

FARM PRODUCE ACT, 1983, No. 30

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 30, 1983.

An Act to repeal the Farm Produce Agents Act, 1926, and to replace that Act with provisions for the registration and regulation of farm produce agents and farm produce merchants. [Assented to, 22nd April, 1983.]

See also Defamation (Farm Produce) Amendment Act, 1983.

Farm Produce.

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:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Farm Produce Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) For the purpose only of enabling licences to have effect on or after (but not before) the day appointed and notified under subsection (2)—

- (a) applications may be made for the grant of a licence;
- (b) the registrar appointed under the Farm Produce Agents Act, 1926, may exercise the functions under Divisions 2 and 3 of Part III of the registrar appointed under this Act; and
- (c) this Act shall apply to and in respect of any applications so made and any action taken by the registrar appointed under the Farm Produce Agents Act, 1926, in the exercise of those functions,

as if the whole of this Act commenced on the date of assent to this Act but any licence granted before the day appointed and notified under subsection (2) shall not take effect until the day so appointed and notified.

Farm Produce.

Arrangement.

3. This Act is divided as follows:—

PART I.—PRELIMINARY—*ss.* 1–5.

PART II.—ADMINISTRATION—*ss.* 6, 7.

PART III.—LICENSING OF FARM PRODUCE SELLERS—*ss.* 8–19.

DIVISION 1.—*Requirement to be licensed—s.* 8.

DIVISION 2.—*Grant of licences—ss.* 9–12.

DIVISION 3.—*Suspension or cancellation of licences—ss.* 13–18.

DIVISION 4.—*Appeals—s.* 19.

PART IV.—PROVISIONS RELATING TO THE SALE, ETC., OF FARM PRODUCE—*ss.* 20–31.

PART V.—MISCELLANEOUS—*ss.* 32–57.

SCHEDULE 1.—REPEALS.

SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

Interpretation.

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

“farm produce” means vegetables, potatoes and other edible roots and tubers, fruit, honey and such other articles or classes of articles as the Minister may, by order published in the Gazette, declare to be farm produce;

“farm produce agent” means a person who sells farm produce as agent, broker or factor for another person—

(a) in the course of carrying on a business on his own behalf; or

(b) in the course of controlling or managing the business of a person who is not resident within New South Wales,

whether or not the business is carried on in connection with any other business but does not include any person or class of persons prescribed for the purposes of this definition;

Farm Produce.

“farm produce merchant” means a person who purchases farm produce from a producer for the purpose of resale—

(a) in the course of carrying on a business on his own behalf;
or

(b) in the course of controlling or managing the business of a person who is not resident within New South Wales,

whether or not the business is carried on in connection with any other business but does not include any person who purchases farm produce for resale exclusively by retail or any other person or class of persons prescribed for the purposes of this definition;

“farm produce seller” means a person who is a farm produce agent or a farm produce merchant, or both;

“functions” includes powers, authorities and duties;

“indemnity” includes bond;

“inspector” means a person authorised by the registrar to be an inspector for the purposes of this Act;

“licence” means a licence granted under this Act;

“licence period” means one of the periods prescribed by the regulations for the purposes of this definition as the periods for which licences are in force;

“licensee” means the holder of a licence which is in force;

“registered office”, in relation to a farm produce seller, means the registered office of the farm produce seller as referred to in section 35;

“registrar” means the person appointed as the registrar as referred to in section 6 (2);

“regulations” means regulations made under this Act.

(2) A reference in this Act to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) A reference in this Act to a sale made by a person as a farm produce agent is a reference to a sale or purported sale of farm produce on behalf of another person, whether or not the purchaser or purported purchaser had or has any interest in the farm produce.

Farm Produce.

Exemption from operation of Act.

5. (1) The Minister may, by order published in the Gazette, direct that the whole or any specified provisions of this Act—

- (a) shall not apply to or in respect of any person or class of persons, or any act, matter or thing or class of acts, matters or things, specified in the order; or
- (b) shall not so apply in such circumstances as may be so specified.

(2) An order published under subsection (1) shall take effect according to its tenor on and from the day of publication or, where a later day is specified in the order, from the day so specified.

(3) Where a licensee has died, the registrar may, by notice in writing addressed to such person or persons as the registrar thinks fit, direct, either unconditionally or subject to such conditions as he may specify in the notice, that for such period (not exceeding 6 months) after the death of the licensee as may be specified in the notice—

- (a) section 8 shall not apply to or in respect of the person or persons;
and
- (b) the provisions of this Act (other than section 8) shall apply to and in respect of the person or persons as if he or they were the licensee,

in relation to the carrying on by the person or persons of a business as a farm produce seller or farm produce sellers, being a business which, immediately before his death, was carried on by the deceased licensee and such a direction shall take effect according to its tenor.

Farm Produce.

PART II.

ADMINISTRATION.

Registrar and other staff.

6. (1) Such staff as may be necessary for the purpose of carrying out the provisions of this Act shall be employed under the Public Service Act, 1979.

(2) A registrar and a deputy registrar shall be appointed by the Minister from among the members of staff employed as referred to in subsection (1).

Delegation.

7. (1) The registrar may, by instrument in writing, delegate to the deputy registrar and to any other member of the staff employed as referred to in section 6 (1) the exercise of such of the functions (other than this power of delegation) conferred or imposed on the registrar by or under this Act as may be specified in the instrument of delegation and may, by instrument in writing, revoke wholly or in part any such delegation.

(2) A function, the exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation by the delegate to whom the exercise thereof has been delegated.

(3) A delegation under this section may be made subject to such conditions or such limitations as to the exercise of any of the functions delegated, or as to time and circumstance, as may be specified in the instrument of delegation.

