

Queensland



# FARM PRODUCE MARKETING ACT 1964

**Reprinted as in force on 14 December 1999  
(includes amendments up to Act No. 45 of 1999)**

**Reprint No. 2**

This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy

# Information about this reprint

This Act is reprinted as at 14 December 1999. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the Reprints Act 1992, section 26(1) have also been made to correct spelling.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

# Queensland



## FARM PRODUCE MARKETING ACT 1964

### TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title .....	5
5	Definitions .....	5
<b>PART 2—FARM PRODUCE COMMERCIAL SELLERS</b>		
6	Registrar and deputy registrar employed under Public Service Act .....	7
7	Application for farm produce commercial seller's licence .....	7
8	Renewal of licence .....	10
9	Appeal against refusal to grant or renew licence .....	10
10	Cancellation or suspension of licences by court .....	11
11	Cancellation or suspension of licences by all courts .....	13
12	Requirements on cancellation or suspension .....	13
13	Effect of suspension of licence .....	13
14	Ceasing to be licensed .....	14
15	Appeals with respect to cancellation or suspension of licences .....	14
16	Prohibition on use of name where licence cancelled under Act .....	15
17	Appointment of substitute by licensee .....	15
18	Death or insolvency of licensee .....	17
19	Substitution or transfer in exceptional circumstances .....	18
20	Certain persons not to be employed by licensee .....	19
21	Carrying on business without licence .....	21
22	Restriction on farm produce commercial seller purchasing consignments .....	21
22A	Beneficial interest .....	22

*Farm Produce Marketing Act 1964*


---

22B	Requirement to register associated persons . . . . .	24
22C	Restriction on use of premises . . . . .	25
23	Purchase of farm produce . . . . .	25
24	Purchase memorandum note or other record . . . . .	26
24A	Consignment note . . . . .	26
25	Account of moneys received and their application . . . . .	27
26	Payment to vendor by farm produce commercial seller . . . . .	27
26A	Duration of certain agreements . . . . .	28
27	Payment of moneys to principal . . . . .	29
29	When bond may be forfeited . . . . .	29
30	Banking of moneys . . . . .	30
31	Duty of financial institution manager . . . . .	32
32	Inspection, audit etc. by registrar etc. . . . .	32
33	Audit of farm produce accounts etc. . . . .	36
34	Entries in commercial seller's books deemed made by the commercial seller . . . . .	40
35	Books etc. to be kept . . . . .	40
36	Registered office of licensee . . . . .	40
37	Inspection by owner . . . . .	42
38	Restriction on remedy for commission . . . . .	42
39	Offence to demand excess or improper remuneration . . . . .	44
40	Prohibition of contracting out . . . . .	44
41	Register . . . . .	45
42	Entries in register . . . . .	45
44	Civil remedies not affected . . . . .	45
45	Destruction of farm produce . . . . .	45

**PART 3—MINISTERIAL ADVISORY BODIES**

46	Minister may establish advisory bodies . . . . .	46
----	--	----

**PART 4—MISCELLANEOUS**

47	Prosecution of offences . . . . .	46
48	Offences and penalties . . . . .	48
49	Liability for offences by corporations etc. . . . .	48
51	Approval of forms . . . . .	49

*Farm Produce Marketing Act 1964*


---

52	Protection of registrar .....	49
53	Regulation making power .....	49
54	Expiry of Act .....	52
<b>PART 5—TRANSITIONAL PROVISIONS FOR PRIMARY INDUSTRIES LEGISLATION AMENDMENT ACT 1999</b>		
55	Fidelity bonds for issue or renewal of licences .....	53
56	Operation of provisions of Act after expiry .....	53
57	Exemption from expiry of Farm Produce Marketing Regulation 1984, s 14 .....	54

**ENDNOTES**

1	Index to endnotes .....	55
2	Date to which amendments incorporated .....	55
3	Key .....	55
4	Table of earlier reprints .....	56
5	Tables in earlier reprints .....	56
6	List of legislation .....	56
7	List of annotations .....	58



# FARM PRODUCE MARKETING ACT 1964

[as amended by all amendments that commenced on or before 14 December 1999]

**An Act to consolidate and amend the law relating to the licensing of farm produce agents and for other purposes**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Farm Produce Marketing Act 1964*.

### Definitions

5. In this Act—

“**approved form**” see section 51.<sup>1</sup>

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

“**farm produce**” means any fruit or vegetables (including potatoes, pumpkins, onions and swede turnips) and any other article or class of articles declared by regulation to be farm produce for the purposes of this Act.

“**farm produce agent**” means any person who, as an agent, whether on commission or for or in expectation of any fee, gain, or reward, whether alone or in connection with any other business, carries on the business or advertises or notifies that he or she carries on the business of selling farm produce or of a broker or factor of farm produce, but does not include a person employed merely as a clerk or servant, or

---

<sup>1</sup> Section 51 (Approval of forms)

*Farm Produce Marketing Act 1964*

---

any banking company, or a person being a licensed auctioneer conducting a clearing-out sale of the vendor's own farm produce on the vendor's property, or any board constituted under the *Primary Producers' Organisation and Marketing Act 1926*.

**“farm produce commercial seller”** means any person who carries on, or advertises or notifies that he or she carries on business as a farm produce agent or a farm produce merchant.

**“farm produce merchant”** means any person who (whether or not that person carries on any other business) purchases or advertises or notifies that he or she purchases farm produce from the person by whom it was actually produced for resale other than by retail.

**“fidelity bond”** means an agreement of any form whatever under which a person holds himself or herself bound to honour the liabilities of the holder of a licence in the circumstances agreed to.

**“inspector”** means an inspector appointed under and for the purposes of this Act.

**“insurer”** means—

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

**“licence”** means a farm produce commercial seller's licence issued under and for the purposes of this Act.

**“licensee”** means the person for the time being holding a licence.

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

**“sell”** includes barter or exchange and also includes agreeing to sell or offering or exposing for sale, or keeping or having in possession for sale, or receiving, sending, forwarding, or delivering for or on sale, or authorising, causing, permitting, suffering, or attempting any of such acts or things; and **“sale”** has a corresponding meaning.

**“State”** includes a Territory.

## **PART 2—FARM PRODUCE COMMERCIAL SELLERS**

### **Registrar and deputy registrar employed under Public Service Act**

**6.(1)** The registrar of farm produce commercial sellers is to be employed under the *Public Service Act 1996*.

**(2)** A deputy registrar may be employed under the *Public Service Act 1996*.

### **Application for farm produce commercial seller's licence**

**7.(1)** A person who desires to obtain a farm produce commercial seller's licence shall lodge an application with the registrar.

**(2)** Such application shall be in writing and shall—

- (a) be in the approved form;
- (b) state the address of the person's principal place of business;
- (d) be accompanied by—
  - (i) the prescribed fee (which shall be refunded if the application is refused);
  - (ii) the prescribed fidelity bond from an insurer;
  - (iii) in respect of a corporation—a certified copy of its certificate of incorporation;
  - (iv) in respect of an application by a person or persons for a licence in a business name in relation to which person or persons such business name is registered under the *Business Names Act 1962*—a certificate of registration of that business name or such other evidence of application for registration as is acceptable to the registrar provided that the certificate of registration shall be lodged as soon as possible thereafter with the registrar;
  - (v) in respect of a corporation trading under a business name—that set out in subparagraphs (iii) and (iv).

*Farm Produce Marketing Act 1964*

---

(3) A person shall be ineligible to obtain a licence or have the person's name endorsed as an incoming member on a licence in accordance with subsection (9B) if, at any time later than a date 5 years prior to the lodgment of the person's application, such person or, in the case of an application for a licence in a business name, any of the persons in relation to whom such business name is registered under the *Business Names Act 1962* at the date of the lodgment of the application—

- (a) was convicted in Queensland or elsewhere of any indictable offence or of any offence involving fraud on the person's part;  
however, in the case of a conviction elsewhere than in Queensland, the act or omission constituting the offence of which the person has been convicted must be such that had the person done the same act or made the same omission in Queensland he or she would have committed thereby either an indictable offence or an offence involving fraud on the person's part;
- (b) was an undischarged bankrupt;
- (c) assigned the person's estate for the benefit of his or her creditors and did not pay unsecured creditors at least 50c in the dollar;
- (d) held a licence for which the Minister forfeited the prescribed indemnity.

(3A) In addition to subsection 3(a) applying to a corporation, in the case of every corporation, subsection (3)(a) to (d) applies as if any person holding the office of a director or any shareholder assisting in the carrying on of the business of the corporation at the date of the application by the corporation as if that director or shareholder were the applicant for the licence.

(4) Upon receipt of an application, the registrar shall forthwith make such investigation into the application as the registrar thinks appropriate.

(6) If the registrar is satisfied that the applicant is of good fame and character, or in the case of a corporation is of good reputation and may hold a licence, and otherwise is a fit and proper person to be the holder of a licence, the registrar may issue to the applicant a licence in the approved form.

(7) No licence shall be issued to a person under the age of 18 years.

(8) The licence shall—

*Farm Produce Marketing Act 1964*

---

- (a) take effect from the date of the issue thereof, and shall (unless sooner cancelled) expire on 30 June 2000; and
- (b) authorise the licensee to carry on the business of a farm produce commercial seller throughout the State during the currency of the licence, unless the same is sooner cancelled or suspended as hereinafter in this Act provided.

(9) Where a person or persons has or have applied for a licence to be issued in a business name registered in relation to him, her or them under the *Business Names Act 1962*, the registrar if satisfied that the provisions of this section have been complied with, shall issue the licence in such business name.

(9A) The registrar shall endorse or cause to be endorsed on the licence the names of the person or persons specified in the application for the licence and who at the date of the issue of the licence carry on business under such business name.

(9B) Where a licence has been issued in a business name as aforesaid and another person or persons (the **“incoming member or members”**) intend to commence to carry on business under that name in place of or in association with any person or persons in relation to whom the licence is already endorsed the incoming member or members shall first make application in the approved form to the registrar for permission to so carry on business.

(9C) The provisions of this section relating to the application for and the issue of a licence shall with any necessary adaptations apply to and with respect to the application for permission by an incoming member or members and the permission if granted on the hearing of the application.

(9D) If the registrar grants permission to an incoming member or members the registrar shall endorse the licence issued in the name of the relevant business name accordingly.

(9E) In the event of a person whose name is endorsed on a licence issued in a business name ceasing to carry on business under that name it shall be the duty of that person (the **“outgoing member”**) to notify the registrar that he or she has ceased to carry on business; in default of that person failing to so notify within 14 days of ceasing to carry on business it shall be the duty of the other person or persons whose name or names are endorsed on the licence to notify the registrar of the cessation of business of the outgoing

member.

(10) Where a licence has been issued in a business name in pursuance of subsections (9) to (9E) every member whose name is for the time being endorsed on the licence shall be deemed to be thereby licensed to carry on the business of a farm produce commercial seller and shall while the member's name remains endorsed on the licence be liable under this Act accordingly.

(11) The registrar shall give notice in writing to each applicant whose application for a licence is refused which notice shall state the registrar's reason for that refusal.

### **Renewal of licence**

**8.(1)** Every licensee who desires to obtain a renewal of the licence shall, before 1 December in each year lodge with the registrar an application in the approved form accompanied by—

- (a) the prescribed fidelity bond or a certificate, in the approved form, of the renewal of the fidelity bond in respect of the applicant; and
- (aa) evidence of the current registration of the business name in which the application is made (if applicable); and
- (b) the prescribed fee (which shall be refunded if renewal is refused).

