

FARM PRODUCE (AMENDMENT) BILL 1985

EXPLANATORY NOTE

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

The object of this Bill is to amend the Farm Produce Act 1983 so as—

- (a) to vary the licensing provisions of that Act, which presently require the automatic disqualification of persons from acting as farm produce sellers, by making certain grounds for disqualification discretionary and by providing for appeals against any disqualification; and
- (b) to implement other reforms of a practical nature arising out of a review of the regulatory scheme provided by that Act for the marketing of farm produce.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day or days appointed by the Governor-in-Council.

Clause 3 defines the Principal Act.

Clause 4 lists the Schedules to the proposed Act. Schedule 1 contains amendments related to licensing under the Principal Act and Schedule 2 contains miscellaneous amendments.

Clause 5 is a formal provision that gives effect to the Schedules of amendments.

Schedule 1 (1) (a) and (b) omit from section 10 (1) of the Principal Act the automatic grounds for disqualification from holding a farm produce seller's licence which are intended to become discretionary grounds for disqualification under proposed section 10A.

Schedule 1 (1) (c) is an amendment consequential on the proposed repeal of section 10 (1) (i) of the Principal Act.

Schedule 1 (2) inserts proposed section 10A into the Principal Act. Under that section the registrar appointed under that Act, after giving a person an opportunity to show cause why a disqualification should not be imposed, may disqualify the person from holding a licence under the Principal Act because the person—

- (a) has been convicted of an offence under that or a similar Act (or of attempting or conspiring to commit such an offence);

(b) is subject to a scheme of arrangement with creditors; or

(c) has had a licence under that or a similar Act cancelled.

A disqualification may not be imposed because of a conviction or a cancellation of a licence so as to extend for more than 5 years.

Schedule 1 (3) (a) amends section 16 (1) (b) of the Principal Act so as to enable a licence to be cancelled if its holder is disqualified under proposed section 10A.

Schedule 1 (3) (b) amends section 16 (1) (c) of the Principal Act so that one of the grounds for cancellation of a licence provided by that paragraph is not duplicated by other provisions of that Act.

Schedule 1 (3) (c) amends sections 16 (3) and 17 (2) of the Principal Act so as to require the registrar to cancel a licence or disqualify a person from holding a licence under those provisions by an order (which may be revoked if the person affected makes a successful appeal) instead of by a notice.

Schedule 1 (4) (a) amends section 19 (1) (d) of the Principal Act to enable appeals to the District Court against automatic disqualifications from holding licences under that Act or any disqualification imposed by the registrar under proposed section 10A.

Schedule 1 (4) (b) inserts proposed section 19 (2A) into the Principal Act which states the principles upon which any such appeal shall be determined.

Schedule 1 (4) (c) and (d) amend section 19 (3) (a) of the Principal Act to specify courses available to the District Court when determining any such appeal.

Schedule 1 (5) amends section 36 of the Principal Act so as to declare that service of orders on licensees may be effected by leaving the orders at their registered offices.

Schedule 2 (1) amends section 4 (1) of the Principal Act so as to ensure that a rural society registered under the Co-operation Act 1923 will be a producer for the purposes of the Principal Act and therefore entitled to the benefits of the Principal Act applicable to producers.

Schedule 2 (2) (a) repeals and replaces section 27 (1) of the Principal Act. The proposed section 27 (1)—

- (a) increases the cases in which persons selling farm produce on an agency basis (without the prior written consent of their principals) are prohibited from selling the produce to other persons related to the seller; and

(b) enables regulations to be made creating exceptions to that prohibition.

Schedule 2 (2) (b) amends section 27 (2) of the Principal Act so as to enable regulations to be made creating exceptions to the prohibition imposed by that subsection on employees purchasing farm produce sold on an agency basis by their employers without the prior written consent of the principals concerned.

Schedule 2 (3) (a) and (b) contain consequential amendments to the Principal Act.

