

## MARKETING OF PRIMARY PRODUCTS BILL, 1983

### EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to repeal the Marketing of Primary Products Act, 1927;
- (b) to establish two broad schemes for the controlled marketing of certain primary products produced in New South Wales, as follows:—
  - (i) the first scheme (which is a continuation, with some modifications, of the scheme under the Marketing of Primary Products Act, 1927) involves the vesting of proclaimed commodities in marketing boards established with the approval of producers of the commodities; and
  - (ii) the second scheme involves the making of marketing orders in relation to proclaimed products that are not commodities covered by the first scheme; and
- (c) to make other provisions in connection with the marketing of primary products produced in New South Wales.

The Bill contains the following provisions:—

#### PART I.—PRELIMINARY.

Clause 1 specifies the short title by which the proposed Act may be cited.

Clause 2 provides that the proposed Act, with minor exceptions, is to commence on a day to be proclaimed by the Governor-in-Council.

Clause 3 sets out how the Bill is arranged in Parts, Divisions and Schedules.

Clause 4 contains various definitions used in the Bill. One of the definitions is that of “authority”, which means a marketing board, a marketing committee or the Agricultural Marketing Finance Agency. Another of the definitions is that of “marketing”, which includes buying, selling, financing, collecting, cleaning, grading, packing, treating, carrying, storing, warehousing, re-handling, distributing, delivering and promoting.

Clause 5 permits the delegation of functions conferred on the Minister under the proposed Act.

## PART II.—CONSTITUTION OF MARKETING BOARDS.

DIVISION 1.—*Preliminary.*

Clause 6 contains definitions used in Part II of the Bill.

DIVISION 2.—*Petition and poll for constitution of board.*

Clause 7 empowers the Governor-in-Council, following a petition by producers of a primary product to direct that a poll be taken on the question of whether a marketing board be constituted in relation to the product.

DIVISION 3.—*Constitution of board.*

Clause 8 empowers the Governor-in-Council, following a successful poll (i.e. more than one-half of the enrolled producers are in favour) for the constitution of a marketing board, to direct that the first election of members of the board be held.

Clause 9 enables electoral districts to be fixed for the purposes of the election of the elected members of a marketing board.

Clause 10 empowers the Governor-in-Council to declare the establishment of a marketing board, to specify the number of members of the board and to declare the product for which the board is constituted to be a commodity for the purposes of the proposed Act.

Clause 11 relates to the constitution of a marketing board, and constitutes it as a corporation. A board is to consist of 2 elected members and 1 nominated member or of 3, 4 or 5 elected members and 2 nominated members. Nominated members are to be appointed after consultation with the Minister for Consumer Affairs. Provision is made for the specification of the objects of a board. Schedules 2 and 3 to the Bill deal with the constitution and procedure of a marketing board.

Clause 12 permits the number of members of a marketing board to be varied, within the options mentioned in clause 11 above.

Clause 13 enables the name of a marketing board to be changed.

Clause 14 recognises that a marketing board may be constituted for one or more products.

Clause 15 empowers a marketing board to employ staff and engage consultants.

DIVISION 4.—*Addition of commodity or area to control of board.*

Clauses 16–19 provide machinery for an additional product or additional area to be added to the control of a marketing board, following a petition and poll of producers.

DIVISION 5.—*Amalgamation of boards.*

Clauses 20–25 provide machinery for 2 or more marketing boards to be amalgamated at the request of the boards themselves or following action by the Minister.

*DIVISION 6.—Removal of commodity or area from control of board.*

Clauses 26–29 provide machinery for the removal of a commodity or an area from the control of a board, following a petition and poll of producers.

*DIVISION 7.—Winding up and dissolution of board.*

Clauses 30–35 provide machinery for the winding up and dissolution of a marketing board, following a petition and poll of producers, at the request of the board itself or on the recommendation of the Minister.

*DIVISION 8.—General provisions.*

Clause 36 provides that a petition expires after 12 months, and that a petition need not be acted on.

Clause 37 deems certain growers and producers to be producers for the purposes of a petition or poll.

Clause 38 requires the Director of Marketing within the Department of Agriculture to publish a report on any proposal that is to be the subject of a poll under Part II.

Clauses 39 and 40 provide the machinery for the conduct of polls and elections, which are to be conducted by the Electoral Commissioner.

Clause 41 empowers the Governor-in-Council to remove all members of a marketing board from office in appropriate circumstances.

Clause 42 directs that a marketing board not be involved in party politics.

Clause 43 makes provision for the appointment of an administrator of a marketing board.

**PART III.—MARKETING OF COMMODITIES: MARKETING BOARDS.**

*DIVISION 1.—General functions of boards.*

Clause 44 confers on a marketing board its main functions in connection with the marketing of the board's commodity. The clause imposes responsibilities on the board in regard to the quality and purity of the commodity.

Clause 45 empowers a marketing board to receive voluntary deliveries of the board's commodity from inside or outside its area.

Clause 46 allows a board to trade in its own commodity.

Clause 47 empowers a marketing board to fix grades and prices for its commodity.

Clause 48 authorises a marketing board, with the approval of the Minister, to engage in manufacturing activities.

Clause 49 allows a marketing board, with the approval of the Minister, to market and otherwise deal with primary products that are not its proclaimed commodity.

Clause 50 empowers a marketing board to appoint authorised agents.

Clause 51 empowers a marketing board to appoint authorised buyers, who may purchase the board's commodity direct from the producer, on commission.

Clause 52 empowers a marketing board, with the approval of the Minister, to act as a marketing agent.

Clause 53 empowers a marketing board, with the approval of the Minister, to act as a purchasing agent for producers.

Clause 54 confers on a marketing board various miscellaneous functions.

Clause 55 enacts miscellaneous provisions respecting a board's trading activities and activities as an agent, so that separate accounts are kept, administrative costs are shared and security in connection with those activities is not given over the board's commodity.

#### DIVISION 2.—*Vesting of commodities in boards.*

Clause 56 vests in a marketing board the commodity in respect of which the board is constituted.

Clause 57 empowers a marketing board to issue exemptions from the vesting provisions.

Clause 58 invalidates certain contracts for sale of the commodity vested in a marketing board.

Clause 59 limits certain claims against a marketing board, and makes ancillary provisions.

#### DIVISION 3.—*Delivery of commodities to boards.*

Clause 60 requires a commodity that is vested in a marketing board to be delivered to the board.

Clause 61 requires a marketing board to accept any of the vested commodity delivered to it, except where the commodity is not of an acceptable standard of quality or grade.

Clause 62 provides for the re-vesting of a commodity not accepted by a marketing board.

Clause 63 provides that the person delivering a commodity to a marketing board is to give notice of liens and other encumbrances.

#### DIVISION 4.—*Payment for vested commodities.*

Clause 64 provides for a marketing board to pay producers of the commodity delivered to the board. Generally, a commodity of a particular quality or grade is to be paid for at a uniform price determined by the board.

Clause 65 enables a scheme to be proposed by a marketing board and approved by the Minister varying the basis on which payments for the commodity are to be made to producers.

Clauses 66 and 67 protect a marketing board for payments made in good faith and without negligence.

#### PART IV.—CONSTITUTION OF MARKETING COMMITTEES.

##### DIVISION 1.—*Constitution of committee.*

Clause 68 empowers the Governor-in-Council, following successful action under Part V for the making of a marketing order, to declare the establishment of a marketing committee and to declare the product for which the committee is constituted to be a commodity for the purposes of the proposed Act.

Clause 69 relates to the constitution of a marketing committee, and constitutes it as a corporation. A committee is to consist of such number of members, appointed by the Governor-in-Council, as are provided for in the relevant marketing order under Part V.

Clause 70 allows a marketing committee to employ staff and engage consultants.

Clause 71 enables the name of a marketing committee to be changed.

Clause 72 recognises that a marketing committee may be constituted for one or more products.

##### DIVISION 2.—*Winding up and dissolution of committee.*

Clause 73 provides machinery for the winding up and dissolution of a marketing committee, where the relevant marketing order under Part V ceases to have effect or is revoked.

##### DIVISION 3.—*General provisions.*

Clause 74 empowers the Governor-in-Council to remove all members of a marketing committee from office in appropriate circumstances.

Clause 75 makes provision for the appointment of an administrator for a marketing committee.

#### PART V.—MARKETING OF COMMODITIES: MARKETING ORDERS.

##### DIVISION 1.—*Preliminary.*

Clause 76 contains definitions used in Part V of the Bill.

##### DIVISION 2.—*Provisions relating to the making, etc., of marketing orders.*

Clause 77 empowers the Minister, following a petition by producers of a primary product within an area, to direct that a report be published in relation to a proposed marketing order for the area.

Clause 78 requires the Director of Marketing to publish a report relating to the proposal.

Clause 79 requires the Director of Marketing to arrange for a public meeting to be held in connection with the proposal.

Clause 80 empowers the Minister to publish the terms of a draft marketing order.

Clause 81 deals with the making of a proclamation for a poll on a draft marketing order.

Clause 82 empowers the Minister to make a marketing order after a successful poll.

Clause 83 provides that a marketing order may not be made for a commodity for which there is a marketing board.

Clause 84 contains provisions relating to marketing orders, including provisions requiring gazettal and certain evidentiary and savings provisions.

Clause 85 provides that a marketing order remains in force for a specified period not exceeding 4 years, but may remain in force for further similar periods, subject to any petitions for a poll to be taken on the question of the continuation of the order for a further such period.

Clause 86 contains provisions for a petition and poll on the question whether a marketing order remains in force for a further period.

Clause 87 authorises a marketing order to be amended or remade.

Clause 88 authorises the Minister to invite representations on the question whether a marketing order should be revoked at any time.

Clause 89 empowers the revocation of a marketing order following consideration of representations under clause 88.

Clause 90 limits the time within which and the grounds on which the validity of a marketing order may be challenged in legal proceedings.

#### DIVISION 3.—*Contents of marketing orders.*

Clause 91 provides that a marketing order shall specify the objects of the order and empowers an order to make provision for or with respect to the marketing of the relevant commodity, and associated activities.

Clause 92 authorises a marketing order to make provision for exempting persons or things from its operation.

Clause 93 authorises a marketing order to make provisions respecting the composition of the relevant marketing committee.

Clause 94 precludes a marketing order from prohibiting production or providing for the automatic vesting or compulsory acquisition of the commodity.

#### DIVISION 4.—*Removal of commodity or area from control of marketing order.*

Clauses 95–98 provide machinery for the removal of a commodity or an area from the control of a marketing order, following a petition and poll.

DIVISION 5.—*General provisions.*

Clause 99 provides that a petition expires after 12 months, and that a petition need not be acted on.

Clause 100 deems certain growers and producers to be producers for the purposes of a petition under Part V.

Clauses 101 and 102 provide machinery for the conduct of polls and elections, which are to be conducted by the Electoral Commissioner.

PART VI.—FINANCIAL PROVISIONS.

DIVISION 1.—*General.*

Clause 103 provides that the financial accounting period for each authority shall be as approved by the Minister.

Clause 104 provides for the accounts to be kept by each authority.

Clause 105 deals with the auditing of the accounts of an authority.

Clause 106 empowers an authority to make charges for the supply of services and products.

Clause 107 enables the recoupment from an authority of costs incurred in connection with services provided by the Electoral Commissioner and the Department of Agriculture.

Clause 108 enables an authority to create and use reserves.

Clause 109 empowers regulations to be made relating to the retention by an authority of money owing to the authority, and for its eventual repayment.

Clause 110 allows an authority to obtain financial accommodation from banks and in other ways approved by the Minister and the Treasurer.

Clause 111 authorises money held by an authority to be invested in authorised trustee investments, on deposit with the Treasurer or a bank or in other ways approved by the Minister and the Treasurer.

Clause 112 authorises a marketing board or committee to deal with futures contracts, with various limitations.

Clause 113 prohibits the making of loans by an authority to members and the giving of security by an authority for loans made by other persons to members.

DIVISION 2.—*Agricultural Marketing Finance Agency.*

Clauses 114–118 provide for the constitution of an Agricultural Marketing Finance Agency, for the purpose of providing financial services to authorities.

Clauses 119 and 120 provide machinery for the winding up and dissolution of the Agency.

Clause 121 makes provision for the appointment of an administrator of the Agency.

Clause 122 permits other bodies to be set up, and specifically saves the Agricultural Finance Agency and the Tobacco Industry Leaf Finance Agency.

#### PART VII.—PUBLIC ACCOUNTABILITY.

Clause 123 requires the Director of Marketing to keep authorities under regular review.

Clause 124 requires each authority to report to the Director of Marketing when requested to do so.

Clause 125 requires each authority to make regular reports at the end of its financial accounting periods.

Clause 126 requires the Director of Marketing to make an annual report, for presentation to Parliament, on the activities of the various authorities, the operation of the various marketing orders, and other matters.

Clause 127 provides for each authority to hold public meetings, at annual and other approved times.

Clauses 128–130 provide for the conduct of management audits in relation to authorities.

Clause 131 requires that the Minister be furnished with copies of reports under Part VII.

#### PART VIII.—STATISTICS, MARKETING INFORMATION AND PROMOTION.

Clause 132 provides for the collection and distribution of information relating to the marketing of primary products.

Clause 133 empowers the Minister to co-operate with authorities and other persons and organisations for the purpose of promoting and facilitating the marketing of primary products.

Clause 134 relates to the publication and dissemination of official marketing information.

Clause 135 provides that Part VIII does not affect the functions of marketing boards and committees.

#### PART IX.—INSPECTION, ETC.

Clause 136 enables the Minister to appoint authorised persons.

Clause 137 enables the Minister, the Director of Marketing, a board or a committee to require a person to furnish relevant information.



Clause 138 gives police and authorised persons a right of entry to premises, at reasonable times, in connection with a commodity or records relating to a commodity. Police may stop vehicles similarly. The clause also provides for the issue of warrants to authorise entry in certain cases and for the seizure of any of the commodity vested in the relevant marketing board.

Clause 139 enables an authorised person to require certain persons to furnish their names and addresses.

Clause 140 makes it an offence to obstruct or personate an authorised person.

#### PART X.—WINDING UP, ARRANGEMENTS, ETC.

The provisions of this Part are similar to provisions contained in the Grain Sorghum Marketing Board (Special Provisions) Act, 1983.

Clause 141 contains definitions used in Part X of the Bill.

Clause 142 provides that Part X is to bind the Crown. The clause is also similar to section 314 of the Companies (New South Wales) Code.

Clause 143 provides that Division 6 of Part XII of the Companies (New South Wales) Code applies to an authority to the extent necessary to make it clear that the Supreme Court has power to appoint a liquidator of the authority, including a provisional liquidator.

Clauses 144 and 145 empower a compromise or arrangement to be entered into between an authority and its creditors. The clauses are also similar in many respects to sections 315 and 316 of the Companies (New South Wales) Code.

Clause 146 provides that certain regulations and rules having effect for the purposes of the Companies (New South Wales) Code have effect for the purposes of Part X, but empowers regulations and rules to be made in any event under the proposed Act.

Clause 147 makes it clear that the person or persons appointed to administer a compromise or arrangement referred to in clause 144 can exercise the statutory functions of the authority.

Clause 148 specifies how a member or officer of an authority is "in default" for the purposes of Part X, and thereby guilty of an offence.

#### PART XI.—MISCELLANEOUS.

Clause 149 makes provision with respect to the commencement, amendment and repeal of proclamations referred to in the Bill.

Clause 150 makes provision with respect to the amendment and repeal of approvals of the Minister referred to in the Bill.

Clause 151 imposes certain duties on prescribed persons.

Clause 152 provides punishment for the giving or receiving of bribes in connection with the functions of an authority.

Clause 153 makes it an offence to divulge information obtained in the course of exercising functions under the proposed Act.

Clause 154 makes it an offence for prescribed persons, or persons who have at any time been prescribed persons to engage in insider trading.

Clause 155 provides a general penalty of \$2,000 (maximum) for offences against the proposed Act, where a penalty is not otherwise provided.

Clause 156 provides for offences to be dealt with summarily, and provides for fines to be recovered as debts.

Clause 157 makes directors and officers liable to punishment for offences committed by corporations.

Clause 158 contains evidentiary provisions.

Clause 159 deals with the service of notices by a marketing board or committee.

Clause 160 limits liability for things done in good faith under the proposed Act.

Clause 161 repeals the Marketing of Primary Products Act, 1927, and also enables repeal of accounting and reporting provisions of the proposed Act (in the event of the enactment or commencement of other legislation dealing with these matters).

Clause 162 gives effect to Schedule 4, which contains savings, transitional and other provisions.

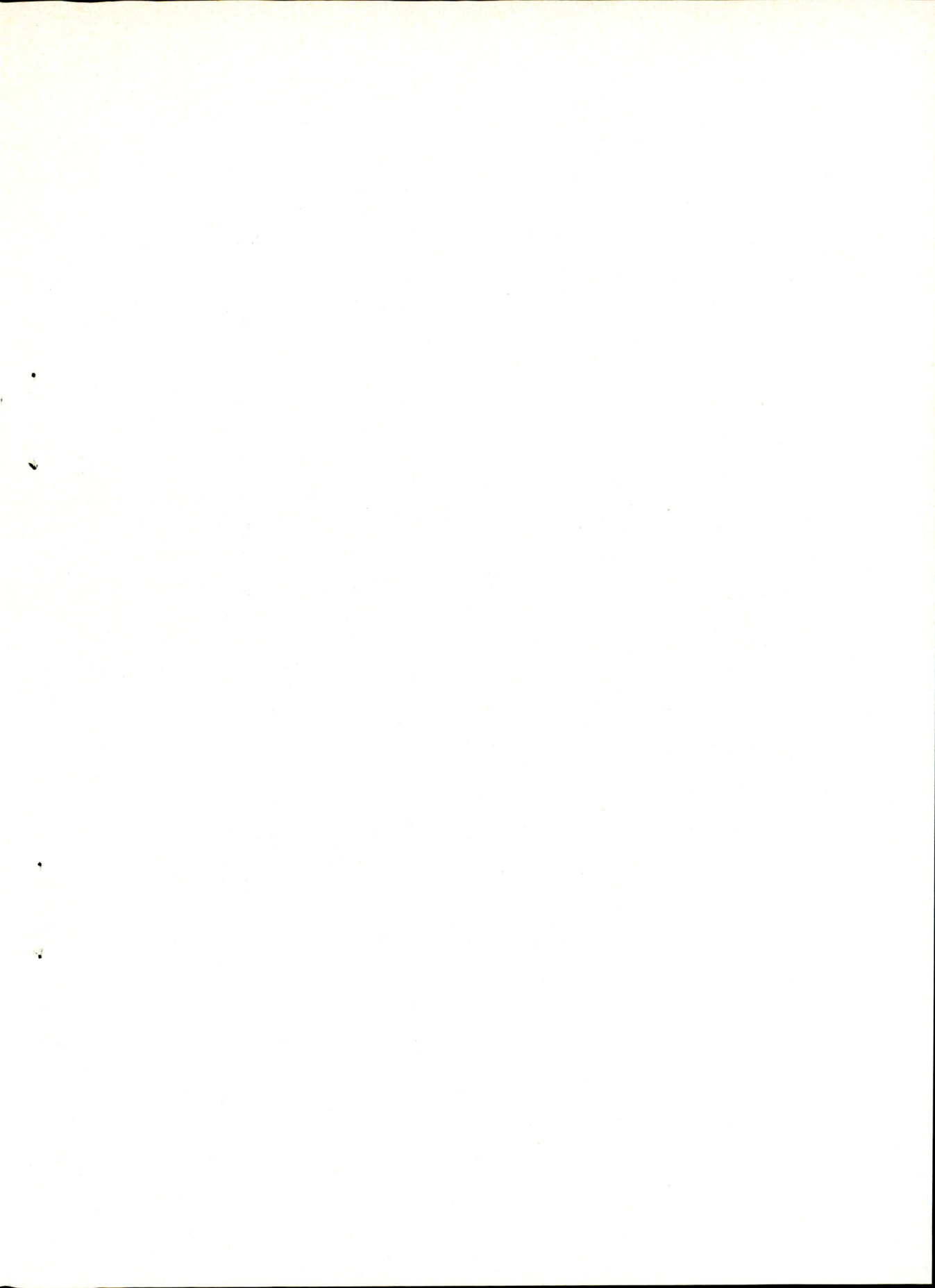
Clause 163. Regulations.

Schedule 1 lists the Acts to be repealed.

Schedules 2 and 3 deal with the constitution and procedure of marketing boards, marketing committees and the Agricultural Marketing Finance Agency.

Schedule 4 contains savings, transitional and other provisions.

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**MARKETING OF PRIMARY PRODUCTS BILL, 1983**

No. , 1983.

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**A BILL FOR**

An Act relating to the marketing of certain primary products; to provide for the establishment of marketing boards in relation to certain of those products; to enable the making of marketing orders; to repeal the Marketing of Primary Products Act, 1927; and for other purposes.

[MR DAY—1 *December*, 1983.]

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

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**PART I.**

**PRELIMINARY.**

**Short title.**

**1.** This Act may be cited as the "Marketing of Primary Products Act, 1983".

**10 Commencement.**

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

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

**15 Arrangement.**

**3.** This Act is divided as follows:—

**PART I.—PRELIMINARY—ss. 1–5.**

**PART II.—CONSTITUTION OF MARKETING BOARDS—ss. 6–43.**

**DIVISION 1.—General—ss. 103–113.**

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**DIVISION 2.—Petition and poll for constitution of board—s. 7.**

**DIVISION 3.—Constitution of board—ss. 8–15.**

**DIVISION 4.—Addition of commodity or area to control of board—  
ss. 16–19.**

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DIVISION 5.—*Amalgamation of boards—ss. 20–25.*

DIVISION 6.—*Removal of commodity or area from control of board—ss. 26–29.*

DIVISION 7.—*Winding up and dissolution of board—ss. 30–35.*

5 DIVISION 8.—*General provisions—ss. 36–43.*

PART III.—*MARKETING OF COMMODITIES: MARKETING BOARDS—ss. 44–67.*

DIVISION 1.—*General functions of boards—ss. 44–55.*

DIVISION 2.—*Vesting of commodities in boards—ss. 56–59.*

10 DIVISION 3.—*Delivery of commodities to boards—ss. 60–63.*

DIVISION 4.—*Payment for vested commodities—ss. 64–67.*

PART IV.—*CONSTITUTION OF MARKETING COMMITTEES—ss. 68–75.*

DIVISION 1.—*Constitution of committee—ss. 68–72.*

DIVISION 2.—*Winding up and dissolution of committee—s. 73.*

15 DIVISION 3.—*General provisions—ss. 74, 75.*

PART V.—*MARKETING OF COMMODITIES: MARKETING ORDERS—ss. 76–102.*

DIVISION 1.—*Preliminary—s. 76.*

20 DIVISION 2.—*Provisions relating to the making, etc., of marketing orders—ss. 77–90.*

DIVISION 3.—*Contents of marketing orders—ss. 91–94.*

DIVISION 4.—*Removal of commodity or area from control of marketing order—ss. 95–98.*

DIVISION 5.—*General provisions—ss. 99–102.*

25 PART VI.—*FINANCIAL PROVISIONS—ss. 103–122.*

DIVISION 1.—*General—ss. 103–113.*

DIVISION 2.—*Agricultural Marketing Finance Agency—ss. 114–122.*

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PART VII.—PUBLIC ACCOUNTABILITY—*ss.* 123–131.

PART VIII.—STATISTICS, MARKETING INFORMATION AND PROMOTION  
—*ss.* 132–135.

PART IX.—INSPECTION, ETC.—*ss.* 136–140.

5 PART X.—WINDING UP, ARRANGEMENTS, ETC.—*ss.* 141–148.

PART XI.—MISCELLANEOUS—*ss.* 149–163.

SCHEDULE 1.—REPEALS.

SCHEDULE 2.—PROVISIONS RELATING TO MEMBERS OF AUTHORITIES.

10 SCHEDULE 3.—PROVISIONS RELATING TO PROCEDURE OF AUTHORITIES.

SCHEDULE 4.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

**Interpretation.**

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“Agency” means the Agricultural Marketing Finance Agency constituted by this Act;

“area” means New South Wales or an area of or locality in New South Wales;

20 “authorised agent” means a person appointed under section 50;

“authorised buyer” means a person appointed under section 51;

“authorised person” means a person appointed under section 136 for the purposes of the provision in which the expression occurs;

“authority” means a board, a committee or the Agency;

25 “board” means a board constituted under this Act;



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- “committee” means a committee constituted under this Act;
- “commodity” means a primary product, or a variety, grade or class of a primary product, declared to be a commodity by a proclamation in force under Part II or IV;
- 5 “Director” means the person holding the position of or acting as Director of Marketing in the Department of Agriculture;
- “futures contract” means a product futures contract, a currency futures contract or a financial futures contract;
- 10 “futures market” means a market, exchange or other place at which futures contracts are regularly made or traded;
- “management audit” means a management audit under Part VII;
- “marketing” includes buying, selling, financing, collecting, cleaning, grading, packing, treating, carrying, storing, warehousing, re-handling, distributing (by wholesale or retail), delivering and promoting;
- 15 “marketing board” means a board constituted under this Act;
- “marketing committee” means a committee constituted under this Act;
- “marketing order” means a marketing order under Part V;
- “primary product” includes—
- 20 (a) any grain, cereal, fruit (fresh, dried or canned), vegetable, livestock, meat, hay, chaff, poultry (live or dead), honey, beeswax or other product of agriculture, grazing, poultry-farming or bee-keeping in New South Wales; and
- 25 (b) any dairy produce (including butter and cheese) and any other article prepared directly from the produce of agriculture, grazing, poultry-farming or bee-keeping in New South Wales,
- but does not include wool, fresh milk, eggs or any dried fruits to which the Dried Fruits Act, 1939, for the time being applies;

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“proclamation” means a proclamation published in the Gazette;

5 “producer”, in relation to a primary product, means a person by whom or on whose behalf any of the product is actually grown or produced for sale, and, where any of the product is grown or produced pursuant to any written share-farming agreement or written partnership agreement, includes the parties to the agreement, but does not include a person engaged as an employee on wages or salary or piece-work rates;

“product” includes article and thing;

10 “regulation” means a regulation made under this Act;

15 “sell” means sell by wholesale or by retail, whether by cash, on terms or otherwise, and includes barter, exchange, supply for profit, offer for sale, receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale and cause, suffer or allow to be sold, offered or exposed for sale.

(2) In this Act, a reference to—

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

20 (3) In this Act, a reference, where used in relation to a board or committee, to the commodity is a reference to the commodity for which the board or committee is constituted.

(4) In this Act, a reference, where used in relation to a marketing order, to the commodity is a reference to the commodity to which the order  
25 relates.

(5) Except as prescribed, a declaration of a primary product as a commodity for the purposes of this Act shall be deemed to be limited to so much of the product as is produced within the area of the board or committee to which it relates.

30 (6) For the purposes of this Act, a board is associated with a product if it is, by or under this Act, authorised to exercise marketing or other functions in relation to the product.

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- (7) In Part IX, a reference (however expressed) to—
- (a) an authorised person is, where the reference occurs in connection with a reference to a board or committee, a reference to an authorised person for the board or committee; and
  - 5 (b) a commodity is, where the reference occurs in connection with an authorised person, a reference to a commodity in relation to which a board or committee is constituted (being the board or committee for which the person is an authorised person).
- (8) A power conferred by this Act to declare a primary product to be  
10 a commodity includes a power to declare a variety, grade or class of a primary product to be a commodity.

**Delegation by the Minister.**

5. (1) The Minister may, by instrument in writing, delegate to an officer of the Public Service the exercise of such of the functions (other than this  
15 power of delegation) conferred or imposed on the Minister by or under this Act as may be specified in the instrument of delegation, and may, by a like instrument, revoke any such delegation.

(2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time  
20 to time in accordance with the terms of the delegation by the delegate.

(3) A delegation under this section may be made subject to such conditions or such limitations as to the exercise of any of the functions delegated, or as to time or circumstances, as may be specified in the instrument of delegation.

25 (4) Notwithstanding any delegation made under this section, the Minister may continue to exercise all or any of the functions delegated.

(5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done or suffered by the Minister, and  
30 shall be deemed to have been done or suffered by the Minister.

(6) An instrument purporting to be signed by a delegate of the Minister in his or her capacity as a delegate of the Minister under this Act shall in all courts be received in evidence as if it were an instrument executed by the Minister and, until the contrary is proved, shall be deemed to be an  
35 instrument signed by a delegate of the Minister.

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## PART II.

## CONSTITUTION OF MARKETING BOARDS.

DIVISION 1.—*Preliminary.***Interpretation.**

5 6. In this Part—

“election” means an election under this Part;

“enrolled” means enrolled in the relevant roll of producers under this Part;

“poll” means a poll under this Part.

10 DIVISION 2.—*Petition and poll for constitution of board.*

**Petition and proclamation for poll to constitute board.**

7. (1) Where the Minister—

(a) is satisfied, on representations made by petition to the Minister by producers of a primary product within an area that a substantial number of producers of that product within that area desire that a board should be constituted for that product within that area; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

20 the Governor may, by proclamation, direct that a poll shall be taken of producers of that product on the question whether a board should be constituted for that product within that area.

(2) Where the Minister—

(a) is satisfied, on representations made by petition to the Minister by producers of 2 or more primary products within one or more areas, that a substantial number of producers of each product within the relevant area desire that a board should be constituted for all those products within that area or those respective areas; and

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(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of those products on the question whether a board should be  
5 constituted for all those products within that area or those respective areas.

(3) Where the Minister—

(a) is satisfied, on representations made by petition to the Minister by producers of 2 or more primary products within one or more areas, that a substantial number of producers of each product within the  
10 relevant area desire that a board should be constituted for such of those products within that area or those respective areas as are the subject of a successful poll; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

15 the Governor may, by proclamation, direct that a poll shall be taken of producers of those products on the question whether a board should be constituted for all or some of those products within that area or those respective areas.

DIVISION 3.—*Constitution of board.*

**20 Proclamation for first election of board.**

8. (1) If more than one-half of the enrolled producers are, at a poll referred to in section 7 (1), in favour of the constitution of a board, the Governor may, by proclamation, direct that an election shall be held for the election of a specified number of representatives of producers of the relevant  
25 primary product to be members of the board.

(2) If more than one-half of the producers respectively enrolled for all the relevant primary products are, at a poll referred to in section 7 (2), in favour of the constitution of a board, the Governor may, by proclamation, direct that an election shall be held for the election of a specified number of  
30 representatives of producers of all those products to be members of the board.

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5 (3) If more than one-half of the producers respectively enrolled for all or some of the relevant primary products are, at a poll referred to in section 7 (3), in favour of the constitution of a board, the Governor may, by proclamation, direct that an election shall be held for the election of a specified number of representatives of producers of those products to be members of the board.

(4) The number of representatives to be specified in a proclamation under this section shall be 2, 3, 4 or 5.

**Electoral districts.**

10 9. (1) The Governor may, by proclamation, appoint electoral districts for an election and fix the number of persons who may be elected from each such district.

(2) A person is not entitled to be a candidate for more than one electoral district at any election.

15 (3) The Governor may, by proclamation, vary or abolish any electoral district or vary the number of persons who may be elected from any such district.

(4) A decrease in the number of elected members for an electoral district operates as from the expiration of the term of office of the then 20 current elected members of the board concerned.

