

FIRST PRINT

SYDNEY FARM PRODUCE MARKET AUTHORITY (AMENDMENT) BILL 1985

EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

Justices (Sydney Market Authority) Amendment Bill 1985;

Public Finance and Audit (Sydney Market Authority) Amendment Bill 1985;

Statutory and Other Offices Remuneration (Sydney Market Authority) Amendment Bill 1985.

The principal object of the Bill is to reconstitute, with a different membership and under a different name, the public authority which manages the Sydney farm produce markets.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence in 2 stages, on days to be appointed by the Governor-in-Council.

Clause 3 provides that the Act to be amended by the proposed Act, namely, the Sydney Farm Produce Market Authority Act 1968, may be referred to as the Principal Act.

Clause 4 sets out the Schedules to the proposed Act.

Clauses 5 and 6 are formal provisions giving effect to the Schedules to the proposed Act.

Schedule 1 (1) alters the long title of the Principal Act to reflect the change of name of the Authority and to omit references to provisions of the Act which have ceased to operate.

Schedule 1 (2) alters the short title of the Principal Act.

Schedule 1 (3) omits section 2 of the Principal Act by way of statute law revision.

Schedule 1 (4) amends the definitions of terms used in the Principal Act to modify certain outdated references and for other formal reasons.

Schedule 1 (5) reconstitutes the Authority and provides for the assumption by a Managing Director of certain functions previously performed by the Chairman of the Authority.

Schedule 1 (6) amends section 9 (1) of the Principal Act in consequence of the amendments made by Schedule 1 (4) (f).

Schedule 1 (7) contains several amendments to section 11 of the Principal Act. The amendments to section 11 (2) (e) and (h) recognise the participation of retailers of general merchandise in the Sydney market and empower the Authority to regulate and assist the businesses conducted by them. The inserted provisions of section 11 (3)–(7) give the Authority power to require the furnishing to the Authority of particulars of the business of a person proposing to obtain the right to sell in a market and enable the Authority to apportion rights of that kind according to the capacity in which persons propose to exercise the rights granted to them.

Schedule 1 (8) inserts sections 11A and 11B into the Principal Act. Section 11A enables the Authority to vary the terms and conditions attached to leases, licenses and permits under which sellers at a market operate and enables the determination or revocation by the Authority of a lease, license or permit after the holder has been afforded an opportunity to be heard. Section 11B provides for an appeal to the Minister against the imposition by the Authority of certain conditions subject to which a right to sell at a market has been or is to be granted.

Schedule 1 (9) amends section 12 (1) of the Principal Act in consequence of the amendments made by Schedule 1 (4) (f).

Schedule 1 (10) amends section 14 of the Principal Act by way of statute law revision.

Schedule 1 (11) amends section 15 (4) (g) of the Principal Act in consequence of the amendments made by Schedule 1 (4) (f).

Schedule 1 (12) repeals Part IV of the Principal Act and inserts a new Part IV—Regulation of Public Markets (sections 16–19). Section 16 enables authorised Authority personnel to search vehicles at the markets outside trading hours and to require persons reasonably suspected of having committed offences to state their names and addresses. Section 17 provides for liability on the part of the owner of a motor vehicle where the vehicle is illegally parked at a market. Section 18 allows the issue of infringement notices for parking offences and certain other offences prescribed by the regulations. Section 19 empowers the Authority to fix maximum fees for portage and other services provided at markets.

Schedule 1 (13) amends section 35 of the Principal Act, to enable regulations to be made with respect to the registration of motorised unloading devices and other vehicles used at markets and with respect to parking offences at markets. The amendment also provides that the regulations may create offences punishable by fines not exceeding \$1,000 and makes further provision with respect to the scope and content of regulations generally.

Schedule 1 (14) amends section 39 of the Principal Act in consequence of the amendments made by Schedule 1 (5).

Schedule 1 (15) repeals and substitutes section 40 of the Principal Act and provides for the payment to the Authority of penalties recovered under the Principal Act in certain cases.

Schedule 1 (16) amends section 43 of the Principal Act in consequence of the amendment made by Schedule 1 (4) (f).

Schedule 1 (17) omits section 45 of the Principal Act by way of statute law revision.

Schedule 1 (18) inserts Schedule 1 into the Principal Act, which relates to the constitution and procedure of the reconstituted Authority.

Schedule 2 contains appropriate savings and transitional provisions in relation to the identity and membership of the Authority, the construction of certain references, and the application of certain provisions of the Principal Act that are amended by the proposed Act. Clause 5 of that Schedule validates any steps taken, in anticipation of the enactment of the proposed Act, to secure the appointment of a Managing Director and other members of the reconstituted Authority and clause 6 of that Schedule enables the making of regulations of a saving or transitional nature in consequence of the enactment of the proposed Act or any of its cognate enactments.

THEORY OF PROBABILITY

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**SYDNEY FARM PRODUCE MARKET AUTHORITY
(AMENDMENT) BILL 1985**

No. , 1985

A BILL FOR

An Act to amend the Sydney Farm Produce Market Authority Act 1968 to alter the constitution of the public authority established by that Act and to make further provision with respect to the control and regulation of public markets in the County of Cumberland.

See also Justices (Sydney Market Authority) Amendment Bill 1985; Public Finance and Audit (Sydney Market Authority) Amendment Bill 1985; Statutory and Other Offices Remuneration (Sydney Market Authority) Amendment Bill 1985.

Sydney Farm Produce Market Authority (Amendment) 1985

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

5 Short title

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

Commencement

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

(2) Schedule 1 (4) (f), (5) and (18), section 5 in its application to those provisions and Schedule 2 (clause 4 excepted) shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

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

Principal Act

3. The Sydney Farm Produce Market Authority Act 1968 is referred to
20 in this Act as the Principal Act.

Schedules

4. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT

25 SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Amendment of Act No. 11, 1968

5. The Principal Act is amended in the manner set forth in Schedule 1.

Savings, transitional and other provisions

6. Schedule 2 has effect.

SCHEDULE 1

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT

- (1) (a) Long title—
5 Omit "Farm Produce".
- (b) Long title—
 Omit "to provide for the transfer to the service of the Authority
 of certain servants of the Council of the City of Sydney;".
- (2) Section 1 (1)—
10 Omit "Farm Produce".
- (3) Section 2—
 Omit the section.
- (4) (a) Section 3, definition of "Authority"—
 Omit "Farm Produce".
- 15 (b) Section 3, definitions of "City Markets", "prescribed"—
 Omit the definitions.
- (c) Section 3, definition of "council"—
 Omit " , as subsequently amended".
- (d) Section 3, definition of "Managing Director"—
20 After the definition of "land", insert:
 "Managing Director" means Managing Director of the
 Authority;
- (e) Section 3, definition of "public market"—
25 Omit "and the City Markets or parts thereof maintained,
 controlled and managed by the Authority", insert instead "or any
 part of any such market".

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(f) Section 3 (2), (3)—

At the end of section 3, insert:

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

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

(3) The Chairperson of the Authority may be referred to as the Chairman or Chairwoman, as the case requires.

(5) Sections 4, 5—

Omit the sections, insert instead:

Constitution of Authority

4. (1) There is constituted by this Act a corporation under the corporate name of the "Sydney Market Authority".

(2) The Authority—

(a) shall have and may exercise the functions conferred or imposed on it by or under this or any other Act;

(b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister; and

(c) shall, for the purposes of any Act, be deemed to be a statutory body representing the Crown.

(3) The Authority shall consist of 9 members appointed by the Governor, of whom 1 shall be a full-time member and 8 shall be part-time members.

