

No. 287



PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE COUNCIL

STANDING COMMITTEE ON
STATE DEVELOPMENT

Report
on

**Operations of the Sydney Market Authority
(Dissolution) Bill from Commencement
until 31 December 1997**

Ordered to be printed Tuesday 31 March 1998

Report No 18

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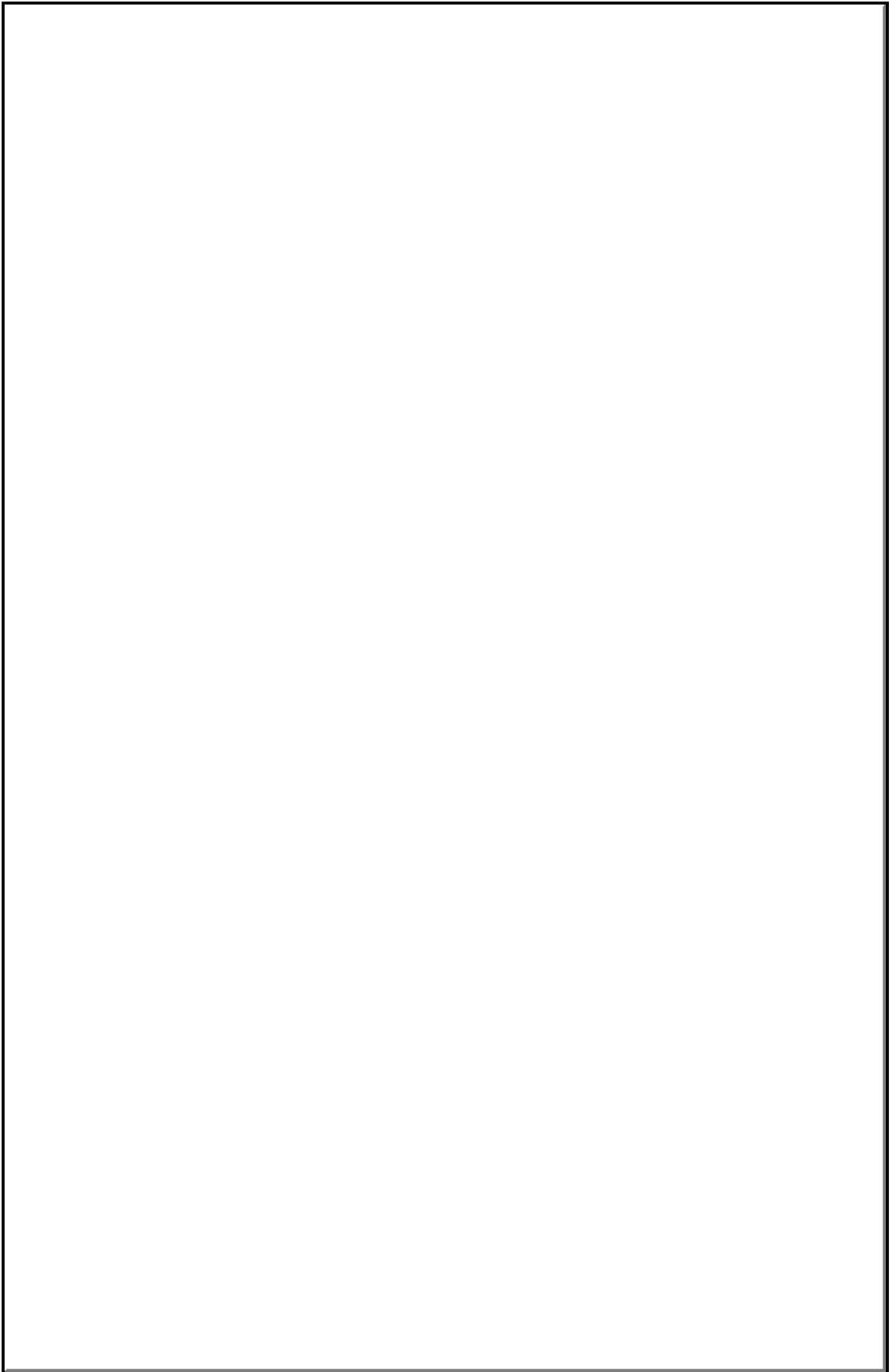
ISBN 0 7313 1581 2

THE INQUIRY'S TERMS OF REFERENCE

Operations of the Sydney Market Authority (Dissolution) Bill from Commencement until 31 December 1997

(Reference Received 23 June 1997)

- (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.



CHAIRMAN'S FOREWORD

The Standing Committee on State Development received the reference for the *Sydney Market Authority (Dissolution) Act 1997* on 23 June 1997. On the same day the Committee received another reference which brought the total number of references before the Committee at that point to five. As a means of simultaneously addressing a number of its references, the Committee resolved to establish a sub-committee to consider the operation of the *Sydney Market Authority (Dissolution) Act 1997*. Based on the sub-committee's findings the Committee tabled this report.

In accordance with the Committee's terms of reference, monitoring of the Act's operation commenced on 1 November 1997 and report writing began shortly after 31 December 1997.

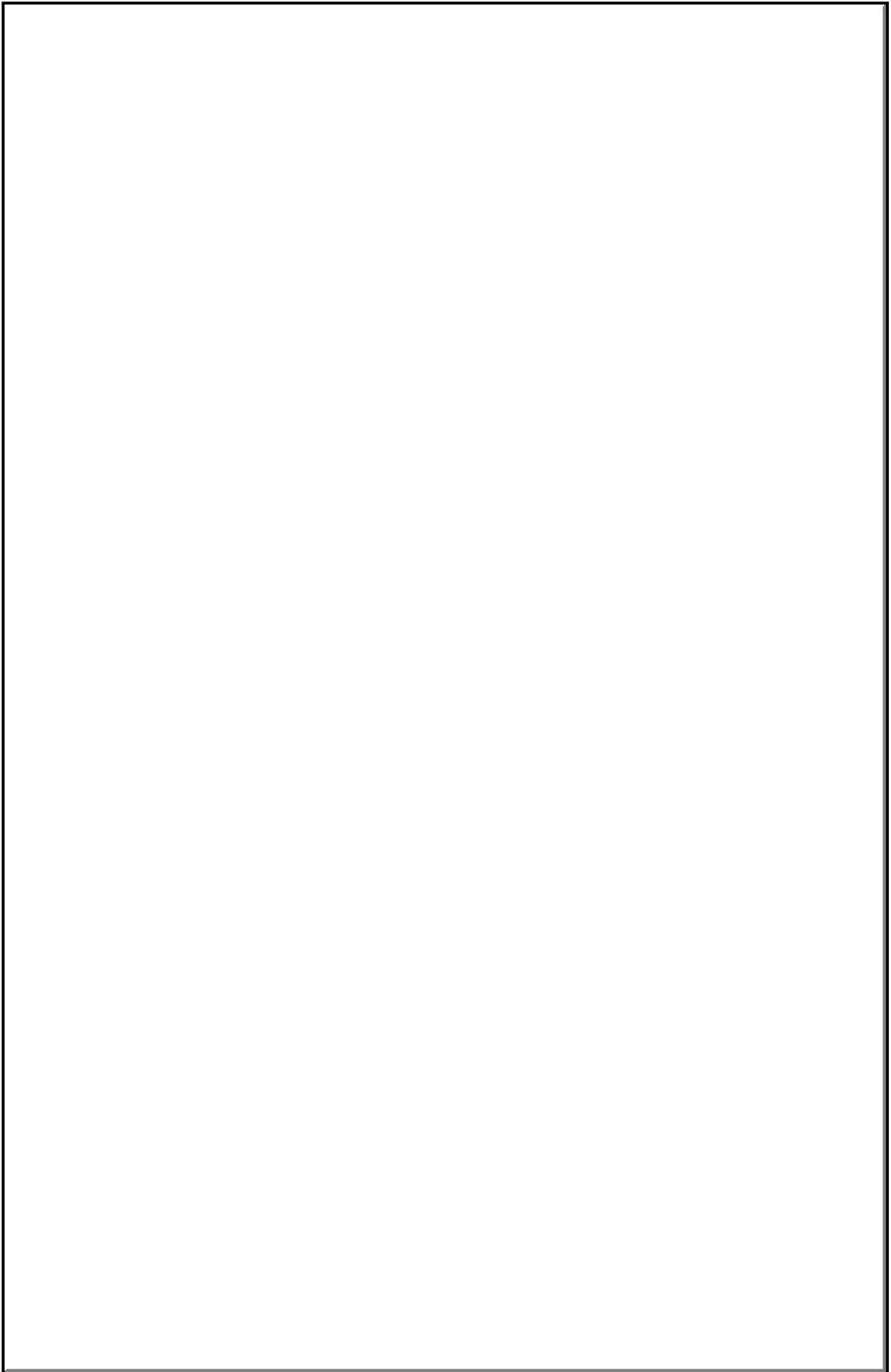
Chapter one of this report presents a background to the inquiry. Chapter two presents an outline of the legislative authority, operating mechanisms and policies of the Sydney Market Authority prior to its dissolution. Chapter three reflects the reasoning and processes behind the dissolution of the Sydney Market Authority and establishment of Sydney Markets Limited.

Chapter four reviews the impacts attributable to the operation of the *Sydney Market Authority (Dissolution) Act 1997* on stakeholders in the Sydney markets, giving particular attention to the concerns of casual stallholders.

In my capacity as chairman and on behalf of the Members of the Standing Committee on State Development I would like to thank the Committee's secretariat for their assistance with this inquiry. In particular the former Director, Mr Stewart Webster, who acted as Clerk to the Committee and oversaw the preparation of the report and Senior Project Officer, Steven Carr, who undertook the report writing. Special mention should also go to Committee Officers Annie Marshall, Charisa Lynne-Sanders and Matthew Scott for their assistance with the inquiry.

Finally, I would also wish to extend my gratitude for the time given by those who appeared before the Committee.

Hon. Tony Kelly, MLC
Chairman



COMMITTEE MEMBERSHIP

The Hon. Tony Kelly, MLC
Australian Labor Party Chairman

The Hon. Dr Brian Pezzutti, RFD, MLC
Liberal Party Deputy Chairman

The Hon. Ian Cohen, MLC
The Greens

The Hon. Jenny Gardiner, MLC
National Party

The Hon. John Johnson, MLC
Australian Labor Party

The Hon. Ian Macdonald, MLC
Australian Labor Party

The Hon. Edward Obeid, OAM, MLC
Australian Labor Party

Secretariat Staff

Ms Anna McNicol Director

Ms Anna George Senior Project Officer

Mr Steven Carr Senior Project Officer

Mr Matthew Scott Committee Officer

ESTABLISHMENT AND FUNCTIONS OF THE STATE DEVELOPMENT COMMITTEE

In June 1988, the Legislative Council of the New South Wales Parliament resolved to establish two Standing Committees, the Standing Committee on Social Issues and the Standing Committee on State Development. A third Committee, the Standing Committee on Law and Justice, was established after the 1995 election.

The Standing Committee on Privilege and Ethics was also reconstituted by resolution.

The functions of the State Development Committee, as set out in the Resolutions of the Legislative Council, are to inquire into, consider and report to the Council on:

- options for future policy directions and emerging issues to ensure that opportunities for sound growth and wise development for the benefit of the people in all areas of New South Wales are pursued;
- any proposal, matter or thing concerned with economics and finances, resources and energy, transportation, tourism, public administration, local government, the Olympics, primary industry, industrial and technological developments and environmental issues in New South Wales;
- employment practices, issues and conditions; and
- any proposal, matter or thing concerned with the problems or disadvantages uniquely or predominantly experienced in country areas, including the viability of cities and towns in those areas.

OPERATION OF THE COMMITTEE

Matters for inquiry may be referred to the Committee by:

- resolution of the Legislative Council;
- a Minister of the Crown; and
- way of relevant annual reports and petitions.

The Committee reports to the Legislative Council. The Committee's reports may include draft Bills designed to give effect to the report's recommendations. The Committee may publish papers and evidence taken in public, as it considers appropriate. In that connection the Committee may prepare and distribute discussion papers as aids to its inquiries.

Committee reports must be laid before the Legislative Council within ten days of their being adopted by the Committee. The reports are given precedence for debate during General Business.

The Leader of the Government in the Legislative Council is required to respond within six months to any recommendations for Government action that have been set out in Standing Committee reports.

In terms of the Legislative Council resolution establishing the Committee, the Committee may:

- summon witnesses;
- make inspections;
- call upon the services of government organisations and their staff, with the consent of the appropriate Minister;
- accept written submissions concerning inquiries from any person or organisation;
- conduct public hearings; and/or
- meet and make joint reports with other Committees of the legislatures

of the Commonwealth and the States.