(2) The application for renewal shall be dealt with by the registrar and the provisions of section 7 shall, with any necessary adaptations, apply to and with respect to the application for renewal and the licence if renewed.

(3) Where in respect of the renewal of his or her licence a licensee obtains a fidelity bond from an insurer not being the insurer which issued or renewed the fidelity bond in respect of the then subsisting year, the licensee shall accompany the application as aforesaid with that fidelity bond in lieu of the certificate as required pursuant to subsection (1)(a).

### **Appeal against refusal to grant or renew licence**

**9.(1)** A person who feels aggrieved by the refusal of the person's application for a licence or a renewal thereof may, within 28 days after service of the notice of refusal, appeal to the Magistrates Court within the district in which the person's principal place of business is situated and

which is nearest by the most convenient route to that principal place of business.

(2) An appeal may be instituted by—

- (a) lodging with the clerk of the court having jurisdiction, written notice of appeal; and
- (b) serving a copy of that notice on the registrar.

(2A) A notice of appeal shall specify fully the grounds of appeal and the facts upon which the person relies.

(3) An appeal shall be by way of rehearing.

(6) No appeal shall lie against the determination of an appeal by a court under this section, which decision shall be final.

(6A) However, always that nothing in this section shall prevent upon reasonable grounds the refusal of any subsequent application for a licence subsequent to the court's determination.

(7) Notwithstanding that an appeal has been lodged, any refusal, under this Act shall be effective as such until the court makes its determination upon the appeal.

(8) A person who has duly appealed against the refusal to renew the person's licence shall be entitled to carry on business in all respects as if the licence had been renewed until the determination of the appeal.

### **Cancellation or suspension of licences by court**

**10.(1)** A court within the district in which the registered office of a licensee is situated may cancel or suspend (as hereinafter provided) the licence held by that licensee on 1 or more of the following grounds—

- (a) that since the issue of the licence such licensee has—
  - (i) been convicted of an offence against this Act;
  - (ii) done an act or made an omission that would thereby render the licensee ineligible to obtain a licence;
- (b) in addition to paragraph (a), in the case of a corporation, that any person holding the office of a director or any shareholder assisting in the carrying on of the business of the corporation has done an

*Farm Produce Marketing Act 1964*

---

act or made an omission that would render him or her ineligible to obtain a licence;

- (c) that such licence was issued erroneously or in consequence of any false document, statement, or representation, or fraudulent document, statement, or misrepresentation;
- (d) that such licensee is in any other respect or respects not a fit and proper person to continue to hold such licence.

**(1A)** An application for the cancellation or suspension of a licence under subsection (1) may be made by any person (including the registrar, deputy registrar, officer or inspector appointed under and pursuant to this Act) to a justice of the peace who then may summon the licensee to appear to show cause before the court aforesaid why the licence should not be cancelled or suspended as the case may be.

**(1B)** If upon the day and at the time and place specified in the summons the licensee fails to appear in obedience to the summons, then upon proof of the due service of the summons upon the licensee a reasonable time before the time appointed for the licensee's appearance such court may proceed to hear and determine the matter of the complaint in the absence of the licensee.

**(1C)** Upon the hearing of a complaint under subsection (1A), the court may if it thinks fit—

- (a) cancel the licence; or
- (b) suspend the licence for such period as the court in its discretion may order.

**(2)** Where a licensee has been convicted of an offence against this Act and is within 12 months thereafter convicted of a second or any subsequent offence of any kind against this Act (whether against the same or a different provision of this Act) the court, before whom the licensee is charged in respect of the second or subsequent offence, in addition to any other penalty or punishment it may award, may, if it thinks fit, cancel the licence of that licensee or may suspend the licence for such period as the court in its discretion may order.

**(3)** Where, in the case of a licence issued in the name of a business name, it is shown upon application to a court in the district in which the registered office of the business carried on under that business name is situated that a

person whose name is endorsed on the licence has done an act or made an omission specified in subsection (1)(a), the court may order that the name of such person shall be removed from that licence either permanently or for such period as the court deems fit.

(4) The provisions of this section relating to the cancellation or suspension of a licence shall with any necessary adaptations apply to an application made under subsection (3).

### **Cancellation or suspension of licences by all courts**

**11.** Where any court (including the Supreme Court or District Court) is of opinion that any licensee who is a party to any proceeding before such court is not a fit and proper person to continue to hold a licence under this Act it may order—

- (a) that the licence held by such person be cancelled; or
- (b) that the licence be suspended for such period as the court in its discretion may order.

### **Requirements on cancellation or suspension**

**12.(1)** Where a licence has been cancelled or suspended by a court, the registrar or clerk thereof shall notify the registrar within 7 days after such cancellation or suspension, as the case may be.

(2) Where a licence has been cancelled or suspended pursuant to this Act, the person in respect of whom that licence was issued shall forthwith deliver or cause to be delivered that licence to the registrar.

### **Effect of suspension of licence**

**13.** Suspension by or under this Act of any licence—

- (a) shall, whilst such licence is so suspended, have the same effect as the cancellation of the licence;
- (b) shall, whilst such licence is so suspended, prohibit the issuing to the person who held that licence of any licence under this Act;
- (c) shall not, upon the termination of that suspension, extend the

period during which that licence would have remained in force if it had not been so suspended.

### **Ceasing to be licensed**

**14.** Every person shall cease to be the holder of a licence under this Act immediately upon the expiration or cancellation of the person's licence.

### **Appeals with respect to cancellation or suspension of licences**

**15.(1)** Where—

- (a) a licensee has had the licensee's licence suspended or cancelled by the order of any court made under or in pursuance of this Act—that licensee; or
- (b) a court refuses to cancel or suspend the licence upon the application by a person under section 10(1A)—that person;

may appeal against such order or refusal as the case may be—

- (c) where that court is the Supreme Court or District Court—as if the order of that court were a sentence recorded by such court in its criminal jurisdiction;
- (d) where that court is a Magistrates Court—in the same manner as a person appealing against an order of a Magistrates Court;

and any court in determining the appeal, may as it thinks fit, by order—

- (e) where paragraph (a) applies—set aside the order appealed against as from such date as may be specified in its order, or dismiss the appeal; or
- (f) where paragraph (b) applies—cancel or suspend the licence of the licensee complained against, or dismiss the appeal.

**(2)** A memorandum of the determination of the appeal shall be transmitted by the registrar of the court determining the appeal to the registrar.

**Prohibition on use of name where licence cancelled under Act**

**16.(1)** A licensee shall not, without the prior consent in writing of the registrar—

- (a) carry on business as such or advertise or in any manner whatsoever hold out that the licensee carries on business as such—
  - (i) under the name, or a name that is identical with, or closely resembles the name, whereunder a person whose licence has been cancelled under or in pursuance of any provision of this Act was carrying on business as a licensee when his or her licence was cancelled; or
  - (ii) under a name implying or capable of being construed as implying that the licensee is the successor in business, or in any way interested or concerned in continuing the business, as a licensee, of a person whose licence has been cancelled under or in pursuance of any provision of this Act; or
- (b) in connection with the licensee's business or the name of the licensee's business as such, use any word or words associating himself, herself or the business as a licensee in any way whatsoever with a person or the business as a licensee of a person whose licence has been cancelled under or in pursuance of any provision of this Act.

**(2)** However, this section shall not apply in respect of the carrying on by a licensee of the licensee's business as such under the licensee's true name without any addition or adaptation whatsoever and in particular without any words of association as hereinbefore specified in this section.

**Appointment of substitute by licensee**

**17.(1)** Subject to this section, a licensee may at any time during the currency of the licensee's licence appoint in writing as his or her substitute a person approved by the registrar.

**(2)** No person shall be appointed a substitute if that person would, at the date in question—

- (a) be under the age of 18 years; and

*Farm Produce Marketing Act 1964*

---

(b) be ineligible to hold a licence under this Act.

(3) The appointment in writing and application for the approval of the registrar shall be lodged with the registrar and shall be accompanied by the prescribed fee (which shall be refunded if the application is withdrawn or the approval is refused) and by the prescribed fidelity bond in the prescribed amount from an insurer in respect of the proposed substitute, as if the proposed substitute were an applicant for the licence.

(3A) However, in lieu of lodging a fidelity bond in the prescribed amount from an insurer there may be lodged an undertaking by the insurer which issued the fidelity bond lodged by the licensee to hold itself liable under that fidelity bond already lodged by the licensee as if the fidelity bond were in respect of the proposed substitute.

(4) Upon receipt of an application, the registrar shall forthwith make such investigation into the application as the registrar thinks appropriate.

(6) If the registrar is satisfied that the proposed substitute is of good fame and character and otherwise is a fit and proper person to be an applicant for a licence as set out in section 7(3) and (3A), the registrar may approve of the proposed substitute acting as substitute for the licensee during a period approved by the registrar but not extending beyond the date on which the licence in question ordinarily expires, and in such case shall endorse the licence accordingly.

(6A) Thereupon, subject to subsections (7) and (7A) and to the licence remaining in force, during the period so approved the substitute shall be deemed to be the holder of the licence and may act as substitute for the licensee who so appointed the substitute.

(6B) The substitute shall, while he or she is deemed to be the holder of the licence, observe and comply with the provisions of this Act as such licensee and on contravening or failing to comply with any such provisions shall be liable to the same penalty or punishment as if the substitute actually held the licence.

(7) A licensee who has appointed a substitute under this section shall not act as a farm produce commercial seller until the expiration of the period during which the substitute may act as the farm produce commercial seller, unless—

(a) the registrar sooner revokes the registrar's approval of the

substitute; or

- (b) the licensee has delivered to the registrar a notice in writing that the licensee is resuming business personally as the farm produce commercial seller, notwithstanding that the period during which the substitute may so act has not expired.

(7A) Upon the happening of any such event, the substitute shall cease to act as the farm produce commercial seller and shall cease to be deemed to be the holder of the licence.

(8) A court within the district in which the registered office of a licensee is situated may revoke the approval of a substitute at any time on any 1 or more of the grounds upon which a licence may be cancelled under section 10.

(8A) The provisions of sections 10 to 15 with respect to the cancellation or suspension of a licence shall, with any necessary adaptations, apply with respect to the revocation or suspension of an approval of a substitute made under this section.

(8B) The provisions of subsection (8) shall not prejudice or affect any power under this Act to cancel or suspend the licence.

(9) In the event of an undertaking, as referred to in subsection (3A), being lodged, then the Minister shall have full power and authority to forfeit the fidelity bond of the licensee if in the Minister's opinion the approved substitute has committed while acting as licensee an offence against this Act, and notwithstanding that the approved substitute has ceased to act as licensee or has not been convicted of the offence, or has died, or has absconded, or has left the State.

(10) The power and authority of the Minister to forfeit a fidelity bond pursuant to subsection (9) includes power and authority to require an insurer to honour the liabilities of the licensee to the maximum amount of the fidelity bond and the insurer shall, when requested to do so by the Minister, pay the amount required as directed by the Minister.

### **Death or insolvency of licensee**

**18.(1)** Subject to the provisions of this section, where a licensee dies or becomes bankrupt, the licensee's executors or administrators or the trustee of the licensee's estate in bankruptcy may transfer the licensee's licence to

any person approved by the registrar.