(4) The full-time member shall, in and by the instrument of the member's appointment, be appointed as the Managing Director of the Authority.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(5) Of the part-time members—

(a) one shall be nominated by the Minister as the Chairperson of the Authority;

5 (b) 5 shall be nominated by the Minister after consideration of a panel of names submitted to the Minister, in accordance with any request made by the Minister, by organisations representing producers of farm produce, wholesalers, retailers and other interests concerned in the use and operation of public markets;

10 (c) one shall be nominated by the Minister for Consumer Affairs to represent the interests of consumers; and

(d) one, being an officer employed within the Treasury, shall be nominated by the Treasurer as the Deputy Chairperson of the Authority.

15 (6) Schedule 1 has effect with respect to the constitution and procedure of the Authority.

Functions of Managing Director

5. The Managing Director—

20 (a) is responsible, as the chief executive officer of the Authority, for the management of the affairs of the Authority subject to and in accordance with any directions of the Authority; and

25 (b) shall have and may exercise the functions conferred or imposed on the Managing Director by or under this or any other Act.

(6) Section 9 (1)—

Omit “and discharging the powers, authorities, duties and”, insert instead “the”.

(7) (a) Section 11 (1)—

30 Omit the subsection, insert instead:

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(1) The Authority may within the County of Cumberland provide, maintain, control and manage public markets for the sale or disposal of farm produce and other merchandise.

(b) Section 11 (2) (a)—

5 Omit “, as subsequently amended”.

(c) Section 11 (2) (e)—

After “produce” where firstly occurring, insert “and vendors of any kind of merchandise”.

(d) Section 11 (2) (e)—

10 After “produce” where secondly occurring, insert “and other merchandise”.

(e) Section 11 (2) (h)—

After “produce”, insert “or other merchandise”.

(f) Section 11 (2) (j)—

15 Omit “or discharge of its powers, authorities, duties and”, insert instead “of its”.

(g) Section 11 (3)–(7)—

After section 11 (2), insert:

20 (3) A person seeking to obtain a right to use and occupy any portion or portions of a public market may apply to the Authority in writing and shall furnish to the Authority such

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

information as the Authority may reasonably request (whether in an approved form made available for the purpose of making an application, or otherwise) in connection with the application.

5 (4) Without limiting the generality of subsection (2) (e), the conditions for the time being attached to a lease, license or permit referred to in that paragraph may include a condition to the effect that the person having the benefit of that lease, license or permit, while using or occupying any portion or portions of a public market by virtue of a right conferred by that lease, license
10 or permit—

 (a) shall not carry on any business other than the business of a farm produce agent as defined in the Farm Produce Act 1983; or

15 (b) shall not carry on any business other than the business of a farm produce merchant as defined in that Act.

 (5) Every lease, license or permit referred to in subsection (2) (e) shall, by force of this subsection, be subject to the condition that the person having the benefit of the lease, license or permit shall not, whether for consideration or otherwise, attempt to
20 assign or encumber that benefit or, unless the express permission of the Authority given in writing is first obtained, permit any other person to use or occupy the portion or portions of a public market to which the lease, license or permit relates.

25 (6) A right of use and occupancy of a portion or portions of a public market, in whatever form granted, cannot be assigned or encumbered by the holder of that right except with the express permission of the Authority given in writing, and any purported assignment or encumbrance of such a right without that permission is void.

30 (7) Where the Authority determines that a right of use and occupancy of any portion or portions of a public market should only be granted subject to certain conditions, or should not be granted at all, to the person who sought to obtain the right, the Authority shall, as soon as may be practicable, notify that person
35 of the Authority's determination and of the reasons for it.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(8) Sections 11A, 11B—

After section 11, insert:

Variation or termination of rights of use and occupancy

5 11A. (1) The Authority may, by notice in writing served on
a person having a right of use and occupancy referred to in
section 11 (not being a right conferred by instrument in writing
under the seal of the Authority), vary or revoke any of the
10 conditions of the lease, license or permit by which the right was
conferred or specify new conditions to which the lease, license
or permit shall be subject.

(2) Except as provided by subsection (3), a notice under
subsection (1) takes effect when it is served on the holder of the
lease, license or permit to which it relates.

15 (3) A notice under subsection (1) which specifies, as a new
condition of a lease, license or permit, a condition of the kind
referred to in section 11 (4) takes effect, except where an appeal
is lodged under section 11B, upon the expiry of the time
prescribed for lodgment of an appeal under that section.

20 (4) Where the Authority considers that a lease should be
determined or that a license or permit should be revoked, the
Authority—

25 (a) may give notice in writing to the holder of the lease,
license or permit that the Authority intends to determine
or revoke the lease, license or permit, as the case may be;
and

(b) shall afford the holder 1 month, or such longer period as
the Authority may allow, to show cause why the lease,
license or permit should not be determined or revoked.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

5 (5) Unless it is satisfied that sufficient cause has been shown for not doing so, the Authority may, by a further notice in writing to the holder of a lease, license or permit given at any time after the period determined under subsection (4) (b) has expired, determine the lease or revoke the license or permit, as the case may be.

(6) Nothing in this section limits or otherwise affects the rights of the Authority under any lease, license, permit or agreement, whether written or not.

10 **Appeal against refusal of right**

15 11B. (1) In any case in which the Authority has determined that a right of use and occupancy referred to in section 11 should only be held subject to a condition of the kind referred to in section 11 (4), the person seeking to hold the right may appeal to the Minister.

(2) An appeal shall be lodged in the manner and within the time prescribed and shall, except as otherwise provided by the regulations, be heard and dealt with as the Minister thinks fit.

20 (3) In determining an appeal, the Minister may confirm or vary a decision of the Authority or may rescind the Authority's decision and grant the appellant a right of use and occupancy on such terms and conditions as the Minister thinks fit.

(4) The Minister's determination of an appeal shall be final and binding on the Authority and the appellant.

25 (9) Section 12 (1)—

Omit "powers, authorities, duties and".

(10) (a) Section 14—

Omit " , as subsequently amended" wherever occurring.

(b) Section 14 (2) (b)—

30 Omit "the said Act, as so amended", insert instead "the Public Works Act 1912".

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(11) Section 15 (4) (g)—

Omit “, performance or discharge by the Authority of the powers, authorities, duties and”, insert instead “by the Authority of the”.

5 (12) Part IV—

Omit the Part, insert instead:

PART IV

REGULATION OF PUBLIC MARKETS

Protection of farm produce and other merchandise

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16. (1) In this section—

“authorised officer” means a servant of the Authority authorised in writing by the Authority to exercise the functions of an authorised officer under this section.

(2) An authorised officer may—

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(a) stop and detain any person appearing to be in charge of a vehicle within any public market—

(i) on any Saturday, Sunday or public holiday; or

(ii) outside the wholesale trading hours on any other day; or

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(b) stop and detain any person at a public market whom the authorised officer reasonably suspects of having committed an offence against this Act or the regulations or any other offence in connection with the market or any property at the market.

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(3) When intending to exercise the functions conferred by subsection (4) (a) in relation to any person, the authorised officer shall inform the person that the person is obliged to permit the search of a vehicle for the purposes of this Act.

(4) The authorised officer may—

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(a) search—

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (i) any vehicle of which a person detained under subsection (2) (a) appears to be in charge; and
 - (ii) any container carried by the vehicle,
- 5 to the extent necessary to establish whether it contains any farm produce or other merchandise; or
- (b) where a person is reasonably suspected by the authorised officer of having committed an offence against this Act or the regulations or an offence in connection with a public market or any property at a public market—ask the person
- 10 to state the person's full name and residential address to the authorised officer.
- (5) A person who—
- (a) whether by refusing to open any vehicle or part of a vehicle or to open any container, or otherwise, obstructs or hinders
- 15 any search authorised by subsection (4) (a); or
- (b) on being asked by an authorised officer in pursuance of subsection (4) (b) to state the person's full name and residential address, fails or refuses to do so or states a false name or residential address,
- 20 is guilty of an offence and liable to a penalty not exceeding \$2,000.
- (6) A person is not guilty of an offence under subsection (5) (b) unless it is established that the authorised officer—
- (a) identified himself or herself as an authorised officer; and
- 25 (b) warned the person that a failure or refusal to state the person's full name and residential address is an offence.
- (7) Upon request by any person in relation to whom an authorised officer is exercising any of the functions of an authorised officer under this section, the authorised officer shall
- 30 produce the authorisation in writing by which the officer is authorised to exercise those functions.
- (8) Nothing in this section authorises—

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(a) the detention of any person for longer than is reasonably necessary for the exercise by an authorised officer of the functions of an authorised officer under this section; or

5 (b) the search of any briefcase, handbag or similar item suited to contain personal belongings in small quantities or of any container that is part of the furnishings or fittings of the interior of that part of a vehicle which is designed for the conveyance of the driver and passengers.

