

GRAIN SORGHUM MARKETING BOARD (SPECIAL PROVISIONS) BILL, 1983

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to make special provisions relating to the appointment of a liquidator of The Grain Sorghum Marketing Board for the State of New South Wales ("the Board") and to enable a compromise or arrangement to be entered into with creditors of the Board.

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2 provides that the proposed Act is to be deemed to have commenced on 1st July, 1982 (which was the date of commencement of the Companies (New South Wales) Code).

Clause 3. Interpretation.

Clause 4 provides that the proposed Act is to bind the Crown. The clause is similar to section 314 of the Companies (New South Wales) Code.

Clause 5 provides that Division 6 of Part XII of the Companies (New South Wales) Code applies to the Board to the extent necessary to make it clear that the Supreme Court has power to appoint a liquidator of the Board, including a provisional liquidator.

Clauses 6 and 7 empower a compromise or arrangement to be entered into between the Board and its creditors. The clauses are similar in many respects to sections 315 and 316 of the Companies (New South Wales) Code.

Clause 8 provides that certain regulations and rules having effect for the purposes of the Companies (New South Wales) Code have effect for the purposes of the proposed Act, but empowers regulations and rules to be made in any event under the proposed Act.

Clause 9 makes it clear that the person or persons appointed to administer a compromise or arrangement referred to in clause 6 can exercise the statutory functions of the Board.

Clause 10 makes provisions relating to offences against the proposed Act and for them to be disposed of summarily by a magistrate.

Clause 11 protects the Crown, the Board and members of the Board and certain other persons against proceedings for anything done in good faith in the execution of the proposed Act.

PROOF

**GRAIN SORGHUM MARKETING BOARD (SPECIAL
PROVISIONS) BILL, 1983**

No. , 1983.

A BILL FOR

An Act relating to the appointment of a liquidator for The Grain Sorghum Marketing Board for the State of New South Wales, and to enable a compromise or arrangement to be entered into with respect to that Board.

Grain Sorghum Marketing Board (Special Provisions).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Grain Sorghum Marketing Board (Special Provisions) Act, 1983".

Commencement.

2. This Act shall be deemed to have commenced on 1st July, 1982.

10 Interpretation.

3. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Board" means The Grain Sorghum Marketing Board for the State of New South Wales;

15 "Court" means the Supreme Court of New South Wales;

"liquidator", in relation to the Board, means the person appointed, or appointed provisionally, by the Court to be liquidator of the Board;

20 "registered liquidator" has the same meaning as in the Companies (New South Wales) Code.

Crown to be bound.

4. This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Grain Sorghum Marketing Board (Special Provisions).

Application of winding up provisions.

5. Division 6 of Part XII of the Companies (New South Wales) Code applies to the Board to the extent, if any, to which that Division would, but for this section, not apply to the Board, and the power of the Court to appoint a liquidator of the Board extends to empower the Court to appoint a liquidator of the Board provisionally.

Power to compromise with creditors.

6. (1) Where a compromise or arrangement is proposed between the Board and its creditors or any class of them, the Court may, on the application in a summary way of the Board or of any creditor of the Board, or of the liquidator of the Board, order a meeting or meetings of the creditors or class of creditors to be convened in such manner, and to be held in such place or places within the State, as the Court directs and, where the Court makes such an order, the Court may approve the explanatory statement required by section 7 (1) (a) to accompany notices of the meeting or meetings.

(2) A compromise or arrangement is binding on the creditors, or on a class of creditors, as the case may be, of the Board and on the liquidator of the Board, if, and only if—

20 (a) at a meeting convened in accordance with an order of the Court under subsection (1), the compromise or arrangement is agreed to by a majority in number of the creditors, or of the creditors included in that class of creditors, present and voting, either in person or by proxy, being a majority whose debts or claims against the Board amount in the aggregate to not less than 75 per cent of the total amount of the debts and claims of the creditors present and voting in person or by proxy, or of the creditors included in that class present and voting in person or by proxy, as the case may be; and

30 (b) it is approved by order of the Court.

(3) Where the Court orders 2 or more meetings of creditors or of a class of creditors to be held in relation to the proposed compromise or arrangement, the meetings shall, for the purposes of subsection (2), be

Grain Sorghum Marketing Board (Special Provisions).

deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall be aggregated, accordingly.