(1A) The application for the approval of the registrar shall be lodged with the registrar and shall be accompanied by the prescribed fee (which shall be refunded if the application is withdrawn or the approval refused) and by the prescribed fidelity bond in the prescribed amount from an insurer in respect of the proposed transferee, as if the proposed transferee were an applicant for the licence.

(2) Before giving approval in any case, the registrar shall be satisfied that the requirements of all the provisions of this Act with respect to applications for licences have been complied with by the proposed transferee in the same manner as in the case of an original application for a licence.

(2A) Where the registrar approves of the application, the transferee, upon the licence being transferred to the transferee shall be deemed to be the holder of the licence, and may act as a farm produce commercial seller during the currency thereof.

(3) When a licensee dies, the licensee's executor or administrator may, instead of transferring the licence as hereinbefore provided and subject to any express testamentary disposition or direction of the licensee to the contrary, surrender the licence by notice in writing addressed to and delivered to the registrar.

(4) The registrar, on being satisfied that the person signing such notice is the executor or administrator of the deceased licensee, and upon the lodgment with the registrar of a statutory declaration by the executor or administrator that such surrender is not contrary to any express testamentary disposition or direction of the licensee, shall register the surrender.

(5) Thereupon such licence shall be terminated as from the date of death of the licensee and such executor or administrator shall be entitled, if the fee for such licence had been paid by the deceased licensee out of his or her own moneys, to receive from the consolidated fund a refund of a part of such fee proportionate to the unexpired portion of the period thereof.

### **Substitution or transfer in exceptional circumstances**

**19.(1)** Whenever the registrar is satisfied that, owing to death or serious illness or other exceptional circumstances, a licensee is unable to carry out duties as a licensee, and that it is necessary or convenient that a substitute for

the licensee should have authority to act as licensee, pending an application to the registrar for approval of a transfer of the licence or approval of a substitute, the registrar upon the application of the licensee or any person on behalf of the licensee, or of the executor or administrator of any such deceased licensee may authorise a person nominated by the applicant to act as substitute for the licensee until an application has been made to and has been dealt with by the registrar.

(2) The application for the authority of the registrar shall be accompanied by the prescribed fee (which shall be refunded if the application is withdrawn or the approval refused) and by the prescribed fidelity bond in the prescribed amount from an insurer in respect of the proposed substitute, as if the proposed substitute were an applicant for the licence.

(3) However, in lieu of lodging the fidelity bond in the prescribed amount from an insurer there may be lodged an undertaking by the insurer which issued the fidelity bond lodged by the licensee to hold itself liable under that fidelity bond (if then in force) already lodged by the licensee as if the fidelity bond were in respect of the proposed substitute.

(4) The person to whom the registrar has granted such authority shall, during the currency of such authority, be deemed to be a licensee under and for the purposes of this Act.

(5) Every such authority shall expire at the conclusion of the current year of the licence and any necessary extension of that licence as provided by section 7(8).

### **Certain persons not to be employed by licensee**

**20.(1)** A licensee shall not, except with the approval of the court under this section, and subject to such conditions as the court may impose—

- (a) knowingly employ in any way whatsoever in connection with the licensee's business as a licensee; or
- (b) in the case of a corporation—knowingly have as a director or knowingly engage any person to assist in the carrying on of the business of the corporation;

any person who, in Australia, has been refused a licence, or has had his or her licence cancelled or has been disqualified permanently from holding a licence or has been convicted of an indictable offence.

*Farm Produce Marketing Act 1964*

---

(2) A person who, in Australia, has been refused a licence, or has had the person's licence cancelled or has been disqualified permanently from holding a licence or has been convicted of an indictable offence, shall not participate or be in any way concerned in the business of a licensee except with the approval of the court under this section and subject to such conditions as the court may impose.

(3) An application may be made for the approval of the court to—

- (a) the employment in connection with the business of a licensee; or
- (b) the participation or concern in the business of a licensee;

of a person who, in Australia, has been refused a licence, or has had the person's licence cancelled or has been disqualified permanently from holding a licence or has been convicted of an indictable offence, by that person or the licensee concerned, and the court may in its discretion grant or refuse its approval thereto and if approval is granted to the application the court may impose such conditions with respect to such employment, participation, or concern as it deems fit.

(3A) Any such condition imposed by the court shall be observed by the person or persons to whom that condition is applicable.

(3B) An application under this section shall be made to a court in the district in which the registered office of the licensee is then situated.

(4) The clerk of the court shall forthwith refer any application under this section to the registrar who shall investigate the application so referred and may recommend or oppose the approval of the application accordingly.

(5) The registrar, the deputy registrar, an inspector, or any person authorised in writing by the Minister may appear and be heard (either personally or by counsel or solicitor) on the hearing of any application under this section.

(6) The approval of any application under this section shall, within 14 days after the date of such approval, be notified by the clerk of the court to the registrar.

(7) In this section—

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

**Carrying on business without licence**

**21.(1)** No person shall act as or carry on or advertise or notify that the person acts as or carries on the business of a farm produce commercial seller unless the person is the holder of a farm produce commercial seller's licence under this Act.

**(2)** Any person (not being the holder of a farm produce commercial seller's licence) who—

- (a) acts as or carries on or advertises or notifies that the person acts as or carries on business as a farm produce commercial seller; or
- (b) has any words painted or written or allows to remain unobliterated any words that have been painted or written over or about or near the person's house, window, or premises that could reasonably lead to the belief or supposition that the person is a farm produce commercial seller; or
- (c) places or causes to be placed any placard, board, writing, or thing in the public view to the intent that it may be believed or supposed that the person is a farm produce commercial seller; or
- (d) sends or causes to be sent to any other person any letter, document or writing that could reasonably lead to the belief or supposition by that other person or any person that the person is a farm produce commercial seller;

commits an offence.

Maximum penalty—20 penalty units or 6 months imprisonment.

**(3)** In any proceedings against any person for any breach of subsection (2), such person shall, unless the person produces his or her licence or brings other satisfactory proof of having been licensed at the time when the offence was alleged to have been committed, be deemed to have not been the holder of a licence.

**Restriction on farm produce commercial seller purchasing consignments**

**22.(1)** Subject to this section and section 22B, it shall not be lawful for—

- (a) any farm produce commercial seller acting in the capacity of a

*Farm Produce Marketing Act 1964*

---

farm produce agent, whether directly or indirectly by himself, herself or by any partner or employee, to purchase or be in any way concerned or beneficially interested in the purchase of any farm produce placed in his or her hands or in the hands of any corporation, partnership or firm of which the farm produce commercial seller is a director, member or employee for sale by any principal;

- (b) any employee of a farm produce commercial seller acting in the capacity of a farm produce agent to purchase or be in any way concerned in the purchase of farm produce placed in his or her employer's hands for sale by the owner thereof.

(2) Where any offence against subsection (1) has been committed by any of the persons referred to therein, the farm produce commercial seller or other person shall, upon conviction, and in addition to any other penalty the court may impose, be ordered by the court to account for and pay over to the principal all profits resulting from the purchase in respect of which the offence was committed.

(3) Notwithstanding the provisions of subsection (1)(a) a farm produce commercial seller acting in the capacity of a farm produce agent may, in the circumstances prescribed (but only if such circumstances are prescribed), purchase from his or her principal—

- (a) a large and unannounced consignment which due to its size would cause market disruption if offered for sale at that time;
- (b) the prescribed part of any consignment remaining unsold after a prescribed period.

(4) Notwithstanding the provisions of subsection (1)(b) an employee of a farm produce commercial seller may purchase farm produce for consumption by the employee and his or her dependants.

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

Maximum penalty—100 penalty units.

**Beneficial interest**

**22A.** For the purposes of section 22 a farm produce commercial seller shall be deemed to be beneficially interested in the purchase of farm produce

*Farm Produce Marketing Act 1964*

---

if the person who purchases or on whose behalf the farm produce is purchased is any of the following—

- (a) the spouse or a parent or child of that farm produce commercial seller;
- (b) a corporation (not being a corporation consisting of more than 100 members), body or association of persons, firm or partnership, carrying on business for profit or gain whereof the farm produce commercial seller or the spouse, a parent or child of the farm produce commercial seller is a member or, where the farm produce commercial seller is itself a corporation, that corporation and the corporation that purchases or on whose behalf the farm produce is purchased have 1 or more members in common or 1 or more directors in common or a common manager, secretary or other officer or that corporation is a member of the corporation that purchases or on whose behalf the farm produce is purchased;
- (c) in the case of a corporation that is a farm produce commercial seller—any member thereof, or the spouse, a parent or child of any member thereof;
- (d) in the case of a farm produce commercial seller employed as such by a corporation—that corporation, a member of that corporation employed by it in any business carried on by it, the spouse, a parent or child of such a member, or, if that corporation consists of not more than 100 members, any member thereof, or the spouse, a parent or child of any member thereof;
- (e) in the case of a farm produce commercial seller carrying on business as such as a member of a firm or partnership—any other person who is a member of that firm or partnership, or the spouse, a parent or child of such person;
- (f) any person carrying on for profit or gain a business the income wherefrom or the profits whereof that farm produce commercial seller or the spouse, a parent or child of that farm produce commercial seller has directly or indirectly a right to participate;
- (g) the spouse or a parent or child of an employee of the farm produce commercial seller.

**Requirement to register associated persons**

**22B.(1)** Where a farm produce commercial seller acting in the capacity of a farm produce agent intends to sell farm produce to, or to a person or persons on behalf of, a natural person, corporation, firm, partnership, body or association of persons referred to in section 22A, (the “**associated persons**”) so that upon purchase by or on behalf of such associated persons the farm produce commercial seller is deemed to be beneficially interested pursuant to section 22A, the farm produce commercial seller shall supply the registrar with a list of such associated persons (specifying the categories into which they fall as set out in section 22A and such other information as the registrar may require) and the registrar may if the registrar sees fit register the names supplied.

**(2)** Names of associated persons may be—

- (a) added to or removed from the register by the registrar from time to time at the request in writing of the farm produce commercial seller;
- (b) removed from the register by the registrar as the registrar sees fit provided that where the registrar removes a name the registrar shall upon request supply to the farm produce commercial seller the reasons for removing that name.

**(3)** A farm produce commercial seller acting in the capacity of a farm produce agent may sell farm produce to an associated person and an associated person may purchase that farm produce if—

- (a) the name of such associated person has been and is currently registered with the registrar in accordance with this section; and
- (b) the farm produce commercial seller has not received notification in the approved form from his or her principal directing that his or her farm produce not be sold to an associated person of the farm produce commercial seller;

and not otherwise.

**(4)** An associated person (and in the case of a body or association of persons, firm or partnership, a member or members thereof) shall as soon as possible after a request by the registrar supply the registrar with all books of accounts and other records requested by the registrar which relate to the sale and purchase of farm produce.

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

Maximum penalty—100 penalty units.

### **Restriction on use of premises**

**22C.(1)** A farm produce commercial seller shall not, except with the prior written approval of the registrar, use the premises from which the farm produce commercial seller conducts his or her business as a farm produce commercial seller for any purpose other than the sale of farm produce.

(2) A person (other than the farm produce commercial seller) shall not pack, repack or sell farm produce on the premises of the farm produce commercial seller except on his or her behalf and shall not retain any moneys from the sale of the farm produce.