10 (9) Nothing in this section derogates from any power otherwise conferred by law upon an authorised officer in any other capacity which authorises the detention of persons, or the inspection or seizure of property.

Parking of vehicles on land vested in Authority

17. (1) In this section—

15 “owner”, in relation to a vehicle, includes—

(a) a person who is the owner or joint owner or part owner of the vehicle and any person, other than the lessor under a hire-purchase agreement relating to the vehicle, who has the use of the vehicle under such an agreement; and

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(b) in the case of a motor vehicle—

(i) the person in whose name the vehicle is registered under the regulations made under the Motor Traffic Act 1909, except where that person has sold or otherwise disposed of the vehicle and has complied with the provisions of those regulations in respect of that sale or disposal;

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(ii) where the vehicle has affixed to it a trader's plate issued under that Act for use as prescribed by those regulations, the person to whom that trader's plate is on issue; or

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Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- 5 (iii) a person who, by virtue of a regulation under section 3 (1) (q11) or (q12) of the Motor Traffic Act 1909, is to be treated as being, for the purposes of section 18A of that Act, the owner of the vehicle;

“parking offence” means the offence committed by a person who contravenes any regulation made under this Act for or with respect to the standing, waiting or parking of vehicles.

- 10 (2) Where a parking offence occurs, the person who, at the time of the occurrence of the offence, is the owner of the vehicle to which the offence relates is, by virtue of this section, guilty of an offence under the regulation relating to the parking offence in all respects as if the person were the actual offender guilty of the
15 parking offence, unless—

- (a) in any case where the offence is dealt with under section 18, the owner satisfies the prescribed officer under that section that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used; or
20 (b) in any other case, the court is satisfied that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used.

- 25 (3) Nothing in this section affects the liability of an actual offender in respect of a parking offence but, where a penalty has been imposed on, or recovered from, any person in relation to any parking offence, no further penalty shall be imposed on or recovered from any other person in relation to the same occurrence.

- 30 (4) The provisions of this section shall be construed as supplementing, and not as derogating from, any other provision of this Act or the regulations or any other Act or any regulation, by-law or ordinance under any other Act.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued***Penalty notices for certain offences**

18. (1) Where it appears to a prescribed officer that any person has committed, or by virtue of section 17 is guilty of, any parking offence (within the meaning of that section) or any offence against the regulations which is prescribed as an offence to which this subsection applies, the prescribed officer may serve a notice on that person to the effect that if that person does not desire to have the matter determined by a court, that person may pay to an officer specified in the notice within the time so specified an amount of penalty prescribed for that offence if dealt with under this section.

(2) Any notice under subsection (1)—

(a) may be served personally or by post; or

(b) if it relates to an offence of which the owner of a vehicle is guilty by virtue of section 17, may be addressed to the owner without naming the owner or stating the owner's address and may be served by leaving it on or attaching it to the vehicle.

(3) Any person alleged to have committed or to be guilty of an offence to which subsection (1) applies has the right to decline to be dealt with under this section.

(4) Any person who fails to pay the penalty within the time specified in the notice given to the person under subsection (1) or within such further time as may in any particular case be allowed shall be deemed to have declined to be dealt with under this section.

(5) Where the amount of any prescribed penalty for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.

(6) Payment of a penalty in accordance with this section shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(7) The regulations may—

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- 5 (a) prescribe offences to which subsection (1) applies by setting out the offences or by reference to the regulation or part of the regulation creating the offence;
- (b) prescribe the amount of penalty payable under this section for any prescribed offence;
- 10 (c) for the purposes of this section, prescribe different amounts of penalties for different offences or classes of offences or for offences or classes of offences having regard to the circumstances in which they are committed; and
- (d) prescribe the persons or classes of persons who shall be prescribed officers for the purposes of this section.
- (8) No amount of penalty prescribed under this section for any offence shall exceed any maximum amount of penalty which could be imposed for the offence by a court.
- 15 (9) The provisions of this section shall be construed as supplementing, and not as derogating from, any other provision of this Act or the regulations or any other Act or any regulation, by-law or ordinance under any other Act in relation to proceedings which may be taken in respect of offences.
- 20 **Fees for services at public markets**
19. (1) The Authority may determine the maximum fees that may be charged by persons providing portorage or unloading services, or any other services of a prescribed kind, at or in connection with a public market.
- 25 (2) The Authority may from time to time vary or rescind a determination of a maximum fee.
- (3) A maximum fee may apply generally or be limited in its application by reference to specified exceptions or factors and may be uniform in its application or apply differently according to different factors of a specified kind.
- 30 (4) A determination of a maximum fee, or a variation or rescission of such a determination, shall take effect from the date of publication in the Gazette of a notice by the Authority of the determination, variation or rescission.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(5) The fee charged for any service in respect of which a maximum fee for the time being applies shall in no case exceed the maximum fee.

(13) (a) Section 35 (1) (d)—

5 Omit “animals;”, insert instead:

animals, including—

(i) providing for the registration by the Authority of motorised unloading devices and other vehicles used for the movement of goods; and

10 (ii) by signs or markings, or otherwise, regulating or prohibiting the standing, waiting or parking of vehicles;

(b) Section 35 (1) (h)—

Omit the paragraph, insert instead:

15 (h) creating an offence punishable by a penalty not exceeding \$1,000.

(c) Section 35 (2), (3)—

Omit the subsections, insert instead:

(2) A provision of a regulation may—

20 (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

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(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.

5 (3) Section 41 of the Interpretation Act 1897 applies in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act 1969.

(14) Section 39—

Omit “Chairman”, insert instead “Managing Director”.

10 (15) Section 40—

Omit the section, insert instead:

Offences and penalties

15 40. (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Except as provided by subsection (3), any penalty and other money recovered in respect of an offence against this Act or the regulations shall be paid to the Authority instead of being carried to the Consolidated Fund.

20 (3) Any penalty and other money recovered as a result of proceedings taken by a member of the police force for an offence against this Act or the regulations shall be paid into the Consolidated Fund.

(16) (a) Section 43 (1)—

25 Omit “powers, authorities, duties or”.

(b) Section 43 (4)—

Omit “or discharge of any power, authority, duty or”, insert instead “of any”.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(17) Section 45—

Omit the section.

(18) Schedule 1—

At the end of the Act, insert:

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SCHEDULE 1

(Sec. 4 (6))

CONSTITUTION AND PROCEDURE OF THE AUTHORITY

Interpretation

1. In this Schedule—

10

“Chairperson” means the Chairperson of the Authority;

“Deputy Chairperson” means the Deputy Chairperson of the Authority;

“part-time member” means a member of the Authority other than the Managing Director, and includes the Chairperson.

Age of member

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2. A person who is of or above the age of 65 years is not eligible to be appointed as a member or to act in the office of a member under clause 4.