Schedule 2 (3) (c) inserts proposed section 34 (2) (c) and (d) into the Principal Act. Those provisions will require the holder of a licence to notify particulars to the registrar within 7 days of a change in the holder's business address or of the sale of the holder's business of selling farm produce.

Schedule 2 (4) repeals and replaces section 38 (3) of the Principal Act for the purpose of empowering the registrar to provide a report of an inspection conducted with respect to a farm produce seller's books to the seller.

Schedule 2 (5) (a) inserts proposed section 53 (1A) into the Principal Act which will provide for the use in evidence of signed documents forming the whole or part of prescribed agreements relating to the sale of farm produce to or by a farm produce seller.

Schedule 2 (5) (b) amends section 53 (2) of the Principal Act so as to create an offence if a person inserts false particulars in, or falsely or recklessly attests particulars contained in, any document referred to in proposed section 53 (1A).

Schedule 2 (6) (a) inserts proposed section 55 (1) (j1) into the Principal Act which will enable regulations to be made permitting farm produce sellers to purchase farm produce held by them as agents in prescribed circumstances.

Schedule 2 (6) (b) contains a consequential amendment to the Principal Act.

Schedule 2 (6) (c) inserts proposed section 55 (1) (m1) into the Principal Act which will enable regulations to be made prescribing the form of agreements for the purposes of proposed section 53 (1A).

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20250

OFFICE OF THE ASSISTANT SECRETARY
FOR LAND AND WATER RESOURCES
1985-1986 FISCAL YEAR

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
SECTION 10

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FARM PRODUCE (AMENDMENT) BILL 1985

No. , 1985

A BILL FOR

An Act to amend the Farm Produce Act 1983 with respect to the disqualification of persons from holding licences under that Act and for other purposes.

Farm Produce (Amendment) 1985

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

5 Short title

1. This Act may be cited as the "Farm Produce (Amendment) Act 1985".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- 10 (2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Farm Produce Act 1983 is referred to in this Act as the Principal
15 Act.

Schedules

4. This Act contains the following Schedules:
- SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO LICENCES
- 20 SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO THE
PRINCIPAL ACT

Amendment of Act No. 30, 1983

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

SCHEDULE 1

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCES

(1) (a) Section 10 (1) (b), (d) and (i)—

5 Omit the paragraphs.

(b) Section 10 (1) (c)—

Omit “or (b)”.

(c) Section 10 (1) (h)—

After “dollar;”, insert “or”.

10 (2) Section 10A—

After section 10, insert:

Disqualification by registrar

10A. (1) The grounds upon which the registrar may disqualify a person under this section from holding a licence are—

- 15 (a) that the person has been, in or beyond the Commonwealth, convicted of an offence against this Act or the regulations, the Farm Produce Agents Act 1926 or any similar legislation of any other State, territory or country or a regulation made under that Act or legislation;
- 20 (b) that the person has been, in or beyond the Commonwealth, convicted of an offence of attempting or conspiring to commit an offence referred to in paragraph (a);
- 25 (c) that the person is subject to a composition or scheme of arrangement with creditors which was made or entered into by the person, in or beyond the Commonwealth, either individually or as a partner; or
- 30 (d) that a licence held by the person under this Act, the Farm Produce Agents Act 1926 or any similar legislation of any other State, territory or country has been cancelled (otherwise than at the holder’s own request).

(2) Where the registrar is satisfied that a ground exists upon which a person may be disqualified under this section from holding a licence, the registrar may—

*Farm Produce (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LICENCES—*continued*

(a) by notice in writing served on the person, inform the person that the registrar proposes to disqualify the person from holding a licence and of the ground for doing so; and

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

10 (3) Where, within the period allowed under subsection (2) (b), the person has not shown sufficient cause why the person should not be disqualified from holding a licence, the registrar may, by order in writing served on the person, disqualify the person from holding a licence for such period, not exceeding 5 years, as is specified in the order.

