

# Farm Produce Agents (Amendment) Bill.

## **EXPLANATORY MEMORANDUM.**

THE provisions of the Principal Act are to be applied to "Honey" as farm produce.

The amount of the security to be provided by farm produce agents is altered, and provision is made for such amount to vary in the case of certain agents.

The Registrar is authorised to refuse any bond or other security tendered to him where such bond or security is inadequate.

The provisions of the Principal Act relating to the keeping of a trust account have been repealed.

Further provision has been made in respect of agents rendering fraudulent accounts.

Certain fraudulent practices in connection with the sale of farm produce are prohibited.

Power is given to exempt from certain provisions of the Act farm produce agents who operate on a small scale in country districts.

[CONFIDENTIAL.]

PROOF

No. , 1930.

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.

[MR. THORBY ;— , 1930.]

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 the same, as follows :—

1. (1) This Act may be cited as the " Farm Produce Agents (Amendment) Act, 1930." Short title.

(2) The Farm Produce Agents Act, 1926, as amended by this Act, may be cited as the "Farm Produce Agents Act, 1926-1930."

Commence-  
ment.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. 5

Amendment of  
Act No. 7, 1926.  
Sec. 2.  
(Interpre-  
tation.)

**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 who receives or by the terms  
of his employment is entitled to  
receive the proceeds of the sale of  
any farm produce; but the term does 30  
not include a licensed auctioneer con-  
ducting a clearing-out sale of the  
vendor's own farm produce on the  
vendor's property or a person em-  
ployed merely as a clerk or servant 35  
or any banking company.

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

(2) This Act shall be read and construed subject to the Commonwealth of Australia 40  
Constitution

5 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.

10 (b) by inserting at the end of section four the following new subsections:—

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

15 (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.

20 (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";

25 (d) (i) by omitting paragraph (a) of subsection three of section seven and by inserting in lieu thereof the following new paragraph:—

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

(ii) by inserting in the same section next after subsection three the following new subsections:—

35 (3A) The amount of the bond or other security shall be—

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

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

(c)

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- (c) where the registrar is satisfied that the applicant sells farm produce outside the counties of Camden and Cumberland and not elsewhere and only by auction to purchasers who purchase for consumption by themselves—two hundred pounds; 5
- (d) in any other case—one thousand pounds.

(3B) 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 firm acts or has acted as farm produce agent against any loss due to any default of any member of the firm in contravention of this Act or the regulations thereunder. 15

(3C) The registrar may refuse to accept any bond receipt for renewal premium, certificate of renewal, or other security if in his opinion the bond or security 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. 20 25

Sec. 8 (b).  
(Disqualification.)

- (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 country”; 30 35
- (f) by omitting from paragraph (f) of section eight the words “for which his license has been cancelled.” 3.

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

- 5 (a) (i) by omitting from subsection one of section Sec. 9. nine the words and letters "paragraphs (Corpora- (b), (c), (e), or (f) of section eight" and tion.) and by inserting in lieu thereof the words and letters "paragraphs (b), (c), (d), (e), or (f) of section eight";
- 10 (ii) by omitting from subsection three of the (Firm.) same section the words "carrying on business" and by inserting in lieu thereof the words "the members of which carry on business";
- 15 (b) (i) by inserting in paragraph (c) of subsection Sec. 10. one of section ten after the words "against (Cancell- this Act" the words "or the regulations tion.) made thereunder";
- 20 (ii) by inserting at the end of subsection one of section ten the following new paragraphs:—
  - (g) the holder being a member of a firm has not furnished the prescribed notice and particulars of any change in the constitution of the firm;
  - 25 (h) the registrar has given notice to the holder that the bond or other security furnished or in 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 a time specified in the notice furnished another bond or security approved by the registrar.
- 30 (c) by inserting next after section ten the following New s. 10A. new section:—
  - 35 10A. Where members of a firm are carrying Change in on business as farm produce agents and any firm. change occurs in the constitution of the firm, the prescribed notice of such change and
    - 40 particulars of the constitution of the firm shall be furnished by each member of the firm to the registrar within the prescribed time.

Further  
amendment of  
Act No. 7, 1926.

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

Sec. 12.

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

Offence.

12. Any person who allows to remain 5 unobliterated any words which have been written or affixed over or about 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, 10 unless he is the holder of a license, be liable to a penalty not exceeding *one hundred* pounds.

Sec. 13.

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

Inspection of  
books, &c.

13. (1) For the purpose of ascertaining 15 whether any offence against this Act 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 any 20 time inspect any books, accounts, registers, documents, or writings relating to any transaction in connection with farm produce, and may take notes, copies, or extracts thereof or therefrom. 25

(2) When the registrar is of opinion that any offence against the provisions of this Act or the regulations has been committed he may by writing under his hand authorise any person to take possession of all or any of 30 such books, accounts, registers, documents, or writings, and the person so authorised may take possession thereof accordingly.

(3) Any person who obstructs the registrar or any person so authorised or who refuses 35 to produce such books, accounts, registers, documents, or writings, or to answer any question relating thereto or to any farm produce or who gives any untruthful answer to any such question, shall be guilty of an 40 offence.

(4) 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.

5 (5) If the registrar or any officer 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.

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

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

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

Payment of proceeds of sale.

