

Sydney Market Authority (Dissolution) Act 1997 No 62

[1997-62]



New South Wales

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Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act	4
2 Commencement	4
3 Definitions	4
Part 2 Sale of business undertaking of Sydney Market Authority	5
Division 1 The sale	5
4 Approved purchaser	5
5 Negotiations and agreements for sale of business undertaking of Sydney Market Authority	5
6 Appointment of sale date	6
7 Proceeds of sale	6
8 Parts of business undertaking of Sydney Market Authority excluded from sale	6
Division 2 The new leases	7
9 Definitions	7
10 Lease of Flemington site to approved purchaser	7
11 Effect of expiry of head lease on statutory subleases	7
12 Exemption from stamp duty	8
Division 3 Dissolution of Sydney Market Authority	8
13 Dissolution of Sydney Market Authority	8

14 Sydney Market Authority members to vacate office.....	8
15 Staff of Sydney Market Authority.....	8
Division 4 Provisions relating to transfer of business undertaking.....	9
16 Application and interpretation.....	9
17 Vesting of undertaking in transferee.....	10
18 Consideration for and terms of vesting.....	10
19 Special provisions with respect to transfer of staff and assets.....	10
Part 3 Miscellaneous.....	10
20 Compensation not payable.....	10
21 Act binds Crown.....	11
22 Regulations.....	11
23 Repeals.....	11
24 (Repealed).....	11
25 Savings, transitional and other provisions.....	11
26 Monitoring of operation of Act.....	11
Schedule 1 (Repealed).....	12
Schedule 2 Savings, transitional and other provisions.....	12

Sydney Market Authority (Dissolution) Act 1997 No 62



New South Wales

An Act to authorise the sale of the business undertaking of the Sydney Market Authority and the lease of the Flemington market site, to dissolve the Sydney Market Authority, to repeal the *Sydney Market Authority Act 1968* and to amend certain other Acts and instruments; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Sydney Market Authority (Dissolution) Act 1997*.

2 Commencement

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

3 Definitions

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 the Sydney Market Authority means the assets, rights and liabilities of the Sydney Market Authority and, in particular, includes the Sydney Market Authority's interests in the Haymarket licence.

Flemington site means land at Flemington, in the State of New South Wales, being the land described in folio identifier Volume 8650, folio 197, under the *Real Property Act 1900*.

former Act means the *Sydney Market Authority Act 1968*.

Haymarket licence means the licence with respect to the Haymarket site granted to the Sydney Market Authority by Rockvale Pty Ltd (ACN 008 655 945) (subsequently renamed

Market City Properties Pty Ltd) pursuant to a deed of agreement dated 10 December 1993.

Haymarket site means land at Sydney, in the State of New South Wales, being the land described in folio identifiers 1/865241, 2/865241, 3/865241 and 4/865241 under the [Real Property Act 1900](#).

instrument means an instrument (other than this Act) that 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).

Ministerial Holding Corporation means the Ministerial Holding Corporation constituted by section 37B of the [State Owned Corporations Act 1989](#).

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 Market Authority means the Sydney Market Authority constituted under the former Act.

Part 2 Sale of business undertaking of Sydney Market Authority

Division 1 The sale

4 Approved purchaser

For the purposes of this Act, the approved purchaser is Sydney Markets Ltd (ACN 077 119 290).

5 Negotiations and agreements for sale of business undertaking of Sydney Market Authority

- (1) Negotiations may be conducted for the sale of the business undertaking of the Sydney Market Authority in accordance with this Part.
- (2) The Minister is authorised to enter into agreements for the sale of the business undertaking of the Sydney Market Authority to the approved purchaser and, for that purpose, the Minister may act for and on behalf of the Sydney Market Authority.
- (3) The Minister may, by order in writing, direct that the assets, rights and liabilities of any part of the business undertaking of the Sydney Market Authority 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 for the purposes of this section before, on or after the sale date.
- (5) However, any sale of the business undertaking of the Sydney Market Authority to the approved purchaser may not take effect before the sale date.
- (6) Any negotiations or agreements conducted or entered into before the commencement of this section for the purposes of the sale of the business undertaking of the Sydney Market Authority, including those conducted or entered into before the date of assent to this Act, are validated to the extent of any invalidity.
- (7) For the purposes of this section, the business undertaking of the Sydney Market Authority does not include assets, rights or liabilities excluded from sale under section 8.

6 Appointment of sale date

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

Editorial note—

Sale date for the purposes of this Part: 1.11.1997. See Gazette No 117 of 31.10.1997, p 8803.

