

Melbourne Wholesale Fruit and Vegetable Market Trust (Amendment) Bill

No.

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By Authority L. V. North, Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1° 10 November 1993

*(Brought in by Mr McGrath (Wimmera) and Mr Maclellan
(Pakenham))*

A BILL

to amend the **Melbourne Wholesale Fruit and Vegetable Market
Trust Act 1977** and for other purposes.

Melbourne Wholesale Fruit and Vegetable Market Trust (Amendment) Act 1993

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

5 The purpose of this Act is to amend the **Melbourne
Wholesale Fruit and Vegetable Market Trust Act
1977—**

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984.**)

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- (a) to replace the Trust with a new body to be known as the Melbourne Market Authority; and
- (b) to make further amendments to improve the efficient operation of the market.

2. Commencement 5

- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed. 10
- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 6 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period. 15

No. 8993 as amended by Nos 9095, 9194, 9863, 110/1986, 41/1987, 68/1987, 23/1988, 35/1988, 8/1989, 12/1989, 18/1989, 72/1989 and 63/1990.

3. Principal Act

In this Act, the **Melbourne Wholesale Fruit and Vegetable Market Trust Act 1977** is called the **Principal Act**.

PART 2—THE MELBOURNE MARKET AUTHORITY 20

4. Change of name of Act

In section 1 (1) of the Principal Act, for “*Melbourne Wholesale Fruit and Vegetable Market Trust Act 1977*” substitute “**Melbourne Market Authority Act 1977**”. 25

5. Amendment of section 3

In section 3 of the Principal Act—

- (a) after the definition of “Appointed day” **insert**—
 “**Authority**” means the Melbourne Market
 Authority established by Part II.’;
- (b) for the definition of “Chairman” **substitute**—
 “**Chairperson**” means chairperson of the
 Authority and includes a person appointed to
 act as chairperson.’;
- (c) for the definition of “Member” **substitute**—
 “**Member**” means member of the Authority and
 includes the chairperson and a person
 appointed to act as member.’;
- (d) **omit** the definition of “Trust”.

6. Substitution of Part II

For Part II of the Principal Act **substitute**—

“PART II—THE MELBOURNE MARKET AUTHORITY

4. Establishment of the Authority

- (1) There is established an Authority to be known as the Melbourne Market Authority.
- (2) The Authority—
- (a) is a body corporate with perpetual succession; and
- (b) shall have a common seal; and
- (c) may sue and be sued in its corporate name; and
- (d) may acquire, hold and dispose of personal property; and
- (e) may—
- (i) with the approval of the Governor in Council and the consent of the Minister administering section 4 of the **Crown Land (Reserves) Act**

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- 1978, purchase or acquire any Crown land; and
- (ii) with the approval of the Minister, purchase or acquire any other real property; and 5
- (iii) with the approval of the Minister, hold and dispose of real property.
- (3) The Governor in Council may grant, on any terms and conditions that it thinks fit, to the Authority any Crown land purchased or acquired by the Authority under sub-section (2) (e). 10
- (4) The common seal of the Authority must be kept in such custody as the Authority directs and must not be used except as authorised by the Authority. 15
- (5) All courts, judges and persons acting judicially must take judicial notice of the common seal of the Authority affixed to a document and until the contrary is proved must presume that it was duly affixed. 20

5. *Objects of the Authority*

The objects of the Authority are—

- (a) to provide a commercially viable wholesale facility for the efficient distribution of fresh produce; and 25
- (b) to optimise returns on land and assets controlled and managed by the Authority.

6. *Functions of the Authority* 30

The Authority has the following functions—

- (a) to control, maintain and manage the Melbourne wholesale fruit and vegetable market and the market land; 35

(b) to promote the use of the facilities at the Melbourne wholesale fruit and vegetable market;

(c) to provide advice and information to the Minister on matters relating to the market and its use by industry and on industry related matters generally;

(d) to do all things necessary or convenient to enable the Authority to achieve its objects;

(e) to do all things the Authority is authorised or required to do by or under this or any other Act or law.

