

Queensland



**HORTICULTURE
LEGISLATION
AMENDMENT ACT 1995**

Act No. 47 of 1995

Queensland



HORTICULTURE LEGISLATION AMENDMENT ACT 1995

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Queensland



Horticulture Legislation Amendment Act 1995

Act No. 47 of 1995

An Act to amend the *City of Brisbane Market Act 1960* and the *Farm Produce Marketing Act 1964*.

[Assented to 22 November 1995]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Horticulture Legislation Amendment Act 1995*.

PART 2—AMENDMENT OF CITY OF BRISBANE MARKET ACT 1960

Act amended in pt 2

2. This part amends the *City of Brisbane Market Act 1960*.

Insertion of new pt 1 heading

3. Before section 1—

insert—

‘PART 1—PRELIMINARY’.

Omission of s 2 (Powers etc. of Brisbane City Council with respect to markets abrogated)

4. Section 2—

omit.

Amendment of s 3 (Exemption from Act)

5.(1) Section 3, ‘The Governor in Council may, by regulation,’—

omit, insert—

‘A regulation may’.

(2) Section 3—

renumber as section 2.

Amendment of s 4 (Meaning of terms)

6.(1) Section 4, heading—

omit, insert—

‘Definitions’.

(2) Section 4, definitions **“Area”, “Fruit”, “Market”, “Trust” and “Vegetables”**—

omit.

(3) Section 4—

insert—

‘**“authority”** means the Brisbane Market Authority.

“Brisbane” means the area of the City of Brisbane.

“Brisbane market” means the market established under this Act.

“other trade and commerce” includes flower shops, petrol stations, trash and treasure markets and other non-fruit and vegetable businesses.

“policy council” means the Horticulture Industry Policy Council.

“selection committee” see section 13.’.

(4) Section 4, ‘Any reference’ to ‘appurtenant to such public market.’—

omit.

(5) Section 4 as amended—

renumber as section 3.

Replacement of ss 5–12

7. Sections 5 to 12—

omit, insert—

‘PART 2—THE BRISBANE MARKET AUTHORITY

‘Division 1—Establishment of authority

‘Establishment

‘4. An authority called the Brisbane Market Authority is established.

‘Authority is a body corporate

‘5.(1) The authority—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued in its corporate name.

‘(2) The authority does not represent the State.

‘(3) The authority is an exempt public authority under the Corporations Law.

‘Division 2—Functions and powers of authority

‘Functions

‘6.(1) The authority must maintain a market in Brisbane.

‘(2) The purposes of the Brisbane market are—

- (a) to provide a place to sell and store fruit and vegetables; and
- (b) to provide accommodation and facilities for the conduct of other trade and commerce at the market.

‘(3) The authority also has other functions given to it under this Act or another Act.

‘General powers

‘7.(1) The authority has, for or in connection with the performance of its functions, all the powers of a natural person, and may, for example—

- (a) provide accommodation at the Brisbane market for any person to carry on trade or commerce, including, for example—
 - (i) as a wholesaler; and
 - (ii) by storing farm products, fruit and vegetables; and
 - (iii) by buying fruit and vegetables wholesale for the purpose of reselling them by wholesale; and
 - (iv) as a retailer; and
- (b) enter into contracts; and
- (c) acquire, hold, deal with and dispose of property; and
- (d) appoint agents and attorneys; and
- (e) make charges for services and facilities it supplies; and
- (f) join and take part in industry associations; and
- (g) do anything else necessary or convenient to be done for, or in connection with, the performance of its functions.

‘(2) Without limiting subsection (1), the authority has the powers given to it under this or another Act.

‘(3) The authority may exercise its powers inside and outside Queensland.

‘(4) Without limiting subsection (2), the authority may exercise its powers outside Australia.

‘Delegation

‘8. The authority may delegate its powers to a committee, member or employee of the authority.

Division 3—Powers of Minister**‘Power of Minister to notify authority of public sector policies**

‘9.(1) The Minister may give the authority written notice of a public sector policy that is to apply to the authority if the Minister is satisfied it is necessary to give the notice in the public interest.

‘(2) The authority must ensure the policy is carried out.

‘(3) Before giving the notice, the Minister must—

- (a) consult with the authority; and
- (b) ask the authority to advise whether, in its opinion, carrying out the policy would not be in its financial interest.

‘(4) The Minister must cause a copy of the notice to be gazetted within 21 days after it is given.