5 (4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

 (5) Except with the leave of the Court, a person shall not be appointed to administer, and shall not administer, a compromise or arrangement approved under this Act between the Board and its creditors or any class of
10 them, whether by the terms of that compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, if the person is—

- (a) a mortgagee of any property of the Board;
- (b) an auditor or an officer of the Board;
- 15 (c) an officer of any corporation that is a mortgagee of property of the Board; or
- (d) a person who is not a registered liquidator.

 (6) Nothing in subsection (5) (d) prohibits the appointment to administer a compromise or arrangement of a corporation authorised by any
20 Act or any law of the State to administer such a compromise or arrangement.

 (7) Where a person is or persons are appointed, whether by the terms of a compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, to administer the compromise or arrangement—

- 25 (a) the provisions of sections 325, 327, 330 and 332 of the Companies (New South Wales) Code apply in relation to that person or those persons as if—
 - (i) the appointment of the person or persons to administer the
30 compromise or arrangement were an appointment of the person or persons as a receiver and manager, or as receivers and managers, of the property of the Board;
 - (ii) a reference in any of those sections to a receiver, or to a receiver of the property, of a company were a reference to that person or to those persons; and

Grain Sorghum Marketing Board (Special Provisions).

- (iii) the references in section 325 of that Code to the Commission were omitted and a reference in section 330 of that Code to the Commission were a reference to the Minister for Agriculture and Fisheries; and
- 5 (b) the provisions of section 420 of that Code apply in relation to that person or those persons as if—
- (i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a liquidator of the Board;
- 10 (ii) a reference in that section to a liquidator were a reference to that person or to those persons; and
- (iii) a reference in that section to the Commission were a reference to the Minister for Agriculture and Fisheries.
- (8) An order of the Court made for the purposes of subsection (2)
- 15 (b) does not have any effect until an office copy of the order is lodged with the Minister, and upon being so lodged the order takes effect, or shall be deemed to have taken effect, on and from the date of lodgment or such earlier date as the Court determines and specifies in the order.
- (9) Where a compromise or arrangement referred to in subsection (1)
- 20 has been proposed, the Board—
- (a) may instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and send their report or reports to the Board as soon as practicable; and
- 25 (b) if a report or reports is or are obtained pursuant to paragraph (a) —shall make the report or reports available at the principal place of business of the Board for inspection by the creditors of the Board at least 7 days before the date of any meeting ordered by the Court to be convened as provided in subsection (1).
- (10) Where no order has been made for the winding up of the Board
- 30 and a compromise or arrangement has been proposed between the Board and its creditors or any class of them, the Court may, in addition to exercising any of its other powers, on the application in a summary way of the Board or of any creditor of the Board, restrain further proceedings in any action or other civil proceeding against the Board except by leave of the Court and
- 35 subject to such terms as the Court imposes.

Grain Sorghum Marketing Board (Special Provisions).

Information as to compromise with creditors.

7. (1) Where a meeting is convened under section 6, the Board shall—

(a) with every notice convening the meeting that is sent to a creditor, send a statement (in this section referred to as the “explanatory statement”)—

(i) explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the members of the Board, whether as members or creditors of the Board or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

(ii) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor whether or not to agree to the compromise or arrangement, being information that is within the knowledge of the members of the Board and has not previously been disclosed to the creditors; and

(b) in every notice convening the meeting that is given by advertisement, include either a copy of the explanatory statement or a notification of the place at which and the manner in which creditors entitled to attend the meeting may obtain copies of the explanatory statement.

(2) In the case of a creditor whose debt does not exceed \$200, subsection (1) (a) does not apply unless the Court otherwise orders but the notice convening the meeting that is sent to such a creditor shall specify a place at which a copy of the explanatory statement can be obtained on request and, where the creditor makes such a request, the Board shall forthwith comply with the request.

(3) Where a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular manner, every creditor entitled to attend the meeting shall, on making application in that manner, be furnished by the Board free of charge with a copy of the explanatory statement.

(4) Subject to subsection (6), where the Board contravenes or fails to comply with a requirement of this section, the Board and any member or officer of the Board who is in default are each guilty of an offence.

Grain Sorghum Marketing Board (Special Provisions).

