NSW Legislative Assembly Hansard

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

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 9 November 2005.

Second Reading

Ms SANDRA NORI (Port Jackson—Minister for Tourism and Sport and Recreation, Minister for Women, and Minister Assisting the Minister for State Development) [7.53 p.m.], on behalf of Mr David Campbell: I move:

That this bill be now read a second time.

Before I deal with the content of the Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Bill, the purpose of which is to deregulate the domestic rice market in New South Wales, I want to give honourable members an overview of the circumstances that have led to the Government introducing this bill. The rice industry is one of the State's most progressive and successful primary industries. Rice growers are all members of the Ricegrowers Co-operative Ltd, which trades as SunRice, and which is one of the most successful agricultural co-operatives in the country. The foundation for SunRice's success is that under the Marketing of Primary Products Act 1983, SunRice operates effectively as a single desk exporter by being the sole agent of the Rice Marketing Board.

This power has been granted by the New South Wales Parliament, as there is no Australian Government legislation providing for a single export desk for rice. Indeed, an application by our Government for such a power was unilaterally rejected by the Australian Government in December 2003. The surest way to ensure that the New South Wales rice industry enjoys an single export desk, so it can maintain these premiums, is to maintain the vesting power under the Marketing of Primary Products Act, and as a consequence control the domestic market for rice as well. In the absence of national export legislation, control over the domestic market is the surest way to prevent leakage of rice to other operators or other States, which can then be exported in competition with SunRice and erode SunRice's premiums.

The 2005 independent national competition policy review of the rice industry found that the consumer transfer associated with these domestic controls is only $3 million, compared with the $48 million of export premiums. The economic efficiency losses as a result of this consumer transfer are a paltry $150,000. This $150,000 is the only net public cost of these arrangements to the Australian economy. The New South Wales Government has always evaluated the New South Wales rice marketing arrangements and their net costs and benefits as a package, not as domestic or international arrangements. Accordingly, the New South Wales Government agreed to retain the present legislative arrangements. However, this is not good enough for the National Competition Council and the Howard Coalition Government.

They want to ensure that any costs, no matter how small, are removed, all in the name of competition reform. That $150,000 is the grand total of the domestic costs that the National Competition Council [NCC] and the Howard Coalition Government want to stamp out. They want to put at risk $48 million of export premiums for the sake of saving $150,000 and they want to fine us $26 million if we do not agree! It is utterly absurd. It is economic rationalism being taken to a ridiculous extreme. Despite all this, and the strong representations that have been made to the NCC and to the Howard Coalition Government on these points, they have given no indication of being willing to change their minds and apply a bit of common sense. The NCC is not even prepared to countenance an additional transitional period to give the Rice Marketing Board and its agent, SunRice, time to adjust to this major change.

Both the board and SunRice have substantial financing arrangements with their bankers which are based on the current vesting powers, and the sudden withdrawal of these powers may well adversely impact on their ability to obtain appropriate financial accommodation at reasonable interest rates. But this does not seem to bother the Howard Government. The New South Wales Government has done everything in its power to protect the industry, and I remind honourable members of the process that we have undertaken over the past two years. In March 2004 the Minister for Primary Industries held emergency talks with the NCC and was able to convince it to recommend to the Federal Treasurer that he suspend the $13 million penalty for 2004-05 in return for New South Wales carrying out yet another independent review of marketing arrangements.

The Federal Treasurer agreed to suspend that penalty. In fact, the Federal Treasurer has consistently rubber-stamped every recommendation the NCC makes. We carried out that review—the third such review in 10 years—and consulted closely with industry throughout the process. Industry also put its case to Kay Hull, Peter McGauran and Mark Vaile—and Nick Minchin came down to see first-hand what a success story the rice industry is. The concerns of industry were explained during each of these briefings with Federal Coalition members. They made it absolutely clear that the Federal Treasurer had always accepted the advice of the NCC and that New South Wales had always stated that it could not afford the penalty and would be forced into

deregulation if the penalty were to be applied. Federal intervention was requested, but nothing was done.

The Premier has even written to the Prime Minister in defence of the arrangements. The Premier's correspondence to the Prime Minister, like all pleas to the Commonwealth on this matter, has been met with a deafening silence. Despite all our efforts, the NCC continually fails to accept the benefits of our rice marketing arrangements. Like us, the industry is flabbergasted by the NCC's continued position. Laurie Arthur of the Rice Growers Association told ABC radio last month that the industry is "absolutely at a loss as to why the NCC will not accept an independent inquiry as was required". I could not agree more. So it is with regret that I bring forward this bill, which is designed to deregulate the domestic market for rice in New South Wales, while at the same time endeavouring to protect the rice industry and to shore up, as best we can, the single export desk currently enjoyed by SunRice.

The bill will free up trade by allowing authorised buyers to operate freely in the domestic rice market provided they do not seek to export the rice, thereby diluting our export premiums. The object of this bill is to amend the Marketing of Primary Products Act 1983 by, first, making more specific provisions relating to the appointment of authorised buyers and agents, including the conditions of appointment, and grounds for refusal or revocation of appointment; secondly, increasing the penalties for breaches of these conditions; thirdly, providing a specific exemption from the vesting provisions for rice sold to authorised buyers; fourthly, providing for a right of appeal to the Administrative Decisions Tribunal in respect of decisions by the board in relation to the appointment of authorised buyers; and, finally, providing that the existing agreement between the board and SunRice is no longer to be construed as an exclusive agreement and that, accordingly, the board is not liable for any damages as a result of appointing additional authorised buyers.