‘Power of Minister to give directions in public interest

‘10.(1) The Minister may give the authority a written direction if the Minister is satisfied it is necessary to give the direction in the public interest because of exceptional circumstances.

‘(2) The authority must ensure the direction is complied with.

‘(3) Before giving the direction, the Minister must—

- (a) consult with the authority; and
- (b) ask the authority to advise whether, in its opinion, complying with the direction would not be in its financial interest.

‘(4) The Minister must cause a copy of the direction to be gazetted within 21 days after it is given.

‘Additional matters to be included in annual report

‘11. Each annual report of the authority must include—

- (a) particulars of the impact on its financial position of any notices and directions given to it by the Minister under this division that relate to the relevant financial year; and

- (b) a copy of each notice and direction and an outline of the action taken by the authority in response to the notice or direction.

Division 4—Membership of authority

‘Composition of authority

‘12.(1) The authority consists of the following members—

- (a) a chairperson with a successful record in business management;
- (b) 1 person with knowledge of and experience in fruit and vegetable growing;
- (c) 1 person with knowledge of and experience in fruit and vegetable wholesaling;
- (d) 1 person with knowledge of and experience in fruit and vegetable buying;
- (e) 3 persons not directly employed in the fruit and vegetable industry with knowledge of and experience in marketing, finance, economics, infrastructure development and maintenance, public administration or industrial relations.

‘(2) The members of the authority are to be appointed by the Governor in Council.

‘(3) The members other than the chairperson are to be nominated by a selection committee.

‘(4) The chairperson may be appointed either full-time or part-time.

‘Selection committee

‘13.(1) Before an appointment of a member other than the chairperson is made, the Minister must establish a selection committee to nominate the member.

‘(2) The committee is to consist of a chairperson and 6 other members appointed by the Minister.

‘(3) The chairperson is to be a person who, in the Minister’s opinion, is suitable to act as an independent chairperson of the selection committee.

‘(4) The other 6 members—

- (a) are to be appointed after consultation with the policy council; and
- (b) must consist of 2 persons representing each of the following interests—
 - (i) fruit and vegetable growers;
 - (ii) fruit and vegetable wholesalers and the farm produce trade;
 - (iii) fruit and vegetable buyers and retailers.

‘(5) Members may be members of the policy council.

‘(6) The chairperson of the selection committee is entitled to be paid by the authority the fees and allowances decided by the Governor in Council.

‘**Selection of members for appointment**

‘**14.(1)** The Minister may give the selection committee written directions about the procedures and criteria to be followed or applied in selecting nominees for appointment to the authority, and the time within which the nominations are to be made.

‘(2) However, a direction may not require the committee to nominate a particular person for appointment as a member of the authority.

‘(3) A person is not eligible to be nominated for appointment as a member of the authority if the person is—

- (a) a member of the policy council; or
- (b) a member of the committee; or
- (c) a chairperson, deputy chairperson or chief executive officer (regardless of the title by which the person is known) of an organisation representing—
 - (i) fruit and vegetable growers; or
 - (ii) fruit and vegetable wholesalers or the farm produce trade; or
 - (iii) fruit and vegetable buyers or retailers.

‘(4) If the selection committee fails to make a nomination or follow the procedures or apply the criteria of selection directed by the Minister, the Minister may nominate a person for appointment.

‘(5) A nomination made by the Minister under subsection (4) is taken to have been made by the selection committee.

‘Duration of appointment

‘15.(1) A member of the authority is to be appointed for a term of not longer than 3 years.

‘(2) The office of a member of the authority becomes vacant if the member—

- (a) resigns by signed notice to the Minister; or
- (b) is absent from 3 consecutive meetings of the authority without the authority’s leave and without reasonable excuse; or
- (c) is convicted of an indictable offence or an offence against this Act; or
- (d) becomes employed by, or a contractor of, the authority; or
- (e) is removed from office by the Governor in Council under subsection (3) or (4).

‘(3) The Governor in Council may remove a member from office if the member—

- (a) engages in misbehaviour; or
- (b) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (c) is incompetent; or
- (d) becomes a person who, because of section 14(3),¹ would not be eligible to be nominated for appointment as a member of the authority; or
- (e) uses the office for party political purposes; or
- (f) causes the authority’s funds or reputation to be used for party political purposes.

