

FISH MARKETING ACT 1994 No. 37

NEW SOUTH WALES



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FISH MARKETING ACT 1994 No. 37

NEW SOUTH WALES



Act No. 37, 1994

An Act to authorise the sale of the business undertaking of the Fish Marketing Authority; to deregulate fish marketing in New South Wales; and to amend the Fisheries and Oyster Farms Act 1935 and certain other Acts. [Assented to 2 June 1994]

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Fish Marketing Act 1994.

Commencement

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

Definitions

3. (1) In this Act:

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

“**assets**” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes choses in action and documents;

“**business undertaking**” of FMA means the assets, rights and liabilities of FMA;

“**commercial fisher**” means a person licensed under the Fisheries Act to take fish for the purpose of sale;

“**condition**” of a fish marketing authority includes a term or stipulation of the authority;

“**deregulation date**” means the date referred to in section 20;

“**fish marketing authority**” means a certificate of exemption issued under section 40C of the Fisheries Act, a consent issued under section 40D of the Fisheries Act or an approval given to a trading society under section 40E of the Fisheries Act;

“**Fisheries Act**” means the Fisheries and Oyster Farms Act 1935;

“**Fisheries Administration Ministerial Corporation**” means the Fisheries Administration Ministerial Corporation constituted under the Fisheries Act;

“**FMA**” means the Fish Marketing Authority referred to in section 41A of the Fisheries Act;

“**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;

“liabilities” means all liabilities, debts and obligations (whether present or future and whether vested or contingent);

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

“sale agreement” means an agreement referred to in section 5;

“sale date” means the date referred to in section 6;

“Sydney fish market site” means the following land at Blackwattle Bay in the Parish of St. Andrew, County of Cumberland:

(a) Lot 1 in DP. 74155;

(b) Land in Volume 3200 Folio 167;

(c) Lot 2 in DP. 827434;

(d) Lot 1 in D.P. 734622;

(e) any adjoining land that is vested in FMA before the sale date.

(2) Words and expressions used in this Act (but not defined in this section) have the same meanings as they have in the Fisheries Act.

PART 2—SALE OF BUSINESS UNDERTAKING OF FISH MARKETING AUTHORITY

Division 1—The sale

Approved purchaser

4 For the purposes of this Act, the approved purchaser is Sydney Fish Markets Pty. Ltd. (A.C.N. 064 254 306).

Negotiations and agreements for sale of business undertaking of FMA

5 (1) Negotiations may be conducted for the sale of the business undertaking of FMA in accordance with this Part.

(2) The Minister is authorised to enter into agreements or the sale of the business undertaking of FMA to the approved purchaser. For that purpose, the Minister may act for and on behalf of FMA.

(3) The Minister may, by order in writing, direct that any part of the business undertaking of FMA be transferred to the approved purchaser for the purpose of the sale of that undertaking in accordance with this Part.

(4) Any negotiations or agreements may be conducted or entered into before, on or after the sale date. 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.

(5) However, any sale of the business undertaking of FMA to the approved purchaser may not take effect before the sale date.

(6) For the purposes of this section, the business undertaking of FMA does not include assets, rights or liabilities excluded from sale under section 8.

Appointment of sale date

6. The sale date is a date to be appointed by proclamation as the sale date for the purposes of this Part.

Proceeds of sale

7. (1) Any amounts received for the sale of the business undertaking of FMA 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 that sale.

Parts of business undertaking of FMA excluded from sale

8. (1) The following assets, rights and liabilities that are part of the business undertaking of FMA are excluded from sale under this Part:

- (a) the Sydney fish market site;
- (b) any other assets, rights or liabilities that the Minister decides to exclude from sale.

(2) The Minister may, by order in writing, direct that any assets, rights or liabilities excluded from sale under this Part be transferred to the Crown, the Fisheries Administration Ministerial Corporation or any other public authority.

(3) The Minister may, in accordance with this section, further transfer any assets, rights or liabilities previously transferred under this section.

Lease of Sydney fish market site to approved purchaser

9. (1) A lease of all or any part of the Sydney fish market site may be granted to the approved purchaser on or after the sale date.

(2) Any such lease may be granted as a concurrent lease in respect of the land the subject of any or all of the existing leases.