### **Purchase of farm produce**

**23.(1)** A transaction purporting to be a purchase of farm produce by a farm produce commercial seller acting in the capacity of a farm produce merchant from the person by whom it was actually produced is not a valid purchase of farm produce unless the price for which the farm produce is purchased or the method of determination of the purchase price is fixed by agreement in writing signed by the farm produce commercial seller and that person or is fixed—

- (a) prior to; or
- (b) no later than the close of trading on the next available trading day after;

the delivery of the produce.

(2) A farm produce commercial seller acting in the capacity of a farm produce merchant who purchases farm produce from the person by whom it was actually produced shall not fix the price by reference to any other transaction of that merchant in respect of that farm produce.

(3) Where farm produce is delivered to a farm produce commercial seller under a transaction in which the price has not been fixed in accordance with subsection (1) or has been fixed contrary to subsection (2) the farm produce commercial seller shall be taken to be acting in the capacity of a farm

produce agent.

(4) In any proceeding for the purposes of this section, the onus of proof that the price of farm produce was not fixed by reference to any other relevant transaction shall lie upon the party fixing that price.

### **Purchase memorandum note or other record**

**24.(1)** Every farm produce commercial seller acting in the capacity of a farm produce merchant who purchases for resale any farm produce from the person by whom it was actually produced shall complete at the time when the price or the method of determination of the price is fixed a purchase memorandum note in the approved form or a record in a form approved by the registrar.

(2) A purchase memorandum note completed pursuant to subsection (1) shall be forwarded by the farm produce commercial seller to the person by whom the farm produce was actually produced at the same time as the proceeds of sale are forwarded to the person.

(3) A farm produce commercial seller shall retain for a period of 12 months at his or her principal place of business as such a seller a copy of every purchase memorandum note or record completed by the farm produce commercial seller pursuant to subsection (1).

(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.

### **Consignment note**

**24A.** The registrar shall not be required to investigate a complaint by a person who has forwarded farm produce to a farm produce commercial seller if the registrar is not satisfied that a consignment note containing the prescribed particulars was forwarded with the farm produce.

**Account of moneys received and their application**

**25.(1)** Every farm produce commercial seller acting in the capacity of a farm produce agent shall within the prescribed period after the sale of any farm produce, render to his or her principal an account sales docket (in writing and containing the particulars prescribed) of or relating to such sale or disposal.

**(2)** Every farm produce commercial seller acting in the capacity of a farm produce agent who fails to render such account sales docket within the time limited as aforesaid or who renders such an account sales docket which is false in any material particular commits an offence.

Maximum penalty—40 penalty units.

**Payment to vendor by farm produce commercial seller**

**26.(1)** Every farm produce commercial seller acting in the capacity of a farm produce agent shall within the prescribed period after the sale of any farm produce, pay to his or her principal or to such person as the principal may in writing direct, the amount due to the principal in respect of that sale notwithstanding the fact that the farm produce commercial seller may not have received the proceeds of the sale.

**(2)** Every farm produce commercial seller acting in the capacity of a farm produce merchant shall within the prescribed period after the sale of any farm produce or within such period as is otherwise agreed between the parties pay to the vendor or to such person as the vendor may in writing direct, the amount due to the vendor in respect of that sale.

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

Maximum penalty—40 penalty units.

**(4)** If the farm produce commercial seller convicted of a contravention of or failure to comply with this section is a licensee and the court by which the farm produce commercial seller is convicted thinks that the circumstances of the case warrant the cancellation or suspension of his or her licence it may order that the licence be cancelled or suspended for a period specified by the court, whereupon the licence in question, where it is ordered to be cancelled shall cease to be in force or, where it is ordered to be suspended, shall cease to be in force for the period specified by the court.

*Farm Produce Marketing Act 1964*

---

(5) For the purposes of subsection (2), a period is not a period as is otherwise agreed between the parties if the agreement by the parties—

- (a) is not in writing; and
- (b) has not been signed by the farm produce commercial seller and the vendor.

(6) Notwithstanding anything contained in an agreement, a party to an agreement of a period for the purposes of subsection (2) may rescind the agreement by notice in writing given to the other party.

**Duration of certain agreements**

**26A.(1)** An agreement entered into pursuant to section 23 or 26 by a farm produce commercial seller acting in the capacity of a farm produce merchant and a person who actually produces farm produce shall not continue in force beyond the expiration of the prescribed period after the making of the agreement or the renewal of the agreement in accordance with subsection (2).

(2) An agreement referred to in subsection (1) shall be renewed if—

- (a) the farm produce seller has, at least 30 days (and not more than 60 days) before that date of expiration, given to the person who actually produces the farm produce a notice in writing stating that, unless the agreement is sooner varied or rescinded, the agreement shall continue in force beyond that date of expiration; and
- (b) the person who actually produces the farm produce has not by notice in writing to the farm produce seller rescinded the agreement.

(3) Notwithstanding anything contained in an agreement referred to in subsection (1) and without prejudice to the parties' right to otherwise rescind the agreement, there is an implied condition in each such agreement that any party to the agreement may rescind the agreement which rescission shall take effect upon receipt by the other party of the notice in writing of rescission or at such later date as may be specified in the notice.

(4) For the purposes of subsection (1), in respect of an agreement, the prescribed period is the period prescribed at the time of—

- (a) the making of the agreement; or

(b) the latest renewal of the agreement;  
whichever is the later.

(5) A farm produce commercial seller shall keep a copy of each agreement made by the farm produce commercial seller pursuant to section 23 or 26 at his or her principal place of business.

### **Payment of moneys to principal**

27. Any farm produce commercial seller who has been ordered by any court to pay to any person any moneys received by him or her in respect of a sale shall, if the farm produce commercial seller fails to pay to the person concerned the moneys so ordered to be paid within the time specified in the order or, if no time is specified in the order, then within 14 days after the making of the order, be liable to a penalty not exceeding 40 penalty units and moreover, the adjudicating court may, if the farm produce commercial seller is a licensee under this Act, and if the court thinks the circumstances of the offence so warrant, suspend the licence of the offender for such period as it shall deem proper, or cancel such licence.

### **When bond may be forfeited**

29.(1) The Minister shall have full power and authority to forfeit the fidelity bond of any person who has held a licence, or of any licensee, or of any substitute for a licensee or of any transferee of a licence, who in the Minister's opinion has committed an offence against this Act, notwithstanding that such person, or licensee, or substitute or transferee, as the case may be, has not been convicted of the offence, or has died, or has absconded, or has left the State.

(2) Where the fidelity bond of any licensee is forfeited under this Act, then the licence held by the licensee shall, by virtue of such forfeiture, be and be deemed to be suspended on and from the date upon which such fidelity bond was forfeited and thereafter until the lodgment by the licensee in accordance with the provisions of this Act relating to the security to be given by an applicant for a licence, of a fidelity bond in the prescribed amount from an insurer as required in the case of an applicant for a farm produce commercial seller's licence.

(3) The power and authority of the Minister to forfeit a fidelity bond

pursuant to subsection (1) includes power and authority to require an insurer to honour the liability of the licensee to the maximum amount of the fidelity bond and the insurer shall, when requested to do so by the Minister, pay the amount required to the Minister.

### **Banking of moneys**

**30.(1)** Subject to this section a farm produce commercial seller shall open and maintain an account with a financial institution to be called the ‘farm produce account’ and all moneys received by a farm produce commercial seller in respect of the sale or disposal of any farm produce shall forthwith upon receipt thereof by him or her be paid into that account.

**(2)** Subject to section 26, a farm produce commercial seller shall draw against his or her farm produce account only in respect of the matters set out hereunder—

- (a) in payment of the expenses, commission and other charges of or incidental to the sale or disposal of farm produce which are authorised by this Act;
- (b) in payment of any moneys owing to the farm produce commercial seller by the person on whose behalf sale or disposal was carried out;
- (c) in payment of any moneys paid or advanced by the farm produce commercial seller to the person on whose behalf sale or disposal was carried out;
- (d) in payment by the farm produce commercial seller to the person on whose behalf sale or disposal was carried out, of any moneys remaining from the sale or disposal after payment of the moneys hereinbefore specified;
- (e) in payment to the farm produce commercial seller or the person from whom he or she purchased farm produce in respect of farm produce sold or disposed of by the farm produce commercial seller acting in the capacity of a farm produce merchant;

provided that a farm produce commercial seller shall not draw against his or her farm produce account in accordance with paragraph (e) where such withdrawal would or would be likely to prejudice any payment due in accordance with paragraph (d).

*Farm Produce Marketing Act 1964*

---

(3) A farm produce commercial seller may invest moneys in the farm produce account for the period prior to the time they are required to be paid out of the farm produce account in accordance with this Act in short-term investments approved by the Treasurer and the interest thereon shall be the property of the farm produce commercial seller.

(4) A farm produce commercial seller shall not draw against or cause any payment to be made from his or her farm produce account unless such drawing is in accordance with this Act and made by or on the farm produce commercial seller's cheque and where the cheque is in respect of a payment to the person on whose behalf such sale or disposal was carried out that cheque requires payment to be made to or to the order of the person to whom the sum for which that cheque is drawn is payable, is crossed, and bears across its face the words 'not negotiable'.

(5) A farm produce commercial seller shall immediately notify the registrar in writing should the farm produce account kept by him or her not be able to meet all payments which have become due to persons on whose behalf sale or disposal has been carried out.

(6) Every farm produce commercial seller shall, within 14 days after any account is opened by him or her in accordance with this section, notify the registrar in writing of—

- (a) the name and branch of the financial institution at which the account is to be kept; and
- (b) the name and number of the account; and
- (c) the names of the persons authorised to operate on the account.

(6A) The farm produce commercial seller shall, within 14 days after any change in the particulars set out in subsection 6(a) to (c), notify the registrar in writing of that change.

(7) A farm produce commercial seller shall, if required by the registrar produce the books, statements and papers relating to the account opened by him or her in accordance with this section, showing the state of the account at the date when production is required or showing the state of the account at any time during the period of 12 months prior to that date.

(8) Moneys paid into the account required to be kept in accordance with this section shall not in respect of moneys owed by the farm produce commercial seller acting in his or her capacity as a farm produce agent be

available for payment of the debt of any creditors of the farm produce commercial seller or be liable to be attached or taken in execution under the order or process of any court at the instance of any such creditor.

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

Maximum penalty—40 penalty units.

(13) If the farm produce commercial seller convicted of a contravention of or failure to comply with this section is a licensee and the court by which he or she is convicted thinks that the circumstances of the case warrant the cancellation or suspension of the farm produce commercial seller's licence it may order that the licence be cancelled or suspended for a period specified by the court, whereupon the licence in question, where it is ordered to be cancelled shall cease to be in force or, where it is ordered to be suspended, shall cease to be in force for the period specified by the court.

### **Duty of financial institution manager**

31.(1) It shall be the duty of the manager or other principal officer of a financial institution with which a farm produce commercial seller has deposited any moneys, whether in his or her own account or in any account required by this Act to be maintained, to disclose the existence of each and every such account to the registrar, the deputy registrar, an inspector, or any person authorised by the Minister or appointed by the Minister under section 33(3), upon demand in writing delivered to the manager or principal officer personally by one of those persons and to permit the registrar, deputy registrar, inspector, or person authorised or appointed by the Minister as aforesaid, as the case may be, to inspect and make and take away with him or her a copy of or extract from any such account, or of or from any book, account, document, or writing relating to any such account.

