

Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The *Marketing of Primary Products Act 1983* (the **principal Act**), originally enacted to provide for the marketing of primary products generally (referred to in that Act as “commodities”), now applies only to the marketing of rice. Under the principal Act, most rice grown in New South Wales is vested in the Rice Marketing Board (the **Board**) for the purpose of its being marketed by the Board. Rice that is not vested in the Board may be purchased only by authorised buyers. The Board has appointed Ricegrowers’ Co-operative Limited (trading as Sunrice) (the **Co-operative**) as the Board’s agent to market the rice vested in the Board, and as an authorised buyer to purchase all other rice. At present, there are no other authorised agents or authorised buyers. National Competition Policy requires that other persons be entitled to be appointed as authorised buyers in relation to the sale or supply of rice within Australia.

The object of this Bill is to amend the principal Act so as:

- (a) to provide that, with limited exceptions, any person is entitled to be appointed as an authorised buyer of rice, subject to a condition prohibiting the person from selling or supplying rice in the export market except with the Board’s written approval, and
- (b) to allow a person to apply to the Administrative Decisions Tribunal for a review of the Board’s decision in relation to an appointment or application for appointment, other than a decision with respect to a condition referred to in paragraph (a), and
- (c) to provide that the existing appointment of the Co-operative as an authorised buyer of rice is not to be construed as an exclusive appointment in relation to the sale or supply of rice within Australia, and
- (d) to make other provision of a minor, consequential and ancillary nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 July 2006.

Clause 3 is a formal provision that gives effect to the amendments to the *Marketing of Primary Products Act 1983* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to other Acts and the instrument set out in Schedule 2.

Schedule 1 Amendment of Marketing of Primary Products Act 1983

Appointment of authorised buyers

Schedule 1 [4] inserts new subsections (1A), (1B) and (1C) into section 51 of the principal Act (Appointment of authorised buyers). The proposed subsections provide for the manner and form in which an application for appointment as an authorised buyer is to be made, the fees payable by applicants and appointees and the grounds on which appointment may be refused.

Schedule 1 [6] inserts new subsections (6), (7) and (8) into section 51 of the principal Act. The proposed subsections enable decisions of the Board with respect to applicants and appointees (other than conditions of the kind referred to in proposed section 51A (2)) to be reviewed by the Administrative Decisions Tribunal.

Schedule 1 [5] clarifies the intent of section 51 (3) of the principal Act.

Conditions of appointment for authorised buyers

Schedule 1 [7] inserts a new section 51A into the principal Act. The proposed section is intended:

- (a) to make it clear that appointment as an authorised buyer can be made subject to such conditions as the board considers appropriate (see proposed subsection (1)), and
- (b) to require the conditions of appointment to which an authorised buyer is to be subject to include a condition prohibiting (except with the board's written approval) any sale or supply, to persons outside Australia, of commodities purchased by the authorised buyer (see proposed subsection (2)), and
- (c) to provide that appointment as an authorised buyer cannot be limited as to time (see proposed subsection (3)), and
- (d) to provide that a contravention of a condition of appointment forms the sole ground for suspending or revoking a person's appointment as an authorised buyer (see proposed subsection (4)), and
- (e) to provide that contravention of a condition of appointment constitutes an offence for which a person may become liable:
 - (i) where it does not involve the sale or supply of a commodity, to a fine of 200 penalty units (\$22,000) (see proposed subsection (5)), or
 - (ii) where it involves the sale or supply of a commodity, to a fine of 2,000 penalty units (\$220,000) (see proposed subsection (6)), and
- (f) to provide that contravention of a condition of appointment that involves the sale or supply of a commodity may give rise to a Supreme Court order for the payment to the State of an amount equivalent to the proceeds of the sale or the value of the commodity supplied, as the case may be (see proposed subsection (7)), and
- (g) to provide that an order under proposed subsection (7) may be made whether or not there have been criminal proceedings under proposed subsection (6) (see proposed subsection (8)).

Schedule 1 [10] amends section 156 of the principal Act so as to enable proceedings for the offence under proposed section 51A (6) of selling or supplying a commodity in contravention of a condition of appointment to be dealt with by the Supreme Court in its summary jurisdiction.

Schedule 1 [3] inserts new subsections (1A) and (1B) into section 50 of the principal Act. The proposed subsections make it clear that appointment as an authorised agent can be made subject to specified conditions (including conditions as to the circumstances in which, and the manner in which, the authorised agent may exercise the Board's functions). **Schedule 1 [2]** makes a consequential amendment. The proposed amendments parallel the amendments proposed in relation to authorised buyers.

Existing appointment of Co-operative as authorised buyer

The Co-operative is currently appointed as the Board's only authorised buyer.

Schedule 1 [12] inserts a new Part 7 into Schedule 4 to the principal Act (Savings, transitional and other provisions). Proposed clause 17, the sole provision of the proposed Part, provides that the appointment is not to be construed as being exclusive in relation to the sale or supply of rice within Australia, and that accordingly neither the Board nor the State is to be liable for any loss or damage suffered by the Co-operative if further persons are appointed as authorised buyers in relation to such sales or supplies.

Schedule 1 [11] amends clause 1A (1) of Schedule 4 to the principal Act so as to allow the regulations under that Act to make savings and transitional provisions consequent on the enactment of the proposed Act.

Minor, consequential and ancillary matters

Schedule 1 [9] amends section 155 of the principal Act so as to increase, from 20 penalty units to 200 penalty units, the maximum fine that may be imposed for an

offence under that Act.

Section 1 of the principal Act sets out its title. **Schedule 1 [1]** substitutes that section so as to rename the principal Act as the *Rice Marketing Act 1983*.

Section 56 of the principal Act provides for the vesting of commodities in the Board. Section 57 of the principal Act enables the Board to grant certain exemptions from the operation of that section. **Schedule 1 [8]** amends section 57 to provide a further exemption in favour of sales to authorised buyers.

Clauses 4 and 5 of Schedule 6 to the principal Act currently impose certain limitations on the Board's power to appoint authorised agents and authorised buyers and to enter into, or terminate, agreements with authorised agents and authorised buyers. **Schedule 1 [13]** omits those clauses.

Schedule 2 Amendment of other Acts and instrument

Schedule 2 amends a number of Acts and an instrument as a consequence of Schedule 1 [1] which renames the principal Act as the *Rice Marketing Act 1983*.