(4) Where a person is disqualified under this section on the ground—

15 (a) that the person has been convicted of an offence; or

(b) that a licence held by the person has been cancelled,

the period of disqualification shall not expire later than 5 years after the date of the conviction or cancellation, as the case may be.

20 (3) (a) Section 16 (1) (b)—

After “section 10”, insert “or 10A”.

(b) Section 16 (1) (c)—

25 Omit “against section 22 or 24, whether or not he has”, insert instead “under section 22 or 24, notwithstanding that the holder has not”.

(c) Sections 16 (3), 17 (2)—

Omit “notice” wherever occurring, insert instead “an order”.

(4) (a) Section 19 (1) (d)—

*Farm Produce (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LICENCES—*continued*

Omit “under section”, insert instead “imposed by section 10 or under section 10A or”.

(b) Section 19 (2A)—

After section 19 (2), insert:

5 (2A) A Judge in determining an appeal under subsection (1) shall have regard to the public interest in the orderly marketing of farm produce and the merits and circumstances of the particular case.

(c) Section 19 (3) (a) (ii)—

10 Omit “or” where lastly occurring.

(d) Section 19 (3) (a) (iii), (iv)—

Omit section 19 (3) (a) (iii), insert instead:

15 (iii) in the case of an appeal under subsection (1) (b) or (c), revoke the requirement or cancellation the subject of the appeal; or

(iv) in the case of an appeal under subsection (1) (d), lift or revoke the disqualification the subject of the appeal or, if appropriate, vary the period of the disqualification the subject of the appeal; and

20 (5) Section 36—

After “notices”, insert “and orders”.

SCHEDULE 2

(Sec. 5)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

25 (1) Section 4 (1), definition of “producer”—

After the definition of “licensee”, insert:

*Farm Produce (Amendment) 1985*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

“producer” includes a rural society registered under the Co-operation Act 1923;

(2) (a) Section 27 (1)—

Omit the subsection, insert instead:

5 (1) Except in accordance with the regulations, a farm produce seller shall not, directly or indirectly, alone or by a partner or subagent, sell any farm produce (being produce in respect of which the seller or a firm of which the seller is a member is acting as farm produce agent)—

10 (a) where the seller is a person other than a corporation—to a member of the seller’s family or to a corporation of which the seller is a director; or

15 (b) where the seller is a corporation—to a director of that corporation, to another corporation having one or more directors in common with that corporation or to a firm of which one or more of the members are directors of that corporation,

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

(b) Section 27 (2)—

Omit “An employee”, insert instead “Except in accordance with the regulations, an employee”.

(3) (a) Section 34 (2) (a)—

25 Omit “or”.

(b) Section 34 (2) (b)—

Omit “change.”, insert instead “change;”.

(c) Section 34 (2) (c), (d)—

After section 34 (2) (b), insert:

Farm Produce (Amendment) 1985

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (c) changes the place at which the holder carries on business as a farm produce seller shall notify the registrar of the address at which the holder carries on that business within 7 days after the change; or
- 5 (d) sells a business which consisted of or included the selling of farm produce shall notify the registrar of the sale and the name of the purchaser of the business within 7 days after the sale.
- (4) Section 38 (3)—
- 10 Omit the subsection, insert instead:
- (3) The registrar may give a report of the result of an inspection made under subsection (1) concerning a farm produce seller—
- 15 (a) to a person for whom the seller acts or has acted as a farm produce agent or with whom the seller deals or has dealt as a farm produce merchant, in so far as the inspection directly concerns the person; and
- (b) to the seller.
- (5) (a) Section 53 (1A)—
- 20 After section 53 (1), insert:
- 25 (1A) A document forming the whole or any part of an agreement in or to the effect of a prescribed form relating to the terms and conditions of sale of farm produce to or by a farm produce seller, being a document which contains particulars purporting to have been acknowledged by the signature of a party to the agreement, is admissible in evidence in any proceedings and is prima facie evidence in any proceedings brought against that party of the facts contained therein.