Term of office

3. Subject to this Schedule, a member shall hold office—

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(a) in the case of the Managing Director—for such period not exceeding 7 years; or

(b) in the case of a part-time member—for such period not exceeding 3 years,

as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

*Sydney Farm Produce Market Authority (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued***Acting members**

5 4. (1) The Governor may from time to time appoint a person to act in the office of a member (other than the office of Managing Director or Chairperson) 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 and shall be deemed to be a member.

10 (2) The Governor may from time to time appoint a person to act in the office of Managing Director during the illness or absence of the Managing Director, and the person so appointed, while so acting, shall have and may exercise all the functions of the Managing Director and shall be deemed to be the Managing Director.

15 (3) The Deputy Chairperson, during the illness or absence of the Chairperson, shall have and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

(4) The Governor may remove any person from any office to which the person was appointed under this clause.

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

20 (6) For the purposes of this clause—

(a) a vacancy in the office of the Chairperson, the Deputy Chairperson or another member shall be deemed to be an absence from office of the Chairperson, Deputy Chairperson or other member, as the case may be; and

25 (b) a part-time member shall be deemed to be absent from office as a part-time member during any period when the member acts in the office of the Managing Director pursuant to an appointment under subclause (2).

Managing Director

30 5. The Managing Director shall devote the whole of his or her time to the duties of the office of Managing Director, except as permitted by this Act or except with the consent of the Minister.

Remuneration

35 6. (1) The Managing Director is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Managing Director.

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

*Sydney Farm Produce Market Authority (Amendment) 1985***SCHEDULE 1—continued****AMENDMENTS TO THE PRINCIPAL ACT—continued****Filling of vacancy in office of member**

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

Casual vacancies

- 5 8. (1) A member shall be deemed to have vacated office if the member—
- (a) dies;
- 10 (b) being the Managing Director, absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister or unless the absence is occasioned by illness or other unavoidable cause;
- 15 (c) being a part-time member, absents himself or herself from 4 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 Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
- (d) 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;
- 20 (e) 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;
- 25 (f) 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;
- (g) being the Managing Director, engages in any paid employment outside the duties of the office of Managing Director, except with the consent of the Minister;
- 30 (h) ceases to hold the qualification by which the member was appointed;
- (i) resigns the office by instrument in writing addressed to the Minister;
- (j) attains the age of 65 years;
- (k) is retired from office by the Governor under subclause (2); or
- (l) is removed from office by the Governor under subclause (3), (4) or (5).
- 35 (2) The Managing Director may, after attaining the age of 60 years and before attaining the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—continued

AMENDMENTS TO THE PRINCIPAL ACT—continued

(3) The Governor may remove the Managing Director from office for incapacity, incompetence or misbehaviour.

(4) The Governor may remove a part-time member from office.

5 (5) Without affecting the generality of subclauses (3) and (4), the Governor may remove from office a member who contravenes the provisions of clause 9.

Disclosure of pecuniary interests

10 9. (1) A member who has a direct or indirect pecuniary interest—
 (a) in a matter that is being considered, or is about to be considered, at a meeting of the 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.

15 (2) A disclosure by a member 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
 20 (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.

25 (3) The 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.

30 (4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Minister otherwise determines—

(a) be present during any deliberation of the Authority, or take part in any decision of the Authority, with respect to that matter; or
 35 (b) exercise any functions under this Act with respect to that thing, as the case may require.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Authority or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises by reason only of the fact that the member is a producer, wholesaler, retailer or consumer of farm produce or other merchandise.

(7) A reference in this clause to a meeting of the Authority includes a reference to a meeting of a committee established under section 12.

Effect of certain other Acts

10. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

(2) Where by or under any other Act provision is made requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 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 a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

(3) The office of a part-time member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

Preservation of rights of Managing Director previously public servant, etc.

11. (1) In this clause—

“statutory body” means any body declared under clause 13 to be a statutory body for the purposes of this Schedule;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

(2) Subject to subclause (3) and to the terms of appointment, where the Managing Director was, immediately before being appointed as Managing Director—

(a) an officer of the Public Service or a Teaching Service;

(b) a contributor to a superannuation scheme;

(c) an officer employed by a statutory body; or

(d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

*Sydney Farm Produce Market Authority (Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

he or she—

(e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;

5 (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as Managing Director; and

(g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

10 as if he or she had continued to be such an officer, contributor or person during his or her service as Managing Director and—

(h) his or her service as Managing Director shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and

15 (i) he or she shall be deemed to be an officer or employee, and the Authority shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

20 (3) If the Managing Director would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as Managing Director or at any later time while holding office as Managing Director) a contributor to any other superannuation scheme, and the provisions of subclause (2) (i) cease to apply to or in respect of him or her and the Authority in any case where
25 he or she becomes a contributor to any such other superannuation scheme.

(4) Subclause (3) does not prevent the payment to the Managing Director upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had
30 ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(5) The Managing Director shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

35 **Managing Director entitled to re-appointment to former employment in certain cases**

12. (1) In this clause, “statutory body” means any body declared under clause 13 to be a statutory body for the purposes of this Schedule.

(2) A person who—

40 (a) ceases to be Managing Director by reason of the expiration of the period for which the person was appointed or by reason of resignation;

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(b) was, immediately before being appointed as Managing Director—

(i) an officer of the Public Service or a Teaching Service; or

(ii) an officer or employee of a statutory body; and

(c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee, shall be entitled to be appointed to some position in the Public Service, the Teaching Service or the service of the statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as Managing Director.

(3) Where subclause (2) does not apply to a person who—

(a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (2) (b); and

(b) is after that appointment appointed as Managing Director,

the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be Managing Director, as are specified in the instrument of appointment as Managing Director or as are agreed upon by the person and by or on behalf of the Government.

Declaration of statutory bodies

13. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

Liability of members, etc.

14. (1) No matter or thing done by the Authority, any member or any person acting under the direction of the Authority shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

(2) Nothing in this clause exempts any member from liability to be surcharged with the amount of any payment which is disallowed by the Auditor-General in the accounts of the Authority and which the member authorised or joined in authorising.

General procedure

15. The procedure for the calling of meetings of the Authority and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Authority.

Quorum

16. Five members, of whom one shall be the Managing Director, shall form a quorum for a meeting of the Authority.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—continued

AMENDMENTS TO THE PRINCIPAL ACT—continued

Presiding member

17. (1) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both, another part-time member elected as chairperson for the meeting by the members present shall preside at a meeting of the Authority.

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

Voting

18. A decision supported by a majority of the votes cast at a meeting of the Authority at which a quorum is present shall be the decision of the Authority.

Minutes

19. The Authority shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Authority.

Seal of the Authority

20. The common seal of the Authority shall be kept in the custody of the Managing Director and shall not be affixed to any instrument except in pursuance of a resolution of the Authority.

First meeting of the Authority

21. The Minister shall call the first meeting of the Authority in such manner as the Minister thinks fit.

SCHEDULE 2

(Sec. 6)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Continuity of the Authority

1. Except to the extent necessary to give effect to the amendments made to the Principal Act by this Act, the Sydney Farm Produce Market Authority constituted under the Principal Act, as in force immediately before the commencement of this clause, and the Sydney Market Authority constituted under the Principal Act, as amended by this Act, shall be deemed to be one and the same statutory body.

*Sydney Farm Produce Market Authority (Amendment) 1985*SCHEDULE 2—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Transitional constitution of the Authority**

2. (1) The person holding office, immediately before the commencement of this clause, as the Chairman of the Sydney Farm Produce Market Authority shall, on and from the commencement of this clause, subject to the Principal Act, as amended by this Act, hold
5 office as the Managing Director of the Sydney Market Authority for the remainder of the term for which he was appointed to hold office as that Chairman.

(2) A person referred to in section 4 (1) (c) (iii) or (v) of the Principal Act, as in force immediately before the commencement of this clause, holding office as a member of the Sydney Farm Produce Market Authority, shall continue, subject to the Principal Act, as
10 amended by this Act, to hold office as a member of the Sydney Market Authority for the remainder of the term for which the person was appointed to hold the firstmentioned office and shall be deemed to be a member referred to in section 4 (5) (d) or (b), respectively, of the Principal Act, as amended by this Act.