PUBLICATIONS BY THE STATE DEVELOPMENT COMMITTEE

Discussion Paper 1 May 1989
Public Sector Tendering & Contracting in New South Wales: A Survey

Report 1 August 1989
Public Sector Tendering & Contracting in New South Wales: Supply of Goods and Services

Report 2 October 1989
Public Sector Tendering & Contracting in New South Wales: Local Government Tendering & Contracting

Discussion Paper 2 November 1989
Coastal Development in New South Wales: Public Concerns & Government Processes

Discussion Paper 3 June 1990
Public Sector Tendering & Contracting in New South Wales: Capital Works Tendering & Contracting: Management Options

Report 3 April 1991
Public Sector Tendering & Contracting in New South Wales: Capital Works Tendering & Contracting. Volume A

Report 4 September 1991
Coastal Planning & Management in New South Wales: A Framework for the Future. Volume I

Supplement to 4 September 1991
An Alternative Dispute Resolution Primer

Report 5

December 1991 Public Sector Tendering & Contracting in New South Wales: Capital Works Tendering & Contracting. Volume B

Report 6

December 1991

Payroll Tax Concessions for Country Industries. Volume I

Report 7

June 1992

Public Sector Tendering & Contracting in New South Wales: Supply of Goods and Services: Follow Up Report

Report 8

October 1992

Coastal Planning & Management in New South Wales: The Process for the Future. Volume II

Report 9

April 1993

Public Sector Tendering & Contracting in New South Wales: Local Government Tendering & Contracting: Follow Up Report

Discussion Paper 4

August 1993

Regional Business Development in New South Wales: Trends, Policies and Issues

Report 10

May 1994

Regional Business Development in New South Wales: Achieving Sustainable Growth: Principles for Setting Policy. Volume I

Report 11

November 1994

Regional Business Development in New South Wales: Achieving Sustainable Growth: Initiatives for Setting Policy. Volume II

Report 12

August 1996

Rationales for Closing the Veterinary Laboratories At Armidale and Wagga Wagga and the Rydalmere Biological and Chemical Research Institute

Report 13 October 1996

Factors Influencing the Relocation of Regional Headquarters of Australian and Overseas Corporations to New South Wales

Report 14 April 1997

Interim Report on the Fisheries Management Amendment (Advisory Bodies) Act 1996

Report 15 April 1997

Waste Minimisation and Management

Report 16 July 1997

The Fisheries Management Amendment (Advisory Bodies) Act 1996

Discussion Paper 5 October 1997

Future Employment and Business Opportunities in the Hunter Region

Report 17 November 1997

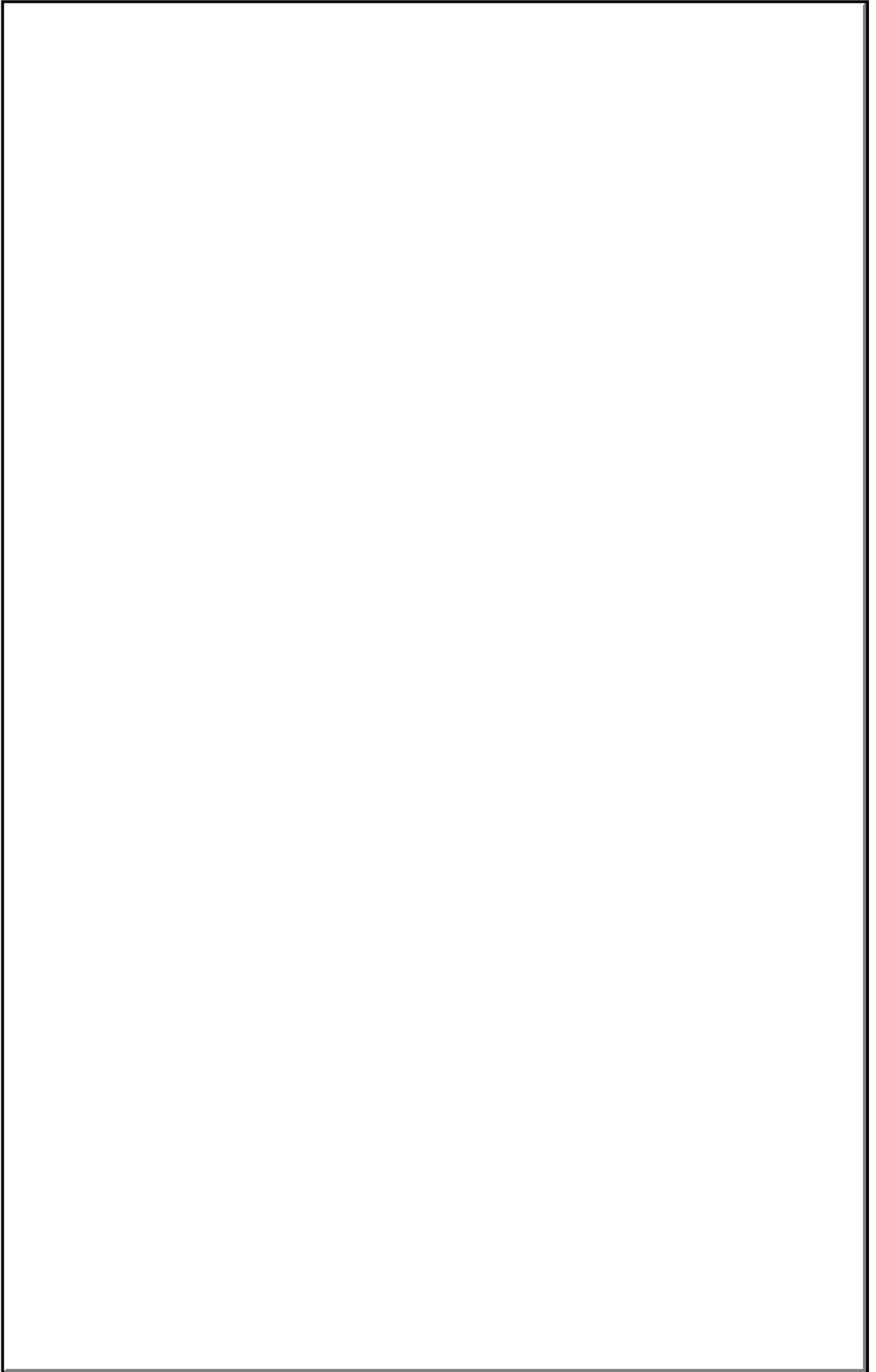
Fisheries Management and Resource Allocation in New South Wales

RECOMMENDATION

RECOMMENDATION

That the Standing Committee on State Development:

- continue to monitor the impacts of the *Sydney Markets Authority (Dissolution) Act 1997* and the provision of public markets for farm produce and other merchandise within the County of Cumberland for a further year (until 31 December 1998);
- accept and consider any representations made to the Standing Committee during that period; and
- if necessary, table an additional report in the Legislative Council after the 31 December 1998.



1 INTRODUCTION

The Hon. R. D. Dyer, Minister for Community Services, Minister for Aged Services, and Minister for Disability Services presented the Second Reading speech for the Sydney Market Authority (Dissolution) Bill 1997 in the Legislative Council on 23 June 1997¹. Ensuing debate in the House concentrated on the concerns of two industry groups operating at the markets, namely the Stallholder Trader's Co-operative Limited and the Flemington Markets Growers and Trader's Association. One or both of these groups petitioned Legislative Council Members including The Hon. R. T. Bull (Deputy Leader of the Opposition), Reverend the Hon. F. J. Nile and The Hon. E. Kirkby, all of whom read correspondence into Hansard² during debate on the Bill.

A summary of the major issues raised by Members in the Legislative Council concerning the Sydney Market Authority (Dissolution) Bill 1997 follows.

Reverend the Hon. F. J. Nile tabled a letter in the Legislative Council from Mr Robert Cianfrano, representative of the Flemington Market Growers and Trader's Association to the Stallholder Trader's Co-operative Limited. An excerpt of the tabled letter is detailed below:

The Flemington Markets Growers and Trader's Association fully support your endeavours to challenge the validity of clauses in the Sydney Market Authority (Dissolution) Bill and also the provisions of the Heads of Agreement document which we believe are contrary to public policy and disastrous for the prospects of free trade in fresh fruit and vegetables and other commodities in public markets in the Greater Sydney area.³

¹ Parliamentary Debates (Hansard), Fifty-first Parliament, Second Session, No.31, pp 10880-10881.

² Parliamentary Debates (Hansard), Fifty-first Parliament, Second Session, No.31, pp 10880-10886.

³ Parliamentary Debates (Hansard), Fifty-first Parliament, Second Session, No.31, p 10883.

The Stallholder Trader's Co-operative Limited suggested in a letter to the Reverend the Hon. F. J. Nile that the Heads of Agreement document, signed by the Hon. R. S. Amery on behalf of the NSW Government and three directors of Sydney Markets Limited, would not provide equity between leaseholders. Further, it was suggested that the process was being driven by a particular interest group rather than leaseholders in general. A section of this letter is presented below:

I am faxing you some relevant sections of the heads of agreement signed by the three directors of Sydney Markets Ltd. and Mr Amery.

The three individuals represent the interests of vested interest group[s], only, ie they being the middlemen of the fruit and vegetable industry.

It is the cooperative's opinion based on established evidence that the move to privatise the Sydney markets is driven not by the individual tenants, and that the only beneficiaries of this dissolutionment [sic] of the Sydney Market Authority will be a very few wealthy agents, and their Labor backers.⁴

The Hon. E. Kirkby indicated that based on the submissions presented, the conspiracy theory suggested by the Stallholder Trader's Co-operative Limited and Flemington Market Growers and Trader's Association could not be substantiated.⁵ The Legislative Council subsequently passed the Sydney Market Authority (Dissolution) Bill 1997, with an amendment that the Standing Committee on State Development review the operation of the Act, once enacted, until 31 December 1997.

The Standing Committee noted that, prior to the 1995 election, the Legislative Assembly established the Select Committee Upon the Sydney Market Authority to inquire into the financial operations of the Sydney Market Authority. The Select Committee prepared a draft report but Parliament was prorogued before the report could be tabled. The Legislative Assembly did not revive the terms of reference.

⁴ Parliamentary Debates (Hansard), Fifty-first Parliament, Second Session, No.31, p 10883.

⁵ Parliamentary Debates (Hansard), Fifty-first Parliament, Second Session, No.31, p 10884.

1.1 The inquiry process

The current inquiry was conducted by a sub-committee of the Standing Committee on State Development and included the Hon. T. Kelly, the Hon. J. Gardiner and the Hon. J. Johnson.

In accordance with the terms of reference, the Standing Committee monitored the operation of the *Sydney Market Authority (Dissolution) Act 1997* from commencement of the Act on 1 November 1997 until 31 December 1997. Background research was undertaken by the Committee prior to proclamation of the *Sydney Market Authority (Dissolution) Act 1997* to develop an understanding of relevant issues and liaise with stakeholders. Initial discussions were held with Sydney Markets Limited and the NSW Premier's Department.

The Committee called for submissions to the inquiry in the Sydney Morning Herald on 18 October 1997. The Committee received one submission to the inquiry.

Due to the lack of public submissions, the Committee deemed it sufficient to conduct one public hearing at Parliament House on 16 December 1997. A total of nine witnesses presented evidence before the Committee on that day. From those nine, two requested to appear before the Committee, including Mr Joseph Tripodi, M.P., Member for Fairfield. The remaining seven witnesses appeared at the request of the Committee on the basis that they represented relevant stakeholders in the dissolution process.

The Committee is reporting its findings as soon as practicable after 31 December 1997.

2 OPERATIONS OF THE SYDNEY MARKET AUTHORITY

Since 1968 the Sydney Market Authority has maintained exclusive control over the operation of public markets for farm produce within the County of Cumberland (Greater Sydney Metropolitan Area). This chapter outlines the structure and operating conditions of the two public markets in the County of Cumberland — Haymarket and Flemington — while under the auspices of the Sydney Market Authority.

2.1 Background

The Sydney Market Authority Act 1968 empowered the Sydney Market Authority to operate and control public markets for farm produce. The Act set out the definition of a public market and the functions, duties and regulatory powers of the Sydney Market Authority in a public market.

On 10 December 1993 the Haymarket site was leased by a private organisation, Market City Properties Pty Ltd, from the Darling Harbour Authority¹ on the condition the site be used as a public market². The Haymarket site is open for trade each week from Friday to Sunday.

The Flemington site is publicly owned and controlled by the NSW Government. It is the larger in terms of size, turnover and patronage of the two sites. The Flemington site is situated on 41 hectares of land, attracts around 5,000 people per day³ and is open for trade every day of the week.

Under the Sydney Market Authority, the Haymarket and Flemington Markets have provided an outlet for the sale of non-farm produce such as t-shirts, caps, luggage, leather goods and shoes in addition to farm produce.

¹ Sydney Market Authority (Dissolution) Bill 1997, p. 2.

² Sydney Market Authority (Dissolution) Bill 1997, p. 2.