Farm Produce (Amendment) 1985

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 53 (2)—

After “produce”, insert “or a document referred to in subsection (1A)”.

(6) (a) Section 55 (1) (j1)—

5 After section 55 (1) (j), insert:

(j1) permitting farm produce sellers to purchase farm produce which, immediately before the purchase, was in the possession of the sellers as farm produce agents and regulating any such purchases;

10 (b) Section 55 (1) (m)—

Omit “and”.

(c) Section 55 (1) (m1)—

After section 55 (1) (m), insert:

15 (m1) prescribing forms of agreements relating to the terms and conditions of sale of farm produce; and

FARM PRODUCE (AMENDMENT) ACT 1985 No. 233

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 233, 1985

An Act to amend the Farm Produce Act 1983 with respect to the disqualification of persons from holding licences under that Act and for other purposes. [Assented to, 18th December, 1985.]

Farm Produce (Amendment) 1985

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

Short title

1. This Act may be cited as the "Farm Produce (Amendment) Act 1985".

Commencement

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

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

Principal Act

3. The Farm Produce Act 1983 is referred to in this Act as the Principal Act.

Schedules

4. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT
RELATING TO LICENCES

SCHEDULE 2—MISCELLANEOUS AMENDMENTS TO THE
PRINCIPAL ACT

Amendment of Act No. 30, 1983

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

SCHEDULE 1

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LICENCES

- (1) (a) Section 10 (1) (b), (d) and (i)—

Omit the paragraphs.

- (b) Section 10 (1) (c)—

Omit “or (b)”.

- (c) Section 10 (1) (h)—

After “dollar;”, insert “or”.

- (2) Section 10A—

After section 10, insert:

Disqualification by registrar

10A. (1) The grounds upon which the registrar may disqualify a person under this section from holding a licence are—

- (a) that the person has been, in or beyond the Commonwealth, convicted of an offence against this Act or the regulations, the Farm Produce Agents Act 1926 or any similar legislation of any other State, territory or country or a regulation made under that Act or legislation;
- (b) that the person has been, in or beyond the Commonwealth, convicted of an offence of attempting or conspiring to commit an offence referred to in paragraph (a);
- (c) that the person is subject to a composition or scheme of arrangement with creditors which was made or entered into by the person, in or beyond the Commonwealth, either individually or as a partner; or
- (d) that a licence held by the person under this Act, the Farm Produce Agents Act 1926 or any similar legislation of any other State, territory or country has been cancelled (otherwise than at the holder’s own request).

(2) Where the registrar is satisfied that a ground exists upon which a person may be disqualified under this section from holding a licence, the registrar may—

*Farm Produce (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LICENCES—*continued*

- (a) by notice in writing served on the person, inform the person that the registrar proposes to disqualify the person from holding a licence and of the ground for doing so; and
- (b) allow the person a period of 14 days to show cause why the person should not be disqualified from holding a licence.

(3) Where, within the period allowed under subsection (2) (b), the person has not shown sufficient cause why the person should not be disqualified from holding a licence, the registrar may, by order in writing served on the person, disqualify the person from holding a licence for such period, not exceeding 5 years, as is specified in the order.

(4) Where a person is disqualified under this section on the ground—

- (a) that the person has been convicted of an offence; or
- (b) that a licence held by the person has been cancelled,

the period of disqualification shall not expire later than 5 years after the date of the conviction or cancellation, as the case may be.

(3) (a) Section 16 (1) (b)—

After “section 10”, insert “or 10A”.

(b) Section 16 (1) (c)—

Omit “against section 22 or 24, whether or not he has”, insert instead “under section 22 or 24, notwithstanding that the holder has not”.

(c) Sections 16 (3), 17 (2)—

Omit “notice” wherever occurring, insert instead “an order”.

