

**NSW GRAIN CORPORATION HOLDINGS LIMITED
ACT 1992 No. 31**

NEW SOUTH WALES



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**NSW GRAIN CORPORATION HOLDINGS LIMITED
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Act No. 31, 1992

An Act relating to NSW Grain Corporation Holdings Limited and the NSW Grain Corporation Limited; to amend the State Owned Corporations Act 1989 and to repeal the Grain Handling Authority (Corporatisation) Act 1989; and for other purposes. [Assented to 18 May 1992]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the NSW Grain Corporation Holdings Limited Act 1992.

Commencement

2. This Act commences on the date of assent.

Definitions

3. (1) Words and expressions used in this Act have the same meanings as they have in the State Owned Corporations Act 1989.

(2) In this Act:

“**appointed day**” means the day appointed for the purposes of section 10;

“**approved person**” has the meaning given by section 4;

“**Grain Corporation**” means NSW Grain Corporation Limited;

“**Grain Holdings**” means NSW Grain Corporation Holdings Limited;

“**instrument**” means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court;

“**Ministerial Corporation**” means the Grain Handling Ministerial Corporation constituted by section 13 of the Grain Handling Authority (Corporatisation) Act 1989.

Approved persons

4. For the purposes of this Act, an approved person is Prime Wheat Association Limited (A.C.N. 000 245 269) or a wholly-owned subsidiary of that company.

Negotiations and agreements for sale of Grain Holdings

5. (1) Negotiations may be conducted for the sale of Grain Holdings by the the transfer of any issued shares in Grain Holdings to persons who are not eligible Ministers.

(2) The Ministers who are shareholders in Grain Holdings are authorised to enter into agreements for the transfer of their shares to an approved person.

(3) Any negotiations or agreements may be conducted or entered into before, on or after the appointed day. Any such negotiations or agreements conducted or entered into before the date of assent to this Act are validated to the extent of any invalidity.

(4) However, any such transfer of shares does not take effect before the appointed day.

(5) Neither the operation of this section nor any such agreement is to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(6) Neither the operation of this section nor any such agreement is to be regarded as an event of default under any contract or other instrument.

Amendment of memorandum and articles of association

6. (1) The Ministers who are the voting shareholders of Grain Holdings are authorised to take steps before the appointed day to make alterations and additions to the memorandum and articles of association of Grain Holdings that are inconsistent with the requirements of the State Owned Corporations Act 1989 or the Grain Handling Authority (Corporatisation) Act 1989 or both.

(2) However, any such inconsistent alterations or additions do not take effect before the appointed day.

Creation of debt due to State

7. (1) The purpose of this section is to maximise the amounts payable to the State in connection with the sale of Grain Holdings by providing for additional payments to the State otherwise than as part of the consideration for the transfer of shares in Grain Holdings.

(2) An agreement referred to in section 5 may provide for Grain Holdings or Grain Corporation, or both, to become liable to pay to the State of New South Wales either or both of the following:

- (a) such amounts as are specified in the agreement; or

(b) such amounts as the Minister may determine by order in writing before the appointed day or within 6 months starting with the appointed day.

(3) The liability to pay the amounts arises on the appointed day, or, in the case of an amount determined after that day, on the day the determination takes effect.

(4) Any such amount is payable on such terms and at such time or times as are provided for in the agreement or as the Minister determines by order in writing and may be recovered by the Minister on behalf of the State as a debt in any court of competent jurisdiction.

Proceeds

8. (1) Any amounts received for the transfer of the shares, or by way of repayment of the debt under section 7, must be paid into the Consolidated Fund.

(2) There may be deducted from those amounts before payment into the Consolidated Fund such amount as the Minister approves to meet the expenses reasonably incurred in connection with the sale of Grain Holdings.

Transfer of identified assets to Crown

9. (1) An agreement referred to in section 5 may identify assets of Grain Holdings or Grain Corporation as assets to which this section applies.

(2) The Minister may, by order in writing, direct that any assets so identified be transferred to the Crown, on such terms and for such consideration (if any) as are specified in the order.

(3) On the commencement of the order, the identified assets vest in the Crown by virtue of this section (subject to any existing leases) and without the need for any conveyance, transfer, assignment or assurance.

(4) No attornment to the Crown by a lessee from Grain Holdings or Grain Corporation is required.

(5) Such an order may be made before, on or after the appointed day and may commence before, on or after that day.

Amendment of State Owned Corporations Act 1989 No. 134

10. On a day to be appointed by proclamation for the purposes of this section, the State Owned Corporations Act 1989 is amended by omitting from Schedule 1 the words "NSW Grain Corporation Holdings Limited".