7. Powers of the Authority

(1) Subject to this Act, the Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting the generality of sub-section (1), the Authority may, subject to this Act—

(a) grant leases, tenancies, permits and licences of land forming part of, or of buildings or chattels on, the market land or other land purchased or acquired by the Authority subject to any terms and conditions and the payment of any fees that the Authority determines;

(b) enter into arrangements with other persons for the sale by the Authority on behalf of those persons of fruit, vegetables or cut flowers, including arrangements for the payment to the Authority of commission or other amounts;

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(c) provide on the market land any buildings, premises, machinery or other equipment for the purposes of the Melbourne wholesale fruit and vegetable market. 5

(3) Despite section 4, the Authority is not required to obtain the approval of the Minister to the grant of a lease, tenancy, permit or licence under this section unless the grant is for a term that exceeds or may exceed 10 years. 10

8. Ministerial directions

(1) The Authority is subject to—
(a) the general direction and control of the Minister; and 15
(b) any specific written directions given by the Minister.

(2) The Authority must provide the Minister with the information, reports and documents relating to its policies and activities that the Minister requests. 20

9. Members of the Authority

The Authority shall consist of not less than 3, and not more than 5, members appointed by the Minister, having regard to their capacity to achieve the objects of the Authority and having qualifications or experience that the Minister considers appropriate. 25

10. Terms and conditions of office of member 30

(1) A member holds office—
(a) for the term, not exceeding 3 years, that is specified in the instrument of appointment, and, subject to

sub-section (2), is eligible for re-appointment; and

(b) subject to the terms and conditions determined by the Minister and specified in the instrument of appointment.

(2) A person who attains the age of 72 years is not eligible for appointment or re-appointment as a member.

(3) The office of a member becomes vacant if—

(a) the member becomes bankrupt; or

(b) the member is convicted of an offence which is, or which would if committed in Victoria be, an indictable offence; or

(c) the member is absent from 4 consecutive meetings of the Authority without the Minister's prior consent.

(4) A member may resign his or her office in writing delivered to the Minister.

(5) The Minister may remove a member from office.

(6) A member is entitled to be paid such remuneration and travelling and other allowances as are specified in the instrument of appointment.

(7) A member, in respect of the office of member, is subject to Part 9 of the **Public Sector Management Act 1992** but is not subject to any other provision of that Act.

11. Chairperson

(1) The Minister must appoint one member to be chairperson of the Authority.

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- (2) The chairperson may resign that office in writing delivered to the Minister.

12. *Acting appointments*

- (1) The Minister may appoint a person to act as a member during any period when a member is absent or unable to perform the duties of office. 5
- (2) The Minister may appoint a member to act as chairperson—
- (a) during a vacancy in the office of chairperson; or 10
- (b) during any period, or during all periods, when the chairperson is unable, for any reason, to attend meetings of the Authority. 15
- (3) While so acting, the person has all the powers and privileges and may perform all the functions and duties conferred by this Act on the member or chairperson, as the case may be. 20
- (4) An appointment under sub-section (1) or (2) is on the terms and conditions determined by the Minister.
- (5) The Minister may at any time terminate an appointment under sub-section (1) or (2). 25

13. *Validity of acts or decisions of the Authority*

An act or decision of the Authority is not invalid by reason only of—

- (a) a defect or irregularity in or in connection with the appointment of a member; or 30
- (b) a vacancy in the office of member.

13A. *Proceedings of the Authority*

- 5
- (1) Meetings of the Authority shall be held at such times and places as the Authority determines.
- (2) The chairperson or, in his or her absence, a member appointed by the chairperson shall preside at a meeting of the Authority.
- 10
- (3) A majority of the members for the time being constitutes a quorum of the Authority.
- (4) A question arising at a meeting shall be determined by a majority of votes of members present and voting on that question and, if voting is equal, the person presiding has a casting, as well as a deliberative, vote.
- 15
- (5) The Authority must ensure that minutes are kept of each of its meetings.
- (6) The Authority may permit members to participate in a particular meeting, or all meetings, by telephone, closed-circuit television or other means of communication.
- 20
- (7) A member who participates in a meeting under permission under sub-section (6) is to be taken to be present at the meeting.
- 25
- (8) Subject to this Act, the Authority may regulate its own proceedings.

