

PARLIAMENT OF VICTORIA

---

**Farm Produce Wholesale (Amendment) Act 1996**

**Act No.**

**TABLE OF PROVISIONS**

<i>Clause</i>	<i>Page</i>
<b>PART 1—PRELIMINARY</b>	<b>1</b>
1. Purposes	1
2. Commencement	2
<b>PART 2—FARM PRODUCE WHOLESALE LICENCES</b>	<b>3</b>
3. Principal Act	3
4. Definitions	3
5. New section 5 substituted	3
5. Registrar and Deputy Registrar	3
6. Delegation	3
7. Annual report	3
8. Applications for renewal of a licence	3
9. Grant, renewal and transfer	4
10. New section 13A inserted	5
13A. Fit and proper person	5
11. Term of licence	7
12. Suspension and cancellation of licences	7
13. Authority	7
14. Review of decisions	8
15. New section 22 substituted	8
22. Determination of pecuniary loss	8
16. Reimbursement	9
17. Market reporting service	9
18. Written information	9
19. Service of documents	10
20. Delegation	10
<b>PART 3—MELBOURNE MARKET AUTHORITY</b>	<b>11</b>
21. New section 3A inserted	11
3A. Market a public place	11
22. Objects of Melbourne Market Authority	11

<i>Clause</i>	<i>Page</i>
<b>PART 4—TRANSITIONAL ARRANGEMENTS AND REPEAL</b>	<b>12</b>
23. Repeal of Farm Produce Wholesale Act 1990	12
24. Transitional and savings provisions	12
<b>NOTES</b>	<b>13</b>

# PARLIAMENT OF VICTORIA

---

Initiated in Council 18 June 1996

## A BILL

to repeal the **Farm Produce Wholesale Act 1990** and to make interim arrangements for the administration of that Act by the Melbourne Market Authority until its repeal, to make consequential amendments to the **Melbourne Market Authority Act 1977** and for other purposes.

### **Farm Produce Wholesale (Amendment) Act 1996**

The Parliament of Victoria enacts as follows:

#### **PART 1—PRELIMINARY**

##### **1. *Purposes***

The main purposes of this Act are to repeal the **Farm Produce Wholesale Act 1990** and to make interim arrangements for the administration of that Act by the Melbourne Market Authority until its

*Farm Produce Wholesale (Amendment) Act 1996*  
*Act No.*

---

repeal and to make consequential amendments to  
the **Melbourne Market Authority Act 1977**.

**2. Commencement**

- 5
- (1) Part 1 comes into operation on the day on which  
this Act receives the Royal Assent.
- (2) Subject to sub-sections (3) and (4), the remaining  
provisions of this Act come into operation on a  
day or days to be proclaimed.
- 10
- (3) Section 23 comes into operation on 31 December  
1997.
- (4) If a provision referred to in sub-section (2) does  
not come into operation within the period of 12  
months beginning on, and including, the day on  
which this Act receives the Royal Assent, it comes  
15 into operation on the first day after the end of that  
period.
-

---

**PART 2—FARM PRODUCE WHOLESALE LICENCES**

**3. *Principal Act***

In this Part, the **Farm Produce Wholesale Act 1990** is called the Principal Act.

No. 63/1990  
amended by  
No. 127/1993.

**4. *Definitions***

In section 3 of the Principal Act after the definition of "authorised officer" **insert—**

**"Authority"** means the Melbourne Market Authority established under the **Melbourne Market Authority Act 1977**;

**5. *New section 5 substituted***

For section 5 of the Principal Act **substitute—**

**"5. *Registrar and Deputy Registrar***

- (1) The Authority must appoint an officer or employee of the Authority to be Registrar for the purposes of this Act.
- (2) The Authority may appoint an officer or employee of the Authority to be Deputy Registrar for the purposes of this Act."

**6. *Delegation***

In section 7 of the Principal Act **omit** "or an officer or employee of the public service".

**7. *Annual report***

Section 9 of the Principal Act is **repealed**.

**8. *Applications for renewal of a licence***

- (1) In section 11(5) of the Principal Act after "application" **insert** "for the grant of a licence or for the approval of the transfer of a licence".