7 Proceeds of sale

- (1) Any amounts received for the sale of the business undertaking of the Sydney Market Authority 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.

8 Parts of business undertaking of Sydney Market Authority excluded from sale

- (1) The following assets, rights and liabilities that are part of the business undertaking of the Sydney Market Authority are excluded from sale under this Part:
 - (a) the Flemington 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 Ministerial Holding 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.

Division 2 The new leases

9 Definitions

In this Division:

existing lease means a lease of any part of the Flemington site that is in force immediately before the sale date, but does not include any sublease of such a lease.

head lease means a lease granted under section 10 (1).

statutory sublease means a lease that becomes a sublease of a head lease by operation of section 10 (2) (b).

10 Lease of Flemington site to approved purchaser

- (1) A lease of all or any part of the Flemington site (a **head lease**) may be granted to the approved purchaser on or after the sale date.
- (2) On the granting of a head lease, the following provisions have effect with respect to all existing leases over the land the subject of the head lease:
 - (a) the lease is taken to be varied by substituting the name of the approved purchaser for that of the lessor,
 - (b) the lease is taken to become a sublease of the head lease,
 - (c) except as otherwise provided by the regulations, the lease continues to have effect according to its tenor,
 - (d) any proceedings under the lease in relation to any matter arising before the head lease was granted are to be commenced or maintained by or against the lessor, or the lessor's successor in title to the land, as if the lease had not been varied as referred to in paragraph (a).

11 Effect of expiry of head lease on statutory subleases

If a head lease ceases to have effect (whether by reason of expiry, surrender, termination, forfeiture or otherwise) the following provisions have effect with respect to any statutory sublease of the head lease:

- (a) the sublease is taken to be varied by substituting the title of the Ministerial Holding Corporation for the name of the head lessee for the time being,
- (b) the sublease is taken to cease to be a statutory sublease and to become a lease granted by the Ministerial Holding Corporation,
- (c) the sublease continues to have effect, as a lease, according to its tenor,

- (d) any proceedings under the sublease in relation to any matter arising before the head lease ceased to have effect are to be commenced or maintained against the head lessee for the time being as if the lease had not been varied as referred to in paragraph (a).

12 Exemption from stamp duty

No duty is chargeable under the [Stamp Duties Act 1920](#) in respect of a variation referred to in section 10 (2) (a) or 11 (a).

Division 3 Dissolution of Sydney Market Authority

13 Dissolution of Sydney Market Authority

- (1) The Sydney Market Authority, and all committees established by it under section 12 of the former Act, are dissolved immediately after the sale date.
- (2) On the dissolution of the Sydney Market Authority, the assets, rights and liabilities (if any) of the Sydney Market Authority become the assets, rights and liabilities of the Crown.
- (3) The Minister may, by order in writing, direct that any such assets, rights or liabilities be transferred to the Ministerial Holding Corporation or any other public authority.

14 Sydney Market Authority members to vacate office

A person who, immediately before the sale date, held office as a member of the Sydney Market Authority or as a member of any committee established by it under section 12 of the former Act:

- (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.

15 Staff of Sydney Market Authority

- (1) The employees of the Sydney Market Authority have the rights conferred on them by this section and by any sale agreement in force.
- (2) Service with the Sydney Market Authority of an employee of the Sydney Market Authority who becomes an employee of the approved purchaser in accordance with a sale agreement or an order under this Part (including service which is taken to be service with the Sydney Market Authority) is taken to be service with the approved purchaser.
- (3) Without limiting subsection (2), any employee of the Sydney Market Authority referred to in that subsection retains any rights to annual leave or long service 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 the

Sydney Market Authority, been paid the money value in pursuance of any other entitlement of the employee).

- (4) Part 2A of the *Public Sector Management Act 1988* applies to any employee of the Sydney Market Authority:
- (a) who, immediately before the sale date, was the holder of an executive position under that Part, and
 - (b) who either:
 - (i) does not become an employee of the approved purchaser on the sale date, or
 - (ii) becomes an employee of the approved purchaser on the sale date or within the period of 6 months after the sale date, but ceases to be such an employee before the end of that period,
- as if the employee had ceased to be an executive officer as referred to in section 42Q (4) of that Act.
- (5) An employee in respect of whom an entitlement arises by virtue of subsection (4) does not become entitled to any further entitlement under that subsection merely because he or she subsequently becomes, and later ceases to be, an employee of the approved purchaser.
- (6) For the purpose of determining the entitlement under Part 2A of the *Public Sector Management Act 1988* of an employee referred to in subclause (4) (b) (ii), the engagement of the employee with the approved purchaser is taken not to be an engagement in the public sector as referred to in section 42S (8) of that Act.