(3) The inclusion in an existing lease, or in any sublease from the approved purchaser, of a condition that prohibits fish being sold by wholesale or retail on the Sydney fish market site unless they are

purchased at the public auction facility of the approved purchaser is specifically authorised and approved, until the deregulation date, for the purposes of section 51 of the Trade Practices Act 1974 of the Commonwealth.

(4) In this section, “**existing lease**” means a lease of any part of the Sydney fish market site that is in force immediately before the sale date.

Continuation of Sydney fish market

10. (1) The approved purchaser is entitled to be given an approval under section 40E of the Fisheries Act (with effect from the sale date) to control and operate a market at the Sydney fish market site. That section applies to the approval.

(2) The approval is to include conditions for the purpose of ensuring that the approved purchaser, during the period after the sale date and before the deregulation date:

- (a) maintains at the Sydney fish market site a public auction facility for the sale of fish; and
- (b) accepts all marketable fish delivered to it by trading societies or commercial fishers, and markets that fish to the best of its ability.

(3) For the purposes of this section, marketable fish are fish that may lawfully be sold or in possession, that are fit for human consumption and that are otherwise generally sold in the market.

Division 2—Dissolution of FMA and other consequential provisions

Dissolution of FMA

11. (1) FMA is dissolved immediately after the sale date.

(2) On the dissolution of FMA, the assets, rights and liabilities (if any) of FMA become the assets, rights and liabilities of the Crown.

(3) The Minister may, by order in writing, direct that any such residual assets, rights or liabilities be transferred to the Fisheries Administration Ministerial Corporation or any other public authority.

Amendment of Fisheries Act and other Acts

12. (1) The Fisheries Act is amended, on the commencement of this subsection, as set out in Schedule 1.

(2) The Fisheries Act and other Acts specified in Schedule 2 are amended, on the dissolution of FMA, as set out in Schedule 2.

FMA members to vacate office

13. A person who, immediately before the sale date, held office as a member of FMA:

- (a) ceases to hold office as such on the sale date; and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

Staff of FMA

14. (1) The employees of FMA have the rights conferred on them by this section and by a sale agreement in force.

(2) The sale agreements validated by section 5 (4) include the Heads of Agreement dated 3 May 1994, a copy of the provisions relating to the employees of FMA (including provisions relating to superannuation for those employees) is set out in Schedule 3. Clauses 11.1 and 12.4 of those Heads of Agreement are taken to be amended as indicated in Schedule 3.

(3) Service with FMA of an employee of FMA who becomes an employee of the approved purchaser in accordance with the sale agreement or an order under this Part (including service which is taken to be service with FMA) is taken to be service with the approved purchaser.

(4) Without limiting subsection (3), any employee of FMA referred to in that subsection retains any rights to annual leave, long service leave or sick leave accrued or accruing immediately before becoming an employee of the approved purchaser (except accrued leave for which the employee has, on ceasing to be employed by FMA, elected to be paid the money value in pursuance of any other entitlement of the employee).

(5) Part 2A of the Public Sector Management Act 1988 applies to any person who, immediately before the sale date, was the holder of an executive position under that Part as if the person had ceased to be an executive officer as referred to in section 42Q (4) of that Act. An engagement of any such person with the approved purchaser is taken to be an engagement in the public sector for the purposes of that Part.

Division 3—Provisions relating to transfers of business undertaking**Application and interpretation**

- 15. (1)** This Division applies to the following orders under this Part:
- (a) an order under section 5 transferring any part of the business undertaking of FMA to the approved purchaser;

- (b) an order under section 8 transferring or further transferring any part of the business undertaking excluded from sale to the Crown or a relevant body;
- (c) an order under section 11 transferring any residual part of the business undertaking vested in the Crown to a relevant body.

(2) In this Division, the body from whom part of the business undertaking is transferred is called the **transferor** and the body to whom it is transferred is called the transferee.

Vesting of undertaking in transferee

16. When any part of the business undertaking is transferred by an order to which this Division applies, the following provisions have effect (subject to the order directing the transfer):

- (a) the assets of the transferor comprised in that part of the undertaking vest in the transferee by virtue of this section and without the need for any conveyance, transfer, assignment or assurance;
- (b) the rights and liabilities of the transferor comprised in that part of the undertaking become by virtue of this section the rights and liabilities of the transferee;
- (c) all proceedings relating to that part of the undertaking pending by or against the transferor are taken to be proceedings pending by or against the transferee;
- (d) any act, matter or thing done or omitted in relation to that part of the undertaking by, to or in respect of the transferor 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 transferee.