(5) For the purposes of subsection (4), the liquidator of the board shall be deemed to be an officer of the Board.

5 (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant proves that the default in complying with a requirement of this section was due to the refusal of any other person, being a member of the Board, to supply particulars of the person's interests for the purposes of the explanatory statement.

Regulations and rules.

8. (1) Subject to this section, the provisions of—

10 (a) Regulation 62 of and Schedule 9 to the Companies (New South Wales) Regulations; and

(b) any rules of court having effect for the purposes of the Companies (New South Wales) Code,

15 apply, with such adaptations as are necessary, as regulations and rules for the purposes of this Act and so apply as if a reference in those provisions—

(c) to a company were a reference to the Board;

(d) to directors of a company were a reference to members of the Board;

20 (e) to the registered office of a company were a reference to the principal place of business of the Board; and

(f) to the Commission were a reference to the Minister for Agriculture and Fisheries.

(2) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or 25 permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(3) Rules of court may be made under the Supreme Court Act, 1970, for the purposes of this Act.

(4) Subsection (3) does not limit the rule-making powers conferred 30 by the Supreme Court Act, 1970.

Grain Sorghum Marketing Board (Special Provisions).

(5) To the extent of any inconsistency, the provisions of regulations or rules made as referred to in subsection (2), (3) or (4) prevail over the provisions referred to in subsection (1).

Exercise of statutory functions.

5 **9. (1)** To the extent that a compromise or arrangement referred to in section 6 so provides—

10 (a) the person or persons appointed to administer the compromise or arrangement shall have and may exercise or perform all or any of the powers, authorities, duties and functions conferred or imposed on the Board by or under any Act other than this Act; and

 (b) those powers, authorities, duties and functions may be exercised or performed by the person or persons so appointed to the exclusion of the Board.

15 **(2)** Any act, matter or thing done or omitted to be done, in the exercise or performance of the powers, authorities, duties and functions referred to in subsection (1) by the person or persons so appointed, shall have the same effect and the same consequences as if done or omitted to be done by the Board without the compromise or arrangement being in
20 force.

Offences and proceedings.

10. (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence against this Act.

25 **(2)** Any person who is guilty of an offence against this Act for which no penalty is otherwise expressly provided is liable to a penalty not exceeding \$1,000.

(3) All proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Grain Sorghum Marketing Board (Special Provisions).

(4) Where a provision of this Act provides that a member or officer of the Board who is in default is guilty of an offence, the reference to the person who is in default shall, in relation to a contravention of, or failure to comply with, the provision, be construed as a reference to any member or officer of the Board (including a person who subsequently ceased to be a member or officer of the Board) who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or failure.

Liability.

10 **11.** No proceedings shall lie or be allowed by or in favour of any person against—

(a) the Crown, the Minister, the Board, a member of the Board or a member of the staff of the Department of Agriculture; or

15 (b) any person acting under the direction of the Minister or the Board,

in the execution or intended execution of this Act in respect of anything done bona fide under and for the purposes of this Act.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

GRAIN SORGHUM MARKETING BOARD (SPECIAL PROVISIONS) ACT, 1983, No. 88

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 88, 1983.

An Act relating to the appointment of a liquidator for The Grain Sorghum Marketing Board for the State of New South Wales, and to enable a compromise or arrangement to be entered into with respect to that Board. [Assented to, 26th October, 1983.]

Grain Sorghum Marketing Board (Special Provisions).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Grain Sorghum Marketing Board (Special Provisions) Act, 1983".

Commencement.

2. This Act shall be deemed to have commenced on 1st July, 1982.

Interpretation.

3. In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Board" means The Grain Sorghum Marketing Board for the State of New South Wales;

"Court" means the Supreme Court of New South Wales;

"liquidator", in relation to the Board, means the person appointed, or appointed provisionally, by the Court to be liquidator of the Board;

"registered liquidator" has the same meaning as in the Companies (New South Wales) Code.

Crown to be bound.

4. This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Grain Sorghum Marketing Board (Special Provisions).

Application of winding up provisions.

5. Division 6 of Part XII of the Companies (New South Wales) Code applies to the Board to the extent, if any, to which that Division would, but for this section, not apply to the Board, and the power of the Court to appoint a liquidator of the Board extends to empower the Court to appoint a liquidator of the Board provisionally.