(4) Notwithstanding any delegation under this section, the registrar may continue to exercise all or any of the functions delegated.

(5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done or suffered by the registrar and shall be deemed to have been done or suffered by the registrar.

Farm Produce.

(6) An instrument purporting to be signed by a delegate in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the registrar and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate.

PART III.

LICENSING OF FARM PRODUCE SELLERS.

DIVISION 1.—*Requirement to be licensed.*

Unlicensed person acting as farm produce seller.

8. (1) A person shall not—
- (a) act as; or
 - (b) advertise or notify that he acts as,
- a farm produce seller unless he is a licensee.
- (2) A person acts as a farm produce seller if he does so either by himself, as a member of a partnership or by his servant or agent.
- (3) A person shall not act as a farm produce seller in partnership with a person who is not a licensee.
- (4) The fact that a member of a partnership formed for the purpose of acting as farm produce sellers is not a licensee is sufficient ground upon which to dissolve the partnership.

Penalty: \$5,000.

Farm Produce.

DIVISION 2.—*Grant of licences.*

Licences.

9. (1) A person who—

- (a) in the case of a person other than a corporation, is—
 - (i) of or above the age of 18 years; and
 - (ii) not disqualified from holding a licence; or
- (b) in the case of a corporation, is not disqualified from holding a licence,

may, subject to subsection (2), make an application to the registrar for the grant of a licence.

(2) An application under subsection (1) may not be made by a licensee earlier than 60 days before the expiration of the current licence period.

(3) An application by a person under subsection (1) shall be—

- (a) in or to the effect of the prescribed form; and
- (b) accompanied by—
 - (i) the prescribed fee; and
 - (ii) in the case of an application by a person who is not a licensee, a notification specifying the place or places which will be the registered office of the applicant if the licence applied for is granted.

(4) On receipt of an application under subsection (1)—

- (a) where the registrar is satisfied that—
 - (i) the applicant is entitled under subsection (1) to make the application;
 - (ii) he has been furnished with an indemnity in a form, and from a person, approved by the registrar which is, in accordance with section 11, adequate security in respect of the applicant;
 - (iii) the application complies with the requirements of subsection (3); and

Farm Produce.

(iv) in the case of an application by a person who is not a licensee, the proposed registered office will provide adequate protection from risk of damage or loss of the books, documents and other records required to be kept by or under this Act,

he shall grant a licence to the applicant; and

(b) where the registrar is not so satisfied, he shall—

(i) by notice in writing served on the applicant for the licence, inform the applicant that he proposes to refuse to grant the licence and of his reasons for doing so; and

(ii) allow the applicant a period of 14 days to show cause why the licence should be granted.

(5) Where, within the period allowed under subsection (4) (b) (ii), an applicant has not shown sufficient cause why a licence should be granted to him, the registrar may refuse to grant a licence to the applicant.

Disqualification.

10. (1) A person is disqualified from holding a licence—

- (a) during the period of 5 years immediately after he has been, in or beyond the Commonwealth, convicted of an offence under Chapter I of Part IV, or under Part V, of the Crimes Act, 1900, or of any similar offence against the law of this or any other State, territory or country;
- (b) during the period of 5 years immediately after he has been, in or beyond the Commonwealth, convicted of an offence against this Act or the regulations, the Farm Produce Agents Act, 1926, or any similar legislation of any other State, territory or country or a regulation made under that Act or legislation;
- (c) during the period of 5 years immediately after he has been, in or beyond the Commonwealth, convicted of an offence of attempting or conspiring to commit an offence referred to in paragraph (a) or (b);
- (d) during the currency of a composition or deed of arrangement made or entered into by him, in or beyond the Commonwealth, either individually or as a partner;

Farm Produce.

- (e) during the period in which he is, in or beyond the Commonwealth, an undischarged bankrupt;
- (f) during the period of 5 years immediately after he has been, in or beyond the Commonwealth, discharged from bankruptcy;
- (g) during the period of 5 years immediately after he has made, in or beyond the Commonwealth, either individually or as a partner, an assignment for the benefit of creditors under which his unsecured debts have not been paid at the rate of at least 70 cents in the dollar;
- (h) during the period of 5 years immediately after payment of his unsecured debts has been completed under a composition or deed of arrangement made or entered into by him, in or beyond the Commonwealth, either individually or as a partner, and under which, in either case, his unsecured debts have not been paid at the rate of at least 70 cents in the dollar;
- (i) during the period of 5 years immediately after the cancellation (otherwise than at the holder's own request) of a licence of which he was the holder, being a licence granted under this Act, the Farm Produce Agents Act, 1926, or any similar legislation of any other State, territory or country; or
- (j) during the period of 5 years immediately after his disqualification under section 17.

(2) A corporation is disqualified from holding a licence if a director of the corporation is disqualified from holding a licence.

(3) A person is disqualified from holding a licence during the period of 5 years immediately after the cancellation of the licence of a corporation of which he is a director.

(4) A person who is disqualified from holding a licence by reason only of subsection (3) may apply to the registrar to have the disqualification lifted.

Farm Produce.

(5) On receipt of an application under subsection (4) from a person who is disqualified from holding a licence by reason of the cancellation of the licence of a corporation of which he is a director, the registrar may lift the disqualification arising by virtue of that cancellation if he is satisfied that—

- (a) the action or conduct by reason of which the cancellation occurred was due to a cause or causes beyond the person's control; and
- (b) the person took all reasonable precautions and exercised all due diligence to prevent that action or conduct.

(6) Where the disqualification of a person arising by virtue of the cancellation of a licence is lifted as referred to in subsection (5), the person shall be deemed not to be disqualified by reason of that cancellation.

Indemnities.