(3) Clause 8 (1) (j) of Schedule 1 to the Principal Act, as amended by this Act, does
15 not apply to a person to whom subclause (2) applies.

Construction of certain references

3. (1) A reference in any Act or statutory instrument, or in any other instrument of any kind, whether enacted, made or executed before, or on or after, the commencement of this clause—

20 (a) to the Sydney Farm Produce Market Authority Act 1968; or

(b) to the Sydney Farm Produce Market Authority,
shall be read as a reference—

(c) to the Sydney Market Authority Act 1968; and

(d) to the Sydney Market Authority,
25 respectively.

(2) A reference in any Act or statutory instrument, or in any other instrument of any kind, enacted, made or executed before the commencement of this clause, to the Chairman of the Sydney Farm Produce Market Authority, being a reference made in relation to any function of that Chairman which, under the Principal Act, as amended
30 by this Act, is a function that may be exercised by the Managing Director of the Sydney Market Authority as constituted by that Act, as so amended, shall be read as a reference to the Managing Director of the Sydney Market Authority.

Application of amendments to existing rights

4. The provisions of sections 11, 11A and 11B of the Principal Act, as amended by
35 this Act, extend to apply to and in respect of rights to use and occupy a portion or portions of a public market that were granted before the commencement of this clause, as well as in respect of any such rights subsequently granted.

Validation

5. Any matter or thing done at any time before the commencement of this clause for
40 or toward—

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 2—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (a) the appointment, for a term commencing on or after the expiry of the term of office referred to in clause 2 (1), of a Managing Director of the Sydney Market Authority;
- 5 (b) the appointment, for an appropriate term, of a member of the Sydney Market Authority referred to in section 4 (5) (b) of the Principal Act, as amended by this Act, to replace a member to whom clause 2 (2) applies, on the expiry of that member's term of office; or
- (c) the appointment of a member of the Sydney Market Authority referred to in section 4 (5) (a), (c) or (d) of the Principal Act, as amended by this Act,
- 10 which, had the Principal Act, as amended by this Act, been in force at the time at which the matter or thing was done, would have been valid is validated.

Regulations

- 6. (1) The regulations under the Principal Act may make provision of a saving or transitional nature consequent on the enactment of this Act, the Justices (Sydney Market Authority) Amendment Act 1985, the Public Finance and Audit (Sydney Market Authority) Amendment Act 1985 or the Statutory and Other Offices Remuneration (Sydney Market Authority) Amendment Act 1985.

(2) A provision made in accordance with subclause (1) may take effect as from the day appointed and notified under section 2 (2) or a later day.

- 20 (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—

- 25 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.

- 30 (4) A provision made in accordance with subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding any other clause of this Schedule.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985

**SYDNEY FARM PRODUCE MARKET AUTHORITY (AMENDMENT)
ACT 1985 No. 135**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 135, 1985

An Act to amend the Sydney Farm Produce Market Authority Act 1968 to alter the constitution of the public authority established by that Act and to make further provision with respect to the control and regulation of public markets in the County of Cumberland. [Assented to, 25th November, 1985.]

See also Justices (Sydney Market Authority) Amendment Act 1985; Public Finance and Audit (Sydney Market Authority) Amendment Act 1985; Statutory and Other Offices Remuneration (Sydney Market Authority) Amendment Act 1985.

Sydney Farm Produce Market Authority (Amendment) 1985

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

Short title

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

Commencement

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

(2) Schedule 1 (4) (f), (5) and (18), section 5 in its application to those provisions and Schedule 2 (clause 4 excepted) shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

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

Principal Act

3. The Sydney Farm Produce Market Authority Act 1968 is referred to in this Act as the Principal Act.

Schedules

4. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Amendment of Act No. 11, 1968

5. The Principal Act is amended in the manner set forth in Schedule 1.

Savings, transitional and other provisions

6. Schedule 2 has effect.

SCHEDULE 1

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT

- (1) (a) Long title—
Omit "Farm Produce".
- (b) Long title—
Omit "to provide for the transfer to the service of the Authority of certain servants of the Council of the City of Sydney;".
- (2) Section 1 (1)—
Omit "Farm Produce".
- (3) Section 2—
Omit the section.
- (4) (a) Section 3, definition of "Authority"—
Omit "Farm Produce".
- (b) Section 3, definitions of "City Markets", "prescribed"—
Omit the definitions.
- (c) Section 3, definition of "council"—
Omit " , as subsequently amended".
- (d) Section 3, definition of "Managing Director"—
After the definition of "land", insert:
"Managing Director" means Managing Director of the Authority;
- (e) Section 3, definition of "public market"—
Omit "and the City Markets or parts thereof maintained, controlled and managed by the Authority", insert instead "or any part of any such market".

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(f) Section 3 (2), (3)—

At the end of section 3, insert:

(2) In this Act—

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

(3) The Chairperson of the Authority may be referred to as the Chairman or Chairwoman, as the case requires.

(5) Sections 4, 5—

Omit the sections, insert instead:

Constitution of Authority

4. (1) There is constituted by this Act a corporation under the corporate name of the "Sydney Market Authority".

(2) The Authority—

- (a) shall have and may exercise the functions conferred or imposed on it by or under this or any other Act;
- (b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister; and
- (c) shall, for the purposes of any Act, be deemed to be a statutory body representing the Crown.

(3) The Authority shall consist of 9 members appointed by the Governor, of whom 1 shall be a full-time member and 8 shall be part-time members.

(4) The full-time member shall, in and by the instrument of the member's appointment, be appointed as the Managing Director of the Authority.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(5) Of the part-time members—

- (a) one shall be nominated by the Minister as the Chairperson of the Authority;
- (b) 5 shall be nominated by the Minister after consideration of a panel of names submitted to the Minister, in accordance with any request made by the Minister, by organisations representing producers of farm produce, wholesalers, retailers and other interests concerned in the use and operation of public markets;
- (c) one shall be nominated by the Minister for Consumer Affairs to represent the interests of consumers; and
- (d) one, being an officer employed within the Treasury, shall be nominated by the Treasurer as the Deputy Chairperson of the Authority.

(6) Schedule 1 has effect with respect to the constitution and procedure of the Authority.

Functions of Managing Director

5. The Managing Director—

- (a) is responsible, as the chief executive officer of the Authority, for the management of the affairs of the Authority subject to and in accordance with any directions of the Authority; and
- (b) shall have and may exercise the functions conferred or imposed on the Managing Director by or under this or any other Act.

(6) Section 9 (1)—

Omit “and discharging the powers, authorities, duties and”, insert instead “the”.

(7) (a) Section 11 (1)—

Omit the subsection, insert instead:

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(1) The Authority may within the County of Cumberland provide, maintain, control and manage public markets for the sale or disposal of farm produce and other merchandise.

(b) Section 11 (2) (a)—

Omit “, as subsequently amended”.

(c) Section 11 (2) (e)—

After “produce” where firstly occurring, insert “and vendors of any kind of merchandise”.

(d) Section 11 (2) (e)—

After “produce” where secondly occurring, insert “and other merchandise”.

(e) Section 11 (2) (h)—

After “produce”, insert “or other merchandise”.

(f) Section 11 (2) (j)—

Omit “or discharge of its powers, authorities, duties and”, insert instead “of its”.

(g) Section 11 (3)–(7)—

After section 11 (2), insert:

(3) A person seeking to obtain a right to use and occupy any portion or portions of a public market may apply to the Authority in writing and shall furnish to the Authority such

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

information as the Authority may reasonably request (whether in an approved form made available for the purpose of making an application, or otherwise) in connection with the application.

