

Grain Marketing Act 1991

As at 7 July 2003

Does not include amendments by:

Law Enforcement (Powers and Responsibilities) Act 2002 No 103 (not commenced)

Reprint history:

Reprint No 1 17 July 2001

Long Title

An Act relating to the marketing of barley, canola and grain sorghum; to constitute the New South Wales Grains Board; and for other purposes.

Part 1 - Preliminary

1 Name of Act

This Act may be cited as the *Grain Marketing Act 1991*.

2 Commencement

(1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.

(2) Part 1 and section 8 commence on the date of assent.

3 Definitions

(1) In this Act:

authorised agent means a person appointed under section 39.

authorised buyer means a person appointed under section 40.

authorised officer means a person appointed under section 85.

Board means the New South Wales Grains Board constituted by this Act.

commodity means any of the following:

- (a) barley,
- (b) canola,
- (c) grain sorghum.

Consultative Committee means the Grain Marketing Consultative Committee constituted by this Act.

Department means the Department of Agriculture.

Director-General means the Director-General of the Department.

marketing includes buying, selling, financing, collecting, cleaning, grading, packing, treating, carrying, storing, warehousing, rehandling, distributing (by wholesale or retail), delivering and promoting.

permitted period means the period beginning 6 months after the appointment of the members of the Board to a term of office and ending 6 months before the end of that term but does not include any such period occurring within the period of 4 years after the commencement of section 5.

producer means:

- (a) a person by whom, or on whose behalf, a commodity is grown or produced for sale, and
- (b) if a commodity is grown or produced by a partnership or under a share-farming agreement, each of the partners or each of the parties to that agreement.

Selection Committee means the Committee appointed under section 8 for the purpose of nominating members for appointment to the Board.

sell includes:

- (a) agree to sell, and
- (b) offer or expose for sale, and
- (c) have in possession for the purpose of sale, and
- (d) barter or exchange, and
- (e) cause or permit to be done any act referred to in paragraph (a), (b), (c) or (d).

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(2A) For the purposes of this Act, a commodity comes into existence at the time that the crop that bears the commodity concerned is harvested and severed from the land.

Note: See *Australian Coarse Grains Pool Pty Ltd v Barley Marketing Board (1985) 157 CLR 605*.

(3) (Repealed)

(4) Notes included in this Act do not form part of this Act.

4 Delegation by Minister

The Minister may delegate to any person any of the Minister's functions under this Act, other than this power of delegation.

4A Delegation by Director-General

The Director-General may delegate to any person any of the Director-General's functions under this Act, other than:

- (a) any function of the Minister delegated to the Director-General under section 4, or
- (b) this power of delegation.

4B Application of Corporations Law after commencement of Corporations legislation

(1) The provisions of the *Corporations Law* and *ASIC Law* continue on and after the commencement to apply of their own force to a matter dealt with by this Act if they applied to that matter of their own force immediately before that commencement despite anything in section 6 of the *Corporations (Ancillary Provisions) Act 2001*.

(2) Any provision of this Act or the regulations that refers to, or applies to a matter, any provision of the *Corporations Law* or *ASIC Law* (whether with or without modification) continues to have effect according to its tenor despite the provisions of sections 11 and 12 of the *Corporations (Ancillary Provisions) Act 2001*.

(3) Subsections (1) and (2) have effect subject to any modifications to the *Corporations*

Law or *ASIC Law* that may be prescribed by the regulations.

(4) Any matter dealt with by this Act to which a provision of the *Corporations Law* or *ASIC Law* applies of its own force (or that is applied to the matter by a provision of this Act or the regulations) is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

Note: Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(5) Subsection (4) does not apply to any matter excluded from the operation of that subsection by the regulations.

(6) In this section:

commencement means the commencement of the *Corporations Act 2001* of the Commonwealth.

matter includes act, omission, body, person or thing.

modification includes addition, exception, omission or substitution.

4C Application of Corporations legislation to certain matters

(1) The regulations may declare a matter dealt with by this Act or the regulations to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to:

- (a) the whole of the Corporations legislation, or
- (b) an Act, regulations or other instrument forming part of the Corporations legislation, or
- (c) a provision or provisions of the Corporations legislation or of an Act, regulations or other instrument forming part of the Corporations legislation.

Note: Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

(2) Any such regulations may:

- (a) specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any provision of the Commonwealth legislation that is the subject of the declaration, and
- (b) provide for ASIC to exercise a function under any provision of the Corporations legislation that is the subject of the declaration, but only if:
 - (i) ASIC is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (ii) ASIC is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
- (c) specify that a reference to ASIC in any provision of the Corporations

legislation that is the subject of the declaration is to be read as a reference to another person, and

(d) identify the provisions of the Corporations legislation to which the declaration relates by reference to that legislation as in force at a particular time, and

(e) specify a court of this State (other than the Supreme Court) to exercise any function conferred on a court or the Court by any provision of the Corporations legislation to which the declaration relates.

(3) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.

(4) In this section:

matter includes act, omission, body, person or thing.

modification includes addition, exception, omission or substitution.

Part 2 - Administration

Division 1 - Constitution of the Board etc

5 Constitution of the Board

(1) There is constituted by this Act a body corporate with the corporate name of the New South Wales Grains Board.

(2) The Board does not, for any purpose, represent the Crown.

6 Membership of the Board

(1) The Board is to consist of:

(a) the Managing Director of the Board, and

(b) 6 part-time members appointed by the Governor.

(2) The part-time members are to be persons nominated by the Selection Committee and of those members:

(a) at least 4 must be producers, and

(b) at least 2 must have qualifications in one or more of the fields of finance, marketing, economics, accountancy or law.

(3) Schedule 1 has effect with respect to the part-time members of the Board.

(4) Schedule 2 has effect with respect to the meetings of the Board.

7 Managing Director of the Board

(1) There is to be a Managing Director of the Board.

(2) The Managing Director is to be employed by the Board on the nomination of the 6 part-time members of the Board.

(3) The Managing Director:

(a) is responsible for the management of the affairs of the Board, subject to and in accordance with any directions of the Board, and

(b) has and may exercise such other functions as are conferred or imposed on the Managing Director by or under this or any other Act.

8 Selection Committee

(1) The Selection Committee is to consist of 5 persons appointed by the Minister of whom:

(a) one is to be a person nominated by the Minister and who is to be the Chairperson of the Committee, and

(b) 4 are to be appointed from a panel of not less than 6 persons nominated by the New South Wales Farmers' Association.

(2) The members of the Selection Committee are to be appointed for such period and on

such terms and conditions (including payment of allowances) as the Minister determines.

(3) The Selection Committee is to ensure, so far as possible, that there is among the persons nominated by it for appointment as members of the Board a balance of skills and experience in the areas of grain production, marketing and financial management.

(4) A person who is nominated for membership of the Board by the Committee must not be a member of the Selection Committee which makes the nomination.

(5) A decision may not be made at a meeting of the Selection Committee unless all members are present. However, the Committee may conduct a meeting at which the members participate by telephone.

(6) The Selection Committee may engage consultants to assist it in nominating persons for appointment as members of the Board.

(7) The procedure of the Selection Committee is to be determined by the Selection Committee.

9 Board may employ staff

(1) For the purpose of enabling it to exercise its functions, the Board may employ staff (including the Managing Director) and engage consultants on such terms and conditions as it thinks fit.

(2) With the approval of the Minister and on such terms and conditions as are agreed on, the Board may make use of the services of any of the staff of the Department of Agriculture and Fisheries.

(3) With the approval of the other authority and on such terms and conditions as are agreed upon, the Board may make use of the services of any of the staff of another authority.

Division 2 - Grain Marketing Consultative Committee

10 Constitution of Grain Marketing Consultative Committee

There is constituted by this Act the Grain Marketing Consultative Committee.

11 Functions of the Consultative Committee

(1) The Consultative Committee has the functions imposed on it by or under this or any other Act.

(2) In particular, the Consultative Committee is:

(a) to make recommendations to the Board in relation to any refusal by the Board to grant, or decision to revoke, an exemption under section 46, and

(b) to conduct a review, every 4 years, of the Board's actions in this regard during the preceding 4 years and to make recommendations to the Board as to the actions to be taken by the Board in the following 4 years, and

(c) to make recommendations to the Board with respect to the operations generally of the Board.

12 Membership of the Consultative Committee

(1) The Consultative Committee is to consist of:

(a) 4 members appointed by the Minister from a panel of at least 6 persons nominated by the New South Wales Farmers' Association, and

(b) 1 member nominated by the Director-General and appointed by the Minister.

(2) A member of the Board is not eligible to be appointed as a member of the Consultative Committee.

13 Other provisions relating to the Consultative Committee

Schedule 3 has effect with respect to the members and procedure of the Consultative Committee.

Division 3 - (Repealed)

Division 4 - Winding up and dissolution of Board

20 Operation of Division

- (1) This Division authorises the winding up and dissolution of the Board:
 - (a) by petition of producers of a commodity, or
 - (b) on the recommendation of the Minister.
- (2) Nothing in this Division limits the operation of Part 7.

21 Advertisement by Minister as to time for petition

- (1) The Minister may cause a notice to be published in the Gazette and at least one newspaper circulating throughout New South Wales, specifying the period during which a petition for the dissolution of the Board may be presented to the Minister, as referred to in section 22.
- (2) The notice is to be published within the period of 3 months before the beginning of each permitted period during which such a petition may be so presented.

22 Petition and proclamation for poll to dissolve Board

- (1) The Governor may, by proclamation, direct that a poll be taken of producers of all commodities under the control of the Board on the question whether the Board should be dissolved.
- (2) The proclamation may be made only if the Minister has certified to the Governor that the Minister is satisfied:
 - (a) on representations made by petition to the Minister by producers of the commodities, that a substantial number of the producers desire that the Board should be dissolved, and
 - (b) that the petition was presented to the Minister during a permitted period.

23 Invitation by Minister for representations on dissolution

- (1) The Minister may, by a notice published in the Gazette and in such other ways as the Minister thinks proper, invite representations by any persons on the question whether the Board should be dissolved.
- (2) A notice published under this section must state the time by which and the manner in which representations are to be made.

24 Winding up and dissolution

- (1) The Governor may, by proclamation, direct the Board to wind up its affairs.
- (2) The proclamation may be made only if the Minister has certified to the Governor that the Minister is satisfied:
 - (a) that a majority of the producers concerned are, at a poll referred to in section 22, in favour of the dissolution of the Board, or
 - (b) that after taking into consideration all representations made in accordance with section 23 on the question of the dissolution of the Board, action ought to be taken in the best interests of the producers concerned for that dissolution.
- (3) On such a proclamation taking effect, the Board must proceed to wind up its affairs.
- (4) Despite subsection (2):
 - (a) the Governor may, by proclamation, appoint a person to be liquidator for the purpose of the winding up, and
 - (b) the liquidator may, for that purpose, on behalf and in the name and as the act and (where necessary) under the seal of the Board, bring and defend such proceedings, and do and execute such acts, deeds and things, as may be necessary.
- (5) (Repealed)
- (6) The reasonable costs and expenses (including remuneration) incurred by or in connection with the appointment of, and exercise of the functions of, a liquidator appointed under this section are payable from the funds of the Board.
- (7) The members of the Board may not exercise any functions as members while a person holds office as liquidator of the Board.