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

Maximum penalty—10 penalty units.

### **Inspection, audit etc. by registrar etc.**

32.(1) A farm produce commercial seller shall at all reasonable times at

*Farm Produce Marketing Act 1964*

---

his or her registered office keep open to inspection by the registrar, the deputy registrar, an inspector, or any person authorised by the Minister, the farm produce commercial seller's farm produce account and all other accounts, books and records required by this Act to be kept by him or her.

(2) The registrar, the deputy registrar, an inspector, or any person authorised by the Minister may at any time and from time to time require any licensee or any servant or employee of a licensee or any other person who he or she has reasonable cause to believe is acting as or carrying on business as a farm produce commercial seller—

- (a) to produce for his or her inspection, or examination, or audit, or inspection and examination and audit—
  - (i) the farm produce account and all documents and writings (including all authorities and orders to bankers) relating to the farm produce account of such licensee or such other person or such accounts, documents and writings as aforesaid as he or she may specify;
  - (ii) all books, accounts and records required by this Act to be kept by a farm produce commercial seller, or such books, accounts and records as aforesaid as he or she may specify;
  - (iii) all contracts, agreements and other documents whatsoever relating to any transaction by or with such licensee or such other person in connection with the business as a farm produce commercial seller of such licensee or such other person in the possession, custody or control of such licensee or such other person, or such contracts, agreements or other documents as aforesaid as he or she may specify; and
- (b) to answer any questions or supply any information with respect to any book, account, document, writing, record, contract or agreement referred to in this subsection or any entry therein.

(2A) Moreover the registrar, deputy registrar, an inspector, or a person authorised by the Minister may at any time and from time to time require any person who has the possession, custody, or control of any book, account, document, writing, record, contract or agreement relating to any transaction by or with a licensee or other person believed as aforesaid to be acting as or carrying on business as a farm produce commercial seller, in connection with that licensee's or that other person's business as a farm

*Farm Produce Marketing Act 1964*

---

produce commercial seller to produce for his or her inspection, or examination, or audit, or inspection and examination and audit that book, account, document, writing, record, contract or agreement and to answer any questions or supply any information with respect thereto or with respect to any entry therein.

**(3)** The registrar, the deputy registrar, an inspector, or a person authorised by the Minister may inspect, or examine, or audit, or inspect and examine and audit all books, accounts, documents, writings, records, contracts and agreements referred to in subsections (2) and (2A) and may take such notes or copies of or extracts from any such book, account, document, writing, record, contract or agreement or of any entries therein as he or she may deem necessary.

**(3A)** Moreover where the registrar, the deputy registrar, an inspector, or a person authorised by the Minister deems it necessary to do so for the purpose of obtaining evidence for production in possible subsequent proceedings against any licensee or any other person for an offence committed against this Act or any other Act he or she may impound or retain any book, account, document, writing, record, contract or agreement inspected by him or her in pursuance of subsection (3), but the person entitled thereto shall, in lieu thereof, be entitled within a reasonable time to a copy certified as correct by the person impounding or retaining it, and such certified copy shall be received in all courts as evidence and as of equal validity as the original.

**(3B)** Any book, account, document, writing, record, contract or agreement impounded or retained under subsection (3A) may be detained for a period of 6 months, or, if within that period there have been commenced proceedings to which such book, account, document, writing, record, contract or agreement relates, until the final determination of those proceedings, including any appeal in the matter of those proceedings.

**(4)** For the purposes of this section the registrar, the deputy registrar, an inspector, or any person authorised by the Minister may enter any premises.

**(5)** A person shall not—

- (a) obstruct, threaten, intimidate or refuse entry to any premises to the registrar, the deputy registrar, an inspector, or any other person in the exercise of his or her powers or authorities or functions or in the discharge of his or her duties under this section, or attempt so

*Farm Produce Marketing Act 1964*

---

to do; or

- (b) when required under subsection (2) or (2A) to produce for inspection, or examination, or audit, or inspection and examination and audit any book, account, document, writing, record, contract or agreement referred to in that subsection, fail to produce such book, account, document, writing, record, contract or agreement in accordance with such requirement; or
- (c) when required under subsection (2) or (3) to answer any question or supply any information with respect to any book, account, document, writing, record, contract or agreement referred to in that subsection, or with respect to any entry in any such book, account, document, writing, record, contract or agreement give an answer or supply information which is false or misleading, or, knowing or being in a position to know the answer or information required, fail to answer that question or supply that information; or
- (d) retake or attempt to retake any book, account, document, writing, record, contract or agreement impounded or retained under the authority of subsection (3A).

(6) Any requirement under this section may be made verbally or by writing addressed to the person to or on whom it is made and delivered to the person personally or sent by registered post addressed to the person at the person's registered office (if a farm produce commercial seller) or place of business or employment in which case it shall be deemed to have been made at the time when it would be delivered in the ordinary course of post.

(7) For the purposes of this section—

**“farm produce account”** includes any account of or with respect to any moneys received by a person in respect of any transaction by the person as a farm produce commercial seller.

**“licensee”** includes any person previously the holder of a licence under this Act whose licence has expired or has been cancelled, suspended or surrendered.

(8) No person shall be required under this section to answer any question or give any information tending to incriminate himself or herself.

(9) The registrar, the deputy registrar, an inspector or any person

authorised by the Minister may compile reports as a result of any inspection, examination or audit carried out pursuant to this section (including reports in relation to the price for which farm produce is sold) and the registrar may advise any person of the findings of any inspection, examination or audit as the Minister sees fit and in the case of reports in relation to the price for which farm produce is sold publish any such report.

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

Maximum penalty—40 penalty units.

### **Audit of farm produce accounts etc.**

**33.(1)** At such times as may be prescribed every farm produce commercial seller—

- (a) shall cause his or her farm produce account for the whole or, as the case may be, any specified part of the period subsequent to the date up to which his or her account has been last audited pursuant to the provisions of this Act, or where no such audit has been performed, for the whole of the period from the date on which the farm produce commercial seller commenced to act or carry on business as a farm produce commercial seller, to be audited by a person who is a registered company auditor under the Companies (Queensland) Code; and
- (b) shall obtain from such company auditor a report of the result of such audit containing such particulars as may be prescribed, and verified by the statutory declaration of the auditor; and
- (c) shall send such report and statutory declaration to the registrar; and
- (d) shall send a true copy of such report and statutory declaration to the insurer which issued the current fidelity bond to that farm produce commercial seller.

**(1A)** However, the Minister may, in any case where, owing to the remoteness of the locality or for other good cause, the Minister deems it desirable so to do, approve of the audit of such account by any person whom the Minister deems competent.

**(1B)** Lodgment of a copy of the report of the result of any audit and a

*Farm Produce Marketing Act 1964*

---

copy of the statutory declaration of the auditor verifying that report as hereinbefore referred to at the head office in Queensland or a branch office in Queensland of the insurer concerned shall be sufficient compliance with the requirements of subsection (1)(d).

**(1C)** Where the auditor of an account under subsection (1) is unable to certify that such account has been properly kept and is in order and is correct in all respects, the auditor shall forward a copy of his or her report to the registrar.

**(2)** Within 2 months after a farm produce commercial seller ceases to act as or carry on business as a farm produce commercial seller, or ceases to be the holder of a licence under this Act, whether by expiry, surrender or cancellation of that licence, whichever is the later or after the suspension of a licence where the period of suspension is greater than 3 months, the farm produce commercial seller—

- (a) shall cause his or her farm produce account for the whole of the period subsequent to the date up to which such account has been last audited pursuant to the provisions of this Act to the date of his or her so ceasing or, where no such audit has been performed, for the whole of the period from the date on which the farm produce commercial seller commenced to act or carry on business as a farm produce commercial seller, to the date of his or her so ceasing or to the date of such suspension as the case may require, to be audited by a person who is a registered company auditor under the Companies (Queensland) Code; and
- (b) shall obtain from such company auditor a report of the result of such audit containing such particulars as may be prescribed, and verified by the statutory declaration of the auditor; and
- (c) shall send such report and statutory declaration to the registrar; and
- (d) shall send a true copy of such report and statutory declaration to the insurer from which that farm produce commercial seller last obtained a fidelity bond.

**(2A)** However, the Minister may, in any case where, owing to the remoteness of the locality or for other good cause, the Minister deems it desirable so to do, approve of the audit of such account by any person whom the Minister deems competent.

*Farm Produce Marketing Act 1964*

---

**(2B)** Lodgment of a copy of the report of the result of any audit and a copy of the statutory declaration of the auditor verifying that report as hereinbefore referred to at the head office in Queensland or a branch office in Queensland of the insurer concerned shall be sufficient compliance with the requirements of subsection (2)(d).

**(2C)** Where the auditor of an account under subsection (2) is unable to certify that such account has been properly kept and is in order and is correct in all respects, the auditor shall forward a copy of his or her report to the registrar.

**(3)** Where a farm produce commercial seller has failed to cause his or her farm produce account to be audited, or has failed to obtain the report of the result of an audit of such account, or to send to the registrar such report or the verifying statutory declaration of the auditor as in this section hereinbefore provided, as required by this Act, and in any other case if the Minister in the particular circumstances of the case thinks fit, the Minister may appoint a person to audit such account.

**(3A)** Every appointment made under subsection (3) shall be in writing and shall be signed by the Minister.

**(3B)** Upon production by such person of the person's appointment as aforesaid, the person may require the farm produce commercial seller in respect of whom the appointment has been made, and any employee or agent or representative of such farm produce commercial seller, to produce to him or her all books, papers, accounts, securities, and other documents relating to the business or accounts of such farm produce commercial seller, and to give all information in relation thereto, and to furnish all authorities and orders to bankers and others that may be reasonably required of him or her, and if any such farm produce commercial seller or employee or agent or representative as aforesaid, without lawful justification or excuse, the proof whereof shall lie on him or her, refuses or fails so to do, or otherwise hinders, obstructs, or delays the person appointed by the Minister as aforesaid in the performance of his or her duties or in the exercise of his or her powers under subsection (3), he or she shall be liable to a penalty not exceeding 20 penalty units.

**(3C)** No person appointed by the Minister to make any examination of accounts for the purposes of subsection (3) shall communicate any matter which may come to the person's knowledge in the course of such examination to any person except in the course of the person's report to the

*Farm Produce Marketing Act 1964*

---

Minister, and except to any court in the course of or for the purposes of any criminal proceedings therein or of any proceedings under this Act, or in the course of any civil proceedings therein relating to the sale or disposal of farm produce by the farm produce commercial seller concerned.

(3D) Where a person has been appointed by the Minister to conduct an audit of the farm produce account of any farm produce commercial seller, the cost of such audit and of the report thereon shall be borne by the farm produce commercial seller.

(3E) The Minister may certify the cost of any such audit and report (including in such cost a reasonable fee per day in respect of the time involved in the audit and report, actual reasonable fares or payments for transport, and a reasonable fee per day for each day of necessary absence of the person appointed by the Minister from the person's home town, including Sundays) and the amount so certified shall be paid by the farm produce commercial seller to the Minister upon demand.

(3F) If the farm produce commercial seller fails to pay such amount upon demand, then the amount shall be deemed to be a debt due to the Crown by the farm produce commercial seller and shall be recoverable from him or her in any court of competent jurisdiction.