(4) (a) Section 19 (1) (d)—

*Farm Produce (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LICENCES—*continued*

Omit “under section”, insert instead “imposed by section 10 or under section 10A or”.

(b) Section 19 (2A)—

After section 19 (2), insert:

(2A) A Judge in determining an appeal under subsection (1) shall have regard to the public interest in the orderly marketing of farm produce and the merits and circumstances of the particular case.

(c) Section 19 (3) (a) (ii)—

Omit “or” where lastly occurring.

(d) Section 19 (3) (a) (iii), (iv)—

Omit section 19 (3) (a) (iii), insert instead:

(iii) in the case of an appeal under subsection (1) (b) or (c), revoke the requirement or cancellation the subject of the appeal; or

(iv) in the case of an appeal under subsection (1) (d), lift or revoke the disqualification the subject of the appeal or, if appropriate, vary the period of the disqualification the subject of the appeal; and

(5) Section 36—

After “notices”, insert “and orders”.

SCHEDULE 2

(Sec. 5)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 4 (1), definition of “producer”—

After the definition of “licensee”, insert:

*Farm Produce (Amendment) 1985*SCHEDULE 2—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

“producer” includes a rural society registered under the Co-operation Act 1923;

(2) (a) Section 27 (1)—

Omit the subsection, insert instead:

(1) Except in accordance with the regulations, a farm produce seller shall not, directly or indirectly, alone or by a partner or subagent, sell any farm produce (being produce in respect of which the seller or a firm of which the seller is a member is acting as farm produce agent)—

(a) where the seller is a person other than a corporation—to a member of the seller’s family or to a corporation of which the seller is a director; or

(b) where the seller is a corporation—to a director of that corporation, to another corporation having one or more directors in common with that corporation or to a firm of which one or more of the members are directors of that corporation,

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

(b) Section 27 (2)—

Omit “An employee”, insert instead “Except in accordance with the regulations, an employee”.

(3) (a) Section 34 (2) (a)—

Omit “or”.

(b) Section 34 (2) (b)—

Omit “change.”, insert instead “change;”.

(c) Section 34 (2) (c), (d)—

After section 34 (2) (b), insert:

Farm Produce (Amendment) 1985

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (c) changes the place at which the holder carries on business as a farm produce seller shall notify the registrar of the address at which the holder carries on that business within 7 days after the change; or
- (d) sells a business which consisted of or included the selling of farm produce shall notify the registrar of the sale and the name of the purchaser of the business within 7 days after the sale.

(4) Section 38 (3)—

Omit the subsection, insert instead:

(3) The registrar may give a report of the result of an inspection made under subsection (1) concerning a farm produce seller—

- (a) to a person for whom the seller acts or has acted as a farm produce agent or with whom the seller deals or has dealt as a farm produce merchant, in so far as the inspection directly concerns the person; and
- (b) to the seller.

(5) (a) Section 53 (1A)—

After section 53 (1), insert:

(1A) A document forming the whole or any part of an agreement in or to the effect of a prescribed form relating to the terms and conditions of sale of farm produce to or by a farm produce seller, being a document which contains particulars purporting to have been acknowledged by the signature of a party to the agreement, is admissible in evidence in any proceedings and is prima facie evidence in any proceedings brought against that party of the facts contained therein.

Farm Produce (Amendment) 1985

SCHEDULE 2—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) Section 53 (2)—

After “produce”, insert “or a document referred to in subsection (1A)”.

(6) (a) Section 55 (1) (j1)—

After section 55 (1) (j), insert:

(j1) permitting farm produce sellers to purchase farm produce which, immediately before the purchase, was in the possession of the sellers as farm produce agents and regulating any such purchases;

(b) Section 55 (1) (m)—

Omit “and”.

(c) Section 55 (1) (m1)—

After section 55 (1) (m), insert:

(m1) prescribing forms of agreements relating to the terms and conditions of sale of farm produce; and