sections sixty-five and sixty-six :

Provided, however, that for the purposes of such incorporation any reference in such provisions to—

(a) ‘The Board’ shall be deemed to be a reference to the Board constituted under this Act :

State Advances (No. 2).

- (b) A protection certificate shall be deemed to be a reference to a stay order issued under this Part : A.D. 1936.
- (c) The cancellation of a protection certificate shall be deemed to be a reference to the discharge of a stay order under this Part : and
- (d) ' This Act ' shall be deemed to be a reference to this Part.

Provided further that, for the purpose of the incorporation of section sixty-six aforesaid, the following proviso shall be deemed to have been inserted at the end of subsection (1) of that section :

Provided, however, that, in any case in which the farmer has, after the coming into operation of this section, obtained an advance under this Part, the consent in writing of the Board shall have been obtained to such agreement.

“ **42C**--(1) On the issue of a stay order to or in respect of any farmer the Manager shall appoint a person to be supervisor of the affairs of the farmer.

Appointment
of super-
visors.

(2) Such supervisor during the continuance of the stay order shall, subject to the control and direction of the Board, control and direct the management of the affairs of the farmer, the carrying on of his farming operations, and the marketing of the produce thereof.

(3) The Manager may appoint any person to assist the supervisor of the affairs of any farmer, and such assistant supervisor shall have all the powers and perform all the duties of the supervisor, which shall, with the consent of the Board, be delegated to him by the supervisor.

(4) No supervisor shall exercise any power or perform any act which the Manager or the Board has, by general or special order, forbidden him to exercise or perform.

(5) For the purposes of the administration of this Part, the Director of Agriculture shall, if and when required by the Board so to do, make

State Advances (No. 2).

A.D. 1936.

available to the Board the services of all such officers and employees of the Department of Agriculture as the Public Service Commissioner shall approve.

Supervisors
to account to
the Board.

“**42D**—A supervisor shall, whenever required so to do, account to the Board for all his receipts and payments in respect of the affairs of any farmer of which he has been appointed supervisor, and shall forthwith pay all moneys coming to his hands to the Board, or to the credit of such bank account as the Board shall direct.

Application
of sections
42P to 42L
and 42P to
42V.

“**42E** Sections forty-two F to forty-two L and forty-two P to forty-two V shall apply to farmers to or in respect of whom stay orders have been issued under this Part, but not otherwise.

Powers of
Board in
respect of
farmer's
affairs.

“**42F**—(1) The Board may require—

- i. A farmer to carry on his farming operations in accordance with a programme approved by the Board, and to follow such advice or technical guidance as the Board or a duly appointed supervisor may give him in respect of such farming operations :
- ii. All moneys derived from the carrying on of the farmer's business or otherwise howsoever payable to the farmer to be paid to the Board ; and the Board shall be the irrevocable agent of the farmer to collect, sue for, and give receipts for such moneys :
- iii. To be paid to the Board the net proceeds of the marketing of any stock of the farmer or of the produce of his farm, whether or not any other person would, but for this section, have been entitled, by reason of any stock, wool, or crop mortgage under the provisions of the *Stock Mortgages Act 1925* or the *Stock, Wool, and Crop Mortgages Act 1930*, or any other mortgage,

16 Geo. V.
No. 63.

21 Geo. V.
No. 26.

State Advances (No. 2).

charge, or lien on, or any agreement relating to, such stock or produce, to receive the whole or any part of such proceeds :

A.D. 1936.

- iv. The manager of any bank or branch of a bank or any other person to state whether any sum of money is standing to the credit of the farmer in the books of such bank, branch, or person, and if so to require such manager or person to pay such sum to the Board : and
- v. The farmer to forward to the Board a statement, verified by statutory declaration, of his receipts and payments during such period as the Board may determine, in respect of his farming operations, or any other business carried on or transaction effected by the farmer.

(2) For the purposes of paragraph iii. of subsection (1) hereof 'net proceeds' used in relation to the marketing of any stock or produce of a farmer, means—

- i. The amount realised by a broker, merchant, auctioneer, agent or other person employed by the farmer in the marketing of such stock or produce after deduction therefrom of all expenses incurred by such broker or other person as aforesaid and the reasonable commission or remuneration of such broker or other person in respect of such marketing : and
- ii. All moneys payable to a farmer in respect of any such stock or produce delivered by or on behalf of any farmer to, and for sale by, any marketing board constituted by law for the purpose of the marketing of primary products.

“42G—(1) The Board shall, out of the moneys received by it as the proceeds of the

Application
of moneys
received by
Board.

State Advances (No. 2).