Consideration for and terms of vesting

17. An order to which this Division applies may be made on such terms and for such consideration (if any) as are specified in the order.

Special provisions with respect to transfer of assets etc.

18. (1) Neither the operation of this Part nor a sale 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.

(2) Neither the operation of this Part nor a sale agreement is to be regarded as an event of default under any contract or other instrument.

(3) No attornment to a person to whom any asset is transferred under this Part by a lessee from the transferor is required.

PART 3—DEREGULATION OF FISH MARKETING

Purpose of Part

19. (1) The purpose of this Part is to remove, on the deregulation date, the regulatory controls imposed by the Fisheries Act on fish marketing in New South Wales.

(2) After that date, commercial fishers will no longer be required to market their catch through the Sydney fish market or other co-operative trading society market or in accordance with a relevant fish marketing authority.

Deregulation date

20. The deregulation date is the earlier of the following:

- (a) 3 years after the sale date;
- (b) 1 January 1998.

Deregulation—repeal of relevant provisions of Fisheries Act and regulations

21. (1) On the deregulation date, the following provisions of the Fisheries Act are repealed:

- (a) the definitions of “Market” and “Trading society” in section 4 (1);
- (b) sections 38–40G (except section 40DA);
- (c) section 120 (2) (o), (x), (y), (gg), (uu)–(ddd), (lll), (mmm).

(2) On the deregulation date, the Fish Marketing Regulation 1980 is repealed.

PART 4—MISCELLANEOUS**Compensation not payable**

- 22.** (1) Compensation is not payable by or on behalf of the State:
- (a) because of the enactment or operation of this Act, or for any consequence of that enactment or operation; or
 - (b) because of any statement or conduct relating to the enactment of this Act, to the deregulation of, or the removal or continuation of restrictions on, the marketing of fish.
- (2) In this section:
- “**compensation**” includes damages or any other form of monetary compensation;
 - “**conduct**” includes any act or omission, whether unconscionable, misleading, deceptive or otherwise;
 - “**statement**” includes a representation of any kind:
 - (a) whether made verbally or in writing; and
 - (b) whether negligent, false, misleading or otherwise;
 - “**the State**” means the Crown within the meaning of the Crown Proceedings Act 1988, and includes FMA or an officer, employee or agent of the Crown or of FMA.

FMA subject to Ministerial control

- 23.** For the purposes of or incidental to this Act, FMA is subject to the control and direction of the Minister.

Act binds Crown

- 24.** This Act binds the Crown.

Regulations

- 25.** (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 (including provisions regarding the interpretation of references in any instrument to FMA or any member or employee of FMA).

(3) Any such savings or transitional provision may, if the regulations so provide, take effect from the date of assent to this Act 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.
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**SCHEDULE 1—AMENDMENT OF FISHERIES ACT
RELATING TO ESTABLISHMENT OF
MINISTERIAL CORPORATION**

(Sec. 12 (1))

Section 5A:

After section 5, insert:

Fisheries Administration Ministerial Corporation

5A. (1) There is constituted by this section a corporation with the corporate name of the Fisheries Administration Ministerial Corporation (the “Corporation”).

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

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

(4) The Corporation has such functions as are conferred on it by or under any Act.

(5) The Corporation may:

- (a) hold on behalf of the Crown any assets, rights and liabilities transferred to it under the Fish Marketing Act 1994; and
- (b) acquire, exchange, lease, dispose of or otherwise deal with property; and
- (c) develop and manage land transferred to it or acquired by it; and
- (d) carry on any activities or business that relate to any of the above.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF FISHERIES ACT AND OTHER ACTS ON SALE DATE

(Sec. 12 (2))

Fisheries Act(1) Section 4 (**Definitions**):

- (a) From section 4 (1), omit the definition of “Authority”.
- (b) From section 4 (1), omit the definition of “Market”, insert instead:

“**Market**” means a fish market established, controlled or operated by a trading society, and any land, improvement or work provided or used for or in connection with such a market.

- (c) From section 4 (1), omit the definition of “Trading society”, insert instead:

“**Trading society**” means:

- (a) the company to which the business undertaking of the Fish Marketing Authority is sold under Part 2 of the Fish Marketing Act 1994; or
- (b) a co-operative registered under the Co-operatives Act 1992 whose objects include (expressly or impliedly) the marketing of fish.