(4) Without limiting the generality of subsection (2) (e), the conditions for the time being attached to a lease, license or permit referred to in that paragraph may include a condition to the effect that the person having the benefit of that lease, license or permit, while using or occupying any portion or portions of a public market by virtue of a right conferred by that lease, license or permit—

(a) shall not carry on any business other than the business of a farm produce agent as defined in the Farm Produce Act 1983; or

(b) shall not carry on any business other than the business of a farm produce merchant as defined in that Act.

(5) Every lease, license or permit referred to in subsection (2) (e) shall, by force of this subsection, be subject to the condition that the person having the benefit of the lease, license or permit shall not, whether for consideration or otherwise, attempt to assign or encumber that benefit or, unless the express permission of the Authority given in writing is first obtained, permit any other person to use or occupy the portion or portions of a public market to which the lease, license or permit relates.

(6) A right of use and occupancy of a portion or portions of a public market, in whatever form granted, cannot be assigned or encumbered by the holder of that right except with the express permission of the Authority given in writing, and any purported assignment or encumbrance of such a right without that permission is void.

(7) Where the Authority determines that a right of use and occupancy of any portion or portions of a public market should only be granted subject to certain conditions, or should not be granted at all, to the person who sought to obtain the right, the Authority shall, as soon as may be practicable, notify that person of the Authority's determination and of the reasons for it.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(8) Sections 11A, 11B—

After section 11, insert:

Variation or termination of rights of use and occupancy

11A. (1) The Authority may, by notice in writing served on a person having a right of use and occupancy referred to in section 11 (not being a right conferred by instrument in writing under the seal of the Authority), vary or revoke any of the conditions of the lease, license or permit by which the right was conferred or specify new conditions to which the lease, license or permit shall be subject.

(2) Except as provided by subsection (3), a notice under subsection (1) takes effect when it is served on the holder of the lease, license or permit to which it relates.

(3) A notice under subsection (1) which specifies, as a new condition of a lease, license or permit, a condition of the kind referred to in section 11 (4) takes effect, except where an appeal is lodged under section 11B, upon the expiry of the time prescribed for lodgment of an appeal under that section.

(4) Where the Authority considers that a lease should be determined or that a license or permit should be revoked, the Authority—

- (a) may give notice in writing to the holder of the lease, license or permit that the Authority intends to determine or revoke the lease, license or permit, as the case may be; and
- (b) shall afford the holder 1 month, or such longer period as the Authority may allow, to show cause why the lease, license or permit should not be determined or revoked.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(5) Unless it is satisfied that sufficient cause has been shown for not doing so, the Authority may, by a further notice in writing to the holder of a lease, license or permit given at any time after the period determined under subsection (4) (b) has expired, determine the lease or revoke the license or permit, as the case may be.

(6) Nothing in this section limits or otherwise affects the rights of the Authority under any lease, license, permit or agreement, whether written or not.

Appeal against refusal of right

11B. (1) In any case in which the Authority has determined that a right of use and occupancy referred to in section 11 should only be held subject to a condition of the kind referred to in section 11 (4), the person seeking to hold the right may appeal to the Minister.

(2) An appeal shall be lodged in the manner and within the time prescribed and shall, except as otherwise provided by the regulations, be heard and dealt with as the Minister thinks fit.

(3) In determining an appeal, the Minister may confirm or vary a decision of the Authority or may rescind the Authority's decision and grant the appellant a right of use and occupancy on such terms and conditions as the Minister thinks fit.

(4) The Minister's determination of an appeal shall be final and binding on the Authority and the appellant.

(9) Section 12 (1)—

Omit "powers, authorities, duties and".

(10) (a) Section 14—

Omit " , as subsequently amended" wherever occurring.

(b) Section 14 (2) (b)—

Omit "the said Act, as so amended", insert instead "the Public Works Act 1912".

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(11) Section 15 (4) (g)—

Omit “, performance or discharge by the Authority of the powers, authorities, duties and”, insert instead “by the Authority of the”.

(12) Part IV—

Omit the Part, insert instead:

PART IV

REGULATION OF PUBLIC MARKETS

Protection of farm produce and other merchandise

16. (1) In this section—

“authorised officer” means a servant of the Authority authorised in writing by the Authority to exercise the functions of an authorised officer under this section.

(2) An authorised officer may—

(a) stop and detain any person appearing to be in charge of a vehicle within any public market—

(i) on any Saturday, Sunday or public holiday; or

(ii) outside the wholesale trading hours on any other day; or

(b) stop and detain any person at a public market whom the authorised officer reasonably suspects of having committed an offence against this Act or the regulations or any other offence in connection with the market or any property at the market.

(3) When intending to exercise the functions conferred by subsection (4) (a) in relation to any person, the authorised officer shall inform the person that the person is obliged to permit the search of a vehicle for the purposes of this Act.

(4) The authorised officer may—

(a) search—

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (i) any vehicle of which a person detained under subsection (2) (a) appears to be in charge; and
 - (ii) any container carried by the vehicle,
to the extent necessary to establish whether it contains any farm produce or other merchandise; or
- (b) where a person is reasonably suspected by the authorised officer of having committed an offence against this Act or the regulations or an offence in connection with a public market or any property at a public market—ask the person to state the person's full name and residential address to the authorised officer.
- (5) A person who—
 - (a) whether by refusing to open any vehicle or part of a vehicle or to open any container, or otherwise, obstructs or hinders any search authorised by subsection (4) (a); or
 - (b) on being asked by an authorised officer in pursuance of subsection (4) (b) to state the person's full name and residential address, fails or refuses to do so or states a false name or residential address,is guilty of an offence and liable to a penalty not exceeding \$2,000.
- (6) A person is not guilty of an offence under subsection (5)
- (b) unless it is established that the authorised officer—
 - (a) identified himself or herself as an authorised officer; and
 - (b) warned the person that a failure or refusal to state the person's full name and residential address is an offence.
- (7) Upon request by any person in relation to whom an authorised officer is exercising any of the functions of an authorised officer under this section, the authorised officer shall produce the authorisation in writing by which the officer is authorised to exercise those functions.
- (8) Nothing in this section authorises—

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (a) the detention of any person for longer than is reasonably necessary for the exercise by an authorised officer of the functions of an authorised officer under this section; or
- (b) the search of any briefcase, handbag or similar item suited to contain personal belongings in small quantities or of any container that is part of the furnishings or fittings of the interior of that part of a vehicle which is designed for the conveyance of the driver and passengers.

(9) Nothing in this section derogates from any power otherwise conferred by law upon an authorised officer in any other capacity which authorises the detention of persons, or the inspection or seizure of property.

Parking of vehicles on land vested in Authority

17. (1) In this section—

“owner”, in relation to a vehicle, includes—

- (a) a person who is the owner or joint owner or part owner of the vehicle and any person, other than the lessor under a hire-purchase agreement relating to the vehicle, who has the use of the vehicle under such an agreement; and
- (b) in the case of a motor vehicle—
 - (i) the person in whose name the vehicle is registered under the regulations made under the Motor Traffic Act 1909, except where that person has sold or otherwise disposed of the vehicle and has complied with the provisions of those regulations in respect of that sale or disposal;
 - (ii) where the vehicle has affixed to it a trader's plate issued under that Act for use as prescribed by those regulations, the person to whom that trader's plate is on issue; or

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (iii) a person who, by virtue of a regulation under section 3 (1) (q11) or (q12) of the Motor Traffic Act 1909, is to be treated as being, for the purposes of section 18A of that Act, the owner of the vehicle;

“parking offence” means the offence committed by a person who contravenes any regulation made under this Act for or with respect to the standing, waiting or parking of vehicles.