³ Evidence of Mr Teys, 16 December 1997, p. 41.

2.2 Organisational structure of the Sydney Market Authority

Figure 1 depicts the management structure of the Sydney Market Authority. Section 4 of the *Sydney Market Authority Act 1968* outlined the requirements for fulfilling membership of the Sydney Market Authority Board. The Board comprised nine members, appointed by the Governor. The only full time Board Member was the Managing Director of Sydney Market Authority. The Minister for Agriculture nominated the Chairperson and a further five members, while the Minister for Consumer Affairs and the Treasurer nominated one member each.

Management Structure of the Sydney Market Authority

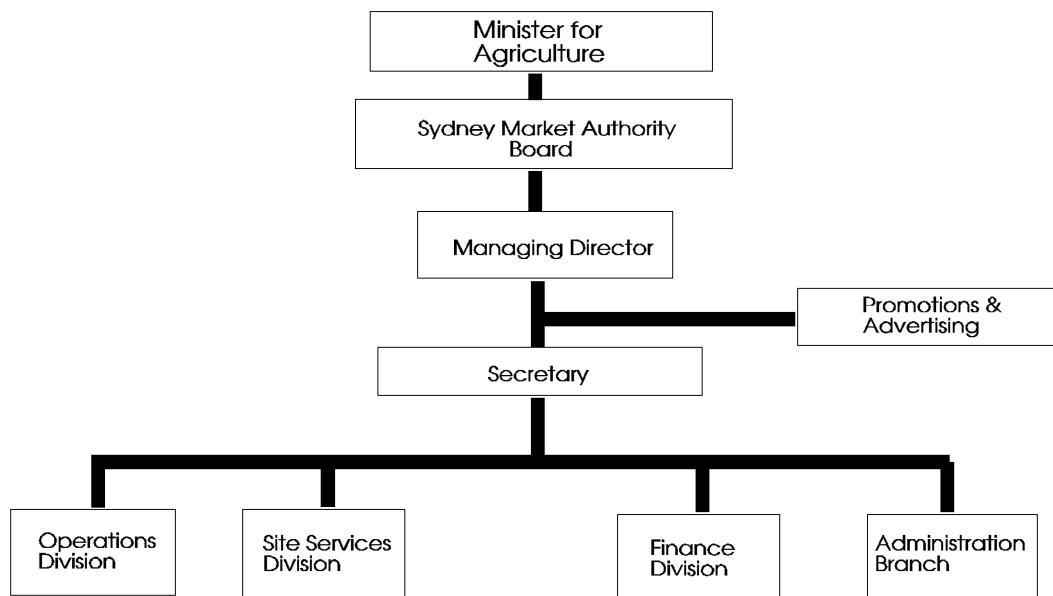


Figure 1 - Management structure of the Sydney Market Authority

Total staff employed by the Sydney Market Authority (excluding Board of Directors) for the years 1993/94 to 1996/97 are presented in Table 2.1 below:

Table 2.1 - Number of employees of the Sydney Market Authority 1993/94 to 1996/97.⁴

	1993/94	1994/95	1995/96	1996/97
Total staff	73	75	65	31
% change on previous year		2.7%	(13.3%)	(52.3%)

⁴ Sourced from the Sydney Market Authority Annual Reports 1995 and 1996 and the Sydney Market Authority Draft Annual Report for 1997.

Note:

1. The final published version of the Sydney Markets Authority Annual Report for 1997 (1996/97 operations ending 31 October 1997) was being printed and subsequently not available at the time this report was tabled.
2. Figures for 1993/94 and 1994/95 are for the period ending 31 March. Figures for 1995/96 are for the 15 month period ending 30 June. Figures for 1996/97 are for the 16 month period ending 31 October 1997.

2.3 Financial status of the Sydney Market Authority

Details of income, expenditure and operating surplus less tax equivalent payments are provided below in Table 2.2 for years 1993/94 to 1996/97.

Table 2.2 - Income, expenditure and surplus of the Sydney Market Authority for years 1993/94 to 1999/97.⁵

YEAR	1993/94 (\$m)	1994/95 (\$m)	1995/96 (\$m)	1996/97 (\$m)
Income	28.33	29.13	37.68	43.28
Expenditure	21.87	25.49	30.46	32.97
Operating surplus before tax equivalent	4.68	3.64	7.22	10.31
Operating surplus after tax equivalent	3.14	2.44	4.62	6.60

The total of funds accumulated by the Sydney Market Authority as at the date of dissolution (31 October 1997) totalled \$47.12 million.⁶

⁵ Sourced from the Sydney Market Authority Annual Reports 1995 and 1996 and the Sydney Market Authority Draft Annual Report for 1997.

Note:

1. The final published version of the Sydney Markets Authority Annual Report for 1997 (1996/97 operations ending 31 October 1997) was being printed and subsequently not available at the time this report was tabled.
2. Figures for 1993/94 and 1994/95 are for the period ending 31 March. Figures for 1995/96 are for the 15 month period ending 30 June. Figures for 1996/97 are for the 16 month period ending 31 October 1997.
3. Figures are actual, and have not been adjusted for inflation.

⁶ Sydney Market Authority Draft Annual Report 1997, p. 32.

2.4 Regulatory powers of the Sydney Market Authority

2.4.1 Control of public markets

The Sydney Market Authority possessed the exclusive right within the Greater Sydney Metropolitan Area (County of Cumberland) to "...maintain, control and manage public markets for the sale or disposal of farm produce and other merchandise..."⁷.

Section 15(1) of the Act stipulated, among other things that:

...no person other than the Authority shall use or permit the use of land or premises situated in the County of Cumberland as and for the purposes of a public market without the written permission of the Authority...

The *Sydney Market Authority Act 1968* provided a general and a specific definition of a "public market". The general definition for the purposes of the entire Act was under s.3(1) and is presented below:

s.3(1)

"public market" means public market provided, maintained, controlled and managed by the Authority or any part of any such market.⁸

An additional definition of a public market outlined by the *Sydney Market Authority Act 1968* relates only to s.15 of the Act. This section nominated Sydney Market Authority as the determining authority for considering whether land within the County of Cumberland was suitable for the purposes of conducting a public market. The definition of a public market as related to s.15 of the Act is as follows:

⁷ S.11(1), *Sydney Market Authority Act 1968*.

⁸ The *Sydney Market (Dissolution) Act 1997* has the effect of eliminating the notion of a public market in relation to farm produce.

s.15(7)

“public market” means any place where a number of wholesalers, merchants, auctioneers or other persons congregate for the purpose of selling or disposing of farm produce to the public.

2.4.2 Special constable powers

A person authorised by the Sydney Market Authority as an authorised officer⁹ under s.16(1) of the Act had the power under s.16(2) to:

(a) stop and detain a person appearing to be in charge of a vehicle within any public market:

(i) on any Saturday, Sunday or public holiday; or

(ii) outside the wholesale trading hours on any other day; or

(b) stop and detain any person at a public market whom the authorised officer reasonably suspects of having committed an offence against this Act or the regulations or any other offence in connection with the market or any property at the market.

Furthermore an authorised officer had the power under s.16(4) to search vehicles which had been stopped or detained. Penalties were enforceable where a person refused to supply details of name and address or refused to allow such an inspection for farm produce or other merchandise on request. Penalties could also be imposed for parking offences under s.17 and s.18 of the Act.¹⁰

2.4.3 Construction and maintenance of facilities in conjunction with a public market

⁹ S.16(1), *Sydney Market Authority 1968*.

¹⁰ S.18, *Sydney Market Authority Act 1968*.

Powers were conferred on Sydney Market Authority under s.11(2)(a1), (b), (c) and (d) of the Act to acquire land and machinery, and for the purpose of

operating public markets to construct railways, buildings, roads, drains and carry out maintenance on roads and drains.

2.4.4 Issuing of licences, leases or permits and the alteration of their conditions

S.11(2)(e) of the *Sydney Market Authority Act 1968* empowered the Authority to grant a licence, lease or permit to “wholesalers, merchants, producers of farm produce and vendors of any kind...”¹¹ for use or occupation of the public market subject to conditions to be determined by the before mentioned parties and the Sydney Market Authority.

The Sydney Market Authority could at any time alter the conditions of a lease, licence or permit under s.11A(1) of the Act. Where a new condition was imposed on a lease, licence or permit, an appeal could be made under s.11B(1) of the Act to the Minister for Agriculture. Similarly, where the Sydney Market Authority decided to revoke a licence or permit or make a determination on a lease, the Sydney Market Authority was required to inform the holder and allow them at least one month¹² to appeal the decision. A decision of the Sydney Market Authority in regard to the above matter could be held over for appeal to the Minister. In all cases the Minister’s decision was final and binding for both parties.

2.4.5 Charging of fees

The Sydney Market Authority under s.11(2)(f) of the Act was authorised to charge a fee where it:

- (i) supplied any service, product or commodity;
- (ii) granted any lease, licence or permit;

¹¹ S.11(2)(e) *Sydney Market Authority Act 1968*.

¹² S.11A(4)(b), *Sydney Market Authority Act 1968*.

-
- (iii) gave any permission or prepared and issued any document authorising the holder to have access to a public market or to any buildings, improvements or facilities established therein or in connection therewith.

2.4.6 Advertising

The Sydney Market Authority had the authority under s.11(2)(h) of the Act to support activities which promoted the sale of farm produce or other merchandise in the public market.

2.4.7 Provision of other services to the public

The Sydney Market Authority had the authority to locate shops or stalls not related to farm produce adjacent to public markets for the purpose of providing services to the public. At the Flemington site the Sydney Market Authority owned the Plaza building which it leased out to tenants including Australia Post, banks and clothing shops.

2.4.8 Sub-leasing

Under s.11(5) of the *Sydney Market Authority Act 1968* the holder of a lease, permit or licence could not sub-lease their tradeable space without permission from the Sydney Market Authority. Sub-leasing was permitted for a maximum 12 month period in the warehouse section only, where the larger organisations such as Franklins and Coles currently operate.¹³ In all other parts of the public market sub-leasing of stalls was not permitted by the Sydney Market Authority, although the Authority conceded that sub-leasing did occur and such activities were policed and treated as a breach of conditions by the stallholder.¹⁴

2.5 Lease conditions imposed by the Sydney Market Authority on stallholders

¹³ Secretariat communication with Dennis Teys, Sydney Market Authority.

¹⁴ Secretariat communication with Ian Coffey, Managing Director, Sydney Market Authority.

A summary of the conditions imposed by the Sydney Market Authority on stallholders relevant to the Committee's inquiry process is presented below.

2.5.1 Boundaries

Under the *Sydney Market Authority Act 1968*, stallholders were required maintain their stand within the confines of the stall area, which was marked on the floor. Where a stall lay outside the specified area an authorised officer of the Sydney Market Authority had the power to request that the stand be moved, issue an infringement notice on the spot, or report the breach to the Sydney Market Authority Board.

2.5.2 Cleaning of stands

The Sydney Market Authority required all stands to be kept clean, with rubbish placed in the bins provided. All stands, equipment, goods and vehicles were to be removed or packed away at the end of the day's trading to allow cleaning of the site by the Authority.

2.5.3 Customer service code and code of conduct for persons in the market

The Sydney Market Authority required all stallholders to follow the Sydney Market Authority's customer service code in relation to exchange of goods and refunds.

Regulations of the Sydney Market Authority Act 1968 set out a code of conduct for stallholders, their employees and persons in general within the market. Section 44(1) of the Regulation prohibited actions such as selling or advertising by shouting, use of microphones and amplified equipment without permission from the Sydney Market Authority. Gambling, obscene language and obstruction or hindrance of any person, including an authorised officer of the Sydney Market Authority, was not permitted.

2.5.4 Breaches of conditions

Where lease, permit or license conditions were breached by the stallholder, the Sydney Market Authority had the option of altering, imposing new conditions on or making a determination on the lease, licence or permit. The Authority could also revoke licences or permits.

2.5.5 Fees

The Sydney Market Authority determined monthly fees payable by stallholders in accordance with the following four criteria:¹⁵

1. the type of market—for example food traders on Paddy's Markets Haymarket site selling items such as fish and smallgoods incurred higher fees than other Paddy's Markets stallholders on the same day;
2. viability of the market—there appears to have been a degree of cross subsidisation in the setting of annual market fees between stall types based on the viability of the activities to maintain product diversity at the markets;

¹⁵ Secretariat communication with Ian Coffey, Managing Director, Sydney Market Authority.

3. floor space of the stall—stalls with larger coverage of floor space incurred greater fees. The per square metre cost was dependent on the other three criteria in this section; and

4. whether the market was conducted outdoors or under cover—undercover stalls generally attracted higher fees than outdoor stalls based on the premise that stallholders conducting business outdoors tended to incur greater risk to financial viability because of the uncertainty of exposure to natural conditions. The last Sydney Market Authority fees schedule (presented at Appendix 1) showed little variation between indoor and outdoor stall fees.