(8) If the Minister is of the opinion that the affairs of the Board are wound up, the Governor may, by proclamation, dissolve the Board, and all money and other assets of the Board to be dealt with and disposed of as the Governor, on the recommendation of the Minister, may direct.

Division 5 - General provisions

25 Expiry and effect of petitions

(1) A petition presented to the Minister for the purposes of this Part is taken not to have been presented if no action has been taken pursuant to its presentation within 12 months after the date it was presented.

(2) Nothing in this Act is to be construed as requiring a direction to be given for a poll to be taken in consequence of the presentation of a petition to the Minister for the purposes of this Part.

26 Certain persons taken to be producers for the purposes of petition, poll or election

If any primary product results from a process of manufacture or treatment of an article that is grown or produced, the grower or producer of the article is, for the purpose of any petition or poll under this Part, taken to be a producer of the product.

27 Report to be published in connection with poll

As soon as practicable after a proclamation under this Part is published in the Gazette directing that a poll be taken, and before the day fixed for the taking of the poll, the Director-General is to cause a report relating to the proposal to which the poll relates to be published in such manner as the Director-General considers appropriate.

28 Provisions as to polls

(1) The regulations may, subject to this Act, make provision for or with respect to the conduct of polls.

(2) The Electoral Commissioner for New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner, is to be the returning officer for the poll, and has and may exercise the functions conferred or imposed on the returning officer by the regulations in relation to the poll.

(3) A roll of producers of the commodity or other primary product concerned is to be prepared for the poll in the prescribed manner.

(4) Despite anything in this Part, and if the regulations so provide:

(a) the producers entitled to vote in accordance with the regulations at a poll are to be the producers having such qualifications as may be prescribed, and

(b) only those producers may vote at the poll.

(5) The regulations may make provision for or with respect to fixing or postponing the date for the taking of a poll.

(6) The regulations may provide that:

(a) it is compulsory for a producer, or a producer of a prescribed class or description, to be enrolled or to apply for enrolment in the relevant roll of producers, and

(b) it is compulsory for producers enrolled in the relevant roll of producers to vote at the poll, and

(c) a producer is taken to be enrolled or to apply for enrolment in the relevant roll of producers if a person of a prescribed class or description is so enrolled or so applies as the representative of the producer, and

(d) a representative referred to in paragraph (c) is, for the purposes of enrolment and of the poll, taken to be a producer.

(7) The regulations made under subsection (6) may impose a penalty not exceeding 1 penalty unit for a breach of any provision of the regulations.

29 Dismissal of the Board

- (1) The Governor may, if of the opinion that circumstances have arisen rendering it advisable to do so, by proclamation, remove all the members of the Board from office, but they or any of them are eligible (if otherwise qualified) for re-appointment.
- (2) The Minister must cause a report of, and the reasons for, the removal of the members of the Board under this section to be laid before each House of Parliament within 14 sitting days of that House after the date of publication of the proclamation in the Gazette.

30 Board not to be concerned in party politics

- (1) It is not lawful for the Board:
 - (a) to expend any of its funds in connection with the politics of any political party, or
 - (b) to become affiliated in any way with any organisation whose objects include the support of the politics or program or aims of any political party.
- (2) Without limiting section 29, if at any time the Governor is satisfied that the Board has acted in contravention of any of the provisions of subsection (1), action may be taken under that section.

31 Appointment of administrator

- (1) The Governor may, by proclamation, appoint a person to be administrator of the Board if:
 - (a) all the members of the Board have vacated their offices or have been removed from their offices, or
 - (b) all or any of the members of the Board retain their offices and the Minister has certified to the Governor that the Minister is satisfied that it would be in the best interests of the Board that an administrator be appointed.
- (2) The administrator of the Board appointed under this section has all the functions of the Board, and any act, matter or thing done or omitted to be done by the administrator has the same effect as if done or omitted by the Board.
- (3) The Governor may, by proclamation:
 - (a) remove from office any person appointed as administrator under this section, and
 - (b) fill any vacancy in the office of administrator.
- (4) The reasonable costs and expenses (including remuneration) incurred by or in connection with the appointment of, and exercise of the functions of the Board by, an administrator appointed under this section are payable from the funds of the Board.
- (5) The members of the Board may not exercise any functions as members while a person holds office as administrator of the Board.

Part 3 - Functions of the Board

Division 1 - General functions of the Board

32 General functions of the Board

The Board may do all things necessary for or incidental to achieving the purpose of improving the marketing of commodities in New South Wales.

33 Functions relating to the marketing of the commodity

The Board may market or arrange for the marketing of a commodity vested in or delivered or to be delivered to it, and do all acts, matters and things necessary or expedient to exercise those functions.

34 Voluntary deliveries of the commodity

- (1) The Board may arrange with a producer of a commodity produced or to be produced

within New South Wales (being a part of the commodity that is not vested in the Board) for the delivery of any of that commodity during such period and on such terms and conditions as the Board thinks fit.

(2) The Board may arrange with a producer of a primary product produced or to be produced outside New South Wales (being a product that, if produced within New South Wales, would answer the description of the commodity) for the delivery of any of the product during such period and on such terms and conditions as the Board thinks fit.

(3) Any of the commodity or other primary product, in so far as that commodity or other primary product is the subject of an arrangement under this section, is, subject to the terms of the arrangement, taken, for the purposes of this Act, to be part of the commodity under the control of the Board.

(4) This section does not authorise the Board to enter into an arrangement with respect to a primary product that is a commodity for which a board or committee is constituted under the *Marketing of Primary Products Act 1983*, except with the consent of that board or committee.

(5) The Board may not:

- (a) enter into an arrangement under this section on or after 1 October 2005, or
- (b) enter into an arrangement under this section that relates (either in whole or in part) to any commodity that comes into existence on or after that date.

35 Board may deal in commodity

(1) In this section, **commodity** includes a primary product that, if produced in New South Wales, would answer the description of the commodity.

(2) The Board may purchase the commodity for the purpose of:

- (a) marketing or using it, or
- (b) providing the commodity for consumption within New South Wales, whether or not during periods of shortage,

and may market, use or provide the commodity accordingly.

(3) This section does not authorise the Board to purchase any primary product that is a commodity for which a board or a committee is constituted under the *Marketing of Primary Products Act 1983*, except with the consent of that board or committee.

36 Grades and wholesale prices of the commodity

The Board may:

- (a) establish grades, classes or descriptions of a commodity, and
- (b) fix the price at which a grade, class or description of a commodity may be sold by wholesale.

37 Manufacturing and processing of the commodity

(1) The Board may, with the approval of the Minister, and subject to any conditions for the time being approved by the Minister:

- (a) establish and conduct processing or manufacturing facilities for a commodity, for use by the Board or by others, and
- (b) process any of the commodity or manufacture products from or based on the commodity, and
- (c) market any of the products so processed or products so manufactured or any by-products resulting from any such processing or manufacturing.

(2) Nothing in this section operates to require approval for anything to be done under this section which may instead be done under any other provision of this Part.

38 Board may deal in other products etc

(1) In this section, **other primary product** means any primary product other than:

- (a) a commodity, and
- (b) any product that, if produced within New South Wales, would answer the description of a commodity.

(2) The Board may, with the approval of the Minister, and subject to any conditions for

the time being determined by the Minister:

- (a) market and otherwise deal in any other primary product, and
- (b) establish and conduct processing or manufacturing facilities for any other primary product, for use by the Board or by others, and
- (c) use facilities referred to in section 37 (1) for any other primary product, and
- (d) process any other primary product or manufacture products from or based on any other primary product, and
- (e) market any of the products so processed or products so manufactured, and
- (f) manufacture articles or things for use in connection with marketing a commodity, any other primary product or any other product, and
- (g) market any of the articles or things so manufactured.

(3) The Board may not under this section deal with a primary product that is a commodity for which a board or committee is constituted under the *Marketing of Primary Products Act 1983*, except with the consent of that board or committee.

Division 2 - Agents etc

39 Appointment of authorised agents

(1) The Board may, by order in writing, appoint any person to be an authorised agent to act as the Board's agent for the purpose of exercising, in such circumstances as may be specified in the order, such of the functions of the Board as may be so specified.

(2) If the Board so appoints an authorised agent for the purpose of exercising any functions of the Board, those functions may be carried out by any employee, or agent, of the authorised agent who is authorised to do so by the authorised agent.

(3) For the purposes of this Act, and if the order appointing an authorised agent so provides:

- (a) the authorised agent of the Board is taken to deliver a portion of the commodity to the Board, and
- (b) the Board is taken to accept that portion,

in such circumstances as may be specified in the order.

(4) The Board may enter into an agreement with an authorised agent of the Board for retention by the authorised agent of such part of the proceeds of the sale by the authorised agent of any of the commodity or any other product as is provided for in the agreement.

40 Appointment of authorised buyers

(1) The Board may, by order in writing, appoint any person to be an authorised buyer.

(2) An authorised buyer is, subject to and in accordance with the order appointing the person, authorised to purchase, on the authorised buyer's own account, from a producer of the commodity or any other person any of the commodity which that producer or other person is entitled to sell.

(3) If the Board appoints an authorised buyer under subsection (1) for the purpose of exercising any functions, those functions may be carried out by any employee, or agent, of the authorised buyer who is authorised to carry out those functions by the authorised buyer.

(4) The Board may enter into an agreement with an authorised buyer for payment of commission or other remuneration to the authorised buyer.

(5) An authorised buyer may also be an authorised agent.

41 Board may act as marketing agent

(1) The Board may act as agent for any person for the purpose of marketing:

- (a) any of the commodity which that person is entitled to sell, or
- (b) with the approval of the Minister, any other primary product which that person is entitled to sell,

whether or not it was produced within New South Wales, and may do all acts, matters and things necessary or expedient to carry out that purpose.

- (2) If the Board, under this section, sells anything which is farm produce within the meaning of the *Farm Produce Act 1983* the Board is taken not to be a farm produce seller within the meaning of that Act.
- (3) Nothing in the *Auctioneers and Agents Act 1941* applies to or in respect of anything done by the Board under this section.
- (4) Without limiting its functions, the Board may, when acting as agent under this section, enter into all such arrangements with respect to marketing the relevant commodity or other product as if it were the principal.
- (5) The Board may not under this section deal with the commodity for which a board or a committee is constituted under the *Marketing of Primary Products Act 1983*, except with the consent of that board or committee.