13B. *Chief executive officer*

- 30
- (1) The Authority may appoint a chief executive officer for the term, not exceeding 5 years, that is specified in the instrument of appointment but is eligible for re-appointment.
- 35
- (2) The chief executive officer holds office, subject to this Act, on the terms and

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conditions that are specified in the instrument of appointment.

13c. Staff

- | | |
|--|---|
| (1) The Authority may engage such officers or employees as are necessary for the performance of its functions. | 5 |
| (2) The terms and conditions of appointment or employment are as determined by the Authority. | |

13d. Advisory committees

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|--|----|
| (1) The Authority must establish the following advisory committees— | |
| (a) a Fruit and Vegetable Wholesalers Committee; | |
| (b) a Fruit and Vegetable Growers Committee; | 15 |
| (c) a Fruit and Vegetable Retailers Committee; | |
| (d) a Flower Industry Committee. | |
| (2) The Authority may from time to time establish any additional advisory committee that it considers desirable. | 20 |
| (3) The Authority must consult each advisory committee not less than 4 times each year. | |
| (4) An advisory committee must consist of 5 persons appointed by the Authority, of whom 3 are selected from a panel of names submitted by industry organisations which in the opinion of the Authority represent the interests of fruit and vegetable wholesalers, growers or retailers or the flower industry (as the case may be). | 25 |
| (5) The chairperson of an advisory committee must be appointed by the Authority. | 30 |

(6) Subject to this Act and to any directions of the Authority, an advisory committee may regulate its own proceedings.

5 (7) An advisory committee may be dissolved by the Authority at any time.”.

7. Insertion of new section 19A

After section 19 of the Principal Act **insert—**

“19A. Authority to pay dividend

10 The Authority must pay to the State such dividend, at such times and in such manner as is determined by the Treasurer after consultation with the Authority and the Minister.”.

8. Market land

15 For sections 26 to 31 of the Principal Act **substitute—**

“26. Use of market land

20 (1) Subject to sub-section (2) and despite anything to the contrary in a folio of the Register, the Authority may permit the whole or any part of the market land to be used for any purpose it thinks fit.

25 (2) The Authority must not permit a use which interferes with or detracts from the use of the market land as a wholesale fruit and vegetable market.”.

9. Consequential amendments

(1) In Parts III (except sections 23 and 24) and IV of the Principal Act, for “Trust” (wherever occurring) **substitute** “Authority”.

30 (2) In section 18 of the Principal Act, for “13” **substitute** “13D”.

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- (3) In section 23 of the Principal Act—
- (a) in sub-section (1), for “Trust” (where thirdly occurring) **substitute** “Authority”; and
 - (b) in sub-section (4), for “Trust” (where secondly, thirdly and fourthly occurring) **substitute** “Authority”; and 5
 - (c) in sub-section (5), for “Trust” **substitute** “Authority”.
- (4) In section 24 of the Principal Act—
- (a) in sub-sections (1), (2), (4) and (7), for “Trust” (wherever occurring) **substitute** “Authority”; and 10
 - (b) in sub-section (6), for “Trust” (where secondly and thirdly occurring) **substitute** “Authority”.
- (5) In Schedule 1 to the Principal Act—
- (a) for “the Trust” (wherever occurring) **substitute** “the Authority”; and 15
 - (b) for “*Melbourne Wholesale Fruit and Vegetable Market Trust Act 1977*” (wherever occurring) **substitute** “**Melbourne Market Authority Act 1977**”; and 20
 - (c) for “Melbourne Wholesale Fruit and Vegetable Market Trust” (wherever occurring) **substitute** “Melbourne Market Authority”; and
 - (d) for “Chairman” **substitute** “chairperson”.
- 10. Amendments to other Acts** 25
- (1) The **Farm Produce Wholesale Act 1990** is amended as follows—
- (a) in section 3, in the definition of “Melbourne Wholesale Fruit and Vegetable Market”, for “*Melbourne Wholesale Fruit and Vegetable Market Trust Act 1977*” **substitute** “**Melbourne Market Authority Act 1977**”; 30
 - (b) in section 32 (3)—
 - (i) for “Melbourne Wholesale Fruit and Vegetable Market Trust” **substitute** “Melbourne Market Authority”; and 35