The Sydney Market Authority imposed the following conditions on all stallholders in regard to payment of fees:

...fees will be payable calendar monthly in advance by the last trading day preceding the commencement of the month. Fees not paid by the seventh day of the calendar month shall result in the standholder being liable for the additional payment of casual fees for each regular stand held.¹⁶

2.5.6 Farm inspections

The Sydney Market Authority reserved the right to conduct inspections of properties used by casual and regular stallholders designated as grower/sellers for the purpose of validating their grower status.

2.5.7 Indemnity and insurance

The Sydney Market Authority required stallholders to:

...indemnify the Authority against liability for death or injury to a person and liability for or loss or damage to property sustained as a result of any act or default or omission on the part of the stand holder, his servants, workers and agents, or caused by anything owned, operated, worked, exhibited, displayed or demonstrated by or under the control (direct or indirect) of the stand holder or by

¹⁶ *Paddy's Markets Flemington, Friday and Sunday Standholders' Guide*, Sydney Market Authority, p 16.

anything sold or otherwise supplied in any way by the stand holder within the Market.¹⁷

Sydney Market Authority had the responsibility to maintain a public risk insurance policy that included stallholder liabilities. The stallholders contributed to the premiums of this insurance policy which had a cover of at least \$10 million.¹⁸

2.5.8 Sale of regular stalls

Sydney Market Authority had eight conditions relating to the sale of regular stalls¹⁹, the major requirements of which are summarised below:

- all sales (transfers) of stands in the public market could only be undertaken with the approval of the Sydney Market Authority in writing, and subject to any conditions the Sydney Market Authority imposed;
- the owner could not sell a stand unless a minimum of two years had passed since the original purchase;
- when a stand was sold, the Sydney Market Authority levied a fee which was equivalent to 10% of either the sale price or the estimated value of the stand, whichever was higher. Valuations of stands were determined by the Sydney Market Authority.²⁰ The 10% fee was payable by the existing stand owner to the Sydney Market Authority prior to stand ownership being transferred. The existing stand owner could appeal the appropriateness of the fee to the Sydney Market Authority Board only in circumstances where the fee was based on the Sydney Market Authority's valuation of the stand rather than the sale price;

¹⁷ *Wholesale Flower Market Guide*, Sydney Markets, Flemington, Sydney Market Authority, 3rd Edition, November 1994, p 30.

¹⁸ *Wholesale Flower Market Guide*, Sydney Markets, Flemington, Sydney Market Authority, 3rd Edition, November 1994, p 30.

¹⁹ As outlined in standholder guides such as *Sydney Fresh Food Market*, Standholder's Guide, Sydney Market Authority, June 1997, pp 17-18.

²⁰ *Sydney Fresh Food Market*, Standholder's Guide, Sydney Market Authority, June 1997, p 17.

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- where a stallholder died, transferral of rights to the stand to a family member or person entitled under the will did not incur a fee; and
 - where a stallholder was declared bankrupt, any transfer of the stand by a trustee to a new owner was at the discretion of the Sydney Market Authority and incurred a fee payable to the Authority.

2.5.9 Attendance

Stallholders were required to be at their stall at a time designated by the Sydney Market Authority, before commencement of the day's trading. Any stallholder not in attendance at that time surrendered their stall for that day's trading, although the stallholder still incurred the cost of leasing the floor space. The Sydney Market Authority then allocated the vacant stall to a casual cardholder for that day.

2.5.10 Casual cardholders and casual stalls

Each stall type within the public market maintained a "market office", which issued casual stallholder cards and allocated a priority list. The time of the first call on casual stallholders varied between market types but was made before the market opened. The Sydney Market Authority maintained a priority list at each market office which was used to allocate stalls to casual cardholders. People who had been on the casual cardholder allocation list continuously for the longest period of time would have the highest priority. The casual stallholder would pay the Sydney Market Authority a daily fee for use at the time of accepting the stall.

2.5.11 Operating hours and market description

A summary of the operating hours at the Flemington and Haymarket sites under the Sydney Market Authority is presented in Table 2.3. A description of the markets and operating conditions previously imposed by the Sydney Market Authority is outlined in Table 2.4. These tables are shown overleaf.

Table 2.3 - Operating hours for the Flemington and Haymarket sites under the Sydney Market Authority

FLEMINGTON							HAYMARKET
	Wholesale Flower Market ²¹	Paddy's Markets ²²	Sydney Fresh Food Market ²³	Wholesale Grower/Sellers ²⁴	Sydney Swap and Sell Market ²⁵	Storeholder - Market Buildings A, B, C and E ²⁶	Paddy's Markets
Sunday		9:00am to 4:30pm					9:00am to 4:30pm
Monday	6:00am to 12:00noon			5:30am to 10:30am		6:00am to 12:00noon	
Tuesday	6:00am to 12:00noon			6:00am to 10:30am		6:00am to 12:00noon	
Wednesday	6:00am to 12:00noon			6:00am to 10:30am		6:00am to 12:00noon	Friday

²¹ *Wholesale Flower Market Guide*, Sydney Markets Flemington, Sydney Market Authority, 3rd Edition, November 1994.

²² *Paddy's Markets, Flemington, Friday and Sunday Standholders' Guide*, Sydney Market Authority, May 1994.

²³ *Sydney Fresh Food Market, Standholder's Guide*, Sydney Market Authority, June, 1997.

²⁴ *Wholesale Grower/Sellers, 'D' Guide*, Sydney Markets, Sydney Market Authority, 2nd Edition, June 1996.

²⁵ *Sydney Swap and Sell Market, Flemington Guide*, Sydney Market Authority, 1 Edition, September 1990.

²⁶ *Storeholder's Guide Market Buildings, A, B, C, E, Flemington Markets*, Sydney Market Authority, 1 Edition, June 1990.

FLEMINGTON							HAYMARKET
Thursday	6:00am to 12:00noon			6:00am to 10:30am		6:00am to 12:00noon	Saturday
Friday	6:00am to 12:00noon	10:30am to 4:30pm		6:00am to 9:30am		6:00am to 12:00noon	9:00am to 4:30pm
Saturday	6:00am to 10:00am		6:00am to 1:00pm		8:00am to 2:00pm		9:00am to 4:30pm

Table 2.4 Description of markets at the Flemington/Haymarket sites under the Sydney Market Authority

	Wholesale Flower Market	Paddy's Markets	Sydney Fresh Food Market	Wholesale Grower/Sellers	Sydney Swap and Sell Market	Storeholder
Location of market	Market Building F	Market Building D	Market Building D	Market Building D	Open area north and west of Market Building F	Market Buildings A, B, C and E and area surrounding these buildings (general trading area - GTA).
Description of market	<p>Individuals or companies who grow and sell their own flowers. The grower/seller were required to produce flowers on land which is either owned, leased or under a bona fide share agreement.</p> <p>Regular stallholders were allocated attendance into one of three categories:</p> <ol style="list-style-type: none"> 1. Monday, Wednesday and Friday 2. Tuesday, Thursday and Saturday 3. Monday to Saturday 	Individuals selling from stalls specifically allocated for different categories such as fruit and vegetables, plants and flowers, pets, seafood and smallgoods.	Farm produce grown by the grower/seller on land either owned, leased or under a bona fide share farming agreement.	<p>Farm produce grown by the grower/seller on land either owned, leased or under a bona fide share farming agreement.</p> <p>Regular stalls were allocated attendance into one of three categories:</p> <ol style="list-style-type: none"> 1. Monday, Wednesday and Friday 2. Tuesday and Thursday 3. Monday to Friday 	Sale to the general public of second hand goods	<p>Wholesale markets for the sale of farm produce. A grower/seller cannot occupy a "store" type stall.</p> <p>Bananas can only be sold in market building E.</p>
Attendance time (must be at stall)	5:00 am for stalls 1 to 109 and 5:30 am for all other stallholders	Friday 10:30 am Sunday 9:00 am	5:00 am. Leeway was given until 6:00 am if notified before 5:00 am of late attendance.	4:00 am	7:30 am	Not mentioned

	Wholesale Flower Market	Paddy's Markets	Sydney Fresh Food Market	Wholesale Grower/Sellers	Sydney Swap and Sell Market	Storeholder
Maximum number of stalls	Six. Stallholders conducting operations on Monday - Wednesday - Friday in conjunction with operations on Tuesday - Thursday - Saturday is deemed to be one stall by the Sydney Market Authority.	Five stalls, irrespective of whether owned individually or jointly.	Five stalls, irrespective of whether owned individually or jointly.	Six stalls, irrespective of whether owned individually or jointly.	Five stalls, irrespective of whether owned individually or jointly.	Not mentioned
Display racks	Not mentioned	Maximum height of three metres	Maximum height of three metres	Not mentioned	Maximum height of five metres	Not mentioned

3 DISSOLUTION OF THE SYDNEY MARKET AUTHORITY

This chapter describes the major events and processes leading up to the dissolution of the Sydney Market Authority on 1 November 1997. The reason for the dissolution, the negotiation process, the development of the Heads of Agreement, challenges to the process and the eventual dissolution are outlined below.

3.1 Reasons for dissolution of the Sydney Market Authority

Mr Colin Saggars, a member of the Stallholder Trader's Co-operative Limited, indicated that the original intention of the NSW Government was to corporatise the Sydney Markets Authority:

At the very beginning of this project of the Government it was put forward that the Sydney Marketing Authority was to be corporatised.¹

Mr Saggars later added,

The first we knew about corporatisation was that the Government, through Mr Gellatly [Director General NSW Premier's Department], formed a consultative group to discuss corporatisation. We had one meeting to discuss corporatisation and the members at that meeting were vocally opposed to even the very discussion of corporatisation. My organisation was the only one that spoke in favour of corporatisation or, at least, to look at the worthiness of corporatisation.²

There was support by stallholders at the Flemington and Haymarket sites to operate the markets themselves without the regulatory control of a NSW

¹ Evidence of Mr Saggars, 16 December 1997, p. 27.

² Evidence of Mr Saggars, 16 December 1997, p. 27.

Government agency. Consequently, the stallholders rejected the proposal to corporatise the Sydney Market Authority.

The Hon. R.D. Dyer in the Second Reading speech on the Sydney Market Authority (Dissolution) Bill referred to the benefits and industry support for dissolution of the Sydney Market Authority, stating:

This bill is about reform. Reform that not only meets the requirements of national competition policy, but reform that the markets industry supports...

...It will provide the markets industry with the opportunity for self-determination and the assurance that it has greater control over its investment in the industry and greater security for its future.

The Hon R.D. Dyer further added:

I am reassured that an industry-run markets is the best option to take the markets to the next level of efficiency and performance.

From the perspective of the NSW Government, operation of the markets under the *Sydney Market Authority Act 1968* limited future options for use of the site at Flemington. The 41 hectare Flemington site, bordering main roads and being close to rail links and the infrastructure developed as part of the Sydney 2000 Olympic Games, has significant real estate and alternative use potential.

In December 1993 the N.S.W. Chamber of Fruit and Vegetables made a submission to the Legislative Assembly Select Committee Upon the Sydney Market Authority. The Chamber maintained that existing stallholders had accumulated equity in the Sydney markets. The combined equity of stallholders was estimated to be around \$184 million for the Redfern (interim site while Haymarket was being refurbished) and Flemington sites. These figures were based on approximate values placed on stalls by the Sydney Market Authority. The Chamber based its claim of stallholder equity in its submission to the Select Committee on the following:

- all stalls, with the exception of warehouses, did not have a set term to the lease. Stallholders were able to buy and sell stalls in perpetuity;
- occupiers of warehouse space had existing leases rolled over to a new lease by the Sydney Market Authority for a small lease establishment fee;

-
- the Sydney Market Authority had maintained stallholder's tradeable space irrespective of the geographical location of the market site;
 - the Sydney Market Authority applied a 10% administration fee based on the assessed value or market value of the stall (whichever was higher) when the stall was sold; and
 - banks were willing to lend money against the capital value of the stall and potential income achievable from it.

Parliament was prorogued prior to the Select Committee tabling its report. Consequently the Committee's approach to the matter of stallholder equity was not made public.

The NSW Government has never formally recognised the validity of the N.S.W. Chamber of Fruit and Vegetable Industries' claim concerning stallholder equity in the markets. Two consultants reports commissioned by the NSW Government, the first prepared by JLW Advisory and ACIL in 1996 and the second by Turnbull and Partners Limited in 1997, alluded to potential stallholder equity.

The JLW Advisory and ACIL report, titled *Commercial Returns of the Sydney Market Authority*³, referred to confusion surrounding the value of stallholders equity in the markets. An extract from the report is presented below:

Depending on the assumptions made, it would be plausible to develop estimates of tenant capital contribution ranging from negligible through to some tens of millions of dollars...⁴

The JLW Advisory and ACIL report suggested that the preferred basis upon which future policy decisions should be made would be to assume stallholders had equity in the markets of around \$110 million. The report stated:

³ *Commercial Returns of the Sydney Market Authority*, prepared for NSW Treasury and the Sydney Market Authority, June 1996, JLW Advisory Corporate Property Services and ACIL Economics & Policy Pty Ltd.