¹ Section 14 (Selection of members for appointment)

‘(4) The Governor in Council may remove all or any members of the authority from office if the authority—

- (a) does not carry out a policy notified under section 9² or comply with a direction given under section 10³; or
- (b) does not comply with its obligations under the *Financial Administration and Audit Act 1977* for the preparation and submission of reports and plans; or
- (c) uses its funds or reputation for party political purposes.

‘Fees and allowances

‘16. The members of the authority are entitled to be paid by the authority the fees and allowances decided by the Governor in Council.

‘Division 5—Proceedings of authority

‘Time and place of meetings

‘17.(1) Meetings of the authority are to be held at the times and places it decides.

‘(2) However, the authority must meet at least once every 3 months.

‘(3) The chairperson—

- (a) may at any time call a meeting of the authority; and
- (b) must call a meeting if asked by at least 4 members.

‘Procedures governing conduct of proceedings of the authority

‘18.(1) The chairperson is to preside at all meetings at which the chairperson is present.

‘(2) If the chairperson is absent, the member chosen by the majority of the members present is to preside.

² Section 9 (Power of Minister to notify authority of public sector policies)

³ Section 10 (Power of Minister to give directions in public interest)

‘(3) At a meeting of the authority—

- (a) 4 members form a quorum; and
- (b) a question is to be decided by a majority of the votes of the members present and voting; and
- (c) each member present has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote.

‘(4) The authority may conduct its proceedings (including its meetings) as it considers appropriate.

‘(5) The authority may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another form of communication.

‘(6) A member who takes part in a meeting of the authority under permission under subsection (5) is taken to be present at the meeting.

‘(7) If—

- (a) all members of the authority agree, in writing, to a proposed resolution; and
- (b) notice of the proposed resolution was given under procedures approved by the authority;

the resolution is a valid resolution of the authority, even though it was not passed at a meeting of the authority.

‘Disclosure of interests

‘19.(1) This section applies to a member of the authority if—

- (a) the member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the authority; and
- (b) the interest could conflict with the proper performance of the member’s duties about the consideration of the issue.

‘(2) As soon as practicable after the relevant facts come to the member’s knowledge, the member must disclose the nature of the interest to a meeting of the authority.

‘(3) The disclosure must be recorded in the authority’s minutes and, unless the authority otherwise decides, the member must not—

- (a) be present when the authority considers the issue; or
- (b) take part in a decision of the authority on the issue.

‘(4) Another member who also has a direct or indirect financial interest in the issue must not—

- (a) be present when the authority is considering its decision under subsection (3); or
- (b) take part in making the decision.

‘Minutes

‘20. The authority must keep minutes of its proceedings.

‘Division 6—Staff

‘Staff generally

‘21.(1) The authority may engage the employees it considers necessary to perform its functions.

‘(2) The terms of employment of the authority’s employees are to be decided by it.

‘(3) However, subsection (2) has effect subject to any relevant industrial award or agreement.

‘Chief executive officer and secretary

‘22.(1) The authority must employ a chief executive officer and a secretary, but both positions may be held by the same person.

‘(2) The chairperson is not eligible to be employed as the chief executive officer.

‘Division 7—Other matters about the authority**‘Seal**

‘23. Judicial notice must be taken of the imprint of the authority’s seal appearing on a document, and the document must be presumed to have been properly sealed unless the contrary is proved.

‘Authority committees

‘24.(1) The authority may establish committees to assist or advise it.

‘(2) The authority may decide—

- (a) the functions of a committee; and
- (b) the membership of a committee; and
- (c) how a committee is to operate.

‘(3) A member of a committee is entitled to be paid by the authority the fees and allowances decided by the authority.

‘(4) The authority must give proper consideration to a committee’s recommendations.

‘Application of certain Acts

‘25.(1) The authority is—

- (a) a unit of public administration under the *Criminal Justice Act 1989*; and
- (b) an agency under the *Equal Opportunity in Public Employment Act 1992*; and
- (c) a statutory body under the *Financial Administration and Audit Act 1977*; and
- (d) a public authority under the *Libraries and Archives Act 1988*; and
- (e) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

‘Strategic plan

‘26. The authority must—

- (a) prepare a strategic plan in accordance with the public finance standards issued under the *Financial Administration and Audit Act 1977*, section 46L;⁴ and
- (b) consult with the policy council about the strategic plan.

‘Public Sector Management Commission Act 1990 not to apply

‘27. The *Public Sector Management Commission Act 1990* does not apply to the authority or its employees.’.

Renumbering of s 12A

8. Section 12A—

renumber as section 28.

Omission of ss 13–16A

9. Sections 13 to 16A—

omit.