(ii) for “the Trust” **substitute** “the Authority”.

5 (2) In Column 1 of Schedule 2 to the **Annual Reporting Act 1983**, for “Melbourne Wholesale Fruit and Vegetable Market Trust” **substitute** “Melbourne Market Authority”.

(3) In section 3 (1) of the **Local Authorities Superannuation Act 1988** for paragraph (l) of the definition of “Authority” **substitute**—
“(l) the Melbourne Market Authority; and”.

10 **PART 3—TRANSITIONAL**

11. Definitions

In this Part—

15 “**appointed day**” means the day on which this Part comes into operation;

“**Authority**” means the Melbourne Market Authority established by Part II of the Principal Act as amended by this Act;

20 “**Trust**” means the Melbourne Wholesale Fruit and Vegetable Market Trust established by the Principal Act as in force before the appointed day;

25 “**Trust instrument**” means an instrument (including debentures and stock issued by the Trust under this Act and a legislative instrument other than this Act) subsisting immediately before the appointed day—

(a) to which the Trust was a party; or

(b) that was given to or in favour of the Trust; or

(c) that refers to the Trust; or

(d) under which—

30 (i) money is, or may become, payable to or by the Trust; or

(ii) other property is to be, or may become liable to be, transferred to or by the Trust.

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12. Authority to be successor in law of Trust

On the appointed day—

- (a) all property and rights of the Trust vest in the Authority;
- (b) all liabilities of the Trust become liabilities of the Authority; 5
- (c) the Authority becomes the successor in law of the Trust;
- (d) the Trust is dissolved.

13. Trust instruments 10

Each Trust instrument continues to have effect according to its tenor on and after the appointed day as if a reference in the instrument to the Trust were a reference to the Authority.

14. Proceedings 15

If, immediately before the appointed day, proceedings (including arbitration proceedings) to which the Trust was a party were pending or existing in any court or tribunal, then, on and after the appointed day, the Authority is substituted for the Trust as a party to proceedings and has the same rights in the proceedings as the Trust had. 20

15. Interests in land

If, immediately before the appointed day, any land subject to the **Transfer of Land Act 1958** was vested in the Trust, that land vests in the Authority, subject to the conditions, covenants, encumbrances, limitations, exceptions, reservations and restrictions to which the land was subject immediately before its vesting under this section. 25 30

16. Evidence

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- (1) Documentary or other evidence that would have been admissible for or against the interests of the Trust if this Act had not been passed, is admissible for or against the interests of the Authority.
- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of the Trust and to entries made in those books of account before the appointed day.
- 10
- (3) In sub-section (2), “**books of account**” has the same meaning as in Division 3A of Part III of the **Evidence Act 1958**.

17. Staff

- 15
- (1) On the appointed day, a person who, immediately before that day, was a member of the staff appointed by the Trust, becomes a member of the staff of the Authority.
- (2) A person who becomes a member of the staff of the Authority under sub-section (1)—
- 20
- (a) is a member of the staff of the Authority with remuneration no less than the person was receiving or was entitled to receive as a member of the staff of the Trust immediately before the appointed day, and on terms and conditions no less favourable than those of the person’s appointment by the Trust; and
- 25
- (b) continues to have the benefit of all entitlements (including all entitlements arising from recognition of prior service with other bodies) accrued in respect of the person’s appointment by the Trust before the appointed day.
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