Power to compromise with creditors.

6. (1) Where a compromise or arrangement is proposed between the Board and its creditors or any class of them, the Court may, on the application in a summary way of the Board or of any creditor of the Board, or of the liquidator of the Board, order a meeting or meetings of the creditors or class of creditors to be convened in such manner, and to be held in such place or places within the State, as the Court directs and, where the Court makes such an order, the Court may approve the explanatory statement required by section 7 (1) (a) to accompany notices of the meeting or meetings.

(2) A compromise or arrangement is binding on the creditors, or on a class of creditors, as the case may be, of the Board and on the liquidator of the Board, if, and only if—

- (a) at a meeting convened in accordance with an order of the Court under subsection (1), the compromise or arrangement is agreed to by a majority in number of the creditors, or of the creditors included in that class of creditors, present and voting, either in person or by proxy, being a majority whose debts or claims against the Board amount in the aggregate to not less than 75 per cent of the total amount of the debts and claims of the creditors present and voting in person or by proxy, or of the creditors included in that class present and voting in person or by proxy, as the case may be; and
- (b) it is approved by order of the Court.

(3) Where the Court orders 2 or more meetings of creditors or of a class of creditors to be held in relation to the proposed compromise or arrangement, the meetings shall, for the purposes of subsection (2), be

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deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall be aggregated, accordingly.

(4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(5) Except with the leave of the Court, a person shall not be appointed to administer, and shall not administer, a compromise or arrangement approved under this Act between the Board and its creditors or any class of them, whether by the terms of that compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, if the person is—

- (a) a mortgagee of any property of the Board;
- (b) an auditor or an officer of the Board;
- (c) an officer of any corporation that is a mortgagee of property of the Board; or
- (d) a person who is not a registered liquidator.

(6) Nothing in subsection (5) (d) prohibits the appointment to administer a compromise or arrangement of a corporation authorised by any Act or any law of the State to administer such a compromise or arrangement.

(7) Where a person is or persons are appointed, whether by the terms of a compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, to administer the compromise or arrangement—

- (a) the provisions of sections 325, 327, 330 and 332 of the Companies (New South Wales) Code apply in relation to that person or those persons as if—
 - (i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a receiver and manager, or as receivers and managers, of the property of the Board;
 - (ii) a reference in any of those sections to a receiver, or to a receiver of the property, of a company were a reference to that person or to those persons; and

Grain Sorghum Marketing Board (Special Provisions).

- (iii) the references in section 325 of that Code to the Commission were omitted and a reference in section 330 of that Code to the Commission were a reference to the Minister for Agriculture and Fisheries; and
- (b) the provisions of section 420 of that Code apply in relation to that person or those persons as if—
 - (i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a liquidator of the Board;
 - (ii) a reference in that section to a liquidator were a reference to that person or to those persons; and
 - (iii) a reference in that section to the Commission were a reference to the Minister for Agriculture and Fisheries.

(8) An order of the Court made for the purposes of subsection (2) (b) does not have any effect until an office copy of the order is lodged with the Minister, and upon being so lodged the order takes effect, or shall be deemed to have taken effect, on and from the date of lodgment or such earlier date as the Court determines and specifies in the order.

(9) Where a compromise or arrangement referred to in subsection (1) has been proposed, the Board—

- (a) may instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and send their report or reports to the Board as soon as practicable; and
- (b) if a report or reports is or are obtained pursuant to paragraph (a)—shall make the report or reports available at the principal place of business of the Board for inspection by the creditors of the Board at least 7 days before the date of any meeting ordered by the Court to be convened as provided in subsection (1).

(10) Where no order has been made for the winding up of the Board and a compromise or arrangement has been proposed between the Board and its creditors or any class of them, the Court may, in addition to exercising any of its other powers, on the application in a summary way of the Board or of any creditor of the Board, restrain further proceedings in any action or other civil proceeding against the Board except by leave of the Court and subject to such terms as the Court imposes.

Grain Sorghum Marketing Board (Special Provisions).

Information as to compromise with creditors.