(2) Section 40 (**Persons authorised to sell fish**):

Omit the section.

(3) Section 40C (**Exemption from selling fish in a market**):

Omit “on the recommendation of the Authority and”.

(4) Section 40D (**Consent to certain sales of fish**):

Omit “Authority” wherever occurring, insert instead “Director-General”.

(5) Section 40E (**Trading societies**):

- (a) From section 40E (1) (a), omit “after a report and recommendation to him by the Authority”.

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SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF FISHERIES
ACT AND OTHER ACTS ON SALE DATE—*continued*

- (b) From section 40E (2), omit “, after a report and recommendation to him by the Authority,”.
- (c) From section 40E (4), omit “or the Authority”.
- (6) Section 40F (**Marketing and distribution of fish under control of Authority in certain cases**):
Omit the section.
- (7) Section 40G:
After section 40F, insert:
Fish Marketing Act 1994
40G. (1) This Division (including this section) has effect subject to the Fish Marketing Act 1994.
(2) A consent issued under section 40D by the Fish Marketing Authority and in force immediately before the amendment of that section by the Fish Marketing Act 1994 is taken to be a consent issued under that section by the Director-General.
(3) A reference to the Fish Marketing Authority in a certificate of exemption issued under section 40C, a consent issued under section 40D or an approval under section 40E is to be read as a reference to the Director-General.
(4) However if such a reference is a reference to the delivery of fish to the Fish Marketing Authority, the reference is to be read as a reference to the delivery of fish to the company to which the business undertaking of that Authority is sold under Part 2 of the Fish Marketing Act 1994.
(5) A reference in the Fish Marketing Regulation 1980 to the Fish Marketing Authority or the General Manager of that Authority is to be read as a reference to that company.
- (8) Part 3, Division 6A (sections 41A–41T):
Omit the Division.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF FISHERIES
ACT AND OTHER ACTS ON SALE DATE—*continued*

(9) Section 120 (**Regulations**):

Omit section 120 (2) (fff), (ggg), (iii), (jjj), (kkk), (ooo),
(ppp), (2A).

**Government and Related Employees Appeal Tribunal Act 1980
No. 39**

Schedule 4 (**Employing Authorities**):

Omit “Fish Marketing Authority.”.

Public Authorities (Financial Arrangements) Act 1987 No. 33

Schedule 1 (**Authorities**):

Omit “Fish Marketing Authority.”.

Public Finance and Audit Act 1983 No. 152

Schedule 2 (**Statutory bodies**):

Omit “Fish Marketing Authority.”.

Public Sector Management Act 1988 No. 33

(1) Schedule 3 (**Declared Authorities**):

Omit “Fish Marketing Authority.”.

(2) Schedule 3A (**Chief executive positions**):

From Part 3, omit “General Manager of the Fish Marketing
Authority”.

(3) Schedule 3B (**Senior executive positions**):

From Part 1, omit the positions relating to the Fish Marketing
Authority.

**SCHEDULE 3—COPY OF HEADS OF AGREEMENT—
PROVISIONS RELATING TO EMPLOYEES (WITH
AMENDMENTS)**

(Sec. 14 (2))

HEADS OF AGREEMENT

Dated 3 May 1994

Parties

**THE HONOURABLE IAN RAYMOND CAUSLEY, MP, MINISTER
FOR AGRICULTURE AND FISHERIES AND MINISTER FOR
MINES, FOR AND ON BEHALF OF THE FISH MARKETING
AUTHORITY REPRESENTING THE CROWN IN THE RIGHT
OF THE STATE OF NEW SOUTH WALES AND THE
GOVERNMENT OF NEW SOUTH WALES**

SYDNEY FISH MARKETS PTY LTD ACN 064 254 306

SFM TENANTS & MERCHANTS PTY LTD ACN 062 939 413

**NEW SOUTH WALES FISHERMEN'S CO-OPERATIVE
ASSOCIATION LTD**

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11. Employees

11.1 Guarantee of employment

Subject to the provisions of the Act and the continuing satisfactory performance of the Employees, the Purchaser agrees to employ or contract, as the case may be:

- (1) wages staff currently employed pursuant to the terms of the *NSW Fish Marketing Authority (Wages Staff) Award* for at least 12 months from Completion on substantially the same terms as are prescribed by that award or in accordance with any otherwise applicable State award;