Replacement of s 17

10. Section 17—

omit, insert—

‘Carrying on business as a wholesaler other than in market prohibited

‘29.(1) A person must not carry on business as a wholesaler in Brisbane other than in the Brisbane market.

Maximum penalty—

- (a) for a first offence—20 penalty units;

⁴ Section 46L (Public finance standards)

(b) for a second or subsequent offence—100 penalty units.

‘(2) However, if the authority is satisfied—

- (a) that a person (the “**wholesaler**”) carries on, on the person’s own behalf, the business of buying fruit or vegetables wholesale for the purpose of the resale of the fruit and vegetables by wholesale to persons who in turn, sell them by retail in the course of carrying on the business of selling by retail fruit or vegetables; and
- (b) that, on the resale by wholesale, the wholesaler delivers the fruit and vegetables to the buyer at the place where the buyer carries on the business of selling fruit and vegetables by retail; and
- (c) that the wholesaler obtains in the Brisbane market all fruit and vegetables so supplied by the wholesaler to any person who sells them;

the authority may exempt the wholesaler from subsection (1) in relation to that business of the wholesaler.

‘(3) The exemption may be given on conditions stated in it, and may be for the term stated in it.

‘(4) The authority may cancel the exemption at any time, whether or not it was given for a stated term and, if so, whether or not the stated term has ended.’.

Replacement of ss 18–25B

11. Sections 18 to 25B—

omit, insert—

‘PART 3—REVIEW OF ADMINISTRATIVE DECISIONS

‘Application to authority for reconsideration of administrative decisions

‘**30.(1)** A person aggrieved by a decision of the authority of an

administrative character may apply to the authority for reconsideration of the decision.⁵

‘(2) An application must be made in writing and set out in detail the grounds on which the applicant seeks reconsideration of the decision.

‘(3) A decision made by the authority on an application for reconsideration under this section cannot be the subject of a further application for reconsideration of the decision.

‘Powers of authority on an application under this part

‘31. The authority may on an application under section 30⁶ confirm, amend or reverse the decision subject to the application.

‘Right to appeal to the Magistrates Court

‘32.(1) A person aggrieved by a decision of the authority on a reconsideration under section 31 may appeal against the decision.

‘(2) The appeal may be made to the Magistrates Court nearest the place where the aggrieved person lives, or carries on a business, or proposes to carry on a business, affected by the decision.

‘How to start appeal

‘33.(1) An appeal is started by—

- (a) filing a written notice of appeal with the clerk of the court; and
- (b) serving a copy of the notice on the authority.

‘(2) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against.

⁵ Under the *Judicial Review Act 1991*, part 4, a person aggrieved by an administrative decision of the authority can also request it to provide a written statement of reasons for the decision, if they were not given. See the *Acts Interpretation Act 1954*, section 27B for what the authority must set out in those reasons.

⁶ Section 30 (Application to authority for reconsideration of administrative decisions)

‘(3) The court may at any time extend the period for filing the notice of appeal.

‘(4) The notice of appeal must state the grounds of appeal.

‘Stay of operation of decisions

‘34.(1) A court to which an appeal is made has power to grant a stay of the decision appealed against for the purpose of securing the effectiveness of the appeal.

‘(2) A stay—

- (a) may be granted on conditions; and
- (b) has effect for the period specified by the court; and
- (c) may be revoked or amended by the court.

‘(3) The period of a stay specified by the court must not extend past the time the court decides the appeal.

‘(4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

‘Hearing procedures

‘35.(1) An appeal is to be a new hearing, unaffected by the decision appealed against.

‘(2) In deciding an appeal, the court—

- (a) is not bound by the rules of evidence; and
- (b) must observe natural justice; and
- (c) may hear the appeal in court or chambers.

‘Powers of court on appeal

‘36.(1) In deciding an appeal, the court may—

- (a) confirm the decision appealed against; or
- (b) set aside the decision and substitute another decision; or

- (c) set aside the decision and return the matter to the authority with directions that the court considers appropriate.

‘(2) In substituting another decision, the court has the same powers as the authority.

‘(3) If the court substitutes another decision, the substituted decision is taken, for the purposes of this Act, to be the decision of the authority.

‘Further appeal to District Court on questions of law only

‘37. A party aggrieved by the decision of a Magistrates Court may appeal to a District Court, but only on a question of law.

‘PART 4—MISCELLANEOUS’.