11. (1) For the purposes of this Act, an indemnity is adequate security in respect of a person only if the registrar is satisfied that the indemnity provides adequate security, in the aggregate, of the prescribed amount, in respect of all or any losses by persons for whom the person acts or has acted as farm produce agent or with whom the person deals or has dealt with as farm produce merchant and arising from default by the person acting as farm produce seller in contravention of this Act or the regulations during the period to which the indemnity relates.

(2) In subsection (1), the "prescribed amount" means—

- (a) except as provided by paragraph (b)—\$50,000; or
- (b) where another amount has been prescribed for the purposes of this section—that other amount.

Duration of licence.

12. (1) A licence granted to a person who is not a licensee takes effect from the date on which it is granted and, unless sooner cancelled, remains in force—

- (a) where it takes effect from the commencement of a licence period—for the whole of that licence period; or

Farm Produce.

(b) where it takes effect during a licence period—for the remainder of that licence period.

(2) A licence granted to a licensee takes effect from the commencement of the next licence period immediately following the date on which it is granted and remains in force for the whole of that next licence period.

(3) Notwithstanding anything contained in subsections (1) and (2), a licence which is suspended under this Act is not in force while it is suspended.

DIVISION 3.—*Suspension or cancellation of licences.*

Removal of disqualified person from share register.

13. (1) The registrar may, by notice in writing, require a corporation which is a licensee to have the name of a person who—

- (a) holds shares in the corporation and is disqualified from holding a licence; or
- (b) holds shares in the corporation as trustee for a person who is disqualified from holding a licence,

removed from the register of members of the corporation within such period (being not less than 3 months) after service of the notice as is specified in the notice.

(2) Where a corporation which has been served with a notice under subsection (1) requiring it to have the name of a person removed from its register of members does not comply with the requirement within the period specified in the notice or within such further period as the registrar may have allowed, the licence of the corporation shall be suspended, and the corporation shall be disqualified from holding a licence, until the name of the person has been removed from the register of members.

(3) A corporation may, by notice in writing, require any holder of its shares in respect of whom a notice has been received from the registrar under subsection (1) to dispose of and entirely divest himself of any interest,

Farm Produce.

legal or equitable, in those shares, either as sole or joint owner, within such period (being not less than 2 months) after service of the notice on the shareholder as is specified in the notice.

(4) Where a shareholder on whom a notice by a corporation is served under subsection (3) does not comply with the notice within the period specified in the notice or within such further period as the registrar may have allowed, the corporation may sell the shares the subject of the notice on behalf of the shareholder and make all cancellations and entries in any appropriate register necessary to give effect to the sale.

(5) Any money received by a corporation on a sale of shares under subsection (4) shall, after payment of the expenses of sale, be paid or credited to the person whose shares were sold.

(6) A corporation, however constituted, may exercise its powers under subsections (3) and (4) notwithstanding the provisions of its memorandum or articles of association, any instrument or any Act or law.

(7) Where the shares of a person in a corporation have been disposed of in accordance with a notice by a corporation under subsection (3), any later transfer to the person of shares in the corporation shall be void unless the prior permission of the registrar to the transfer has been given to the person in writing.

Employment of disqualified person.

14. (1) The registrar may, by notice in writing, require a licensee who employs in connection with his business as a farm produce seller a specified person who is disqualified from holding a licence to cease so employing that specified person within such period (being not less than 28 days) after service of the notice as is specified in the notice.

(2) Where a person who has been served with a notice under subsection (1) requiring him to cease employing a specified person in connection with his business as a farm produce seller has not ceased so to employ the specified person within the period specified in the notice or within such further period as the registrar may have allowed or, having ceased so to employ the specified person, so employs the specified person again without

Farm Produce.

the prior permission of the registrar, the licence of the person shall be suspended, and the person so served shall be disqualified from holding a licence, until he ceases so to employ the specified person.

Registrar may require fresh indemnity.

15. (1) Where the registrar forms the opinion that an indemnity is no longer adequate security in respect of a licensee, he may, by notice in writing, require the licensee to furnish him with an indemnity which is, in accordance with section 11, adequate security in respect of the licensee, within such period (being not less than 28 days) after service of the notice as is specified in the notice.

(2) Where a person has been served with a notice under subsection (1) requiring him to furnish the registrar with another indemnity and, within the period specified in the notice or within such further period as the registrar may have allowed, an indemnity in a form, and from a person, approved by the registrar which is, in accordance with section 11, adequate security in respect of the person is not furnished to the registrar, the licence of the person shall be suspended, and the person shall be disqualified from holding a licence, until an indemnity in a form, and from a person, approved by the registrar which is, in accordance with that section, adequate security in respect of the person has been furnished to the registrar.

Cancellation of licence.

16. (1) The grounds upon which a licence may be cancelled by the registrar are that—

- (a) the licence was granted—
 - (i) erroneously; or
 - (ii) in consequence of a false or fraudulent document, statement or representation;
- (b) the holder of the licence is disqualified from holding a licence under section 10;
- (c) the holder of the licence has committed an offence against section 22 or 24, whether or not he has been convicted of the offence; or

Farm Produce.

(d) judgment has been obtained in an action upon an indemnity in respect of default by the holder of the licence acting as farm produce seller in contravention of this Act or the regulations.

(2) Where the registrar is satisfied that there are grounds upon which he may cancel a licence, he may—

(a) by notice in writing served on the holder of the licence, inform the holder that he proposes to cancel the licence and of his reasons for doing so; and

(b) allow the holder of the licence a period of 28 days to show cause why the licence should not be cancelled.

(3) Where, within the period allowed under subsection (2) (b), a holder of a licence has not shown sufficient cause why the licence should not be cancelled, the registrar may, by notice in writing served on the holder of the licence, cancel the licence.