42 Board may act as purchasing agent

- (1) The Board may, with the approval of the Minister, act as agent for any persons for the purpose of purchasing equipment, machinery, seed, fertiliser or any other article or thing for use in the production of the commodity.
- (2) Without limiting its functions, the Board may, when acting as agent under this section, enter into all such arrangements with respect to any purchases referred to in this section as if it were the principal.

43 Miscellaneous functions

- (1) The Board may:
 - (a) make such arrangements as it considers necessary with regard to sales of the commodity or any other product with which the Board is associated for export or for consignment to other countries or other parts of Australia, and
 - (b) enter into insurance contracts relating to the commodity or any other product with which the Board is associated, and
 - (c) promote and encourage the use, sale or consumption of the commodity or any other product with which the Board is associated, and
 - (d) establish and maintain laboratories and carry out research and make investigations into matters relating to the commodity and any other product with which the Board is associated (including chemical, physical, bacteriological and economic research and investigations), and
 - (e) devise and initiate as far as may be practicable improved methods of producing, marketing and using the commodity and any other product with which the Board is associated, and
 - (f) devise and initiate as far as may be practicable means to prevent or eliminate wasteful, unnecessary or unhygienic methods, practices, costs or charges in connection with producing, marketing or using the commodity and any other product with which the Board is associated, and
 - (g) enter into agreements for the use (within New South Wales or elsewhere) of any trade mark of which it is, or is entitled to be, registered as proprietor, and
 - (h) publish reports, information and advice concerning the producing, marketing or use of the commodity or any other product with which the Board is associated.
- (2) Without limiting any other of its functions, the Board may:
 - (a) enter into agreements with any person for or in connection with its functions, including agreements for the carrying out of works or the performance of services or the supply of goods or materials in connection with any of its functions, and
 - (b) enter into agreements with any person for the use of any of the equipment, machinery or facilities of the Board for a purpose not itself otherwise connected with the functions of the Board.
- (3) If necessary, and without limiting any other provision of this Act, the Board may return, destroy or otherwise dispose of any of the commodity.
- (4) Any of the functions of the Board may be exercised:

- (a) by the Board, or
 - (b) by any affiliate of the Board, or
 - (c) by the Board or such an affiliate, or both, in a partnership, joint venture or other association with other persons or bodies.
- (5) For the purpose of exercising its functions, the Board may:
- (a) join in the formation of any company to be incorporated, and
 - (b) purchase, hold, dispose of or deal with shares in, or subscribe to the issue of shares by, any company.
- (6) The Board is not to do any of the things mentioned in subsection (5) otherwise than in accordance with such guidelines (if any) as are from time to time determined by the Minister.
- (7) An affiliate of the Board is not, except with the approval of the Minister, to engage in any activities which the Board may not engage in.
- (8) If any function of the Board may be exercised only with an approval under this Act, the function requires the same approval when exercised under an arrangement, or by a company, or in a partnership, joint venture or other association, as referred to in this section.
- (9) The Board may exercise any of its functions under this Act, whether or not the function is exercised in, or the thing in respect of which the function is exercised is in or of or produced in, New South Wales.
- (10) In this section, **affiliate**, in relation to the Board, means:
- (a) a company in which the Board has a controlling interest by virtue of its shareholding, or
 - (b) a company whose memorandum and articles of association provide that any or all of the directors of the company are to be persons who are, or who are nominated by, persons for the time being holding office as members of the Board.

44 Trading activities and activities as agent etc

- (1) This section applies to the following functions of the Board:
- (a) its functions in relation to a commodity or any other primary product under sections 35 (Board may deal in commodity) and 38 (Board may deal in other products etc),
 - (b) its function as agent under section 41 (Board may act as marketing agent) or 42 (Board may act as purchasing agent),
 - (c) such other of the Board's functions as may be prescribed.
- (2) In so far as the Board keeps accounts relating to any of its functions to which this section applies, the Board is to keep separate accounts in respect of each such function.
- (3) In so far as the Board keeps accounts relating to any commodities, the Board is to keep separate accounts in respect of each such commodity.
- (4) Costs, charges and expenses incurred by the Board in exercising any function to which this section applies, including such share of the general overheads of the Board as the Board thinks fair and proper, are to be met out of any commission or other remuneration received by the Board, or out of a reserve created by the Board under Part 5, in connection with the function.
- (5) Any mortgage, charge, lien, pledge, interest or trust given or created by or on behalf of the Board in connection with, or in connection with financial accommodation obtained in connection with, any function to which this section applies, is, to the extent to which it is given or created in respect of any of the commodity vested in the Board by the operation of this Act, and whether given or created before or after the commodity became so vested, null and void.

Part 4 - Commodities

Division 1 - General

45 Vesting of commodities in Board

- (1) A commodity is absolutely vested in and is the property of the Board at the time that the commodity comes into existence.
- (2) Subsection (1) does not apply to a commodity referred to in section 34 (3), but on delivery of any such commodity in accordance with the relevant arrangement, the commodity is, unless the arrangement otherwise provides, absolutely vested in and is the property of the Board.
- (3) Any commodity vested in the Board by the operation of subsection (1) or (2) and accepted by the Board is so vested freed from all mortgages, charges, liens, pledges, interests and trusts affecting it, and the rights and interests of every person in the commodity are converted into a claim for payment for the commodity so accepted.
- (4) This section does not apply to commodities that come into existence on or after 1 October 2005.

46 Exemption by Board

- (1) The Board may, in such manner, in such cases and on such terms and conditions as it thinks fit or as are prescribed, exempt (either generally or in any particular case or class of cases) from the operation of section 45 (Vesting of commodity in Board):
 - (a) such small producers of the commodity as the Board thinks fit, and
 - (b) sales of the commodity directly from producers to consumers, processors, merchants or retail vendors, and
 - (c) such portion of the commodity as the producer may require for the producer's own use for food for the producer's family or livestock, or for seed, or for other prescribed purposes, and
 - (d) such other sales and purchases or receipts of the commodity as may be prescribed.
- (2) The Board's decision as to whether any specified person, article or thing falls within the limits of any such exemption is final.
- (3) The Board may at any time, by notification published in the Gazette or in a newspaper circulating throughout New South Wales, or by a notice in writing to the exempted producer, signed by the Managing Director or other authorised officer of the Board, revoke any such exemption.
- (4) An exemption may be granted on a condition that requires payment to the Board of such amounts of money as are specified or referred to in the condition.
- (5) Despite subsection (1), if an exemption is granted on a condition referred to in subsection (4) and an amount of money specified or referred to in the condition has not been paid prior to the sale of the commodity:
 - (a) the exempted producer is taken to act as agent for the Board in respect of the portion of the commodity which on sale realises an amount of money equal to that required to be paid to the Board in accordance with the condition, and
 - (b) section 45 (Vesting of commodity in Board) is taken to remain operative in respect of that portion of the commodity,until payment, or recovery under subsection (6), of the amount of money specified or referred to in the condition.
- (6) So much of any amount of money realised by a producer acting as agent for the Board under subsection (5) as does not exceed the amount of money owed to the Board pursuant to a condition referred to in subsection (4) may be recovered by the Board as a debt due in any court of competent jurisdiction.
- (7) Nothing in subsection (5) affects the relationship between a producer referred to in that subsection and any person to whom the commodity concerned is sold.
- (8) On and after 1 October 2005:

(a) the Board ceases to have the power to grant an exemption under this section, and

(b) subsection (5) does not apply to any producer in respect of any sale occurring on or after that date.

(9) However, nothing in subsection (8) affects the continued operation of this section in respect of any sale by a producer or money owing to the Board before 1 October 2005.

47 Consultation with Consultative Committee concerning compulsory acquisition

The Board is to make arrangements with the Consultative Committee for consultations between the 2 bodies before it refuses to grant, or revokes, an exemption from the operation of section 45.

48 Avoidance of contracts for sale of commodity

(1) Every contract, whether made before or after the commencement of this section, or provision in any such contract, so far as it relates to the sale of a commodity vested in the Board by section 45 (1) whether or not the commodity has come into existence when the contract was made, is and is taken to have been void and of no effect as from the date on which the contract was made.

(2) Any provision in a contract, being a provision referred to in subsection (1), is taken to be severable.

(3) Any transaction or contract with respect to the commodity which is the subject-matter of any contract or provision of a contract declared by this section to be void is also to be void and of no effect, and any money paid pursuant to any such contract or provision or to any such transaction is to be repayable.

(4) This section does not apply to a contract entered into by the Board or a contract declared by the Board to be a contract to which this section does not apply.

49 Remedy against Board confined to claim for account

(1) No proceedings at law or in equity are to be brought against the Board or any person acting under its authority by any person claiming to be entitled under any bill of sale, mortgage, charge, lien (including any lien under the *Liens on Crops and Wool and Stock Mortgages Act of 1898* or the *Co-operatives Act 1992*) or other encumbrance over, of or upon the commodity delivered to, and accepted by, the Board, or claiming to be the true owner of the commodity, as against the person who delivered the commodity, except as provided by this section.

(2) Any person who, but for subsection (1), would have been entitled to bring any such proceedings may adopt the delivery of any of the commodity to the Board as a delivery of the commodity by the person to the Board, and may claim accordingly for an account of the payments due in respect of the commodity, and recover the amount due in any court of competent jurisdiction as a debt.

(3) Despite anything in the *Liens on Crops and Wool and Stock Mortgages Act of 1898* or any other Act, or any rule of law to the contrary, any such person is not entitled to make any such claim for an account of the payments due in respect of the commodity, or any part of those payments, unless the person has given prior notice in writing to the Board in the form and containing the particulars prescribed of the bill of sale, mortgage, charge, lien or other encumbrance, or the claim of ownership, and then only for such part of such money as has not been paid to any other person at the time of the receipt by the Board of the notice.

Division 2 - Delivery of commodities to Board

50 Delivery of commodity

(1) The commodity vested in the Board by section 45 (1) is (unless the producer has been granted an exemption under section 46) to be delivered by the producers to the Board, or an authorised agent or authorised buyer, at or within such times, at such places, and in such manner as the Board may by public notice or in a particular case in writing direct, or

as may be prescribed by regulation.

(2) A producer who supplies, sells or delivers any of the commodity vested in the Board by section 45 (1) to a person other than the Board, or an authorised agent or authorised buyer, is guilty of an offence against this Act.

(3) A person:

(a) who buys or receives any of the commodity that is supplied, sold or delivered in contravention of subsection (2), or

(b) who buys by wholesale any of the commodity at a price other than the price fixed in respect of the commodity by the Board,

is guilty of an offence against this Act.

(4) In proceedings for an offence under subsection (3) (a), it is a defence if it is established that the defendant did not know, and could not reasonably have been expected to have ascertained, that the commodity was supplied, sold or delivered in contravention of subsection (2).

(5) In proceedings for an offence under subsection (3) (b), it is a defence if it is established that the defendant did not know, and could not reasonably have been expected to have ascertained, that the price was not that fixed by the Board.