(2) Where a parking offence occurs, the person who, at the time of the occurrence of the offence, is the owner of the vehicle to which the offence relates is, by virtue of this section, guilty of an offence under the regulation relating to the parking offence in all respects as if the person were the actual offender guilty of the parking offence, unless—

- (a) in any case where the offence is dealt with under section 18, the owner satisfies the prescribed officer under that section that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used; or
- (b) in any other case, the court is satisfied that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used.

(3) Nothing in this section affects the liability of an actual offender in respect of a parking offence but, where a penalty has been imposed on, or recovered from, any person in relation to any parking offence, no further penalty shall be imposed on or recovered from any other person in relation to the same occurrence.

(4) The provisions of this section shall be construed as supplementing, and not as derogating from, any other provision of this Act or the regulations or any other Act or any regulation, by-law or ordinance under any other Act.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued***Penalty notices for certain offences**

18. (1) Where it appears to a prescribed officer that any person has committed, or by virtue of section 17 is guilty of, any parking offence (within the meaning of that section) or any offence against the regulations which is prescribed as an offence to which this subsection applies, the prescribed officer may serve a notice on that person to the effect that if that person does not desire to have the matter determined by a court, that person may pay to an officer specified in the notice within the time so specified an amount of penalty prescribed for that offence if dealt with under this section.

(2) Any notice under subsection (1)—

(a) may be served personally or by post; or

(b) if it relates to an offence of which the owner of a vehicle is guilty by virtue of section 17, may be addressed to the owner without naming the owner or stating the owner's address and may be served by leaving it on or attaching it to the vehicle.

(3) Any person alleged to have committed or to be guilty of an offence to which subsection (1) applies has the right to decline to be dealt with under this section.

(4) Any person who fails to pay the penalty within the time specified in the notice given to the person under subsection (1) or within such further time as may in any particular case be allowed shall be deemed to have declined to be dealt with under this section.

(5) Where the amount of any prescribed penalty for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.

(6) Payment of a penalty in accordance with this section shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(7) The regulations may—

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (a) prescribe offences to which subsection (1) applies by setting out the offences or by reference to the regulation or part of the regulation creating the offence;
- (b) prescribe the amount of penalty payable under this section for any prescribed offence;
- (c) for the purposes of this section, prescribe different amounts of penalties for different offences or classes of offences or for offences or classes of offences having regard to the circumstances in which they are committed; and
- (d) prescribe the persons or classes of persons who shall be prescribed officers for the purposes of this section.

(8) No amount of penalty prescribed under this section for any offence shall exceed any maximum amount of penalty which could be imposed for the offence by a court.

(9) The provisions of this section shall be construed as supplementing, and not as derogating from, any other provision of this Act or the regulations or any other Act or any regulation, by-law or ordinance under any other Act in relation to proceedings which may be taken in respect of offences.

Fees for services at public markets

19. (1) The Authority may determine the maximum fees that may be charged by persons providing portorage or unloading services, or any other services of a prescribed kind, at or in connection with a public market.

(2) The Authority may from time to time vary or rescind a determination of a maximum fee.

(3) A maximum fee may apply generally or be limited in its application by reference to specified exceptions or factors and may be uniform in its application or apply differently according to different factors of a specified kind.

(4) A determination of a maximum fee, or a variation or rescission of such a determination, shall take effect from the date of publication in the Gazette of a notice by the Authority of the determination, variation or rescission.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(5) The fee charged for any service in respect of which a maximum fee for the time being applies shall in no case exceed the maximum fee.

(13) (a) Section 35 (1) (d)—

Omit “animals;”, insert instead:

animals, including—

- (i) providing for the registration by the Authority of motorised unloading devices and other vehicles used for the movement of goods; and
- (ii) by signs or markings, or otherwise, regulating or prohibiting the standing, waiting or parking of vehicles;

(b) Section 35 (1) (h)—

Omit the paragraph, insert instead:

- (h) creating an offence punishable by a penalty not exceeding \$1,000.

(c) Section 35 (2), (3)—

Omit the subsections, insert instead:

- (2) 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

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (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.

(3) Section 41 of the Interpretation Act 1897 applies in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act 1969.

(14) Section 39—

Omit “Chairman”, insert instead “Managing Director”.

(15) Section 40—

Omit the section, insert instead:

Offences and penalties

40. (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Except as provided by subsection (3), any penalty and other money recovered in respect of an offence against this Act or the regulations shall be paid to the Authority instead of being carried to the Consolidated Fund.

(3) Any penalty and other money recovered as a result of proceedings taken by a member of the police force for an offence against this Act or the regulations shall be paid into the Consolidated Fund.

(16) (a) Section 43 (1)—

Omit “powers, authorities, duties or”.

(b) Section 43 (4)—

Omit “or discharge of any power, authority, duty or”, insert instead “of any”.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(17) Section 45—

Omit the section.

(18) Schedule 1—

At the end of the Act, insert:

SCHEDULE 1

(Sec. 4 (6))

CONSTITUTION AND PROCEDURE OF THE AUTHORITY

Interpretation

1. In this Schedule—

“Chairperson” means the Chairperson of the Authority;

“Deputy Chairperson” means the Deputy Chairperson of the Authority;

“part-time member” means a member of the Authority other than the Managing Director, and includes the Chairperson.

Age of member

2. A person who is of or above the age of 65 years is not eligible to be appointed as a member or to act in the office of a member under clause 4.

Term of office

3. Subject to this Schedule, a member shall hold office—

(a) in the case of the Managing Director—for such period not exceeding 7 years; or

(b) in the case of a part-time member—for such period not exceeding 3 years,

as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—continued

AMENDMENTS TO THE PRINCIPAL ACT—continued

Acting members

4. (1) The Governor may from time to time appoint a person to act in the office of a member (other than the office of Managing Director or Chairperson) 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 and shall be deemed to be a member.

(2) The Governor may from time to time appoint a person to act in the office of Managing Director during the illness or absence of the Managing Director, and the person so appointed, while so acting, shall have and may exercise all the functions of the Managing Director and shall be deemed to be the Managing Director.

(3) The Deputy Chairperson, during the illness or absence of the Chairperson, shall have and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

(4) The Governor may remove any person from any office to which the person was appointed under this clause.

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

(6) For the purposes of this clause—

(a) a vacancy in the office of the Chairperson, the Deputy Chairperson or another member shall be deemed to be an absence from office of the Chairperson, Deputy Chairperson or other member, as the case may be; and

(b) a part-time member shall be deemed to be absent from office as a part-time member during any period when the member acts in the office of the Managing Director pursuant to an appointment under subclause (2).

Managing Director

5. The Managing Director shall devote the whole of his or her time to the duties of the office of Managing Director, except as permitted by this Act or except with the consent of the Minister.

Remuneration

6. (1) The Managing Director is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Managing Director.

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

*Sydney Farm Produce Market Authority (Amendment) 1985***SCHEDULE 1—continued****AMENDMENTS TO THE PRINCIPAL ACT—continued****Filling of vacancy in office of member**

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

Casual vacancies

8. (1) A member shall be deemed to have vacated office if the member—

(a) dies;

(b) being the Managing Director, absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister or unless the absence is occasioned by illness or other unavoidable cause;

(c) being a part-time member, absents himself or herself from 4 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 Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;

(d) 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;

(e) 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;

(f) 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;

(g) being the Managing Director, engages in any paid employment outside the duties of the office of Managing Director, except with the consent of the Minister;

(h) ceases to hold the qualification by which the member was appointed;

(i) resigns the office by instrument in writing addressed to the Minister;

(j) attains the age of 65 years;

(k) is retired from office by the Governor under subclause (2); or

(l) is removed from office by the Governor under subclause (3), (4) or (5).

(2) The Managing Director may, after attaining the age of 60 years and before attaining the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(3) The Governor may remove the Managing Director from office for incapacity, incompetence or misbehaviour.

(4) The Governor may remove a part-time member from office.

