

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

PROOF

No. , 1931.

A BILL

To make further provision for the regulation and control of farm produce agents and the sale of farm produce; to amend the Farm Produce Agents Act, 1926; and for purposes connected therewith.

[CAPTAIN DUNN ;— , 1931.]

BE it enacted by the King'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
5 the same, as follows :—

1. (1) This Act may be cited as the " Farm Produce Agents (Amendment) Act, 1931."

62263

250—(5)

(2)

Short title, citation, and commencement.

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Farm Produce Agents (Amendment).

(2) The Farm Produce Agents Act, 1926, as amended by this Act, may be cited as the Farm Produce Agents Act, 1926-1931.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. 6

Amendment of Act No. 7, 1926. Sec. 2. (Interpretation.)

2. The Farm Produce Agents Act, 1926, is amended—

- (a) (i) by inserting in section two in the definition of "Farm produce" after the word "poultry" the word "honey"; 10
- (ii) by omitting the definition of "Farm produce agent" from the same section and by inserting in lieu thereof the following new definition:—

"Farm produce agent" means any 15
 person who as agent for another
 whether alone or in connection
 with any other business sells farm
 produce or advertises or notifies
 that he exercises or carries on the 20
 business of selling farm produce,
 and includes a person who controls
 or manages the business of a farm
 produce agent who is not resident
 within the State of New South 25
 Wales, and also any broker or factor
 of any farm produce; but the term
 does not include a licensed auc-
 tioneer conducting a clearing-out
 sale of the vendor's own farm pro- 30
 duce on the vendor's property, a
 person employed merely as a clerk
 or servant, or any banking company,
 or any society registered under the
 Co-operation Acts, 1923-1929, which 35
 disposes of the agricultural pro-
 ducts of its members and of no
 other persons.

(iii)

(iii) by inserting at the end of the same section the following new subsection :—

5 (2) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any enactment thereof would but for this section have been construed as being in excess of that power it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

(b) by inserting at the end of section four the following new subsections :— Sec. 4. (Deputy registrar.)

15 (2) The Governor may appoint a deputy registrar to act at any time when the registrar is prevented by illness or absence from acting in his office or during any vacancy in his office.

20 (3) A deputy, while acting under such appointment, shall have the like powers and duties and be subject to the like provisions as if he were the registrar.

25 (c) by inserting at the end of section five the words "and shall be liable on summary conviction to a penalty of not less than *five* pounds nor more than *one hundred* pounds, or to imprisonment for a term not exceeding *twelve* months"; Sec. 5. (Carrying on business without a license.)

30 (d) (i) by inserting at the end of subsection two of section seven the following proviso :— Sec. 7. (License.)

35 Provided that the registrar may refuse to enter an applicant in the register and to issue a license to him if during the immediately preceding five years the applicant has been convicted of an offence against this Act.

(ii)

Farm Produce Agents (Amendment).

(ii) by omitting paragraph (a) of subsection three of the same section and by inserting in lieu thereof the following new paragraph :—

(a) a bond in the prescribed form from 5
an insurance company approved by
the registrar ; or

(iii) by omitting paragraph (c) of the same subsection ;

(iv) by inserting in the same section next after 10
subsection three the following new sub-
sections :—

(3A) The amount of the bond shall be—

(a) where the applicant is a corporation— 15
two thousand pounds ;

(b) where the applicant is a member of
a firm—two thousand pounds ;

(c) where the registrar is satisfied that
the applicant sells farm produce out-
side a radius of ten miles from the 20
General Post Office, Sydney, and not
within such radius, and so sells only
by auction—three hundred pounds ;

(d) in any other case—one thousand
pounds. 25

(3B) Any farm produce agent who fur-
nishes a bond in accordance with paragraph
(c) of subsection (3A) of this section as a
condition of being granted a license and
who sells farm produce otherwise than in 30
accordance with the provisions of that
paragraph shall, unless he furnishes a
further bond in an amount requisite to
comply with the provisions of that sub-
section in regard to such sale, be guilty of 35
an offence against this Act.

(3C) In the case of a firm, each member
shall apply for a license, but one bond only
shall be required, conditioned to indemnify
all persons for whom any member of the 40
firm acts or has acted as farm produce
agent

agent against any loss due to any default of any member of the firm in contravention of this Act or the regulations thereunder.

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(3D) The registrar may refuse to accept any bond, receipt for renewal premium, or certificate of renewal, if in his opinion the bond tendered or in respect of which the receipt or certificate is issued is not adequate security for the amount prescribed by subsection (3A) of this section.

