

**GRAIN HANDLING AUTHORITY (CORPORATISATION) ACT  
1989 No. 135**

NEW SOUTH WALES



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SCHEDULE 1 - AMENDMENT OF ACTS

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**GRAIN HANDLING AUTHORITY (CORPORATISATION) ACT  
1989 No. 135**

**NEW SOUTH WALES**



**Act No. 135, 1989**

An Act to establish a State owned corporation in relation to grain handling; to provide for the transfer of assets, rights and liabilities of the Grain Handling Authority; to amend the State Owned Corporations Act 1989 and certain other Acts; to repeal the Grain Handling Act 1954; and for other purposes. [Assented to 27 September 1989]

**The Legislature of New South Wales enacts:**

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the Grain Handling Authority (Corporatisation) Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**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:

"**Authority**" means the Grain Handling Authority of New South Wales;

"**business undertaking**" means all assets, rights and liabilities of the Authority, but does not include any excluded undertaking;

"**excluded undertaking**" means any assets, rights or liabilities of the Authority which the Minister has directed to be excluded under section 7;

"**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 and process of a court;

"**Ministerial Corporation**" means the Grain Handling Ministerial Corporation constituted by section 13.

**PART 2 - ESTABLISHMENT OF STATE OWNED CORPORATION**

**Establishment of Grain Corporation as SOC**

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

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**Substitution of Grain Holdings as SOC**

5. (1) On a later day to be appointed by proclamation for the purposes of this section, the State Owned Corporations Act 1989 is amended by inserting in Schedule 1 the words "NSW Grain Corporation Holdings Limited" and by omitting the reference to Grain Corporation.

(2) Such a proclamation is not effective unless Grain Corporation is a subsidiary of Grain Holdings.

**PART 3 - TRANSFER OF ASSETS, RIGHTS AND LIABILITIES**

**Direction to transfer business undertaking**

6. (1) The Minister may, by order in writing, direct that the business undertaking of the Authority be transferred to Grain Corporation, upon such consideration as is specified in the order.

(2) The transfer of assets, rights and liabilities under this section is to take place at a value or values specified in the order.

(3) On the commencement of the order, the following provisions have effect (subject to the order):

- (a) the assets of the Authority comprised in its business undertaking vest in Grain Corporation by virtue of this section and without the need for any conveyance, transfer, assignment or assurance;
- (b) the rights and liabilities of the Authority comprised in its business undertaking become by virtue of this section the rights and liabilities of Grain Corporation;
- (c) all proceedings relating to the business undertaking commenced before the transfer by or against the Authority or a predecessor of the Authority and pending immediately before the transfer are to be taken to be proceedings pending by or against Grain Corporation;
- (d) any act, matter or thing done or omitted to be done in relation to the business undertaking before the transfer by, to or in respect of the Authority is (to the extent that that act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in respect of Grain Corporation;
- (e) a reference in any instrument of any kind to the Authority or a predecessor of the Authority is (to the extent that it relates to

the business undertaking) to be read as a reference to Grain Corporation.

(4) Neither the operation of this section nor the transfer of shares under section 14 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.

(5) No attornment to Grain Corporation by a lessee from the Authority is required.

(6) Assets, rights or liabilities may not be transferred under this section to Grain Corporation unless it is a State owned corporation or a subsidiary of a State owned corporation.

#### **Excluded undertakings**

7. (1) The Minister may direct, by order in writing, that such assets, rights or liabilities of the Authority as are specified or referred to in the order be excluded from the Authority's business undertaking.

(2) On the date specified in the order, the excluded undertaking concerned is transferred to the Ministerial Corporation or such other person on behalf of the Crown as is so specified.

(3) Section 6 applies to that transfer in the same way as it applies to the transfer of the Authority's business undertaking to Grain Corporation.

(4) Different parts of any excluded undertaking may be so transferred to different persons.

(5) The Ministerial Corporation or other person is authorised to dispose of any excluded undertaking so transferred or to retain it and conduct any business to which it relates.

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**Transfer of other assets, rights or liabilities**

8. (1) The Minister may direct, by order in writing, and on such terms and conditions as are set out or referred to in the order, that such other assets, rights or liabilities used by or attaching to the Authority for grain handling, storage and associated purposes, and belonging to the State or an authority of the State, as are specified in the order be transferred to Grain Corporation or Grain Holdings or to a subsidiary of either.