(4) The registrar may, at any time, cancel a licence at the request of the holder and the provisions of subsections (1), (2) and (3) do not apply to such a cancellation.

Disqualification in lieu of cancellation where licence expired.

17. (1) Where the registrar is satisfied that a ground upon which he may cancel a licence as referred to in section 16 (1) (c) or (d) arose while the licence was in force but the licence was not cancelled before it ceased to be in force by reason of the expiration of a licence period, he may—

(a) by notice in writing served on the person who was the holder of the licence, inform the person that he proposes to disqualify him from holding a licence and of his reasons for doing so; and

(b) allow the person a period of 14 days to show cause why he should not be disqualified from holding a licence.

(2) Where, within the period allowed under subsection (1) (b), a person has not shown sufficient cause why he should not be disqualified from holding a licence, the registrar may, by notice in writing served on the person, disqualify him from holding a licence.

Farm Produce.

Suspension, cancellation or disqualification not effective pending appeal, etc., in certain cases.

18. (1) Where, before the expiration of the period within which a requirement made by the registrar under section 13 or 14 is to be complied with, the holder of a licence appeals under section 19 (1) against the requirement, any suspension or disqualification by reason of non-compliance with the requirement shall not take effect until the appeal is determined or withdrawn.

(2) The cancellation of a licence by the registrar upon the ground referred to in section 16 (1) (a) shall not take effect—

- (a) until the expiration of the period of 28 days after notice of the cancellation was given to the holder of the licence; or
- (b) where the holder of the licence appeals against the cancellation under section 19 (1) before the expiration of that period—until the appeal is determined or withdrawn.

DIVISION 4.—Appeals.**Appeals.**

19. (1) A person who is aggrieved by—

- (a) a refusal by the registrar to—
 - (i) grant a licence; or
 - (ii) lift a disqualification under section 10 (5);
- (b) a requirement made by the registrar under section 13, 14 or 15;
- (c) the cancellation by the registrar of a licence under section 16; or
- (d) the disqualification of a person from holding a licence under section 17,

may, within 28 days after the refusal, the making of the requirement, the cancellation or the disqualification, appeal to the District Court in accordance with the rules of court.

Farm Produce.

(2) In hearing an appeal under subsection (1), the District Court is not bound by the rules or practice as to evidence and may inform itself of any matter in such manner as it thinks fit.

(3) In determining an appeal under subsection (1), the District Court—

(a) may—

- (i) confirm the refusal, requirement, cancellation or disqualification the subject of the appeal;
- (ii) in the case of an appeal under subsection (1) (a), direct that the registrar grant a licence to the person aggrieved or, as the case may be, lift a disqualification in respect of the person; or
- (iii) in the case of an appeal under subsection (1) (b), (c) or (d), revoke the requirement, cancellation or disqualification the subject of the appeal; and

(b) may make such other orders as may be necessary or appropriate.

(4) The decision of the District Court in respect of an appeal under subsection (1) shall be final and conclusive and shall be given effect to by the registrar.

(5) Where the registrar fails to determine an application made under section 9 for the grant of a licence, or section 10 (4) for a disqualification to be lifted, within a period of 90 days after receipt of the application, he shall, for the purposes of this section be deemed, at the expiration of the period, to have refused to grant the licence or, as the case may be, to have refused to lift the disqualification.

Farm Produce.

PART IV.

PROVISIONS RELATING TO THE SALE, ETC., OF FARM PRODUCE.

Sales deemed to be on agency basis except in certain circumstances.

20. (1) Where, but for this subsection, an agreement by a farm produce seller in the course of acting as a farm produce seller to purchase farm produce from a person would be effective to pass property in the farm produce, the agreement is effective to pass the property only to the extent that—

- (a) it relates to farm produce received by the farm produce seller after the amount payable in respect of the purchase as referred to in section 24 (1) is paid; or
- (b) it relates to any other farm produce if—
 - (i) it contains the prescribed particulars; and
 - (ii) the farm produce seller informs the person, after the receipt of that farm produce that the farm produce so received complies with the agreement.

(2) Where farm produce is in the possession of, or is sold by, a farm produce seller in the course of carrying on business as a farm produce seller and the property in the farm produce has not passed to the farm produce seller by reason of subsection (1) or otherwise, the farm produce shall be deemed to be in his possession, or sold by him, as a farm produce agent on behalf of the person in whom property in the farm produce is vested.

Advice of sales by farm produce agent.

21. (1) A farm produce seller shall, on or before the Friday in the week immediately following a sale or other disposal of farm produce made by him as a farm produce agent on behalf of a person, render to the person an account of the sale or disposal which complies with the requirements of subsection (2).

Penalty: \$2,000.

Farm Produce.

(2) The account referred to in subsection (1) shall be in writing in or to the effect of the prescribed form and shall contain the prescribed particulars.

Payment of proceeds of sale by farm produce agent.

22. (1) The amount payable in respect of a sale of farm produce made by a farm produce seller as a farm produce agent on behalf of a person is the amount of the purchase money less only the following deductions:—

- (a) commission at the prescribed rate or in the prescribed amount;
- (b) such charges and other deductions as may be permitted by the regulations to be deducted at the prescribed rate or in the prescribed amount;
- (c) any amount required to be deducted pursuant to a regulation referred to in section 29;
- (d) any prescribed expense payable in respect of the farm produce;
- (e) subject to section 30, such other amount as the farm produce seller and the person may have agreed to in writing before the sale.

(2) A farm produce seller shall, on or before the Friday in the week immediately following a sale of farm produce made by him as a farm produce agent on behalf of a person, pay to the person or to such other person, or both, and in such manner as the person may direct in writing the amount payable in respect of the sale as referred to in subsection (1).