(6) In the event of an inconsistency, a regulation referred to in subsection (1) prevails over a notice or direction so referred to.

Maximum penalty: 20 penalty units.

51 Acceptance of commodity

(1) The Board must not refuse to accept from any producer any of the commodity which is vested in it by section 45 (1) and which conforms to the applicable standards of quality or grade and which is delivered to it in accordance with this Act.

(2) The Board may accept from any producer any of the commodity that does not conform to the applicable standards of quality or grade, and may deal with it in such manner as it thinks appropriate.

52 Revesting of commodity if not accepted

If:

(a) the Board refuses, for any reason (whether lawful or unlawful), to accept any of the commodity after tender of delivery to it in accordance with this Act, or

(b) any of the commodity becomes exempted from the provisions of this Act vesting the commodity in the Board,

that part of the commodity which the Board refuses to accept or which is exempted is to revest in the person who would have been the owner of the commodity, but subject to all mortgages, charges, liens, pledges, interests and trusts that would have affected the commodity, if this Part had not applied to the commodity.

53 Duty to give notice of encumbrances

(1) Every person delivering to the Board any of the commodity which is subject to any bill of sale, mortgage, charge, lien or encumbrance or in respect of which the person has entered into any contract in derogation of the person's title to supply the commodity as its absolute owner, and whether the bill of sale, mortgage, charge, lien, encumbrance or contract was made before or after the commencement of this section, is, on delivering the commodity to the Board, to give to the Board a notice in writing of the bill of sale, mortgage, charge, lien, encumbrance or contract.

(2) Any person who wilfully fails to comply with the provisions of this section is guilty of an offence.

Maximum penalty: 20 penalty units.

Division 3 - Payment for vested commodities

54 Payments

- (1) The Board is, subject to this Act, to make payments to producers of the commodity for the commodity delivered to, and accepted by, the Board in accordance with this Act, at such rates and in such instalments (if any) as the Board may determine.
- (2) Any payment to producers for any of the commodity (not being any of the commodity that has not vested in the Board) is, in respect of any of the commodity of the same quality or grade delivered to the Board during such periods as may be prescribed (or, if not prescribed, as may be determined by the Board), to be made, as nearly as possible, at a uniform rate.
- (3) The rate is to be based on the proceeds of the sale of the commodity so delivered and such other matters as the Board may determine (but excluding any credits or debits arising in respect of the Board's activities under sections 35 (Board may deal in commodity), 38 (Board may deal in other products etc), 41 (Board may act as marketing agent) and 42 (Board may act as purchasing agent) and such other of the Board's activities as may be prescribed).
- (4) Despite subsection (2):
 - (a) the Board may, if it is satisfied that the circumstances warrant its doing so, make different payments for any of the commodity produced in different districts, and
 - (b) the Board may, with the approval of the Minister or in accordance with the regulations, make different payments for any of the commodity according to other factors, and
 - (c) the Board may adjust any amount payable to a particular producer, having regard to other amounts owing to or by the producer and other factors that are, in the opinion of the Board, relevant.
- (5) In determining rates of payment under this section, the Board may take into account, and make suitable deductions for:
 - (a) expenditure incurred in marketing, returning, destroying or otherwise disposing of the commodity, and
 - (b) the costs, charges and expenses incurred by the Board in the administration by the Board of this Act, and
 - (c) any reserves created by the Board, and
 - (d) any other matters that are, in the opinion of the Board, relevant or that are prescribed.
- (6) Despite anything in this section, but subject to the regulations, the Board may, out of the proceeds of the sale of the commodity delivered to the Board during any period referred to in subsection (2), deduct amounts for the purpose of liquidating any liability incurred for any previous period or for any other purpose that is prescribed or approved by the Minister.
- (7) The Board's decision as to the quality and grade of the commodity, the method of determining any adjustments to be made and the amounts thereof are to be final and conclusive.
- (8) Nothing in this section requires the Board to make any payments for any of the commodity that does not conform to the applicable standards of quality or grade.
- (9) If, at the end of a period referred to in subsection (2), there remains unsold any portion of the commodity delivered to the Board during that period, the Board may:
 - (a) determine an amount as being the market value of that portion as at the end of that period, and
 - (b) make such adjustments in the accounts of the Board as will result in a credit being made in respect of that period of an amount equal to that market value and a corresponding debit being made in respect of the subsequent such period, and
 - (c) thereafter treat that portion as having been delivered to the Board in that subsequent period.

(10) The Board is not to do any of the things mentioned in subsection (9) otherwise than in accordance with such guidelines (if any) as are from time to time determined by the Minister.

55 Schemes for payments

(1) At the request of the Board, the Minister may, from time to time, approve schemes proposed by the Board and making provision for or with respect to the variation of the basis on which payments are to be made under section 54 (Payments) in respect of any of the commodity delivered to the Board.

(2) A scheme is to apply in respect of any of the commodity specified or described in the scheme and delivered to the Board during or covering a period that is:

- (a) referred to in section 54 (2), and
- (b) specified in the scheme.

(3) If, during the period specified in a scheme, any of the commodity is delivered to the Board, the Board is to make payments under section 54 in respect of that commodity on the basis prescribed by that section as varied by or under the scheme.

(4) The Minister may:

- (a) cancel or vary a scheme in accordance with a request made by the Board to do so, or
- (b) cancel a scheme without any request having been made by the Board to do so, if the Minister gives the Board at least 3 months' notice of intention to do so.

(5) If any payments have been made in accordance with a scheme, the scheme may be cancelled only as from the commencement of a later season in respect of which no payments have been made in accordance with the scheme.

(6) A scheme, and any variations to a scheme under this section, are to be in writing.

(7) In this section (other than subsection (1)), **scheme** means a scheme approved under subsection (1).

56 Board not liable for payments made in good faith

If the Board in good faith and without negligence has made any payment:

- (a) to a producer delivering or causing to be delivered any of the commodity to the Board or any person acting under its authority, or
- (b) to any person entitled or claiming to be entitled through such a producer, or
- (c) to any person on the order of such a producer or of a person referred to in paragraph (b),

the Board is not to be answerable to any person in respect of the payment for the commodity or any part of the commodity, or in any action or other proceedings, claim or demand whatever for damages or otherwise.

57 Board protected in certain cases

(1) If, before receiving notice of a claim to any payment for any of the commodity vested in the Board or to the chose in action or any part of it the subject-matter of any such payment, the Board has in good faith and without negligence made that payment, in whole or in part, in accordance with the provisions of this Division, the Board is not, to the extent to which it has made that payment, to incur any liability to the true owner of the commodity or chose in action or any part of it or to any person claiming through, under or in trust for the true owner.

(2) This section does not in any way prejudice or affect any rights between any parties claiming adversely to one another to be entitled whether at law or in equity to the commodity or chose in action the subject-matter or part of the subject-matter of any claim for payment.

(3) In any proceedings taken in any court by any such person in respect of any such commodity or chose in action or part, the Board may plead this section as a defence to the proceedings.

Part 5 - Finance

58 Financial accounting period

(1) The financial accounting period of the Board is such period as the Minister from time to time approves in respect of the Board.

(2) A reference in any other Act or instrument under any other Act to a financial year is to be read and construed, where the reference occurs in relation to a financial year of the Board, as a reference to a financial accounting period of the Board.

59 (Repealed)

60 Charges and fees

If the Board supplies any service, commodity or other product, it may make, demand, levy and recover such charges and fees as may be prescribed or, if no charge or fee is prescribed, such charges and fees as may be fixed by it, subject to the maximum (if any) prescribed.

61 Costs incurred by Department etc on behalf of the Board

(1) The Board must, on receipt of a notice in writing signed by the Electoral Commissioner for New South Wales specifying the costs and expenses of any poll under this Act taken or held with respect to the Board, pay to the Electoral Commissioner an amount equal to the amount so specified.

(2) The Board must, on receipt of a notice in writing signed by the Minister specifying the costs or expenses incurred by the Minister or the Department of Agriculture and Fisheries (other than costs and expenses referred to in subsection (1)) in respect of anything done for or in connection with the Board, pay to the Minister an amount equal to the amount so specified.

(3) Any amount required to be paid under this section must be paid within such period as is specified in the notice or such further period as the Electoral Commissioner or the Minister may allow.

62 Reserves

The Board may create and use such reserves as it considers necessary or expedient for the purposes of this Act.

63 Retention of certain money owing by the Board

(1) The regulations may make provision for or with respect to:

- (a) the retention by the Board of money owing by the Board to a person or class of persons, and
- (b) the manner in which any money so retained is to be accounted for in the books of the Board, and
- (c) the purposes for which any money so retained may be used, and
- (d) the payment of any money so retained to or at the direction of the person to whom it is owing.

(2) Any such retention of money may be made with or without the consent of the person to whom it is owing, as provided by the regulations.

64 Financial accommodation

(1) For the purposes of, or for purposes connected with, the exercise of its functions, the Board may obtain financial accommodation:

- (a) from a bank, building society or credit union, or
- (b) from any institution or person approved by the Minister with the concurrence of the Treasurer, or
- (c) with the approval of the Minister and with the concurrence of the Treasurer, in any other manner.

(2) The Board may, in connection with any such financial accommodation, give such

securities as will effectively place the commodity or any part of it, delivered or expected to be delivered to the Board, or any other assets of the Board, under the legal or other control of the bank, institution or person providing the financial accommodation.

65 Investment

The Board may invest money held by it:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power to invest money held by the Board:
 - (i) in any manner authorised for the time being for the investment of trust funds, or
 - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

66 Futures contracts

(1) The Board may, in relation to:

- (a) a sale or proposed sale of the commodity by the Board, or
- (b) a borrowing or raising of money by the Board or a proposed borrowing or raising of money by the Board (including a borrowing or raising of money by the Board by dealing with securities),

enter into and deal with contracts for hedging purposes at a futures market or at such other markets or with such other persons or institutions as may be prescribed.

(2) A futures contract is taken to be entered into or dealt with for hedging purposes if, and only if, the contract is entered into or dealt with for the purpose of:

- (a) minimising the risks of variations in the price obtainable for the commodity under a contract for the sale of the commodity that has been, or is to be, entered into by the Board, including risks of fluctuations in exchange rates, or
- (b) minimising the risks of variations in the costs of the borrowing or raising of money by the Board or a proposed borrowing or raising of money, including risks of fluctuations in exchange rates.

67 Loans to members

The Board must not, whether directly or indirectly:

- (a) make a loan to a member of the Board, or
- (b) give a guarantee or provide security in connection with a loan made or to be made by another person to a member of the Board.

Part 6 - Public accountability

Division 1 - Accounts and reports

68 Review of activities by Director-General

It is the duty of the Director-General to keep under review the activities of the Board and to make regular reports on its activities.