Division 4 Provisions relating to transfer of business undertaking

16 Application and interpretation

- (1) This Division applies to the following orders under this Part:
- (a) an order under section 5 transferring any assets, rights or liabilities to the approved purchaser,
 - (b) an order under section 8 transferring or further transferring any assets, rights or liabilities to the Crown or to a relevant body,
 - (c) an order under section 13 transferring any assets, rights or liabilities to a relevant body.
- (2) In this Division, the body from whom any assets, rights or liabilities are transferred is called the **transferor** and the body to whom they are transferred is called the **transferee**.

17 Vesting of undertaking in transferee

When any assets, rights or liabilities are transferred by an order to which this Division applies, the following provisions have effect (subject to the order directing the transfer):

- (a) the assets 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 become, by virtue of this section, the rights and liabilities of the transferee,
- (c) all proceedings relating to the assets, rights or liabilities 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 the assets, rights or liabilities by, to or in respect of the transferor is (to the extent to which 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.

18 Consideration for and terms of vesting

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.

19 Special provisions with respect to transfer of staff and assets

- (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 Miscellaneous

20 Compensation not payable

- (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.

(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 the Sydney Market Authority or an officer, employee or agent of the Crown or of the Sydney Market Authority.

21 Act binds Crown

This Act binds the Crown.

22 Regulations

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.

23 Repeals

The *Sydney Market Authority Act 1968* and the *Sydney Market Regulation 1993* are repealed.

24 (Repealed)

25 Savings, transitional and other provisions

Schedule 2 has effect.

26 Monitoring of operation of Act

- (1) The Committee of the Legislative Council established under the name of the “Standing Committee on State Development” is to monitor, and prepare a report on the operation of this Act during the period from its commencement until 31 December 1997.
- (2) The report is to be tabled in the Legislative Council as soon as practicable after 31 December 1997.

Schedule 1 (Repealed)

Schedule 2 Savings, transitional and other provisions

(Section 25)

1 Definitions

In this Schedule:

licence or permit means a licence or permit referred to in clause 2.

long-term licence or permit means a licence or permit to which clause 3 applies.

short-term licence or permit means a licence or permit to which clause 4 applies.

2 Continuation of certain licences and permits

Subject to clauses 3 and 4, any licence or permit held by any person from the Sydney Market Authority under section 11 (2) (e) of the former Act and in force immediately before the sale date:

- (a) is taken to be a licence or permit held by that person from the approved purchaser, and
- (b) continues to have effect, and may be revoked, in accordance with the terms and conditions to which it is subject.

3 Long-term licences and permits

(1) This clause applies to any licence or permit:

- (a) that relates to the use or occupation of any part of the Flemington site or the Haymarket site for the sale or disposal of farm produce or other merchandise, and
- (b) that is identified in a sale agreement as a long-term licence or permit.

(2) A long-term licence or permit:

- (a) unless sooner revoked, ceases to have effect on the date occurring 10 years after the sale date, and
- (b) may be revoked by agreement between the holder of the licence or permit and the approved purchaser.

(3) Subject to subclause (2), a long-term licence or permit may be varied in either or both of the following ways:

- (a) by agreement between the holder of the licence or permit and the approved purchaser,

(b) in accordance with the terms and conditions to which the licence or permit is subject.

- (4) The terms and conditions of a long-term licence or permit may be varied by the approved purchaser by notice in writing served on the holder of the licence or permit.
- (5) No duty is chargeable under the *Stamp Duties Act 1920* in respect of any licence or permit granted by the approved purchaser to replace a long-term licence or permit.

4 Short-term licences and permits

- (1) This clause applies to any licence or permit that is not a long-term licence or permit.
- (2) A short-term licence or permit may be varied or revoked in either or both of the following ways:
- (a) by agreement between the holder of the licence or permit and the approved purchaser,
- (b) in accordance with the terms and conditions to which the licence or permit is subject.
- (3) The terms and conditions of a short-term licence or permit may be varied by the approved purchaser by notice in writing served on the holder of the licence or permit.

5 Rentals, fees, dues and other amounts

The approved purchaser may, in connection with a licence or permit, charge such rentals, fees, dues or other amounts as are determined by the approved purchaser.

6 Continuation of certain permissions

Any permission granted by the Sydney Market Authority under section 11 (5) or (6) of the former Act and in force immediately before the sale date:

- (a) is taken to be a permission granted by the approved purchaser, and
- (b) continues to have effect, and may be revoked, in accordance with the terms and conditions to which it is subject.

7 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such 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.