(3) The amount payable in respect of a sale as referred to in subsection (1) shall be paid by a farm produce seller in accordance with that subsection whether it has been received by the farm produce seller or not.

Penalty: \$2,000.

Notice of purchase by farm produce merchant.

23. (1) A farm produce seller shall, on or before the Friday in the week immediately following the purchase by him of farm produce purchased by

Farm Produce.

him as a farm produce merchant from a person, forward to the person a notice of the purchase which complies with the requirements of subsection (2).

Penalty: \$2,000.

(2) The notice referred to in subsection (1) shall be in writing in or to the effect of the prescribed form and shall contain the prescribed particulars.

Payment of purchase money by farm produce merchant.

24. (1) The amount payable in respect of a purchase from a person of farm produce made by a farm produce seller as a farm produce merchant is the amount of the purchase money less only the following deductions:—

- (a) any amount required to be deducted pursuant to a regulation referred to in section 29;
- (b) any prescribed expense payable by the person from whom the farm produce was purchased in respect of the farm produce;
- (c) subject to section 30, such other amount as the farm produce seller and the person from whom the farm produce was purchased may have agreed to in writing before the purchase.

(2) A farm produce seller shall, on or before the Friday in the week immediately following the purchase by him of farm produce purchased by him as a farm produce merchant from a person, pay to the person or to such other person, or both, and in such manner as the person may direct in writing the amount payable in respect of the purchase as referred to in subsection (1).

Penalty: \$2,000.

Order for payment.

25. (1) The court before which a farm produce seller is convicted of an offence under section 22 or 24 shall, in addition to any penalty imposed, order the farm produce seller forthwith to pay to the person entitled to it the net amount calculated in accordance with that section or the balance of that amount then owing.

Farm Produce.

(2) Upon entry of a certified copy of an order made under subsection (1) in the records of any court of petty sessions exercising civil jurisdiction, the order shall operate as a judgment made, and be enforceable, under the Courts of Petty Sessions (Civil Claims) Act, 1970.

False accounts.

26. A farm produce seller shall not render a false account of the receipt, sale or disposal of any farm produce or of any money received in connection therewith or of the application of that money.

Penalty: \$5,000.

Restriction on persons to whom agents may sell consignments.

27. (1) A farm produce seller shall not, directly or indirectly, or by himself or a partner or subagent, sell any farm produce in respect of which he or a firm of which he is a member is acting as farm produce agent for a person—

- (a) where the farm produce seller is a person other than a corporation, to a member of his family; or
- (b) where the farm produce seller is a corporation, to a director of the corporation,

without having previously obtained from the person on whose behalf he is acting as farm produce agent his consent in writing to the sale.

(2) An employee of a farm produce seller shall not purchase, or be in any way interested or concerned in the purchase of, any farm produce in respect of which his employer is acting as farm produce agent for a person without having previously obtained from the person his consent in writing to the purchase.

(3) A farm produce seller shall not charge commission in respect of the sale of any farm produce which is purchased or sold as referred to in subsection (1) or (2).

Penalty for an offence against subsection (1), (2) or (3): \$2,000.

Farm Produce.

(4) The court before which a person is convicted of an offence under this section in respect of a sale or purchase of farm produce made without the prior consent of another person, shall, in addition to imposing any penalty, order the person forthwith to account for and pay over to the other person an amount equivalent to the profits resulting from the sale or purchase.

(5) Upon entry of a certified copy of an order made under subsection (4) in the records of any court of petty sessions exercising civil jurisdiction, the order shall operate as a judgment made, and be enforceable, under the Courts of Petty Sessions (Civil Claims) Act, 1970.

Destruction of farm produce.

28. A farm produce seller shall not, by himself or his agent or servant, destroy or discard any farm produce not his property except by the written direction of, or with the written authority first had and obtained of, a prescribed officer.

Penalty: \$2,000.

Deductions to be made on behalf of other persons.

29. A regulation may be made for or with respect to requiring a farm produce seller by whom money is payable to a person by reason of a sale made as a farm produce agent or a purchase made as a farm produce merchant—

- (a) to deduct from the money a specified charge, fee or other amount payable by the person to another person in respect of a service or facility provided by the other person in relation to the sale of farm produce by or on behalf of the person or in relation to the purchase of farm produce from the person; and
- (b) to pay any such charge, fee or other amount so deducted to the other person.

Farm Produce.

Regulation of commission and other charges.

30. (1) A person shall not charge, sue for or recover—

- (a) any commission for or in respect of the sale or disposal of farm produce, except commission not exceeding commission at the prescribed rate or in the prescribed amount;
- (b) any fees, charges, commission, reward or other remuneration for or in respect of the performance or doing of any service, act or thing incidental to the sale or disposal of farm produce or in relation to any farm produce sold or disposed of by him or forwarded or delivered to or received by him for sale or disposal unless the service, act or thing is a service, act or thing prescribed as one in respect of which fees, charges, commission, reward or other remuneration may be charged, sued for or recovered; or
- (c) any fees, charges, commission, reward or other remuneration for or in respect of any service, act or thing so prescribed in excess of the fees, charges, commission, reward or other remuneration at the prescribed rate or in the prescribed amount for the service, act or thing.

(2) A person shall not charge, sue for or recover any fees, charges, commission, reward or other remuneration for or in respect of the sale or disposal of farm produce made by a person other than a licensee or for or in respect of any service, act or thing incidental to a sale or disposal of farm produce and performed or done by or on behalf of a person other than a licensee or in relation to farm produce sold or disposed of by a person other than a licensee.

Penalty: \$2,000.