Renumbering of ss 25C–25H

12. Sections 25C to 25H—
renumber as sections 38 to 43.

Omission of s 26 (Regulations)

13. Section 26—
omit.

Amendment and renumbering of s 27 (By-laws)

- 14.(1) Section 27, heading—
omit, insert—

‘By-law making power’.

- (2) Section 27(1), words before paragraph (a)—
omit, insert—

‘44.(1) The authority may make by-laws under this Act.

‘(2) A by-law may be made for or about—’.

(3) Section 27(1)(a) to (c), ‘The Area of the City of’—

omit.

(4) Section 27(1)(a) to (c) and (d)(v) to (xiii), ‘public market established under this Act’—

omit, insert—

‘Brisbane market’.

(5) Section 27(2)(c), ‘the purposes of this paragraph’—

omit, insert—

‘paragraph (1)(c)—’.

(6) Section 27(1)(c), from ‘For’ to ‘such prescribed fruit or vegetables’ (as amended)—

relocate as subsection 27(3).

(7) Section 27(1)(d), ‘For all or any of the following purposes:—’—

omit.

(8) Section 27(1)(d)(ii), ‘officers,’—

omit.

(9) Section 27(1)(d)(vii), ‘officers’—

omit, insert—

‘employees’.

(10) Section 27(1)(d)(xi), from ‘but so’ to ‘1976’—

omit.

(11) Section 27(1)(xiv) and (xv)—

omit, insert—

‘prescribing penalties for breaches of the by-laws of not more than 10 penalty units.’.

(12) Section 27(1)(d)(i) to (xiv), as amended by this Act—

renumber as section 27(2)(d) to (q).

(13) Section 27(1A)(a), after ‘prescribing any offences under the by-laws’—

insert—

‘by the offender or by the owner of any vehicle involved in the offence,’.

(14) Section 27(2)—

renumber as section 27(4).

(15) Section 27(3) and (4)—

omit, insert—

‘(5) A by-law must be approved by the Governor in Council.’⁷.

(16) Section 27 as amended—

renumber as section 44.

Replacement of s 28

15. Section 28—

omit, insert—

‘Prosecution of offences

‘45. An offence against this Act is a summary offence.’.

Renumbering of s 28A (General offence and penalty)

16. Section 28A, as amended—

renumber as section 46.

Amendment of s 28B (Facilitation of proof)

17.(1) Section 28(B)(1)(a), ‘or an authorized officer or officer of the Trust’—

omit, insert—

⁷ A by-law is subordinate legislation (see *Statutory Instruments Act 1992*, sections 7, 8(b)(i) and 9(1)(a))

‘, or an employee, or authorised employee, of the authority’.

(2) Section 28B(1)(b), ‘ or an authorized officer of the Trust’—

omit, insert—

‘, or an authorised employee of the authority,’.

(3) Section 28B(2)(b)(iii), ‘or any officer thereof’—

omit, insert—

‘or an employee of the authority’.

(4) Section 28B, ‘market’—

omit, insert—

‘Brisbane market’.

(5) Section 28B, as amended—

renumber as section 47.

Insertion of new s 48

18. After section 28B—

insert—

‘Regulations

‘**48.(1)** The Governor in Council may make regulations under this Act.

‘**(2)** A regulation may—

(a) impose fees; and

(b) create offences and prescribe penalties of not more than 10 penalty units for each offence.’.

Insertion of new pt 5

19. Before the schedule—

insert—

‘PART 5—TRANSITIONAL PROVISIONS

‘Definitions for pt 5

‘49.(1) In this part—

“changeover day” means—

- (a) the day that is 6 months after the commencement; or
- (b) if an earlier day is fixed by regulation—the earlier day.

“commencement” means the commencement of this part.

“former authority” means the Brisbane Market Trust.

‘(2) This section expires 6 months after the changeover day.

‘Continuation of former authority

‘50.(1) Until the changeover day, the former authority continues in existence and may exercise the functions and powers of the authority.

‘(2) The authority may, before the changeover day, make by-laws to have effect on or after the changeover day.

‘(3) Until the changeover day, a reference in this Act to the authority includes a reference to the former authority.

‘(4) Until the changeover day, the Act as it was in force immediately before the commencement continues to apply to the former authority, but applies subject to this part.

‘(5) On the changeover day, the former authority is dissolved and its members go out of office.

‘(6) This section expires on the changeover day.

‘Vesting of assets in the authority

‘51.(1) On the commencement, the assets, rights and liabilities of the former authority (including those under any contract or lease between the former authority and anyone) vest in the authority.