(5) Without affecting the generality of subclauses (3) and (4), the Governor may remove from office a member who contravenes the provisions of clause 9.

Disclosure of pecuniary interests

9. (1) A member who has a direct or indirect pecuniary interest—

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

(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) The 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) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Minister otherwise determines—

(a) be present during any deliberation of the Authority, or take part in any decision of the Authority, with respect to that matter; or

(b) exercise any functions under this Act with respect to that thing,
as the case may require.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Authority or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises by reason only of the fact that the member is a producer, wholesaler, retailer or consumer of farm produce or other merchandise.

(7) A reference in this clause to a meeting of the Authority includes a reference to a meeting of a committee established under section 12.

Effect of certain other Acts

10. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

(2) Where by or under any other Act provision is made requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 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 a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

(3) The office of a part-time member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

Preservation of rights of Managing Director previously public servant, etc.

11. (1) In this clause—

“statutory body” means any body declared under clause 13 to be a statutory body for the purposes of this Schedule;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

(2) Subject to subclause (3) and to the terms of appointment, where the Managing Director was, immediately before being appointed as Managing Director—

- (a) an officer of the Public Service or a Teaching Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

*Sydney Farm Produce Market Authority (Amendment) 1985***SCHEDULE 1—continued****AMENDMENTS TO THE PRINCIPAL ACT—continued**

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as Managing Director; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, contributor or person during his or her service as Managing Director and—

- (h) his or her service as Managing Director shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee, and the Authority shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(3) If the Managing Director would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as Managing Director or at any later time while holding office as Managing Director) a contributor to any other superannuation scheme, and the provisions of subclause (2) (i) cease to apply to or in respect of him or her and the Authority in any case where he or she becomes a contributor to any such other superannuation scheme.

(4) Subclause (3) does not prevent the payment to the Managing Director upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(5) The Managing Director shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

Managing Director entitled to re-appointment to former employment in certain cases

12. (1) In this clause, “statutory body” means any body declared under clause 13 to be a statutory body for the purposes of this Schedule.

(2) A person who—

- (a) ceases to be Managing Director by reason of the expiration of the period for which the person was appointed or by reason of resignation;

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (b) was, immediately before being appointed as Managing Director—
 - (i) an officer of the Public Service or a Teaching Service; or
 - (ii) an officer or employee of a statutory body; and
- (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee, shall be entitled to be appointed to some position in the Public Service, the Teaching Service or the service of the statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as Managing Director.

(3) Where subclause (2) does not apply to a person who—

- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (2) (b); and

(b) is after that appointment appointed as Managing Director,

the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be Managing Director, as are specified in the instrument of appointment as Managing Director or as are agreed upon by the person and by or on behalf of the Government.

Declaration of statutory bodies

13. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

Liability of members, etc.

14. (1) No matter or thing done by the Authority, any member or any person acting under the direction of the Authority shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

(2) Nothing in this clause exempts any member from liability to be surcharged with the amount of any payment which is disallowed by the Auditor-General in the accounts of the Authority and which the member authorised or joined in authorising.

General procedure

15. The procedure for the calling of meetings of the Authority and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Authority.

Quorum

16. Five members, of whom one shall be the Managing Director, shall form a quorum for a meeting of the Authority.

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

Presiding member

17. (1) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both, another part-time member elected as chairperson for the meeting by the members present shall preside at a meeting of the Authority.

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

Voting

18. A decision supported by a majority of the votes cast at a meeting of the Authority at which a quorum is present shall be the decision of the Authority.

Minutes

19. The Authority shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Authority.

Seal of the Authority

20. The common seal of the Authority shall be kept in the custody of the Managing Director and shall not be affixed to any instrument except in pursuance of a resolution of the Authority.

First meeting of the Authority

21. The Minister shall call the first meeting of the Authority in such manner as the Minister thinks fit.

SCHEDULE 2

(Sec. 6)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Continuity of the Authority

1. Except to the extent necessary to give effect to the amendments made to the Principal Act by this Act, the Sydney Farm Produce Market Authority constituted under the Principal Act, as in force immediately before the commencement of this clause, and the Sydney Market Authority constituted under the Principal Act, as amended by this Act, shall be deemed to be one and the same statutory body.

*Sydney Farm Produce Market Authority (Amendment) 1985***SCHEDULE 2—continued****SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—continued****Transitional constitution of the Authority**

2. (1) The person holding office, immediately before the commencement of this clause, as the Chairman of the Sydney Farm Produce Market Authority shall, on and from the commencement of this clause, subject to the Principal Act, as amended by this Act, hold office as the Managing Director of the Sydney Market Authority for the remainder of the term for which he was appointed to hold office as that Chairman.

(2) A person referred to in section 4 (1) (c) (iii) or (v) of the Principal Act, as in force immediately before the commencement of this clause, holding office as a member of the Sydney Farm Produce Market Authority, shall continue, subject to the Principal Act, as amended by this Act, to hold office as a member of the Sydney Market Authority for the remainder of the term for which the person was appointed to hold the firstmentioned office and shall be deemed to be a member referred to in section 4 (5) (d) or (b), respectively, of the Principal Act, as amended by this Act.

(3) Clause 8 (1) (j) of Schedule 1 to the Principal Act, as amended by this Act, does not apply to a person to whom subclause (2) applies.

Construction of certain references

3. (1) A reference in any Act or statutory instrument, or in any other instrument of any kind, whether enacted, made or executed before, or on or after, the commencement of this clause—

(a) to the Sydney Farm Produce Market Authority Act 1968; or

(b) to the Sydney Farm Produce Market Authority,

shall be read as a reference—

(c) to the Sydney Market Authority Act 1968; and

(d) to the Sydney Market Authority,

respectively.

(2) A reference in any Act or statutory instrument, or in any other instrument of any kind, enacted, made or executed before the commencement of this clause, to the Chairman of the Sydney Farm Produce Market Authority, being a reference made in relation to any function of that Chairman which, under the Principal Act, as amended by this Act, is a function that may be exercised by the Managing Director of the Sydney Market Authority as constituted by that Act, as so amended, shall be read as a reference to the Managing Director of the Sydney Market Authority.

Application of amendments to existing rights

4. The provisions of sections 11, 11A and 11B of the Principal Act, as amended by this Act, extend to apply to and in respect of rights to use and occupy a portion or portions of a public market that were granted before the commencement of this clause, as well as in respect of any such rights subsequently granted.

Validation

5. Any matter or thing done at any time before the commencement of this clause for or toward—

Sydney Farm Produce Market Authority (Amendment) 1985

SCHEDULE 2—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (a) the appointment, for a term commencing on or after the expiry of the term of office referred to in clause 2 (1), of a Managing Director of the Sydney Market Authority;
- (b) the appointment, for an appropriate term, of a member of the Sydney Market Authority referred to in section 4 (5) (b) of the Principal Act, as amended by this Act, to replace a member to whom clause 2 (2) applies, on the expiry of that member's term of office; or
- (c) the appointment of a member of the Sydney Market Authority referred to in section 4 (5) (a), (c) or (d) of the Principal Act, as amended by this Act,

which, had the Principal Act, as amended by this Act, been in force at the time at which the matter or thing was done, would have been valid is validated.

Regulations

6. (1) The regulations under the Principal Act may make provision of a saving or transitional nature consequent on the enactment of this Act, the Justices (Sydney Market Authority) Amendment Act 1985, the Public Finance and Audit (Sydney Market Authority) Amendment Act 1985 or the Statutory and Other Offices Remuneration (Sydney Market Authority) Amendment Act 1985.

(2) A provision made in accordance with subclause (1) may take effect as from the day appointed and notified under section 2 (2) 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 the State or an authority of the State), the rights of that person existing before the date of its publication in the Gazette; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication in the Gazette.

(4) A provision made in accordance with subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding any other clause of this Schedule.