Misrepresentation of description, grade, etc.

31. (1) A person shall not sell, offer or expose for sale, or supply, any farm produce falsely represented by him, expressly or impliedly, to be of a particular description, origin, grade or quality.

(2) A person offering or exposing for sale any farm produce or supplying or exhibiting a sample of farm produce shall not, upon an offer to purchase farm produce of the same quality or at the same price as that

Farm Produce.

of the farm produce offered or exposed or as that of the sample, supply to the person making the offer farm produce of a quality inferior to that of the farm produce offered or exposed for sale or to that of the sample.

(3) A person offering or exposing for sale a quantity of farm produce shall not, upon an offer to purchase farm produce from that quantity, refuse to supply the purchaser from that quantity.

Penalty: \$2,000.

PART V.

MISCELLANEOUS.

Register.

32. (1) The registrar shall keep a register of licensees which shall be open to inspection, upon payment of the prescribed fee, by any person at the office of the registrar at all times when that office is open for business.

(2) The register kept under subsection (1) shall contain—

(a) particulars of—

(i) all licences;

(ii) all indemnities furnished to the registrar in respect of licensees;

(iii) the cancellation of licences;

(iv) the disqualification of persons from holding a licence under section 17; and

(v) requirements made by the registrar under section 13, 14 or 15; and

(b) such other particulars as may be prescribed.

(3) Subsections (1) and (2) do not require the registrar to keep in the register particulars relating to licences which have ceased to be in force for the prescribed period.

Farm Produce.

Refund of fees.**33. Where—**

- (a) an application for a licence is refused or withdrawn; or
- (b) a licence is cancelled,

the registrar may refund to the applicant or former holder of the licence, or to any other person who appears entitled thereto, the whole or any part of a fee which has been paid to the registrar by the applicant or former holder of the licence.

Licensee to notify certain changes.

34. (1) A corporation which is the holder of a licence shall notify the registrar of any change in the directors of the corporation within 7 days after the change and of the details of any transfer or issue of, or any alteration in the rights attached to, shares in the corporation within 7 days after the registration of the transfer or the making of the issue or alteration, as the case may require.

(2) A holder of a licence who—

- (a) becomes a member of a partnership acting as farm produce sellers shall notify the registrar of details of the membership of the partnership within 7 days after becoming a member of the partnership; or
- (b) is a member of a partnership acting as farm produce sellers shall notify the registrar of any change in the membership of the partnership within 7 days after the change.

Penalty: \$200.

Records required to be kept under this Act to be kept at registered office.**35. (1)** The registered office of a licensee shall be—

- (a) the place or places the licensee specified as his proposed registered office in a notification accompanying his first application for a licence as referred to in section 9 (3) (b); or

Farm Produce.

- (b) such other place or places as the registrar may have, upon application by the licensee for a change of his registered office, consented to being the registered office of the licensee.

(2) A licensee shall not remove any of the books, documents or other records required to be kept by him by or under this Act from his registered office without the prior consent of the registrar.

Penalty: \$2,000.

(3) The registrar shall not give his consent to the change of the registered office of a licensee or the removal of books, documents or other records from the registered office of a licensee unless he is satisfied that—

- (a) the books, documents or other records of the licensee required to be kept by him by or under this Act will not be unduly exposed to risk of damage or loss by the change or removal; and
- (b) the change or removal is in the normal course of business.

Service of notices, etc., on farm produce seller.

36. All written notices and other documents required to be served or given to a licensee shall be deemed to be duly served on, or given to, the licensee if left at the registered office of the licensee.

Premises.

37. A person shall not display or permit to be displayed over or about any premises or part of premises or any place occupied by him any sign or notice which is capable of being understood to indicate that the occupier thereof is a farm produce seller unless he is a licensee.

Penalty: \$2,000.

Inspection of books, etc.

38. (1) For the purpose of ascertaining whether any offence against this Act or the regulations has been committed, the registrar or an inspector may, at any reasonable time, enter the registered office of a licensee or any other premises or place in which he has reasonable cause to believe the business of

Farm Produce.

selling farm produce as a farm produce seller is being carried on or in which any books, documents or other records required under this Act are kept and may—

- (a) search the registered office, the premises or place; and
- (b) inspect any books, documents or other records found in or upon the registered office, the premises or place relating to any transaction in connection with farm produce, and take copies thereof or of any entries therein.

(2) For the purpose of, or in connection with, a search or inspection under subsection (1), the registrar or an inspector may—

- (a) require any person having farm produce in his possession for sale or for use in connection with any business, commercial or trading undertaking or who he has reasonable cause to believe has farm produce in his possession for such a purpose to furnish him with information as to the ownership and source of any farm produce in his possession; and
- (b) require any person to produce for his inspection any book or other record in his possession or under his control and kept by the person under this Act or the regulations or required by or under this Act or the regulations to be kept by the person or any docket or other document in his possession or under his control and delivered to the person in accordance with this Act or the regulations or required by or under this Act or the regulations to have been delivered to the person in respect of farm produce purchased by the person for resale or for use in connection with any business, commercial or trading undertaking, and take copies thereof or of any particulars contained therein.

(3) The registrar may give any person for whom a farm produce seller acts or has acted as farm produce agent or with whom a farm produce seller deals or has dealt with as farm produce merchant a report of the result of an inspection made under subsection (1) so far as the inspection directly concerns the person.

(4) A person shall not assault, hinder, obstruct or interfere with the registrar or an inspector in the exercise of his powers under subsection (1) or, when so required under subsection (2)—

- (a) refuse or neglect to furnish information;

Farm Produce.

- (b) furnish any information which is false or misleading in any material particular;
- (c) refuse or neglect to produce any book, document or other record;
or
- (d) produce any book, document or other record which contains particulars which are false or misleading in any material particular.