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(e) by omitting from paragraph (b) of section eight the words "of any felony or offence punishable by imprisonment for a term exceeding three months" and by inserting in lieu thereof the words "of any offence under Chapter I of Part IV, or under Part V of the Crimes Act, 1900, as amended by subsequent Acts, or of any similar offence against the law of any other State, territory or country";

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(f) by omitting paragraph (f) of the same section; (g) by inserting at the end of the same section the following new paragraph:—

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or (g) has during the immediately preceding five years been the holder of a license which has been cancelled on the ground specified in paragraph (i) or in paragraph (j) of subsection one of section ten of this Act.

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3. The Farm Produce Agents Act, 1926, is further amended—

Further amendment of Act No. 7, 1926.

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(a) (i) by omitting from subsection one of section nine the words and letters "paragraphs (b), (c), (e), or (f) of section eight" and by inserting in lieu thereof the words and letters "paragraphs (b), (c), (d), (e), or (g) of section eight";

Sec. 9. (Correction.)

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(ii) by omitting from subsection three of the same section the words "carrying on business" and by inserting in lieu thereof the words "the members of which carry on business";

(b)

Sec. 10.
(Cancellation)

- (b) (i) by omitting from paragraph (c) of subsection one of section ten the word "commits" and by inserting in lieu thereof the words "is convicted of";
- (ii) by inserting in the same paragraph after the word "Act" the words "or the regulations";
- (iii) by inserting at the end of the same subsection the following new paragraphs:—
- or (g) the holder being a member of a firm has 10 not furnished the prescribed notice and particulars of any change in the constitution of the firm; or
- (h) the registrar has given notice to the holder that the bond furnished or in 15 respect of which a receipt for renewal premium or certificate of renewal has been furnished is not in his opinion adequate security for the amount thereof and the holder has not within 20 a time specified in the notice furnished another bond approved by the registrar; or
- (i) judgment has been obtained in an action upon a bond furnished in 25 accordance with section seven of this Act; or
- (j) the registrar is satisfied upon the written admission of the holder that default has been made by the holder 30 in complying with the provisions of section fifteen of this Act.
- (c) by inserting next after section ten the following

New s. 10A.

Change in firm.

new section:—

10A. Where members of a firm are carrying 35 on business as farm produce agents and any change occurs in the constitution of the firm, the prescribed notice of such change and particulars of the constitution of the firm shall be furnished by each member of the firm to 40 the registrar within the prescribed time.

4. The Farm Produce Agents Act, 1926, is further amended— Further amendment of Act No. 7, 1926.

5 (a) by omitting section twelve and by inserting in lieu thereof the following section:— Sec. 12.

10 12. Any person who allows to remain unobliterated any words which have been written or affixed over or about a house or premises or part of a house or premises occupied by him which are capable of being understood to indicate that the occupier thereof is a farm produce agent shall, unless he is the holder of a license, be liable to a penalty not exceeding *one hundred* pounds. Premises.

15 (b) by omitting section thirteen and by inserting in lieu thereof the following section:— Sec. 13.

20 13. (1) For the purpose of ascertaining whether any offence against this Act or the regulations has been committed, the registrar or any person authorised by him in that behalf by writing under his hand either generally or in respect of any particular transaction or person may at all reasonable times— Inspection of books, &c.

25 (a) enter and search any premises in which the business of a farm produce agent or of any person required by this Act to keep books is being carried on, or in which he has reasonable cause to believe such business is being carried on;

30 (b) inspect any books, accounts, registers, documents, or writings found in or upon such premises relating to any transaction in connection with farm produce, and take copies thereof or of any entries therein.

35 (2) Any person who obstructs, hinders, prevents, or interferes with the registrar or any person so authorised or who, when requested so to do, refuses or neglects to produce such books, accounts, registers, documents, or writings shall be guilty of an offence against this Act.

(3)

(3) The registrar may communicate to any client of a farm produce agent a report of the result of such inspection so far as it directly concerns such client.

(4) If the registrar or any officer appointed in accordance with the provisions of this Act or any person authorised by the registrar in accordance with the provisions of this section without lawful excuse reveals any matter or thing relating to the business of a farm produce agent which has come to his knowledge in his official capacity or in his capacity as such authorised person he shall be liable to a penalty not exceeding *fifty* pounds. 5

Sec. 14.
(Advice of sales.)

(c) (i) by omitting from section fourteen the words "seven days" and by inserting in lieu thereof the words "fourteen days"; 15

(ii) by inserting at the end of the same section the following new subsection:—

(2) Such account shall be in the form and contain such particulars as are prescribed. 20

Sec. 15.

(d) by omitting section fifteen and by inserting in lieu thereof the following section:—

Payment of proceeds of sale.

15. (1) Every farm produce agent shall, within fourteen days after the sale of any farm produce, pay to the person on whose behalf the sale was made or to such other person or in such manner as such person may direct the amount of the purchase money, less commission and other charges at the prescribed rate, any out-of-pocket expenses properly payable by the principal, and any amount owing by him to the agent. 25 30

Such net amount in respect of the sale shall be so paid whether it has been received by the farm produce agent or not. 35

(2) Any farm produce agent who fails to pay such net amount within the prescribed time shall be guilty of an offence against this Act, 40

5 Act, and the court before whom any such offender is convicted shall, in addition to any penalty imposed, order the offender forthwith to pay to the person entitled thereto such net amount or the balance thereof then owing.

