Legislative Council

23/10/2002

Agricultural Industry Services Amendment (Interstate Arrangements) Bill Hansard - Extract

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [6.16 p.m.]: I move:

That this bill be now read a second time.

As the speech is lengthy and detailed and has already been delivered in the other place, I seek leave to incorporate it in *Hansard.*

Leave granted.

This Bill that I now put before the House is a proposal that came together as a result of consultations between the Governments of New South Wales and Victoria, and the Murray Valley citrus industry over the last four years. In its initial application, the Bill will enable the implementation of agreed outcomes of the National Competition Policy review of the NSW and Victorian *Murray Valley Citrus Marketing Acts*.

The potential applications of the key provisions of the Bill are not limited to the Murray Valley or the citrus industry however.

The concept of truly singular interstate arrangements has existed and been discussed for a long time. With the support and encouragement of the Murray Valley citrus industry that has its own interest in a form of legislation that will have general application, those who have been involved in the drafting of this legislation have achieved some generic provisions that can be used by other agricultural industry services committees.

As this Bill has its origin and initial application in the citrus industry of the Murray Valley, I would like to briefly outline the significance of this industry.

The Murray Valley is one of the three main citrus growing areas that collectively produce about 90% of the Australian citrus crop. The other two areas are the Riverland of South Australia and the Murrumbidgee Irrigation Area in NSW.

There are nearly 600 citrus growers in the Murray Valley and their numbers are fairly evenly divided between the two States with the current split between Victoria and New South Wales being around 55%/45%.

Over the last decade the annual production in this area has varied between 110,000 tonnes and nearly 200,000 tonnes of citrus.

The citrus growers of the Murray Valley are serviced by the organisations established under the *Murray Valley Citrus Marketing Acts* of NSW and Victoria. I refer to organisations in the plural because each Act legally establishes an intrastate Murray Valley Citrus Marketing Board. Certain provisions of these Acts, like the appointment of the same board members by each State, have given the Boards a public appearance of being a singular entity. Overcoming the problems associated with this conflict between public appearance and legality was a further contributing factor to this Bill.

Over recent years, these Boards have provided various services to growers that have been funded through a compulsory charge. However, the Acts under which the Boards are established provide them with the power to engage in various marketing and processing activities as well as other powers of market intervention.

I turn now to the National Competition Policy review and how it led to this Bill.

In 1998, the NSW and Victorian Governments jointly commissioned a review of their *Murray Valley Citrus Marketing Acts.*

The immediate outcomes of this review supported the continuation of the Boards as a provider of services funded through a compulsory charge, provided the use of that charge was restricted to the provision of services consistent with established National Competition Policy guidelines.

There was support for the removal of the Boards' powers of market intervention and the improvement of

their accountability to growers. In addition, it was agreed that growers who contribute most to the Boards' revenue should have a proportionate influence on Board operations.

On their own, the immediate outcomes of the review tell only part of the story.

In the process of consultation between officials of the two Governments and industry on the implementation of these outcomes, an opportunity was seen to reconstitute the Boards under the generic agricultural industry services legislation of the two States. I refer to the NSW *Agricultural Industry Services Act 1998* and the Victorian *Agricultural Industry Development Act 1990*.

Although these Acts have some procedural differences they are similar in that they provide for the constitution of statutory bodies that have a service provision function funded through a compulsory charge.

The opportunity was embraced by industry but its support for the action was subject to three conditions being able to be met.

First, the Boards had to be able to be established as a truly singular entity so that the resulting Board could realise the benefits of reduced administrative and compliance costs through having to be directly accountable to only one Government.

Second, the resulting legislation should be capable of enabling amalgamation of the Murray Valley Board with either or both of the other State based statutory authorities serving the citrus industry in other areas. Industry discussions on such amalgamation have a long history and have always foundered on the perceived problems of legislating for any proposed amalgamation.