(2) Section 6 applies to that transfer in the same way as it applies to the transfer of the Authority's business undertaking to Grain Corporation.

**Authority subject to ministerial direction**

9. For the purposes of or incidental to the transfer of the business undertaking, any excluded undertaking and any other assets, rights or liabilities under this Part, the Authority is, in the exercise of its functions, subject to the control and direction of the Minister.

**PART 4 - DISSOLUTION OF AUTHORITY**

**Dissolution of Authority**

10. (1) On a day to be appointed by proclamation for the purposes of this section, the Authority is dissolved.

(2) The assets, rights and liabilities (if any) of the Authority immediately before its dissolution under this section are transferred to the Ministerial Corporation.

(3) Section 6 applies to that transfer in the same way as it applies to the transfer of the Authority's business undertaking to Grain Corporation.

**Members of Authority to vacate office**

11. (1) A person who, immediately before the dissolution of the Authority, held office as a member of the Authority:

- (a) ceases to hold office as such; and
- (b) except as provided by subsection (2), is not entitled to any remuneration or compensation because of the loss of that office.

(2) Part 8 of the Public Sector Management Act 1988 applies to a person who so ceases to hold office as a member of the Authority, without immediately being appointed to the service of Grain Corporation or Grain Holdings or a subsidiary of either, in the same way as it applies to a person removed from office under that Part.

**Repeal of Grain Handling Act 1954 No. 36**

12. (1) The Grain Handling Act 1954 is repealed.
- (2) All regulations under the Grain Handling Act 1954 are repealed.

**PART 5 - MISCELLANEOUS**

**Ministerial Corporation**

13. (1) There is constituted by this Act a corporation with the corporate name of the Grain Handling Ministerial Corporation.

(2) The affairs of the Ministerial Corporation are to be managed by the Minister.

(3) Any act, matter or thing done in the name of, or on behalf of, the Ministerial Corporation by the Minister, or with the authority of the Minister, is to be taken to have been done by the Ministerial Corporation.

(4) The Ministerial Corporation has the functions conferred or imposed on it by or under this or any other Act.

(5) The functions of the Ministerial Corporation are to hold and dispose of assets, rights and liabilities transferred to it under this Act.

**Transfer of shares to Grain Holdings**

14. (1) The eligible Ministers holding shares in Grain Corporation's issued share capital are authorised to transfer the shares to Grain Holdings.

(2) That transfer of shares is an exempt matter for the purposes of section 17 (State taxation) of the State Owned Corporations Act 1989.

(3) Part 2 of Schedule 2 to the State Owned Corporations Act 1989 is, as regards Grain Corporation, to be taken to be altered as follows:

- (a) Clause 1 (1) is altered to provide that "Only eligible Ministers or NSW Grain Corporation Holdings Limited may hold shares in the corporation's issued share capital."



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(b) Clause 1 (4) is altered to provide that "A shareholder may not sell or otherwise dispose of shares in the corporation otherwise than to another eligible Minister or to NSW Grain Corporation Holdings Limited."

(4) The articles of association of Grain Corporation may be altered, with effect on or after the time when Grain Corporation becomes a subsidiary of Grain Holdings, so as to contain provisions to the effect of those required by Schedule 3 to the State Owned Corporations Act 1989.

(5) Any alteration of the articles of Grain Corporation or Grain Holdings made as a result of this Act, or made so as to bring the articles into conformity with this Act, is to be taken to have been approved by resolutions passed by both Houses of Parliament.

**Alteration of names**

15. References in this Act to a company by a specified name include references to the company under any altered name.

**Composition of Board**

16. Part 2 of Schedule 2 to the State Owned Corporations Act 1989 is, as regards Grain Corporation, to be taken to be altered by inserting after clause 1 (6) the following subclauses:

(6A) The Board is to consist of the following:

- (a) a Chairman, selected by the voting shareholders;
- (b) three directors, selected for their commercial expertise by the voting shareholders;
- (c) three directors, selected under subclause (6B) to be grower nominee directors;
- (d) a director with industrial relations experience, selected under subclause (6D), not being an employee of the corporation;
- (e) the chief executive officer of the corporation.

(6B) Grower nominee directors are to be selected by a Selection Committee from among persons each nominated in writing by at least 20 grain growers after nominations have been called by advertisement in a newspaper (circulating throughout New South Wales) at least 2 weeks before the close of nominations. In this subclause, "grain grower" means a person having a registration number allocated by a board having statutory responsibilities for the

marketing of grains or a person having such other qualifications as are prescribed by regulations made under the Grain Handling Authority (Corporatisation) Act 1989.