10 (3) An order for the payment of such net amount or the balance thereof then owing shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, and be enforceable as such an order under the provisions of that Act. The order may for such purpose be entered in the records of the court exercising jurisdiction under the said Act named in the order, or, if 15 no such court is named, in the records of any court exercising such jurisdiction within the police district in which the order was made. The entry in such records shall be made in accordance with regulations made under this Act.

20 (e) by omitting section sixteen and by inserting Sec. 16. in lieu thereof the following new section :— (Trust account.)

25 16. (1) A farm produce agent who renders a False false account of the receipt, sale, or disposal of accounts. any farm produce or of any moneys received in connection therewith or of the application of such moneys shall be liable upon summary conviction to a penalty not exceeding *fifty* pounds.

30 (2) A farm produce agent who fraudu- Fraudulent accounts by agent. lently renders any such false account shall be liable upon conviction upon indictment to imprisonment with hard labour for a term not exceeding *three* years.

35 (3) Where any such false account is Fraudulent accounts by corporation. fraudulently rendered on behalf of a corporation carrying on business as a farm produce agent the corporation shall be deemed to have committed

committed an offence against this Act and shall be liable upon conviction upon indictment to a penalty not exceeding *one thousand* pounds.

And, in addition, the secretary and every director or manager or chairman thereof in the State and every officer concerned in the management of the corporation shall be guilty of an offence, and upon conviction upon indictment shall be liable to imprisonment with hard labour for a term not exceeding *three* years unless the person charged proves that the offence charged was committed without his knowledge or connivance and without any negligence on his part.

Fraudulent accounts by firm.

(4) Where any such false account is rendered by or on behalf of a firm the members of which carry on business as a farm produce agent, each member of the firm who is in the State shall be liable to be charged with an offence against subsection one of this section, or if the account was fraudulently rendered, with an offence against subsection two of this section, and shall be liable to the punishment thereby provided.

(f) by omitting section seventeen.

Sec. 17.
(Fraudulent accounts.)
Further amendment of Act No. 7, 1926.
Sec. 18.
(Restrictions on agents purchasing consignments.)
New s. 19.

5. The Farm Produce Agents Act, 1926, is further amended—

- (a) by inserting in subsection one of section eighteen after the words "delivered to him" the words "or to any firm of which he is a member";
- (b) by omitting section nineteen and by inserting in lieu thereof the following section:—

19. Any farm produce agent who by himself or his agent or servant destroys or casts away any farm produce except by the written direction of or with the written authority first had and obtained of any health officer, officer of the City Municipal Council, or prescribed officer of the Department of Agriculture, shall be guilty of an offence against this Act.

Destruction of farm produce.

(c)

(c) by omitting section twenty-one and by inserting in lieu thereof the following section :— New s. 21.

5 21. (1) No person shall sell hay, chaff, or other prescribed article that is on the railway premises at Alexandria otherwise than in the manner prescribed. Sale of chaff at Alexandria to be by auction.

(2) Any sale by auction shall be held at such times as are prescribed.

10 (3) No person who sells any such hay, chaff, or other prescribed article as aforesaid shall charge, sue for, or recover any fees, charges, commission, reward or other remuneration in excess of the fees, charges, commission, reward, or other remuneration prescribed.

15 (d) (i) by omitting from section twenty-two the word "knowingly"; Sec. 22.

(ii) by adding at the end of the same section the following new subsections :— (Misrepresentation of description, grade, &c.)

20 (2) Any person who, having offered or exposed for sale any farm produce or supplied or exhibited any sample of farm produce thereafter upon an offer to purchase farm produce of the same quality or price, supplies farm produce of a quality inferior to that offered or exposed for sale or to the sample shall be guilty of an offence against this Act.

25 (3) Any person who offers or exposes for sale any farm produce and upon an offer to purchase the farm produce refuses to supply the purchaser from the lot of farm produce so offered or exposed shall be guilty of an offence against this Act.

30 (e) (i) by omitting from section twenty-three the words "a farm produce agent shall not be entitled to" and by inserting in lieu thereof the following words: "no farm produce agent shall charge"; Sec. 23. (Regulation of commission.)

35 (ii) by inserting in paragraph (b) of the same section before the word "remuneration" the words "fees, charges, commission, reward, or other"; (f)

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Sec. 24.
(Registered
office.)