Third, the legislation should be capable of being applied to other industries. Many of the Murray Valley citrus growers also grow wine grapes. The wine grape industry in the Murray Valley is similar to the citrus industry in having two State based statutory bodies that are trying to operate as one.

Needless to say, the move to reconstitute the Murray Valley Citrus Marketing Boards under the generic agricultural industry services legislation of the two States also had its advantages for Government. A major revision of the *Murray Valley Citrus Marketing Acts* of the two States could be avoided. These specific Acts, and the Regulations under them, could even be repealed with savings in the amount of legislation to be maintained. The benefits of working with generic legislation could be extended.

This is the platform of consultation, co-operation and agreement that has led to where we now are. While the provisions of this Bill have been drafted with immediate regard to the Murray Valley citrus industry, the provisions are generic and will be available to other agricultural industry services committees with similar needs.

I am pleased to say that this Bill is a credit to all the parties involved in its development the result of which is a proposal based on commonsense and cooperation that yields significant benefits to both industry and government.

I turn now to the main provisions of the Bill.

As can be seen from my earlier remarks, the Bill provides generally for the establishment of arrangements that may be constituted in one State and operate in another. It provides specifically for the reconstitution of the Murray Valley Citrus Marketing Boards and it provides for the repeal of the *Murray Valley Citrus Marketing Act 1989.*

I turn initially to the general provisions for the establishment of a committee with extra-territorial or interstate power, that is the power to operate in two States.

The Bill provides for a reciprocal relationship between States. It makes provision for any NSW agricultural industry services committee to have extra-territorial operation with respect to the primary producers and products for which that committee is established. In addition it will enable NSW to recognise a legislative instrument in another State or Territory which establishes a committee designed to operate interstate with NSW.

The procedure to do this is quite simple and demands both government and industry involvement in each and every decision on an extra-territorial arrangement.

An agricultural industry that wants to establish a committee with extra-territorial operation must apply to the Minister in the State in which they propose that the committee be constituted.

That Minister must then dialogue with the counterpart Minister in the proposed participating State or Territory to establish concurrence for the proposal at Government level.

With Government concurrence established NSW constituents must be polled and the outcome of the poll must support the proposal before an extra-territorial committee is established. This poll is conducted in accordance with the polling provisions in the *Agricultural Industry Services Act 1998*. In other words more than half of the relevant NSW producers must vote at the poll and more than half of those producers must cast their votes in favour of the establishment of the committee.

This is just one of the many safeguards specifically designed to protect NSW constituents where an

extra-territorial committee is proposed.

If the result of the poll supports the proposal, the proposed committee can be established. This means that constituents of the committee will be subject to the constituting State's laws to the extent that those laws affect the operation of and exercise of the committee's functions. For example the Freedom of Information Act, Ombudsman Act and Whistleblowers legislation would apply interstate.

This is the foundation of all extra-territorial arrangements.

If the result of the poll does not support the proposal but there is strong support for the continuation of a committee within NSW, in accordance with section 5 of the *Agricultural Industry Services Act 1998* the Minister may establish an intrastate arrangement without conducting a further poll.

Four key principles can be seen to underpin the establishment of a committee with extra-territorial power.

The first is that an extra-territorial arrangement cannot be established without the support of the Governments concerned.

The second is that the arrangement cannot be established without the support of proposed constituents who are to be polled on a State basis with a requirement that the proposal is supported in every proposed State.

The third is that the choice of State in which to constitute an arrangement with extra-territorial power will rest with the proponents and potential constituents of the arrangement.

The fourth is that once an interstate committee is established it will operate fully under the legislation of the State in which it is constituted. It will only operate in the participating jurisdiction if that jurisdiction recognises the arrangement at law.

Having outlined the provisions as they will generally apply, I pick up where I began, with the specific case of the Murray Valley citrus industry.

With regard to the general provisions for the establishment of an extra-territorial arrangement, the situation of the Murray Valley citrus industry has three key points of context.