‘(2) This section expires on the changeover day.

‘Pending legal proceedings

‘52.(1) A legal proceeding by or against the former authority that has not been finished before the commencement may be continued and finished by or against the authority.

‘(2) This section expires on the changeover day.

‘Existing staff

‘53.(1) On the commencement, a person who immediately before the commencement was an officer or employee of the former authority becomes an employee of the authority.

‘(2) The person remains entitled to all existing and accruing rights of employment.

‘(3) This section expires on the changeover day.

‘Existing superannuation arrangements and schemes

‘54.(1) A superannuation arrangement or scheme to which the former authority was contributing at the commencement is taken to be a superannuation scheme contributed to by the authority under this Act.

‘(2) This section expires on the changeover day.

‘Market officers

‘55.(1) A person who immediately before the commencement was a market officer of the former authority whose duty was to ensure the orderly conduct of business within Brisbane market (regardless of the title by which the person was known) is taken to be appointed as a market officer of the authority.

‘(2) This section expires on the changeover day.

‘Existing approvals, permits and licences

‘56.(1) An approval, permit or licence of the former authority in force immediately before the commencement remains in force on the same

terms, subject to amendment or repeal under this Act, for 1 year after the commencement.

‘Duty to assist transfer of property

‘**57.(1)** The registrar of titles and all other persons who are required or authorised to keep a register about dealings in property must, at the request of the authority make in the register all entries necessary to record the vesting of property in the authority by section 51.⁸

‘(2) Fees and charges are not payable for a request under subsection (1).

‘Expiry of part

‘**58.** This part expires 1 year after the commencement.

‘References to the Trust

‘**59.(1)** In this Act, a reference to the Trust is a reference to the authority.

‘(2) This section expires on the date of the first reprint of the Act produced under the *Reprints Act 1992*.’.

‘Numbering and renumbering of Act

‘**60.** In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.’.

Omission of schedule

20. Schedule—

omit.

⁸ Section 51 (Vesting of assets in the authority)

PART 3—AMENDMENTS OF FARM PRODUCE MARKETING ACT 1964

Act amended in pt 3

21. This part amends the *Farm Produce Marketing Act 1964*.

Insertion of new pt 1 heading

22. Before section 1—

insert—

‘PART 1—PRELIMINARY’.

Omission of s 2 (Commencement)

23. Section 2—

omit.

Amendment of s 5 (Interpretation)

24.(1) Section 5, heading—

omit, insert—

‘Definitions’.

(2) Section 5(1), definitions “**Court**”, “**Deputy Registrar**”, “**District**”, “**Insurer**” and “**Registrar**”—

omit.

(3) Section 5(1)—

insert—

“**approved form**” see section 51.⁹

“**deputy registrar**” means the deputy registrar of farm produce commercial sellers.

⁹ Section 51 (Approval of forms).

“insurer” means—

- (a) a person authorised to carry on insurance business under the *Insurance Act 1973* (Cwlth); or
- (b) a financial institution; or
- (c) a foreign society under the Financial Institutions Code.

“policy council” means the Horticulture Industry Policy Council.

“registrar” means the registrar of farm produce commercial sellers.

“State” includes a Territory’.

(4) Section 5(1), definition **“Farm Produce Merchant”**, words after ‘retail’—

omit.

(5) Section 5(2)—

omit.

Insertion of new pt 2 heading

25. After section 5—

insert—

‘PART 2—FARM PRODUCE COMMERCIAL SELLERS’.

Replacement of s 6

26. Section 6—

omit, insert—

‘Registrar and other officers

‘6.(1) There is to be a registrar of farm produce commercial sellers appointed by the Governor in Council.

‘(2) The registrar is to be appointed under the *Public Service Management and Employment Act 1988*.

‘(3) A deputy registrar may be appointed under the *Public Service Management and Employment Act 1988*.’.

Amendment of s 7 (Application for farm produce commercial seller’s license)

27.(1) Section 7(2)(a), ‘prescribed form’—

omit, insert—

‘approved form’.

(2) Section 7(2)(c)—

omit.

(3) Section 7(3)(e)—

omit.

Amendment of s 8 (Renewal of license)

28.(1) Section 8(1), ‘form prescribed’—

omit, insert—

‘approved form’.

(2) Section 8(1)(a), ‘prescribed form’—

omit, insert—

‘approved form’.