(5) Notwithstanding subsection (4), a decrease in the number of elected members for an electoral district operates immediately, if there is, at the time the proclamation under subsection (3) takes effect, a corresponding number of vacancies in the offices of elected members for the 25 district.

(6) Nothing in this section authorises the number of elected members of a board to be greater than the number authorised under the other provisions of this Act.

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**Constitution of board and declaration of commodity.**

10. (1) After the first election of persons for appointment as members of a board, the Governor may, by proclamation—

- 5 (a) declare that section 11 applies for the purpose of constituting a board, with a specified corporate name, for a specified primary product and in relation to a specified area;
- (b) specify the number of elected members and nominated members constituting the board; and
- 10 (c) declare that the product is a commodity for the purposes of this Act.

(2) The primary product and area to be specified in the proclamation shall be those for or in relation to which the poll was taken and the first election was held, and the number of elected members to be specified in the proclamation shall be that specified in the relevant proclamation under  
15 section 8 for the first election.

**Constitution of board.**

11. (1) Where a proclamation under section 10 takes effect in relation to a board, there is hereby constituted a corporation under the corporate name specified in the relevant proclamation, for the primary product so  
20 specified and in relation to the area so specified.

(2) A board shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

(3) The members of a board shall be appointed by the Governor.

(4) A board shall consist of—

- 25 (a) 2 elected members and 1 nominated member;
- (b) 3 elected members and 2 nominated members;
- (c) 4 elected members and 2 nominated members; or
- (d) 5 elected members and 2 nominated members,

according to the number specified in relation to the board pursuant to section  
30 8, 12 or 23.

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(5) The nominated member or members of a board shall be nominated for appointment by the Minister, after consultation with the Minister for Consumer Affairs.

(6) A board does not, for any purpose, represent the Crown.

5 (7) The Governor may, by proclamation, specify the objects of a board referred to in the proclamation, and the board shall, as far as practicable, have regard to those objects in the exercise of the functions conferred or imposed on it by or under this or any other Act, but nothing in this subsection authorises or requires the board to contravene any provisions  
10 of this Act or of any other law.

(8) A board—

(a) has perpetual succession;

(b) shall have a common seal;

15 (c) may take proceedings, and be proceeded against, in its corporate name;

(d) subject to this Act, may, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property; and

20 (e) may do and suffer all other things that a body corporate may, by law, do and suffer and that are necessary for or incidental to the purposes for which the board is constituted.

(9) Schedule 2 has effect with respect to the members of a board.

(10) Schedule 3 has effect with respect to the procedure of a board.

**Variation of total number of elected members.**

25 **12.** (1) The Governor may, from time to time, on the recommendation of a board or of the Minister, direct, by proclamation, that the total number of elected members of the board shall be increased or decreased, as specified in the proclamation.

(2) The number of elected members, following a variation under  
30 subsection (1), shall be 2, 3, 4 or 5.



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(3) A decrease in the total number of elected members of a board operates as from the expiration of the term of office of the then current elected members of the board.

5 (4) Notwithstanding subsection (3), a decrease in the total number of elected members of a board operates immediately, if there is, at the time the proclamation under subsection (1) takes effect, a corresponding number of vacancies in the offices of elected members of the board.

**Change of name of board.**

10 13. (1) The Governor may, at the request or with the consent of a board, by proclamation, change the corporate name of the board.

15 (2) No such change of name of a board affects any rights or obligations of the board or renders defective any legal proceedings instituted or to be instituted by or against the board, and any legal proceedings may be continued or commenced by or against the board by its new name that might have been continued or commenced by or against the board by its former name.

**Board may control one or more commodities.**

14. (1) A board may be constituted under this Act for one or more commodities.

20 (2) Where an election is to be held for a board constituted or to be constituted for more than one primary product, the Governor may, by proclamation, make such provision for the representation by election of the producers of each of the products on the board as the Governor deems proper.

25 (3) Nothing in this section authorises the respective numbers of elected members and nominated members of a board to be greater than the numbers authorised under the other provisions of this Act.

**Board may employ staff.**

15. (1) For the purpose of enabling it to exercise its functions, a board may employ such staff and engage such consultants as it thinks fit.

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

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

DIVISION 4.—*Addition of commodity or area to control of board.*

**Operation of Division.**

16. (1) This Division authorises—

- 10 (a) an additional primary product to be added to the control of a board;
- (b) an additional area to be added to the control of a board; or
- (c) an additional primary product and an additional area to be added to the control of a board.

15 (2) This Division does not authorise—

- (a) a primary product to be so added in relation to an area if another board has been constituted for that product in relation to the whole or any part of that area and that board remains in existence; or
- 20 (b) an area to be so added in relation to a primary product if another board has been constituted for that product in relation to the whole or any part of that area and that board remains in existence.

**Petition and proclamation for poll to add product or area to control of board.**

17. Where the Minister—

- (a) is satisfied—
- 25 (i) on representations made by petition to the Minister by producers of a primary product within an area, that a substantial number of the producers of that product within that area desire that that product or that area or both should be added to the control of a specified board; and

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(ii) that this Division authorises the addition; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of  
5 producers of that product within that area on the question whether that product or that area or both should be added to the control of that board.

**Proclamation of addition of commodity or area.**

18. (1) If more than one-half of the enrolled producers are, at a poll referred to in section 17, in favour of the addition of a primary product or  
10 area to the control of a specified board, the Governor may, by proclamation—

(a) declare that the specified commodity, or specified area, or specified commodity and specified area, as the case may require, is or are added to the control of the board; and

15 (b) so far as may be relevant, declare that the product is a commodity for the purposes of this Act.

(2) A board referred to in subsection (1) shall be deemed to have been constituted for any additional primary product and in relation to any additional area, as specified in the proclamation, in addition to the product  
20 for which and the area in relation to which it was already constituted.

(3) Nothing in this section affects the continuity of any corporation constituted under section 11.

**Existing producers may also be polled.**

19. (1) If the board referred to in section 17 so requests by instrument  
25 in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of producers of each commodity for which the board is already constituted on the question mentioned in that section.

(2) The poll to be taken under this section on a particular question shall be taken on the same day as the poll to be taken under section 17  
30 on the same question.

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(3) If a direction is given under this section, a declaration may not be made under section 18 unless at least one-half of the enrolled producers of each commodity for which the board is already constituted are, at the poll to be taken under this section, also in favour of the addition of the product or area to the control of the board.

(4) Where the board is already constituted for 2 or more commodities, the poll to be taken under this section shall be a single poll of the producers of all those commodities.

DIVISION 5.—*Amalgamation of boards.*

**10 Operation of Division.**

20. This Division authorises the amalgamation of 2 or more boards—
- (a) at the request of the boards concerned; or
  - (b) following consideration of representations invited by the Minister.

**Request for amalgamation by boards.**

15 21. (1) Two or more boards may, by instruments in writing under their respective seals, make a request to the Minister for action to be taken for the boards to be amalgamated.

(2) The Minister may refuse to consider such a request unless the request is confirmed by both or all of the boards concerned, by similar 20 instruments, within such period as the Minister determines.

**Invitation by Minister for representations on amalgamation.**

22. (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 2 or more specified boards should be 25 amalgamated.

(2) A notice published under this section shall state the time by which and the manner in which representations are to be made.

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(3) A notice may be published under this section whether or not the boards concerned have made a request under section 21, but nothing requires such a notice to be published before action is taken following the making and (if required) confirmation of such a request.

## 5 Proclamation of amalgamation.

23. (1) Where the Minister—

(a) is satisfied—

- 10 (i) that a request has been made, and (if required) confirmed, in accordance with section 21 by 2 or more boards; or
- 15 (ii) that, although such a request has not been made or, if made, has not (if required) been confirmed, in accordance with that section, and after taking into consideration all representations made in accordance with section 22 on the question whether the boards should be amalgamated, action ought to be taken in the best interests of the producers concerned for the amalgamation of the boards; and
- (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, declare that the boards are  
20 amalgamated.

(2) The proclamation declaring that boards are amalgamated shall also—

- (a) declare that the individual boards are dissolved;
- 25 (b) declare that a board, with a specified corporate name, is constituted for specified primary products and in relation to specified areas;
- (c) specify the number of elected members and nominated members who are to constitute the board; and
- 30 (d) declare that the products are commodities for the purposes of this Act.

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5 (3) The primary products and areas to be specified in the proclamation shall be those for or in relation to which the dissolved boards were constituted immediately before the dissolution, and each such product shall, by the proclamation, be identified with the same area as in the previous relevant proclamations.

**Consequences of amalgamation.**

24. (1) When a proclamation under section 23 declaring that 2 or more boards are amalgamated takes effect—

- 10 (a) the individual boards declared by the proclamation to be dissolved are dissolved; and
- (b) a person who, immediately before the dissolution takes effect, held office as a member of one of the dissolved boards—
- 15 (i) shall cease to hold office as such;
- (ii) is eligible, if otherwise qualified, to be appointed as a member of the new board; and
- (iii) is not entitled to be paid any remuneration or compensation by reason of ceasing to hold that office.

(2) A board established pursuant to a proclamation under section 23 is a continuation of, and the same legal entity as, the boards dissolved 20 pursuant to that proclamation.

(3) Division 3 has effect as if the board declared to be constituted by a proclamation under section 23 had been declared to be constituted by a proclamation under section 10.

**Interim arrangements as to elected members of amalgamated board.**

25 25. (1) Notwithstanding anything in this Act, if the number of elected members of the dissolved boards does not, immediately before the boards are dissolved by the operation of this Division, exceed the number specified in the relevant proclamation under section 23, those members are eligible to be appointed as elected members of the new board, without further 30 election, for a term not exceeding 12 months.

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(2) Notwithstanding anything in this Act, if the number of elected members of the dissolved boards does, immediately before the boards are dissolved by the operation of this Division, exceed the number specified in the relevant proclamation under section 23, such of those members as the  
5 respective boards have specified by instrument in writing under their respective seals are eligible to be appointed as elected members of the new board, without further election, for a term not exceeding 12 months.

(3) If the number of persons specified by the boards under sub-section (2) exceeds the number of vacancies to be filled, the persons to be  
10 appointed shall be such of them as the Minister nominates.

(4) If the number of persons specified by the boards under sub-section (2) is less than the number of vacancies to be filled, or no persons are so specified, or any or all of the persons so specified are unavailable for appointment, the persons to be appointed shall be such (if any) of them as  
15 are available to be appointed and such other persons as the Minister nominates.

(5) Any persons appointed pursuant to this section shall be deemed to be elected members of the board concerned, and shall hold office, subject to this Act, for a term not exceeding 12 months.

20 (6) Subject to this section, the term of office of the members appointed pursuant to this section shall be that specified by the Governor in the relevant instrument of appointment.

(7) A person appointed as an elected member of a board pursuant to this section is eligible (if otherwise qualified) for re-appointment in  
25 accordance with the other provisions of this Act.

DIVISION 6.—*Removal of commodity or area from control of board.*

**Operation of Division.**

26. (1) This Division authorises—

(a) the removal of a commodity from the control of a board; or

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(b) the removal of an area from the control of a board in relation to a commodity,

by petition of producers of the commodity.

(2) This Division does not authorise any removal referred to in subsection (1) unless the board would, after the removal, retain control of a commodity in relation to an area.

**Petition and proclamation for poll for removal of commodity or area from control of board.**

27. (1) Where the Minister—

10 (a) is satisfied—

(i) on representations made by petition to the Minister by producers of a commodity for which a board is constituted, that a substantial number of the producers within the area in respect of which the board is constituted desire that the commodity should be removed from the control of the board; and

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(ii) that this Division authorises the removal; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

20 the Governor may, by proclamation, direct that a poll shall be taken of producers of that commodity within that area on the question whether that commodity should be removed from the control of the board.

(2) Where the Minister—

25 (a) is satisfied, on representations made by petition to the Minister by producers of a commodity for which a board is constituted, that a substantial number of the producers within the area in respect of which the board is constituted desire that part of that area should be removed from the control of the board; and

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(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),



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the Governor may, by proclamation, direct that a poll shall be taken of producers of that commodity within that part of that area on the question whether that part of that area should be removed from the control of the board.

**5 Removal of commodity or area from control of board.**

**28. (1)** Where the Minister—

- (a) is satisfied that more than one-half of the enrolled producers are, at a poll referred to in section 27, in favour of the removal of a commodity or part of an area from the control of a board; and
- 10 (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct the board to wind up so much of its affairs as relates to the commodity or the part of the area, as the case may require.

- 15 **(2)** Upon a proclamation under subsection (1) taking effect, the board shall proceed to wind up its affairs to the extent that the direction so provides.

- 20 **(3)** A proclamation under subsection (1) may revoke a declaration of a primary product as a commodity for the purposes of this Act or reduce the area for which a marketing board is constituted, or both, as the case may require, and may contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of such a revocation.

**Other producers may also be polled.**

- 25 **29. (1)** If the board referred to in section 27 (1) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of producers of each other commodity for which the board is constituted on the question mentioned in that subsection.

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(2) If the board referred to in section 27 (2) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of producers of the commodity within the other part of the area on the question mentioned in that subsection.

5 (3) If the board referred to in section 27 (2) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of producers of—

(a) the commodity within the other part of the area; and

(b) each other commodity for which the board is constituted,

10 on the question mentioned in that subsection.

(4) A poll to be taken under this section on a particular question shall be taken on the same day as the poll to be taken under section 27 on the same question.

15 (5) If a direction is given under this section, a direction may not be given under section 28 unless at least one-half of the enrolled producers referred to in the firstmentioned direction are also in favour of the removal of the commodity or part of an area from the control of the board.

(6) The poll to be taken under subsection (1) or (3) shall be a single poll of the producers referred to in that subsection.

20 DIVISION 7.—*Winding up and dissolution of board.*

**Operation of Division.**

30. (1) This Division authorises the winding up and dissolution of a board—

(a) by petition of producers of the commodity;

25 (b) at the request of the board itself; or

(c) on the recommendation of the Minister.

(2) Nothing in this Division limits the operation of Part X.

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**Advertisement by Minister as to time for petition.**

31. (1) The Minister shall cause a notice to be published in the Gazette and at least one newspaper circulating within the relevant area, specifying the period during which a petition for the dissolution of a board may be presented to the Minister, as referred to in section 32.

(2) A notice referred to in subsection (1) shall be published within the period of 3 months ending 3 months before the beginning of each period during which such a petition may be so presented.

**Petition and proclamation for poll to dissolve board.**

32. (1) Where the Minister—

(a) is satisfied—

(i) on representations made by petition to the Minister by producers of the commodity for which a board is constituted, that a substantial number of the producers desire that the board should be dissolved; and

(ii) that the petition was presented to the Minister during a permitted period, as defined in subsection (3); and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of that commodity within the area in respect of which the board is constituted on the question whether the board should be dissolved.

(2) The date for the taking of the poll may be the same as that fixed for an election of members of the board.

(3) In this section, “permitted period” means a period of 6 months commencing 12 months before the end of the term of office specified for the elected members of the board or, if different terms are specified, the later or latest of them, other than the first such period following the constitution of the board pursuant to a proclamation under section 10 or 23.

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**Request for dissolution by board.**

33. (1) A board may, by instrument in writing under its seal, make a request to the Minister for action to be taken for the board to be dissolved.

(2) The Minister may refuse to consider such a request unless the  
5 request is confirmed by the board, by a similar instrument, within such period as the Minister determines.

**Invitation by Minister for representations on dissolution.**

34. (1) The Minister may, by a notice published in the Gazette and in such other ways as the Minister thinks proper, invite representations by  
10 any persons on the question whether a particular board should be dissolved.

(2) A notice published under this section shall state the time by which and the manner in which representations are to be made.

(3) A notice may be published under this section whether or not the board concerned has made a request under section 33, but nothing  
15 requires such a notice to be published before action is taken following the making and (if required) confirmation of such a request.

**Winding up and dissolution.**

35. (1) Where the Minister—

(a) is satisfied—

- 20 (i) that more than one-half of the enrolled producers are, at a poll referred to in section 32, in favour of the dissolution of a particular board;
- (ii) that a request has been made, and (if required) confirmed, in accordance with section 33 by a board; or
- 25 (iii) that, although such a request has not been made or, if made, has not (if required) been confirmed, in accordance with section 33, and after taking into consideration all representations made in accordance with section 34 on the question of the dissolution of a board, action ought to be taken in the best interests of the producers concerned for
- 30 that dissolution; and

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(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct the board to wind up its affairs.

(2) Upon a proclamation under subsection (1) taking effect, the  
5 board shall proceed to wind up its affairs.

(3) Notwithstanding subsection (2)—

(a) the Governor may, by proclamation, appoint any person to be liquidator for the purpose of the winding up; and

10 (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.

(4) A proclamation under subsection (3) may revoke a declaration of a primary product as a commodity for the purposes of this Act, and may  
15 contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of such a revocation.

(5) 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, as certified from  
20 time to time by the Minister, shall be payable from the funds of the board.

(6) The members of a board may not exercise any functions as members while a person holds office as liquidator of the board.

(7) Where the Minister is of the opinion that the affairs of a board are wound up, the Governor may, by proclamation, dissolve the board, and  
25 all money and other assets of the board shall become the property of the State and shall be dealt with and disposed of as the Governor may direct.

DIVISION 8.—*General provisions.*

**Expiry and effect of petitions.**

30 **36. (1)** A petition presented to the Minister for the purposes of this Part shall be deemed not to have been presented if no action has been taken pursuant to its presentation within 12 months after the date it was presented.

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(2) Nothing in this Act shall 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.

5 **Certain persons deemed to be producers for the purposes of petition, poll or election.**

37. Where any primary product results from a process of manufacture or treatment of an article grown or produced by a farmer, orchardist, vegetable grower, grazier, poultry farmer, apiarist or dairyman, the grower or producer of the article shall, for the purpose of any petition, poll or election 10 under this Part, be deemed to be a producer of the product.

**Report to be published in connection with poll.**

38. 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 shall cause a report relating to 15 the proposal to which the poll relates to be published in such manner as the Director considers appropriate.

**Provisions as to polls.**

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

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

25 (3) A roll of producers of the primary product producing it within the relevant area shall be prepared for the poll in the prescribed manner.

(4) Notwithstanding anything in this Part, and if the regulations so provide—

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

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

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(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—

- 5 (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;
- (b) it is compulsory for producers enrolled in the relevant roll of producers to vote at the poll;
- 10 (c) a producer shall be deemed 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) shall, for the purposes of enrolment and of the poll, be deemed to be a producer,
- 15 and the regulations may impose a penalty not exceeding \$10 for a breach of any such provision of the regulations.

**Provisions as to elections.**

40. (1) The regulations may, subject to this Act, make provision for or with respect to the election of persons for appointment as the elected members of a board.

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

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(3) A roll of producers entitled to vote at an election shall be prepared for the election in the prescribed manner.

(4) Notwithstanding anything in this Part, and if the regulations so provide—

- 30 (a) the producers entitled to vote in accordance with the regulations at an election shall be the producers having such qualifications as may be prescribed; and

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

(5) Notwithstanding anything in this Part, and if the regulations so provide—

- 5 (a) the persons entitled to be nominated as candidates for election as members of a board shall be persons having such qualifications as may be prescribed; and
- (b) a person's nomination is invalid if the person does not have those qualifications.

10 (6) The regulations may make provision for or with respect to fixing or postponing the date for an election.

(7) 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;
- 15 (b) a producer shall be deemed 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
- 20 (c) a representative referred to in paragraph (b) shall, for the purposes of enrolment and of the election, be deemed to be a producer,

and the regulations may impose a penalty not exceeding \$10 for a breach of any such provision of the regulations.

(8) Voting at an election is not compulsory.

25 (9) To the extent that there is a failure to nominate a sufficient number of persons, or to the extent that an election fails for any other reason, the Governor may appoint a person or persons nominated by the Minister to be a member or members of a board, and a person so nominated shall, on being appointed, be deemed to be a person elected in accordance with the regulations.



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**Dismissal of board.**

41. (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 a board from office, but they or any of them are eligible (if  
5 otherwise qualified) for re-appointment.

(2) The Minister shall cause a report of, and the reasons for, the removal of the members of a 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 under subsection (1) in the Gazette.

10 (3) For the purposes of subsection (2), sitting days shall be counted, whether or not they occur during the same session.

**Board not to be concerned in party politics.**

42. (1) It shall not be lawful for any board to expend any of its funds for any purpose whatever in connection with the politics of any political  
15 party, nor shall any board become affiliated in any way whatever with any body, association or organisation having for its objects or any of its objects the support of the politics or program or aims of any political party.

(2) Without limiting section 41, if at any time the Governor is satisfied that a board has acted in contravention of any of the provisions  
20 of subsection (1), action may be taken under that section.

**Appointment of administrator.**

43. (1) The Governor may, by proclamation, appoint a person to be administrator of a board, where—

- 25 (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.

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(2) The administrator of a 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 shall have the same effect as if done or omitted by the board.

5 (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.

10 (4) The reasonable costs and expenses (including remuneration) incurred by or in connection with the appointment of, and exercise of the functions of a board by, an administrator appointed under this section, as certified from time to time by the Minister, shall be payable from the funds of the board.

15 (5) The members of a board may not exercise any functions as members while a person holds office as administrator of the board.

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PART III.

MARKETING OF COMMODITIES: MARKETING BOARDS.

DIVISION 1.—*General functions of boards.*

**Functions relating to the marketing of the commodity.**

20 44. (1) A board may market or arrange for the marketing of the commodity vested in or delivered or to be delivered to it, and do all acts, matters and things necessary or expedient in that behalf accordingly.

(2) It is the duty of a board, in exercising its functions under this Act, to ensure, as far as practicable, the wholesomeness and purity of the 25 commodity in the interests of public health.

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**Voluntary deliveries of the commodity.**

45. (1) A board may arrange with a producer of the commodity produced or to be produced within the area of the board (being a part of the commodity that is not vested in the board) for the delivery of any of that  
5 commodity during such period and on such terms and conditions as the board thinks fit.

(2) A board may arrange with a producer of a primary product produced or to be produced outside the area of the board (being a product that, if produced within the area of the board, would answer the description of the  
10 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, shall, subject to the terms of the arrangement, be deemed,  
15 for the purposes of this Act, to be part of the commodity for which the board is constituted.

(4) This section does not authorise a board to enter into an arrangement with respect to a primary product that is a commodity for which another board or a committee is constituted, except with the consent of the other  
20 board or of the committee.

**Board may deal in the commodity.**

46. (1) In this section, "commodity" includes a primary product that, if produced in the area of the board concerned, would answer the description of the commodity.

25 (2) A board may purchase the commodity for the purpose of—

(a) marketing or using it; or

(b) providing the commodity for consumption within the area of the board, whether or not during periods of shortage,

and may market, use or provide the commodity accordingly.

30 (3) This section does not authorise a board to purchase any primary product that is a commodity for which another board or a committee is constituted, except with the consent of the other board or of the committee.

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**Grades and wholesale prices of the commodity.**

47. A board may—

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

**Manufacturing and processing of the commodity.**

48. (1) A 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 the commodity, for use by the board or by others;
- (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.

**Board may deal in other products, etc.**

49. (1) In this section, "other primary product" means any primary product other than—

- (a) the commodity for which the board concerned is constituted; and
- (b) any product that, if produced within the area of the board concerned, would answer the description of the commodity.

(2) A 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;
- (b) establish and conduct processing or manufacturing facilities for any other primary product, for use by the board or by others;

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- (c) use facilities referred to in section 48 (1) for any other primary product;
- (d) process any other primary product or manufacture products from or based on any other primary product;
- 5 (e) market any of the products so processed or products so manufactured;
- (f) manufacture articles or things for use in connection with marketing the commodity, any other primary product or any other product; and
- 10 (g) market any of the articles or things so manufactured.

**Appointment of authorised agents.**

**50. (1)** A 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  
15 of the board as may be so specified.

**(2)** Where a board appoints an authorised agent under subsection (1) 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.

20 **(3)** For the purposes of this Act, and if the relevant order referred to in subsection (1) so provides—

- (a) an authorised agent of a board shall be deemed to deliver a portion of the commodity to the board; and
  - (b) the board shall be deemed to accept that portion,
- 25 in such circumstances as may be specified in the order.

**(4)** A 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.

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**Appointment of authorised buyers.**

51. (1) A board may, by order in writing, appoint any person to be an authorised buyer.

5 (2) An authorised buyer is, subject to and in accordance with the relevant order referred to in subsection (1), 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.

10 (3) Where a 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 do so by the authorised buyer.

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

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

**Board may act as marketing agent.**

52. (1) A board may act as agent for any person (including another board) for the purpose of marketing—

- (a) any of the commodity which that person is entitled to sell; or  
20 (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 the area of the board or within New South Wales, and may do all acts, matters and things necessary or expedient in that behalf accordingly.

25 (2) If a board, in pursuance of subsection (1), sells anything which is farm produce within the meaning of the Farm Produce Act, 1983, the board shall be deemed not to be a farm produce seller within the meaning of that Act.

(3) Nothing in the Auctioneers and Agents Act, 1941, applies to  
30 or in respect of anything done by a board in pursuance of subsection (1).

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(4) Without limiting its functions, a board may, when acting as agent under subsection (1), enter into all such arrangements with respect to marketing the relevant commodity or other product as if it were the principal.

5 (5) A board may not under this section deal with the commodity for which another board or a committee is constituted, except with the consent of the other board or the committee.

**Board may act as purchasing agent.**

10 53. (1) A board may, with the approval of the Minister, act as agent for any persons for the purpose of purchasing equipment, machinery, seed, fertilizer or any other article or thing for use in the production of the commodity.

(2) Without limiting its functions, a board may, when acting as agent under subsection (1), enter into all such arrangements with respect to any 15 purchases referred to in subsection (1) as if it were the principal.

**Miscellaneous functions.**

54. (1) Without limiting the generality of the foregoing provisions of this Division, a board may—

- 20 (a) make such arrangements as it deems 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;
- (b) enter into insurance contracts relating to the commodity or any other product with which the board is associated;
- 25 (c) promote and encourage the use, sale or consumption of the commodity or any other product with which the board is associated;
- 30 (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);

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- (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;
- 5 (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;
- 10 (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.

15 **(2)** Without limiting any other of its functions, a 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
- 20 (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)** Where necessary, and without limiting any other provision of this Act, a board may return, destroy or otherwise dispose of any of the commodity.

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**(4)** Any of the functions of a board may be exercised—

- (a) by the board;
- (b) by any affiliate of the board; or
- 30 (c) by the board or such an affiliate, or both, in a partnership, joint venture or other association with other persons or bodies.



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- (5) For the purpose of exercising its functions, a board may—
- (a) join in the formation of any company to be incorporated in New South Wales; and
  - (b) purchase, hold, dispose of or deal with shares in, or subscribe to the issue of shares by, any company incorporated in New South Wales.

(6) A board shall not 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 a board shall not, except with the approval of the Minister, engage in any activities which the board may not engage in.

(8) If any function of a 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) A 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, the area of the board or New South Wales.

- (10) In this section, “affiliate”, in relation to a 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 shall be persons who are, or who are nominated by, persons for the time being holding office as members of the board.

**Miscellaneous provisions.**

55. (1) This section applies to the following functions of a board:—
- (a) its functions in relation to the commodity or any other primary product under sections 46 and 49;

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- (b) its function as agent under section 52 or 53;
- (c) such other of the board's functions as may be prescribed.

(2) In so far as a board keeps accounts relating to any of its functions to which this section applies, the board shall keep separate accounts  
5 in respect of each such function.

(3) Costs, charges and expenses incurred by a 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, shall be met out of any commission or other remuneration received by the board,  
10 or out of a reserve created by the board under Part VI, in connection with the function.

(4) Any mortgage, charge, lien, pledge, interest or trust given or created by or on behalf of a board in respect of, or in respect of financial accommodation obtained in connection with, any function to which this  
15 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.

DIVISION 2.—*Vesting of commodities in boards.*

20 **Vesting of commodity in board.**

56. (1) Where a product has been declared a commodity and a board has been constituted in respect of the commodity, the Governor, by proclamation, may—

(a) declare—

- 25 (i) that the commodity shall forthwith, upon the date of publication of the proclamation in the Gazette or on and from a later date specified in the proclamation, or upon fulfilment of such conditions as are specified in the proclamation, be divested from the producers thereof and  
30 become absolutely vested in and be the property of the board; and

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- (ii) that upon any of the commodity coming into existence within a time specified in the proclamation or in any subsequent proclamation it shall become absolutely vested in and be the property of the board; and
- 5 (b) make such further provision as will enable the board effectively to obtain possession of the commodity as owner and to deal with the commodity as may be deemed necessary or convenient in order to give full effect to the objects and purposes for which the board is constituted.
- 10 (2) Upon the date of publication of the proclamation under subsection (1), or on and from the date specified in the proclamation, or upon fulfilment of the conditions specified in the proclamation, as the case may require, the commodity is absolutely vested in and is the property of the board.
- 15 (3) Subsections (1) and (2) do not apply to a commodity referred to in section 45 (3), but upon 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.
- (4) Any of the commodity vested in a board by the operation of  
20 subsection (2) or (3) 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.
- (5) A proclamation under this section may—
- 25 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;  
or
- 30 (c) authorise any matter or thing to be from time to time determined, applied or regulated by the relevant board or by any other specified person or body,
- or may do any combination of those things.

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**Exemption by board.**

57. (1) A 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 56—

- 5 (a) such small producers of the commodity as the board thinks fit;
- (b) sales of the commodity direct from producers to consumers, processors, merchants or retail vendors;
- 10 (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.

- 15 (3) The board may at any time, by notification published in the Gazette or in a newspaper circulating in the area of the board, or by a notice in writing to the exempted producer, signed by the secretary or other authorised officer of the board, revoke any such exemption.

20 (4) An exemption may be granted under this section on a condition that requires payment to the board of such amounts of money as are specified or referred to in the condition.

**Avoidance of contracts for sale of commodity.**

58. (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 a board by section 56 (2), is and shall be deemed to have been void and of no effect as from the date upon which the contract was made.

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

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(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 shall also be void and of no effect, and any money paid pursuant to any such contract or provision or to any such transaction shall  
5 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.

**Remedy against board confined to claim for account.**

10 59. (1) Subject to this section, no proceedings at law or in equity shall be brought against a 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-operation Act, 1923) or other encumbrance  
15 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.

(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  
20 commodity to a board as a delivery thereof by the person to the board, and may claim accordingly for an account of the payments due in respect thereof, and recover the amount due in any court of competent jurisdiction as a debt.

(3) Notwithstanding 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  
25 contrary, any such person shall not be 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 a board in the form and containing the particulars prescribed of the bill of sale, mortgage, charge, lien or other encumbrance, or the claim of owner-  
30 ship, 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.

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DIVISION 3.—*Delivery of commodities to boards.***Delivery of commodity.**

5 **60. (1)** The commodity vested in a board by section 56 (2) shall 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.

10 **(2)** A producer who supplies, sells or delivers any of the commodity vested in the board by section 56 (2) 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—

- 15 (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.

20 **(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 arising 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 25 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.

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**Acceptance of commodity.**

5 **61. (1)** A board shall not refuse to accept from any producer any of the commodity which is vested in it by section 56 (2) and which conforms to the applicable standards of quality or grade and which is delivered to it in accordance with this Act.