69 Reports by the Board

The Board must, when requested to do so by the Director-General, furnish to the Director-General a report containing such kind of information relating to the activities of the Board as the Director-General requests.

70 Annual reports by Director-General

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Director-General must prepare and forward to the Minister a report of the activities of the Board for the 12 months ending on 30 June in that year.
- (2) The Minister is to lay the report or cause it to be laid before both Houses of

Parliament as soon as practicable after receiving the report.

71 Annual meetings of the Board

(1) It is the duty of the Board:

(a) to convene and conduct public meetings in accordance with the regulations, at such annual or other intervals as may be prescribed or directed by the Minister, and

(b) to circulate at or before any such meeting, as prescribed or directed by the Minister, such reports as may be prescribed or directed by the Minister.

(2) An annual meeting of the Board must be held not later than 6 months after each financial accounting period of the Board, or at such other time as may be prescribed or directed by the Minister.

(3) At least 21 days' notice must be given, in accordance with the regulations, of an annual meeting of the Board.

Division 2 - 5 year operational plans

72 Strategic plans

(1) Within 12 months after the commencement of this section, the Board must submit to the Minister a plan of its intended operations during the following 5 years.

(2) The Board is to review the plan of operations each year and submit a revised plan to the Minister with the annual report it is required to submit under the *Annual Reports (Statutory Bodies) Act 1984*.

(3) A plan of operations may include indicators against which the performance of the Board may be measured.

Division 3 - Management audits

73 Management audits

(1) The Director-General may require management audits to be conducted for the purpose of examining the activities (or part of the activities) of the Board and assessing the extent to which any such activities are being carried on in an efficient, economical and proper manner.

(2) Except in so far as the Minister otherwise approves or directs:

(a) the Director-General must consult with the Board before requiring the management audit to be conducted, and

(b) the Director-General must give the Board an opportunity to nominate such number of members of the staff of the Board to participate in the conduct of the management audit as the Director-General determines, and

(c) any members of the staff of the Board so nominated may participate in the conduct of the management audit.

(3) Any of the functions of the Director-General under this section may be exercised by:

(a) the Director-General personally, or

(b) other members of the staff of the Department approved for the purpose by the Director-General with the concurrence of the Minister, or

(c) consultants employed for the purpose with the concurrence of the Minister.

74 Powers of Director-General etc at management audit

(1) The Director-General, or any person approved or employed as referred to in section 73 (3), may:

(a) enter the premises of the Board, and

(b) require the production of and examine any documents in the custody of any member or employee of the Board, and

(c) require any such member or employee to answer questions,

in connection with and for the purposes of a management audit.

(2) A person must not:

- (a) delay, obstruct, hinder or impede a person in the exercise of any functions under this section, or
- (b) fail or refuse to comply with a requirement under this section, or
- (c) provide, in answer to a question under this section, any information that is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

75 Reports of management audits

The Director-General must, as soon as practicable, prepare a report on the conduct and findings, and any recommendations, of a management audit.

76 Reports to be provided

(1) The Director-General must give the Minister a copy of each report under sections 68 (Review of activities by Director-General) and 75 (Reports of management audits).

(2) The Minister must give a copy of any such report to the Board, unless the Minister is satisfied that there are sufficient reasons for not doing so.

Part 7 - Winding up, arrangements etc

77 Definitions

In this Part:

Court means the Supreme Court of New South Wales.

liquidator means the person appointed, or appointed provisionally, by the Court to be liquidator of the Board.

registered liquidator has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

78 Crown to be bound

This Part binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

79 Application of winding up provisions

If at any time the Board consists of less than the number of members necessary for it to be a Part 5.7 body within the meaning of the *Corporations Law*, Part 5.7 of that Law continues to apply to the Board.

80 Power to compromise with creditors

(1) If a compromise or arrangement is proposed between the Board and its creditors or any class of them, the Court may, on the application in a summary way of the Board or of any creditor of the Board, or, in the case of the Board being wound up, of the liquidator, order a meeting or meetings of the creditors or class of creditors to be convened in such manner, and to be held in such place or places within the State, as the Court directs. If the Court makes such an order, the Court may approve the explanatory statement required by section 81 (1) (a) to accompany notices of the meeting or meetings.

(2) A compromise or arrangement is binding on the creditors, or on a class of creditors of the Board and, if the Board is being wound up, on the liquidator, if, and only if:

- (a) at a meeting convened in accordance with an order of the Court under subsection (1), the compromise or arrangement is agreed to by a majority in number of the creditors, or of the creditors included in that class of creditors,

present and voting, either in person or by proxy, being a majority whose debts or claims against the Board amount in the aggregate to not less than 75 per cent of the total amount of the debts and claims of the creditors present and voting in person or by proxy, or of the creditors included in that class present and voting in person or by proxy, as the case may be, and

(b) it is approved by order of the Court.

(3) If the Court orders 2 or more meetings of creditors or of a class of creditors to be held in relation to the proposed compromise or arrangement, the meetings are, for the purposes of subsection (2), taken to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings are to be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings are to be aggregated, accordingly.

(4) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(5) Except with the leave of the Court, a person must not be appointed to administer, and must not administer, a compromise or arrangement approved under this Act between the Board and its creditors or any class of them, whether by the terms of that compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, if the person is:

(a) a mortgagee of any property of the Board, or

(b) an auditor or an officer of the Board, or

(c) an officer of any corporation that is a mortgagee of property of the Board, or

(d) a person who is not a registered liquidator.

(6) Nothing in subsection (5) (d) prohibits the appointment to administer a compromise or arrangement of a corporation authorised by any Act or any law of the State to administer such a compromise or arrangement.

(7) If a person is or persons are appointed, whether by the terms of a compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, to administer the compromise or arrangement:

(a) the provisions of sections 425, 428, 432 and 434 of the *Corporations Law* apply in relation to that person or those persons as if:

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a receiver and manager, or as receivers and managers, of the property of the Board, and

(ii) a reference in any of those sections to a receiver, or to a receiver of the property, of a company were a reference to that person or to those persons, and

(iii) the references in section 425 of that Law to the Commission were omitted and a reference in section 432 of that Law to the Commission were a reference to the Minister for Agriculture and Fisheries, and

(b) the provisions of section 536 of that Law apply in relation to that person or those persons as if:

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a liquidator of the Board, and

(ii) a reference in that section to a liquidator were a reference to that person or to those persons, and

(iii) a reference in that section to the Commission were a reference to the Minister for Agriculture and Fisheries.

(8) An order of the Court made for the purposes of subsection (2) (b) does not have any effect until an office copy of the order is lodged with the Minister, and on being so

lodged the order takes effect, or is taken to have taken effect, on and from the date of lodgment or such earlier date as the Court determines and specifies in that order.

- (9) If a compromise or arrangement referred to in subsection (1) has been proposed:
- (a) the Board may instruct such accountants or solicitors (or both) as are named in the resolution to report on the proposals and send their report or reports to the Board as soon as practicable, and
 - (b) if such a report or reports is or are obtained--the Board is to make the report or reports available at the principal place of business of the Board for inspection by the creditors of the Board at least 7 days before the date of any meeting ordered by the Court to be convened as provided in subsection (1).
- (10) If no order has been made for the winding up of the Board and a compromise or arrangement has been proposed between the Board and its creditors or any class of them, the Court may, in addition to exercising any of its other powers, on the application in a summary way of the Board or of any creditor of the Board, restrain further proceedings in any action or other civil proceeding against the Board except by leave of the Court and subject to such terms as the Court imposes.

81 Information as to compromise with creditors

- (1) If a meeting is convened under section 80, the Board must:
- (a) with every notice convening the meeting that is sent to a creditor, send a statement (in this section referred to as the **explanatory statement**):
 - (i) explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the members of the Board, whether as members or creditors of the Board or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons, and
 - (ii) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor whether or not to agree to the compromise or arrangement, being information that is within the knowledge of the members of the Board and has not previously been disclosed to the creditors, and
 - (b) in every notice convening the meeting that is given by advertisement, include either a copy of the explanatory statement or a notification of the place at which and the manner in which creditors entitled to attend the meeting may obtain copies of the explanatory statement.
- (2) In the case of a creditor whose debt does not exceed \$200, subsection (1) (a) does not apply unless the Court otherwise orders but the notice convening the meeting that is sent to such a creditor must specify a place at which a copy of the explanatory statement can be obtained on request and, if the creditor makes such a request, the Board must (as soon as practicable) comply with the request.
- (3) If a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular manner, every creditor entitled to attend the meeting must, on making application in that manner be furnished by the Board free of charge with a copy of the explanatory statement.
- (4) Subject to subsection (6), if the Board contravenes or fails to comply with a requirement of this section, the Board and any member or officer of the Board who is in default are each guilty of an offence.
- Maximum penalty: 20 penalty units.
- (5) For the purposes of subsection (4), the liquidator of the Board is taken to be an officer of the Board.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant proves that the default in complying with a requirement of this section is due to the refusal of any other person, being a member of the Board, to supply particulars of the

person's interests for the purposes of the explanatory statement.

82 Regulations and rules

- (1) Subject to this section, the provisions of:
 - (a) Regulation 5.1.01 of, and Schedule 8 to, the *Corporations Regulations* , and
 - (b) any rules of court having effect for the purposes of the *Corporations Law* , apply, with such adaptations as are necessary, as regulations and rules for the purposes of this Part and so apply as if a reference in those provisions:
 - (c) to a company were a reference to the Board, and
 - (d) to directors of a company were a reference to members of the Board, and
 - (e) to the registered office of a company were a reference to the principal place of business of the Board, and
 - (f) to the Commission were a reference to the Minister for Agriculture and Fisheries.
- (2) The regulations may make provision for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (3) Rules of court may be made under the *Supreme Court Act 1970* for the purposes of this Part.
- (4) Subsection (3) does not limit the rule-making powers conferred by the *Supreme Court Act 1970* .
- (5) To the extent of any inconsistency, the provisions of regulations or rules made as referred to in subsection (2), (3) or (4) prevail over the provisions referred to in subsection (1).

83 Exercise of statutory functions

- (1) To the extent that a compromise or arrangement referred to in section 80 so provides:
 - (a) the person or persons appointed to administer the compromise or arrangement have and may exercise all or any of the functions conferred or imposed on the Board by or under any other Part of this Act or under any other Act, and
 - (b) those functions may be exercised by the person or persons so appointed to the exclusion of the Board.
- (2) Any act, matter or thing done or omitted to be done, in the exercise of the functions referred to in subsection (1) by the person or persons so appointed, has the same effect and the same consequences as if done or omitted to be done by the Board without the compromise or arrangement being in force.

84 Persons in default

If a provision of this Part provides that a member of the Board who is in default is guilty of an offence, the reference to the person who is in default is, in relation to a contravention of the provision, to be construed as a reference to any member or officer of the Board (including a person who subsequently ceased to be a member or officer of the Board) who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or failure.