(3G) For the purposes of subsections (3) to (3F)—

**“farm produce commercial seller”** includes a person who has ceased to act or carry on business as a farm produce commercial seller or has ceased to be the holder of a licence under this Act.

(4) The Minister may from time to time by signed writing appoint officers of the public service to be inspectors or auditors of accounts under and for the purposes of this Act and any such appointee may hold office as an inspector in conjunction with the officer's office in the said public service.

(5) The registrar may communicate to any person on whose behalf a sale or disposal of farm produce was carried out or was attempted to be carried out by the farm produce commercial seller the contents of a report (or part thereof) of the result of an inspection carried out pursuant to this section which in the opinion of the registrar concerns that principal.

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

Maximum penalty—20 penalty units.

### **Entries in commercial seller's books deemed made by the commercial seller**

**34.(1)** Every entry in any book kept or belonging to a licensed farm produce commercial seller or found on his or her premises shall be deemed, unless the contrary is shown, to have been made by or with the authority of such commercial seller.

### **Copy of entries in registers to be evidence**

(2) A copy of any entry in any prescribed register, purporting to be signed by the clerk of the court or any officer of the department making the same, shall be prima facie evidence of the truth of the matters stated in such copy.

### **Books etc. to be kept**

**35.(1)** Every farm produce commercial seller shall, subject to the provisions of this section, keep—

- (a) the books, statements and papers relating to the farm produce account kept by him or her; and
- (b) such books, accounts and records required to be kept by him or her pursuant to the regulations under this Act;

for a period of 12 months after the expiration of the year during which any entries were made therein.

(2) The registrar, on application in writing made by a farm produce commercial seller, may vary the period mentioned in subsection (1) in respect of any book, statement, paper account or record required to be kept by that farm produce commercial seller.

### **Registered office of licensee**

**36.(1)** For the purposes of this Act—

*Farm Produce Marketing Act 1964*

---

- (a) each and every licensee shall have a registered office within Queensland; and
- (b) the address of the sole or principal place of business as specified in the application for the licence held by the licensee shall be the registered office of the licensee until that sole, or as the case may be, principal place of business is shown to have been removed to another address by a notification in writing in the approved form received by the registrar of that removal, when in such event the address to which the sole or principal place of business is thus shown to have been removed shall be the registered office of the licensee until such lastmentioned sole or principal place of business is again shown as hereinbefore provided to have been removed to another address, and so on from time to time; and
- (c) in the case of a corporation—the registered office shall be the registered office of the corporation as required by the *Companies Act 1961*.

**Publication of name of licensee**

(2) A licensee shall cause to be painted up or affixed and shall keep painted up or affixed on the outside of the licensee's registered office, and where he or she carries on business as a licensee at any place or places other than the licensee's registered office, on the outside of each other place in which the licensee's business as a licensee is carried on, in a conspicuous position, a sign bearing, in letters easily legible, the licensee's name as a licensee and the words 'licensed farm produce commercial seller'.

**Notice left at registered office deemed served on licensee**

(3) Any notice or other document required to be served or given to a licensee shall be deemed to be duly served or given if left at his or her registered office.

**Notification of change in place of business**

(4) When and so often as a licensee removes his or her sole or principal place of business to another address, or removes any other place of business as a licensee to another address, or opens a new place where the licensee intends to carry on business as a licensee, or ceases to carry on business as a licensee at any place, the licensee shall, within 14 days of any such event, notify in writing in the form prescribed the registrar of that fact and of the

address to which the licensee has removed the licensee's sole or principal place of business or other place of business as a licensee, or the address of the new place where he or she intends to carry on business as a licensee or the address of the place where the licensee has ceased to carry on business as a licensee, as the case may be.

(4A) The registrar shall enter in the register of licences the requisite particulars contained in each and every such notice received by the registrar.

(5) Any farm produce commercial seller who publishes any advertisement (whether in a newspaper or otherwise) in connection with the licensee's business as a farm produce commercial seller without specifying the name under which he or she is licensed as a farm produce commercial seller and the address of the principal place of business commits an offence.

Maximum penalty—10 penalty units.

### **Inspection by owner**

37.(1) Provided that the written permission of the registrar is first obtained it shall be lawful for any person who has consigned farm produce to a farm produce commercial seller to inspect and take copies of all entries in such farm produce commercial seller's books and accounts which relate to the receipt and sale of the said produce; or such person may, by signed writing, authorise another person to make such inspection and take such copies, and it shall thereupon be lawful for such other person to inspect and make copies of the said entries.

(2) Provided that the person so authorised shall produce and show to the farm produce commercial seller the person's authority whenever required by the farm produce commercial seller to do so.

(3) Any such farm produce commercial seller or any servant or employee of any such farm produce commercial seller who prevents or obstructs any person as aforesaid from making such inspection or taking such copies, shall be guilty of an offence against this Act.

### **Restriction on remedy for commission**

38.(1) A farm produce commercial seller acting in the capacity of a farm produce agent shall not be entitled to sue for or recover or retain any fees,

charges, commission, reward or other remuneration for or in respect of any transaction in respect of his or her being engaged as a farm produce agent, unless—

- (a) he or she is the holder of a licence as a farm produce commercial seller under this Act; and
- (b) such fees, charges, commission, reward or other remuneration are included in and not in excess of the prescribed fees, charges, commission, reward or other remuneration for or in respect of such transaction, where the same have been prescribed.

**Restriction on recovery of commission where transaction has not been effected**

(2) A farm produce commercial seller who has not effected a service or transaction in respect of which he or she has been engaged or appointed to act as farm produce agent prior to the withdrawal of his or her authority or the effecting of the service or transaction by some other person, shall not be entitled to sue for, or recover, or retain any fees, charges, commission, reward or other remuneration under or in respect of such engagement or appointment unless he or she proves—

- (a) if claiming a sum for expenses actually and properly incurred or a reasonable sum for the service actually and properly rendered by him or her in endeavouring to effect the service or transaction prior to the withdrawal of his or her authority or the receipt by him or her of actual or constructive notice of the service or transaction having been effected by some other person—that the farm produce commercial seller is entitled to such sum under the terms of his or her engagement or appointment as farm produce agent; or
- (b) if claiming fees, charges, commission, reward or other remuneration, not being a sum in respect of any of the matters mentioned in paragraph (a)—that the farm produce commercial seller was in a position to effect the service or transaction at a time prior to the withdrawal of his or her authority or the receipt by him or her of actual or constructive notice of the service or transaction having been effected by some other person, and that his or her failure to do so was caused solely by the refusal of the person who engaged or appointed him or her to act as farm

produce agent to allow the service or transaction to be carried out at that time under the terms of that engagement or appointment.

### **Offence to demand excess or improper remuneration**

**39.(1)** Where the fees, charges, commission, reward or other remuneration which a farm produce commercial seller shall be entitled to receive for or in respect of any service or transaction are prescribed, any farm produce commercial seller who, for or in respect of such service or transaction, demands, receives or retains from any moneys received by him or her an amount by way of fees, charges, commission, reward or other remuneration which is in excess of or not included in the fees, charges, commission, reward or other remuneration, as the case may be, so prescribed, commits an offence.

Maximum penalty—20 penalty units.

**(2)** Upon conviction for an offence against this section the adjudicating court shall order the farm produce commercial seller concerned to refund any excess or improper fees, charges, commission, reward or other remuneration received or retained by him or her.

**(3)** Where any amount is alleged to be payable to a farm produce commercial seller for recouping expenditure lawfully incurred by him or her in connection with a service or transaction, then, in proceedings against the farm produce commercial seller under this section for that the farm produce commercial seller demanded, received or retained from moneys received by him or her, that amount contrary to this section, the onus of proving the lawfulness of the expenditure in question and the amount thereof shall be upon the farm produce commercial seller.

### **Prohibition of contracting out**

**40.** Where the fees, charges, commission, reward or other remuneration which a farm produce commercial seller shall be entitled to receive for or in respect of any service or transaction are prescribed, any covenant, agreement or condition whereby any person agrees to pay or allow to a farm produce commercial seller any amount by way of fees, charges, commission, reward or other remuneration which is in excess of or not included in the fees, charges, commission, reward or other remuneration, as the case may

be, so prescribed, or whereby any person agrees to waive or surrender any right or remedy which the person may have in respect of any such excess or improper fees, charges, commission, reward or other remuneration received or retained by a farm produce commercial seller or, in any event, any covenant, agreement or condition whereby any person agrees to waive or surrender any right or remedy which the person may have against a farm produce commercial seller under and in pursuance of this Act shall be absolutely void and of no effect whatsoever.

### **Register**

**41.** The registrar shall, in the prescribed manner, keep a register of farm produce commercial sellers.

### **Entries in register**

**42.(1)** It shall be the duty of the clerk of the court at which any licence is cancelled or suspended, to send particulars of such cancellation or suspension forthwith to the registrar.

**(2)** The registrar shall enter in the register kept pursuant to section 41 all grants, renewals, cancellations and suspensions of licences made or ordered under this Act.

### **Civil remedies not affected**

**44.** Nothing in this Act shall affect any civil remedy which any person may have against a farm produce commercial seller in respect of any matter.

### **Destruction of farm produce**

**45.(1)** Any farm produce commercial seller acting in the capacity of a farm produce agent who by himself, herself or his or her agent, servant or employee destroys or casts away any farm produce which is in a marketable condition shall be guilty of an offence against this Act.

**(2)** Where a farm produce commercial seller acting in the capacity of a farm produce agent has cast away farm produce and requires that casting away to be evidenced and an appropriate adjustment made in the account

sales docket then he or she shall, except where the person who actually produces the farm produce indicates in writing that the person does not require such a certificate to be supplied to him or her, supply to that person a certificate from an officer of the Department of Primary Industries or the Department of Health showing the casting away to have been at the direction of or with the consent of an officer of the Department of Primary Industries or the Department of Health pursuant to any Act administered by the Minister for Primary Industries or the Minister for Health as the case may be.

(3) A farm produce commercial seller acting in the capacity of a farm produce merchant shall not cast away farm produce without a certificate referred to in subsection (2) before the farm produce commercial seller and the person who actually produces the farm produce have determined the price of the farm produce.

(4) A farm produce commercial seller shall pay the prescribed fee for a cast away certificate.

### **PART 3—MINISTERIAL ADVISORY BODIES**

#### **Minister may establish advisory bodies**

46. The Minister may establish an advisory committee or other body to assist the Minister in the administration of this Act.

### **PART 4—MISCELLANEOUS**

#### **Prosecution of offences**

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

(4) In any complaint—

- (a) several offences may be charged, whether of the same or of different kinds;

*Farm Produce Marketing Act 1964*

---

- (b) several persons may be joined as defendants, whether in respect of the same or of different offences, and whether those offences are committed by the same, or by different persons; and in such case separate decisions may be given in respect of each defendant so joined.

(4A) However, in any case the adjudicating court may give such directions as it thinks fit for the separate hearing of any charge against any defendant.

(5) If 2 or more persons are parties to the same offence each of those persons shall be guilty of the offence, and the liability of each of them shall be independent of the liability of the others.