- (f) (i) by omitting from section twenty-four the words "such place of business" and by inserting in lieu thereof the words "each place at which the business of a farm produce agent is conducted"; 5
- (ii) by inserting at the end of the same section the following new subsection:—
 - (2) No farm produce agent shall—
 - (a) commence to carry on business at any place other than that mentioned in 10 his application for a license; or
 - (b) cease to carry on business as a farm produce agent at any place, unless he has given notice in that behalf to the registrar. 15

Sec. 25.
(Entries in
books, &c.)

- (g) by inserting in section twenty-five after the words "every entry in any book" the words "account, document, or writing issued by or";

Sec. 27.
(Offence by
corporation.)

- (h) by omitting from section twenty-seven the words "the chairman of directors and every 20 managing director" and by inserting in lieu thereof the words "the secretary and every director or manager or chairman thereof in the State";

Sec. 28.
(Right to
inspect and
sue on bond.)

- (i) by inserting at the end of subsection two of 25 section twenty-eight the following words: "and may take such other proceedings against the company which entered into the bond as are necessary to recover the amount of the loss." 30

Further
amendment of
Act No. 7, 1926.

6. The Farm Produce Agents Act, 1926, is further amended—

Sec. 29.
(Evidence.)

- (a) (i) by omitting from section twenty-nine the words "having acted or carried on business or for having advertised or notified that he 35 acts or carries on business as a farm produce agent without a license" and by inserting in lieu thereof the words "a contravention of any provision of this Act or the regulations thereunders; (ii)

- (ii) by omitting from the same section the words " did not " and by inserting in lieu thereof the words " did or did not as the case may be " ;
- 5 (iii) by inserting at the end of the same section the following new subsection :—
 - (2) In any proceedings against any person for an offence against the provisions of this Act or the regulations made there-
10 under—
 - (a) the fact that any farm produce, or any case, box, bag, or other receptacle which contains farm produce is marked—
 - 15 (i) with the name of any person who or firm which is a grower or producer of that class of farm produce ; or
 - (ii) with any mark commonly used by such person or firm to denote his or its farm produce ;
 - 20 (b) statements made by a farm produce agent at or about the time of a sale by him in reply to interrogations by the purchaser, or the registrar, or a person authorised under subsection one of section
25 thirteen, that any person or firm is the owner of any farm produce, shall be evidence that such farm produce is the property of such person or firm.
- 30 (b) by inserting after section twenty-nine the following new sections :—
 - 29A. No person shall purchase for resale
35 any farm produce from the person by whom it was produced unless at the time of the purchase or before delivery of the farm produce, which-
40 ever is the earlier, the price for which he purchases such farm produce has been definitely fixed and agreed to by his vendor at a sum of money certain, and which is not to be ascer-
tained by reference to any other transaction or otherwise.

New ss. 29A, 29B, 29C.

Purchase of farm produce.

In

In any prosecution for an offence against this section the onus of proof that the price has been so fixed and agreed to shall be upon the defendant.

Any person who contravenes any of the provisions of this section shall be liable on summary conviction to a penalty of not less than *twenty* pounds nor more than *one hundred* pounds. **5**

Books to be kept.

29B. Every person who purchases for resale any farm produce from the person by whom it was produced shall keep such books and in such manner as may be prescribed. **10**

Destruction of books.

29C. Any farm produce agent or other person required by this Act to keep any book who, without the permission of the registrar, or a person authorised by the registrar under subsection one of section thirteen of this Act, destroys or disposes of, or authorises or permits the destruction or disposal of any such book, within twelve months after the expiration of the year during which entries were made in such book, shall be guilty of an offence against this Act. **15**

Sec. 30 (2). (Penalties.)

(c) by inserting in subsection two of section thirty before the word "penalties" the words "except where otherwise provided in this Act"; **25**

Sec. 32. (Regulations.)

(d) (i) by inserting in paragraph (e) of subsection one of section thirty-two after the words "farm produce agents" where firstly occurring the words "or by any prescribed class of farm produce agents or by any other persons required by this Act to keep books"; **30**

(ii) by inserting in the same paragraph after the words "farm produce agents" where secondly occurring the words "or by any prescribed class of farm produce agents"; **35**
(iii)

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- (iii) by inserting in paragraph (f) of the same subsection after the word "charges" the word "commission";
- 5 (iv) by inserting in the same paragraph after the words "farm produce agents" the words "or any prescribed class of farm produce agents";
- (v) by inserting at the end of the same subsection the following new paragraphs:—
- 10 (j) the manner in which farm produce received by a farm produce agent for sale shall be stored, ripened, or otherwise treated by the farm produce agent;
- 15 (k) the manner in which any farm produce or any case, box, bag, or other receptacle which contains farm produce delivered or consigned to a farm produce agent, shall be marked;
- 20 (l) the manner in which any case, box, bag, or other receptacle which contains farm produce repacked by a farm produce agent, shall be marked to indicate that it has been repacked by him.
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