Penalty: \$2,000.

(5) It is a defence to any prosecution for refusal or neglect to produce a book, document or other record required to be produced under subsection (2) if the person charged proves that the book, document or other record has been destroyed or disposed of in accordance with the provisions of this Act or the regulations.

(6) Any information furnished pursuant to a requirement made under subsection (2) (a) shall not, if the person furnishing the information objected, at the time of furnishing it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against that person for any offence or in any proceedings relating to any offence, not being the offence of refusing or neglecting to comply with a requirement made under that subsection.

Entries in farm produce seller's books, etc., deemed made by him.

39. Every entry in a book, account, document, writing or other record issued or kept by or belonging to a farm produce seller or found on premises or a place occupied by him and relating to his business as a farm produce seller shall, unless the contrary is shown, be deemed to have been made by or with the authority of the farm produce seller.

Destruction of books, etc.

40. A person required by or under this Act to keep or make a book, document or other record shall not, without the permission of the registrar or an inspector, destroy or dispose of, or authorise or permit the destruction

Farm Produce.

or disposal of, any such book, document or other record within 12 months after the last entry was made in the book or, as the case may be, within 12 months after the document or other record was made.

Penalty: \$1,000.

False or misleading statements.

41. A person shall not, in an application for a licence, make any statement which he knows to be false or misleading in a material particular.

Penalty: \$500.

Disclosure of information.

42. A person shall not, without lawful excuse, disclose any information obtained by him in connection with the administration or execution of this Act.

Penalty: \$2,000.

Offence by corporation.

43. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each officer concerned with the management of the corporation, shall be deemed to have contravened the same provision unless he satisfies the court that—

- (a) the corporation contravened the provision without his knowledge;
- (b) he was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) he, being in such a position, used all due diligence to prevent the contravention of the provision by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.

Farm Produce.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against that provision is actually committed.

Proceedings for offences.

44. Proceedings for an offence against a provision of this Act or the regulations shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

Civil remedies not affected.

45. Nothing in this Act affects any civil or criminal remedy which may exist against a farm produce seller with respect to any matter.

Right to inspect and sue upon indemnity.

46. (1) A person for whom a licensee is acting or has acted as a farm produce agent or with whom a licensee is dealing or has dealt as a farm produce merchant may, on payment of the prescribed fee, inspect the indemnity furnished to the registrar in respect of the licensee and take a copy thereof.

(2) A person referred to in subsection (1) may, with the written consent of the registrar, sue upon an indemnity furnished to the registrar in respect of any loss by him and covered by the indemnity and may take such other proceedings against the person who gave the indemnity as are necessary to recover the amount of the loss as if he were the registrar.

Notice of cancellation or suspension of licence.

47. Where the Minister is satisfied that it is necessary to do so, he may cause to be published, in such manner as he thinks fit, a notice of the cancellation or suspension of a licence under this Act or any similar legislation of any other State, territory or country.

Farm Produce.

Notice calling for claims.

48. (1) Where the Minister is satisfied that it is necessary to do so, he may cause to be published in a newspaper published and circulating in Sydney, and in such other manner (if any) as he thinks fit, a notice requiring details of any claim by a person against a specified person who is or was a licensee to be given to the registrar within the period specified in the notice (being a period not less than 28 days after the notice is given) and stating that, at the expiration of that period, the registrar may claim upon the indemnity in respect of the person having regard only to the claims of which he is aware.

(2) Where the registrar has, after the expiration of the period specified in a notice or, as the case may be, in the last of the notices given under subsection (1), claimed upon, and recovered money under, an indemnity, he may refuse to reimburse out of money received by him under the indemnity any person of whose claim he was not aware at the time he claimed upon the indemnity.

Reimbursement for loss at discretion of registrar.

49. The reimbursement of persons out of money received by the registrar under an indemnity for loss arising from default by a person acting as a farm produce seller in contravention of this Act or the regulations shall be at the discretion of the registrar who, having regard to—

- (a) the extent to which persons have, to the satisfaction of the registrar, proven their loss; and
- (b) the total amount of loss so proven in relation to the total amount of money received by the registrar,

may decide whether any particular person shall be reimbursed and, if so, what reimbursement shall be made.

Certificate as to whether licence held.

50. In any proceedings against a person for a contravention of a provision of this Act or the regulations, a certificate purporting to be under the hand of the registrar is admissible in evidence to prove the fact that

Farm Produce.

the person charged was or was not, as the case may be, on the date mentioned in the certificate a licensee and is prima facie evidence of the fact stated therein.

Evidence as to origin of farm produce.

51. In any proceedings for an offence against a provision of this Act or the regulations—

- (a) the fact that any farm produce, or any case, box, bag or other receptacle which contains farm produce is marked—
 - (i) with the name of a person who is a producer or harvester of that class of farm produce or who otherwise deals with that class of farm produce in a prescribed manner; or
 - (ii) otherwise with any mark commonly used by such a person to denote farm produce produced or harvested by him or farm produce with which he deals in a prescribed manner; or
- (b) a statement made by a farm produce seller at or about the time of a sale by him, in reply to questions asked of him by the purchaser, the registrar or an inspector, that a person is the producer or harvester of farm produce or the farm produce was dealt with by a person in a prescribed manner,

is prima facie evidence that the farm produce was produced, harvested or dealt with in that manner by the person.

Certificate as to variety, grade or size of farm produce.

52. (1) This section applies in relation to farm produce to which section 18A of the Plant Diseases Act, 1924, applies.

(2) An inspector appointed under the Plant Diseases Act, 1924, may, on payment of the prescribed fee, certify that farm produce is of a particular variety, grade or size.