Part 8 - Miscellaneous provisions

85 Authorised officers

The Minister may appoint persons (or a class of persons) as authorised officers for the purposes of this Act.

86 Information to be furnished

- (1) For the purposes of this Act, the Minister, the Director-General or the Board may, by notice in writing served on the person to whom it is addressed either:

(a) personally, or
(b) by post at the person's last-known residential or business address,
require a person to furnish in writing to the Minister, the Director-General or the Board, within the time specified in the notice, such information relating to any commodity or other product as is specified in the notice.

(2) A person must not, without reasonable excuse, fail or refuse to comply with a requirement under this section.

(3) A person is not excused from furnishing information that the person is required to furnish under this section on the ground that the information might tend to incriminate the person or make the person liable to a penalty, but any information so furnished is not admissible in evidence against the person in proceedings other than proceedings for an offence against subsection (4).

(4) A person must not furnish under this section information that the person knows is false or misleading in a material particular.

(5) The Board may not require information to be furnished under this section except in relation to the commodity.

Maximum penalty: 20 penalty units.

87 Access to premises and motor vehicles

(1) A police officer or an authorised officer may, at all reasonable times, for the purpose of exercising any of the functions of an authorised officer under this section, enter any premises where the officer has reasonable grounds to believe that any of the commodity is stored, or any accounts, documents, books or papers relating to any of the commodity are kept.

(2) Subsection (1) does not authorise any person to enter that portion of any premises that is used for residential purposes, without the consent of the occupier of that portion.

(3) A police officer may, for the purpose of exercising any of the functions of an authorised officer under this section, stop and detain any motor vehicle on a public street or public place in which the officer has reasonable grounds to believe that there is any of the commodity, or any accounts, documents, books or papers relating to any of the commodity.

(4) A police officer or an authorised officer may apply to an authorised justice for a search warrant if the officer has reasonable grounds for believing:

(a) that there is on any premises any of the commodity that is the property of the Board or any of the commodity the delivery of which has been lawfully demanded by the Board under this Act, or

(b) that there are on any premises accounts, documents, books or papers relating to any of the commodity.

(5) An authorised justice to whom an application is made under subsection (4) may:

(a) if satisfied that there are reasonable grounds for doing so, and

(b) without affecting the generality of paragraph (a), if satisfied that the issue of the warrant is reasonably required for purposes of, or related to the operation of, this Act,

issue a search warrant authorising any authorised officer or police officer to enter the premises for the purpose of exercising any of the functions of an authorised officer under this section.

(6) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.

(7) The functions of an authorised officer under this section are as follows:

(a) to search for and inspect any of the commodity,

(b) to demand that the occupier of any premises or, as the case may require, the person in charge of a motor vehicle, produce any accounts, documents, books or papers relating to the commodity,

- (c) to search for, inspect, take extracts from and make copies of any accounts, documents, books or papers referred to in paragraph (b),
- (d) to take possession of and remove any of the commodity that the authorised officer reasonably suspects is the property of the Board or is any of the commodity the delivery of which has been lawfully demanded by the Board under this Act,
- (e) to make any inquiry that the authorised officer considers necessary relating to any of the commodity.

(8) A person must not:

- (a) fail or refuse to produce any accounts, documents, books or papers referred to in subsection (7) (b), or
- (b) make any false or misleading statement in answer to any inquiry referred to in subsection (7) (e).

Maximum penalty: 20 penalty units.

(9) On taking possession, as referred to in subsection (7) (d), of any of the commodity that, immediately before that taking, was not the property of the Board, the portion of the commodity so taken becomes the absolute property of the Board, freed from all mortgages, charges, liens, pledges, interests and trusts affecting it, and the rights and interests of every person in the commodity are converted into a claim for payment (in accordance with the regulations) for the commodity so taken.

(10) In this section:

authorised justice means:

- (a) a Magistrate, or
- (b) an authorised officer within the meaning of the *Criminal Procedure Act 1986*.

occupier, in relation to any premises, includes a person in charge of those premises.

88 Demanding name and residential address

(1) An authorised officer who finds a person committing an offence against this Act or the regulations, or who finds a person whom, on reasonable grounds, the authorised officer suspects of having committed or attempted to commit any such offence, may demand from that person his or her full name and residential address.

(2) A person who on demand made under subsection (1):

- (a) fails or refuses to state his or her full name or residential address, or
- (b) states a name that is not his or her full name or a residential address that is not his or her residential address,

is guilty of an offence against this Act.

Maximum penalty: 20 penalty units.

89 Offences

(1) A person must not assault, delay, obstruct, hinder or impede an authorised officer in the exercise of any functions conferred on the authorised officer under this Act or the regulations.

(2) A person must not:

- (a) forge or counterfeit any written evidence of appointment of an authorised officer, or
- (b) make use of any forged, counterfeited or false written evidence of such an appointment, or
- (c) personate an authorised officer, or
- (d) falsely pretend to be such an authorised officer.

Maximum penalty: 20 penalty units.

90 Duties and liability of certain persons

- (1) It is the duty of a prescribed person at all times to act honestly in the exercise of his or her functions as a prescribed person.
- (2) It is the duty of a prescribed person at all times to exercise a reasonable degree of care and diligence in the exercise of his or her functions as a prescribed person.
- (3) In this section, **prescribed person** means:
 - (a) a member of the Board, or
 - (b) a member of the staff of the Board whose position is or is of a class or description prescribed for the purposes of this paragraph.

91 Offences by members and officers

- (1) Any prescribed person who, without lawful authority, demands or receives from any person any payment, gratuity or present in consideration of doing or omitting to do some act or thing pertaining to the prescribed person's office or employment under this Act or the regulations is guilty of an offence against this Act and liable to a penalty not exceeding 50 penalty units or to imprisonment for a term not exceeding 2 years, or both.
- (2) Any person who, without lawful authority, makes or gives to a prescribed person any payment, gratuity or present in consideration that the prescribed person will do or omit to do some act or thing pertaining to the prescribed person's office or employment under this Act or the regulations is guilty of an offence against this Act and liable to a penalty not exceeding 50 penalty units or to imprisonment for a term not exceeding 2 years, or both.
- (3) In this section, **prescribed person** means:
 - (a) the Director-General or any other member of the staff of the Department, or
 - (b) a member of or a member of the staff of the Board, or
 - (c) a person of a class or description prescribed for the purposes of this paragraph.

92 Secrecy

- (1) A person who is, or has at any time been, a prescribed person must not, except to the extent necessary to exercise his or her functions under this Act or the regulations, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired as a result of that person being or having been a prescribed person, or make use of any such information, for any purpose other than the exercise of his or her official functions.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

- (2) Nothing in subsection (1) precludes a person from:
 - (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act or a prescribed Act, or
 - (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under his or her notice in the exercise of his or her official functions, or
 - (c) producing a document or divulging or communicating information that is required or permitted by any Act, or any Act of the Commonwealth, to be produced, divulged or communicated.
- (3) In this section, **prescribed person** means:
 - (a) the Director-General or any other member of the staff of the Department, or
 - (b) a member of or a member of the staff of the Board, or
 - (c) a member of the police force, or other person, who has exercised any function under section 87 (Access to premises and motor vehicles), or
 - (d) a person of a class or description prescribed for the purposes of this paragraph.

93 Restrictions on certain dealings

- (1) A person who is, or has at any time been, a prescribed person must not make improper use of information acquired by virtue of his or her position as such a prescribed person to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Board, except as prescribed.

(2) A prescribed person must not make improper use of his or her position as such a prescribed person, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Board, except as prescribed.

(3) In this section, **prescribed person** means:

(a) the Director-General or any other member of the staff of the Department, or

(b) a member of or a member of the staff of the Board, or

(c) a person of a class or description prescribed for the purposes of this paragraph.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

94 Proceedings

(1) Proceedings for offences against this Act or the regulations are to be dealt with summarily before a Local Court.

(2) An information for an offence against this Act or the regulations may be laid in the name of the Board by an officer of the Board authorised by the Board to lay informations on behalf of the Board.

(3) Any prosecution instituted in the name of the Board is, in the absence of evidence to the contrary, taken to have been instituted by the authority of the Board.

(4) Nothing in subsection (2) prevents an information for an offence against this Act or the regulations from being laid in any other manner.

(5) Despite the provisions of any other Act, where any person is, by any conviction or order adjudged to pay any fine, penalty, sum of money or costs in respect of an offence against this Act or the regulations:

(a) that person is not to be adjudged to be, or be, liable to imprisonment in default of payment of the amount of the fine, penalty, sum of money or costs, and

(b) that conviction or order is, irrespective of the amount adjudged to be paid, to operate and is enforceable in the same way as a judgment of a Local Court under the *Local Courts (Civil Claims) Act 1970*.

(6) Judgment may be entered up in the records of a Local Court for the amount adjudged to be paid by a conviction or order referred to in subsection (5).

(7) Any pecuniary penalty recovered in proceedings for an offence against this Act or the regulations is, if the information was laid in the name of the Board, payable to the Board and forms part of its income.

95 Offences by corporations

(1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person, being a director of the corporation or a person concerned in the management of the corporation, is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

(4) This section does not apply to or in respect of the Board.

96 Evidentiary provisions

In any proceedings:

(a) any notification, requisition, direction, demand, order or other document in writing, purporting to be signed or made or sent by the Board, the Chairperson of the Board or the Minister is to be judicially noticed, and

(b) the production of a copy of the Gazette purporting to contain any proclamation, notification, direction or order under this Act is conclusive evidence of the matters contained in it, and that all steps necessary to be taken before the making of the proclamation, notification, direction or order have been duly taken, and

(c) the averment on behalf of the Board that anything was or is a commodity or product to which the provisions of this Act are applicable, or was or is a commodity or product

mentioned or included in any instrument or document, or that any place is a place in New South Wales, or that any person was or is a producer of a commodity or product, or was or is an authorised agent or authorised buyer, is prima facie evidence of that fact, and (d) any document or anything purporting to be a copy or extract from any document containing any reference to any matter or thing alleged to be done in contravention of this Act or the regulations is (on proof that it was produced by or came from the custody of a person who is a defendant or respondent or is charged with an offence, or a responsible officer or a representative of that person) admissible in evidence against that person and is evidence:

- (i) of the matters and things appearing in it, and
- (ii) that the document (or in the case of a copy, that the original of the document) was written, signed, despatched or received by the persons by whom it purports to have been written, signed, despatched and received, and
- (iii) that any such copy or extract is a true copy of or extract from the original of or from which it purports to be a copy or extract.

97 Service of notices

Any notice that is required to be given or that may be given by the Board under this Act or the regulations is taken to have been duly given if sent by post in a letter addressed to the person to be served at the person's residential or business address last known to the Board, and the notice is taken to have been given at the time when a letter so posted should in the ordinary course of post be delivered.