Amendment of s 9 (Appeal against refusal to grant or renew license)

29.(1) Section 9(1) ‘court’—

omit, insert—

‘Magistrates Court’.

(2) Section 9(2)(d)—

omit.

‘(3) Section 9(4) and (5)—

omit.

Amendment of s 12 (Requirements on cancellation or suspension)

30. Section 12(1) and (2), headings—

omit.

Amendment of s 15 (Appeals with respect to cancellation or suspension of licenses)

31. Section 15, third sentence—

omit.

Amendment of s 20 (Certain persons not to be employed by licensee)

32.(1) Section 20(1) to (3), ‘Queensland or in any other State or any Territory of the Commonwealth of’—

omit.

(2) Section 20(7)—

omit, insert—

‘(7) In this section—

‘ **“licence”** includes any licence (however described) similar to a licence that is issued under the law of another State.’.

Amendment of s 21 (Carrying on business without license)

33. Section 21(2), words after paragraph (d)—

omit, insert—

‘commits an offence.

Maximum penalty—20 penalty units or 6 months imprisonment.’.

Amendment of s 22 (Restriction on farm produce commercial seller purchasing consignments)

34. Section 22(5)—

omit, insert—

‘(5) A person who contravenes this section commits an offence.

Maximum penalty—100 penalty units.’.

Amendment of s 22B (Requirement to register associated persons)

35. Section 22B(5)—

omit, insert—

‘(5) A person who contravenes this section commits an offence.

Maximum penalty—100 penalty units.’.

Amendment of s 24 (Purchase memorandum note or other record)

36.(1) Section 24(1), ‘prescribed form’—

omit, insert—

‘approved form’.

(2) Section 24(4)—

omit, insert—

‘(4) A farm produce commercial seller who contravenes this section commits an offence.

Maximum penalty—

(a) for a first offence—40 penalty units; or

(b) for a second or later offence—100 penalty units.’.

Amendment of s 25 (Account of moneys received and their application)

37. Section 25(2), words after ‘particular’—

omit, insert—

‘commits an offence.

‘Maximum penalty—40 penalty units.’.

Amendment of s 26 (Payment to vendor by farm produce commercial seller)

38.(1) Section 26(3)—

omit, insert—

‘(3) A farm produce commercial seller who contravenes this section commits an offence.

Maximum penalty—40 penalty units.’.

Amendment of s 27 (Payment of moneys to principal)

39. Section 27, ‘\$2 000’—

omit, insert—

‘40 penalty units’.

Amendment of s 30 (Banking of moneys)

40.(1) Section 30(1), after ‘account’—

insert—

‘with a financial institution’.

(2) Section 30(6), ‘bank account’—

omit, insert—

‘account’.

(3) Section 30(6), ‘the bank’—

omit, insert—

‘the financial institution’.

(4) Section 30(9)—

omit.

(5) Section 30(12)—

omit, insert—

‘(12) A farm produce commercial seller who contravenes this section commits an offence.

Maximum penalty—40 penalty units.’.

Amendment of s 31 (Duty of bank manager)

41.(1) Section 31, ‘bank’—

omit, insert—

‘financial institution’.

(2) Section 31, second sentence—

omit, insert—

‘(2) A manager or other principal officer of a financial institution who contravenes subsection (1) commits an offence.

Maximum penalty—10 penalty units.’.

Amendment of s 32 (Inspection, audit etc. by registrar etc.)

42. Section 32(10)—

omit, insert—

‘(10) A person who contravenes subsection (1) commits an offence.

Maximum penalty—40 penalty units.’.

Amendment of s 33 (Audit of farm produce accounts etc.)

43.(1) Section 33(3)(c), ‘\$1 000.’—

omit, insert—

‘20 penalty units.’.

(2) Section 33(6)—

omit, insert—

‘(6) A farm produce commercial seller who contravenes this section commits an offence.

Maximum penalty—20 penalty units.’

Amendment of s 36 (Registered office of licensee)

44.(1) Section 36(1)(b), ‘form prescribed’—

omit, insert—

‘approved form’.

(2) Section 36(5), words after ‘of business’—

omit, insert—

‘commits an offence.

Maximum penalty—10 penalty units.’

Amendment of s 39 (Offence to demand excess or improper remuneration)

45. Section 39, first sentence, words after ‘so prescribed,’—

omit, insert—

‘commits an offence.

Maximum penalty—20 penalty units.’

Amendment of s 42 (Entries in register)

46. Section 42(1) and (2), headings—

omit.