(3) A certificate purporting to be under the hand of an inspector appointed under the Plant Diseases Act, 1924, certifying the variety, grade or size of farm produce is admissible in evidence in any proceedings and is prima facie evidence of the matters stated therein.

Farm Produce.

Evidence—consignment notes.

53. (1) A consignment note in or to the effect of the prescribed form which—

- (a) is in respect of the delivery of farm produce; and
- (b) contains particulars which purport to have been acknowledged by the signatures of the person who delivered the farm produce and the person to whom it was delivered,

is admissible in evidence in any proceedings and is prima facie evidence of the facts contained therein.

(2) A person shall not, on a consignment note in respect of farm produce—

- (a) falsely specify any particular; or
- (b) acknowledge by his signature any particular contained therein without knowing whether the particular is true or false or knowing the particular to be false.

Penalty: \$2,000.

Contracting out void.

54. The provisions of this Act have effect notwithstanding any stipulation to the contrary and no contract or agreement made or entered into before, on or after the day appointed and notified under section 2 (2) operates to annul, vary or exclude any of the provisions of this Act.

Regulations.

55. (1) 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 and, in particular, for or with respect to—

- (a) the manner in which the register of licensees is to be kept;

Farm Produce.

- (b) the form and manner of issue of receipts for money received on account of any other person by farm produce sellers acting as farm produce agents;
- (c) the maximum fees, charges, commission and other remuneration which farm produce sellers may charge for their services as farm produce sellers;
- (d) the fees which may be charged under this Act;
- (e) the form and particulars of account sales to be rendered to any principals by farm produce sellers acting as farm produce agents;
- (f) the manner in which farm produce received by a farm produce seller shall be stored, ripened or otherwise treated by the farm produce seller;
- (g) the manner in which any farm produce or any case, box, bag or other receptacle which contains farm produce delivered or consigned to a farm produce seller shall be marked;
- (h) the manner in which any case, box, bag or other receptacle which contains farm produce repacked by a farm produce seller shall be marked to indicate that it has been repacked by him;
- (i) the display of signs by a farm produce seller, indicating that he is a farm produce seller;
- (j) prohibiting or regulating any sales or purchases of farm produce by farm produce sellers;
- (k) prescribing the books, documents and other records to be kept by farm produce sellers;
- (l) requiring the delivery by farm produce sellers to purchasers of dockets or documents containing the prescribed particulars with respect to farm produce sold and the retention of dockets or other documents required to be delivered or issued under this Act by the persons to whom they are delivered or issued;
- (m) prescribing a form of consignment note; and
- (n) otherwise prohibiting or regulating the marketing of farm produce or marketing practices in relation to farm produce by farm produce sellers.

Farm Produce.

(2) The provisions of the Local Government Act, 1919, and of any ordinance made thereunder shall, to the extent to which they are inconsistent with the provisions of any regulation made under subsection (1), cease to have any force or effect.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;
or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(4) A regulation may impose a penalty not exceeding \$1,000 for any offence against the regulations.

Repeals.

56. Each Act specified in Column 1 of Schedule 1 is, to the extent specified in Column 2 of that Schedule, repealed.

Savings and transitional provisions.

57. Schedule 2 has effect.

Farm Produce.

SCHEDULE 1.

(Sec. 56.)

REPEALS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of repeal.
1926, No. 7	Farm Produce Agents Act, 1926	The whole Act.
1932, No. 7	Farm Produce Agents (Amendment) Act, 1932.	The whole Act.
1937, No. 35	Statute Law Revision Act, 1937	So much of the Second Schedule as amended Act No. 7, 1926.
1941, No. 28	Auctioneers and Agents Act, 1941	Section 22 (6).
1952, No. 40	Farm Produce Agents (Amendment) Act, 1952.	The whole Act.
1960, No. 3	Farm Produce Agents (Amendment) Act, 1960.	The whole Act.
1965, No. 33	Decimal Currency Act, 1965	So much of the First Schedule as amended Act No. 7, 1926.

SCHEDULE 2.

(Sec. 57.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Interpretation.

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

“former Act” means the Farm Produce Agents Act, 1926.

Former licenses to have no effect after appointed day.

2. (1) A license issued under the former Act and in force immediately before the appointed day ceases to have any effect on and from the appointed day.

(2) No refund shall be payable in respect of any part of the fee paid in respect of a license, or the annual renewal of a license, which ceases to have effect as referred to in subclause (1).

Farm Produce.

SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.***Registrar and deputy registrar.**

3. The persons holding the offices of registrar and deputy registrar under the former Act shall be deemed to have been appointed as registrar and deputy registrar, respectively, under this Act.

Bonds given under former Act.

4. (1) A bond given to the registrar appointed under the former Act and in force immediately before the appointed day shall be deemed to be given to the registrar appointed under this Act and shall be enforceable by the registrar appointed under this Act in the same way as it would be enforceable by the registrar appointed under the former Act if this Act were not enacted.

(2) Except as provided by subsection (1), the repeal of the former Act shall not affect a bond given under that Act.

Books, etc., kept under former Act.

5. This Act and the regulations apply to and in respect of books, documents and other records required to be kept or made by or under the former Act in the same way as they apply to and in respect of books, documents and other records required to be kept or made by or under this Act.

References to former Act and licenses under former Act.

6. A reference to the former Act or to a license under or issued under the former Act in any Act (other than this Act) or in any instrument made under any such Act shall, except in so far as the context may otherwise require, be respectively read and construed as a reference to this Act or a licence under this Act.

Regulations.

7. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the date of assent to this Act or a later day.

Farm Produce.

SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or a public authority), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or a public authority) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding the foregoing clauses of this Schedule.