*Farm Produce Wholesale (Amendment) Act 1996*  
Act No.

---

(2) In section 12(1) of the Principal Act **omit** ",  
renewal".

(3) In section 12(3) of the Principal Act—

(a) for "Minister" (where twice occurring)  
**substitute** "Authority";

(b) for "Minister's" **substitute** "Authority's".

**9. Grant, renewal and transfer**

(1) In section 13(1) of the Principal Act—

(a) for "Minister" **substitute** "Authority";

(b) in paragraph (f) after "been convicted" **insert**  
"or found guilty";

(c) after paragraph (f) **insert**—

"(g) that, on an application under section  
459P of the Corporations Law, the  
Court would be required under section  
459C(2) of that law to presume that the  
licensee or, in the case of a transfer, the  
proposed transferee is insolvent; or

(h) that the licensee or, in the case of a  
transfer, the proposed transferee is an  
externally administered body corporate  
within the meaning of the Corporations  
Law."

(2) In section 13(2), (3) and (4) of the Principal Act,  
for "Minister" (wherever occurring) **substitute**  
"Authority".

(3) After section 13(4) of the Principal Act **insert**—

"(4A) In granting or renewing a licence the  
Authority or the Registrar may impose any  
condition to which the licence is to be  
subject."

- 
- (4) In section 13(5), (7), (8) and (9) of the Principal Act for "Minister" (wherever occurring) **substitute "Authority"**.

**10. *New section 13A inserted***

After section 13 of the Principal Act **insert—**

**'13A. *Fit and proper person***

- (1) This section does not limit the circumstances in which a person may be considered not to be a fit and proper person to hold a licence.
- (2) For the purposes of this Act, a person must be taken not to be a fit and proper person to hold a licence if—
- (a) the person, or an associate of the person is not of good repute having regard to character, honesty and integrity; or
  - (b) the person, or an associate of the person has a business association with a person, body or association who or which is not of good repute having regard to character, honesty and integrity; or
  - (c) a director, partner, trustee, executive officer, secretary or any other officer or person associated or connected with the ownership, administration or management of the person's business as a wholesaler is not a suitable person to act in that capacity.
- (3) For the purposes of this section a person ("the associate") is the associate of another person ("the principal") if the associate—
- (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in right of the person or on behalf of any

5 other person), in the principal's business as a wholesaler and, by virtue of that interest or power, is able or would be able to exercise significant influence over or with respect to the management or operation of that business; or

10 (b) holds or will hold any relevant position, whether in right of the associate or on behalf of any other person, in the principal's business as a wholesaler; or

(c) is a relative of the principal; or

(d) is an agent of the principal.

(4) In sub-section (3)—

15 "**relative**" means spouse (including de facto spouse), parent, child, or sibling (whether of the full or half blood);

"**relevant financial interest**" in relation to a business means—

20 (a) any share in the capital of the business; or

(b) any entitlement to receive any income derived from the business; or

25 (c) any entitlement to receive any payment as a result of money advanced;

30 "**relevant position**" in relation to a business, means the position of director, manager or other executive position or secretary, however that position is designated;

"**relevant power**" means any power, whether exercisable by voting or

---



---

otherwise and whether exercisable alone or in association with others—

- (a) to participate in any directorial, managerial or executive decision; or
- (b) to elect or appoint any person to any relevant position.'

### **11. Term of licence**

In section 14 of the Principal Act for "until 30 June next" **substitute** "for a period fixed by the Authority not exceeding 2 years".

### **12. Suspension and cancellation of licences**

In section 15(1) of the Principal Act—

- (a) for "Minister" (where twice occurring) **substitute** "Authority";
- (b) in paragraph (e) after "been convicted" **insert** "or found guilty";
- (c) after paragraph (e) **insert**—  
"; or
- (f) that, on an application under section 459P of the Corporations Law, the Court would be required under section 459C(2) of that law to presume that the licensee is insolvent; or
- (g) that the licensee is an externally administered body corporate within the meaning of the Corporations Law."

### **13. Authority**

In sections 15(2), (4), (5) and (6) and 16(1), (2), (3) and (5) of the Principal Act for "Minister" (wherever occurring) **substitute** "Authority".