⁴ *Commercial Returns of the Sydney Market Authority*, prepared for NSW Treasury and the Sydney Market Authority, June 1996, JLW Advisory Corporate Property Services and ACIL Economics & Policy Pty Ltd, p. 48.

...it is important that market forces have created their own interpretations of how equity might be shared - by arriving at essentially full occupancy at current levels of gross rental and service provision and by determining a value to be associated with the rights to trade in the present and prospective environment. In this environment, the SYDNEY MARKET AUTHORITY has access to a stream of gross rentals and charges which can, based on the earlier analysis, probably support a SYDNEY MARKET AUTHORITY asset valuation of around \$100 million, while the capitalised value of the range of modules is around \$110 million (with a further nominal value of goodwill associated with warehouses of about \$40 million). This may represent a more logical starting point for considering future policy arrangements...⁵

The second report to the NSW Government, often referred to as the "Turnbull Report"⁶, suggested that the Sydney Market Authority's practice of charging 10% of the sale price of stalls could be inferred as a right to trade. The consultant's position on this matter was as follows:

It is entirely possible that the SMA, by accepting 10% of the sale price, permits a purchaser of a licence to assume that such a licence would continue for a reasonable period of time (in order to recover the key money as well as making a reasonable profit/income) and the SMA may be prevented or estopped from denying otherwise.⁷

As part of the agreement between the NSW Government and Sydney Markets Limited, any stallholder who does not elect to take up shares in Sydney Markets Limited is guaranteed continued trading for ten years. Advice by the Crown Solicitor's Office to the NSW Government was that ten years was a sufficient time period to extinguish any claims for compensation arising from adverse impacts on equity stallholders.

⁵ *Commercial Returns of the Sydney Market Authority*, prepared for NSW Treasury and the Sydney Market Authority, June 1996, JLV Advisory Corporate Property Services and ACIL Economics & Policy Pty Ltd, p. 49.

⁶ *The Report to Sydney Market Authority Steering Committee, Advice on Ground Lease Proposal and Haymarket Transfer*, Turnbull & Partners, 8 April 1997.

⁷ *The Report to Sydney Market Authority Steering Committee, Advice on Ground Lease Proposal and Haymarket Transfer*, Turnbull & Partners, 8 April 1997, p. 20.

3.2 Negotiations between Sydney Markets Limited and the NSW Government

Negotiations between the NSW Government and stallholders at the Flemington and Haymarket sites were conducted to determine a means of transferring the rights, assets and liabilities of the Sydney Markets Authority to a private stallholder-owned entity. Negotiations were conducted over a 12 month period⁸ prior to the eventual dissolution of the Sydney Market Authority. Stallholders set up a private company called Sydney Markets Limited and elected three caretaker directors—Mr Colin Gray, Mr Kevin Willits and Mr Eric Kime.

Mr Gray explained to the Committee the role of the caretaker directors in negotiations with the NSW Government:

We are elected by the industry—by "the industry" I mean the various groups at the markets that represent market stakeholders—to negotiate with the New South Wales Government representatives for what was originally known as a ground lease proposal. It was proposed that the industry would take control of Sydney Markets. Subsequently, with the agreement of the industry, we were appointed as the initial directors of Sydney Markets Ltd. Our primary task is to bring the changeover from the Sydney Market Authority to Sydney Markets Ltd to fruition.⁹

The three caretaker directors of Sydney Markets Limited represent 16 industry groups. These industry groups comprise members at either the Flemington or Haymarket sites that have capital investment in tradeable floor space, or are considered integral participants in the operation of the markets.

Table 3.1 Industry representatives of Sydney Markets Limited

Tenants with tradeable space

⁸ Evidence of Mr Gray, 16 December 1997, p. 7.

⁹ Evidence of Mr Gray, 16 December 1997, p 6.

-
- | |
|--|
| <ul style="list-style-type: none"> • Growers' organisations <ul style="list-style-type: none"> <i>Australian Chinese Growers' Association</i> <i>Flower Growers' Group NSW Inc</i> <i>NSW Freegrowers Horticultural Council</i> • Wholesale market organisations <ul style="list-style-type: none"> <i>Flemington Market Exporters</i> <i>Flemington Market Warehouse Operators</i> <i>NSW Chamber of Fruit & Vegetable Industries</i> • Retail market organisations <ul style="list-style-type: none"> <i>Saturday Morning Markets traders</i> <i>Swap and Sell Market</i> <i>Paddy's Markets Traders (includes the Stallholder Trader's Co-operative Limited and Flemington Market Growers' and Traders' Association)</i> |
|--|

Other industry groups without tradeable floor space
--

<p><i>Australian United Fresh Fruit and Vegetable Association Ltd</i> <i>Combined Industries Committee</i> <i>Flemington Unloaders and Portage Operators</i> <i>NSW Farmers' Association</i> <i>Paddy's Advisory Committee</i> <i>Plaza Tenants Association</i> <i>Sydney Markets Buyers' Association</i></p>

Note:

1. Only tenants with tradeable floor space will be offered shares in the new private company Sydney Markets Limited.
2. The Stallholder Trader's Co-operative Limited group is a sub group of the larger Paddy's Markets traders group.¹⁰

The NSW Premier's Department Sydney Market Authority Steering Committee conducted negotiations on behalf of the Minister for Agriculture in the Sydney Market Authority dissolution process. Mr John Dermody, a Steering Committee member, represented the NSW Government in its negotiations with Sydney Markets Limited.

3.3 Development of the Heads of Agreement document

¹⁰ Document from the Premiers Department , New South Wales "Sydney Market Authority Ground Lease Proposal - Heads of Agreement Ratification Results", signed by Dr Col Gellatly, dated 26 March 1997.

The Heads of Agreement document was signed on 3 March 1997 by the Minister for Agriculture, The Hon. R. A. Amery, representing the NSW Government, and Mr Gray, representing Sydney Markets Limited. In a joint statement by the above mentioned, the Heads of Agreement was described as a document which:

...formally signifies the agreement and willingness of Government and industry to undertake continued negotiations in good faith to bring the industry run Markets proposal into operation.¹¹

The same statement also refers to the Heads of Agreement as:

...the framework for further detailed negotiations and lays down the requirements that have to be met before industry can take over responsibility for the Markets.

The Heads of Agreement document was separated into 19 parts, which specified guidelines for addressing matters, including: ratification by industry groups; terms of the sale agreement; transfer of employees from Sydney Market Authority to Sydney Markets Limited; and conditions limiting establishment of another NSW Government operated public market.

The Heads of Agreement document was presented to industry groups at Flemington and Haymarket sites, who subsequently ratified the document.

3.4 Federal Court proceedings

On the 16 June 1997, the Stallholder Trader's Co-operative Limited lodged legal proceedings with the Federal Court of Australia against the Hon. R. A. Amery, representing the right of the Crown in the State of New South Wales, and Sydney Markets Limited¹². The application claimed:

- the Heads of Agreement document was unenforceable because it restricted the NSW Government from establishing an alternative public

¹¹ Joint Government / Industry Statement relating to the future of Sydney Markets, Minister for Agriculture, Sydney Markets Limited, 3 March 1997, p. 1.

¹² Federal Court of Australia, NSW District Registry number G 459 / 1997.

market within the County of Cumberland while under a leasehold agreement with Sydney Markets Limited. This restriction was in breach of s.45B and s.46(1)(b) and (c) of the *Trade Practices Act 1974*;¹³

- the Heads of Agreement document, prohibiting any wholesale or public market activities in the County of Cumberland, was likely to substantially lessen competition in this area;¹⁴
- section 20 of the Sydney Market Authority (Dissolution) Bill 1997 admonishing any compensation payable by the State of New South Wales for enactment of the Act was invalid as it conflicted with provisions of the *Trade Practices Act 1974*;¹⁵
- operations of Sydney Markets Limited involved activities of exclusive dealing which contravened s.47 of the *Trade Practices Act 1974*;¹⁶
- the Heads of Agreement, sanctioning Sydney Markets Limited as the “successor” to the Sydney Market Authority, was misleading or deceptive conduct under s.52 of the *Trade Practices Act 1974*¹⁷; and

¹³ Lodgement of proceedings by the applicant The Stallholder Trader’s Cooperative with the first respondent Sydney Markets Limited and second respondent, The State of New South Wales, in the Federal Court of Australia, New South Wales District Registry, No. 459, 16 June 1997, p. 11.

¹⁴ Lodgement of proceedings by the applicant The Stallholder Trader’s Cooperative with the first respondent Sydney Markets Limited and second respondent, The State of New South Wales, in the Federal Court of Australia, New South Wales District Registry, No. 459, 16 June 1997, p. 12.

¹⁵ Lodgement of proceedings by the applicant The Stallholder Trader’s Cooperative with the first respondent Sydney Markets Limited and second respondent, The State of New South Wales, in the Federal Court of Australia, New South Wales District Registry, No. 459, 16 June 1997, p. 12.

¹⁶ Lodgement of proceedings by the applicant The Stallholder Trader’s Cooperative with the first respondent Sydney Markets Limited and second respondent, The State of New South Wales, in the Federal Court of Australia, New South Wales District Registry, No. 459, 16 June 1997, p. 13.

¹⁷ Lodgement of proceedings by the applicant The Stallholder Trader’s Cooperative with the first respondent Sydney Markets Limited and second respondent, The State of New South Wales, in the Federal Court of Australia, New South Wales District Registry, No. 459, 16 June 1997, p. 14.

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- the State of New South Wales was inferring deceptive conduct to allow Sydney Markets Limited, "...an improper monopoly advantage in trade and commerce within the Greater Sydney area with respect to the holding of public markets in that area".¹⁸

On 3 July 1997 the Stallholder Trader's Co-operative Limited filed a Notice of Discontinuance with the Federal Court concerning this matter. The Stallholder Trader's Co-operative Limited subsequently issued a formal retraction and apology to Sydney Markets Limited including an expression of support for the Heads of Agreement document and a transition to industry owned and operated markets. An extract of the letter of retraction to Sydney Markets Limited is given below:

We wish to assure SML that the Co-operative as a member of the Paddy's Markets traders, and indeed all of us, are fully supportive of the Heads of Agreement and the transactions contemplated by it.¹⁹

Mr Saggars, representing the Stallholder Trader's Co-operative Limited in response to a question from the Chairman as to why they commenced legal proceedings, indicated that the Co-operative felt this was the only alternative to stop the dissolution process long enough to allow all stallholders to develop a full understanding of the issues. Mr Saggars stated:

When the heads of agreement came out we looked for some issue within those heads of agreement with which we could possibly turn the lights on or stop this train long enough for people to actually ask what was going on. The Committee can appreciate that taking legal action was a difficult thing and not something to be rushed into but at the time it seemed to be the only way to put the brakes on.

We found an issue that we felt was relevant to do with anti-competitive behaviour within the heads of agreement. We then

¹⁸ Lodgement of proceedings by the applicant The Stallholder Trader's Cooperative with the first respondent Sydney Markets Limited and second respondent, The State of New South Wales, in the Federal Court of Australia, New South Wales District Registry, No. 459, 16 June 1997, p. 14.

¹⁹ Letter from the Stallholder Trader's Co-operative Limited to Sydney Markets Limited, (not dated).

took that issue to court. We lobbied Parliament and we believed that [if] we got significant support that there would be a delay of the legislation.²⁰

3.5 Review of Sydney Markets Limited's market power

The National Competition Council was asked by the Commonwealth Treasury to review representations it had received by Mr Robert Cianfrano in relation to market power. In a letter from the National Competition Council to the Director General of The Cabinet Office of New South Wales, the Council indicated consideration would be given regarding Mr Cianfrano's view that:

...Sydney Markets Limited and the State of New South Wales have breached the Trade Practices Act and the National Competition Policy agreements by providing for the establishment of a public market monopoly within the County of Cumberland (Greater Sydney).²¹

The representations made by Mr Cianfrano were similar to the application made by the Stallholder Trader's Co-operative.

The National Competition Council review of Sydney Markets Limited's market power stated:

The Council is satisfied that the transfer of ownership of the Flemington and Paddy's Markets does not create a monopoly.²²

The Australian Competition and Consumer Commission reported that the dissolution process involved a transfer of any existing market power from Sydney Market Authority to Sydney Markets Limited. This straight transfer in

²⁰ Evidence of Mr Saggars, 16 December 1997, p. 28.

²¹ Letter from Mr Ed Willett, Executive Director, National Competition Council to Mr Roger Wilkins, Director General, The Cabinet Office, 14 August 1997, p. 1.