**(2)** A 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.

**Revesting of commodity if not accepted.**

10 **62. Where—**

(a) a 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

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

the commodity shall 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.

**20 Duty to give notice of encumbrances.**

**63. (1)** Every person delivering any of the commodity to the board 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 the absolute owner thereof,  
25 and whether the bill of sale, mortgage, charge, lien, encumbrance or contract was made before or after the commencement of this section, shall, upon delivering the commodity to the board, give to the board a notice in writing of the bill of sale, mortgage, charge, lien, encumbrance or contract.

**(2)** Any person wilfully guilty of a failure to comply with the provisions of this section is guilty of an offence against this Act.  
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DIVISION 4.—*Payment for vested commodities.***Payments.**

5 **64. (1)** A board shall, subject to this Act, 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.

10 **(2)** Any payment to producers for any of the commodity (not being any of the commodity that has not vested in the board) shall, 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), be made, as nearly as possible, at a uniform rate, 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 46, 49, 52 15 and 53 and such other of the board's activities as may be prescribed).

**(3)** Notwithstanding subsection (2)—

- 20 (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;
- (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
- 25 (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.

**(4)** In determining rates of payment under this section, the board may take into account, and make suitable deductions for—

- 30 (a) expenditure incurred in marketing, returning, destroying or otherwise disposing of the commodity;
- (b) the costs, charges and expenses incurred by the board in the administration by the board of this Act;
- (c) any reserves created by the board; and



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(d) any other matters that are, in the opinion of the board, relevant or that are prescribed.

(5) Notwithstanding anything in this section, but subject to the regulations, a 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.

(6) 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 shall be final and conclusive.

(7) 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.

(8) Where, 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;
- (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.

(9) The board shall not do any of the things mentioned in subsection (8) otherwise than in accordance with such guidelines (if any) as are from time to time determined by the Minister.

#### **Schemes for payments.**

65. (1) At the request of a 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 64 in respect of any of the commodity delivered to the board.

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(2) A scheme shall apply in respect of any of the commodity specified or described therein and delivered to the board during or covering a period of time that is—

(a) referred to in section 64 (2); and

5 (b) specified in the scheme.

(3) Where, during the period of time specified in a scheme, any of the commodity is delivered to the board, the board shall make payments under section 64 in respect of that commodity on the basis prescribed by that section as varied by or under the scheme.

10 (4) The Minister may—

(a) cancel or vary a scheme in accordance with a request made by the board in that behalf; or

(b) cancel a scheme without any request having been made by the board in that behalf, if the Minister gives the board at least 3  
15 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.

20 (6) A scheme, and any variations thereof under this section, shall be in writing.

(7) In this section (other than subsection (1))—

“scheme” means a scheme approved under subsection (1);

25 “the board”, in relation to a scheme, means the board at whose request the scheme was approved under subsection (1).

**Board not liable for payments made in good faith.**

66. Where a board in good faith and without negligence has made any payment—

30 (a) to a producer delivering or causing to be delivered any of the commodity to the board or any person acting under its authority;

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- (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),
- 5 the board shall not be answerable to any person in respect of the payment for the commodity or any part thereof, or in any action or other proceedings, claim or demand whatever for damages or otherwise.

**Board protected in certain cases.**

67. (1) If, before receiving notice of a claim to any payment for any  
10 of the commodity vested in a board or to the chose in action or any part thereof 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 shall not, to the extent to which it has made that payment, incur any liability to the true owner of  
15 the commodity or chose in action or any part thereof 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 inter se of 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-  
20 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.

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## PART IV.

## CONSTITUTION OF MARKETING COMMITTEES.

DIVISION 1.—*Constitution of committee.***Constitution of committee and declaration of commodity.**

- 5     **68.** Where a proclamation for a poll is published under section 81 and more than one-half of the enrolled persons entitled to vote are, at the poll, in favour of the making of a marketing order, the Governor may, by proclamation—
- 10         (a) declare that section 69 applies for the purpose of constituting a committee, with a specified corporate name, for a specified primary product and in relation to a specified area; and
- (b) declare that the product is a commodity for the purposes of this Act.

**Constitution of committee.**

- 15     **69. (1)** Where a proclamation under section 68 takes effect in relation to a committee, there is hereby constituted a corporation under the corporate name specified in the relevant proclamation, for the primary product so specified and in relation to the area so specified.
- (2)** A committee shall have and may exercise the functions conferred  
20 or imposed on it by or under this or any other Act.
- (3)** The members of a committee shall be appointed by the Governor.
- (4)** A committee shall consist of the number of members specified in the relevant marketing order, and appointments shall be made in accordance with the relevant provisions of the order.
- 25         **(5)** The members of a committee shall, subject to the provisions of the relevant marketing order, be nominated for appointment by the Minister, after consultation with the Minister for Consumer Affairs.
- (6)** A committee does not, for any purpose, represent the Crown.

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**(7) A committee—**

- (a) has perpetual succession;
- (b) shall have a common seal;
- 5 (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) subject to this Act, may, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property; and
- 10 (e) may do and suffer all other things that a body corporate may, by law, do and suffer and that are necessary for or incidental to the purposes for which the committee is constituted.

**(8)** Schedule 2 has effect with respect to the members of a committee.

15 **(9)** Schedule 3 has effect with respect to the procedure of a committee.

**Committee may employ staff.**

**70. (1)** For the purpose of enabling it to exercise its functions, a committee may employ such staff and engage such consultants as it thinks fit.

20 **(2)** With the approval of the Minister and upon such terms and conditions as are agreed upon, a committee may make use of the services of any of the staff of the Department of Agriculture.

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

**25 Change of name of committee.**

**71. (1)** The Governor may, at the request or with the consent of a committee, by proclamation, change the corporate name of the committee.

30 **(2)** No such change of name of a committee affects any rights or obligations of the committee or renders defective any legal proceedings instituted or to be instituted by or against the committee, and any legal proceedings may be continued or commenced by or against the committee by its new name that might have been continued or commenced by or against the committee by its former name.

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**Committee may control one or more commodities.**

72. A committee may be constituted under this Act for one or more commodities.

DIVISION 2.—*Winding up and dissolution of committee.***5 Winding up and dissolution.**

73. (1) Where a marketing order ceases to have effect or is revoked, the committee to which the order relates shall proceed to wind up its affairs under the order.

(2) Notwithstanding subsection (1)—

- 10 (a) the Governor may, by proclamation, appoint any 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 committee, bring and defend such proceedings, and do and execute
- 15 such acts, deeds and things, as may be necessary.

(3) A proclamation under subsection (2) may revoke a declaration of a primary product as a commodity for the purposes of this Act, and may contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of such a revocation.

20 (4) 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, as certified from time to time by the Minister, shall be payable from the funds of the committee.

(5) The members of a committee may not exercise any functions

25 as members while a person holds office as liquidator of the committee.

(6) Where the Minister is of the opinion that the affairs of a committee are wound up, the Governor may, by proclamation, dissolve the committee, and all money and other assets of the committee shall become the property of the State and shall be dealt with and disposed of as the Governor

30 may direct.

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(7) A marketing order referred to in this section shall be deemed to continue in force for such period and to such extent as is necessary to enable the affairs of a committee to be wound up under this section.

DIVISION 3.—*General provisions.***5 Dismissal of committee.**

74. (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 a committee from office, but they or any of them are eligible (if otherwise qualified) for re-appointment.

10 (2) The Minister shall cause a report of, and the reasons for, the removal of the members of a committee 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 under subsection (1) in the Gazette.

15 (3) For the purposes of subsection (2), sitting days shall be counted, whether or not they occur during the same session.

**Appointment of administrator.**

75. (1) The Governor may, by proclamation, appoint a person to be administrator of a committee, where—

20 (a) all the members of the committee have vacated their offices or have been removed from their offices; or

(b) all or any of the members of the committee 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 committee that an administrator be appointed.

25 (2) The administrator of a committee appointed under this section has all the functions of the committee, and any act, matter or thing done or omitted to be done by the administrator shall have the same effect as if done or omitted by the committee.

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(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.

5 (4) The reasonable costs and expenses (including remuneration) incurred by or in connection with the appointment of, and exercise of the functions of a committee by, an administrator appointed under this section, as certified from time to time by the Minister, shall be payable from the funds of the committee.

10 (5) The members of a committee may not exercise any functions as members while a person holds office as administrator of the committee.

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**PART V.**

**MARKETING OF COMMODITIES: MARKETING ORDERS.**

**DIVISION 1.—*Preliminary.***

15 **Interpretation.**

76. In this Part—

“election” means an election under this Part;

“poll” means a poll under this Part.

**DIVISION 2.—*Provisions relating to the making, etc., of marketing orders.***

20 **Petition for marketing order.**

77. Where the Minister is satisfied, on representations made by petition to the Minister by producers of a primary product within an area, that a substantial number of the producers of that product within that area are in



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favour of a proposal that a marketing order of a specified kind should be made in respect of that product within that area, the Minister may direct that a report be published in relation to the proposal.

**Report to be published in connection with proposal.**

5     **78. (1)** As soon as practicable after a direction under section 77 is given in relation to a proposal referred to in the direction, the Director shall cause a report relating to the proposal to be published in such manner as the Director considers appropriate.

10     **(2)** The report shall invite representations by any persons with respect to the proposal to which the report relates, and shall state the time by which and the manner in which representations are to be made.

**Public meeting to be held.**

15     **79.** The Director shall arrange for and advertise a public meeting to be held in the area to which the proposal relates, for the purpose of enabling the proposal to be discussed.

**Publication of draft marketing order.**

**80. (1)** Where—

- (a) a report relating to a proposal has been published under section 78;
- 20     (b) the time, as stated in the report, by which representations are to be made on the proposal has elapsed;
- (c) a public meeting has been held under section 79 before the time mentioned in paragraph (b) has elapsed; and
- 25     (d) the Minister has taken into consideration all representations made with respect to the proposal in accordance with section 78,

the Minister may cause a notice to be published in the Gazette setting out the terms of a draft marketing order.

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(2) The draft marketing order may be different from the order as originally proposed.

**Proclamation for poll as to making of a marketing order.**

5 **81.** Where the Minister certifies to the Governor that a draft marketing order has been published in accordance with section 80, the Governor may, by proclamation, direct that a poll shall be taken of the persons entitled to vote at the poll on the question whether a marketing order should be made in or to the effect of that draft marketing order.

**Making of marketing order.**

10 **82.** Where—

(a) a notice setting out the terms of a draft marketing order is published in the Gazette under section 80; and

15 (b) a proclamation for a poll is published under section 81 and more than one-half of the persons entitled to vote at the poll are, at the poll, in favour of the making of the marketing order,

the Minister may make a marketing order in or to the effect of the draft marketing order.

**Marketing order not to be made with respect to certain commodities.**

20 **83.** A marketing order does not have effect with respect to any commodity so far as it is a commodity for which a board is constituted.

**Provisions relating to marketing orders.**

**84. (1)** A marketing order—

25 (a) shall take effect from the date of its publication in the Gazette or on and from a later date specified or referred to in the order; and

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(b) subject to this Act, may be rescinded, revoked, amended or varied by a subsequent order from time to time as occasion requires.

(2) Judicial notice shall be taken of every marketing order and of the date of its publication in the Gazette.

5 (3) It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a marketing order have been complied with and performed.

(4) The rescission, revocation, amendment or variation, whether in whole or in part, of any marketing order does not affect—

10 (a) the previous operation of the order or anything duly suffered, done or commenced under the order;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the order;

15 (c) any penalty, forfeiture or punishment incurred in respect of any offence against the order; or

(d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceedings or remedy may be instituted, 20 continued or enforced and any such penalty, forfeiture or punishment may be imposed or enforced as if the rescission, revocation, amendment or variation had not occurred.

#### **Duration of marketing orders.**

25 **85. (1)** A marketing order shall state the period, not exceeding 4 years, for which it is to be initially in force.

(2) The Minister may cause a notice to be published in the *Gazette* stating that a marketing order specified in the notice will remain in force for a further period, not exceeding 4 years, specified in the notice if a petition for a poll is, before the day specified in the notice, presented to the 30 Minister, as referred to in section 86, and more than one-half of the persons entitled to vote at the poll are, at the poll, in favour of the order remaining in force for the further period.

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(3) The notice under subsection (2) shall be published at least 3 months before the commencement of the further period.

(4) Where—

- 5 (a) a notice is published in the Gazette under subsection (2);
- (b) a petition for a poll on the question whether the marketing order should remain in force for the further period is presented in accordance with section 86 and more than one-half of the persons entitled to vote at the poll are, at the poll, in favour of the order remaining in force for the further period; and
- 10 (c) the results of the poll are published before the commencement of the further period,

the marketing order shall, subject to this Act, remain in force for the further period, but shall otherwise cease to have effect at the beginning of the further period.

15 **Petition and proclamation for poll as to continuance of marketing order.**

**86. (1)** Where the Minister—

- (a) is satisfied—
- 20 (i) on representations made by petition to the Minister by producers of the commodity to which a marketing order relates, that a substantial number of the producers desire that a poll should be taken on the question whether the marketing order should remain in force for a further period; and
- 25 (ii) that the petition was presented to the Minister before the expiration of the day specified in the relevant notice under section 85; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

30 the Governor may, by proclamation, direct that a poll shall be taken of the persons entitled to vote at the poll on the question whether the marketing order should remain in force for the further period.

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(2) As soon as practicable after a proclamation under this section is published in the Gazette directing that a poll be taken, and before the day fixed for the taking of the poll, the Director shall cause a report relating to the question to which the poll relates to be published in such manner as the Director considers appropriate.

**Amendment, etc., of marketing orders.**

87. The Minister may amend, vary or re-make a marketing order—

- (a) to make such alterations as are necessary or convenient to make in connection with any action taken under Part IV; or
- (b) to effect such alterations, not being alterations of substance, as the Minister thinks fit.

**Invitation by Minister for representations on revocation of marketing order.**

88. (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 a particular marketing order should be revoked.

(2) A notice published under this section shall state the time by which and the manner in which representations are to be made.

(3) As soon as practicable after a notice is published under this section, the Director shall cause a report relating to the question to which the notice relates to be published in such manner as the Director considers appropriate.

**Revocation of marketing order following representations.**

89. Where the Minister is satisfied, after taking into consideration all representations made in accordance with section 88 on the question whether a particular marketing order should be revoked, that the order should be revoked, the Minister may revoke the order.

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**Validity of marketing orders.**

5 **90. (1)** The validity of a marketing order shall not be questioned in any legal proceedings except those commenced within 3 months after the date of its publication in the Gazette or within 3 months after the beginning of a further period referred to in section 85 for which the order is to remain in force.

10 **(2)** The validity of a marketing order shall not be questioned in any legal proceedings commenced within 3 months after the beginning of a further period referred to in subsection (1) on any ground which could have been raised in legal proceedings commenced within a previous such period of 3 months relating to the order.

15 **(3)** Nothing in subsection (1) or (2) prevents the questioning of the validity of a marketing order at any time in any legal proceedings on the ground that the order makes or contains provisions other than those which, by or under this or any other Act, it may make or contain.

**(4)** A court shall not declare a marketing order or any provision of a marketing order invalid unless the court is of the opinion that the failure of the order or provision to comply with this or any other Act or the regulations made under this or any other Act is substantial.

20 **DIVISION 3.—***Contents of marketing orders.*

**Principal contents of marketing order.**

25 **91. (1)** A marketing order shall specify its objects, and the relevant committee shall, as far as practicable, have regard to those objects in the exercise of the functions conferred or imposed on it by or under this or any other Act, but nothing in this subsection authorises or requires the committee to contravene any provisions of this Act or of any other law.

**(2)** A marketing order may make provision for or with respect to—

- 30 (a) the marketing of the commodity to which the order relates; and  
(b) all acts, matters and things that are necessary or expedient to be done in connection with the marketing of the commodity.

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(3) Without limiting the generality of subsection (2), a marketing order may provide that—

- 5 (a) all or any of the things included in the marketing, collecting, cleaning, grading, packing, treating, transforming, carrying, storing, distributing (by wholesale or retail) or delivering of the commodity shall be done only by the committee, or its agents or employees, or only by a specified person or specified persons or a specified class of persons;
- 10 (b) all of the commodity that, during a specified period, is in the possession or comes into the possession of any person in the course, or for the purpose, of marketing, collecting, cleaning, grading, packing, treating, transforming, carrying, storing, distributing (by wholesale or retail) or delivering the commodity shall be handled and dealt with only under the instructions and with the authority of the committee, or shall be consigned or delivered only to specified persons or a specified class, or specified classes, of persons;
- 15 (c) certain classes of agreements with producers, processors and others engaged in the handling of the commodity are approved;
- 20 (d) the commodity may not be made the subject of any agreements except those that are approved as referred to in paragraph (c);
- 25 (e) any agreements referred to in paragraph (c) shall make particular provision with respect to the quality of the commodity, research and development relating to the commodity, marketing information relating to the commodity, the rate of flow of the commodity on to or through the marketing processes, the prohibition of unfair practices relating to the commodity, the prices to be paid for the commodity and other conditions of sale of the commodity; and
- 30 (f) a committee may exercise, in relation to the commodity, any specified function that may be exercised by a board in relation to a primary product for which it is or may be constituted.

(4) A marketing order may impose a penalty not exceeding \$2,000 for any contravention thereof.

(5) A provision of a marketing order may—

- 35 (a) apply generally or be limited in its application by reference to specified exceptions or factors;

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(b) apply differently according to different factors of a specified kind;  
or

(c) authorise any matter or thing to be from time to time determined,  
applied or regulated by the committee or by any other specified  
5 person or body,

or may do any combination of those things.

**Exemptions.**

**92. (1)** Without limiting anything in section 91, a marketing order may  
make provision for or with respect to exempting—

10 (a) any person or class of persons;

(b) any of the commodity or class of the commodity; or

(c) any act, matter or thing or class of acts, matters or things,

from any or all of the provisions of the order.

**(2)** A marketing order may provide that the committee's decision  
15 as to whether any person, any of the commodity or any act, matter or thing  
is within an exemption is final.

**(3)** The committee may at any time, by notification published in the  
Gazette or in a newspaper circulating in the area of the committee, or by  
a notice in writing to the exempted producer, signed by the secretary or  
20 other authorised officer of the committee, revoke any such exemption.

**(4)** An exemption may be granted under this section on a condition  
that requires payment to the committee of such amounts of money as are  
specified or referred to in the condition.

**Contents of marketing order relating to composition of committee.**

25 **93.** A marketing order may make provision for or with respect to the  
composition of the relevant committee and, in particular, for or with respect  
to—

(a) the number of members of the committee;



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- (b) whether any members are to be elected and, if so, how many are to be elected and by whom; and
- (c) any special qualifications that any members are required to hold.

**Matters not to be dealt with in marketing order.**

- 5     **94.** A marketing order may not make provision for or with respect to—
- (a) prohibiting the production of any of the commodity; or
  - (b) the automatic vesting or compulsory acquisition of any of the commodity in or by any person.

10                   DIVISION 4.—*Removal of commodity or area from control of marketing order.*

**Operation of Division.**

- 95.** (1) This Division authorises—
- (a) the removal of a commodity from the control of a marketing order; or
  - 15     (b) the removal of an area from the control of a marketing order in relation to a commodity,
- by petition of producers of the commodity.

          (2) This Division does not authorise any removal referred to in subsection (1) unless the marketing order would, after the removal, continue  
20 to control a commodity in relation to an area.

**Petition and proclamation for poll to remove commodity or area from control of marketing order.**

- 96.** (1) Where the Minister—
- (a) is satisfied—
  - 25     (i) on representations made by petition to the Minister by producers of a commodity for which a marketing order is in force, that a substantial number of producers within the

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area in respect of which the order is in force desire that the commodity should be removed from the control of the order; and

(ii) that this Division authorises the removal; and

5 (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of persons entitled to vote in respect of that commodity within that area on the question whether that commodity should be removed from the control  
10 of the order.

(2) Where the Minister—

(a) is satisfied, on representations made by petition to the Minister by producers of a commodity for which a marketing order is in force, that a substantial number of the producers within the area in  
15 respect of which the order is in force desire that part of that area should be removed from the control of the order; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of  
20 persons entitled to vote in respect of that commodity within that part of that area on the question whether that part of that area should be removed from the control of the order.

**Removal of commodity or area from control of marketing order.**

97. (1) Where the Minister—

25 (a) is satisfied that more than one-half of the persons entitled to vote are, at a poll referred to in section 96, in favour of the removal of a commodity or part of an area from the control of a marketing order; and

(b) certifies to the Governor that the Minister is satisfied as to the  
30 matters mentioned in paragraph (a),

the Governor may, by proclamation, direct the relevant committee to wind up so much of its affairs as relates to the commodity or the part of the area, as the case may require.

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(2) Upon a proclamation under subsection (1) taking effect, the committee shall proceed to wind up its affairs to the extent that the direction so provides.

5 (3) A proclamation under subsection (1) may revoke a declaration of a primary product as a commodity for the purposes of this Act or reduce the area for which a marketing order is in force, or both, as the case may require, and may contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of such a revocation.

**Other persons may also be polled.**

10 98. (1) If the committee constituted with respect to a marketing order referred to in section 96 (1) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of persons entitled to vote in respect of each other commodity for which the order is in force on the question mentioned in that subsection.

15 (2) If the committee constituted with respect to a marketing order referred to in section 96 (2) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of persons entitled to vote in respect of the commodity within the other part of the area on the question mentioned in that subsection.

20 (3) If the committee constituted with respect to a marketing order referred to in section 96 (2) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of persons entitled to vote in respect of—

- (a) the commodity within the other part of the area; and
- 25 (b) each other commodity for which the order is in force, on the question mentioned in that subsection.

(4) A poll to be taken under this section on a particular question shall be taken on the same day as the poll taken under section 96 on the same question.

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(5) If a direction is given under this section, a direction may not be given under section 96 unless at least one-half of the persons referred to in the firstmentioned direction are also in favour of the removal of the commodity or part of an area from the control of the marketing order.

5 (6) The poll to be taken under subsection (1) or (3) shall be a single poll of the persons referred to in that subsection.

*DIVISION 5.—General provisions.***Expiry and effect of petitions.**

99. (1) A petition presented to the Minister for the purposes of this Part shall be deemed 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 Part shall be construed as requiring anything to be done in consequence of the presentation of a petition to the Minister for 15 the purposes of this Part.

**Certain persons deemed to be producers for the purposes of petition.**

100. Where any primary product results from a process of manufacture or treatment of an article grown or produced by a farmer, orchardist, vegetable grower, grazier, poultry farmer, apiarist or dairyman, the grower 20 or producer of the article shall, for the purpose of any petition under this Part, be deemed to be a producer of the product.

**Provisions as to polls.**

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

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

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(3) A roll of persons entitled to vote at a poll shall be prepared for the poll in the prescribed manner.

(4) Notwithstanding anything in this Part, and if the regulations so provide—

- 5 (a) the persons entitled to vote in accordance with the regulations at a poll shall be the persons having such qualifications as may be prescribed; and
- (b) only those persons may vote at the poll.

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

(6) The regulations may provide that—

- (a) it is compulsory for a person, or a person of a prescribed class or description, to be enrolled or to apply for enrolment in the relevant roll;
- 15 (b) it is compulsory for persons enrolled in the relevant roll to vote at the poll;
- (c) a person shall be deemed to be enrolled or to apply for enrolment in the relevant roll if a person of a prescribed class or description is so enrolled or so applies as the representative of the person; and
- 20 (d) a representative referred to in paragraph (c) shall, for the purposes of enrolment and of the poll, be deemed to be a person entitled to vote,

and the regulations may impose a penalty not exceeding \$10 for a breach of any such provision of the regulations.

## 25 Provisions as to elections.

102. (1) The regulations may, subject to this Act, make provision for or with respect to the election of persons for appointment as the elected members of a committee.

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

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(3) A roll of persons entitled to vote at an election shall be prepared for the election in the prescribed manner.

(4) Notwithstanding anything in this Part, and if the regulations so provide—

- 5 (a) the persons entitled to vote in accordance with the regulations at an election shall be the persons having such qualifications as may be prescribed; and
- (b) only those persons may vote at the elections.

10 (5) Notwithstanding anything in this Part, and if the regulations so provide—

- (a) the persons entitled to be nominated as candidates for election as members of a committee shall be persons having such qualifications as may be prescribed; and
- 15 (b) a person's nomination is invalid if the person does not have those qualifications.

(6) The regulations may make provision for or with respect to fixing or postponing the date for an election.

(7) The regulations may provide that—

- 20 (a) it is compulsory for a person, or a person of a prescribed class or description, to be enrolled or to apply for enrolment in the relevant roll;
- (b) a person shall be deemed to be enrolled or to apply for enrolment in the relevant roll if a person of a prescribed class or description is so enrolled or so applies as the representative of the person; and
- 25 (c) a representative referred to in paragraph (b) shall, for the purposes of enrolment and of the election, be deemed to be a person entitled to vote,

and the regulations may impose a penalty not exceeding \$10 for a breach of any such provision of the regulations.

- 30 (8) Voting at an election is not compulsory.

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5 (9) To the extent that there is a failure to nominate a sufficient number of persons, or to the extent that an election fails for any other reason, the Governor may appoint a person or persons nominated by the Minister to be a member or members of a committee, and a person so nominated shall, on being so appointed, be deemed to be a person elected in accordance with the regulations.

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PART VI.

## FINANCIAL PROVISIONS.

DIVISION 1.—*General.*10 **Financial accounting periods.**

103. (1) The financial accounting period of each authority shall be such period as the Minister from time to time approves in respect of the authority.

(2) A reference in any other Act or instrument under any other Act to a financial year shall be read and construed as, where the reference 15 occurs in relation to a financial year of an authority, a reference to a financial accounting period of the authority.

**Accounts to be kept.**

104. (1) Each authority shall cause to be kept proper accounts and records in relation to all of its operations.

20 (2) Each authority shall, as soon as practicable, but within 6 months, after the end of each financial accounting period of the authority, prepare and forward to the Director for presentation by the Minister to Parliament a statement of accounts, together with the Auditor-General's certificate given under this section in relation to the statement.

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(3) The statement of accounts of an authority shall—

- (a) be in a form approved by the Auditor-General;
- (b) include such information as is requested by the Auditor-General;  
and
- 5 (c) exhibit a true and fair view of the financial position and transactions  
of the authority.

(4) Each authority shall, as soon as practicable, but within 4 months, after the end of the financial accounting period to which a statement of accounts relates, transmit the statement to the Auditor-General for  
10 verification and certification.

(5) The Auditor-General's certificate shall—

- (a) state that the Auditor-General has audited the accounts of the  
authority relating to the relevant financial accounting period;
- 15 (b) indicate whether the statement of accounts complies with subsection  
(3); and
- (c) set forth any qualifications subject to which the certificate is given.

(6) Nothing in this section prevents the alteration of the statement of accounts, with the approval of the Auditor-General, after its receipt by the Auditor-General and before its submission to the Director.

20 (7) The Minister shall lay the statement of accounts, or cause it to  
be laid, together with the Auditor-General's certificate, before both Houses  
of Parliament as soon as practicable after the receipt by the Director of the  
statement.

### **Audit.**

25 **105. (1)** The accounts and records of financial transactions of each  
authority, and the records relating to assets of or in the custody of the  
authority, shall be inspected and audited by or under the supervision of the  
Auditor-General.



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(2) For the purposes of any such inspection and audit, the Auditor-General or a person authorised by the Auditor-General is entitled at all reasonable times to full and free access to the accounts, records, documents and papers of an authority and may make copies thereof or take extracts  
5 therefrom.

(3) The Auditor-General or a person authorised by the Auditor-General may require a person, being a person engaged in the administration of this Act, to furnish such information in the possession of the person or to which the person has access as the Auditor-General or authorised person  
10 considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

Penalty: \$200.

(4) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-  
15 section (1).

(5) The Auditor-General shall report to the authority and the Minister on the result of any such inspection and audit, and as to such irregularities or other matters as in the Auditor-General's judgment call for special notice or as are prescribed.

20 (6) Towards defraying the costs and expenses of any such inspection and audit, an authority shall pay to the Consolidated Fund such amounts, at such times, as the Treasurer decides.

### **Charges and fees.**

25 **106.** Where an authority supplies any service, commodity or other product, it may make, demand, levy and recover such charges and fees as may be prescribed or where no charge or fee is prescribed such charges and fees as may be fixed by it, subject to the maximum (if any) prescribed.

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**Costs incurred by Department, etc., on behalf of boards, etc.**

5 **107. (1)** A board or a committee shall, on receipt of a notice in writing signed by the Electoral Commissioner for New South Wales specifying the costs and expenses of any poll or election under this Act taken or held with respect to the board or committee or the primary product in respect of which the board or committee is or may be constituted, pay to the Electoral Commissioner an amount equal to the amount so specified.

10 **(2)** An authority shall, 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 (other than costs and expenses referred to in subsection (1)) in respect of anything done for or in connection with the authority, pay to the Minister an amount equal to the amount so specified.

15 **(3)** Any amount required to be paid pursuant to subsection (1) or (2) shall be paid within such period as is specified in the notice or such further period as the Electoral Commissioner or the Minister, as the case may be, may allow.

**(4)** If there is no board or committee to which a notice may be given under subsection (1), the costs and expenses of the poll or election shall be met by the Minister from money available for the purpose.

**20 Reserves.**

**108.** An authority may, subject to and in accordance with any conditions for the time being determined by the Minister, create and use such reserves as it considers necessary or expedient for the purposes of this Act.

**Retention of certain money owing by authorities.**

25 **109. (1)** The regulations may make provision for or with respect to the retention by an authority of money owing by the authority to a person or class of persons, the manner in which any money so retained shall be accounted for in the books of the authority, the purposes for which any money so retained may be used and the payment of any money so retained  
30 to or at the direction of the person to whom it is owing.

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(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.

**Financial accommodation.**

5 **110. (1)** For the purposes of or for purposes connected with the exercise of its functions, an authority may obtain financial accommodation—

- (a) from a bank within the meaning of the Banking Act 1959 of the Commonwealth as amended and in force for the time being or a bank constituted by a law of a State or of the Commonwealth;
- 10 (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) Subject to this Act, a board or committee may, in connection with any such financial accommodation, give such securities as will effectively place the commodity (or, in the case of a board, any other product with which the board is associated), or any part thereof, delivered or expected to be delivered to the board or committee, under the legal or other control of the bank, institution or person providing the financial accommodation.

**20 Investment of money of authority.**

**111. (1)** Money held by an authority may be invested—

- (a) in any manner for the time being allowed by an Act for the investment of trust money;
- (b) on deposit with the Treasurer;
- 25 (c) on deposit with a bank within the meaning of the Banking Act 1959 of the Commonwealth as amended and in force for the time being or a bank constituted by a law of a State or of the Commonwealth; or
- 30 (d) with the approval of the Minister and with the concurrence of the Treasurer, in any other manner.

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(2) An approval or concurrence referred to in subsection (1) may be given for a particular case or for any class of cases.

**Futures contracts.**

5 112. (1) Subject to subsection (2), a board or committee may, in relation to—

(a) a sale or proposed sale of the commodity by the board or committee; or

10 (b) a borrowing or raising of money by the board or committee or a proposed borrowing or raising of money by the board or committee (including a borrowing or raising of money by the board or committee 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.