A.D. 1936.

marketing of the produce of the farmer or otherwise received by the Board in respect of the farmer, make the following disbursements—

- i. Out of any moneys received from the marketing of any stock subject to a valid mortgage, charge, or lien in payment to the mortgagee of the principal moneys and interest secured by such mortgage. The onus of proving that any such mortgage is valid and binding shall be on the mortgagee:
- ii. All interest due to the mortgagee of any land of the farmer which has accrued due since the issue of the stay order, and all rent which has accrued due to the landlord of the farmer since such issue :
- iii. Subject to paragraph ii. hereof out of any moneys received from the marketing of any crops or wool which are subject to a valid mortgage, charge, or lien, in payment to the mortgagee of the principal moneys and interest secured thereby. The foregoing provision of this paragraph shall only apply where the principal moneys secured by such mortgage, charge, or lien have been advanced to the farmer to enable him to carry on during the season in which the crops or wool given as security were grown or produced. Where the mortgage was given by the farmer, either wholly or in part, as security for a debt incurred prior to the season in which such wool or crops were grown or produced, then such debt or such part thereof, as the case may be, as was incurred prior to the commencement of such season as aforesaid, shall, for the purposes of this Part, be deemed to be an unsecured liability of the farmer :

State Advances (No. 2).

17. Out of any moneys received from the sale of any other property or assets of the farmer, in payment to the holders of any securities to which the property or assets sold were subject, and subject to which the property or assets were not sold, and in the order of the respective priorities of such securities, of the moneys secured thereby. A.D. 1936.

(2) After making the disbursements mentioned in subsection (1) hereof the Board shall apply the moneys in that subsection first mentioned—

- I. In or towards satisfaction of such of the liabilities of the farmer as have been incurred, subsequently to the issue of the stay order, by the farmer to the Board or to any person with the consent of the Board for the purpose of enabling the farmer to carry on his farming operations or for the maintenance of his wife and family while such operations were being so carried on : and
- II. Subject as provided by paragraph I. hereof, in or towards satisfaction of such other liabilities of the farmer as the Board may deem expedient, having regard to the enabling of the farmer to continue to carry on his farming operations and to the desirability of the ultimate rehabilitation of his affairs.

“ 42H If at any time the Board is of opinion that there is no reasonable prospect of the affairs of the farmer being rehabilitated under the provisions of this Part, the Board shall discharge the stay order issued to or in respect of the farmer.

Stay order to be discharged in certain events.

“ 42J—(1) The farmer may, with the consent of the Board, sell by way of capital realisation his farm or any part thereof and any of his property or assets.

Capital realisation of farmers' assets.

(2) The proceeds of such sale shall be paid to the Board, and such proceeds shall, subject to the satisfaction in the order of their respective

State Advances (No. 2).

A.D. 1936.

priorities of any securities to which the property so sold was subject at the time of such sale, be deemed to be moneys received by the Board under section forty-two G, and shall be paid out and applied accordingly.

Farmer to pay moneys received by him to Board.

“**42K** Every farmer shall pay to the Board forthwith after the receipt thereof all moneys received by him as the proceeds of the marketing of his produce or which the Board might under this Part have required the farmer or any other person to pay to it.

Penalty : Fifty pounds or imprisonment for six months.

Board may recover moneys payable to farmer.

“**42L** Where any person has been required by the Board, by notice in writing signed by the Chairman or the Secretary of the Board, to pay to the Board any moneys payable by such person to the farmer, and such person fails to comply with such notice within fourteen days after the same has been served upon him by post, the Board may recover such moneys in any court of competent jurisdiction from the person so failing as aforesaid.

Concealment of property.

“**42M** Any person who—

i. Wilfully conceals from the Board any property of a farmer to or in respect of whom a stay order has been granted :

ii. Having been required by the Board, pursuant to paragraph iv. of subsection (1) of section forty-two F, to state whether any sum of money is standing to the credit of a farmer to or in respect of whom a stay order has been issued, in the books of any bank, branch of a bank, or person, and who fails, without reasonable excuse, to comply with the Board's requirement, or supplies a statement to the Board which is false in any material particular :

iii. With intent to defraud, in any proceeding under this Part, makes any false

Failure to disclose information.

False claim or account.

State Advances (No. 2).

claim, or furnishes the Board with A.D. 1936.
any account, declaration, or statement
of account, which is untrue in any
material particular : or

- iv. Without reasonable excuse, fails or
neglects to comply with any lawful
requirement of the Board, as and when
required by the Board under this
Part—

shall be liable to a penalty of one hundred
pounds or to imprisonment for twelve months.

“ **42N** Any person who contravenes, or with-
out reasonable excuse fails or neglects to comply
with, any provision of this Part in respect of
which contravention, failure, or neglect no special
penalty is herein provided, shall be liable to a
penalty of twenty pounds.

General
penalty.

“ **42O** Any farmer who is guilty of any false
representation or other fraud for the purpose of
obtaining the benefit of any provision of this
Part shall be liable to a penalty of one hundred
pounds or to imprisonment for twelve months.

False repre-
sentation by
farmer.

“ **42P** Any farmer to or in respect of whom
a stay order has been issued and who, during the
continuance of the stay order—

Stay order
to be dis-
closed by
farmer.

- i. Either alone or jointly with any other
person, obtains credit to the extent of
five pounds or upwards from any
person, without informing him that
he is a person to or in respect of whom
a stay order has been issued : or
- ii. Trades under an assumed name or in the
name of any other person, or in the
name of a firm, without disclosing to
every person with whom he deals his
true name and the fact that he is a
person to or in respect of whom a stay
order has been issued—

shall be liable to a penalty of one hundred
pounds or to imprisonment for twelve months.