²² Letter from Mr Ed Willett, Executive Director, National Competition Council to Mr Robert Cianfrano, carbon copied to Premiers Department of New South Wales, The Cabinet Office of New South Wales, The Commonwealth Treasury and the Australian Competition and Consumer Commission, 15 September 1997, p. 1.

the ACCC's opinion does not breach the *Trade Practices Act 1974*, in that it does not constitute a substantial lessening of competition.²³

The Sydney Market Authority had exclusive control over the operation of public markets in the County of Cumberland under s.11 of the *Sydney Market Authority Act 1968*. This power was not transferred to Sydney Markets Limited. Dr Col Gellatly, Director General of the NSW Premier's Department, in a letter to the National Competition Council, indicated that opportunities exist for alternative markets in farm produce to compete with Sydney Markets Limited. An extract from the letter is detailed below:

...with the removal of the exclusivity clause, another competitive fresh produce market could be established in the County of Cumberland should Sydney Market[s] Limited not satisfy the competitive and access requirements of the fresh produce industry. Negotiation and supply direct from the grower to the retailer already provides a distribution system competitive to the central produce market system and there are, currently, other private fresh produce distributors who operate outside the central market system.²⁴

The Standing Committee recognised that the Heads of Agreement placed a restriction on the State of New South Wales establishing a new public market for farm produce which is in **competition** with Sydney Markets Limited. The relevant section of the Heads of Agreement is outlined below:

Section 18.1

(a) The Vendor must not during the term of the Lease or any Lease granted in respect of any replacement premises establish, conduct or promote the establishment or conduct of another central market competitive with the SM.

²³ Letter from Mr Michael Terceiro, Australian Competition and Consumer Commission to Mr Robert Cianfrano, carbon copied to the Commonwealth Treasury, Premiers Department of New South Wales and the National Competition Council, 25 September 1997, p. 2.

²⁴ Letter from Dr Col Gellatly, Director General, Premier's Department of New South Wales to Mr Ed Willet, Executive Director, National Competition Council, 1 September 1997, p. 2.

(b) If the Purchaser relocates to an alternative site with the approval of the Vendor, the Site must not be used for a central market competitive with the SM and the Vendor must not establish, conduct or promote the establishment of conduct or another central market competitive with the SM on the Site.²⁵

3.6 Dissolution of the Sydney Market Authority

The *Sydney Market Authority (Dissolution) Act 1997* operated as the legal mechanism for the dissolution process. In particular ss.13-15 under Division 3 of the Act addressed matters of Sydney Market Authority assets, liabilities, members of the Board and employees. Section 13 of the Act is reproduced below:

Section 13

(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.

Section 6 of the *Sydney Market Authority (Dissolution) Act 1997* required the sale date for the Sydney Market Authority to coincide with proclamation of the Act on 1 November 1997.

3.7 Development of Prospectus and Election of Board of Directors for Sydney Markets Limited

²⁵ Heads of Agreement, Minister for Agriculture, the Hon R. A. Amery, M.P., and Sydney Markets Limited, 3 March 1997, part 18, p. 21.

3.7.1 Time frame for action

In July 1997 an information letter signed by Mr Colin Gray as caretaker director of Sydney Markets Limited was released. This letter indicated that industry groups of Sydney Markets Limited had accepted that release of the organisation's prospectus and election of its Board members would not occur before the dissolution of the Sydney Market Authority.²⁶ An extract of the information letter, quoted below, cited the following beneficial outcomes for Sydney Markets Limited from proceeding with such action:

- The widespread view that SML should take over responsibility for the Markets as soon as possible;
- Government would support this interim arrangement;
- There is no legal reason to prevent us [SML] from doing it. On the contrary, our legal advisers believe it is the best option;
- Profits from the operation of the Markets would go to SML sooner instead of going to Treasury;
- It would remove the present uncertainty that is seriously affecting the SMA and the SMA staff; and
- It would enable SML to use the staff and other resources transferring from the SMA to assist with the administration of the share issue and election of directors. This would also substantially reduce the costs of employing outside agencies for this task.²⁷

In addition to the above matters, Mr Gray said in evidence to the Standing Committee that the dissolution process needed to be wrapped up because it was:

...costing the industry a fortune in legal, accounting and other costs the longer the negotiations went on. Many hundreds of

²⁶ Sydney Markets Industries Group, Information letter 7/97, 1 October 1997, p. 1.

²⁷ Sydney Market Industries Group, Information Letter 7/97, 1 October 1997, p.1.

thousands of dollars have been paid out by industry for its side of the deal—the due diligence requirements and all that.²⁸

Referring to the expected time frame for release of the prospectus detailing share options for Sydney Markets Limited, Mr Gray stated:

I anticipate that the prospectus and the share issue will be cleared through the Australian Securities Commission by the end of January so that the next part of the operation can get underway.²⁹

In relation to the entire process of releasing the prospectus, allocating shares and electing members to the Sydney Markets Limited Board, Mr Gray stated:

Frankly, the procedure of the issuing of the prospectus, clearance through the ASC, time for people to take up shares and go through the voting procedure for the election of directors and their appointment could take another three or four months.³⁰

The caretaker directors of Sydney Markets Limited advised the Standing Committee that one share would be allocated for each stall or area of tradeable space. Each share would be issued with a value of \$1.00, which has been designed to minimise any financial burden on stallholders with multiple allotments of tradeable space.³¹

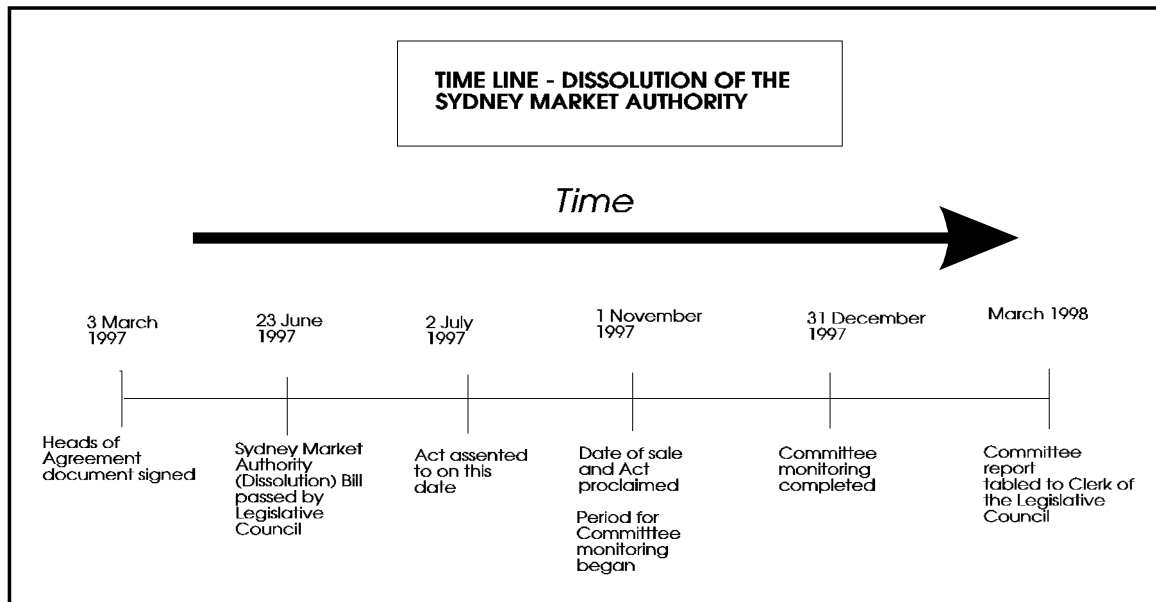
²⁸ Evidence of Mr Gray, 16 December 1997, p. 7.

²⁹ Evidence of Mr Gray, 16 December 1997, p. 7.

³⁰ Evidence of Mr Gray, 16 December 1997, p. 8.

³¹ Evidence of Mr Gray, 16 December 1997, p. 8.

Figure 2 Time line for dissolution of the Sydney Market Authority



3.7.2 Election process for Sydney Markets Limited Board of Directors

The Sydney Markets Limited Board will comprise nine members, including the chairperson. The election process is depicted diagrammatically in Figure 3. Mr Gray stated:

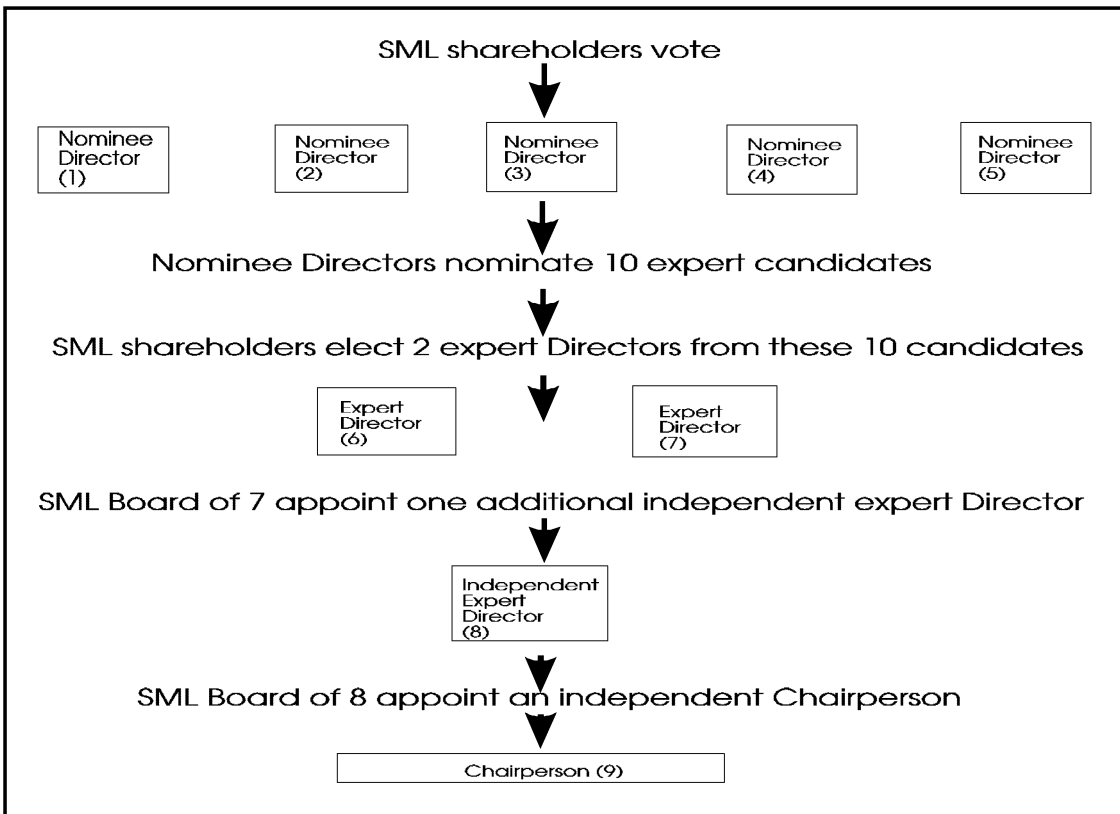
One of the most important aspects of the company is to ensure that the board is truly representative of the industry and has a degree of industry experience and expertise. All of the shares fall into one of five categories: wholesale markets; warehouse areas; D shed growers, which is the large growers shed at Flemington; flower growers; or retail markets. Each of the shares is earmarked: it will have a little tag on it saying that it is a flower share or a wholesaler share. Each of the five areas votes for one director on the board. They are what are known as the five nominee directors. They then nominate a maximum of two each—a total panel of 10—who are expertise directors. They must be people who have expertise in one or more of the following areas: law, finance, marketing, senior management or property management. All the

shareholders vote for two out of those 10 people to be the expertise directors.

That now gives a board of seven. The seven board members then appoint a totally independent director who can have no connection with the markets but who would be appointed on the basis of an expertise that the board needed. For example, if as a result of the earlier election process there were three lawyers on the board we would look for somebody who had a skill in a different area. Then those eight board members appoint the chairman, who is independent. That gives the total board number of nine. There were no full-time executive directors on the board. Unlike with the previous market authority on which the managing director was a board member, that is not the case with this organisation, although naturally the chief executive and the secretary-financial controller will attend the board meetings.³²

Figure 3 Election of the Sydney Markets Limited Board of Directors

³² Evidence of Mr Gray, 16 December 1997, p. 10.