15 (2) A board or committee shall not enter into or deal with futures contracts otherwise than in accordance with such guidelines (if any) as are from time to time determined by the Minister.

(3) A futures contract shall be taken to be entered into or dealt with for hedging purposes if, and only if, the contract is entered into or  
20 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 or committee, including risks of fluctuations in exchange rates; or

25 (b) minimising the risks of variations in the costs of the borrowing or raising of money by the board or committee or a proposed borrowing or raising of money, including risks of fluctuations in exchange rates.

**Loans to members of authorities.**

30 113. An authority shall not, whether directly or indirectly—

(a) make a loan to a member of the authority; 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 authority.

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DIVISION 2.—*Agricultural Marketing Finance Agency.***Proclamation for constitution of Agency.**

5       **114.** Where at least one board makes a request, by instrument in writing under its seal, to the Minister that the Agency be constituted, the Governor may, by proclamation, declare that section 115 applies for the purpose of constituting the Agricultural Marketing Finance Agency.

**Constitution of Agency.**

10       **115. (1)** Where a proclamation under section 114 takes effect, there is hereby constituted a corporation with the corporate name “Agricultural Marketing Finance Agency”.

**(2)** The Agency shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

15       **(3)** The Agency shall consist of such number of persons appointed by the Governor as may be prescribed, being persons qualified in such manner as may be prescribed and nominated by boards in such manner as may be prescribed.

**(4)** The Agency does not, for any purpose, represent the Crown.

**(5)** The Agency—

- 20       (a) has perpetual succession;
- (b) shall have a common seal;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- 25       (d) subject to this Act, may, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property; and
- (e) may do and suffer all other things that a body corporate may, by law, do and suffer and that are necessary for or incidental to the purposes for which the Agency is constituted.

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(6) Schedule 2 has effect with respect to the members of the Agency.

(7) Schedule 3 has effect with respect to the procedure of the Agency.

## 5 Functions of Agency.

**116. (1)** The Agency may provide and organise finance and financial services to boards, and other persons or organisations approved by the Minister and nominated by boards in such manner as may be prescribed, relating to the marketing of primary products (those boards and approved persons or organisations being referred to in this Division as "participants").

**(2)** The Agency may—

- (a) provide a participant with financial accommodation and related services on such terms and conditions as are agreed upon by the participant and the Agency;
- 15 (b) open and maintain banking accounts;
- (c) accept money on deposit from a participant;
- (d) aggregate and divide, in such manner as it considers appropriate for the exercise of its functions, money borrowed by it for the purpose of lending to participants;
- 20 (e) act as agent of a participant for the purpose of obtaining financial accommodation or related services for the participant and in other financial matters;
- (f) arrange insurance on behalf of participants;
- (g) provide information, guidance and advice to participants in relation to financial matters; and
- 25 (h) exercise such other functions as may be prescribed.

**(3)** Where the Agency acts as agent of a participant, neither the assets of the Agency nor those of any other participant are, except in so far as the Agency and other participant otherwise expressly agree, available to satisfy any liability incurred by the participant as a result of anything done or omitted to be done by the Agency acting as such an agent.

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(4) Where the Agency acts as agent of a participant, the assets of the participant (whether held by the Agency or not) are, except in so far as the participant otherwise expressly agrees, not available to satisfy any liability of any other participant or of the Agency acting in any capacity  
5 other than as agent of the participant.

**Agency may employ staff.**

117. (1) For the purpose of enabling it to exercise its functions, the Agency may employ such staff and engage such consultants as it thinks fit.

(2) With the approval of the Minister and upon such terms and  
10 conditions are are agreed upon, the Agency may make use of the services of any of the staff of the Department of Agriculture.

(3) With the approval of the board or committee and upon such terms and conditions as are agreed upon, the Agency may make use of the services of the staff of a board or committee.

**15 Change of name of Agency.**

118. (1) The Governor may, at the request or with the consent of the Agency, by proclamation, change the name of the Agency.

(2) No such change of name of the Agency affects any rights or obligations of the Agency or renders defective any legal proceedings insti-  
20 tuted or to be instituted by or against it, and any legal proceedings may be continued or commenced by or against it by its new name that might have been continued or commenced by or against it by its former name.

(3) A reference in this or any other Act, in any instrument made under this or any other Act or in any other instrument of any kind to the  
25 Agency by its former name shall be read and construed as a reference to the Agency by its new name.

**Request for dissolution of Agency.**

119. (1) A participant may, by instrument in writing, make a request to the Minister for action to be taken for the Agency to be dissolved.

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(2) The Minister may refuse to consider such a request unless the request is confirmed by the participant, by a similar instrument, within such period as the Minister determines.

**Winding up and dissolution of Agency.**

5 **120. (1)** Where the Minister—

(a) is satisfied that requests have been made, and (if required) confirmed, in accordance with section 119 by a significant number of participants; and

10 (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct the Agency to wind up its affairs.

(2) Upon a proclamation under subsection (1) taking effect, the Agency shall proceed to wind up its affairs.

15 (3) Notwithstanding subsection (2)—

(a) the Governor may, by proclamation, appoint any person to be liquidator for the purpose of the winding up; and

20 (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 Agency, bring and defend such proceedings, and do and execute such acts, deeds and things as may be necessary.

(4) 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, as certified from time  
25 to time by the Minister, shall be payable from the funds of the Agency.

(5) The members of the Agency may not exercise any functions as members while a person holds office as liquidator of the Agency.

(6) Where the Minister is of the opinion that the affairs of the Agency are wound up, the Governor may, by proclamation, dissolve the  
30 Agency, and all money and other assets of the Agency shall become the property of the State and shall be dealt with and disposed of as the Governor may direct.



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**Appointment of administrator.**

**121. (1)** The Governor may, by proclamation, appoint a person to be administrator of the Agency, where—

- 5 (a) all the members of the Agency have vacated their offices or have been removed from their offices; or
- (b) all or any of the members of the Agency 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 Agency that an administrator be appointed.

10 **(2)** The administrator of the Agency appointed under this section has all the functions of the Agency, and any act, matter or thing done or omitted to be done by the administrator shall have the same effect as if done or omitted by the Agency.

**(3)** The Governor may, by proclamation—

- 15 (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  
20 functions of the Agency by, an administrator appointed under this section, as certified from time to time by the Minister, shall be payable from the funds of the Agency.

**(5)** The members of the Agency may not exercise any functions as members while a person holds office as administrator of the Agency.

**25 Other bodies.**

**122. (1)** Nothing in this Division shall be construed as preventing any body from being established or created that could have been established or created had this Division not been enacted.

**(2)** Nothing in this Division affects the existence of the Agricultural  
30 Finance Agency established by The Oilseeds Marketing Board for the State of New South Wales and the Tobacco Industry Leaf Finance Agency as established before the commencement of this section.

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- (3) The regulations may make provision for or with respect to—
- (a) the dissolution of the Agricultural Finance Agency; and
  - (b) the transfer of the assets and liabilities of that body so dissolved to the Agency constituted by this Division.

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PART VII.

PUBLIC ACCOUNTABILITY.

**Review of authorities by Director.**

123. It is the duty of the Director to keep under review the activities of the authorities and to make regular reports on their activities.

10 **Reports by authorities.**

124. An authority shall, when requested to do so by the Director, furnish to the Director a report containing such kind of information relating to the activities of the authority as the Director requests.

**Periodical reports by authorities.**

15 125. Each authority shall, as soon as practicable, but within 6 months, after the end of each financial accounting period of the authority, prepare and forward to the Director a report, in or to the effect of a form approved by the Minister, of its activities for that financial accounting period.

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**Annual reports by Director.**

126. (1) As soon as practicable after 30th June, but on or before 31st December, in each year, the Director shall prepare and forward to the Minister a report of—

- 5 (a) the Director's work and activities;  
(b) the activities of the various authorities;  
(c) the operation and effect of any marketing orders; and  
(d) such other matters or things as the Director thinks appropriate or as are directed by the Minister to be reported on,  
10 for the 12 months ending on 30th June in that year.

(2) The Minister shall lay each such report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

**Annual meetings of authorities.**

15 127. (1) It is the duty of each authority—

- (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  
20 (b) to circulate at or before any such meeting, as prescribed or directed by the Minister, such reports under section 125 and such other reports as may be prescribed or directed by the Minister.

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

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

**Management audits.**

128. (1) The Director shall, as approved or directed by the Minister, conduct management audits for the purpose of examining the activities of  
30 authorities and assessing the extent to which any such activities are being carried on in an efficient, economical and proper manner.

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(2) A management audit may, if the Minister so approves or directs, be conducted in relation to—

- (a) the activities of one authority only;
- (b) a part only of the activities of one authority; or
- 5 (c) the activities of more than one authority in related matters.

(3) Except in so far as the Minister otherwise approves or directs—

- (a) the Director shall consult with the authority concerned before commencing to conduct the management audit;
- 10 (b) the Director shall afford the authority an opportunity to nominate such number of members of the staff of the authority to participate in the conduct of the management audit as the Director determines; and
- (c) any members of the staff of the authority so nominated may participate in the conduct of the management audit.

15 (4) Any of the functions of the Director under this section may be exercised by—

- (a) the Director personally;
- (b) other members of the staff of the Department of Agriculture approved for the purpose by the Director with the concurrence of the Minister; or
- 20 (c) consultants employed for the purpose with the concurrence of the Minister.

**Powers of Director, etc., at management audit.**

25 **129. (1)** The Director, or any person approved or employed as referred to in section 128 (4), may—

- (a) enter the premises of any authority;
- (b) require the production of and examine any documents in the custody of any member of any authority or any member of the staff of any authority; and

30 (c) require any such member to answer questions,  
in connection with and for the purposes of a management audit.

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- (2) A person shall not—
- (a) delay, obstruct, hinder or impede a person in the exercise of any functions under this section;
  - (b) fail or refuse to comply with a requirement under this section; or
  - 5 (c) provide in answer to a question under this section, any information that is false or misleading in a material particular.

**Reports of management audits.**

**130.** The Director shall, as soon as practicable, prepare a report on the conduct and findings, and any recommendations, of a management audit.

**10 Reports to be furnished.**

**131. (1)** The Director shall furnish the Minister with a copy of each report under sections 123 and 130.

(2) The Minister shall furnish a copy of any such report to the authority concerned, unless the Minister is satisfied that there are sufficient  
15 reasons for not doing so.

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**PART VIII.****STATISTICS, MARKETING INFORMATION AND PROMOTION.****Statistics and marketing information.**

**132. (1)** The Minister may, through the Department of Agriculture, 20 cause such information to be collected and distributed with respect to the marketing of primary products as the Minister thinks appropriate.

(2) Without limiting the generality of subsection (1), information referred to in that subsection may relate to—

- (a) statistics and marketing information;

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- (b) forecasts and statistics relating to the supply of, demand for and marketing conditions relating to primary production and relevant for producers in New South Wales;
- 5 (c) prices, profits and costs involved in the production, marketing, collecting, cleaning, grading, transforming, packing, carrying, storing, distributing (by wholesale or retail) and delivering of primary products;
- (d) the sources of supply of primary products and the location of markets for primary products;
- 10 (e) economy and efficiency in the distribution of primary products, so that needless waste and duplication may be so far as possible eliminated;
- (f) farm business management; and
- 15 (g) such other matters relating to the production, marketing or consumption of primary products as the Minister thinks appropriate.

(3) Information referred to in this section may be obtained pursuant to section 137 or from any other source.

**Co-operation in marketing.**

20 **133.** The Minister may, through the Department of Agriculture, co-operate with, and encourage co-operation among, boards, committees, societies registered under the Co-operation Act, 1923, and other persons and organisations, for the purpose of promoting and facilitating the marketing and consumption of primary products.

**Dissemination of official information.**

25 **134. (1)** The Minister may, from time to time, arrange with any person to publish, broadcast or otherwise disseminate information as to the current wholesale and retail prices of any commodity or other product, and may furnish any such person with any such information.

30 **(2)** The information so furnished shall alone be published or broadcast as official information.

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(3) A person who publishes, broadcasts or otherwise disseminates information as to the current wholesale or retail prices of any commodity or other product as official information is, unless the information has been furnished by or at the direction of the Minister, guilty of an offence against  
5 this Act.

**Functions of boards, etc., not affected.**

135. (1) Nothing in this Part shall be construed as affecting the functions of a board or committee under this Act.

(2) Nothing in this Part shall be construed as affecting the function  
10 of the New South Wales Meat Industry Authority to provide, in co-operation with the Department of Agriculture, a market intelligence service referred to in section 46 of the Meat Industry Act, 1978.

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**PART IX.****INSPECTION, ETC.****15 Appointment of authorised persons.**

136. The Minister may appoint a person, or persons included in a class of persons, to be, for or in relation to all boards or committees or one or more specified boards or committees, an authorised person or authorised persons, as the case may be, for the purposes of a specified provision of this  
20 Act.

**Information to be furnished.**

137. (1) For the purposes of this Act, the Minister, the Director, a board or a committee may, by notice in writing served on the person to whom it is addressed either—

25 (a) personally; or

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(b) by post at the person's last-known place of abode or business, require a person to furnish in writing to the Minister, the Director, the board or the committee, within the time specified in the notice, such information relating to any primary product or other product as is specified in the notice.

5 (2) A person shall 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  
10 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 shall not furnish under this section information that is false or misleading in a material particular.

15 (5) A board or committee may not require information to be furnished under this section except in relation to the commodity.

**Access to premises and motor vehicles.**

138. (1) Subject to subsection (2), a member of the police force or an authorised person may, at all reasonable times, for the purpose of exercising  
20 any of the functions of an authorised person under this section, enter any premises where the member or person 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  
25 portion of any premises that is used for residential purposes, without the consent of the occupier of that portion.

(3) A member of the police force may, for the purpose of exercising any of the functions of an authorised person under this section, stop and detain any motor vehicle upon a public street or public place in which the  
30 member 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.



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(4) Where a member of the police force or an authorised person has reasonable grounds to believe that—

- 5 (a) there is on any premises any of the commodity that is the property of the board or committee or any of the commodity the delivery of which has been lawfully demanded by the board or committee under this Act; or
- (b) there are on any premises accounts, documents, books or papers relating to any of the commodity,

10 the member or person, as the case may be, may make application to a stipendiary magistrate for a warrant authorising the member or person to enter those premises for the purpose of exercising the functions of an authorised person under this section.

(5) If, on an application under subsection (4), a stipendiary magistrate is satisfied by information under oath—

- 15 (a) that there are reasonable grounds for believing that there is on any premises any of the commodity, or that there are on any premises any accounts, documents, books or papers, referred to in subsection (4); and
- 20 (b) that the issue of a warrant is reasonably required for purposes of, or related to the operation of, this Act,

the stipendiary magistrate may grant a warrant authorising the applicant, with such assistance as the applicant thinks necessary, to enter the premises during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose  
25 of exercising any of the functions of an authorised person under this section.

(6) The functions of an authorised person under this section are—

- (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  
30 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);

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5 (d) to take possession of and remove any of the commodity that the authorised person reasonably suspects is the property of the board or committee or is any of the commodity the delivery of which has been lawfully demanded by the board or committee under this Act; and

(e) to make any inquiry that the authorised person considers necessary relating to any of the commodity.

(7) A person shall not—

10 (a) fail or refuse to produce any accounts, documents, books or papers referred to in subsection (6) (b); or

(b) make any false or misleading statement in answer to any inquiry referred to in subsection (6) (e).

(8) On taking possession, as referred to in subsection (6) (d), of any of the commodity that, immediately before that taking, was not the 15 property of the board or committee, the portion of the commodity so taken becomes the absolute property of the board or committee, 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 20 so taken.

(9) In this section—

“commodity” includes any product that, if produced in the area of the board or committee, would answer the description of the commodity;

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

### **Demanding name and place of abode.**

30 **139. (1)** An authorised person who finds a person committing an offence against this Act or the regulations or who finds a person whom, on reasonable grounds, the authorised person suspects of having committed or attempted to commit any such offence, may demand from that person his or her name and place of abode.

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(2) A person who upon demand made under subsection (1)—

- (a) fails or refuses to state his or her name or place of abode; or
- (b) states a name that is not his or her name or a place of abode that is not his or her place of abode,

5 is guilty of an offence against this Act.

**Offences.**

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

10 (2) A person shall not—

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

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**PART X.**

**WINDING UP, ARRANGEMENTS, ETC.**

**Interpretation.**

20 141. In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“Court” means the Supreme Court of New South Wales;

“liquidator”, in relation to an authority, means the person appointed, or appointed provisionally, by the Court to be liquidator of the

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“registered liquidator” has the same meaning as in the Companies (New South Wales) Code.

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**Crown to be bound.**

142. 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.

**5 Application of winding up provisions.**

143. Division 6 of Part XII of the Companies (New South Wales) Code applies to an authority to the extent, if any, to which that Division would, but for this section, not apply to the authority, and the power of the Court to appoint a liquidator of the authority extends to empower the Court to appoint 10 a liquidator of the authority provisionally.

**Power to compromise with creditors.**

144. (1) Where a compromise or arrangement is proposed between an authority and its creditors or any class of them, the Court may, on the application in a summary way of the authority or of any creditor of the 15 authority, or, in the case of an authority 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 and, where the Court makes such an order, the Court may approve the explanatory statement required by section 145 (1) 20 (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, as the case may be, of the authority and, if the authority is being wound up, on the liquidator, if, and only if—

25 (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 authority amount in the aggregate to not less than 75 per cent 30 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.

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(3) Where 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 shall, for the purposes of subsection (2), be deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall 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 shall not be appointed to administer, and shall not administer, a compromise or arrangement approved under this Act between an authority 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 authority;
- (b) an auditor or an officer of the authority;
- (c) an officer of any corporation that is a mortgagee of property of the authority; 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) Where 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 325, 327, 330 and 332 of the Companies (New South Wales) Code 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 receiver and managers, of the property of the authority;

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- (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
- 5 (iii) the references in section 325 of that Code to the Commission were omitted and a reference in section 330 of that Code to the Commission were a reference to the Minister for Agriculture and Fisheries; and
- (b) the provisions of section 420 of that Code apply in relation to that persons or those persons as if—
- 10 (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 authority;
- (ii) a reference in that section to a liquidator were a reference to that person or to those persons; and
- 15 (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 upon being so lodged the order takes effect, or shall be

20 deemed to have taken effect, on and from the date of lodgment or such earlier date as the Court determines and specifies in the order.

- (9)** Where a compromise or arrangement referred to in subsection (1) has been proposed, the authority—
- 25 (a) 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 authority as soon practicable; and
- (b) if a report or reports is or are obtained pursuant to paragraph (a)—shall make the report or reports available at the principal place of business of the authority for inspection by the creditors of the authority at least 7 days before the date of any meeting ordered
- 30 by the Court to be convened as provided in subsection (1).

**(10)** Where no order has been made for the winding up of an authority and a compromise or arrangement has been proposed between the authority and its creditors or any class of them, the Court may, in addition to

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exercising any of its other powers, on the application in a summary way of the authority or of any creditor of the authority, restrain further proceedings in any action or other civil proceeding against the authority except by leave of the Court and subject to such terms as the Court imposes.

5 **Information as to compromise with creditors.**

145. (1) Where a meeting is convened under section 144, the authority shall—

- 10 (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”)—
- 15 (i) explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the members of the authority, whether as members or creditors of the authority 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
- 20 (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 authority and has not previously been disclosed to the creditors; and
- 25 (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.

30 (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 shall specify a place at which a copy of the explanatory statement can be obtained on request and, where the creditor makes such a request, the authority shall forthwith comply with the request.

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5 (3) Where 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 shall, on making application in that manner, be furnished by the authority free of charge with a copy of the explanatory statement.

(4) Subject to subsection (6), where an authority contravenes or fails to comply with a requirement of this section, the authority and any member or officer of the authority who is in default are each guilty of an offence.

10 (5) For the purposes of subsection (4), the liquidator of an authority shall be deemed to be an officer of the authority.

15 (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 authority, to supply particulars of the person's interests for the purposes of the explanatory statement.

**Regulations and rules.**

146. (1) Subject to this section, the provisions of—

20 (a) Regulation 62 of and Schedule 9 to the Companies (New South Wales) Regulations; and

(b) any rules of court having effect for the purposes of the Companies (New South Wales) Code,

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—

25 (c) to a company were a reference to an authority;

(d) to directors of a company were a reference to members of an authority;

(e) to the registered office of a company were a reference to the principal place of business of an authority; and

30 (f) to the Commission were a reference to the Minister for Agriculture and Fisheries.



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(2) Without limiting section 163, 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.

5 (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.

10 (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).

**Exercise of statutory functions.**

147. (1) To the extent that a compromise or arrangement referred to in section 144 so provides—

15 (a) the person or persons appointed to administer the compromise or arrangement shall have and may exercise all or any of the functions conferred or imposed on the relevant authority by or under any other Part of this Act or under any Act other than this Act; and

20 (b) those functions may be exercised by the person or persons so appointed to the exclusion of the authority.

(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, shall have the same effect and the same consequences as if  
25 done or omitted to be done by the relevant authority without the compromise or arrangement being in force.

**Persons in default.**

148. Where a provision of this Part provides that a member or officer of an authority who is in default is guilty of an offence, the reference to the  
30 person who is in default shall, in relation to a contravention of, or failure

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to comply with, the provision, be construed as a reference to any member or officer of the authority (including a person who subsequently ceased to be a member or officer of the authority) who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the  
5 contravention or failure.

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PART XI.

MISCELLANEOUS.

**Proclamations.**

**149.** A proclamation under this Act (other than under section 2)—

- 10 (a) shall take effect from the date of its publication in the Gazette or on and from a later date specified or referred to in the proclamation; and
- (b) may, subject to this Act, be rescinded, revoked, altered or varied  
15 by a subsequent proclamation from time to time as occasion requires.

**Approvals of Minister.**

**150.** An approval of the Minister under this Act shall be in writing and may, subject to this Act, be rescinded, revoked, altered or varied by instrument in writing from time to time as occasion requires.

**20 Duties and liability of certain persons.**

**151. (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  
25 as a prescribed person.

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(3) In this section, "prescribed person" means—

- (a) a member of an authority; or
- (b) a member of the staff of an authority whose position is or is of a class or description prescribed for the purposes of this paragraph.

5 **Offences by members and officers.**

15 **152. (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 \$5,000 or to imprisonment for a term not exceeding 2 years, or both.

15 **(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 \$5,000 or to imprisonment for a term not exceeding 2 years, or both.

(3) In this section, "prescribed person" means—

- 20 (a) the Director or any other member of the staff of the Department of Agriculture;
- (b) a member of or a member of the staff of an authority; or
- (c) a person of a class or description prescribed for the purposes of this paragraph.

**Secrecy.**

25 **153. (1)** Subject to this Act, a person who is, or has at any time been, a prescribed person shall 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

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information that is or was acquired by reason of 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.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- 5           **(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;
  - 10          (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
  - 15          (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, as the case may be.
- (3)** In this section, “prescribed person” means—
- (a) the Director or any other member of the staff of the Department of Agriculture;
  - 20          (b) a member of or a member of the staff of an authority; or
  - (c) a member of the police force, or other person, who has exercised any function under section 138; or
  - (d) a person of a class or description prescribed for the purposes of this paragraph.

25 **Restrictions on certain dealings.**

**154. (1)** Except as prescribed, a person who is, or has at any time been, a prescribed person shall 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  
30 or to cause detriment to an authority.

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(2) Except as prescribed, a prescribed person shall 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 an authority.

5 (3) In this section, "prescribed person" means—

(a) the Director or any other member of the staff of the Department of Agriculture;

(b) a member of or a member of the staff of an authority; or

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

Penalty: \$5,000 or imprisonment for 2 years, or both.

**Offences and penalty.**

155. (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence against this Act.

15 (2) Any person who is guilty of an offence against this Act for which no penalty is otherwise expressly provided is liable to a penalty not exceeding \$2,000.

**Proceedings.**

20 156. (1) Subject to subsection (5), all proceedings for offences against this Act or the regulations shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

(2) An information for an offence against this Act or the regulations may be laid in the name of a board or committee by an officer of the board or committee, authorised by the board or committee to lay informations on 25 behalf of the board or committee.

(3) Any prosecution instituted in the name of a board or committee shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the board or committee.

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(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) Notwithstanding the provisions of the Justices Act, 1902, 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 shall not 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 shall, irrespective of the amount adjudged to be paid, operate, and be enforceable in the same way, as a judgment of a court of petty sessions under the Courts of Petty Sessions (Civil Claims) Act, 1970.

(6) Judgment may be entered up in the records of any court of petty sessions 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 shall, if the information was laid in the name of a board or committee, be payable to the board or committee and shall form part of its income.

**Offences by corporations.**

157. (1) Where 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, shall be deemed to have contravened the same provision unless the person satisfies the court that—

(a) the corporation contravened the provision without the person's knowledge;

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- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

5           (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 subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by 10 which an offence is actually committed.

(4) This section does not apply to or in respect of an authority.

**Evidentiary provisions.**

158. (1) In any proceedings—

- 15           (a) any notification, requisition, direction, demand, order or other document in writing, purporting to be signed or made or sent by a board or committee, the Chairman or secretary of a board or committee or the Minister shall be judicially noticed;
- 20           (b) the production of a copy of the Gazette purporting to contain any proclamation, notification, direction or order under this Act shall be conclusive evidence of the matters contained therein, and that all steps necessary to be taken prior to the making of the proclamation, notification, direction or order have been duly taken;
- 25           (c) the averment on behalf of a board or committee 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, shall be prima facie evidence of that fact;

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- 5 (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 shall, upon 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, be admissible in evidence against that person and be evidence—
- (i) of the matters and things thereby appearing;
- 10 (ii) that the document (or, in the case of a copy, that the original thereof) was written, signed, despatched or received by the persons by whom it purports to have been written, signed, despatched and received; and
- 15 (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; and
- (e) a certificate purporting to be signed by the prescribed officer of a board or committee and certifying that on a specified date or during the whole of a specified period any person was or was not registered with the board or committee shall be admissible and be evidence of the matters specified in the certificate.
- 20

(2) Subsection (1) (b) does not apply to an order to which section 84 or 90 applies.

**Service of notices.**

- 25 **159.** Any notice that is required to be given or that may be given by a board or committee under this Act or the regulations shall be deemed to have been duly given if sent by post in a letter addressed to the person to be served at the person's place of abode or business last known to the board or committee, and the notice shall be deemed to have been given at the
- 30 time when a letter so posted should in the ordinary course of post be delivered.



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**Liability.**

**160.** No proceedings shall lie or be allowed by or in favour of any person against—

- 5 (a) the Crown, the Minister, the Director, a member of an authority or a member of the staff of the Department of Agriculture or an authority; or
- (b) any person acting under the direction of the Minister, the Director or an authority,

in the execution or intended execution of this Act in respect of anything done  
10 bona fide under and for the purposes of this Act.

**Repeals.**

**161. (1)** The Acts specified in Schedule 1 are repealed to the extent specified in that Schedule.

15 **(2)** The several provisions of sections 104, 105 and 125 are repealed on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Savings, transitional and other provisions.**

**162.** Schedule 4 has effect.

**20 Regulations.**

**163. (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.

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(2) Without limiting subsection (1), the regulations may make provision for or with respect to—

- (a) any of the functions conferred or imposed on the Minister, the Director, a committee or the Agency;
- 5 (b) the business, proceedings and meetings of a board, a committee or the Agency;
- (c) the signing of documents relating to a board, a committee or the Agency;
- (d) the custody and use of the common seal of a board, a committee  
10 or the Agency;
- (e) prescribing forms of returns and of statistics to be made and furnished in accordance with this Act and the contents thereof, and the persons (whether producers or not) by whom they shall be made, and the time and mode of making and furnishing them; and
- 15 (f) the certificates and other forms which are to be or may be used for the purposes of this Act.

(3) Without limiting subsection (1), the regulations may make provision for or with respect to—

- (a) any of the functions conferred or imposed on a board;
- 20 (b) the making and keeping of records by a producer, the inspection of those records and the production of those records in any legal proceedings;
- (c) authorising a board or committee in any sale or agreement for sale  
25 of the commodity by the board or committee to any person to insert conditions and to fix a sum by way of liquidated damages for any breach of conditions (which damages shall be recoverable accordingly);

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- 5 (d) ascertaining whether a commodity is of the required quality or grade and prescribing a standard therefor, and providing for an increase or decrease in the price otherwise payable to any producer or other person for any of the commodity delivered by the producer or any other person to a board or committee according to the quality or grade of the commodity;
- 10 (e) ascertaining whether a commodity is of the required quality or grade and prescribing a standard therefor so as to ensure that the commodity, whether it is or has, at any time, been vested in a board and whether produced in New South Wales or elsewhere shall comply with prescribed standards of quality and grade when sold by wholesale or retail in New South Wales;
- 15 (f) regulating within the area controlled by a board or committee—  
(i) the collecting, cleaning, grading, packing, treating, carrying, storing, marketing, branding, distributing, supplying, selling and exporting by the board or committee or any other person; and  
(ii) the delivery by or to the board or committee or by or to  
20 of any of the commodity, whether it was produced within the area controlled by the board or committee or not, 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 committee or not;
- 25 (g) prescribing periods of time in respect of which the computation of or accounting for the net proceeds of a commodity for which a board or committee is constituted;
- 30 (h) the control and management and expenditure of the funds of an authority;
- 35 (i) requiring the producers of a commodity produced within the area controlled by a board or committee, and authorised agents and authorised buyers for a board, to register and re-register with the board or committee at the prescribed times their names and such other particulars as may be prescribed, and requiring a producer on ceasing to produce the commodity to notify the board or committee thereof;
- (j) requiring such classes or descriptions of persons who buy or sell, as principal or agent, any of the commodity to register and re-register with a board or committee at the prescribed times their

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names and such other particulars as **may be** prescribed, and requiring any such person on ceasing to act as such a principal or agent to notify the board or committee thereof;

- 5 (k) the publication of any particulars registered or notified as referred to in paragraph (i) or (j);
- 10 (l) regulating within the area of a board **the marketing**, branding or stamping, storing or cold storing by **any person** of any of the commodity for the time being within **the area of the board**, whether the commodity was produced **within the area of the board** or not, and whether the commodity is or was **at any time** owned by the board or not;
- 15 (m) the duties of care or precaution to be **taken and methods** to be used by a board or committee or any other **person in the display**, within the area of the board or committee, **of any of the commodity** for sale or in storage, treatment or custody of **any of the commodity** held or offered for sale, whether **in any of those cases** the commodity was produced within **the area of the board** or committee or elsewhere, whether the commodity was **produced in New South Wales** or elsewhere, and whether the **commodity** is or was at any time owned by the board or committee **or not; and**
- 20 (n) establishing grades, classes or descriptions of **any commodity**.

(4) A regulation may impose a penalty **not exceeding \$1,000** and, in the case of a continuing offence, an additional **penalty not exceeding \$100** for each day during which the offence continues, **for non-compliance** with or contravention of any regulation.

(5) A provision of a regulation may—

- (a) apply generally or be limited in its **application** by reference to specified exceptions or factors;
- 30 (b) apply differently according to **different factors** of a specified kind; or
- (c) authorise any matter or thing to be **from time to time** determined, applied or regulated by any specified **person or body**,

or may do any combination of those things.