(6C) The Selection Committee for grower nominee directors is to consist of the following:

- (a) the Chairman of the Board (or, if that position is vacant, a person nominated by the voting shareholders);
- (b) a representative nominated by the NSW Farmers' Association;
- (c) a representative nominated by the Prime Wheat Association;
- (d) two other persons nominated by the voting shareholders.

(6D) The director with industrial relations experience is to be selected by a Selection Committee from among panels of three persons, each such panel being nominated by a union of employees having coverage of employees of the corporation.

(6E) The Selection Committee for the director with industrial relations experience is to consist of the following:

- (a) the Chairman of the Board (or, if that position is vacant, a person nominated by the voting shareholders);
- (b) two persons nominated jointly by the unions of employees having coverage of employees of the corporation;
- (c) two other persons nominated by the voting shareholders.

(6F) Subject to this clause, the procedures for nominating and selecting the grower nominee directors and the director with industrial relations experience, for determining which unions of employees have coverage of employees of the corporation and for constituting the Selection Committees are to be as determined by the voting shareholders.

### **Regulations**

17. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that 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

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(including the interpretation of references to the Authority or any member or employee of the Authority).

(3) Any such savings or transitional provision may, if the regulations so provide, take effect on the commencement of this section or a later date.

(4) To the extent to which any such savings or transitional provision takes effect on 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, the Authority or any other 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, the Authority or any other authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Amendment of Acts**

18. The Acts specified in Schedule 1 are amended as set out in that Schedule.

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**SCHEDULE 1 - AMENDMENT OF ACTS**

(Sec. 18)

**Land Tax Management Act 1956 No. 26:**

Section 3 (**Definitions**):

From the definition of "Public authority" in subsection (1), omit "the Grain Elevators Board of New South Wales,".

**Pipelines Act 1967 No. 90:**

Section 3 (**Definitions**):

From the definition of "statutory body representing the Crown" in subsection (1), omit ", the Grain Handling Authority of New South Wales".

SCHEDULE 1 - AMENDMENT OF ACTS - *continued*

**Wheat Marketing Act 1984 No. 115:**

- (1) Section 3 (**Definitions**):  
From subsection (1), omit the definition of "State corporation".
- (2) Section 6 (**Authorized receivers**):  
Omit section 6 (1).
- (3) Section 9 (**Delivery to authorized receiver**):  
Omit section 9 (6).
- (4) Section 12 (**Permits for purchase of wheat for stockfeed use**):  
From section 12 (8), omit ", after consultation with the State corporation,".
- (5) Section 26 (**Notice by authorized receiver with reference to capital expenditure**):  
Omit the section.
- (6) Section 27 (**Access to premises**):  
Omit the section.

**Public Authorities (Financial Arrangements) Act 1987 No. 33:**

Section 6 (**Definition of "authority"**):  
In paragraph (b) of the definition, after "corporation", insert "or a State owned corporation established under the State Owned Corporations Act 1989 or a subsidiary of such a State owned corporation".

**Public Sector Management Act 1988 No. 33:**

- (1) Section 42S (**Compensation etc. where executive officer has no right to return to public sector**):  
In section 42S (8), after "public sector", insert "or employed in the service of a State owned corporation established under the State Owned Corporations Act 1989 or a subsidiary of such a State owned corporation".

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SCHEDULE 1 - AMENDMENT OF ACTS - *continued*

- (2) Section 92 (**Compensation for office holder following removal or retirement**):

In section 92 (7), after "public sector", insert "or employed in the service of a State owned corporation established under the State Owned Corporations Act 1989 or a subsidiary of such a State owned corporation".

**State Owned Corporations Act 1989:**

- (1) Section 3 (**Definitions**):

Insert in alphabetical order:

"rights" means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent);

- (2) Section 7 (**Transfer of assets and liabilities etc.**):

After "Assets" and "assets" wherever occurring, insert ", rights".

- (3) Schedule 3 (**Provisions to be included in memorandum or articles of association of subsidiaries**):

In clause 1 (3) of Part 2, after "Minister", insert "or to the State owned corporation or a subsidiary of the State owned corporation".

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[*Minister's second reading speech made in -  
Legislative Assembly on 13 September 1989  
Legislative Council on 20 September 1989*]