4 THE SYDNEY MARKET AUTHORITY (DISSOLUTION) ACT - THE IMPACTS

4.1 Operation of the Act

The Sydney Markets Authority (Dissolution) Act 1997 was enacted on 1 November 1997. The main provisions of the Act (subject to agreement between the NSW Government and Sydney Markets Limited) are as follows:

- the transfer of rights, assets and liabilities from the Sydney Markets Authority to Sydney Markets Limited;¹
- the transfer of the rights of Sydney Markets Authority employees (including long service leave and annual leave) to Sydney Markets Limited;
- the creation of a head lease agreement for the Flemington site between the lessor, the State of New South Wales, and lessee, Sydney Markets Limited;²
- the name of the Sydney Market Authority on the lease agreement with Market City Properties Pty Ltd be altered to Sydney Market Limited;
- the conversion of all leases held by stallholders to sub-leases of the head lease;
- the dissolution of the Sydney Market Authority Board without any compensation to members for loss of office;³
- the revocation of the Sydney Market Authorities exclusive right to conduct and control public markets for farm produce in the County

¹ S. 4 and s.5(3), *Sydney Market Authority (Dissolution) Act 1997*.

² S.10, *Sydney Market Authority (Dissolution) Act 1997*.

³ S.14, *Sydney Market Authority (Dissolution) Act 1997*.

of Cumberland. Any number of private organisations may set up public markets for farm produce to compete with Sydney Markets Limited; and

- the revocation of the special constable policing powers previously held by the Sydney Market Authority including the ability to fine stallholders for breaches of the *Sydney Market Authority Act 1968 Regulation*.

4.2 Impact on Stakeholders in the Markets

Comments made by witnesses before the Standing Committee fell into two clear categories: firstly, the occurrence of any impacts during the Committee's reporting period, and secondly concerns over potential future impacts which may occur after the Committee's inquiry had concluded.

4.2.1 Impacts on stakeholders during the committee's period of monitoring

4.2.1.1 *Transfer of activities to Sydney Markets Limited*

Sydney Markets Limited representatives considered that the dissolution of the Sydney Market Authority and transfer of its principal activities have occurred smoothly. Mr Gray, caretaker Director of Sydney Markets Limited stated:

In our view that changeover occurred smoothly. Indeed, most of the market tenants would probably not have realised that there was a change. We went to a lot of trouble to ensure that there was no disruption to the businesses of the thousands of people who depend on the markets. All of the procedures as laid down in the sale agreement, the lease agreement, the heads of agreement and the dissolution bill are proceeding exactly in accordance with the requirements of those documents.⁴

Similarly, Mr Robert Cianfrano, an orchardist and casual stallholder at the Flemington site, advised the Standing Committee that there had been little

⁴ Evidence of Mr Gray, 16 December 1997, p. 7.

impact attributable in the transfer of the operation of the markets to Sydney Markets Limited stating:

...I have found it to be a smooth transition from management by the Sydney Market Authority to management by Sydney Markets Limited.⁵

Mr Colin Saggors, Legal Co-ordinator of the Stallholder Co-operative, suggested to the Standing Committee that both the Sydney Market Authority and Sydney Markets Limited had intimidated stallholders to prevent them from expressing their concerns to the inquiry. Mr Saggors contended:

It is fair to say that to all intents and purposes the Sydney Market Authority, and now Sydney Markets Ltd, is identical to any trader at the markets. They understand the system: if you co-operate you get favours, and if you do not co-operate you will find life very difficult. That is why many people are not prepared to give evidence or to speak about their particular problems.⁶

4.2.1.2 Staff issues

At the date of proclamation, 31 Sydney Market Authority staff were transferred to Sydney Markets Limited. The former Managing Director of the Sydney Market Authority, Mr Ian Coffey, resigned to take up a position in the NSW Premier's Department.⁷ Mr Gray, caretaker Director of Sydney Markets Limited outlined the approach taken in transferring former Sydney Market Authority staff to Sydney Markets Limited, stating:

We spent a considerable amount of time negotiating with staff and union representatives, in particular the MEU, to come up with an acceptable enterprise agreement that looked after the needs of the SMA staff coming across to SML. I am very pleased to report that it passed through the industrial court in about 3½ minutes as a consent award between all the parties. It was a co-operative

⁵ Evidence of Mr Cianfrano, 16 December 1997, p. 14.

⁶ Evidence of Mr Saggors, 16 December 1997, p. 26.

⁷ Evidence of Mr Jones , 16 December 1997, p. 4.

negotiation in which we sat down, thrashed out all the concerns and came up with a good and fair result.⁸

There has been a significant reduction in staff numbers at the Sydney Market Authority in the 16 month period prior to the Authority's dissolution. Review of the Draft Sydney Market Authority Annual Report 1997 revealed that the number of employees decreased from 65 to 31 during the period 30 June 1996 to 31 October 1997.⁹ This equates to a reduction in employees of around 52% over 16 months. The reduction was attributable in the most part to 29 staff opting to take voluntary redundancy packages available prior to the Sydney Market Authority being dissolved. Additional staff reductions were achieved through the contracting out of cleaning services that were previously undertaken by Sydney Market Authority employees.

⁸ Evidence of Mr Gray, 16 December 1997, p. 38.

⁹ Draft Sydney Market Authority Annual Report, 1997, p. 32.

4.2.2 NSW Government position

The Committee invited Mr John Dermody, a member of the Sydney Market Authority Steering Committee and the NSW Premier's Department representative in the Sydney Market Authority negotiations, to outline the NSW Government position in the Sydney Market dissolution process. Mr Dermody advised that the Government was unaware of any adverse impacts arising from the operation of the *Sydney Market Authority (Dissolution) Act 1997*.¹⁰ Mr Dermody went on to state:

I keep in contact with people at Paddy's and in the markets regularly just as a bit of after sales service to make sure that everything is working well. I have not heard any complaint except a disappointment that things have not changed overnight.¹¹

In relation to special constable policing powers, Mr Dermody stated:

What SML does not have that the SMA had is legislative powers and regulations and the ability to fine. The Government said that there was no way that it was going to allow a private organisation to have those sorts of legislative powers. This came up particularly during the discussion about controlling traffic. Under the SMA, officers were designated special constables and they could issue parking infringement notices. We could not have private companies doing that. We have set up a situation in which SML can talk to the police and perhaps come to an arrangement for police to come in to deal with parking infringements.¹²

Mr Dermody later indicated that Sydney Markets Limited could apply a self policing scheme to control infringements made by stallholders as an alternative.

The tenants can introduce their own voluntary code of fines or penalties as part of their tenancies. So if a tenant keeps on playing up he may well lose some of his rights or whatever. There is no

¹⁰ Evidence of Mr Dermody, 16 December 1997, p. 34.

¹¹ Evidence of Mr Dermody, 16 December 1997, p. 34.

¹² Evidence of Mr Dermody, 16 December 1997, p. 31.

legislative control, so it is up to the shareholders or a board elected by the shareholders, to resolve disputes, as would be the case normally within any private company.¹³

¹³ Evidence of Mr Dermody, 16 December 1997, p. 31.

4.2.3 Summary of impacts

Presented overleaf are two tables which summarise the impacts of the operation of the *Sydney Market Authority (Dissolution) Act 1997* during the Committee's monitoring period. Table 4.1 details the impacts on Sydney Market Authority stakeholders while Table 4.2 outlines the impacts on operational mechanisms previously implemented by the Sydney Market Authority.

Table 4.1 - Impact on Sydney Market Authority stakeholders of the *Sydney Market Authority (Dissolution) Act 1997* (for the period 1 November 1997 to 31 December 1997).

IMPACT ON SYDNEY MARKET AUTHORITY STAKEHOLDERS			
Customer	Impact (Yes/No)	Role prior to dissolution of SMA	Type of impact
NSW Agriculture	No	Inspection of farm produce for disease and pests	Unchanged
Stallholders (growers/wholesalers and retailers)	No	Access to buy and sell farm produce and other goods from the Haymarket and Flemington sites	Unchanged
General public	No	Access to purchase farm produce and other goods from the Haymarket and Flemington sites	Unchanged
NSW Treasury	Yes	Determination of an appropriate annual dividend payable by the SMA for capital investment in SMA infrastructure and use of the Flemington site	NSW Treasury determined the appropriate cost to SML to lease the Flemington site. Any dividends from SML will be payable to the shareholders (owners of tradeable space)
SMA Board members	Yes	Management of the SMA	Dissolved
SMA employees	Yes	Conduct operational, executive and corporate activities for SMA	Transfer of employees to conduct the same activities for SML

Table 4.2 - Impact on Sydney Market Authority operations as a consequence of the *Sydney Market Authority (Dissolution) Act 1997* (for the period 1 November 1997 to 31 December 1997).

IMPACT ON MARKET OPERATIONS		
Type of market activity	Description	Impact from dissolution of SMA
Lay out of stalls	Positioning of stalls within market, size of stalls and size of sheds	Operations unchanged
Cleaning and waste removal	Cleaning of sheds before market begins, operation and removal of waste	Operations unchanged, although a new contract is being tendered out
Delivery procedures	Logistics of loading and unloading vehicles within the market	Operations unchanged
Infringement notices	Use of special constable policing powers to levy fines	Special constable powers not available to SML
Parking	Areas designated as parking for public and stallholders	Operations unchanged
Trading hours	Days of operation, hours of operation, opening and closing times	Operations unchanged
Occupancy rates	Procedures for filling vacant stalls	Operations unchanged
Advertising / marketing	Nature and focus of marketing / advertising campaigns	Operations unchanged
Provision of capital infrastructure	Building of new sheds, purchasing of forklifts and vehicles	Operations unchanged, but will be sourced from SML funds rather than the NSW Government

IMPACT ON MARKET OPERATIONS		
Repairs and maintenance	Repairs and maintenance to buildings, sheds, roads within the market	Operat fro
Fees	Fees payable for use of the site to trade and service facilities involved in the market such as cleaning Fees payable irrespective of attendance Fees involved when transferring ownership of stalls	Operatic
Security	Security for Flemington and Haymarket sites	Operatic

4.2.3 Concerns over future impacts on stakeholders

The Standing Committee heard a number of concerns relating to future impacts arising from the *Sydney Market Authority (Dissolution) Act 1997*. These are summarised below.

4.2.3.1 *Cross subsidies between Flemington and Haymarket sites*

Mr Keith Jones, a stallholder expressed to the Committee concerns that Haymarket stallholders would subsidise any eventual relocation of the stallholders at Flemington to another site.

It has already been demonstrated in the Act, or in the heads of agreement, that part of the deal is that the Government will increase the rent commercially so it will not be viable for them to stay at Flemington. In the meantime SML has to accumulate acquisition money to purchase a site elsewhere. I do not believe stallholders at Haymarket realise that we are once again going to cross-subsidise Flemington's move somewhere else. I do not see why they should have to. The licence was issued to Haymarket.¹⁴

4.2.3.2 *Impediments for casual stallholders to access the markets*

The Committee heard evidence that a number of casual stallholders were concerned about their future access to the markets and whether conditions

¹⁴ Evidence of Mr Jones, 16 December 1997, p. 3.

previously implemented by the Sydney Market Authority would continue. Mr Robert Cianfrano indicated that access to "D" shed at the Flemington site was an important outlet for casual producers to sell excess farm produce on Saturday mornings on an ad-hoc basis at wholesale or retail level.¹⁵ Mr Cianfrano outlined his concern about access for casuals as follows:

I think the critical factor that would concern me and others like me in the same position, would be the people with casual permanent stands. A lot of people at Flemington Markets are very concerned about tomorrow, whether the stands will still be available to them and whether the method put forward by the Marketing Authority will be continued.¹⁶

Mr Joseph Tripodi, M.P. Member for Fairfield, advised the Standing Committee of constituents concerns for the future access and treatment of casual stallholders at the markets. These concerns stemmed from the hypothesis that permanent stallholders may see casuals as competitors for income, and direct the Sydney Markets Limited Board to manage the market in such a fashion as to minimise competition from casual stallholders.

Mr Tripodi stated:

Casuals are not shareholders; they are not part of the establishment of the markets. They come into the markets, sell their product and get out. They act as a source of price competition to the permanents during peak seasons. The permanents are not always happy with the casuals because the casuals may undercut them on price.

If I were a shareholder in Sydney Markets Limited I would direct management, which I nominate at each annual general meeting, to minimise the competition from the casuals who come in, sell their product and leave. That competition is the biggest threat to their income flow. Permanent stallholders who are shareholders may direct management to reduce the source of competition to them rather than invite as much competition as possible so that at the end of the day consumers get a good product. My concern is not

¹⁵ Evidence of Mr Cianfrano, 16 December 1997, p. 16.

¹⁶ Evidence of Mr Cianfrano, 16 December 1997, p. 16.

with the privatisation; it is with the ownership structure of the privatisation.¹⁷

The Standing Committee also heard evidence that casual stallholders believed discriminatory price mechanisms may be used by Sydney Markets Limited as a barrier to entry.¹⁸ Casuals already pay a daily fee for use of a stall which is in excess of the fee paid by the permanent stallholder. It was put to the Standing Committee that it may be possible for Sydney Markets Limited to charge casual stallholders a fee which is so high as to make trading unviable and thus deter attendance.