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- 5 **(6)** Where the Minister is of the opinion that a proposed regulation relates to any of the matters in respect of which subsection (3) or section 109 relates and would, when made, apply with respect to a board or the commodity for which a board is constituted, the regulation may be made only on the recommendation of the board.

## SCHEDULE 1.

(Sec. 161.)

## REPEALS.

Column 1.		Column 2.	
10	Year and number of Act.	Short title of Act.	
		Extent of repeal.	
	1927, No. 34	<b>Marketing of Primary Products Act, 1927.</b>	The whole Act.
15	1928, No. 19	<b>Marketing of Primary Products (Amendment) Act, 1928.</b>	The whole Act.
	1930, No. 3	<b>Marketing of Primary Products (Amendment) Act, 1930.</b>	The whole Act.
20	1931, No. 11	<b>Marketing of Primary Products (Amendment) Act, 1931.</b>	The whole Act.
	1934, No. 7	<b>Marketing of Primary Products (Amendment) Act, 1934.</b>	The whole Act.
	1938, No. 4	<b>Marketing of Primary Products (Amendment) Act, 1938.</b>	The whole Act.
25	1939, No. 7	<b>Dried Fruits Act, 1939.</b>	The words "to make consequential amendments of the Marketing of Primary Products Act, 1927-1938, and certain other Acts;" in the long title. Section 4 (2).

*Marketing of Primary Products.*SCHEDULE 1—*continued.*REPEALS—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of repeal.
5 1940, No. 42	Marketing of Primary Products (Amendment) Act, 1940.	The whole Act.
10 1956, No. 11	Marketing of Primary Products (Amendment) Act, 1956.	The whole Act.
1964, No. 47	Marketing of Primary Products (Amendment) Act, 1964.	The whole Act.
1970, No. 38	Marketing of Primary Products (Amendment) Act, 1970.	The whole Act.
15 1978, No. 66	Marketing of Primary Products (Amendment) Act, 1978.	The whole Act.

## SCHEDULE 2.

(Secs. 11 (9), 69 (8), 115 (6).)

## PROVISIONS RELATING TO MEMBERS OF AUTHORITIES.

**20 Age of members.**

1. A person who is of or above the age of 70 years is not eligible to be appointed as a member of an authority.

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO MEMBERS OF AUTHORITIES—*continued.***Chairman and Deputy Chairman of authority.**

5 2. (1) The members of an authority shall, whenever there is a vacancy in the office of Chairman of the authority, at the first meeting of the authority at which all the members are present, elect one of the members to be Chairman of the authority.

(2) The members of an authority may, whenever there is a vacancy in the office of Deputy Chairman of the authority, at the first meeting at which all the members are present, elect one of the members to be Deputy Chairman of the authority.

10 (3) If a Chairman or Deputy Chairman is not so elected, the Governor may appoint a member to be Chairman or Deputy Chairman of the authority.

(4) A person who is a member and Chairman or Deputy Chairman of an authority shall be deemed to have vacated office as Chairman or Deputy Chairman if the person—

- 15 (a) is removed from that office under subclause (5);  
(b) resigns that office by instrument in writing delivered to the authority; or  
(c) ceases to be a member of the authority.

(5) The members of an authority may, at a meeting of the authority at which all the members are present, remove a member of the authority from the office of  
20 Chairman or Deputy Chairman.

(6) Subject to this Act, the Chairman or Deputy Chairman of an authority shall hold office as such for such period as may be prescribed, but is eligible (if otherwise qualified) for re-election.

**Alternate members.**

25 3. (1) The regulations may make provision for or with respect to the appointment, from time to time, of a person as an alternate member to act in the office of an elected member of an authority during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member.

30 (2) The Minister may, from time to time, appoint a person as an alternate member to act in the office of a member of a board (other than an elected member) during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member.

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO MEMBERS OF AUTHORITIES—*continued.*

- (3) The regulations may make provision for or with respect to the removal of any person from any office to which the person was appointed under subclause (1).
- 5 (4) The Minister may remove any person from any office to which the person was appointed under subclause (2).
- (5) A person while acting in the office of a member of an authority 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 person.
- 10 (6) For the purposes of this clause, a vacancy in the office of a member of an authority shall be deemed to be an absence from office of the member.
- (7) In section 160, clauses 1, 8 and 9 and Schedule 3—
- (a) a reference to a member of an authority includes a reference to a person acting in the office of a member of an authority;
- 15 (b) a reference to the appointment of a member of an authority includes a reference to the appointment of a person to act in the office of a member of an authority; and
- (c) a reference to the office of a member of an authority includes a reference to the office of a person appointed to act in the office of a member of an authority.
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**Terms of office.**

4. (1) Subject to this Act, an elected member of an authority shall hold office for—
- (a) the period of 4 years; or
- 25 (b) some other period determined in relation to the authority by the Governor by proclamation,
- specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.
- (2) Subject to this Act, a member of an authority (other than an elected
- 30 member) shall hold office for such period not exceeding 4 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.
- (3) A period shall not be determined under subsection (1) (b) except in accordance with a request made by the relevant authority to the Minister.



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SCHEDULE 2—*continued.*PROVISIONS RELATING TO MEMBERS OF AUTHORITIES—*continued.***Remuneration.**

- 5 5. A member of an authority 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.

**Filling of vacancy in office of member.**

6. (1) In the event of the office of any member of an authority becoming vacant a person shall, subject to this Act, be appointed to fill the vacancy.
- 10 (2) If a vacancy occurs in the office of an elected member of an authority otherwise than by reason of the expiry of the term of office for which the former member was appointed, the member appointed to fill the vacancy shall be appointed for the balance of the firstmentioned term of office.
- (3) If—
- 15 (a) a vacancy occurs in the office of an elected member of an authority otherwise than by reason of the expiry of the term for which the former member was appointed;
- (b) it appears to the Minister that the member, if elected to fill the vacancy, would have a term of office of less than 12 months; and
- 20 (c) the authority concerned requests the Minister, by instrument in writing under the seal of the authority, that the election be dispensed with,
- the Governor may appoint a person to fill the vacancy on the nomination of the Minister, without an election being held, and the person so appointed shall be deemed to be an elected member.
- 25 (4) A person may not be nominated for the purposes of subclause (3) unless the person would have been eligible to be elected to the vacancy had the election been held.

**Casual vacancies.**

7. (1) A member of an authority shall be deemed to have vacated office if the
- 30 member—
- (a) dies;
- (b) absents himself or herself from 2 consecutive meetings of the authority of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the authority (which
- 35 leave the authority is hereby authorised to grant) or unless, before the expiration of 2 weeks after the last of those meetings, the member is excused by the authority for being absent from those meetings;

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*Marketing of Primary Products.*

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO MEMBERS OF AUTHORITIES—*continued.*

- 5 (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;
- (d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- 10 (e) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister;
- (g) attains the age of 70 years; or
- 15 (h) is removed from office in accordance with this Act.

(2) The Governor may remove a member of an authority from office for incapacity, incompetence or misbehaviour.

(3) Without affecting subclause (2), the Governor may remove from office a member of an authority who—

- 20 (a) contravenes clause 8;
- (b) has breached the duty imposed by section 151; or
- (c) is convicted of any offence against this Act.

**Disclosure of pecuniary interests.**

8. (1) A member of an authority who has a direct or indirect pecuniary interest—
- 25 (a) in a matter that is being considered, or is about to be considered, at a meeting of the authority; or
- (b) in a thing being done or about to be done by the authority,
- shall, 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 authority.

- 30 (2) A disclosure by a member of an authority at a meeting of the authority that the member—
- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO MEMBERS OF AUTHORITIES—*continued.*

- (c) has some other specified interest relating to a specified company or other body or a specified person,
- 5 shall be deemed to be 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.
- (3) An authority shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be  
10 open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the authority from time to time.
- (4) Nothing in this clause applies to or in respect of an interest of a member of an authority in a matter or thing of a prescribed class or description.
- (5) An authority may, by resolution, provide for the exclusion of a member of the  
15 authority from a meeting of the authority while any matter or thing in which the member has a direct or indirect pecuniary interest is under consideration.
- (6) A reference in this clause to a meeting of an authority includes a reference to a meeting of a committee or sub-committee of the authority.

**Effect of certain other Acts.**

- 20 9. (1) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of a member of an authority and a member of an authority is not, as a member, subject to those provisions.
- (2) Where by or under any other Act provision is made requiring a person who  
25 is the holder of an office specified therein to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision shall not operate to disqualify the person from holding that office and also the office of member of an authority or from accepting and retaining any remuneration payable to the person under this Act as such a member.
- (3) The office of a member of an authority shall for the purposes of any Act  
30 be deemed not to be an office or place of profit under the Crown.
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*Marketing of Primary Products.*

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## SCHEDULE 3.

(Secs. 11 (10), 69 (9), 115 (7).)

## PROVISIONS RELATING TO PROCEDURE OF AUTHORITIES.

**General procedure.**

- 5 1. The procedure for the calling of meetings of an authority and for the conduct of business at those meetings shall, subject to any procedure that is specified in this Act or prescribed by the regulations, be as determined by the authority.

**Quorum.**

- 10 2. (1) The relevant number of members of an authority, of whom one shall in the case of a board be a nominated member of the board, shall form a quorum and any duly convened meeting of the authority at which a quorum is present shall be competent to transact any business of the authority and shall have and may exercise all the functions of the authority.

- 15 (2) For the purposes of subclause (1), the relevant number of members is the next highest whole number above one-half of the number of members of the authority for the time being.

**Presiding member.**

- 20 3. (1) The Chairman of an authority or, in the absence of the Chairman, the Deputy Chairman of the authority or, in the absence of both, another member of the authority elected as chairman for the meeting by the members present shall preside at a meeting of the authority.

(2) The person acting as chairman at any meeting of an authority shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

**25 Voting.**

4. A decision supported by a majority of votes cast at a meeting of an authority at which a quorum is present shall be the decision of the authority.

**Minutes.**

- 30 5. (1) Each authority shall cause full and accurate minutes to be kept of the proceedings of each meeting of the authority.

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*Marketing of Primary Products.*


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SCHEDULE 3—*continued.*PROVISIONS RELATING TO PROCEDURE OF AUTHORITIES—*continued.*

(2) Each board and committee shall submit to the Director a copy of the confirmed minutes of each meeting within 2 weeks after the day on which they were confirmed or within such other period as the Director may from time to time determine.

**First meeting of authority.**

6. The Minister shall call the first meeting of an authority (being an authority constituted after the day appointed and notified under section 2 (2)) in such manner as the Minister thinks fit.

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## SCHEDULE 4.

(Sec. 162.)

## SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

**Interpretation.**

1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2).

**Boards.**

2. (1) The following boards shall be deemed to have been constituted as boards under this Act:—

- (a) The Barley Marketing Board for the State of New South Wales.
- 20 (b) The Central Coast (N.S.W.) Citrus Marketing Board.
- (c) The Grain Sorghum Marketing Board for the State of New South Wales.
- (d) The Murray Valley (N.S.W.) Citrus Marketing Board.
- (e) The Oats Marketing Board for the State of New South Wales.
- (f) The Oilseeds Marketing Board for the State of New South Wales.
- 25 (g) The Rice Marketing Board for the State of New South Wales.
- (h) The Sheep Meats Marketing Board for the State of New South Wales.

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*Marketing of Primary Products.*

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SCHEDULE 4—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

- (i) The Tobacco Leaf Marketing Board for the State of New South Wales.
- 5 (j) The Wine Grapes Marketing Board for the Shires of Leeton, Griffith, Carrathool and Murrumbidgee.
- (k) The Yellow Maize Marketing Board for the State of New South Wales.
- (2) The boards deemed by subclause (1) to have been constituted under this Act are continuations of, and the same entities as, the respective boards constituted under the Marketing of Primary Products Act, 1927.
- 10 (3) Anything done or omitted to be done under the Marketing of Primary Products Act, 1927, in relation to a board referred to in subclause (1) shall have effect, in relation to the board, after the appointed day as if it had been done under this Act.
- (4) The reference in section 32 (3) to the constitution of a board pursuant to a proclamation under section 10 or 23 shall, in relation to a board referred to in  
15 subclause (1), be read and construed as a reference to the constitution of the board pursuant to a proclamation under the Marketing of Primary Products Act, 1927.

**Members of boards.**

3. (1) The elected members of a board holding office under the Marketing of Primary Products Act, 1927, immediately before the appointed day—
- 20 (a) shall be deemed to have been duly appointed under this Act as elected members of the board;
- (b) shall, subject to this Act, hold office for the balance of their respective terms of office; and
- (c) are eligible (if otherwise qualified) for re-appointment.
- 25 (2) The members of a board (other than the elected members) holding office under the Marketing of Primary Products Act, 1927, immediately before the appointed day—
- (a) shall be deemed to have been duly appointed under this Act as nominated members of the board;
- 30 (b) shall, subject to this Act, be deemed to have been appointed for a term that ends at the expiration of the period of 6 months commencing on the appointed day; and
- (c) are eligible (if otherwise qualified) for re-appointment.

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*Marketing of Primary Products.*

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SCHEDULE 4—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

- 5 (3) Notwithstanding anything in subclause (1) or (2), a member of a board holding office under the Marketing of Primary Products Act, 1927, immediately before the appointed day shall, if the member has attained the age of 70 years on or before the appointed day, be deemed to have vacated the office on the appointed day.

**Elections and polls.**

- 10 4. (1) Any election or poll to be conducted in relation to a board or proposed board within the period of 6 months commencing on the appointed day shall, except in accordance with the Marketing of Primary Products Act, 1927, and the regulations under that Act, as in force respectively immediately before the appointed day.

(2) Nothing in subclause (1) authorises a person who is of or above the age of 70 years to be appointed as a member of a board.

**15 General savings.**

5. Subject to this Act, anything done or omitted to be done under or for the purposes of the Marketing of Primary Products Act, 1927, shall be deemed to have been done or omitted to be done under or for the purposes of this Act.

**Payments for commodities.**

- 20 6. (1) The enactment of this Act does not affect any arrangements for the payment for any commodity delivered to a marketing board under the Marketing of Primary Products Act, 1927, including an arrangement pursuant to section 14 (6) of that Act.

25 (2) Any scheme in force under section 14A of the Marketing of Primary Products Act, 1927, immediately before the appointed day shall be deemed to be in force under this Act.

**Grain Sorghum Marketing Board (Special Provisions) Act, 1983.**

7. Nothing in this Act affects the operation of the Grain Sorghum Marketing Board (Special Provisions) Act, 1983.

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*Marketing of Primary Products.*

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SCHEDULE 4—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Existing regulations.**

- 5 8. Any regulations in force under the Marketing of Primary Products Act, 1927, immediately before the appointed day, shall, to the extent to which they could have been made under this Act, and subject to any amendments made by regulations under this Act and to take effect from the appointed day, be deemed to have been made under this Act.

**Regulations.**

- 10 9. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the appointed day or a later day.

- 15 (3) To the extent to which a provision referred to in subclause (1) 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 a marketing board, the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- 20 (b) to impose liabilities on any person (other than a marketing board, the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding any of the foregoing provisions of this Schedule.



**MARKETING OF PRIMARY PRODUCTS ACT, 1983, No. 176**

**New South Wales**



ANNO TRICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

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**Act No. 176, 1983.**

An Act relating to the marketing of certain primary products; to provide for the establishment of marketing boards in relation to certain of those products; to enable the making of marketing orders; to repeal the Marketing of Primary Products Act, 1927; and for other purposes. [Assented to, 31st December, 1983.]

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*Marketing of Primary Products.*

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

**PART I.**

**PRELIMINARY.**

**Short title.**

**1.** This Act may be cited as the "Marketing of Primary Products Act, 1983".

**Commencement.**

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

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

**Arrangement.**

**3.** This Act is divided as follows:—

**PART I.—PRELIMINARY—ss. 1–5.**

**PART II.—CONSTITUTION OF MARKETING BOARDS—ss. 6–43.**

**DIVISION 1.—General—ss. 103–113.**

**DIVISION 2.—Petition and poll for constitution of board—s. 7.**

**DIVISION 3.—Constitution of board—ss. 8–15.**

**DIVISION 4.—Addition of commodity or area to control of board—  
ss. 16–19.**

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DIVISION 5.—*Amalgamation of boards—ss. 20–25.*

DIVISION 6.—*Removal of commodity or area from control of board—ss. 26–29.*

DIVISION 7.—*Winding up and dissolution of board—ss. 30–35.*

DIVISION 8.—*General provisions—ss. 36–43.*

PART III.—MARKETING OF COMMODITIES: MARKETING BOARDS—ss. 44–67.

DIVISION 1.—*General functions of boards—ss. 44–55.*

DIVISION 2.—*Vesting of commodities in boards—ss. 56–59.*

DIVISION 3.—*Delivery of commodities to boards—ss. 60–63.*

DIVISION 4.—*Payment for vested commodities—ss. 64–67.*

PART IV.—CONSTITUTION OF MARKETING COMMITTEES—ss. 68–75.

DIVISION 1.—*Constitution of committee—ss. 68–72.*

DIVISION 2.—*Winding up and dissolution of committee—s. 73.*

DIVISION 3.—*General provisions—ss. 74, 75.*

PART V.—MARKETING OF COMMODITIES: MARKETING ORDERS—ss. 76–102.

DIVISION 1.—*Preliminary—s. 76.*

DIVISION 2.—*Provisions relating to the making, etc., of marketing orders—ss. 77–90.*

DIVISION 3.—*Contents of marketing orders—ss. 91–94.*

DIVISION 4.—*Removal of commodity or area from control of marketing order—ss. 95–98.*

DIVISION 5.—*General provisions—ss. 99–102.*

PART VI.—FINANCIAL PROVISIONS—ss. 103–122.

DIVISION 1.—*General—ss. 103–113.*

DIVISION 2.—*Agricultural Marketing Finance Agency—ss. 114–122.*

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PART VII.—PUBLIC ACCOUNTABILITY—*ss.* 123–131.

PART VIII.—STATISTICS, MARKETING INFORMATION AND PROMOTION  
—*ss.* 132–135.

PART IX.—INSPECTION, ETC.—*ss.* 136–140.

PART X.—WINDING UP, ARRANGEMENTS, ETC.—*ss.* 141–148.

PART XI.—MISCELLANEOUS—*ss.* 149–163.

SCHEDULE 1.—REPEALS.

SCHEDULE 2.—PROVISIONS RELATING TO MEMBERS OF AUTHORITIES.

SCHEDULE 3.—PROVISIONS RELATING TO PROCEDURE OF AUTHORITIES.

SCHEDULE 4.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

**Interpretation.**

**4. (1)** In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“Agency” means the Agricultural Marketing Finance Agency constituted by this Act;

“area” means New South Wales or an area of or locality in New South Wales;

“authorised agent” means a person appointed under section 50;

“authorised buyer” means a person appointed under section 51;

“authorised person” means a person appointed under section 136 for the purposes of the provision in which the expression occurs;

“authority” means a board, a committee or the Agency;

“board” means a board constituted under this Act;

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*Marketing of Primary Products.*

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- “committee” means a committee constituted under this Act;
- “commodity” means a primary product, or a variety, grade or class of a primary product, declared to be a commodity by a proclamation in force under Part II or IV;
- “Director” means the person holding the position of or acting as Director of Marketing in the Department of Agriculture;
- “futures contract” means a product futures contract, a currency futures contract or a financial futures contract;
- “futures market” means a market, exchange or other place at which futures contracts are regularly made or traded;
- “management audit” means a management audit under Part VII;
- “marketing” includes buying, selling, financing, collecting, cleaning, grading, packing, treating, carrying, storing, warehousing, re-handling, distributing (by wholesale or retail), delivering and promoting;
- “marketing board” means a board constituted under this Act;
- “marketing committee” means a committee constituted under this Act;
- “marketing order” means a marketing order under Part V;
- “primary product” includes—
- (a) any grain, cereal, fruit (fresh, dried or canned), vegetable, livestock, meat, hay, chaff, poultry (live or dead), honey, beeswax or other product of agriculture, grazing, poultry-farming or bee-keeping in New South Wales; and
  - (b) any dairy produce (including butter and cheese) and any other article prepared directly from the produce of agriculture, grazing, poultry-farming or bee-keeping in New South Wales,
- but does not include wool, fresh milk, eggs or any dried fruits to which the Dried Fruits Act, 1939, for the time being applies;

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“proclamation” means a proclamation published in the Gazette;

“producer”, in relation to a primary product, means a person by whom or on whose behalf any of the product is actually grown or produced for sale, and, where any of the product is grown or produced pursuant to any written share-farming agreement or written partnership agreement, includes the parties to the agreement, but does not include a person engaged as an employee on wages or salary or piece-work rates;

“product” includes article and thing;

“regulation” means a regulation made under this Act;

“sell” means sell by wholesale or by retail, whether by cash, on terms or otherwise, and includes barter, exchange, supply for profit, offer for sale, receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale and cause, suffer or allow to be sold, offered or exposed for sale.

**(2)** In this Act, a reference to—

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

**(3)** In this Act, a reference, where used in relation to a board or committee, to the commodity is a reference to the commodity for which the board or committee is constituted.

**(4)** In this Act, a reference, where used in relation to a marketing order, to the commodity is a reference to the commodity to which the order relates.

**(5)** Except as prescribed, a declaration of a primary product as a commodity for the purposes of this Act shall be deemed to be limited to so much of the product as is produced within the area of the board or committee to which it relates.

**(6)** For the purposes of this Act, a board is associated with a product if it is, by or under this Act, authorised to exercise marketing or other functions in relation to the product.

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*Marketing of Primary Products.*

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(7) In Part IX, a reference (however expressed) to—

- (a) an authorised person is, where the reference occurs in connection with a reference to a board or committee, a reference to an authorised person for the board or committee; and
- (b) a commodity is, where the reference occurs in connection with an authorised person, a reference to a commodity in relation to which a board or committee is constituted (being the board or committee for which the person is an authorised person).

(8) A power conferred by this Act to declare a primary product to be a commodity includes a power to declare a variety, grade or class of a primary product to be a commodity.

**Delegation by the Minister.**

5. (1) The Minister may, by instrument in writing, delegate to an officer of the Public Service the exercise of such of the functions (other than this power of delegation) conferred or imposed on the Minister by or under this Act as may be specified in the instrument of delegation, and may, by a like instrument, revoke any such delegation.

(2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation by the delegate.

(3) A delegation under this section may be made subject to such conditions or such limitations as to the exercise of any of the functions delegated, or as to time or circumstances, as may be specified in the instrument of delegation.

(4) Notwithstanding any delegation made under this section, the Minister may continue to exercise all or any of the functions delegated.

(5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done or suffered by the Minister, and shall be deemed to have been done or suffered by the Minister.

(6) An instrument purporting to be signed by a delegate of the Minister in his or her capacity as a delegate of the Minister under this Act shall in all courts be received in evidence as if it were an instrument executed by the Minister and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Minister.

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## PART II.

## CONSTITUTION OF MARKETING BOARDS.

DIVISION 1.—*Preliminary.***Interpretation.****6.** In this Part—

“election” means an election under this Part;

“enrolled” means enrolled in the relevant roll of producers under this Part;

“poll” means a poll under this Part.

DIVISION 2.—*Petition and poll for constitution of board.***Petition and proclamation for poll to constitute board.****7. (1)** Where the Minister—

(a) is satisfied, on representations made by petition to the Minister by producers of a primary product within an area that a substantial number of producers of that product within that area desire that a board should be constituted for that product within that area; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of that product on the question whether a board should be constituted for that product within that area.

**(2)** Where the Minister—

(a) is satisfied, on representations made by petition to the Minister by producers of 2 or more primary products within one or more areas, that a substantial number of producers of each product within the relevant area desire that a board should be constituted for all those products within that area or those respective areas; and



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- (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of those products on the question whether a board should be constituted for all those products within that area or those respective areas.

**(3) Where the Minister—**

- (a) is satisfied, on representations made by petition to the Minister by producers of 2 or more primary products within one or more areas, that a substantial number of producers of each product within the relevant area desire that a board should be constituted for such of those products within that area or those respective areas as are the subject of a successful poll; and

- (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of those products on the question whether a board should be constituted for all or some of those products within that area or those respective areas.

**DIVISION 3.—*Constitution of board.***

**Proclamation for first election of board.**

**8. (1)** If more than one-half of the enrolled producers are, at a poll referred to in section 7 (1), in favour of the constitution of a board, the Governor may, by proclamation, direct that an election shall be held for the election of a specified number of representatives of producers of the relevant primary product to be members of the board.

**(2)** If more than one-half of the producers respectively enrolled for all the relevant primary products are, at a poll referred to in section 7 (2), in favour of the constitution of a board, the Governor may, by proclamation, direct that an election shall be held for the election of a specified number of representatives of producers of all those products to be members of the board.

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(3) If more than one-half of the producers respectively enrolled for all or some of the relevant primary products are, at a poll referred to in section 7 (3), in favour of the constitution of a board, the Governor may, by proclamation, direct that an election shall be held for the election of a specified number of representatives of producers of those products to be members of the board.

(4) The number of representatives to be specified in a proclamation under this section shall be 2, 3, 4 or 5.

**Electoral districts.**

9. (1) The Governor may, by proclamation, appoint electoral districts for an election and fix the number of persons who may be elected from each such district.

(2) A person is not entitled to be a candidate for more than one electoral district at any election.

(3) The Governor may, by proclamation, vary or abolish any electoral district or vary the number of persons who may be elected from any such district.

(4) A decrease in the number of elected members for an electoral district operates as from the expiration of the term of office of the then current elected members of the board concerned.

(5) Notwithstanding subsection (4), a decrease in the number of elected members for an electoral district operates immediately, if there is, at the time the proclamation under subsection (3) takes effect, a corresponding number of vacancies in the offices of elected members for the district.

(6) Nothing in this section authorises the number of elected members of a board to be greater than the number authorised under the other provisions of this Act.

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**Constitution of board and declaration of commodity.**

**10. (1)** After the first election of persons for appointment as members of a board, the Governor may, by proclamation—

- (a) declare that section 11 applies for the purpose of constituting a board, with a specified corporate name, for a specified primary product and in relation to a specified area;
- (b) specify the number of elected members and nominated members constituting the board; and
- (c) declare that the product is a commodity for the purposes of this Act.

**(2)** The primary product and area to be specified in the proclamation shall be those for or in relation to which the poll was taken and the first election was held, and the number of elected members to be specified in the proclamation shall be that specified in the relevant proclamation under section 8 for the first election.

**Constitution of board.**

**11. (1)** Where a proclamation under section 10 takes effect in relation to a board, there is hereby constituted a corporation under the corporate name specified in the relevant proclamation, for the primary product so specified and in relation to the area so specified.

**(2)** A board shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

**(3)** The members of a board shall be appointed by the Governor.

**(4)** A board shall consist of—

- (a) 2 elected members and 1 nominated member;
- (b) 3 elected members and 2 nominated members;
- (c) 4 elected members and 2 nominated members; or
- (d) 5 elected members and 2 nominated members,

according to the number specified in relation to the board pursuant to section 8, 12 or 23.

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(5) The nominated member or members of a board shall be nominated for appointment by the Minister, after consultation with the Minister for Consumer Affairs.

(6) A board does not, for any purpose, represent the Crown.

(7) The Governor may, by proclamation, specify the objects of a board referred to in the proclamation, and the board shall, as far as practicable, have regard to those objects in the exercise of the functions conferred or imposed on it by or under this or any other Act, but nothing in this subsection authorises or requires the board to contravene any provisions of this Act or of any other law.

(8) A board—

- (a) has perpetual succession;
- (b) shall have a common seal;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) subject to this Act, may, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property; and
- (e) may do and suffer all other things that a body corporate may, by law, do and suffer and that are necessary for or incidental to the purposes for which the board is constituted.

(9) Schedule 2 has effect with respect to the members of a board.

(10) Schedule 3 has effect with respect to the procedure of a board.

**Variation of total number of elected members.**

**12.** (1) The Governor may, from time to time, on the recommendation of a board or of the Minister, direct, by proclamation, that the total number of elected members of the board shall be increased or decreased, as specified in the proclamation.

(2) The number of elected members, following a variation under subsection (1), shall be 2, 3, 4 or 5.

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(3) A decrease in the total number of elected members of a board operates as from the expiration of the term of office of the then current elected members of the board.

(4) Notwithstanding subsection (3), a decrease in the total number of elected members of a board operates immediately, if there is, at the time the proclamation under subsection (1) takes effect, a corresponding number of vacancies in the offices of elected members of the board.

**Change of name of board.**

13. (1) The Governor may, at the request or with the consent of a board, by proclamation, change the corporate name of the board.

(2) No such change of name of a board affects any rights or obligations of the board or renders defective any legal proceedings instituted or to be instituted by or against the board, and any legal proceedings may be continued or commenced by or against the board by its new name that might have been continued or commenced by or against the board by its former name.

**Board may control one or more commodities.**

14. (1) A board may be constituted under this Act for one or more commodities.

(2) Where an election is to be held for a board constituted or to be constituted for more than one primary product, the Governor may, by proclamation, make such provision for the representation by election of the producers of each of the products on the board as the Governor deems proper.

(3) Nothing in this section authorises the respective numbers of elected members and nominated members of a board to be greater than the numbers authorised under the other provisions of this Act.

**Board may employ staff.**

15. (1) For the purpose of enabling it to exercise its functions, a board may employ such staff and engage such consultants as it thinks fit.

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

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

DIVISION 4.—*Addition of commodity or area to control of board.*

**Operation of Division.**

16. (1) This Division authorises—

- (a) an additional primary product to be added to the control of a board;
- (b) an additional area to be added to the control of a board; or
- (c) an additional primary product and an additional area to be added to the control of a board.

(2) This Division does not authorise—

- (a) a primary product to be so added in relation to an area if another board has been constituted for that product in relation to the whole or any part of that area and that board remains in existence; or
- (b) an area to be so added in relation to a primary product if another board has been constituted for that product in relation to the whole or any part of that area and that board remains in existence.

**Petition and proclamation for poll to add product or area to control of board.**

17. Where the Minister—

- (a) is satisfied—
  - (i) on representations made by petition to the Minister by producers of a primary product within an area, that a substantial number of the producers of that product within that area desire that that product or that area or both should be added to the control of a specified board; and

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(ii) that this Division authorises the addition; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of that product within that area on the question whether that product or that area or both should be added to the control of that board.

**Proclamation of addition of commodity or area.**

**18. (1)** If more than one-half of the enrolled producers are, at a poll referred to in section 17, in favour of the addition of a primary product or area to the control of a specified board, the Governor may, by proclamation—

- (a) declare that the specified commodity, or specified area, or specified commodity and specified area, as the case may require, is or are added to the control of the board; and
- (b) so far as may be relevant, declare that the product is a commodity for the purposes of this Act.

**(2)** A board referred to in subsection (1) shall be deemed to have been constituted for any additional primary product and in relation to any additional area, as specified in the proclamation, in addition to the product for which and the area in relation to which it was already constituted.

**(3)** Nothing in this section affects the continuity of any corporation constituted under section 11.

**Existing producers may also be polled.**

**19. (1)** If the board referred to in section 17 so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of producers of each commodity for which the board is already constituted on the question mentioned in that section.

**(2)** The poll to be taken under this section on a particular question shall be taken on the same day as the poll to be taken under section 17 on the same question.