Amendment. Omit Paragraph (1) above insert instead:

- (1) **wages staff currently employed pursuant to the terms of the *NSW Fish Marketing Authority (Wages Staff) Award* for at least 12 months from Completion on terms no less favourable than that award;**

SCHEDULE 3—COPY OF HEADS OF AGREEMENT—
 PROVISIONS RELATING TO EMPLOYEES (WITH
 AMENDMENTS) —*continued*

- (2) salaried staff currently employed pursuant to the terms of the *NSW Fish Marketing Authority Salaried Staff Enterprise Agreement* for at least 12 months from Completion on the same terms and conditions as are prescribed by that agreement; and
- (3) SES officers currently engaged pursuant to the terms of an SES contract under Part 2A of the Public Sector Management Act 1988 on a contract for at least 12 months duration in the position which they hold immediately prior to Completion on substantially the same remuneration package.

11.2 Recognition of public sector service for redundancy and leave purposes

- (1) The Purchaser agrees that all continuous service for the Employees with the New South Wales Public service/sector will be recognised by the Purchaser as “service” with the Purchaser for the purposes of calculating Employees’ entitlements to redundancy pay applying at the time of redundancy and leave entitlements such as annual leave, sick leave, long service, parental leave or extended leave, where applicable.
- (2) The Vendor will accept no pro-rata liability for redundancy or severance payments for any period of employment relating to any service of any Employee prior to Completion.

11.3 Payment of leave entitlements

- (1) The Purchaser acknowledges that annual leave and pro-rata long service leave, extended leave (where applicable) entitlements for the Employees as at the date of Completion will be either paid to the Employees or allowed by the Vendor against the Purchase Price, as appropriate.
- (2) The Vendor will indemnify the Purchaser in respect of sick leave taken by Employees over and above their respective annual entitlements for 3 years following Completion. Any payment under this indemnity will be made on the anniversaries of the date of completion.

SCHEDULE 3—COPY OF HEADS OF AGREEMENT—
PROVISIONS RELATING TO EMPLOYEES (WITH
AMENDMENTS)—*continued*

11.4 Enterprise agreement

The Vendor and Purchaser acknowledge that the Purchaser, or its successor, will be bound by the *NSW Fish Marketing Authority Salaried Staff Enterprise Agreement* between the FMA and its salaried employees.

11.5 Co-operation and notice

- (1) The Purchaser agrees to co-operate with the Vendor in consulting with the Employees (and their representatives, if appropriate) prior to Completion.
- (2) The Vendor and the Purchaser agree that the letters annexed as Annexure 4 will be forwarded to the appropriate Employees on or about execution of this Heads of Agreement.

12 Superannuation

12.1 Non-entitlement to State schemes post Completion

The Vendor and Purchaser acknowledge that all the Employees will cease to be entitled to contribute to State superannuation schemes following Completion.

12.2 Unfunded superannuation liabilities

- (1) The Vendor will extinguish all unpaid superannuation liabilities relating to the Employees upon Completion.
- (2) The Vendor will fully fund (or procure the funding of) any unfunded superannuation liabilities of the FMA for the Employees as at Completion.

12.3 Transfer of accrued entitlements

- (1) The Vendor will transfer the Employee's accrued superannuation entitlements to the scheme established by the Purchaser under clause 12.4.
- (2) For the avoidance of doubt, no assets (other than the accrued entitlements pursuant to clause 12.3(1)), or surplus of any State superannuation fund referable to the Employees will be transferred to the Purchaser's superannuation scheme.

SCHEDULE 3—COPY OF HEADS OF AGREEMENT—
PROVISIONS RELATING TO EMPLOYEES (WITH
AMENDMENTS) —*continued*

12.4 Establishment of new superannuation scheme

As from Completion the Purchaser will establish a superannuation scheme (“new scheme”) so that:

- (1) the Employees are entitled to contribute and rollover their existing entitlements into the new scheme; and
- (2) the Purchaser will make contributions to the new scheme on behalf of Employees at a rate equal to the contributions previously made by the Vendor on behalf of the Employees.

Amendment. After “Employees” where lastly occurring in paragraph (2), insert “(including contributions for which the Vendor was liable but payment of which was deferred)”.

*[Minister’s second reading speech made in—
Legislative Assembly on 4 May 1994
Legislative Council on 13 May 1994]*