First, through its awareness of the legislation being proposed, the industry has indicated its preference for the reconstitution and amalgamation of the existing Murray Valley Citrus Marketing Boards to occur under the Victorian *Agricultural Industry Development Act*.

Second, in the course of enacting this legislation, and a counterpart Victorian Bill, the Governments of NSW and Victoria will be equipped with a mechanism whereby they may recognise in their legislation each others' agricultural industry services legislation for the purposes of these amendments.

Third, as there are authorities already in existence, some transitional provisions are to be expected.

In this context, the immediate action will be a poll of the citrus producers of Victoria and NSW on their support for the establishment of an extra-territorial committee. The outcome of this poll will determine whether an extra-territorial committee is established.

If the result of the poll supports the proposal, then a single committee with extra-territorial operation within the Murray Valley will be established. In order for this to happen however, NSW must recognise the proposed Victorian Order under which the committee will be established in order for the relevant Victorian laws to apply in the area of operations within NSW.

If the result of the poll does not support the establishment of an extra-territorial committee, I will immediately take necessary action to ensure the continuation of the NSW Murray Valley Citrus Marketing Board under the *Agricultural Industry Services Act 1998*.

The administration and operation of this committee would be up to the NSW Murray Valley citrus industry.

Furthermore, although I acknowledge a possibility that NSW citrus growers may not want the NSW Board to continue at all, an interim committee will be in the interest of NSW growers because it will enable them to determine how their share of the assets of the current Boards are to be distributed.

Another two provisions of this Bill worth bringing to your attention relate to the continuation of the role of approved receivers in the collection of charges and the selection of committee members.

Firstly, under the NSW *Agricultural Industry Services Act 1998* committees are empowered to charge growers who are the beneficiaries of the services they provide, for those services. This provision does not deny the possibility of funds being collected another way but it does require any such system to properly account for the charges payable and paid by each grower.

Under the NSW and Victorian *Murray Valley Citrus Marketing Acts* the Boards' revenue is collected by approved receivers. Because there are deficiencies in the system of 'funds accountability', the Bill provides for a continuation of the approved receiver system for a transitional period of four years to allow for the development of an alternative system during that time.

Secondly, the NSW *Agricultural Industry Services Act 1998* currently provides that a majority of members of

any committee must be elected from and by constituents. The majority of members of the current Murray Valley Citrus Marketing Boards are chosen by a selection committee rather than through an election process. Representatives of the industry have indicated a strong desire to retain the selection committee approach.

The amendment proposed at Schedule 1 Clause 1 of the Bill will enable the retention of the selection committee process because it provides for the use of methods of choosing committee members other than election, without compromising the requirement that a majority of members of a committee must be constituents of the committee.

Regardless of whether the existing Murray Valley Citrus Marketing Boards are reconstituted as a single entity with extra-territorial power or as continuing intrastate entities under agricultural industry services legislation, the recommendations of the National Competition Policy review that led to this Bill will be implemented.

The agricultural industry services legislation of both States does not permit the kinds of market intervention that were to be removed from the *Murray Valley Citrus Marketing Acts*. On the other hand, the agricultural industry services legislation embraces the kinds of modern accountabilities that needed to be introduced to the *Murray Valley Citrus Marketing Acts* if they were to continue.

This is the first such cross border proposal of its nature in NSW. The corresponding Victorian version of the NSW Bill was read into the Victorian Parliament on 5 June 2002. This action and my action today reflect the level of support for the proposed legislation by both Governments and industry.

There has been an enormous amount of good will and good work put into not only the development of this Bill but also the equivalent Bill already before the Victorian Parliament. This good will and good work involves everyone from the citrus growers of the Murray Valley to the Parliamentary Counsels of NSW and Victoria and each of them deserves recognition for their role in the progress of this exemplary piece of legislation.

I commend the Bill to the House.