98 Liability

No proceedings are to lie or be allowed by or in favour of any person against:

- (a) the Crown, the Minister, the Director-General, a member of the Board or a member of the staff of the Department or the Board, or
- (b) any person acting under the direction of the Minister, the Director-General or the Board, or
- (c) an administrator of the Board,

in the execution or intended execution of this Act in respect of anything done, or omitted to be done, in good faith under and for the purposes of this Act.

99 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to:
 - (a) any of the functions conferred or imposed on the Minister, the Board or the Committee by or under this Act, and
 - (b) the business, proceedings and meetings of the Board or the Committee, and
 - (c) the control and management and expenditure of the funds of the Board, and
 - (d) the marketing of commodities not meeting the prescribed standards, and
 - (e) the making and keeping of records relating to the marketing of commodities, the inspection of those records and their production in any legal proceedings, and
 - (f) prescribing forms of returns and of statistics to be made and furnished in accordance with this Act and the contents of them, and the persons (whether producers or not) by whom they are to be made, and the time and mode of making and furnishing them, and
 - (g) authorising the Board in any sale or agreement for sale of the commodity by the Board to any person to insert conditions and to fix a sum by way of liquidated damages for any breach of conditions (which damages are recoverable accordingly), and

- (h) regulating within New South Wales:
 - (i) the collecting, cleaning, grading, packing, treating, carrying, storing, marketing, branding, distributing, supplying, selling and exporting by the Board, and
 - (ii) the delivery by or to the Board or by or to any other person, of any of the commodity concerned, whether the commodity was produced within New South Wales or elsewhere and whether the commodity is or was at any time owned by the Board or not.

(3) A regulation may impose a penalty not exceeding 10 penalty units and, in the case of a continuing offence, an additional penalty not exceeding 1 penalty unit for each day during which the offence continues, for non-compliance with any regulation.

100 Authorisation of certain acts and things for the purposes of the Trade Practices Act 1974 of the Commonwealth

(1) In this section:

authorise includes approve.

the Commonwealth Act means the *Trade Practices Act 1974* of the Commonwealth.

(2) The object of this section is to specifically authorise certain acts and things, or acts and things of certain kinds, for the purposes of section 51 of the Commonwealth Act, and this section has effect and is to be construed accordingly.

(3) The making by the Board, whether as principal or agent, of a contract, agreement or understanding relating to the marketing of a commodity or primary product:

- (a) that is, or is of a kind that is, prescribed for the purposes of this section, or
- (b) that is approved by the Minister,

and all conduct, whether as principal or agent, of the Board and all parties to the contract, agreement or understanding which relates to the proposed making of, negotiating for, making, and performance of any such contract, agreement or understanding, are hereby authorised for the purposes of section 51 of the Commonwealth Act.

(4) The Board is hereby authorised in the course of exercising the functions conferred upon it by this Act to do or omit to do, whether as principal or agent, any act or thing that is, or is of a kind which would, but for the authorisation conferred by this section, be a contravention of a provision of Part IV of the Commonwealth Act.

(5) If authorisation is conferred by this section, the contract, arrangement or understanding so authorised is lawful and the Board and all parties to the contract, arrangement or understanding are authorised by force of this Act and whether as principal or agent to enter into it, and to engage in the conduct referred to in subsection (3).

(6) Nothing in this section:

- (a) authorises the Board to do or omit to do any act or thing that it would not be empowered to do or omit to do apart from this section and the Commonwealth Act, or
- (b) affects the operation of any provision of this Act, or of any other Act, that confers or imposes functions on the Board.

(7) An approval under subsection (3) may be given subject to such conditions as the Minister determines.

101 Dissolution of marketing boards

- (1) The Barley Marketing Board for the State of New South Wales is dissolved.
- (2) The Grain Sorghum Marketing Board for the State of New South Wales is dissolved.
- (3) The Oats Marketing Board for the State of New South Wales is dissolved.
- (4) The Oilseeds Marketing Board for the State of New South Wales is dissolved.

102 (Repealed)

103 Savings and transitional provisions

Schedule 5 has effect.

Schedule 1 Provisions relating to the part-time members of the Board

(Section 6 (3))

1 Definition

In this Schedule:

member means a part-time member of the Board.

2 Chairperson of the Board

(1) The Board is to appoint one of its members as Chairperson of the Board and another of its members as Deputy Chairperson of the Board.

(2) The Board may at any time remove a member from the office of Chairperson or Deputy Chairperson.

(3) A person who is a member and Chairperson or Deputy Chairperson of the Board vacates that office if the person:

- (a) is removed from that office by the Board, or
- (b) resigns that office by instrument in writing addressed to the Board, or
- (c) ceases to be a member.

3 Terms of office

A member holds office for 4 years and is eligible for re-appointment if otherwise qualified.

4 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Vacancy in office of member

(1) The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
- (e) is absent from 2 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 2 weeks after the last of those meetings, the member is excused by the Board for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may remove a member from office for incapacity, incompetence or

misbehaviour.

6 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Effect of certain other Acts

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

Schedule 2 Provisions relating to the meetings of the Board

(Section 6 (4))

1 Definition

In this Schedule:

member includes the Managing Director of the Board.

2 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

3 Quorum

The quorum for a meeting of the Board is 4 members.

4 Presiding member

(1) The Chairperson of the Board or, in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

5 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

6 Transaction of business outside meetings or by telephone etc

(1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other

means, but only if a member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

7 First meeting

The Minister must call the first meeting of the Board in such manner as the Minister thinks fit.

8 Pecuniary interests of members

(1) A member who has a direct or indirect pecuniary interest:

(a) in a matter that is being considered, or is about to be considered, at a meeting of the Board, or

(b) in a thing being done or about to be done by the Board,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or a specified person,

is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of the fee determined by the Board.

(4) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing of a prescribed class or description.

(5) The Board may, by resolution, provide for the exclusion of a member from a meeting of the Board while any matter or thing in which the member has a direct or indirect pecuniary interest is under consideration.

Schedule 3 Provisions relating to the members and procedure of the Consultative Committee

(Section 13)

1 Chairperson of the Consultative Committee

The Consultative Committee is to appoint one of its members to be the Chairperson of the Consultative Committee.

2 Term of office

Subject to this Schedule, a member of the Consultative Committee holds office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

3 Remuneration

A member of the Consultative Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

4 Filling of vacancy in office of member

If the office of any member of the Consultative Committee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

5 Casual vacancies

(1) A member of the Consultative Committee is to be taken to have vacated office if the member:

- (a) dies, or
- (b) absents himself or herself from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings, or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (d) becomes a mentally incapacitated person, or
- (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (f) resigns the office by instrument in writing addressed to the Minister, or
- (g) is removed from office by the Minister under subclause (2).

(2) The Minister may remove a member from office.

6 General procedure

The procedure for the calling of meetings of the Consultative Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Consultative Committee.

7 Quorum

The quorum for a meeting of the Consultative Committee is 3 members.

8 Voting

A decision supported by a majority of the votes cast at a meeting of the Consultative Committee at which a quorum is present is the decision of the Consultative Committee.

9 Presiding member

(1) The Chairperson of the Consultative Committee or, in the absence of the Chairperson, another member of the Consultative Committee elected to chair the meeting by the members present, is to preside at a meeting of the Consultative Committee.

(2) The person presiding at any meeting of the Consultative Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Schedule 4 (Repealed)

Schedule 5 Savings, transitional and other provisions

(Section 103)

Part 1 - Regulations

1 Savings and transitional regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and any of the following Acts:

Grain Marketing Amendment Act 2001

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 - Provisions relating to dissolution of marketing boards

2 Definitions

In this Schedule:

new Board means the New South Wales Grains Board constituted by this Act.

old Board means:

(a) the Barley Marketing Board for the State of New South Wales, or

(b) the Grain Sorghum Marketing Board for the State of New South Wales, or

(c) the Oats Marketing Board for the State of New South Wales, or

(d) the Oilseeds Marketing Board for the State of New South Wales,

relevant day means the day appointed for the dissolution of the old Board under section 101.

3 Dissolution of the old Board

(1) On the relevant day:

(a) all assets, rights, liabilities and obligations of the old Board become assets, rights, liabilities and obligations of the new Board, and

(b) any act, matter or thing done or omitted to be done before that day by, to or in respect of the old Board is, to the extent that that act, matter or thing has any effect, to be taken to have been done or omitted to be done by, to or in respect of the new Board,

except as provided by this Part.

(2) This clause does not apply to the Grain Sorghum Marketing Board for the State of New South Wales.

4 Arrangements in relation to payment of former staff of Grain Sorghum Marketing Board

Despite clause 3, if, before the relevant day, an employee of the Grain Sorghum Marketing Board for the State of New South Wales elects to transfer to the employment of the new Board, arrangements may be made by the liquidator appointed in respect of that Board to transfer to the

new Board an amount sufficient to satisfy any obligation that may arise under clause 9 in respect of any redundancy payment to which that employee was entitled on 1 February 1991 and which the new Board may be required to make after the relevant day to that employee.

5 Scheme of arrangement--Oilseeds Marketing Board

(1) The scheme of arrangement made in respect of the Oilseeds Marketing Board for the State of New South Wales by an agreement on 21 August 1989 (**the agreement**) is to be completed or otherwise dealt with by the new Board so as to give effect to the scheme of arrangement in accordance with the law applicable immediately before the commencement of this clause.

(2) The annual service fee payable to the new Board for administration of the scheme of arrangement is to be such amount, not exceeding \$400,000 per annum, as is agreed between the new Board and the parties to the agreement for the period between the relevant date and the date on which the scheme of arrangement would but for this Act have been completed.

6 Liabilities etc of Oats Marketing Board and Barley Marketing Board

(1) Clause 3 does not apply to or in respect of any liability incurred before the relevant day by:

- (a) the Oats Marketing Board for the State of New South Wales or the liquidator appointed for the purposes of winding up that Board, or
- (b) if a liquidator is appointed for the purposes of winding up the Barley Marketing Board for the State of New South Wales before the relevant day--by that Board or liquidator,

and any legal proceeding or remedy may be instituted, continued or enforced by the liquidator despite that clause.

(2) If, immediately before the relevant day, a scheme of arrangement has been made in respect of the Barley Marketing Board for the State of New South Wales or the Oats Marketing Board for the State of New South Wales, the agreement is to be completed or otherwise dealt with by the new Board so as to give effect to the scheme of arrangement in accordance with the law applicable immediately before the commencement of this clause.

7 Members of the old Board

A person who, immediately before the relevant day, held office as a member of the old Board:

- (a) ceases to hold office as such on that day, and
- (b) is not entitled to any remuneration or compensation by virtue of having lost that office.

8 Superseded references

In any other Act, or in any instrument made under any Act or in any other document of any kind, a reference to the old Board is, on and after the relevant day, to be read as a reference to the new Board.