30 (e) by omitting section sixteen;

Sec. 16. (Trust Account.)

(f) 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."

Sec. 18 (1). (Restriction agents purchasing.)

35 5. The Farm Produce Agents Act, 1926, is further amended by omitting section seventeen and by inserting in lieu thereof the following new sections:—

Further amendment of Act No. 7, 1926. New sections 17, 17A, 17B.

40 17. (1) A farm produce agent who renders a false account of the receipt, sale, or disposal of any farm produce or of any moneys received by him or

False accounts.

on



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on his behalf in connection therewith shall be liable upon summary conviction to a penalty not exceeding *fifty* pounds.

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

False accounts by firm.

17A. Where a false account of the receipt, sale, or disposal of any farm produce or of any moneys received in connection therewith or of the application of such moneys is fraudulently rendered on behalf of a corporation carrying on business as a farm produce agent the corporation shall be deemed to have committed an offence against this Act and shall be liable 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 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 corporation.

17B. Where a false account of the receipt, sale, or disposal of any farm produce, or of any moneys received in connection therewith, or of the application of such moneys is rendered by or on behalf of a firm carrying 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 section seventeen, or if the account was fraudulently rendered, with an offence against subsection two of section seventeen, and shall be liable to the punishment thereby provided unless the person charged proves that the offence charged was committed without his knowledge or connivance and without any negligence on his part.

17c.

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17c. In any prosecution for an offence against the provisions of sections seventeen, 17A, or 17B of this Act it shall be presumed that the person charged knew that the account, the subject of the prosecution, was false unless he proves lack of knowledge and that such lack of knowledge was not due to connivance or negligence on his part.

Onus of proof of lack of knowledge of falsity on accused.

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

Further amendment of Act No. 7, 1926.

- 10 (a) by omitting section twenty-one;
- (b) by inserting next before section twenty-two the following new section:—

New s. 21A.

21A. No person shall sell hay, chaff, or other prescribed article on the railway premises at Alexandria otherwise than by public auction, except with the written permission of the consignor, or after the hay, chaff, or other article has been there first offered at public auction.

Sale of chaff at Alexandria to be by auction.

- 20 (c) by adding at the end of section twenty-two the following new subsections:—

Sec. 22.

(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.

(Misrepresentation of description, grade, &c.)

(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.

- 35 (d) (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";

Sec. 24.

(Registered office.

40 66—B (ii)

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

(2) Any farm produce agent who—

(a) commences to carry on business at any place other than that mentioned in his application for a license, or 5

(b) ceases to carry on business as a farm produce agent at any place

shall forthwith give notice thereof to the registrar. 10

Sec. 27.  
(Offence by corporation.)

(e) by omitting from section twenty-seven the words “the chairman of directors and every managing director” and by inserting in lieu thereof the words “the secretary and every director or manager or chairman thereof in the State” ; 15

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

(f) by adding at the end of 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.” 20

Further amendment of Act No. 7, 1926.

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

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

(a) by inserting in section twenty-five after the words “every entry in any book” the words “account, document, or writing” ; 25

Sec. 29.  
(Evidence.)

(b) (i) by omitting from section twenty-nine the words “having acted or carried on business or for having advertised or notified that he acts or carries on business as a farm produce agent without a license” and by inserting in lieu thereof the words “for a breach of any provision of section five or of section twelve” ; 30

(ii) by inserting at the end of section twenty-nine the following new subsection :—

(2) In any proceedings against any person for an offence against the provisions of  
of

of this Act or the regulations made there-  
under, the fact that any case, box, bag, or  
other receptacle which contains farm pro-  
duce is marked—

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(a) with the name of any person who or  
firm which is a grower or producer of  
that class of farm produce ; or

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(b) with any mark commonly used by  
such person or firm to denote his or  
its farm produce,

shall be evidence that such farm produce  
is the property of such person or firm.

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(c) by inserting after section twenty-nine the New sections  
29A, 29B.  
following new sections :—

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29A. No person shall purchase any farm Purchase of  
farm produce.  
produce from the person by whom it was  
produced unless at the time of the purchase  
or before delivery of the farm produce, which-  
ever is the earlier, the price for which he  
purchases has been definitely fixed or agreed  
to by his vendor at a sum of money certain,  
and is not to be ascertained by reference to  
any other transaction or otherwise.

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

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Any person who commits an offence against  
this section shall be liable on summary con-  
viction to a penalty of not less than *twenty*  
pounds nor more than *one hundred* pounds.

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29B. The Governor may by regulation Exemption of  
certain  
persons from  
provisions  
of Act.  
prescribe the conditions under which the  
registrar may exempt from any or all of the  
provisions of this Act farm produce agents  
who sell farm produce by auction to purchasers  
the majority of whom purchase for consump-  
tion by themselves.

(d)

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Sec. 32.  
(Regu-  
lations.)

- (d) (i) by inserting in paragraph (f) of subsection one of section thirty-two after the word "charges" the word "commission";
  - (ii) by inserting at the end of subsection one of section thirty-two the following new 5  
paragraph:—
    - (j) the manner in which farm produce received by a farm produce agent for sale shall be stored, marked, ripened, or otherwise treated by the farm pro-10  
duce agent and the manner in which farm produce repacked by a farm produce agent shall be marked to indicate that it has been repacked by him. 15
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