#### 14. *Review of decisions*

In section 20(3) of the Principal Act—

- (a) **omit** "of the Minister";
- (b) in paragraphs (c) and (d) after "decision"  
**insert** "of the Authority";
- (c) after paragraph (d) **insert**—
  - "(e) A decision to impose a condition on the granting or renewal of a licence."

#### 15. *New section 22 substituted*

For section 22 of the Principal Act **substitute**—

##### **"22. *Determination of pecuniary loss***

- (1) The Registrar may determine that a producer has suffered a pecuniary loss as a result of the failure of a licensee to pay for produce.
- (2) On making a determination, the Registrar must—
  - (a) publish in the Government Gazette and in a newspaper circulating generally throughout Australia; and
  - (b) serve on each other producer whom the Registrar believes may have suffered a pecuniary loss as a result of that licensee's failure to pay for produce—  
notice that—
  - (c) the determination has been made in respect of the producers named in the determination; and
  - (d) the Registrar may make a further determination that other producers have suffered a pecuniary loss as a result of

---

the failure of that licensee to pay for produce.

- (3) The Registrar may make a determination or a further determination within the period of 6 months after the payment for the produce first became payable to the producer concerned."

### **16. Reimbursement**

For section 23(1) and (2) of the Principal Act **substitute**—

- "(1) The Registrar may certify that a producer has suffered a pecuniary loss if the Registrar is satisfied that a licensee is unable to pay an amount owed to a producer.
- (2) If the aggregate of determined losses in respect of a licensee exceeds the amount available under the indemnity lodged by the licensee, each producer must be reimbursed according to the proportion which his or her determined loss bears to the aggregate."

### **17. Market reporting service**

In section 32 of the Principal Act—

- (a) in sub-sections (1) and (2) for "Registrar" **substitute** "Authority";
- (b) sub-section (3) is **repealed**.

### **18. Written information**

In section 36(1) of the Principal Act—

- (a) after "supply" **insert** "in writing";
- (b) in paragraph (a) for "Minister" **substitute** "Authority".

*Farm Produce Wholesale (Amendment) Act 1996*  
*Act No.*

---

**19. *Service of documents***

In section 43(3) of the Principal Act for  
"Department of Agriculture and Rural Affairs"  
**substitute** "Authority".

**20. *Delegation***

Section 45 of the Principal Act is **repealed**.

---

---

**PART 3—MELBOURNE MARKET AUTHORITY**

**21. *New section 3A inserted***

After section 3 of the **Melbourne Market Authority Act 1977** insert—

**"3A. *Market a public place***

The market land is to be treated as a market for the purposes of paragraph (j) of the definition of public place in section 3 of the **Summary Offences Act 1966**."

**22. *Objects of Melbourne Market Authority***

After section 5(b) of the **Melbourne Market Authority Act 1977** insert—

"; and

- (c) to ensure a fair and competitive environment for the wholesale trading of produce."
- 

No. 8993.  
Reprinted to  
No. 127/93  
subsequently  
amended by  
No. 31/1994.

**PART 4—TRANSITIONAL ARRANGEMENTS AND REPEAL**

**23. *Repeal of Farm Produce Wholesale Act 1990***

**The Farm Produce Wholesale Act 1990 is repealed.**

**24. *Transitional and savings provisions***

(1) Any reference in any indemnity lodged under section 21 of the **Farm Produce Wholesale Act 1990** before the commencement of section 5 of this Act to the Department of Agriculture and Resources in relation to the advancement of amounts under the indemnity is deemed to be a reference to the Melbourne Market Authority.

(2) Despite section 23, if a determination under section 22 of the **Farm Produce Wholesale Act 1990** could have been made in respect of the pecuniary loss of a producer and the Melbourne Market Authority has received written notice of that loss before 30 June 1998, the Authority may make such a determination and certify the loss as if it were the Registrar under and subject to that Act as in force immediately before its repeal.

---

---

*Farm Produce Wholesale (Amendment) Act 1996*  
*Act No.*

---

**NOTES**

By Authority. Government Printer for the State of Victoria.