Application of State Owned Corporations Act from appointed day

11. The State Owned Corporations Act 1989 does not apply to Grain Holdings or Grain Corporation on and after the appointed day. This section has effect subject to any express provisions of this Act.

Dissolution of Grain Handling Ministerial Corporation

12. (1) The Ministerial Corporation is dissolved on the appointed day.

(2) On the appointed day, the following provisions have effect:

- (a) the assets of the Ministerial Corporation vest in the Crown by virtue of this section and without the need for any conveyance, transfer, assignment or assurance;
- (b) the rights and liabilities of the Ministerial Corporation become by virtue of this section the rights and liabilities of the Crown;
- (c) all proceedings pending by or against the Ministerial Corporation are taken to be proceedings pending by or against the Crown;
- (d) any act, matter or thing done or omitted by, to or in respect of the Ministerial Corporation is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Crown;
- (e) a reference in any Act, in any instrument made under an Act or in any document of any kind to the Ministerial Corporation is to be read as a reference to the Crown.

(3) The operation of this section is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities;
or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.

(4) The operation of this section is not to be regarded as an event of default under any contract or other instrument.

(5) No attornment to the Crown by a lessee from the Ministerial Corporation is required.

(6) The purpose of this subsection is to ensure that the above provisions of this section extend to the “excluded undertaking” of the Grain Handling Authority. Accordingly, this section extends to assets,

rights and liabilities transferred to the Ministerial Corporation under section 7 of the Grain Handling (Corporatisation) Act 1989. In particular, subsection (2) (e) of this section extends to a reference to the Ministerial Corporation that relates to any excluded undertaking referred to in section 7 of that Act.

**Repeal of Grain Handling Authority (Corporatisation) Act 1989
No. 135**

13. (1) The Grain Handling Authority (Corporatisation) Act 1989 is repealed on the appointed day.

(2) Section 6 of that Act continues to operate on and after the appointed day as if it had not been repealed by this Act.

(3) The regulations may contain provisions regarding the interpretation of references in any instrument to the Grain Handling Authority of New South Wales or any member or employee of the Authority. Any such provisions have effect despite section 6 of that Act as continuing in operation.

Dividends

14. Section 14 of the State Owned Corporations Act 1989 continues to apply to any dividends declared by Grain Holdings or Grain Corporation (before the appointed day) to the extent that the whole or any part of those dividends payable to eligible Ministers has not been paid to the Treasurer.

Tax-equivalents

15. (1) Section 15 of the State Owned Corporations Act 1989 continues to apply to any tax-equivalents due and payable to the Treasurer by Grain Holdings or Grain Corporation (before the appointed day) to the extent that they have not been paid to the Treasurer before the appointed day.

(2) Without affecting subsection (1), an agreement referred to in section 5 of this Act may provide for the continued operation of section 15 of that Act on or after the appointed day to Grain Holdings or Grain Corporation as regards any period before the appointed day.

(3) Authorities of the State are entitled to access to books and records of or relating to Grain Holdings and Grain Corporation for the purposes of this section.

Reports and accounts

16. (1) An agreement referred to in section 5 of this Act may provide for the continued operation of section 24 of the State Owned Corporations Act 1989 on or after the appointed day in relation to Grain Holdings or Grain Corporation as regards any period before the appointed day.

(2) Authorities of the State are entitled to access to books and records of or relating to Grain Holdings and Grain Corporation for the purposes of this section.

Staff

17. (1) An employee of Grain Holdings or Grain Corporation retains any rights to annual leave, extended service leave or sick leave accrued or accruing by virtue of clause 3 of Schedule 4 to the State Owned Corporations Act 1989.

(2) An employee of Grain Holdings or Grain Corporation retains any rights to annual leave, extended service leave or sick leave accrued or accruing on or after 1 October 1989 and before the appointed day.

(3) Neither the contract of employment nor the period of employment of each employee of Grain Holdings or Grain Corporation is taken to have been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that employee.

Operation of this Act

18. (1) This Act binds the Crown.

(2) This Act has effect despite anything in the State Owned Corporations Act 1989, the Grain Handling Authority (Corporatisation) Act 1989 or the memorandum or articles of association of Grain Holdings or Grain Corporation.

Regulations

19. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or the Grain Handling Authority (Corporatisation) Act 1989 (including provisions of the kind referred to in section 13 (3) of this Act).

(3) Any such savings or transitional provision may, if the regulations so provide, take effect from the commencement of the Grain Handling Authority (Corporatisation) Act 1989 or a later date.

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

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

*[Minister's second reading speech made in—
Legislative Assembly on 30 April 1992
Legislative Council on 7 May 1992]*