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(3) If a direction is given under this section, a declaration may not be made under section 18 unless at least one-half of the enrolled producers of each commodity for which the board is already constituted are, at the poll to be taken under this section, also in favour of the addition of the product or area to the control of the board.

(4) Where the board is already constituted for 2 or more commodities, the poll to be taken under this section shall be a single poll of the producers of all those commodities.

DIVISION 5.—*Amalgamation of boards.*

**Operation of Division.**

20. This Division authorises the amalgamation of 2 or more boards—
- (a) at the request of the boards concerned; or
  - (b) following consideration of representations invited by the Minister.

**Request for amalgamation by boards.**

21. (1) Two or more boards may, by instruments in writing under their respective seals, make a request to the Minister for action to be taken for the boards to be amalgamated.

(2) The Minister may refuse to consider such a request unless the request is confirmed by both or all of the boards concerned, by similar instruments, within such period as the Minister determines.

**Invitation by Minister for representations on amalgamation.**

22. (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 2 or more specified boards should be amalgamated.

(2) A notice published under this section shall state the time by which and the manner in which representations are to be made.



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(3) A notice may be published under this section whether or not the boards concerned have made a request under section 21, but nothing requires such a notice to be published before action is taken following the making and (if required) confirmation of such a request.

**Proclamation of amalgamation.****23. (1) Where the Minister—**

(a) is satisfied—

- (i) that a request has been made, and (if required) confirmed, in accordance with section 21 by 2 or more boards; or
- (ii) that, although such a request has not been made or, if made, has not (if required) been confirmed, in accordance with that section, and after taking into consideration all representations made in accordance with section 22 on the question whether the boards should be amalgamated, action ought to be taken in the best interests of the producers concerned for the amalgamation of the boards; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, declare that the boards are amalgamated.

(2) The proclamation declaring that boards are amalgamated shall also—

- (a) declare that the individual boards are dissolved;
- (b) declare that a board, with a specified corporate name, is constituted for specified primary products and in relation to specified areas;
- (c) specify the number of elected members and nominated members who are to constitute the board; and
- (d) declare that the products are commodities for the purposes of this Act.

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(3) The primary products and areas to be specified in the proclamation shall be those for or in relation to which the dissolved boards were constituted immediately before the dissolution, and each such product shall, by the proclamation, be identified with the same area as in the previous relevant proclamations.

**Consequences of amalgamation.**

24. (1) When a proclamation under section 23 declaring that 2 or more boards are amalgamated takes effect—

- (a) the individual boards declared by the proclamation to be dissolved are dissolved; and
- (b) a person who, immediately before the dissolution takes effect, held office as a member of one of the dissolved boards—
  - (i) shall cease to hold office as such;
  - (ii) is eligible, if otherwise qualified, to be appointed as a member of the new board; and
  - (iii) is not entitled to be paid any remuneration or compensation by reason of ceasing to hold that office.

(2) A board established pursuant to a proclamation under section 23 is a continuation of, and the same legal entity as, the boards dissolved pursuant to that proclamation.

(3) Division 3 has effect as if the board declared to be constituted by a proclamation under section 23 had been declared to be constituted by a proclamation under section 10.

**Interim arrangements as to elected members of amalgamated board.**

25. (1) Notwithstanding anything in this Act, if the number of elected members of the dissolved boards does not, immediately before the boards are dissolved by the operation of this Division, exceed the number specified in the relevant proclamation under section 23, those members are eligible to be appointed as elected members of the new board, without further election, for a term not exceeding 12 months.

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(2) Notwithstanding anything in this Act, if the number of elected members of the dissolved boards does, immediately before the boards are dissolved by the operation of this Division, exceed the number specified in the relevant proclamation under section 23, such of those members as the respective boards have specified by instrument in writing under their respective seals are eligible to be appointed as elected members of the new board, without further election, for a term not exceeding 12 months.

(3) If the number of persons specified by the boards under subsection (2) exceeds the number of vacancies to be filled, the persons to be appointed shall be such of them as the Minister nominates.

(4) If the number of persons specified by the boards under subsection (2) is less than the number of vacancies to be filled, or no persons are so specified, or any or all of the persons so specified are unavailable for appointment, the persons to be appointed shall be such (if any) of them as are available to be appointed and such other persons as the Minister nominates.

(5) Any persons appointed pursuant to this section shall be deemed to be elected members of the board concerned, and shall hold office, subject to this Act, for a term not exceeding 12 months.

(6) Subject to this section, the term of office of the members appointed pursuant to this section shall be that specified by the Governor in the relevant instrument of appointment.

(7) A person appointed as an elected member of a board pursuant to this section is eligible (if otherwise qualified) for re-appointment in accordance with the other provisions of this Act.

DIVISION 6.—*Removal of commodity or area from control of board.*

**Operation of Division.**

26. (1) This Division authorises—

- (a) the removal of a commodity from the control of a board; or

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- (b) the removal of an area from the control of a board in relation to a commodity,

by petition of producers of the commodity.

(2) This Division does not authorise any removal referred to in subsection (1) unless the board would, after the removal, retain control of a commodity in relation to an area.

**Petition and proclamation for poll for removal of commodity or area from control of board.**

27. (1) Where the Minister—

(a) is satisfied—

(i) on representations made by petition to the Minister by producers of a commodity for which a board is constituted, that a substantial number of the producers within the area in respect of which the board is constituted desire that the commodity should be removed from the control of the board; and

(ii) that this Division authorises the removal; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of that commodity within that area on the question whether that commodity should be removed from the control of the board.

(2) Where the Minister—

(a) is satisfied, on representations made by petition to the Minister by producers of a commodity for which a board is constituted, that a substantial number of the producers within the area in respect of which the board is constituted desire that part of that area should be removed from the control of the board; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

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the Governor may, by proclamation, direct that a poll shall be taken of producers of that commodity within that part of that area on the question whether that part of that area should be removed from the control of the board.

**Removal of commodity or area from control of board.**

**28. (1)** Where the Minister—

- (a) is satisfied that more than one-half of the enrolled producers are, at a poll referred to in section 27, in favour of the removal of a commodity or part of an area from the control of a board; and
- (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct the board to wind up so much of its affairs as relates to the commodity or the part of the area, as the case may require.

**(2)** Upon a proclamation under subsection (1) taking effect, the board shall proceed to wind up its affairs to the extent that the direction so provides.

**(3)** A proclamation under subsection (1) may revoke a declaration of a primary product as a commodity for the purposes of this Act or reduce the area for which a marketing board is constituted, or both, as the case may require, and may contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of such a revocation.

**Other producers may also be polled.**

**29. (1)** If the board referred to in section 27 (1) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of producers of each other commodity for which the board is constituted on the question mentioned in that subsection.

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(2) If the board referred to in section 27 (2) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of producers of the commodity within the other part of the area on the question mentioned in that subsection.

(3) If the board referred to in section 27 (2) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of producers of—

- (a) the commodity within the other part of the area; and
  - (b) each other commodity for which the board is constituted,
- on the question mentioned in that subsection.

(4) A poll to be taken under this section on a particular question shall be taken on the same day as the poll to be taken under section 27 on the same question.

(5) If a direction is given under this section, a direction may not be given under section 28 unless at least one-half of the enrolled producers referred to in the firstmentioned direction are also in favour of the removal of the commodity or part of an area from the control of the board.

(6) The poll to be taken under subsection (1) or (3) shall be a single poll of the producers referred to in that subsection.

DIVISION 7.—*Winding up and dissolution of board.*

**Operation of Division.**

30. (1) This Division authorises the winding up and dissolution of a board—

- (a) by petition of producers of the commodity;
- (b) at the request of the board itself; or
- (c) on the recommendation of the Minister.

(2) Nothing in this Division limits the operation of Part X.

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**Advertisement by Minister as to time for petition.**

**31. (1)** The Minister shall cause a notice to be published in the Gazette and at least one newspaper circulating within the relevant area, specifying the period during which a petition for the dissolution of a board may be presented to the Minister, as referred to in section 32.

**(2)** A notice referred to in subsection (1) shall be published within the period of 3 months ending 3 months before the beginning of each period during which such a petition may be so presented.

**Petition and proclamation for poll to dissolve board.**

**32. (1)** Where the Minister—

(a) is satisfied—

(i) on representations made by petition to the Minister by producers of the commodity for which a board is constituted, that a substantial number of the producers desire that the board should be dissolved; and

(ii) that the petition was presented to the Minister during a permitted period, as defined in subsection (3); and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of producers of that commodity within the area in respect of which the board is constituted on the question whether the board should be dissolved.

**(2)** The date for the taking of the poll may be the same as that fixed for an election of members of the board.

**(3)** In this section, “permitted period” means a period of 6 months commencing 12 months before the end of the term of office specified for the elected members of the board or, if different terms are specified, the later or latest of them, other than the first such period following the constitution of the board pursuant to a proclamation under section 10 or 23.

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**Request for dissolution by board.**

**33. (1)** A board may, by instrument in writing under its seal, make a request to the Minister for action to be taken for the board to be dissolved.

**(2)** The Minister may refuse to consider such a request unless the request is confirmed by the board, by a similar instrument, within such period as the Minister determines.

**Invitation by Minister for representations on dissolution.**

**34. (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 a particular board should be dissolved.

**(2)** A notice published under this section shall state the time by which and the manner in which representations are to be made.

**(3)** A notice may be published under this section whether or not the board concerned has made a request under section 33, but nothing requires such a notice to be published before action is taken following the making and (if required) confirmation of such a request.

**Winding up and dissolution.**

**35. (1)** Where the Minister—

(a) is satisfied—

- (i) that more than one-half of the enrolled producers are, at a poll referred to in section 32, in favour of the dissolution of a particular board;
- (ii) that a request has been made, and (if required) confirmed, in accordance with section 33 by a board; or
- (iii) that, although such a request has not been made or, if made, has not (if required) been confirmed, in accordance with section 33, and after taking into consideration all representations made in accordance with section 34 on the question of the dissolution of a board, action ought to be taken in the best interests of the producers concerned for that dissolution; and



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(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct the board to wind up its affairs.

(2) Upon a proclamation under subsection (1) taking effect, the board shall proceed to wind up its affairs.

(3) Notwithstanding subsection (2)—

(a) the Governor may, by proclamation, appoint any 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.

(4) A proclamation under subsection (3) may revoke a declaration of a primary product as a commodity for the purposes of this Act, and may contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of such a revocation.

(5) 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, as certified from time to time by the Minister, shall be payable from the funds of the board.

(6) The members of a board may not exercise any functions as members while a person holds office as liquidator of the board.

(7) Where the Minister is of the opinion that the affairs of a board are wound up, the Governor may, by proclamation, dissolve the board, and all money and other assets of the board shall become the property of the State and shall be dealt with and disposed of as the Governor may direct.

DIVISION 8.—*General provisions.*

**Expiry and effect of petitions.**

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

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(2) Nothing in this Act shall 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.

**Certain persons deemed to be producers for the purposes of petition, poll or election.**

37. Where any primary product results from a process of manufacture or treatment of an article grown or produced by a farmer, orchardist, vegetable grower, grazier, poultry farmer, apiarist or dairyman, the grower or producer of the article shall, for the purpose of any petition, poll or election under this Part, be deemed to be a producer of the product.

**Report to be published in connection with poll.**

38. 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 shall cause a report relating to the proposal to which the poll relates to be published in such manner as the Director considers appropriate.

**Provisions as to polls.**

39. (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, shall be the returning officer for the poll, and shall have 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 primary product producing it within the relevant area shall be prepared for the poll in the prescribed manner.

(4) Notwithstanding anything in this Part, and if the regulations so provide—

- (a) the producers entitled to vote in accordance with the regulations at a poll shall be the producers having such qualifications as may be prescribed; and
- (b) only those producers may vote at the poll.

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(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;
- (b) it is compulsory for producers enrolled in the relevant roll of producers to vote at the poll;
- (c) a producer shall be deemed 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) shall, for the purposes of enrolment and of the poll, be deemed to be a producer,

and the regulations may impose a penalty not exceeding \$10 for a breach of any such provision of the regulations.

**Provisions as to elections.**

40. (1) The regulations may, subject to this Act, make provision for or with respect to the election of persons for appointment as the elected members of a board.

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

(3) A roll of producers entitled to vote at an election shall be prepared for the election in the prescribed manner.

(4) Notwithstanding anything in this Part, and if the regulations so provide—

- (a) the producers entitled to vote in accordance with the regulations at an election shall be the producers having such qualifications as may be prescribed; and

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

(5) Notwithstanding anything in this Part, and if the regulations so provide—

- (a) the persons entitled to be nominated as candidates for election as members of a board shall be persons having such qualifications as may be prescribed; and
- (b) a person's nomination is invalid if the person does not have those qualifications.

(6) The regulations may make provision for or with respect to fixing or postponing the date for an election.

(7) 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;
- (b) a producer shall be deemed 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
- (c) a representative referred to in paragraph (b) shall, for the purposes of enrolment and of the election, be deemed to be a producer,

and the regulations may impose a penalty not exceeding \$10 for a breach of any such provision of the regulations.

(8) Voting at an election is not compulsory.

(9) To the extent that there is a failure to nominate a sufficient number of persons, or to the extent that an election fails for any other reason, the Governor may appoint a person or persons nominated by the Minister to be a member or members of a board, and a person so nominated shall, on being appointed, be deemed to be a person elected in accordance with the regulations.

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**Dismissal of board.**

41. (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 a board from office, but they or any of them are eligible (if otherwise qualified) for re-appointment.

(2) The Minister shall cause a report of, and the reasons for, the removal of the members of a 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 under subsection (1) in the Gazette.

(3) For the purposes of subsection (2), sitting days shall be counted, whether or not they occur during the same session.

**Board not to be concerned in party politics.**

42. (1) It shall not be lawful for any board to expend any of its funds for any purpose whatever in connection with the politics of any political party, nor shall any board become affiliated in any way whatever with any body, association or organisation having for its objects or any of its objects the support of the politics or program or aims of any political party.

(2) Without limiting section 41, if at any time the Governor is satisfied that a board has acted in contravention of any of the provisions of subsection (1), action may be taken under that section.

**Appointment of administrator.**

43. (1) The Governor may, by proclamation, appoint a person to be administrator of a board, where—

- (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.

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(2) The administrator of a 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 shall have 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 a board by, an administrator appointed under this section, as certified from time to time by the Minister, shall be payable from the funds of the board.

(5) The members of a board may not exercise any functions as members while a person holds office as administrator of the board.

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PART III.

MARKETING OF COMMODITIES: MARKETING BOARDS.

DIVISION 1.—*General functions of boards.*

**Functions relating to the marketing of the commodity.**

44. (1) A board may market or arrange for the marketing of the commodity vested in or delivered or to be delivered to it, and do all acts, matters and things necessary or expedient in that behalf accordingly.

(2) It is the duty of a board, in exercising its functions under this Act, to ensure, as far as practicable, the wholesomeness and purity of the commodity in the interests of public health.

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**Voluntary deliveries of the commodity.**

**45. (1)** A board may arrange with a producer of the commodity produced or to be produced within the area of the board (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)** A board may arrange with a producer of a primary product produced or to be produced outside the area of the board (being a product that, if produced within the area of the board, 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, shall, subject to the terms of the arrangement, be deemed, for the purposes of this Act, to be part of the commodity for which the board is constituted.

**(4)** This section does not authorise a board to enter into an arrangement with respect to a primary product that is a commodity for which another board or a committee is constituted, except with the consent of the other board or of the committee.

**Board may deal in the commodity.**

**46. (1)** In this section, "commodity" includes a primary product that, if produced in the area of the board concerned, would answer the description of the commodity.

**(2)** A board may purchase the commodity for the purpose of—

(a) marketing or using it; or

(b) providing the commodity for consumption within the area of the board, whether or not during periods of shortage,

and may market, use or provide the commodity accordingly.

**(3)** This section does not authorise a board to purchase any primary product that is a commodity for which another board or a committee is constituted, except with the consent of the other board or of the committee.

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**Grades and wholesale prices of the commodity.**

47. A board may—

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

**Manufacturing and processing of the commodity.**

48. (1) A 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 the commodity, for use by the board or by others;
- (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.

**Board may deal in other products, etc.**

49. (1) In this section, "other primary product" means any primary product other than—

- (a) the commodity for which the board concerned is constituted; and
- (b) any product that, if produced within the area of the board concerned, would answer the description of the commodity.

(2) A 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;
- (b) establish and conduct processing or manufacturing facilities for any other primary product, for use by the board or by others;



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- (c) use facilities referred to in section 48 (1) for any other primary product;
- (d) process any other primary product or manufacture products from or based on any other primary product;
- (e) market any of the products so processed or products so manufactured;
- (f) manufacture articles or things for use in connection with marketing the commodity, any other primary product or any other product; and
- (g) market any of the articles or things so manufactured.

**Appointment of authorised agents.**

**50. (1)** A 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)** Where a board appoints an authorised agent under subsection (1) 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 relevant order referred to in subsection (1) so provides—

- (a) an authorised agent of a board shall be deemed to deliver a portion of the commodity to the board; and
  - (b) the board shall be deemed to accept that portion,
- in such circumstances as may be specified in the order.

**(4)** A 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.

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**Appointment of authorised buyers.**

**51. (1)** A 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 relevant order referred to in subsection (1), 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)** Where a 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 do so by the authorised buyer.

**(4)** A 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.

**Board may act as marketing agent.**

**52. (1)** A board may act as agent for any person (including another board) 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 the area of the board or within New South Wales, and may do all acts, matters and things necessary or expedient in that behalf accordingly.

**(2)** If a board, in pursuance of subsection (1), sells anything which is farm produce within the meaning of the Farm Produce Act, 1983, the board shall be deemed 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 a board in pursuance of subsection (1).

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(4) Without limiting its functions, a board may, when acting as agent under subsection (1), enter into all such arrangements with respect to marketing the relevant commodity or other product as if it were the principal.

(5) A board may not under this section deal with the commodity for which another board or a committee is constituted, except with the consent of the other board or the committee.

**Board may act as purchasing agent.**

**53. (1)** A board may, with the approval of the Minister, act as agent for any persons for the purpose of purchasing equipment, machinery, seed, fertilizer or any other article or thing for use in the production of the commodity.

(2) Without limiting its functions, a board may, when acting as agent under subsection (1), enter into all such arrangements with respect to any purchases referred to in subsection (1) as if it were the principal.

**Miscellaneous functions.**

**54. (1)** Without limiting the generality of the foregoing provisions of this Division, a board may—

- (a) make such arrangements as it deems 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;
- (b) enter into insurance contracts relating to the commodity or any other product with which the board is associated;
- (c) promote and encourage the use, sale or consumption of the commodity or any other product with which the board is associated;
- (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);

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- (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;
- (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;
- (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, a 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)** Where necessary, and without limiting any other provision of this Act, a board may return, destroy or otherwise dispose of any of the commodity.

**(4)** Any of the functions of a board may be exercised—

- (a) by the board;
- (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.

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(5) For the purpose of exercising its functions, a board may—

- (a) join in the formation of any company to be incorporated in New South Wales; and
- (b) purchase, hold, dispose of or deal with shares in, or subscribe to the issue of shares by, any company incorporated in New South Wales.

(6) A board shall not 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 a board shall not, except with the approval of the Minister, engage in any activities which the board may not engage in.

(8) If any function of a 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) A 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, the area of the board or New South Wales.

(10) In this section, “affiliate”, in relation to a 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 shall be persons who are, or who are nominated by, persons for the time being holding office as members of the board.

**Miscellaneous provisions.**

55. (1) This section applies to the following functions of a board:—

- (a) its functions in relation to the commodity or any other primary product under sections 46 and 49;

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- (b) its function as agent under section 52 or 53;
- (c) such other of the board's functions as may be prescribed.

(2) In so far as a board keeps accounts relating to any of its functions to which this section applies, the board shall keep separate accounts in respect of each such function.

(3) Costs, charges and expenses incurred by a 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, shall be met out of any commission or other remuneration received by the board, or out of a reserve created by the board under Part VI, in connection with the function.

(4) Any mortgage, charge, lien, pledge, interest or trust given or created by or on behalf of a board in respect of, or in respect of 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.

DIVISION 2.—*Vesting of commodities in boards.*

**Vesting of commodity in board.**

56. (1) Where a product has been declared a commodity and a board has been constituted in respect of the commodity, the Governor, by proclamation, may—

- (a) declare—
  - (i) that the commodity shall forthwith, upon the date of publication of the proclamation in the Gazette or on and from a later date specified in the proclamation, or upon fulfilment of such conditions as are specified in the proclamation, be divested from the producers thereof and become absolutely vested in and be the property of the board; and

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- (ii) that upon any of the commodity coming into existence within a time specified in the proclamation or in any subsequent proclamation it shall become absolutely vested in and be the property of the board; and
  - (b) make such further provision as will enable the board effectively to obtain possession of the commodity as owner and to deal with the commodity as may be deemed necessary or convenient in order to give full effect to the objects and purposes for which the board is constituted.
- (2) Upon the date of publication of the proclamation under subsection (1), or on and from the date specified in the proclamation, or upon fulfilment of the conditions specified in the proclamation, as the case may require, the commodity is absolutely vested in and is the property of the board.
- (3) Subsections (1) and (2) do not apply to a commodity referred to in section 45 (3), but upon 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.
- (4) Any of the commodity vested in a board by the operation of subsection (2) or (3) 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.
- (5) A proclamation under this section may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
  - (b) apply differently according to different factors of a specified kind; or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by the relevant board or by any other specified person or body,
- or may do any combination of those things.

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**Exemption by board.**

**57. (1)** A 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 56—

- (a) such small producers of the commodity as the board thinks fit;
- (b) sales of the commodity direct from producers to consumers, processors, merchants or retail vendors;
- (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 in the area of the board, or by a notice in writing to the exempted producer, signed by the secretary or other authorised officer of the board, revoke any such exemption.

**(4)** An exemption may be granted under this section on a condition that requires payment to the board of such amounts of money as are specified or referred to in the condition.

**Avoidance of contracts for sale of commodity.**

**58. (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 a board by section 56 (2), is and shall be deemed to have been void and of no effect as from the date upon which the contract was made.

**(2)** Any provision in a contract, being a provision referred to in subsection (1), shall be deemed to be severable.



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(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 shall also be void and of no effect, and any money paid pursuant to any such contract or provision or to any such transaction shall 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.

**Remedy against board confined to claim for account.**

59. (1) Subject to this section, no proceedings at law or in equity shall be brought against a 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-operation Act, 1923) 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.

(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 a board as a delivery thereof by the person to the board, and may claim accordingly for an account of the payments due in respect thereof, and recover the amount due in any court of competent jurisdiction as a debt.

(3) Notwithstanding 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 shall not be 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 a 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.

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DIVISION 3.—*Delivery of commodities to boards.***Delivery of commodity.**

**60. (1)** The commodity vested in a board by section 56 (2) shall 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 56 (2) 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 arising 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.

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**Acceptance of commodity.**

**61. (1)** A board shall not refuse to accept from any producer any of the commodity which is vested in it by section 56 (2) and which conforms to the applicable standards of quality or grade and which is delivered to it in accordance with this Act.

**(2)** A 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.

**Revesting of commodity if not accepted.**

**62.** Where—

- (a) a 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,

the commodity shall 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.

**Duty to give notice of encumbrances.**

**63. (1)** Every person delivering any of the commodity to the board 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 the absolute owner thereof, and whether the bill of sale, mortgage, charge, lien, encumbrance or contract was made before or after the commencement of this section, shall, upon delivering the commodity to the board, give to the board a notice in writing of the bill of sale, mortgage, charge, lien, encumbrance or contract.

**(2)** Any person wilfully guilty of a failure to comply with the provisions of this section is guilty of an offence against this Act.

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DIVISION 4.—*Payment for vested commodities.***Payments.**

**64. (1)** A board shall, subject to this Act, 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) shall, 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), be made, as nearly as possible, at a uniform rate, 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 46, 49, 52 and 53 and such other of the board's activities as may be prescribed).

**(3)** Notwithstanding 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;
- (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.

**(4)** 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;
- (b) the costs, charges and expenses incurred by the board in the administration by the board of this Act;
- (c) any reserves created by the board; and

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(d) any other matters that are, in the opinion of the board, relevant or that are prescribed.

(5) Notwithstanding anything in this section, but subject to the regulations, a 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.

(6) 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 shall be final and conclusive.

(7) 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.

(8) Where, 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;
- (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.

(9) The board shall not do any of the things mentioned in subsection (8) otherwise than in accordance with such guidelines (if any) as are from time to time determined by the Minister.

#### **Schemes for payments.**

**65. (1)** At the request of a 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 64 in respect of any of the commodity delivered to the board.

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(2) A scheme shall apply in respect of any of the commodity specified or described therein and delivered to the board during or covering a period of time that is—

- (a) referred to in section 64 (2); and
- (b) specified in the scheme.

(3) Where, during the period of time specified in a scheme, any of the commodity is delivered to the board, the board shall make payments under section 64 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 in that behalf; or
- (b) cancel a scheme without any request having been made by the board in that behalf, 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 thereof under this section, shall be in writing.

(7) In this section (other than subsection (1))—

“scheme” means a scheme approved under subsection (1);

“the board”, in relation to a scheme, means the board at whose request the scheme was approved under subsection (1).

**Board not liable for payments made in good faith.**

66. Where a 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;

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

**Board protected in certain cases.**

**67. (1)** If, before receiving notice of a claim to any payment for any of the commodity vested in a board or to the chose in action or any part thereof 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 shall not, to the extent to which it has made that payment, incur any liability to the true owner of the commodity or chose in action or any part thereof 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 inter se of 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.

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## PART IV.

## CONSTITUTION OF MARKETING COMMITTEES.

DIVISION 1.—*Constitution of committee.***Constitution of committee and declaration of commodity.**

**68.** Where a proclamation for a poll is published under section 81 and more than one-half of the enrolled persons entitled to vote are, at the poll, in favour of the making of a marketing order, the Governor may, by proclamation—

- (a) declare that section 69 applies for the purpose of constituting a committee, with a specified corporate name, for a specified primary product and in relation to a specified area; and
- (b) declare that the product is a commodity for the purposes of this Act.

**Constitution of committee.**

**69. (1)** Where a proclamation under section 68 takes effect in relation to a committee, there is hereby constituted a corporation under the corporate name specified in the relevant proclamation, for the primary product so specified and in relation to the area so specified.

**(2)** A committee shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

**(3)** The members of a committee shall be appointed by the Governor.

**(4)** A committee shall consist of the number of members specified in the relevant marketing order, and appointments shall be made in accordance with the relevant provisions of the order.

**(5)** The members of a committee shall, subject to the provisions of the relevant marketing order, be nominated for appointment by the Minister, after consultation with the Minister for Consumer Affairs.

**(6)** A committee does not, for any purpose, represent the Crown.



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**(7) A committee—**

- (a) has perpetual succession;
- (b) shall have a common seal;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) subject to this Act, may, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property; and
- (e) may do and suffer all other things that a body corporate may, by law, do and suffer and that are necessary for or incidental to the purposes for which the committee is constituted.

**(8)** Schedule 2 has effect with respect to the members of a committee.

**(9)** Schedule 3 has effect with respect to the procedure of a committee.

**Committee may employ staff.**

**70. (1)** For the purpose of enabling it to exercise its functions, a committee may employ such staff and engage such consultants as it thinks fit.

**(2)** With the approval of the Minister and upon such terms and conditions as are agreed upon, a committee may make use of the services of any of the staff of the Department of Agriculture.

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

**Change of name of committee.**

**71. (1)** The Governor may, at the request or with the consent of a committee, by proclamation, change the corporate name of the committee.

**(2)** No such change of name of a committee affects any rights or obligations of the committee or renders defective any legal proceedings instituted or to be instituted by or against the committee, and any legal proceedings may be continued or commenced by or against the committee by its new name that might have been continued or commenced by or against the committee by its former name.

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**Committee may control one or more commodities.**

72. A committee may be constituted under this Act for one or more commodities.

*DIVISION 2.—Winding up and dissolution of committee.***Winding up and dissolution.**

73. (1) Where a marketing order ceases to have effect or is revoked, the committee to which the order relates shall proceed to wind up its affairs under the order.

(2) Notwithstanding subsection (1)—

- (a) the Governor may, by proclamation, appoint any 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 committee, bring and defend such proceedings, and do and execute such acts, deeds and things, as may be necessary.

(3) A proclamation under subsection (2) may revoke a declaration of a primary product as a commodity for the purposes of this Act, and may contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of such a revocation.

(4) 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, as certified from time to time by the Minister, shall be payable from the funds of the committee.

(5) The members of a committee may not exercise any functions as members while a person holds office as liquidator of the committee.

(6) Where the Minister is of the opinion that the affairs of a committee are wound up, the Governor may, by proclamation, dissolve the committee, and all money and other assets of the committee shall become the property of the State and shall be dealt with and disposed of as the Governor may direct.

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(7) A marketing order referred to in this section shall be deemed to continue in force for such period and to such extent as is necessary to enable the affairs of a committee to be wound up under this section.

DIVISION 3.—*General provisions.*

**Dismissal of committee.**

74. (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 a committee from office, but they or any of them are eligible (if otherwise qualified) for re-appointment.

(2) The Minister shall cause a report of, and the reasons for, the removal of the members of a committee 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 under subsection (1) in the Gazette.

(3) For the purposes of subsection (2), sitting days shall be counted, whether or not they occur during the same session.

**Appointment of administrator.**

75. (1) The Governor may, by proclamation, appoint a person to be administrator of a committee, where—

- (a) all the members of the committee have vacated their offices or have been removed from their offices; or
- (b) all or any of the members of the committee 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 committee that an administrator be appointed.

(2) The administrator of a committee appointed under this section has all the functions of the committee, and any act, matter or thing done or omitted to be done by the administrator shall have the same effect as if done or omitted by the committee.

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(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 a committee by, an administrator appointed under this section, as certified from time to time by the Minister, shall be payable from the funds of the committee.

(5) The members of a committee may not exercise any functions as members while a person holds office as administrator of the committee.

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PART V.

MARKETING OF COMMODITIES: MARKETING ORDERS.

DIVISION 1.—*Preliminary.*

**Interpretation.**

76. In this Part—

“election” means an election under this Part;

“poll” means a poll under this Part.

DIVISION 2.—*Provisions relating to the making, etc., of marketing orders.*

**Petition for marketing order.**

77. Where the Minister is satisfied, on representations made by petition to the Minister by producers of a primary product within an area, that a substantial number of the producers of that product within that area are in

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favour of a proposal that a marketing order of a specified kind should be made in respect of that product within that area, the Minister may direct that a report be published in relation to the proposal.

**Report to be published in connection with proposal.**

**78. (1)** As soon as practicable after a direction under section 77 is given in relation to a proposal referred to in the direction, the Director shall cause a report relating to the proposal to be published in such manner as the Director considers appropriate.

**(2)** The report shall invite representations by any persons with respect to the proposal to which the report relates, and shall state the time by which and the manner in which representations are to be made.

**Public meeting to be held.**

**79.** The Director shall arrange for and advertise a public meeting to be held in the area to which the proposal relates, for the purpose of enabling the proposal to be discussed.