Omission of s 43 (Appropriation of fees etc.)

47. Section 43—

omit.

Insertion of new pt 3

48. After section 45—

insert—

**‘PART 3—THE HORTICULTURE INDUSTRY
POLICY COUNCIL**

‘Establishment of policy council

‘46. A council called the Horticultural Industry Policy Council is established.

‘Functions

‘46A. The policy council has the following functions—

- (a) to address, and advise on, the long-term strategic issues facing the industry, and to develop appropriate policy responses;
- (b) to examine, and make recommendations to the Minister on, industry issues, either on the council’s own initiative or if asked by the Minister or the authority;
- (c) to examine, and make recommendations to the Minister on, the authority’s strategic plan;
- (d) to find out industry views on industry administration, and give them to the Minister;
- (e) assist in the selection of members of the authority;
- (f) to examine the State’s legislation about horticulture and make recommendations to the Minister about—
 - (i) its operation; and
 - (ii) the achievement of its objectives.

‘Composition

‘46B.(1) The policy council consists of—

- (a) the Minister or the Minister's nominee (who is to be chairperson of the council); and
- (b) the other persons the Minister considers necessary and appropriate to represent adequately all sectors of the industry, and appoints to membership of the council.

'(2) The conditions on which members of the policy council hold office are to be as decided by the Minister.'

'Meetings

'46C.(1) The policy council may meet whenever it is necessary to transact its business.

'(2) However, the council must meet at least once every 6 months.

'(3) The Minister—

- (a) may at any time call a meeting of the council; and
- (b) must call a meeting if asked by at least three-quarters of the council members.

'Policy council committees

'46D.(1) The policy council may establish committees to advise it.

'(2) The council may decide—

- (a) the functions of a committee; and
- (b) the membership of a committee; and
- (c) how the committee is to operate.'

Insertion of new pt 4 heading

49. Before section 47—

insert—

'PART 4—MISCELLANEOUS'.

Amendment of s 47 (Proceedings evidence etc.)

50.(1) Section 47, heading—

omit, insert—

‘Prosecution of offences’.

(2) Section 47(1) to (3)—

omit, insert—

‘47.(1) An offence against this Act is a summary offence.’.

Amendment of s 48 (Offences and penalties)

51.(1) Section 48(2), ‘\$1 000’—

omit, insert—

‘20 penalty units’.

(2) Section 48(3), ‘\$200’—

omit, insert—

‘4 penalty units’.

(3) Section 48(4)—

omit.

Amendment of s 50 (Regulations)

52.(1) Section 50, heading—

omit, insert—

‘Regulation making power’.

(2) Section 50(1)—

omit, insert—

‘50.(1) The Governor in Council may make regulations under this Act.’.

(3) Section 50(2) and (3)—

omit.

(4) Section 50(4), from ‘Without limiting’ to ‘things:—’

omit, insert—

‘A regulation may be made about—’.

(5) Section 50(4)(ix)—

omit.

(6) Section 50(4)(xi), ‘Prescribing particulars’ to ‘charged for such farm produce.’—

omit.

(7) Section 50(4)(xiii), ‘bank’—

omit, insert—

‘financial institution’.

(8) Section 50(4)(xviii), ‘forms of’—

omit.

(9) Section 50(4)(xxi), ‘thereby secured’ to ‘companies and firms’—

omit.

(10) Section 50(4)(xxi), proviso—

omit.

(11) Section 50(4)(xxv), ‘\$500’—

omit, insert—

‘10 penalty units’.

(12) Section 50(4)(xxvii)—

omit.

(13) Section 50(4)(xxviii), ‘, duties,’—

omit.

(14) Section 50(4)(xxix)—

omit.

(15) Section 50, as amended—

relocate as section 53.

Replacement of s 51 (Publication of proclamations)

53. Section 51—

omit, insert—

‘Approval of forms

‘51. The chief executive may approve forms for use under this Act.

‘Transitional provision about forms

‘51A.(1) This section applies if—

- (a) immediately before its commencement, there was a prescribed form for a matter; and
- (b) on the commencement, there is to be an approved form for the matter.

‘(2) Until there is an approved form for the matter, the form that was the prescribed form for the matter immediately before the commencement is taken to be the approved form for the matter.

‘(3) This section expires 6 months after it commences.’.

Insertion of new s 54

54. After section 53—

insert—

‘Expiry of Act

‘54. This Act expires on 31 December 1999.’.