State Advances (No. 2).

A.D. 1936.

Discharge of stay order not to prevent prosecution for offence.

“**42R** Where a farmer to or in respect of whom a stay order has been issued has been guilty of an offence under this Part, he shall not be exempt from being proceeded against therefor by reason only that such stay order has been discharged since the date of the commission of the offence.

Application to judge by Board.

“**42S**—(1) The Board may apply to a judge in chambers for the determination of any question or dispute that may arise in the exercise of its powers under this Part.

Application by farmer or creditor.

(2) Any farmer, or any creditor of a farmer, who considers himself aggrieved by any decision, act, or omission of the Board under this Part, may apply to a judge in chambers for redress, and upon such application the judge may make such order in the premises as he thinks just: Provided, however, that nothing herein contained shall abridge, or make subject to review, the exercise by the Board in good faith of any power under this Part in the exercise of which it has a discretion.

(3) Every such application as aforesaid shall be by way of summons, and the judge shall have full power and authority to regulate the procedure to be followed, and the parties to be served, and to give such directions and make such order or orders, including an order as to the payment of costs, as to the judge shall seem fit.

Stay order not to affect operation of certain agreements entered into under 26 Geo. V. No. 32.

“**42T** Notwithstanding anything in this Part to the contrary, no stay order issued under this Part, to or in respect of a farmer, shall affect the operation of any such agreement as is referred to in the second proviso to subsection (1) of section thirty-eight of the *Farmers' Debt Adjustment Act* 1935, and which, before the commencement of this section, was entered into by the farmer with any person to the effect mentioned in that proviso, and such agreement shall continue to be binding on the farmer in accordance with the terms thereof, save and

State Advances (No. 2).

except that for the purposes of such continuance any reference in such agreement to a protection certificate shall be deemed to be a reference to a stay order under this Act. A.D. 1936.

“**42U** No stay order issued under this Part in respect of any farmer shall relate or extend to any real or personal property in respect of which the farmer, after the commencement of this section, becomes a mortgagor, lessee, purchaser under a contract of sale (in the case of any land), grantor of a charge, bill of sale, or lien, hirer under a hiring or hire purchase agreement, or grantor of any other form of security if—

Restriction of operation of stay orders in respect of mortgages, &c., given after the commencement of this section.

- I. Such mortgage, lease, contract, charge or bill of sale, lien, agreement, or other form of security negatives the operation of the provisions of this Part in respect of the property comprised in or affected by such security or lease :
- II. In the case of any security, the same is given or made for some valuable consideration no part of which is a past debt, and gives rise to an obligation on the part of the farmer unrelated to any obligation of the farmer existing at the commencement of this section : and
- III. The previous consent in writing of the Board, has been obtained thereto, in any case in which an advance under this Part has been made to the farmer after the coming into operation of this section.

“**42V** No stay order issued under this Part in respect of any farmer shall relate or extend to any real or personal property in respect of which the farmer, after the commencement of the *Farmers' Debt Adjustment Act 1935*, hereinafter called ‘the Act of 1935’, became a mortgagor, lessee, purchaser under a contract of sale (in the case of any land), grantor of a charge,

Restriction of stay orders in respect of mortgages, &c., given after commencement of 26 Geo. V. No. 32.

State Advances (No. 2).

A.D. 1936.

bill of sale, or lien, hirer under a hiring or hire-purchase agreement, or grantor of any other form of security if—

i. Such mortgage, lease, contract, charge or bill of sale, lien, agreement, or other form of security negatived the operation of the provisions of the Act of 1935 in respect of the property comprised in or affected by such security or lease: and

ii. In the case of any security, the same was given or made for some valuable consideration no part of which was a past debt, and gave rise to an obligation of the farmer unrelated to any obligation of the farmer existing at the commencement of the Act of 1935.”

Limitation
of period of
operation of
amendments.

3 Except in respect of advances made by the Board under Part IV. to a farmer after the commencement of this Act and prior to the thirty-first day of December, one thousand nine hundred and forty, the amendments of the Principal Act effected by this Act shall cease to operate on that date:

Provided, however, that such cessation shall not affect—

i. The previous operation of any of the amendments so ceasing to operate as aforesaid, or anything duly done or suffered thereunder:

ii. Any right, privilege, obligation, or liability acquired, accrued, or incurred under any of such amendments:

iii. Any penalty or punishment incurred in respect of any offence created by any of such amendments:

iv. The continuance in operation of any agreement or other instrument entered into or executed by the farmer with or in favour of any person in accordance with the provisions of the *Farmers' Debt Adjustment Act 1935*, or of this Part, and which, but for this section, would or might have ceased to operate, or of any right, privilege, exemption, obligation, or liability acquired, accrued, or incurred under any such agreement or arising thereunder or consequent thereon:

State Advances (No. 2).

v. Any investigation, legal proceeding, or remedy in A.D. 1936.
respect of any such right, privilege, obligation, —
liability, penalty, or punishment as aforesaid—

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty or punishment may be imposed as if such amendments had not so ceased to operate.