**Publication of draft marketing order.**

**80. (1)** Where—

- (a) a report relating to a proposal has been published under section 78;
- (b) the time, as stated in the report, by which representations are to be made on the proposal has elapsed;
- (c) a public meeting has been held under section 79 before the time mentioned in paragraph (b) has elapsed; and
- (d) the Minister has taken into consideration all representations made with respect to the proposal in accordance with section 78,

the Minister may cause a notice to be published in the Gazette setting out the terms of a draft marketing order.

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(2) The draft marketing order may be different from the order as originally proposed.

**Proclamation for poll as to making of a marketing order.**

81. Where the Minister certifies to the Governor that a draft marketing order has been published in accordance with section 80, the Governor may, by proclamation, direct that a poll shall be taken of the persons entitled to vote at the poll on the question whether a marketing order should be made in or to the effect of that draft marketing order.

**Making of marketing order.**

82. Where—

- (a) a notice setting out the terms of a draft marketing order is published in the Gazette under section 80; and
- (b) a proclamation for a poll is published under section 81 and more than one-half of the persons entitled to vote at the poll are, at the poll, in favour of the making of the marketing order,

the Minister may make a marketing order in or to the effect of the draft marketing order.

**Marketing order not to be made with respect to certain commodities.**

83. A marketing order does not have effect with respect to any commodity so far as it is a commodity for which a board is constituted.

**Provisions relating to marketing orders.**

84. (1) A marketing order—

- (a) shall take effect from the date of its publication in the Gazette or on and from a later date specified or referred to in the order; and

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(b) subject to this Act, may be rescinded, revoked, amended or varied by a subsequent order from time to time as occasion requires.

(2) Judicial notice shall be taken of every marketing order and of the date of its publication in the Gazette.

(3) It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a marketing order have been complied with and performed.

(4) The rescission, revocation, amendment or variation, whether in whole or in part, of any marketing order does not affect—

- (a) the previous operation of the order or anything duly suffered, done or commenced under the order;
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the order;
- (c) any penalty, forfeiture or punishment incurred in respect of any offence against the order; or
- (d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed or enforced as if the rescission, revocation, amendment or variation had not occurred.

**Duration of marketing orders.**

**85. (1)** A marketing order shall state the period, not exceeding 4 years, for which it is to be initially in force.

(2) The Minister may cause a notice to be published in the Gazette stating that a marketing order specified in the notice will remain in force for a further period, not exceeding 4 years, specified in the notice if a petition for a poll is, before the day specified in the notice, presented to the Minister, as referred to in section 86, and more than one-half of the persons entitled to vote at the poll are, at the poll, in favour of the order remaining in force for the further period.

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(3) The notice under subsection (2) shall be published at least 3 months before the commencement of the further period.

(4) Where—

- (a) a notice is published in the Gazette under subsection (2);
- (b) a petition for a poll on the question whether the marketing order should remain in force for the further period is presented in accordance with section 86 and more than one-half of the persons entitled to vote at the poll are, at the poll, in favour of the order remaining in force for the further period; and
- (c) the results of the poll are published before the commencement of the further period,

the marketing order shall, subject to this Act, remain in force for the further period, but shall otherwise cease to have effect at the beginning of the further period.

**Petition and proclamation for poll as to continuance of marketing order.**

**86. (1) Where the Minister—**

(a) is satisfied—

- (i) on representations made by petition to the Minister by producers of the commodity to which a marketing order relates, that a substantial number of the producers desire that a poll should be taken on the question whether the marketing order should remain in force for a further period; and
- (ii) that the petition was presented to the Minister before the expiration of the day specified in the relevant notice under section 85; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of the persons entitled to vote at the poll on the question whether the marketing order should remain in force for the further period.



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(2) As soon as practicable after a proclamation under this section is published in the Gazette directing that a poll be taken, and before the day fixed for the taking of the poll, the Director shall cause a report relating to the question to which the poll relates to be published in such manner as the Director considers appropriate.

**Amendment, etc., of marketing orders.**

**87.** The Minister may amend, vary or re-make a marketing order—

- (a) to make such alterations as are necessary or convenient to make in connection with any action taken under Part IV; or
- (b) to effect such alterations, not being alterations of substance, as the Minister thinks fit.

**Invitation by Minister for representations on revocation of marketing order.**

**88. (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 a particular marketing order should be revoked.

(2) A notice published under this section shall state the time by which and the manner in which representations are to be made.

(3) As soon as practicable after a notice is published under this section, the Director shall cause a report relating to the question to which the notice relates to be published in such manner as the Director considers appropriate.

**Revocation of marketing order following representations.**

**89.** Where the Minister is satisfied, after taking into consideration all representations made in accordance with section 88 on the question whether a particular marketing order should be revoked, that the order should be revoked, the Minister may revoke the order.

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**Validity of marketing orders.**

**90. (1)** The validity of a marketing order shall not be questioned in any legal proceedings except those commenced within 3 months after the date of its publication in the Gazette or within 3 months after the beginning of a further period referred to in section 85 for which the order is to remain in force.

**(2)** The validity of a marketing order shall not be questioned in any legal proceedings commenced within 3 months after the beginning of a further period referred to in subsection (1) on any ground which could have been raised in legal proceedings commenced within a previous such period of 3 months relating to the order.

**(3)** Nothing in subsection (1) or (2) prevents the questioning of the validity of a marketing order at any time in any legal proceedings on the ground that the order makes or contains provisions other than those which, by or under this or any other Act, it may make or contain.

**(4)** A court shall not declare a marketing order or any provision of a marketing order invalid unless the court is of the opinion that the failure of the order or provision to comply with this or any other Act or the regulations made under this or any other Act is substantial.

**DIVISION 3.—***Contents of marketing orders.***Principal contents of marketing order.**

**91. (1)** A marketing order shall specify its objects, and the relevant committee shall, as far as practicable, have regard to those objects in the exercise of the functions conferred or imposed on it by or under this or any other Act, but nothing in this subsection authorises or requires the committee to contravene any provisions of this Act or of any other law.

**(2)** A marketing order may make provision for or with respect to—

- (a) the marketing of the commodity to which the order relates; and
- (b) all acts, matters and things that are necessary or expedient to be done in connection with the marketing of the commodity.

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(3) Without limiting the generality of subsection (2), a marketing order may provide that—

- (a) all or any of the things included in the marketing, collecting, cleaning, grading, packing, treating, transforming, carrying, storing, distributing (by wholesale or retail) or delivering of the commodity shall be done only by the committee, or its agents or employees, or only by a specified person or specified persons or a specified class of persons;
- (b) all of the commodity that, during a specified period, is in the possession or comes into the possession of any person in the course, or for the purpose, of marketing, collecting, cleaning, grading, packing, treating, transforming, carrying, storing, distributing (by wholesale or retail) or delivering the commodity shall be handled and dealt with only under the instructions and with the authority of the committee, or shall be consigned or delivered only to specified persons or a specified class, or specified classes, of persons;
- (c) certain classes of agreements with producers, processors and others engaged in the handling of the commodity are approved;
- (d) the commodity may not be made the subject of any agreements except those that are approved as referred to in paragraph (c);
- (e) any agreements referred to in paragraph (c) shall make particular provision with respect to the quality of the commodity, research and development relating to the commodity, marketing information relating to the commodity, the rate of flow of the commodity on to or through the marketing processes, the prohibition of unfair practices relating to the commodity, the prices to be paid for the commodity and other conditions of sale of the commodity; and
- (f) a committee may exercise, in relation to the commodity, any specified function that may be exercised by a board in relation to a primary product for which it is or may be constituted.

(4) A marketing order may impose a penalty not exceeding \$2,000 for any contravention thereof.

(5) A provision of a marketing order may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;

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- (b) apply differently according to different factors of a specified kind;  
or
- (c) authorise any matter or thing to be from time to time determined,  
applied or regulated by the committee or by any other specified  
person or body,

or may do any combination of those things.

**Exemptions.**

**92. (1)** Without limiting anything in section 91, a marketing order may make provision for or with respect to exempting—

- (a) any person or class of persons;
- (b) any of the commodity or class of the commodity; or
- (c) any act, matter or thing or class of acts, matters or things,

from any or all of the provisions of the order.

**(2)** A marketing order may provide that the committee's decision as to whether any person, any of the commodity or any act, matter or thing is within an exemption is final.

**(3)** The committee may at any time, by notification published in the Gazette or in a newspaper circulating in the area of the committee, or by a notice in writing to the exempted producer, signed by the secretary or other authorised officer of the committee, revoke any such exemption.

**(4)** An exemption may be granted under this section on a condition that requires payment to the committee of such amounts of money as are specified or referred to in the condition.

**Contents of marketing order relating to composition of committee.**

**93.** A marketing order may make provision for or with respect to the composition of the relevant committee and, in particular, for or with respect to—

- (a) the number of members of the committee;

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- (b) whether any members are to be elected and, if so, how many are to be elected and by whom; and
- (c) any special qualifications that any members are required to hold.

**Matters not to be dealt with in marketing order.**

94. A marketing order may not make provision for or with respect to—

- (a) prohibiting the production of any of the commodity; or
- (b) the automatic vesting or compulsory acquisition of any of the commodity in or by any person.

DIVISION 4.—*Removal of commodity or area from  
control of marketing order.*

**Operation of Division.**

95. (1) This Division authorises—

- (a) the removal of a commodity from the control of a marketing order;  
or
- (b) the removal of an area from the control of a marketing order in relation to a commodity,

by petition of producers of the commodity.

(2) This Division does not authorise any removal referred to in subsection (1) unless the marketing order would, after the removal, continue to control a commodity in relation to an area.

**Petition and proclamation for poll to remove commodity or area from control of marketing order.**

96. (1) Where the Minister—

- (a) is satisfied—
  - (i) on representations made by petition to the Minister by producers of a commodity for which a marketing order is in force, that a substantial number of producers within the

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area in respect of which the order is in force desire that the commodity should be removed from the control of the order; and

(ii) that this Division authorises the removal; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of persons entitled to vote in respect of that commodity within that area on the question whether that commodity should be removed from the control of the order.

**(2)** Where the Minister—

(a) is satisfied, on representations made by petition to the Minister by producers of a commodity for which a marketing order is in force, that a substantial number of the producers within the area in respect of which the order is in force desire that part of that area should be removed from the control of the order; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct that a poll shall be taken of persons entitled to vote in respect of that commodity within that part of that area on the question whether that part of that area should be removed from the control of the order.

**Removal of commodity or area from control of marketing order.**

**97. (1)** Where the Minister—

(a) is satisfied that more than one-half of the persons entitled to vote are, at a poll referred to in section 96, in favour of the removal of a commodity or part of an area from the control of a marketing order; and

(b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct the relevant committee to wind up so much of its affairs as relates to the commodity or the part of the area, as the case may require.

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(2) Upon a proclamation under subsection (1) taking effect, the committee shall proceed to wind up its affairs to the extent that the direction so provides.

(3) A proclamation under subsection (1) may revoke a declaration of a primary product as a commodity for the purposes of this Act or reduce the area for which a marketing order is in force, or both, as the case may require, and may contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of such a revocation.

**Other persons may also be polled.**

98. (1) If the committee constituted with respect to a marketing order referred to in section 96 (1) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of persons entitled to vote in respect of each other commodity for which the order is in force on the question mentioned in that subsection.

(2) If the committee constituted with respect to a marketing order referred to in section 96 (2) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of persons entitled to vote in respect of the commodity within the other part of the area on the question mentioned in that subsection.

(3) If the committee constituted with respect to a marketing order referred to in section 96 (2) so requests by instrument in writing under its seal, the Governor may, by proclamation, direct that a separate poll shall be taken of persons entitled to vote in respect of—

- (a) the commodity within the other part of the area; and
- (b) each other commodity for which the order is in force,

on the question mentioned in that subsection.

(4) A poll to be taken under this section on a particular question shall be taken on the same day as the poll taken under section 96 on the same question.

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(5) If a direction is given under this section, a direction may not be given under section 96 unless at least one-half of the persons referred to in the firstmentioned direction are also in favour of the removal of the commodity or part of an area from the control of the marketing order.

(6) The poll to be taken under subsection (1) or (3) shall be a single poll of the persons referred to in that subsection.

DIVISION 5.—*General provisions.*

**Expiry and effect of petitions.**

99. (1) A petition presented to the Minister for the purposes of this Part shall be deemed 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 Part shall be construed as requiring anything to be done in consequence of the presentation of a petition to the Minister for the purposes of this Part.

**Certain persons deemed to be producers for the purposes of petition.**

100. Where any primary product results from a process of manufacture or treatment of an article grown or produced by a farmer, orchardist, vegetable grower, grazier, poultry farmer, apiarist or dairyman, the grower or producer of the article shall, for the purpose of any petition under this Part, be deemed to be a producer of the product.

**Provisions as to polls.**

101. (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, shall be the returning officer for the poll, and shall have and may exercise the functions conferred or imposed on the returning officer by the regulations in relation to the poll.



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(3) A roll of persons entitled to vote at a poll shall be prepared for the poll in the prescribed manner.

(4) Notwithstanding anything in this Part, and if the regulations so provide—

- (a) the persons entitled to vote in accordance with the regulations at a poll shall be the persons having such qualifications as may be prescribed; and
- (b) only those persons 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 person, or a person of a prescribed class or description, to be enrolled or to apply for enrolment in the relevant roll;
- (b) it is compulsory for persons enrolled in the relevant roll to vote at the poll;
- (c) a person shall be deemed to be enrolled or to apply for enrolment in the relevant roll if a person of a prescribed class or description is so enrolled or so applies as the representative of the person; and
- (d) a representative referred to in paragraph (c) shall, for the purposes of enrolment and of the poll, be deemed to be a person entitled to vote,

and the regulations may impose a penalty not exceeding \$10 for a breach of any such provision of the regulations.

**Provisions as to elections.**

**102.** (1) The regulations may, subject to this Act, make provision for or with respect to the election of persons for appointment as the elected members of a committee.

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

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(3) A roll of persons entitled to vote at an election shall be prepared for the election in the prescribed manner.

(4) Notwithstanding anything in this Part, and if the regulations so provide—

- (a) the persons entitled to vote in accordance with the regulations at an election shall be the persons having such qualifications as may be prescribed; and
- (b) only those persons may vote at the elections.

(5) Notwithstanding anything in this Part, and if the regulations so provide—

- (a) the persons entitled to be nominated as candidates for election as members of a committee shall be persons having such qualifications as may be prescribed; and
- (b) a person's nomination is invalid if the person does not have those qualifications.

(6) The regulations may make provision for or with respect to fixing or postponing the date for an election.

(7) The regulations may provide that—

- (a) it is compulsory for a person, or a person of a prescribed class or description, to be enrolled or to apply for enrolment in the relevant roll;
- (b) a person shall be deemed to be enrolled or to apply for enrolment in the relevant roll if a person of a prescribed class or description is so enrolled or so applies as the representative of the person; and
- (c) a representative referred to in paragraph (b) shall, for the purposes of enrolment and of the election, be deemed to be a person entitled to vote,

and the regulations may impose a penalty not exceeding \$10 for a breach of any such provision of the regulations.

(8) Voting at an election is not compulsory.

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(9) To the extent that there is a failure to nominate a sufficient number of persons, or to the extent that an election fails for any other reason, the Governor may appoint a person or persons nominated by the Minister to be a member or members of a committee, and a person so nominated shall, on being so appointed, be deemed to be a person elected in accordance with the regulations.

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PART VI.

FINANCIAL PROVISIONS.

DIVISION 1.—*General.*

**Financial accounting periods.**

103. (1) The financial accounting period of each authority shall be such period as the Minister from time to time approves in respect of the authority.

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

**Accounts to be kept.**

104. (1) Each authority shall cause to be kept proper accounts and records in relation to all of its operations.

(2) Each authority shall, as soon as practicable, but within 6 months, after the end of each financial accounting period of the authority, prepare and forward to the Director for presentation by the Minister to Parliament a statement of accounts, together with the Auditor-General's certificate given under this section in relation to the statement.

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(3) The statement of accounts of an authority shall—

- (a) be in a form approved by the Auditor-General;
- (b) include such information as is requested by the Auditor-General; and
- (c) exhibit a true and fair view of the financial position and transactions of the authority.

(4) Each authority shall, as soon as practicable, but within 4 months, after the end of the financial accounting period to which a statement of accounts relates, transmit the statement to the Auditor-General for verification and certification.

(5) The Auditor-General's certificate shall—

- (a) state that the Auditor-General has audited the accounts of the authority relating to the relevant financial accounting period;
- (b) indicate whether the statement of accounts complies with subsection (3); and
- (c) set forth any qualifications subject to which the certificate is given.

(6) Nothing in this section prevents the alteration of the statement of accounts, with the approval of the Auditor-General, after its receipt by the Auditor-General and before its submission to the Director.

(7) The Minister shall lay the statement of accounts, or cause it to be laid, together with the Auditor-General's certificate, before both Houses of Parliament as soon as practicable after the receipt by the Director of the statement.

**Audit.**

**105. (1)** The accounts and records of financial transactions of each authority, and the records relating to assets of or in the custody of the authority, shall be inspected and audited by or under the supervision of the Auditor-General.

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(2) For the purposes of any such inspection and audit, the Auditor-General or a person authorised by the Auditor-General is entitled at all reasonable times to full and free access to the accounts, records, documents and papers of an authority and may make copies thereof or take extracts therefrom.

(3) The Auditor-General or a person authorised by the Auditor-General may require a person, being a person engaged in the administration of this Act, to furnish such information in the possession of the person or to which the person has access as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

Penalty: \$200.

(4) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).

(5) The Auditor-General shall report to the authority and the Minister on the result of any such inspection and audit, and as to such irregularities or other matters as in the Auditor-General's judgment call for special notice or as are prescribed.

(6) Towards defraying the costs and expenses of any such inspection and audit, an authority shall pay to the Consolidated Fund such amounts, at such times, as the Treasurer decides.

### **Charges and fees.**

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

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**Costs incurred by Department, etc., on behalf of boards, etc.**

**107. (1)** A board or a committee shall, on receipt of a notice in writing signed by the Electoral Commissioner for New South Wales specifying the costs and expenses of any poll or election under this Act taken or held with respect to the board or committee or the primary product in respect of which the board or committee is or may be constituted, pay to the Electoral Commissioner an amount equal to the amount so specified.

**(2)** An authority shall, 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 (other than costs and expenses referred to in subsection (1)) in respect of anything done for or in connection with the authority, pay to the Minister an amount equal to the amount so specified.

**(3)** Any amount required to be paid pursuant to subsection (1) or (2) shall be paid within such period as is specified in the notice or such further period as the Electoral Commissioner or the Minister, as the case may be, may allow.

**(4)** If there is no board or committee to which a notice may be given under subsection (1), the costs and expenses of the poll or election shall be met by the Minister from money available for the purpose.

**Reserves.**

**108.** An authority may, subject to and in accordance with any conditions for the time being determined by the Minister, create and use such reserves as it considers necessary or expedient for the purposes of this Act.

**Retention of certain money owing by authorities.**

**109. (1)** The regulations may make provision for or with respect to the retention by an authority of money owing by the authority to a person or class of persons, the manner in which any money so retained shall be accounted for in the books of the authority, the purposes for which any money so retained may be used and the payment of any money so retained to or at the direction of the person to whom it is owing.

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(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.

**Financial accommodation.**

110. (1) For the purposes of or for purposes connected with the exercise of its functions, an authority may obtain financial accommodation—

- (a) from a bank within the meaning of the Banking Act 1959 of the Commonwealth as amended and in force for the time being or a bank constituted by a law of a State or of the Commonwealth;
- (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) Subject to this Act, a board or committee may, in connection with any such financial accommodation, give such securities as will effectually place the commodity (or, in the case of a board, any other product with which the board is associated), or any part thereof, delivered or expected to be delivered to the board or committee, under the legal or other control of the bank, institution or person providing the financial accommodation.

**Investment of money of authority.**

111. (1) Money held by an authority may be invested—

- (a) in any manner for the time being allowed by an Act for the investment of trust money;
- (b) on deposit with the Treasurer;
- (c) on deposit with a bank within the meaning of the Banking Act 1959 of the Commonwealth as amended and in force for the time being or a bank constituted by a law of a State or of the Commonwealth; or
- (d) with the approval of the Minister and with the concurrence of the Treasurer, in any other manner.

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(2) An approval or concurrence referred to in subsection (1) may be given for a particular case or for any class of cases.

**Futures contracts.**

112. (1) Subject to subsection (2), a board or committee may, in relation to—

- (a) a sale or proposed sale of the commodity by the board or committee; or
- (b) a borrowing or raising of money by the board or committee or a proposed borrowing or raising of money by the board or committee (including a borrowing or raising of money by the board or committee 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 board or committee shall not enter into or deal with futures contracts otherwise than in accordance with such guidelines (if any) as are from time to time determined by the Minister.

(3) A futures contract shall be 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 or committee, 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 committee or a proposed borrowing or raising of money, including risks of fluctuations in exchange rates.

**Loans to members of authorities.**

113. An authority shall not, whether directly or indirectly—

- (a) make a loan to a member of the authority; 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 authority



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DIVISION 2.—*Agricultural Marketing Finance Agency.***Proclamation for constitution of Agency.**

**114.** Where at least one board makes a request, by instrument in writing under its seal, to the Minister that the Agency be constituted, the Governor may, by proclamation, declare that section 115 applies for the purpose of constituting the Agricultural Marketing Finance Agency.

**Constitution of Agency.**

**115. (1)** Where a proclamation under section 114 takes effect, there is hereby constituted a corporation with the corporate name "Agricultural Marketing Finance Agency".

**(2)** The Agency shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

**(3)** The Agency shall consist of such number of persons appointed by the Governor as may be prescribed, being persons qualified in such manner as may be prescribed and nominated by boards in such manner as may be prescribed.

**(4)** The Agency does not, for any purpose, represent the Crown.

**(5)** The Agency—

- (a) has perpetual succession;
- (b) shall have a common seal;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) subject to this Act, may, for the purposes for which it is constituted, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property; and
- (e) may do and suffer all other things that a body corporate may, by law, do and suffer and that are necessary for or incidental to the purposes for which the Agency is constituted.

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(6) Schedule 2 has effect with respect to the members of the Agency.

(7) Schedule 3 has effect with respect to the procedure of the Agency.

**Functions of Agency.**

**116. (1)** The Agency may provide and organise finance and financial services to boards, and other persons or organisations approved by the Minister and nominated by boards in such manner as may be prescribed, relating to the marketing of primary products (those boards and approved persons or organisations being referred to in this Division as “participants”).

(2) The Agency may—

- (a) provide a participant with financial accommodation and related services on such terms and conditions as are agreed upon by the participant and the Agency;
- (b) open and maintain banking accounts;
- (c) accept money on deposit from a participant;
- (d) aggregate and divide, in such manner as it considers appropriate for the exercise of its functions, money borrowed by it for the purpose of lending to participants;
- (e) act as agent of a participant for the purpose of obtaining financial accommodation or related services for the participant and in other financial matters;
- (f) arrange insurance on behalf of participants;
- (g) provide information, guidance and advice to participants in relation to financial matters; and
- (h) exercise such other functions as may be prescribed.

(3) Where the Agency acts as agent of a participant, neither the assets of the Agency nor those of any other participant are, except in so far as the Agency and other participant otherwise expressly agree, available to satisfy any liability incurred by the participant as a result of anything done or omitted to be done by the Agency acting as such an agent.

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(4) Where the Agency acts as agent of a participant, the assets of the participant (whether held by the Agency or not) are, except in so far as the participant otherwise expressly agrees, not available to satisfy any liability of any other participant or of the Agency acting in any capacity other than as agent of the participant.

**Agency may employ staff.**

117. (1) For the purpose of enabling it to exercise its functions, the Agency may employ such staff and engage such consultants as it thinks fit.

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

(3) With the approval of the board or committee and upon such terms and conditions as are agreed upon, the Agency may make use of the services of the staff of a board or committee.

**Change of name of Agency.**

118. (1) The Governor may, at the request or with the consent of the Agency, by proclamation, change the name of the Agency.

(2) No such change of name of the Agency affects any rights or obligations of the Agency or renders defective any legal proceedings instituted or to be instituted by or against it, and any legal proceedings may be continued or commenced by or against it by its new name that might have been continued or commenced by or against it by its former name.

(3) A reference in this or any other Act, in any instrument made under this or any other Act or in any other instrument of any kind to the Agency by its former name shall be read and construed as a reference to the Agency by its new name.

**Request for dissolution of Agency.**

119. (1) A participant may, by instrument in writing, make a request to the Minister for action to be taken for the Agency to be dissolved.

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(2) The Minister may refuse to consider such a request unless the request is confirmed by the participant, by a similar instrument, within such period as the Minister determines.

**Winding up and dissolution of Agency.**

**120.** (1) Where the Minister—

- (a) is satisfied that requests have been made, and (if required) confirmed, in accordance with section 119 by a significant number of participants; and
- (b) certifies to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a),

the Governor may, by proclamation, direct the Agency to wind up its affairs.

(2) Upon a proclamation under subsection (1) taking effect, the Agency shall proceed to wind up its affairs.

(3) Notwithstanding subsection (2)—

- (a) the Governor may, by proclamation, appoint any 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 Agency, bring and defend such proceedings, and do and execute such acts, deeds and things as may be necessary.

(4) 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, as certified from time to time by the Minister, shall be payable from the funds of the Agency.

(5) The members of the Agency may not exercise any functions as members while a person holds office as liquidator of the Agency.

(6) Where the Minister is of the opinion that the affairs of the Agency are wound up, the Governor may, by proclamation, dissolve the Agency, and all money and other assets of the Agency shall become the property of the State and shall be dealt with and disposed of as the Governor may direct.

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**Appointment of administrator.**

**121. (1)** The Governor may, by proclamation, appoint a person to be administrator of the Agency, where—

- (a) all the members of the Agency have vacated their offices or have been removed from their offices; or
- (b) all or any of the members of the Agency 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 Agency that an administrator be appointed.

**(2)** The administrator of the Agency appointed under this section has all the functions of the Agency, and any act, matter or thing done or omitted to be done by the administrator shall have the same effect as if done or omitted by the Agency.

**(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 Agency by, an administrator appointed under this section, as certified from time to time by the Minister, shall be payable from the funds of the Agency.

**(5)** The members of the Agency may not exercise any functions as members while a person holds office as administrator of the Agency.

**Other bodies.**

**122. (1)** Nothing in this Division shall be construed as preventing any body from being established or created that could have been established or created had this Division not been enacted.

**(2)** Nothing in this Division affects the existence of the Agricultural Finance Agency established by The Oilseeds Marketing Board for the State of New South Wales and the Tobacco Industry Leaf Finance Agency as established before the commencement of this section.

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- (3) The regulations may make provision for or with respect to—
- (a) the dissolution of the Agricultural Finance Agency; and
  - (b) the transfer of the assets and liabilities of that body so dissolved to the Agency constituted by this Division.
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**PART VII.****PUBLIC ACCOUNTABILITY.****Review of authorities by Director.**

**123.** It is the duty of the Director to keep under review the activities of the authorities and to make regular reports on their activities.

**Reports by authorities.**

**124.** An authority shall, when requested to do so by the Director, furnish to the Director a report containing such kind of information relating to the activities of the authority as the Director requests.

**Periodical reports by authorities.**

**125.** Each authority shall, as soon as practicable, but within 6 months, after the end of each financial accounting period of the authority, prepare and forward to the Director a report, in or to the effect of a form approved by the Minister, of its activities for that financial accounting period.

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**Annual reports by Director.**

**126. (1)** As soon as practicable after 30th June, but on or before 31st December, in each year, the Director shall prepare and forward to the Minister a report of—

- (a) the Director's work and activities;
- (b) the activities of the various authorities;
- (c) the operation and effect of any marketing orders; and
- (d) such other matters or things as the Director thinks appropriate or as are directed by the Minister to be reported on,

for the 12 months ending on 30th June in that year.

**(2)** The Minister shall lay each such report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

**Annual meetings of authorities.**

**127. (1)** It is the duty of each authority—

- (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 under section 125 and such other reports as may be prescribed or directed by the Minister.

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

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

**Management audits.**

**128. (1)** The Director shall, as approved or directed by the Minister, conduct management audits for the purpose of examining the activities of authorities and assessing the extent to which any such activities are being carried on in an efficient, economical and proper manner.

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(2) A management audit may, if the Minister so approves or directs, be conducted in relation to—

- (a) the activities of one authority only;
- (b) a part only of the activities of one authority; or
- (c) the activities of more than one authority in related matters.

(3) Except in so far as the Minister otherwise approves or directs—

- (a) the Director shall consult with the authority concerned before commencing to conduct the management audit;
- (b) the Director shall afford the authority an opportunity to nominate such number of members of the staff of the authority to participate in the conduct of the management audit as the Director determines; and
- (c) any members of the staff of the authority so nominated may participate in the conduct of the management audit.

(4) Any of the functions of the Director under this section may be exercised by—

- (a) the Director personally;
- (b) other members of the staff of the Department of Agriculture approved for the purpose by the Director with the concurrence of the Minister; or
- (c) consultants employed for the purpose with the concurrence of the Minister.

**Powers of Director, etc., at management audit.**

**129. (1)** The Director, or any person approved or employed as referred to in section 128 (4), may—

- (a) enter the premises of any authority;
  - (b) require the production of and examine any documents in the custody of any member of any authority or any member of the staff of any authority; and
  - (c) require any such member to answer questions,
- in connection with and for the purposes of a management audit.



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(2) A person shall not—

- (a) delay, obstruct, hinder or impede a person in the exercise of any functions under this section;
- (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.

**Reports of management audits.**

**130.** The Director shall, as soon as practicable, prepare a report on the conduct and findings, and any recommendations, of a management audit.

**Reports to be furnished.**

**131. (1)** The Director shall furnish the Minister with a copy of each report under sections 123 and 130.

(2) The Minister shall furnish a copy of any such report to the authority concerned, unless the Minister is satisfied that there are sufficient reasons for not doing so.

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**PART VIII.**

**STATISTICS, MARKETING INFORMATION AND PROMOTION.**

**Statistics and marketing information.**

**132. (1)** The Minister may, through the Department of Agriculture, cause such information to be collected and distributed with respect to the marketing of primary products as the Minister thinks appropriate.

(2) Without limiting the generality of subsection (1), information referred to in that subsection may relate to—

- (a) statistics and marketing information;

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- (b) forecasts and statistics relating to the supply of, demand for and marketing conditions relating to primary production and relevant for producers in New South Wales;
- (c) prices, profits and costs involved in the production, marketing, collecting, cleaning, grading, transforming, packing, carrying, storing, distributing (by wholesale or retail) and delivering of primary products;
- (d) the sources of supply of primary products and the location of markets for primary products;
- (e) economy and efficiency in the distribution of primary products, so that needless waste and duplication may be so far as possible eliminated;
- (f) farm business management; and
- (g) such other matters relating to the production, marketing or consumption of primary products as the Minister thinks appropriate.

(3) Information referred to in this section may be obtained pursuant to section 137 or from any other source.

**Co-operation in marketing.**

**133.** The Minister may, through the Department of Agriculture, co-operate with, and encourage co-operation among, boards, committees, societies registered under the Co-operation Act, 1923, and other persons and organisations, for the purpose of promoting and facilitating the marketing and consumption of primary products.