9 Transfer of staff

(1) Any person who, immediately before the date of assent to this Act, was employed by the old Board may elect to transfer to employment with the new Board on a day, being a day not later than the relevant day, nominated by the employee in writing (**the transfer day**).

(2) A person who so elects becomes, on the transfer day, an employee of the new Board with the same rights and entitlements and subject to the same obligations as those applicable to the person before that day.

(3) For the purposes of this clause, a person who, immediately before the appointment of a liquidator for the purpose of winding up the Oats Marketing Board for the State of New South Wales was an employee of that Board, is taken to be a person who, immediately

before the date of assent to this Act, was employed by that Board.

(4) If a person who becomes an employee of the new Board under this clause resigns his or her employment with the new Board within the period of 6 months immediately following the transfer day, the new Board must make any redundancy payment to the employee to which the employee would have been entitled if he or she had been retrenched by the old Board on that day.

10 Audit of old Board's accounts

In relation to the accounts of the old Board for the Board's financial year that, but for this Act, would have ended on or after the relevant day:

- (a) the accounts are to be audited by the Auditor-General in the same way as if this Act had not been enacted, and
- (b) the Auditor-General has those powers and functions that he or she would have had but for the enactment of this Act, and
- (c) the Auditor-General has, in relation to members and employees of the new Board, any powers or functions that he or she could have exercised or performed in relation to members and employees of the old Board but for the enactment of this Act.

11 Repeals of certain Regulations

On the relevant day, in respect of:

- (a) the Barley Marketing Board for the State of New South Wales--the *Barley Marketing Board Regulations 1972* , and
- (b) the Grain Sorghum Marketing Board for the State of New South Wales--the *Grain Sorghum Marketing Board Regulations 1972* , and
- (c) the Oats Marketing Board for the State of New South Wales--the *Marketing of Primary Products (Oats Marketing Board) Regulation 1988* , and
- (d) the Oilseeds Marketing Board for the State of New South Wales--the *Oilseeds Marketing Board (NSW) Regulations* ,

are repealed.

12 Exercise of functions of old Board during winding up

If a liquidator of an old Board has been appointed under the *Marketing of Primary Products Act 1983* before the commencement of section 101, the liquidator may (until the relevant day in respect of the Board) exercise such of those functions in respect of the commodity for which the old Board was constituted under that Act as are necessary to wind up the old Board and as are not inconsistent with the exercise of the functions of the new Board under this Act.

13 Repeal of Grain Sorghum Marketing Board (Special Provisions) Act 1983 No 88

On the relevant day in respect of the Grain Sorghum Marketing Board for the State of New South Wales, the *Grain Sorghum Marketing Board (Special Provisions) Act 1983* is repealed.

Part 3 - Declaration of commodity

14 Proclamation of coarse grains and oilseeds as commodity

If, on the day coarse grains or oilseeds are declared to be a commodity under Division 3 of Part 2, coarse grains or oilseeds are within the control of a board within the meaning of the *Marketing of Primary Products Act 1983* , they are taken, on that day, to be removed from the control of that board.

Part 4 - Special provisions relating to former Grain Sorghum Marketing Board

15 Definitions

In this Part:

former Board means the Grain Sorghum Marketing Board for the State of New South Wales as constituted immediately before 28 February 1992.

liquidator means the liquidator of the former Board appointed for the purpose of winding up the Board by proclamation under the *Marketing of Primary Products Act 1983* published in the Gazette on 12 July 1991.

16 Distribution of surplus funds

(1) The liquidator (or a person appointed by the Minister to act in place of the liquidator) is taken to be authorised, on and from 28 February 1992, to distribute all money held by the former Board immediately before its dissolution as if the Board had not been dissolved on that day.

(2) Any such distribution is to be carried out in accordance with the authority conferred by the proclamation by which the liquidator was appointed and the *Marketing of Primary Products Act 1983* as in force on the day the liquidator was appointed.

(3) For the purposes of this clause, the liquidator or person:

(a) may do any act, matter or thing that the liquidator might validly have done but for the dissolution of the Board, and

(b) is entitled to any reasonable costs and expenses (including remuneration) from its funds to which the liquidator would have been entitled but for that dissolution.

Part 5 - Provisions consequent on enactment of Grain Marketing Amendment Act 2001

17 Definition

In this Part:

amending Act means the *Grain Marketing Amendment Act 2001* .

18 Revocation of certain proclamations

(1) Any proclamation in force under Division 3 of Part 2 of this Act immediately before the commencement of Schedule 1 [6] to the amending Act is revoked on that commencement.

(2) Any proclamation in force under section 45 immediately before the commencement of Schedule 1 [12] to the amending Act is revoked on that commencement.

(3) Nothing in this clause affects the operation of section 30 of the *Interpretation Act 1987* in relation to the amendments made by Schedule 1 [6] and [12] to the amending Act.

Note: Section 30 of the *Interpretation Act 1987* preserves certain rights, privileges, obligations and liabilities arising under a repealed or amended Act or statutory rule before its repeal or amendment.

19 Liability for certain existing offences

(1) In this clause, **existing offence** means an offence against this Act or the regulations that was committed before the commencement of Schedule 1 [3] to the amending Act.

(2) A person is not liable to be prosecuted for an existing offence if:

(a) the offence was committed on or after 30 October 2000, and

(b) the person would not have been liable to be convicted of the offence had Schedule 1 [3] to the amending Act been in force before the offence was committed, and

(c) the person had not been convicted of the offence before the commencement of Schedule 1 [3] to the amending Act.

20 Vesting of commodities

(1) A commodity that was vested in and the property of the Board by operation of section 45 as in force immediately before the commencement of Schedule 1 [12] to the amending Act continues to be vested in and the property of the Board on and after that commencement for the purposes of this Act.

(2) A reference in this clause to a commodity includes a reference to any primary product that was a commodity within the meaning of section 3 (1) as in force before the commencement of Schedule 1 [3] to the amending Act.

21 Savings and transitional regulations

Regulations made as referred to in clause 1 (1) may have effect despite the terms of any savings or transitional provisions contained in this Part, if the regulations so provide.

Historical notes

Table of Acts *Grain Marketing Act 1991 No 15* . Assented to 3.5.1991. Date of commencement, Part 1, secs 8 and 101 and cl 5 of Sch 5 excepted, 12.7.1991, sec 2 (1) and GG No 106 of 12.7.1991, p 5520; date of commencement of Part 1 and sec 8, assent, sec 2 (2); date of commencement of sec 101 (1), 1.8.1991, sec 2 (1) and GG No 110 of 26.7.1991, p 6041; date of commencement of sec 101 (2), (4) and cl 5 of Sch 5, 28.2.1992, sec 2 (1) and GG No 30 of 28.2.1992, p 1234; date of commencement of sec 101 (3), 20.9.1991, sec 2 (1) and GG No 132 of 20.9.1991, p 8158. This Act has been amended as follows:

Law (Miscellaneous Provisions) Act (No 2) 1991 . Assented to 17.12.1991. Date of commencement of the provisions of Sch 1 relating to the *Grain Marketing Act 1991* , assent,

Law (Miscellaneous Provisions) Act (No 3) 1992 . Assented to 8.12.1992. Date of commencement of the provisions of Sch 1 relating to the *Grain Marketing Act 1991* , assent,

Legal Institutions (Miscellaneous Amendments) Act 1996 . Assented to 21.6.1996. Date of commencement, 12.7.1996, sec 2 and GG No 84 of 12.7.1996, p 3984.

Private Housing and Starr-Bowkett Societies Act 1998 . Assented to 15.5.1998. Date of commencement of Sch 6.11, 1.9.2000, sec 2 and GG No 112 of 1.9.2000, p 8633.

Agricultural Industry Services Act 1998 . Assented to 26.6.1998. Date of commencement, 1998, sec 2 and GG No 120 of 14.8.1998, p 6025.

Law (Miscellaneous Provisions) Act 1999 . Assented to 7.7.1999. Date of commencement of Sch 1.16, assent, sec 2 (2).

Law (Miscellaneous Provisions) Act (No 2) 1999 . Assented to 3.12.1999. Date of commencement of Sch 4, assent, sec 2 (1).

Legislation Amendment (Sentencing) Act 1999 . Assented to 8.12.1999. Date of commencement of sec 7 and Sch 5, 1.1.2000, sec 2 (1) and GG No 144 of 24.12.1999, p

Legislation Amendment (Consequential Amendments) Act 2001 . Assented to 28.6.2001. Date of

ncement of Sch 2.25, 15.7.2001, sec 2 (1) and Commonwealth Gazette No S 285 of 01.

Marketing Amendment Act 2001 . Assented to 14.12.2001. Date of commencement, sec 2.

Law (Miscellaneous Provisions) Act (No 2) 2001. Assented to 14.12.2001. Date of ncement of Sch 3, assent, sec 2 (1).

Legislation Repeal and Amendment Act 2001 . Assented to 19.12.2001. Date of ncement of Sch 2, 7.7.2003, sec 2 and GG No 104 of 27.6.2003, p 5978.

Table of amendments

title	01 No 110, Sch 1 [1].
	08 No 45, Sch 3.2 [1]; 2001 No 34, Sch 2.25 [1]; 2001 No 110, Sch 1 [2]-
	9 No 31, Sch 1.16 [1].
3, 4C	1 No 34, Sch 2.25 [2].
	08 No 45, Sch 3.2 [2]; 1999 No 31, Sch 1.16 [2].
Div 3 (secs 14-19)	01 No 110, Sch 1 [6].
	01 No 110, Sch 1 [7] [8].
	08 No 45, Sch 3.2 [2].
	01 No 110, Sch 1 [9].
	01 No 110, Sch 1 [10].
	01 No 110, Sch 1 [11].
	001 No 110, Sch 1 [12].
	01 No 110, Sch 1 [13].
	01 No 110, Sch 1 [14].
	08 No 11, Sch 6.11.
	01 No 110, Sch 1 [15]; 2001 No 112, Sch 3.7 [1].
	01 No 110, Sch 1 [16].
	91 No 94, Sch 1.
	06 No 24, Sch 1.

- 70 98 No 45, Sch 3.2 [2].
 98 No 45, Sch 3.2 [2] [3].
- 76 98 No 45, Sch 3.2 [2].
 01 No 34, Sch 2.25 [3].
 98 No 45, Sch 3.2 [2]; 2001 No 112, Sch 3.7 [2].
 01 No 121, Sch 2.121 [1].
- 93 98 No 45, Sch 3.2 [2] [3].
 01 No 121, Sch 2.121 [2] [3].
 98 No 45, Sch 3.2 [2] [3]; 2001 No 110, Sch 1 [17]-[19].
- ! 99 No 85, Sch 4.
 99 No 94, sec 7 (2) and Sch 5, Part 2.
 99 No 94, sec 7 (3) and Sch 5, Part 3.
 99 No 85, Sch 4.
 01 No 94, Sch 1; 1992 No 111, Sch 1; 2001 No 110, Sch 1 [20]-[23].