(6) Any document, or any writing purporting to be a copy of or extract from any document containing reference to any matter or thing alleged to have been done in contravention of this Act, shall, upon proof—

- (a) in the case of an original document—that it was produced by, or came from the custody of, a person charged with the offence in question, or a responsible officer in the employ of that person or a representative of that person;
- (b) in the case of a copy of or extract from a document—that it was made from an original which was produced by or came from the custody of a person charged with the offence in question, or a responsible officer in the employ of that person, or a representative of that person;

be admissible in evidence against the person charged with the offence in question and shall be evidence—

- (c) of the matters therein contained;
- (d) that the document (or in the case of a copy or extract, that the original document) was written, signed, despatched, or received by the persons by whom it purports to have been written, signed, despatched or received;
- (e) in the case of a copy or extract—that the copy or extract is a true copy of or as the case may be, extract from the original document of or from which it purports to be a copy or extract.

**Offences and penalties**

**48.(1)** Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence.

**(2)** Any person who commits any offence against this Act for which no other penalty or punishment is expressly provided, shall be liable to a penalty not exceeding 20 penalty units or to be imprisoned for any period not exceeding 3 months.

**(3)** Any person convicted of an offence against this Act shall in addition to any other penalty imposed be liable to a penalty not exceeding 4 penalty units for each and every day during which such offence is continued after a conviction therefor.

**(4)** However, the continuing offence shall not be deemed to commence until the expiration of 14 days from the date of the conviction.

**Liability for offences by corporations etc.**

**49.(1)** Except where otherwise expressly provided in this Act, where a corporation offends against this Act each and every one of the following persons shall be deemed to have committed the offence, and shall be liable to be proceeded against and punished accordingly—

- (a) the managing director, manager, or other governing officer, by whatever name called, and every member of the governing body, by whatever name called, thereof;
- (b) every person who in Queensland manages or acts or takes part in the management, administration, or government of the business in Queensland of the corporation.

**(1A)** Subsection (1) applies so as not to limit or affect howsoever the liability of a corporation to be proceeded against and punished for an offence against this Act committed by it.

**(2)** Except where otherwise expressly provided in this Act, where any member of an unincorporate body or association of persons commits an offence against this Act, the other member or members, as the case requires, of that body or association shall be deemed to have also committed the offence and shall be liable to be proceeded against and punished accordingly.

(3) No person who is proceeded against pursuant to this section shall be convicted if the person satisfies the court that the offence was committed without his or her consent or connivance and that the person exercised all such diligence to prevent the commission of the offence as the person ought to have exercised having regard to all the circumstances.

### **Approval of forms**

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

### **Protection of registrar**

52. Liability at law shall not attach to the registrar on account of anything done for the purposes of this Act or done in good faith and without negligence and purporting to be done for the purposes of this Act.

### **Regulation making power**

53.(1) The Governor in Council may make regulations under this Act.

(4) A regulation may be made about—

- (a) the form, manner, and place of registration of licences, renewals, cancellations and suspensions and other matters requiring registration under this Act, where not specially provided for in this Act;
- (b) the times at which applications for licences or any renewals thereof may be made, and the manner in which those applications are to be made;
- (c) the procedure to be followed on an application to a court or the registrar under this Act;
- (d) the transfer of licences;
- (e) the surrender of licences;
- (f) the fees to be paid for the issue, renewal, or transfer of any licence, or appointment of a substitute by a licensee, or on any other application under this Act, which fees may apply generally or in relation to a particular farm produce commercial seller or a

*Farm Produce Marketing Act 1964*

---

- particular class of farm produce commercial sellers, or otherwise as to place or circumstances;
- (g) the fees to be paid for inspection of the register of farm produce commercial sellers and for the making and supply of any copy or abstract therefrom;
  - (h) means for circulating throughout Queensland or any part thereof lists of licences, cancellations and suspensions thereof and of associated persons;
  - (i) prescribing the persons who shall be entitled to complete documentation to be furnished with farm produce forwarded to a farm produce commercial seller and the form of, particulars to be contained in and the effect of such documentation;
  - (j) the keeping by farm produce commercial sellers of such books, accounts, and records relating to farm produce, the sale or other disposal thereof, or such books, accounts, and records as may be prescribed, and prescribing the particulars to be entered therein and the manner of keeping same and manner of issue of receipts for money received by farm produce commercial sellers on account of any other person;
  - (k) also giving power to the registrar to exempt any farm produce commercial seller from keeping all or any of such prescribed books, accounts, and records if in the registrar's opinion the system of keeping any such books, accounts, and records used by a commercial seller is sufficient for the purposes of the Act;
  - (l) the issuing and delivery by farm produce commercial sellers with all farm produce (or if prescribed all farm produce of a prescribed class or classes) sold (whether for cash or on credit or otherwise) or, if prescribed, within such time after the delivery of the farm produce as is prescribed, of an invoice or docket containing such particulars as are prescribed, the person or persons to whom the invoice or docket is to be delivered and the time for which a person or persons or class or classes of person shall be required to retain such invoice or docket;
  - (m) the making and retaining by every farm produce commercial seller of a carbon copy or other prescribed duplicate of each such invoice and docket issued by him or her;

*Farm Produce Marketing Act 1964*

---

- (n) the deeming of such carbon copies and, if other duplicates are prescribed, other duplicates as books for the purposes of this Act;
- (o) the audit at any time or at any interval of time of farm produce accounts, and if necessary, of business accounts of farm produce commercial sellers, and for the furnishing of a report of such audit, or any other report in relation to such accounts or business accounts;
- (p) requiring the production to the auditor by the licensee, the licensee's servants or agents or representative, or by the manager or person in charge of any financial institution, of books, papers and accounts relating to the business of a farm produce commercial seller, subject to prescribed conditions;
- (q) prescribing the persons to whom the reports of auditors shall be sent for inspection, information or record;
- (r) prescribing a scale of fees to be paid for such audit;
- (s) providing that the auditor shall be subject to an obligation not to divulge, otherwise than as prescribed, any matter of which the auditor shall be informed in the course of the audit;
- (t) prescribing that in the absence of any agreement in writing, to the contrary the audit fees shall be paid by the licensee;
- (u) prescribing returns and of statistics to be made and furnished to the registrar, and the contents thereof, and the persons (whether farm produce commercial sellers or not) by whom the same shall be made, and the time and mode of making and furnishing the same;
- (v) regulating or restricting the selling on credit by a farm produce commercial seller of any farm produce received by him or her for sale either generally or in special circumstances;
- (w) the fees, charges, commission, reward, or other remuneration which farm produce commercial sellers shall be entitled to receive for and in respect of their services and the conditions in which and the extent to which a farm produce commercial seller acting in the capacity of a farm produce agent may make deductions in respect of farm produce sold and delivered;
- (x) the security to be given by applicants for licences, and the

*Farm Produce Marketing Act 1964*

---

recovery and application of the moneys, and the terms and conditions in respect to any such security also variations in the security in respect of application for renewals of licences;

- (y) the keeping by farm produce merchants of such books, accounts and records relating to farm produce, or such other books, accounts and records as may be prescribed, and prescribing the particulars to be entered therein and the manner of keeping same;
- (z) giving power to the registrar to exempt any farm produce merchant from keeping all or any of such prescribed books, accounts and records if in the registrar's opinion the system of keeping any such books, accounts and records used by a farm produce merchant is sufficient for the purposes of the Act;
- (za) the issue of official market reports with respect to farm produce;
- (zb) the checking of weights of farm produce, and the rendering of accounts as to weights;
- (zc) imposing penalties not exceeding 10 penalty units for the breach of any regulation;
- (zd) regulating the procedure for the recovery of penalties and for the cancellation and suspension of licences;
- (ze) prescribing the functions, powers and privileges of all or any persons engaged in the administration of this Act.

**Expiry of Act**

**54.** This Act expires on 30 June 2000.

**PART 5—TRANSITIONAL PROVISIONS FOR  
PRIMARY INDUSTRIES LEGISLATION  
AMENDMENT ACT 1999**

**Fidelity bonds for issue or renewal of licences**

**55.(1)** This section applies to a fidelity bond for a licence issued or renewed after the commencement of this section.

(2) The fidelity bond or the certificate of renewal of the fidelity bond must state that the fidelity bond has effect for the period starting on the day the licence is issued or renewed and ending on 31 December 2000.

**Operation of provisions of Act after expiry**

**56.(1)** Despite the expiry of this Act, the following provisions and any definitions in the Act relevant to the provisions remain in force until the end of 31 December 2000, when they cease to have effect—

- (a) section 6;
- (b) section 29(1) and (3);
- (c) section 30(2) to (5), (7) and (12);
- (d) sections 32 and 33.<sup>2</sup>

(2) In section 32, a reference to a person who is acting as or carrying on business as a farm produce commercial seller is taken to include a reference to a person who was acting as or carrying on business as a farm produce commercial seller before 1 July 2000.

---

<sup>2</sup> Section 6 (Registrar and deputy registrar employed under Public Service Act)  
Section 29 (When bond may be forfeited)  
Section 30 (Banking of moneys)  
Sections 32 (Inspection, audit etc. by registrar etc.) and 33 (Audit of farm produce accounts etc.)

**Exemption from expiry of Farm Produce Marketing Regulation 1984,  
s 14**

57. Despite the *Statutory Instruments Act 1992*, part 7, and the expiry of this Act, the *Farm Produce Marketing Regulation 1984*, section 14,<sup>3</sup> does not expire at the end of 30 June 2000,<sup>4</sup> but remains in force until the end of 31 December 2000, when it ceases to have effect.

---

<sup>3</sup> Section 14 (Procedure on forfeiture of fidelity bond) of the regulation

<sup>4</sup> The *Farm Produce Marketing Regulation 1984* was exempted from expiry under the *Statutory Instruments Act 1992*, part 7 (Staged automatic expiry of subordinate legislation), for the period ending at midnight on 30 June 2000—see the *Statutory Instruments Regulation 1992*, section 9.

---

## ENDNOTES

### 1 Index to endnotes

	Page
2 Date to which amendments incorporated . . . . .	55
3 Key . . . . .	55
4 Table of earlier reprints . . . . .	56
5 Tables in earlier reprints . . . . .	56
6 List of legislation . . . . .	56
7 List of annotations . . . . .	58

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 14 December 1999. Future amendments of the Farm Produce Marketing Act 1964 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 47 of 1995	16 January 1996
1A	to Act No. 13 of 1996	30 July 1996
1B	to Act No. 59 of 1996	18 December 1996
1C	to Act No. 19 of 1999	4 June 1999
1D	to Act No. 27 of 1999	16 July 1999

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	1
Corrected minor errors	1
Obsolete and redundant provisions	1
Renumbered provisions	1

## 6 List of legislation

### **Farm Produce Marketing Act 1964 No. 29 (prev Farm Produce Agents Act 1964)**

date of assent 14 April 1964

commenced 1 January 1965 (proc pubd gaz 14 December 1964 p 1531)

exp 30 June 2000 (see s 54)

Despite the expiry of this Act on 30 June 2000 the following provisions, and any definitions relevant to the provisions, remain in force until 31 December 2000 (see s 56)

- ss 6, 29(1), (3), 30(2)–(5), (7), (12), 32 and 33

as amended by—

### **Age of Majority Act 1974 No. 57 s 8 sch**

date of assent 27 September 1974

commenced 1 March 1975 (proc pubd gaz 16 November 1974 p 1083)

**Farm Produce Agents Act and Another Act Amendment Act 1982 No. 77 pt 2**

date of assent 16 December 1982

commenced 1 July 1984 (proc pubd gaz 16 June 1984 p 1241)