**Dissemination of official information.**

**134. (1)** The Minister may, from time to time, arrange with any person to publish, broadcast or otherwise disseminate information as to the current wholesale and retail prices of any commodity or other product, and may furnish any such person with any such information.

(2) The information so furnished shall alone be published or broadcast as official information.

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(3) A person who publishes, broadcasts or otherwise disseminates information as to the current wholesale or retail prices of any commodity or other product as official information is, unless the information has been furnished by or at the direction of the Minister, guilty of an offence against this Act.

**Functions of boards, etc., not affected.**

135. (1) Nothing in this Part shall be construed as affecting the functions of a board or committee under this Act.

(2) Nothing in this Part shall be construed as affecting the function of the New South Wales Meat Industry Authority to provide, in co-operation with the Department of Agriculture, a market intelligence service referred to in section 46 of the Meat Industry Act, 1978.

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**PART IX.****INSPECTION, ETC.****Appointment of authorised persons.**

136. The Minister may appoint a person, or persons included in a class of persons, to be, for or in relation to all boards or committees or one or more specified boards or committees, an authorised person or authorised persons, as the case may be, for the purposes of a specified provision of this Act.

**Information to be furnished.**

137. (1) For the purposes of this Act, the Minister, the Director, a board or a committee may, by notice in writing served on the person to whom it is addressed either—

- (a) personally; or

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(b) by post at the person's last-known place of abode or business, require a person to furnish in writing to the Minister, the Director, the board or the committee, within the time specified in the notice, such information relating to any primary product or other product as is specified in the notice.

(2) A person shall 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 shall not furnish under this section information that is false or misleading in a material particular.

(5) A board or committee may not require information to be furnished under this section except in relation to the commodity.

**Access to premises and motor vehicles.**

**138.** (1) Subject to subsection (2), a member of the police force or an authorised person may, at all reasonable times, for the purpose of exercising any of the functions of an authorised person under this section, enter any premises where the member or person 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 member of the police force may, for the purpose of exercising any of the functions of an authorised person under this section, stop and detain any motor vehicle upon a public street or public place in which the member 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.

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(4) Where a member of the police force or an authorised person has reasonable grounds to believe that—

- (a) there is on any premises any of the commodity that is the property of the board or committee or any of the commodity the delivery of which has been lawfully demanded by the board or committee under this Act; or
- (b) there are on any premises accounts, documents, books or papers relating to any of the commodity,

the member or person, as the case may be, may make application to a stipendiary magistrate for a warrant authorising the member or person to enter those premises for the purpose of exercising the functions of an authorised person under this section.

(5) If, on an application under subsection (4), a stipendiary magistrate is satisfied by information under oath—

- (a) that there are reasonable grounds for believing that there is on any premises any of the commodity, or that there are on any premises any accounts, documents, books or papers, referred to in subsection (4); and
- (b) that the issue of a warrant is reasonably required for purposes of, or related to the operation of, this Act,

the stipendiary magistrate may grant a warrant authorising the applicant, with such assistance as the applicant thinks necessary, to enter the premises during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising any of the functions of an authorised person under this section.

(6) The functions of an authorised person under this section are—

- (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);

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- (d) to take possession of and remove any of the commodity that the authorised person reasonably suspects is the property of the board or committee or is any of the commodity the delivery of which has been lawfully demanded by the board or committee under this Act; and
- (e) to make any inquiry that the authorised person considers necessary relating to any of the commodity.

(7) A person shall not—

- (a) fail or refuse to produce any accounts, documents, books or papers referred to in subsection (6) (b); or
- (b) make any false or misleading statement in answer to any inquiry referred to in subsection (6) (e).

(8) On taking possession, as referred to in subsection (6) (d), of any of the commodity that, immediately before that taking, was not the property of the board or committee, the portion of the commodity so taken becomes the absolute property of the board or committee, 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.

(9) In this section—

“commodity” includes any product that, if produced in the area of the board or committee, would answer the description of the commodity;

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

**Demanding name and place of abode.**

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

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(2) A person who upon demand made under subsection (1)—

- (a) fails or refuses to state his or her name or place of abode; or
- (b) states a name that is not his or her name or a place of abode that is not his or her place of abode,

is guilty of an offence against this Act.

**Offences.**

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

(2) A person shall not—

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

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**PART X.****WINDING UP, ARRANGEMENTS, ETC.****Interpretation.**

**141.** In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“Court” means the Supreme Court of New South Wales;

“liquidator”, in relation to an authority, means the person appointed, or appointed provisionally, by the Court to be liquidator of the authority;

“registered liquidator” has the same meaning as in the Companies (New South Wales) Code.

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**Crown to be bound.**

**142.** 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.

**Application of winding up provisions.**

**143.** Division 6 of Part XII of the Companies (New South Wales) Code applies to an authority to the extent, if any, to which that Division would, but for this section, not apply to the authority, and the power of the Court to appoint a liquidator of the authority extends to empower the Court to appoint a liquidator of the authority provisionally.

**Power to compromise with creditors.**

**144. (1)** Where a compromise or arrangement is proposed between an authority and its creditors or any class of them, the Court may, on the application in a summary way of the authority or of any creditor of the authority, or, in the case of an authority 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 and, where the Court makes such an order, the Court may approve the explanatory statement required by section 145 (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, as the case may be, of the authority and, if the authority 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 authority 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.



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(3) Where 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 shall, for the purposes of subsection (2), be deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall 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 shall not be appointed to administer, and shall not administer, a compromise or arrangement approved under this Act between an authority 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 authority;
- (b) an auditor or an officer of the authority;
- (c) an officer of any corporation that is a mortgagee of property of the authority; 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) Where 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 325, 327, 330 and 332 of the Companies (New South Wales) Code 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 receiver and managers, of the property of the authority;

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- (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 325 of that Code to the Commission were omitted and a reference in section 330 of that Code to the Commission were a reference to the Minister for Agriculture and Fisheries; and
- (b) the provisions of section 420 of that Code apply in relation to that persons 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 authority;
  - (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 upon being so lodged the order takes effect, or shall be deemed to have taken effect, on and from the date of lodgment or such earlier date as the Court determines and specifies in the order.

**(9)** Where a compromise or arrangement referred to in subsection (1) has been proposed, the authority—

- (a) 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 authority as soon practicable; and
- (b) if a report or reports is or are obtained pursuant to paragraph (a)—shall make the report or reports available at the principal place of business of the authority for inspection by the creditors of the authority at least 7 days before the date of any meeting ordered by the Court to be convened as provided in subsection (1).

**(10)** Where no order has been made for the winding up of an authority and a compromise or arrangement has been proposed between the authority and its creditors or any class of them, the Court may, in addition to

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exercising any of its other powers, on the application in a summary way of the authority or of any creditor of the authority, restrain further proceedings in any action or other civil proceeding against the authority except by leave of the Court and subject to such terms as the Court imposes.

**Information as to compromise with creditors.**

**145. (1)** Where a meeting is convened under section 144, the authority shall—

- (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 authority, whether as members or creditors of the authority 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 authority 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 shall specify a place at which a copy of the explanatory statement can be obtained on request and, where the creditor makes such a request, the authority shall forthwith comply with the request.

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(3) Where 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 shall, on making application in that manner, be furnished by the authority free of charge with a copy of the explanatory statement.

(4) Subject to subsection (6), where an authority contravenes or fails to comply with a requirement of this section, the authority and any member or officer of the authority who is in default are each guilty of an offence.

(5) For the purposes of subsection (4), the liquidator of an authority shall be deemed to be an officer of the authority.

(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 authority, to supply particulars of the person's interests for the purposes of the explanatory statement.

**Regulations and rules.**

146. (1) Subject to this section, the provisions of—

- (a) Regulation 62 of and Schedule 9 to the Companies (New South Wales) Regulations; and
- (b) any rules of court having effect for the purposes of the Companies (New South Wales) Code,

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 an authority;
- (d) to directors of a company were a reference to members of an authority;
- (e) to the registered office of a company were a reference to the principal place of business of an authority; and
- (f) to the Commission were a reference to the Minister for Agriculture and Fisheries.

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(2) Without limiting section 163, 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).

**Exercise of statutory functions.**

147. (1) To the extent that a compromise or arrangement referred to in section 144 so provides—

- (a) the person or persons appointed to administer the compromise or arrangement shall have and may exercise all or any of the functions conferred or imposed on the relevant authority by or under any other Part of this Act or under any Act other than this Act; and
- (b) those functions may be exercised by the person or persons so appointed to the exclusion of the authority.

(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, shall have the same effect and the same consequences as if done or omitted to be done by the relevant authority without the compromise or arrangement being in force.

**Persons in default.**

148. Where a provision of this Part provides that a member or officer of an authority who is in default is guilty of an offence, the reference to the person who is in default shall, in relation to a contravention of, or failure

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to comply with, the provision, be construed as a reference to any member or officer of the authority (including a person who subsequently ceased to be a member or officer of the authority) who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention or failure.

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PART XI.

MISCELLANEOUS.

**Proclamations.**

149. A proclamation under this Act (other than under section 2)—

- (a) shall take effect from the date of its publication in the Gazette or on and from a later date specified or referred to in the proclamation; and
- (b) may, subject to this Act, be rescinded, revoked, altered or varied by a subsequent proclamation from time to time as occasion requires.

**Approvals of Minister.**

150. An approval of the Minister under this Act shall be in writing and may, subject to this Act, be rescinded, revoked, altered or varied by instrument in writing from time to time as occasion requires.

**Duties and liability of certain persons.**

151. (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.

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(3) In this section, "prescribed person" means—

- (a) a member of an authority; or
- (b) a member of the staff of an authority whose position is or is of a class or description prescribed for the purposes of this paragraph.

**Offences by members and officers.**

152. (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 \$5,000 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 \$5,000 or to imprisonment for a term not exceeding 2 years, or both.

(3) In this section, "prescribed person" means—

- (a) the Director or any other member of the staff of the Department of Agriculture;
- (b) a member of or a member of the staff of an authority; or
- (c) a person of a class or description prescribed for the purposes of this paragraph.

**Secrecy.**

153. (1) Subject to this Act, a person who is, or has at any time been, a prescribed person shall 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

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information that is or was acquired by reason of 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.

Penalty: \$5,000 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;
- (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, as the case may be.

(3) In this section, “prescribed person” means—

- (a) the Director or any other member of the staff of the Department of Agriculture;
- (b) a member of or a member of the staff of an authority; or
- (c) a member of the police force, or other person, who has exercised any function under section 138; or
- (d) a person of a class or description prescribed for the purposes of this paragraph.

**Restrictions on certain dealings.**

**154. (1)** Except as prescribed, a person who is, or has at any time been, a prescribed person shall 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 an authority.



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(2) Except as prescribed, a prescribed person shall 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 an authority.

(3) In this section, "prescribed person" means—

- (a) the Director or any other member of the staff of the Department of Agriculture;
- (b) a member of or a member of the staff of an authority; or
- (c) a person of a class or description prescribed for the purposes of this paragraph.

Penalty: \$5,000 or imprisonment for 2 years, or both.

**Offences and penalty.**

**155.** (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence against this Act.

(2) Any person who is guilty of an offence against this Act for which no penalty is otherwise expressly provided is liable to a penalty not exceeding \$2,000.

**Proceedings.**

**156.** (1) Subject to subsection (5), all proceedings for offences against this Act or the regulations shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

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

(3) Any prosecution instituted in the name of a board or committee shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the board or committee.

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(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) Notwithstanding the provisions of the Justices Act, 1902, 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 shall not 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 shall, irrespective of the amount adjudged to be paid, operate, and be enforceable in the same way, as a judgment of a court of petty sessions under the Courts of Petty Sessions (Civil Claims) Act, 1970.

(6) Judgment may be entered up in the records of any court of petty sessions 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 shall, if the information was laid in the name of a board or committee, be payable to the board or committee and shall form part of its income.

**Offences by corporations.**

157. (1) Where 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, shall be deemed to have contravened the same provision unless the person satisfies the court that—

- (a) the corporation contravened the provision without the person's knowledge;

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- (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

(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 subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence is actually committed.

(4) This section does not apply to or in respect of an authority.

**Evidentiary provisions.**

**158. (1)** In any proceedings—

- (a) any notification, requisition, direction, demand, order or other document in writing, purporting to be signed or made or sent by a board or committee, the Chairman or secretary of a board or committee or the Minister shall be judicially noticed;
- (b) the production of a copy of the Gazette purporting to contain any proclamation, notification, direction or order under this Act shall be conclusive evidence of the matters contained therein, and that all steps necessary to be taken prior to the making of the proclamation, notification, direction or order have been duly taken;
- (c) the averment on behalf of a board or committee 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, shall be prima facie evidence of that fact;

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(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 shall, upon 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, be admissible in evidence against that person and be evidence—

(i) of the matters and things thereby appearing;

(ii) that the document (or, in the case of a copy, that the original thereof) 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; and

(e) a certificate purporting to be signed by the prescribed officer of a board or committee and certifying that on a specified date or during the whole of a specified period any person was or was not registered with the board or committee shall be admissible and be evidence of the matters specified in the certificate.

(2) Subsection (1) (b) does not apply to an order to which section 84 or 90 applies.

**Service of notices.**

**159.** Any notice that is required to be given or that may be given by a board or committee under this Act or the regulations shall be deemed to have been duly given if sent by post in a letter addressed to the person to be served at the person's place of abode or business last known to the board or committee, and the notice shall be deemed to have been given at the time when a letter so posted should in the ordinary course of post be delivered.

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**Liability.**

**160.** No proceedings shall lie or be allowed by or in favour of any person against—

- (a) the Crown, the Minister, the Director, a member of an authority or a member of the staff of the Department of Agriculture or an authority; or
- (b) any person acting under the direction of the Minister, the Director or an authority,

in the execution or intended execution of this Act in respect of anything done bona fide under and for the purposes of this Act.

**Repeals.**

**161. (1)** The Acts specified in Schedule 1 are repealed to the extent specified in that Schedule.

**(2)** The several provisions of sections 104, 105 and 125 are repealed on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Savings, transitional and other provisions.**

**162.** Schedule 4 has effect.

**Regulations.**

**163. (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.

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(2) Without limiting subsection (1), the regulations may make provision for or with respect to—

- (a) any of the functions conferred or imposed on the Minister, the Director, a committee or the Agency;
- (b) the business, proceedings and meetings of a board, a committee or the Agency;
- (c) the signing of documents relating to a board, a committee or the Agency;
- (d) the custody and use of the common seal of a board, a committee or the Agency;
- (e) prescribing forms of returns and of statistics to be made and furnished in accordance with this Act and the contents thereof, and the persons (whether producers or not) by whom they shall be made, and the time and mode of making and furnishing them; and
- (f) the certificates and other forms which are to be or may be used for the purposes of this Act.

(3) Without limiting subsection (1), the regulations may make provision for or with respect to—

- (a) any of the functions conferred or imposed on a board;
- (b) the making and keeping of records by a producer, the inspection of those records and the production of those records in any legal proceedings;
- (c) authorising a board or committee in any sale or agreement for sale of the commodity by the board or committee to any person to insert conditions and to fix a sum by way of liquidated damages for any breach of conditions (which damages shall be recoverable accordingly);

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- (d) ascertaining whether a commodity is of the required quality or grade and prescribing a standard therefor, and providing for an increase or decrease in the price otherwise payable to any producer or other person for any of the commodity delivered by the producer or any other person to a board or committee according to the quality or grade of the commodity;
- (e) ascertaining whether a commodity is of the required quality or grade and prescribing a standard therefor so as to ensure that the commodity, whether it is or has, at any time, been vested in a board and whether produced in New South Wales or elsewhere shall comply with prescribed standards of quality and grade when sold by wholesale or retail in New South Wales;
- (f) regulating within the area controlled by a board or committee—
  - (i) the collecting, cleaning, grading, packing, treating, carrying, storing, marketing, branding, distributing, supplying, selling and exporting by the board or committee or any other person; and
  - (ii) the delivery by or to the board or committee or by or to any other person,  
of any of the commodity, whether it was produced within the area controlled by the board or committee or not, 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 committee or not;
- (g) prescribing periods of time in respect of which the computation of or accounting for the net proceeds of a commodity for which a board or committee is constituted;
- (h) the control and management and expenditure of the funds of an authority;
- (i) requiring the producers of a commodity produced within the area controlled by a board or committee, and authorised agents and authorised buyers for a board, to register and re-register with the board or committee at the prescribed times their names and such other particulars as may be prescribed, and requiring a producer on ceasing to produce the commodity to notify the board or committee thereof;
- (j) requiring such classes or descriptions of persons who buy or sell, as principal or agent, any of the commodity to register and re-register with a board or committee at the prescribed times their

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names and such other particulars as may be prescribed, and requiring any such person on ceasing to act as such a principal or agent to notify the board or committee thereof;

- (k) the publication of any particulars registered or notified as referred to in paragraph (i) or (j);
- (l) regulating within the area of a board the marketing, branding or stamping, storing or cold storing by any person of any of the commodity for the time being within the area of the board, whether the commodity was produced within the area of the board or not, whether the commodity was produced in New South Wales or not, and whether the commodity is or was at any time owned by the board or not;
- (m) the duties of care or precaution to be taken and methods to be used by a board or committee or any other person in the display, within the area of the board or committee, of any of the commodity for sale or in storage, treatment or custody of any of the commodity held or offered for sale, whether in any of those cases the commodity was produced within the area of the board or committee or elsewhere, whether the commodity was produced in New South Wales or elsewhere, and whether the commodity is or was at any time owned by the board or committee or not; and
- (n) establishing grades, classes or descriptions of any commodity.

(4) A regulation may impose a penalty not exceeding \$1,000 and, in the case of a continuing offence, an additional penalty not exceeding \$100 for each day during which the offence continues, for non-compliance with or contravention of any regulation.

(5) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;  
or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.



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(6) Where the Minister is of the opinion that a proposed regulation relates to any of the matters in respect of which subsection (3) or section 109 relates and would, when made, apply with respect to a board or the commodity for which a board is constituted, the regulation may be made only on the recommendation of the board.

## SCHEDULE 1.

(Sec. 161.)

## REPEALS.

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of repeal.
1927, No. 34	Marketing of Primary Products Act, 1927.	The whole Act.
1928, No. 19	Marketing of Primary Products (Amendment) Act, 1928.	The whole Act.
1930, No. 3	Marketing of Primary Products (Amendment) Act, 1930.	The whole Act.
1931, No. 11	Marketing of Primary Products (Amendment) Act, 1931.	The whole Act.
1934, No. 7	Marketing of Primary Products (Amendment) Act, 1934.	The whole Act.
1938, No. 4	Marketing of Primary Products (Amendment) Act, 1938.	The whole Act.
1939, No. 7	Dried Fruits Act, 1939.	The words "to make consequential amendments of the Marketing of Primary Products Act, 1927-1938, and certain other Acts;" in the long title. Section 4 (2).

*Marketing of Primary Products.*SCHEDULE 1—*continued.*REPEALS—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of repeal.
1940, No. 42	Marketing of Primary Products (Amendment) Act, 1940.	The whole Act.
1956, No. 11	Marketing of Primary Products (Amendment) Act, 1956.	The whole Act.
1964, No. 47	Marketing of Primary Products (Amendment) Act, 1964.	The whole Act.
1970, No. 38	Marketing of Primary Products (Amendment) Act, 1970.	The whole Act.
1978, No. 66	Marketing of Primary Products (Amendment) Act, 1978.	The whole Act.

## SCHEDULE 2.

(Secs. 11 (9), 69 (8), 115 (6).)

## PROVISIONS RELATING TO MEMBERS OF AUTHORITIES.

**Age of members.**

1. A person who is of or above the age of 70 years is not eligible to be appointed as a member of an authority.

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO MEMBERS OF AUTHORITIES—*continued.***Chairman and Deputy Chairman of authority.**

2. (1) The members of an authority shall, whenever there is a vacancy in the office of Chairman of the authority, at the first meeting of the authority at which all the members are present, elect one of the members to be Chairman of the authority.

(2) The members of an authority may, whenever there is a vacancy in the office of Deputy Chairman of the authority, at the first meeting at which all the members are present, elect one of the members to be Deputy Chairman of the authority.

(3) If a Chairman or Deputy Chairman is not so elected, the Governor may appoint a member to be Chairman or Deputy Chairman of the authority.

(4) A person who is a member and Chairman or Deputy Chairman of an authority shall be deemed to have vacated office as Chairman or Deputy Chairman if the person—

- (a) is removed from that office under subclause (5);
- (b) resigns that office by instrument in writing delivered to the authority; or
- (c) ceases to be a member of the authority.

(5) The members of an authority may, at a meeting of the authority at which all the members are present, remove a member of the authority from the office of Chairman or Deputy Chairman.

(6) Subject to this Act, the Chairman or Deputy Chairman of an authority shall hold office as such for such period as may be prescribed, but is eligible (if otherwise qualified) for re-election.

**Alternate members.**

3. (1) The regulations may make provision for or with respect to the appointment, from time to time, of a person as an alternate member to act in the office of an elected member of an authority during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member.

(2) The Minister may, from time to time, appoint a person as an alternate member to act in the office of a member of a board (other than an elected member) during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member.

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO MEMBERS OF AUTHORITIES—*continued.*

(3) The regulations may make provision for or with respect to the removal of any person from any office to which the person was appointed under subclause (1).

(4) The Minister may remove any person from any office to which the person was appointed under subclause (2).

(5) A person while acting in the office of a member of an authority 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 person.

(6) For the purposes of this clause, a vacancy in the office of a member of an authority shall be deemed to be an absence from office of the member.

(7) In section 160, clauses 1, 8 and 9 and Schedule 3—

- (a) a reference to a member of an authority includes a reference to a person acting in the office of a member of an authority;
- (b) a reference to the appointment of a member of an authority includes a reference to the appointment of a person to act in the office of a member of an authority; and
- (c) a reference to the office of a member of an authority includes a reference to the office of a person appointed to act in the office of a member of an authority.

**Terms of office.**

4. (1) Subject to this Act, an elected member of an authority shall hold office for—

- (a) the period of 4 years; or
- (b) some other period determined in relation to the authority by the Governor by proclamation,

specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

(2) Subject to this Act, a member of an authority (other than an elected member) shall hold office for such period not exceeding 4 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

(3) A period shall not be determined under subsection (1) (b) except in accordance with a request made by the relevant authority to the Minister.

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO MEMBERS OF AUTHORITIES—*continued.***Remuneration.**

5. A member of an authority 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.

**Filling of vacancy in office of member.**

6. (1) In the event of the office of any member of an authority becoming vacant a person shall, subject to this Act, be appointed to fill the vacancy.

(2) If a vacancy occurs in the office of an elected member of an authority otherwise than by reason of the expiry of the term of office for which the former member was appointed, the member appointed to fill the vacancy shall be appointed for the balance of the firstmentioned term of office.

(3) If—

- (a) a vacancy occurs in the office of an elected member of an authority otherwise than by reason of the expiry of the term for which the former member was appointed;
- (b) it appears to the Minister that the member, if elected to fill the vacancy, would have a term of office of less than 12 months; and
- (c) the authority concerned requests the Minister, by instrument in writing under the seal of the authority, that the election be dispensed with,

the Governor may appoint a person to fill the vacancy on the nomination of the Minister, without an election being held, and the person so appointed shall be deemed to be an elected member.

(4) A person may not be nominated for the purposes of subclause (3) unless the person would have been eligible to be elected to the vacancy had the election been held.

**Casual vacancies.**

7. (1) A member of an authority shall be deemed to have vacated office if the member—

- (a) dies;
- (b) absents himself or herself from 2 consecutive meetings of the authority of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the authority (which leave the authority is hereby authorised to grant) or unless, before the expiration of 2 weeks after the last of those meetings, the member is excused by the authority for being absent from those meetings;

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO MEMBERS OF AUTHORITIES—*continued.*

- (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;
- (d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (e) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister;
- (g) attains the age of 70 years; or
- (h) is removed from office in accordance with this Act.

(2) The Governor may remove a member of an authority from office for incapacity, incompetence or misbehaviour.

(3) Without affecting subclause (2), the Governor may remove from office a member of an authority who—

- (a) contravenes clause 8;
- (b) has breached the duty imposed by section 151; or
- (c) is convicted of any offence against this Act.

**Disclosure of pecuniary interests.**

8. (1) A member of an authority 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 authority; or
- (b) in a thing being done or about to be done by the authority,

shall, 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 authority.

(2) A disclosure by a member of an authority at a meeting of the authority that the member—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO MEMBERS OF AUTHORITIES—*continued.*

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

shall be deemed to be 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.

(3) An authority shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the authority from time to time.

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

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

(6) A reference in this clause to a meeting of an authority includes a reference to a meeting of a committee or sub-committee of the authority.

**Effect of certain other Acts.**

9. (1) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of a member of an authority and a member of an authority is not, as a member, subject to those provisions.

(2) Where by or under any other Act provision is made requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision shall not operate to disqualify the person from holding that office and also the office of member of an authority or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of a member of an authority shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

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## SCHEDULE 3.

(Secs. 11 (10), 69 (9), 115 (7).)

## PROVISIONS RELATING TO PROCEDURE OF AUTHORITIES.

**General procedure.**

1. The procedure for the calling of meetings of an authority and for the conduct of business at those meetings shall, subject to any procedure that is specified in this Act or prescribed by the regulations, be as determined by the authority.

**Quorum.**

2. (1) The relevant number of members of an authority, of whom one shall in the case of a board be a nominated member of the board, shall form a quorum and any duly convened meeting of the authority at which a quorum is present shall be competent to transact any business of the authority and shall have and may exercise all the functions of the authority.

(2) For the purposes of subclause (1), the relevant number of members is the next highest whole number above one-half of the number of members of the authority for the time being.

**Presiding member.**

3. (1) The Chairman of an authority or, in the absence of the Chairman, the Deputy Chairman of the authority or, in the absence of both, another member of the authority elected as chairman for the meeting by the members present shall preside at a meeting of the authority.

(2) The person acting as chairman at any meeting of an authority shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

**Voting.**

4. A decision supported by a majority of votes cast at a meeting of an authority at which a quorum is present shall be the decision of the authority.

**Minutes.**

5. (1) Each authority shall cause full and accurate minutes to be kept of the proceedings of each meeting of the authority.



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SCHEDULE 3—*continued.*PROVISIONS RELATING TO PROCEDURE OF AUTHORITIES—*continued.*

(2) Each board and committee shall submit to the Director a copy of the confirmed minutes of each meeting within 2 weeks after the day on which they were confirmed or within such other period as the Director may from time to time determine.

**First meeting of authority.**

6. The Minister shall call the first meeting of an authority (being an authority constituted after the day appointed and notified under section 2 (2)) in such manner as the Minister thinks fit.

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**SCHEDULE 4.**

(Sec. 162.)

## SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

**Interpretation.**

1. In this Schedule, "appointed day" means the day appointed and notified under section 2 (2).

**Boards.**

2. (1) The following boards shall be deemed to have been constituted as boards under this Act:—

- (a) The Barley Marketing Board for the State of New South Wales.
- (b) The Central Coast (N.S.W.) Citrus Marketing Board.
- (c) The Grain Sorghum Marketing Board for the State of New South Wales.
- (d) The Murray Valley (N.S.W.) Citrus Marketing Board.
- (e) The Oats Marketing Board for the State of New South Wales.
- (f) The Oilseeds Marketing Board for the State of New South Wales.
- (g) The Rice Marketing Board for the State of New South Wales.
- (h) The Sheep Meats Marketing Board for the State of New South Wales.

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*Marketing of Primary Products.*

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SCHEDULE 4—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

- (i) The Tobacco Leaf Marketing Board for the State of New South Wales.
- (j) The Wine Grapes Marketing Board for the Shires of Leeton, Griffith, Carrathool and Murrumbidgee.
- (k) The Yellow Maize Marketing Board for the State of New South Wales.

(2) The boards deemed by subclause (1) to have been constituted under this Act are continuations of, and the same entities as, the respective boards constituted under the Marketing of Primary Products Act, 1927.

(3) Anything done or omitted to be done under the Marketing of Primary Products Act, 1927, in relation to a board referred to in subclause (1) shall have effect, in relation to the board, after the appointed day as if it had been done under this Act.

(4) The reference in section 32 (3) to the constitution of a board pursuant to a proclamation under section 10 or 23 shall, in relation to a board referred to in subclause (1), be read and construed as a reference to the constitution of the board pursuant to a proclamation under the Marketing of Primary Products Act, 1927.

**Members of boards.**

3. (1) The elected members of a board holding office under the Marketing of Primary Products Act, 1927, immediately before the appointed day—

- (a) shall be deemed to have been duly appointed under this Act as elected members of the board;
- (b) shall, subject to this Act, hold office for the balance of their respective terms of office; and
- (c) are eligible (if otherwise qualified) for re-appointment.

(2) The members of a board (other than the elected members) holding office under the Marketing of Primary Products Act, 1927, immediately before the appointed day—

- (a) shall be deemed to have been duly appointed under this Act as nominated members of the board;
- (b) shall, subject to this Act, be deemed to have been appointed for a term that ends at the expiration of the period of 6 months commencing on the appointed day; and
- (c) are eligible (if otherwise qualified) for re-appointment.

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*Marketing of Primary Products.*

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SCHEDULE 4—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(3) Notwithstanding anything in subclause (1) or (2), a member of a board holding office under the Marketing of Primary Products Act, 1927, immediately before the appointed day shall, if the member has attained the age of 70 years on or before the appointed day, be deemed to have vacated the office on the appointed day.

**Elections and polls.**

4. (1) Any election or poll to be conducted in relation to a board or proposed board within the period of 6 months commencing on the appointed day shall, except in so far as the regulations made under clause 9 otherwise provide, be conducted in accordance with the Marketing of Primary Products Act, 1927, and the regulations under that Act, as in force respectively immediately before the appointed day.

(2) Nothing in subclause (1) authorises a person who is of or above the age of 70 years to be appointed as a member of a board.

**General savings.**

5. Subject to this Act, anything done or omitted to be done under or for the purposes of the Marketing of Primary Products Act, 1927, shall be deemed to have been done or omitted to be done under or for the purposes of this Act.

**Payments for commodities.**

6. (1) The enactment of this Act does not affect any arrangements for the payment for any commodity delivered to a marketing board under the Marketing of Primary Products Act, 1927, including an arrangement pursuant to section 14 (6) of that Act.

(2) Any scheme in force under section 14A of the Marketing of Primary Products Act, 1927, immediately before the appointed day shall be deemed to be in force under this Act.

**Grain Sorghum Marketing Board (Special Provisions) Act, 1983.**

7. Nothing in this Act affects the operation of the Grain Sorghum Marketing Board (Special Provisions) Act, 1983.

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*Marketing of Primary Products.*

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SCHEDULE 4—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Existing regulations.**

8. Any regulations in force under the Marketing of Primary Products Act, 1927, immediately before the appointed day, shall, to the extent to which they could have been made under this Act, and subject to any amendments made by regulations under this Act and to take effect from the appointed day, be deemed to have been made under this Act.

**Regulations.**

9. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) 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 a marketing board, the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than a marketing board, the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding any of the foregoing provisions of this Schedule.

*In the name and on behalf of Her Majesty I assent to this Act.*

L. W. STREET,  
*By Deputation from  
His Excellency the Governor.*

*Government House,  
Sydney, 31st December, 1983.*