7. (1) Where a meeting is convened under section 6, the Board shall—
- (a) with every notice convening the meeting that is sent to a creditor, send a statement (in this section referred to as the “explanatory statement”)—
 - (i) explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the members of the Board, whether as members or creditors of the Board or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and
 - (ii) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor whether or not to agree to the compromise or arrangement, being information that is within the knowledge of the members of the Board and has not previously been disclosed to the creditors; and
 - (b) in every notice convening the meeting that is given by advertisement, include either a copy of the explanatory statement or a notification of the place at which and the manner in which creditors entitled to attend the meeting may obtain copies of the explanatory statement.

(2) In the case of a creditor whose debt does not exceed \$200, subsection (1) (a) does not apply unless the Court otherwise orders but the notice convening the meeting that is sent to such a creditor shall specify a place at which a copy of the explanatory statement can be obtained on request and, where the creditor makes such a request, the Board shall forthwith comply with the request.

(3) Where a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular manner, every creditor entitled to attend the meeting shall, on making application in that manner, be furnished by the Board free of charge with a copy of the explanatory statement.

(4) Subject to subsection (6), where the Board contravenes or fails to comply with a requirement of this section, the Board and any member or officer of the Board who is in default are each guilty of an offence.

Grain Sorghum Marketing Board (Special Provisions).

(5) For the purposes of subsection (4), the liquidator of the board shall be deemed to be an officer of the Board.

(6) It is a defence to a prosecution for an offence against subsection (4) if the defendant proves that the default in complying with a requirement of this section was due to the refusal of any other person, being a member of the Board, to supply particulars of the person's interests for the purposes of the explanatory statement.

Regulations and rules.

8. (1) Subject to this section, the provisions of—

- (a) Regulation 62 of and Schedule 9 to the Companies (New South Wales) Regulations; and
- (b) any rules of court having effect for the purposes of the Companies (New South Wales) Code,

apply, with such adaptations as are necessary, as regulations and rules for the purposes of this Act and so apply as if a reference in those provisions—

- (c) to a company were a reference to the Board;
- (d) to directors of a company were a reference to members of the Board;
- (e) to the registered office of a company were a reference to the principal place of business of the Board; and
- (f) to the Commission were a reference to the Minister for Agriculture and Fisheries.

(2) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(3) Rules of court may be made under the Supreme Court Act, 1970, for the purposes of this Act.

(4) Subsection (3) does not limit the rule-making powers conferred by the Supreme Court Act, 1970.

Grain Sorghum Marketing Board (Special Provisions).

(5) To the extent of any inconsistency, the provisions of regulations or rules made as referred to in subsection (2), (3) or (4) prevail over the provisions referred to in subsection (1).

Exercise of statutory functions.

9. (1) To the extent that a compromise or arrangement referred to in section 6 so provides—

- (a) the person or persons appointed to administer the compromise or arrangement shall have and may exercise or perform all or any of the powers, authorities, duties and functions conferred or imposed on the Board by or under any Act other than this Act; and
- (b) those powers, authorities, duties and functions may be exercised or performed by the person or persons so appointed to the exclusion of the Board.

(2) Any act, matter or thing done or omitted to be done, in the exercise or performance of the powers, authorities, duties and functions referred to in subsection (1) by the person or persons so appointed, shall have the same effect and the same consequences as if done or omitted to be done by the Board without the compromise or arrangement being in force.

Offences and proceedings.

10. (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence against this Act.

(2) Any person who is guilty of an offence against this Act for which no penalty is otherwise expressly provided is liable to a penalty not exceeding \$1,000.

(3) All proceedings for offences against this Act shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Grain Sorghum Marketing Board (Special Provisions).

(4) Where a provision of this Act provides that a member or officer of the Board who is in default is guilty of an offence, the reference to the person who is in default shall, in relation to a contravention of, or failure to comply with, the provision, be construed as a reference to any member or officer of the Board (including a person who subsequently ceased to be a member or officer of the Board) who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or failure.

Liability.

11. No proceedings shall lie or be allowed by or in favour of any person against—

- (a) the Crown, the Minister, the Board, a member of the Board or a member of the staff of the Department of Agriculture; or
- (b) any person acting under the direction of the Minister or the Board,

in the execution or intended execution of this Act in respect of anything done bona fide under and for the purposes of this Act.

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
Lieutenant-Governor.

*Government House,
Sydney, 26th October, 1983.*