Mr Tripodi expressed the belief that measures to expand the number of existing stalls would generate an inconsistency in the objectives of Sydney Markets Limited. The expansion of the number of stallholders in the market would increase competition and supply for goods leading to benefits to the consumer through lower prices.¹⁹ However, these actions would have a detrimental impact on the income stream available to each stall thus reducing the capital value of existing permanent stalls.²⁰

4.2.3.3 *Alteration to operations after the completion of the inquiry*

Mr Tripodi outlined to the Standing Committee the stallholders concern that there would be no alteration to the operation of the markets until the Committee had completed its inquiry. Mr Tripodi stated:

It is rumoured amongst the markets, and I do not know whether it is true or not, that the management does not intend to change much in the way the markets are run at the moment, because this Committee exists and oversees what is happening in the markets.²¹

¹⁷ Evidence of Mr Tripodi, 16 December 1997, p. 19.

¹⁸ Evidence of Mr Tripodi, 16 December 1997, p. 19.

¹⁹ Evidence of Mr Tripodi, 16 December 1997, p. 19.

²⁰ Evidence of Mr Tripodi, 16 December 1997, p. 19.

²¹ Evidence of Mr Tripodi, 16 December 1997, p. 20.

Mr Tripodi later added:

The primary reason I wanted to give evidence is to ask the Committee to consider extending the period for overseeing the implementation. If the Committee were to watch over this for another year, I do not think management would defer for another year the kinds of changes it wants to bring in.²²

4.2.4 NSW Government and Sydney Markets Limited response to impacts

Mr Tripodi advised the Committee that he had approached the Minister for Agriculture, the Hon. R. A. Amery, M.P. in relation to maintaining the existing rights of casual flower growers at the Flemington and Haymarket sites. In a letter responding to Mr Tripodi's concerns, the Minister for Agriculture advised that the NSW Government's lease agreement had been prepared and signed with an amendment to allow casual stallholders access to the market.²³ An excerpt of the letter is reproduced below:

The Lease, which I have signed today, now contains a Mandatory Use clause which provides that the Lessee "...must use the premises for the purposes of public markets, providing access to growers, suppliers, buyers and the public, for the storage and disposal of Farm produce and other merchandise..."²⁴

The letter also refers to advice received from the Crown Solicitor stating that the lease conditions may be breached if Sydney Markets Limited did not allow casual stallholders access to the markets.²⁵

²² Evidence of Mr Tripodi, 16 December 1997, p. 20.

²³ Letter from the Minister for Agriculture, the Hon R. A. Amery M.P. to Mr Joe Tripodi M.P. Member for Fairfield, 29 October 1997.

²⁴ Letter from the Minister for Agriculture, the Hon R. A. Amery M.P. to Mr Joe Tripodi M.P. Member for Fairfield, 29 October 1997, p. 1.

²⁵ Letter from the Minister for Agriculture, the Hon R. A. Amery M.P. to Mr Joe Tripodi M.P. Member for Fairfield, 29 October 1997, p. 1.

Mr Dermody referred to three reasons why Sydney Markets Limited would not exclude casual stallholders from the markets:

If the permanent does not come in, the space is available for a casual. The attraction for the Market Authority in the past and for SML in the future is that the permanent has already paid his rent. When the space is vacant and the casual comes in he pays a further rent. So there is a good, sound revenue reason for keeping casuals coming: the space is paid for twice, once by the permanent and once by the casual. Secondly, anyone who runs a market knows that a good market is a full market. So if for some reason the permanents are not filling the market, casuals are very desirable to keep the market full of traders. Thirdly, casuals are usually your source of people who wish to buy permanent stalls. So you are creating your own market for people who wish to buy stalls in the future. For those reasons I could not see why SML would not want to continue the use of casuals while ever there is space available.²⁶

Mr Dermody inferred that it would be in Sydney Markets Limited's best interest to avoid the development of competing private markets by satisfying casual stallholder's needs. Mr Dermody stated:

It would be a very silly Sydney Markets Limited that pushed those people outside its business because it would just be creating a competitor. It would be better off to embrace them, bring them in and keep them in.²⁷

Mr Gray concurred with Mr Dermody's statement that it was desirable to have the market full of traders. Mr Gray stated:

...one of the reasons Sydney markets have always succeeded is the very high occupancy level. The old thing that is part and parcel of the industry - flowers, fruit and vegetables - is that you always try to keep the supply a little bit below demand. The worst thing

²⁶ Evidence of Mr Dermody, 16 December 1997, p. 32.

²⁷ Evidence of Mr Dermody, 16 December 1997, p. 32.

that could possibly happen in a market is to have it half empty; you are better off having it pretty close to full.²⁸

Mr Gray addressed concerns raised by Mr Tripodi relating to Sydney Market Limited's possible reluctance to expand the number of stalls due to conflicting interests with permanent stallholders, stating:

It was the practice of the Sydney Market Authority to only build new facilities when there is a defined need and when people want to occupy them.²⁹

Mr Gray added:

...if there is a defined need to increase the size of a particular area because the customers want it, and they are prepared to help finance it—because you cannot just build a building out of thin air, it has to be paid for—there is no reason that cannot be seriously looked at.³⁰

The Standing Committee invited a response from the three caretaker directors of Sydney Markets Limited in regard to the possibility that only after the Committee's inquiry was concluded would there be any significant changes to the operation of Sydney Markets Limited. Mr Gray replied as follows:

The first time I heard that rumour was this morning. The three of us as the initial directors made the conscious decision that we will not seek to introduce any major change of any sort. ...We believe that it is not our prerogative to do so; it is the prerogative of the full board who are elected by the shareholders and appointed in the manner that I outlined earlier.³¹

Mr Gray added:

²⁸ Evidence of Mr Gray, 16 December 1997, p. 41.

²⁹ Evidence of Mr Gray, 16 December 1997, p. 41.

³⁰ Evidence of Mr Gray, 16 December 1997, p. 41.

³¹ Evidence of Mr Gray, 16 December 1997, p. 37.

It is interesting because, with all due respect to the Committee, the business of Sydney Markets Limited and the operations of the markets is dependent on the shareholders. While we respect the inquiry of the Committee, it is not really part of the considerations at all.³²

4.3 Committee analysis

The Standing Committee recognised the serious nature of the suggestion made by Mr Saggars that stallholders were not willing to speak out about the dissolution process through intimidation or fear of intimidation by employees of Sydney Market Authority (now employees of Sydney Markets Limited).

The Standing Committee could not find any corroborating evidence to support Mr Saggars' claim.

The Standing Committee considered that during the period in which the Committee monitored the Act, the industry groups at the markets were generally satisfied with the outcome of the dissolution process. In arriving at this view the Committee took into consideration the fact that the relevant industry groups of Sydney Markets Limited which negotiated the Heads of Agreement represented the vast majority of permanent stallholders. These industry groups endorsed the agreement and the process for transferring control of the markets from the Sydney Market Authority to Sydney Markets Limited.

The Standing Committee considered that from an economic perspective it was in Sydney Markets Limited's interest to have a market that is operated at full capacity. This would maximise rental returns to Sydney Markets Limited but also provides for competition and diversity of product which will attract customers. Maintaining access for the casual stallholder to the market would allow Sydney Markets Limited to achieve these objectives. This mechanism, along with the lease requirement to allow casual stallholder access was, in the Committee's view, sufficient to ensure that casual stallholders will maintain access to the market given the present operating conditions.

The proposition was put to the Standing Committee that Sydney Markets Limited may have the market power to charge casual stallholders an

³² Evidence of Mr Gray, 16 December 1997, p. 37.

inappropriately high fee for use of a tradeable stall at the Flemington or Haymarket sites. This action would serve to maximise the profits of Sydney Markets Limited while minimising profits achievable by casual stallholders. The Committee does not consider that such profit maximising measures were applied by Sydney Markets Limited to casual stallholders during the Committee's period of monitoring. Furthermore the Committee was satisfied that if Sydney Markets Limited were to apply such a strategy, sufficient scope existed for casual stallholders to develop alternative private markets.

The Standing Committee recognised that the absence of impacts on stakeholders during the Committee's period of monitoring may not be duplicated in the period subsequent to the Sydney Markets Limited Board being appointed. Under present operating conditions, the Committee is satisfied that the lease requirements at the Flemington site along with the economic mechanisms impacting on Sydney Markets Limited will be sufficient to maintain future access rights of casual stallholders in the markets.

The Standing Committee is not in a position to predict how, or if, the Sydney Markets Limited Board will alter operating conditions in the future. To a large extent the internal mechanisms of Sydney Markets Limited in determining future operational conditions would not be of the Committee's concern. To achieve a more complete understanding of the longer term impacts on stakeholders from operation of the *Sydney Market Authority (Dissolution) Act 1997* the Committee considered it necessary that the situation be monitored for a further year.

5 CONCLUSIONS AND RECOMMENDATIONS

Monitoring activities were undertaken by the Standing Committee during the period 1 November 1997 to 31 December 1997 in relation to the operation of the *Sydney Market Authority (Dissolution) Act 1997*. The Committee found that during its period of monitoring the transfer of responsibility for the markets to Sydney Markets Limited from the Sydney Market Authority occurred smoothly.

The Standing Committee recognised the serious nature of the suggestion made by Mr Saggars that stallholders were not willing to speak out about the dissolution process through intimidation or fear of intimidation by employees of Sydney Market Authority (now employees of Sydney Markets Limited). The Committee could not find any corroborating evidence to support Mr Saggars' claim. On the contrary the Standing Committee concludes that during the period in which the Committee monitored the Act, the industry groups at the markets were generally satisfied with the outcome of the dissolution process. In arriving at this view, the Committee took into consideration the fact that the relevant industry groups of Sydney Markets Limited represented the vast majority of permanent stallholders and had endorsed the agreement and the process for transferring control of the markets from the Sydney Market Authority to Sydney Markets Limited. Secondly the caretaker directors of Sydney Markets Limited stated that industry groups had considered the transition satisfactory.

The Standing Committee concluded that from an economic perspective, it is in Sydney Markets Limited's interest to have a market that is operated at full capacity. A market at full capacity would maximise rental returns to Sydney Markets Limited but also provide for competition and diversity of product which will attract the customers. Maintaining access for the casual stallholder to the market would allow Sydney Markets Limited to achieve these objectives. This mechanism, along with the lease requirement to allow casual stallholder access, was in the Committee's view, sufficient protection to ensure that casual stallholder will maintain access to the market given the present operating conditions.

The Standing Committee recognised that there may be additional impacts on stakeholders following the appointment of the Sydney Markets Limited Board. The Standing Committee is not in a position to predict how or if the Sydney

Markets Limited Board will alter operating conditions in the future. Therefore, the Standing Committee believes further monitoring of stakeholder interests is warranted. The Standing Committee notes that the internal mechanisms of Sydney Markets Limited which determine its future operational conditions, to a large extent falls outside the Standing Committee's terms of reference.

5.1 Committee Findings

The Committee finds:

1. all legislative requirements specified in *Sydney Market Authority (Dissolution) Act 1997* were satisfied when the Act became operational;
2. stakeholders at the Flemington and Haymarket sites incurred negligible impacts during the Committee's period of monitoring. At this stage, no Government action is required to address any issues stemming from the Act's operation; and
3. the potential exists for stakeholders at the Flemington and Haymarket sites to be impacted upon beyond the Committee's monitoring period, as a consequence of the Act becoming operational.

RECOMMENDATION

That the Standing Committee on State Development:

- continue to monitor the impacts of the *Sydney Markets Authority (Dissolution) Act 1997* and the provision of public markets for farm produce and other merchandise within the County of Cumberland for a further year (until 31 December 1998);
- accept and consider any representations made to the Standing Committee during that period; and
- if necessary, table an additional report in the Legislative Council after the 31 December 1998.

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APPENDICES



APPENDIX ONE: STALL FEES BY MARKET TYPE FOR THE SYDNEY MARKET AUTHORITY

APPENDIX TWO: WITNESSES AT COMMITTEE HEARINGS

HEARING DATE APPLICABLE)	ID No.	WITNESS NAME, POSITION AND ORGANISATION (IF
Tuesday 16 December 1997	1	Mr Keith Jones
	2	Mr Colin Gray, Director, Sydney Markets Limited
	3	Mr Eric Kime, Director, Sydney Markets Limited
	4	Mr Kevin Willits, Director, Sydney Markets Limited
	5	Mr Robert Cianfrano
	6	Mr Joseph Tripodi, M.P., Member for Fairfield
	7	Mr Colin Sagers, Stallholder Trader's Co-operative Limited
	8	Mr John Dermody, Project Director, Strategic Projects Division, NSW Premier's Department
	9	Mr Denis Teys, Chief of Operations, Sydney Markets Limited

APPENDIX THREE: SUBMISSIONS TO THE INQUIRY

ID No. SUBMITTEE'S NAME, POSITION AND ORGANISATION (IF APPLICABLE)

01 Mr Robert Cianfrano

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