**Farm Produce Marketing Act Amendment Act 1986 No. 46**

date of assent 25 September 1986

ss 1–2, 4(1) commenced on date of assent

remaining provisions commenced 1 January 1987 (see s 2(2))

**Statute Law (Miscellaneous Provisions) Act 1989 No. 103 s 3 sch**

date of assent 25 October 1989

commenced on date of assent

**Public Accountants Registration (Repeal and Consequential Amendments) Act 1990 No. 85 s 5 sch 2**

date of assent 29 November 1990

commenced 1 January 1991 (see s 2(3))

**Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 2**

date of assent 17 December 1991

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1994 No. 15 ss 1–2, 3 sch 2**

date of assent 10 May 1994

commenced on date of assent

**Horticulture Legislation Amendment Act 1995 No. 47 pts 1, 3**

date of assent 22 November 1995

commenced on date of assent

**Primary Industries Legislation Amendment Act 1996 No. 13 pts 1, 5**

date of assent 23 May 1996

commenced on date of assent

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Primary Industries Legislation Amendment Act (No. 2) 1996 No. 59 pts 1, 5**

date of assent 5 December 1996

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch**

date of assent 30 April 1999

commenced on date of assent

**Financial Sector Reform (Queensland) Act 1999 No. 27 ss 1–2(1), (4), 76 sch 1 pt 3**

date of assent 16 June 1999

ss 1–2, 76 commenced on date of assent

remaining provisions commenced 1 July 1999 (see s 2(1) and proc pubd Cwlth of Australia gaz 29 June 1999, No. S283)

**Primary Industries Legislation Amendment Act 1999 No. 45 ss 1, 2(4) pt 4A**

date of assent 17 September 1999

commenced on date of assent (see s 2(4))

**7 List of annotations****PART 1—PRELIMINARY****pt hdg** ins 1995 No. 47 s 22**Short title****s 1** sub 1991 No. 97 s 3 sch 2**Commencement****s 2** om 1995 No. 47 s 23**Severability****s 3** om 1991 No. 97 s 3 sch 2**Repeal and Savings. (Schedule.)****s 4** om 1991 No. 97 s 3 sch 2**Definitions****prov hdg** sub 1995 No. 47 s 24(1)**s 5** amd 1995 No. 47 s 24(5)def **“approved form”** ins 1995 No. 47 s 24(3)def **“Court”** sub 1982 No. 77 s 5(a)

om 1995 No. 47 s 24(2)

def **“deputy registrar”** amd 1982 No. 77 s 5(b)

sub 1995 No. 47 s 24(2)–(3)

def **“District”** sub 1982 No. 77 s 5(c)

om 1995 No. 47 s 24(2)

def **“farm produce”** sub 1982 No. 77 s 5(d)

amd 1994 No. 15 s 3 sch 2

def **“farm produce commercial seller”** ins 1982 No. 77 s 5(e)def **“farm produce merchant”** ins 1982 No. 77 s 5(e)

amd 1995 No. 47 s 24(4)

def **“fidelity bond”** ins 1982 No. 77 s 5(e)def **“insurer”** amd 1982 No. 77 s 5(f)

sub 1995 No. 47 s 24(2)–(3)

amd 1999 No. 27 s 76 sch 1

def **“licence”** amd 1982 No. 77 s 5(g)def **“Minister”** om 1991 No. 97 s 3 sch 2def **“policy council”** ins 1995 No. 47 s 24(3)

om 1996 No. 59 s 28

def **“registrar”** amd 1982 No. 77 s 5(h)

sub 1995 No. 47 s 24(2)–(3)

def **“State”** ins 1995 No. 47 s 24(3)def **“The Department”** om 1991 No. 97 s 3 sch 2

**PART 2—FARM PRODUCE COMMERCIAL SELLERS****pt hdg** ins 1995 No. 47 s 25**Registrar and deputy registrar employed under Public Service Act****s 6** amd 1982 No. 77 s 6  
sub 1995 No. 47 s 26; 1996 No. 37 s 147 sch 2**Application for farm produce commercial seller's licence****prov hdg** amd 1982 No. 77 s 7(a)**s 7** amd 1974 No. 57 s 8 sch; 1982 No. 77 s 7(b)–(i); 1986 No. 46 s 5;  
1995 No. 47 s 27; 1996 No. 13 s 12; 1999 No. 45 s 20B**Renewal of licence****s 8** amd 1982 No. 77 s 8; 1986 No. 46 s 6; 1989 No. 103 s 3 sch; 1995 No. 47  
s 28**Offence not to hold fidelity bond****s 8A** ins 1982 No. 77 s 9  
om 1986 No. 46 s 7**Appeal against refusal to grant or renew licence****s 9** sub 1986 No. 46 s 8  
amd 1995 No. 47 s 29**Cancellation or suspension of licenses by all courts****s 11** amd 1999 No. 19 s 3 sch**Requirements on cancellation or suspension****s 12** amd 1995 No. 47 s 30**Appeals with respect to cancellation or suspension of licences****s 15** amd 1995 No. 47 s 31; 1999 No. 19 s 3 sch**Appointment of substitute by licensee****s 17** amd 1982 No. 77 s 10; 1986 No. 46 s 9**Death or insolvency of licensee****s 18** amd 1982 No. 77 s 11; 1986 No. 46 s 10**Substitution or transfer in exceptional circumstances****s 19** amd 1986 No. 46 s 11**Certain persons not to be employed by licensee****s 20** amd 1982 No. 77 s 12; 1995 No. 47 s 32**Carrying on business without licence****s 21** amd 1982 No. 77 s 13; 1995 No. 47 s 33**Restriction on farm produce commercial seller purchasing consignments****s 22** sub 1982 No. 77 s 14  
amd 1995 No. 47 s 34**Beneficial interest****s 22A** ins 1982 No. 77 s 14

**Requirement to register associated persons**

**s 22B** ins 1982 No. 77 s 14  
amd 1995 No. 47 s 35; 1996 No. 13 s 13

**Restriction on use of premises**

**s 22C** ins 1982 No. 77 s 14

**Purchase of farm produce**

**s 23** sub 1982 No. 77 s 15; 1986 No. 46 s 12

**Purchase memorandum note or other record**

**s 24** sub 1982 No. 77 s 1  
amd 1986 No. 46 s 13; 1995 No. 47 s 36

**Consignment note**

**s 24A** ins 1986 No. 46 s 14

**Account of moneys received and their application**

**s 25** amd 1982 No. 77 s 17; 1995 No. 47 s 37

**Payment to vendor by farm produce commercial seller**

**s 26** sub 1982 No. 77 s 18  
amd 1986 No. 46 s 15; 1995 No. 47 s 38

**Duration of certain agreements**

**s 26A** ins 1986 No. 46 s 16

**Payment of moneys to principal**

**s 27** amd 1982 No. 77 s 19; 1995 No. 47 s 39

**Fraudulently disposing of property**

**s 28** om 1982 No. 77 s 20

**When bond may be forfeited**

**s 29** amd 1982 No. 77 s 21

**Banking of moneys**

**s 30** sub 1982 No. 77 s 22  
amd 1986 No. 46 s 17; 1995 No. 47 s 40

**Level of funds to be maintained**

**s 30A** ins 1982 No. 77 s 22  
om 1986 No. 46 s 18

**Duty of financial institution manager**

**prov hdg** amd 1995 No. 47 s 41(1)  
**s 31** amd 1982 No. 77 s 23; 1986 No. 46 s 19; 1995 No. 47 s 41

**Inspection, audit etc. by registrar etc.**

**s 32** amd 1982 No. 77 s 24; 1986 No. 46 s 20; 1995 No. 47 s 42

**Audit of farm produce accounts etc.**

**prov hdg** amd 1986 No. 46 s 21(a)  
**s 33** amd 1982 No. 77 s 25; 1986 No. 46 s 21(b)–(g); 1990 No. 85 s 5 sch 2;  
1991 No. 97 s 3 sch 2; 1995 No. 47 s 43

**Entries in commercial seller's books deemed made by the commercial seller****prov hdg** amd 1982 No. 77 s 26(a)**s 34** amd 1982 No. 77 s 26(b)**Books etc. to be kept****s 35** amd 1982 No. 77 s 27; 1986 No. 46 s 22**Registered office of licensee****s 36** amd 1982 No. 77 s 28; 1986 No. 46 s 23; 1995 No. 47 s 44**Inspection by owner****s 37** amd 1982 No. 77 s 29; 1986 No. 46 s 24**Restriction on remedy for commission****s 38** amd 1982 No. 77 s 30**Offence to demand excess or improper remuneration****s 39** amd 1982 No. 77 s 31; 1995 No. 47 s 45**Prohibition of contracting out****s 40** amd 1982 No. 77 s 32**Register****s 41** amd 1982 No. 77 s 33**Entries in register****s 42** amd 1986 No. 46 s 25; 1995 No. 47 s 46**Appropriation of fees etc.****s 43** om 1995 No. 47 s 47**Civil remedies not affected****s 44** amd 1982 No. 77 s 34**Destruction of farm produce****s 45** amd 1982 No. 77 s 35; 1986 No. 46 s 26**PART 3—MINISTERIAL ADVISORY BODIES****pt hdg** ins 1995 No. 47 s 48

sub 1996 No. 59 s 29

**Minister may establish advisory bodies****s 46** prev s 46 om 1982 No. 77 s 36

pres s 46 ins 1995 No. 47 s 48

sub 1996 No. 59 s 29

**Functions****s 46A** ins 1995 No. 47 s 48

amd 1996 No. 13 s 14

om 1996 No. 59 s 29

**Composition****s 46B** ins 1995 No. 47 s 48

om 1996 No. 59 s 29

**Meetings**

**s 46C** ins 1995 No. 47 s 48  
om 1996 No. 59 s 29

**Policy council committees**

**s 46D** ins 1995 No. 47 s 48  
om 1996 No. 59 s 29

**PART 4—MISCELLANEOUS**

**pt hdg** ins 1995 No. 47 s 49

**Prosecution of offences**

**prov hdg** sub 1995 No. 47 s 50(1)  
**s 47** amd 1995 No. 47 s 50(2)

**Offences and penalties**

**s 48** amd 1982 No. 77 s 37; 1995 No. 47 s 51

**Advisers**

**s 49A** ins 1982 No. 77 s 38  
om 1996 No. 59 s 29

**Approval of forms**

**s 51** sub 1991 No. 97 s 3 sch 2; 1995 No. 47 s 53

**Transitional provision about forms**

**s 51A** ins 1995 No. 47 s 53  
exp 22 May 1996 (see s 51A(3))

**Protection of registrar**

**s 52** ins 1986 No. 46 s 28

**Regulation making power**

**prov hdg** sub 1995 No. 47 s 52(1)  
**s 53** (prev s 50) amd 1982 No. 77 s 39; 1986 No. 46 s 27; 1989 No. 103 s 3 sch;  
1995 No. 47 s 52(2)–(14)  
reloc 1995 No. 47 s 52(15)

**Expiry of Act**

**s 54** ins 1995 No. 47 s 54  
amd 1999 No. 45 s 20C

**PART 5—TRANSITIONAL PROVISIONS FOR PRIMARY INDUSTRIES  
LEGISLATION AMENDMENT ACT 1999**

**pt 5 (ss 55–57)** ins 1999 No. 45 s 20D

**SCHEDULE**

om 1991 No. 97 s 3 sch 2