The bill also includes additional regulation making powers to cover the detail of these provisions and to ensure compliance with the policy direction of the national competition policy. The commencement date of the bill is 1 July next year, just over seven months away. This Government does not support the blind and rigid application of national competition policy. At least in the past when industries have been deregulated there has been a transitional period to give time for the industry to adjust. But not this time. The NCC and the Federal Government have instructed that we must pass this legislation by 30 November, or they will penalise our budget by $26 million.

Let me turn to schedule 1. Item [1] of this schedule renames the principal Act as the Rice Marketing Act 1983. This is because the only board now established under the original Marketing of Primary Products Act 1983 is the Rice Marketing Board. Item [3] inserts a subsection (1A) in section 50 of the principal Act to allow the board to impose conditions on any authorised agents it may appoint. The amendment provides for this power to be constrained by regulation. The reason for specifically allowing for conditions to be imposed is to ensure that there is no question mark over the board's authority to limit the performance of any function that it may delegate to an agent. Item [4] inserts new subsections (1A) to (1C) in section 51 of the principal Act. New subsection (1A) provides for the board to determine the procedure for making and processing applications for appointment as an authorised buyer. New subsection (1B) provides for fees to be paid by authorised buyers and applicants for appointment as an authorised buyer.

In consultation with the board, a regulation will be made that establishes an application fee and annual administration fee that will cover the cost of the administration of the authorised buyer scheme. New subsection (1C) establishes the grounds for the board to refuse to appoint someone as an authorised buyer. This can occur if the applicant is still serving a two-year suspension or revocation of a previous appointment, paragraph (a), or if the board reasonably believes the applicant would not comply with their conditions of appointment, paragraph (b). The board will have some discretion, but the exercise of that discretion can be appealed to the Administrative Decisions Tribunal [ADT], as provided for in item [6] of this schedule.

Item [6] inserts new subsections (6), (7) and (8) into section 51 of the principal Act. These subsections provide for appeal to the ADT by persons aggrieved by a board decision relating to an application for appointment as an authorised buyer or a board decision to vary, suspend or revoke any such appointment. Item [7] inserts a new section 51A dealing with the conditions of appointment as an authorised buyer. Subsection (1) is equivalent to the new section 50(1A), which I spoke about a few minutes ago, but refers to authorised buyers rather than authorised agents. The difference between a buyer and an agent in this instance is fairly straightforward. Authorised buyers, of whom there may be several, will be appointed by the board to buy and trade rice on the domestic market in Australia. The authorised agent of the board will be the only operator that is approved by the board to export New South Wales grown rice.

This role underpins our current single export desk arrangement and is currently performed solely by SunRice. The main condition that we would expect to see imposed on authorised buyers, with the exception of SunRice, would be to prevent them from exporting New South Wales grown rice. Because both paddy rice and milled rice are covered by the legislation, this will work to protect the export single desk operated by SunRice, while not restricting the domestic market. Subsection (3) makes an appointment as an authorised buyer continue indefinitely, unless and until it is suspended or revoked by the board, or voluntarily surrendered. The only grounds for suspension/revocation are if the person has contravened a condition of their appointment, as set out

in subsection (4). Subsection (5) applies a penalty of up to 200 penalty units for a breach of conditions of appointment, with the exception of breaches involving sales of rice. Subsection (6) creates a much higher penalty for breaches that involve selling rice—2,000 penalty units, which is currently $220,000.

This "selling" penalty is one of the key deterrents for misbehaviour by an authorised buyer. This level of penalty is comparable with the penalties under the Queensland Sugar Industry Act 1999. Subsection (7) allows the Minister to initiate action in the Supreme Court to take from an authorised buyer who has breached a selling condition the proceeds of the sale. So, not only will they be fined under the offence provisions and have their appointment as an authorised buyer suspended for up to two years—as provided for in subsection (4) above—they also will not profit from their illegal transaction. Item [8] ensures that an authorised buyer has full possession and ownership of rice delivered to them, equivalent to the situation that already exists for SunRice. Item [9] increases the penalty for non-selling offences from a maximum of 20 to 200 penalty units—that is, from $2,200 to $22,000—which is much more commensurate with the potential benefits of illegal transactions or other wrongful behaviour by authorised buyers.

Item [12] inserts a new part 7 in schedule 4 to the principal Act, which serves to "read down" the contract between the board and SunRice so that it no longer provides SunRice with exclusive access to rice produced in New South Wales. This was necessary to comply with the National Competition Council's demands. This part also protects the board from liability for any damage to SunRice that might arise as a result. It is appropriate to protect the board, which is a statutory industry authority, in this way. This in no way changes the status of SunRice as the board's agent.

Item [13] makes consequential deletions arising from the other amendments. The only ones of note are the removal of the previous four-year limit on authorised agent and authorised buyer appointments and the requirement for ministerial approval before any such appointment could be revoked. We cannot see any reason for having a mandatory sunset on these appointments; nor, now that decisions of the board will be subject to appeal to the Administrative Decisions Tribunal, do we see a requirement for ministerial approval to be warranted. Let me again make it clear that this Government would prefer to retain the legislative arrangements as they currently stand but, regrettably, the Australian Government is forcing us to change a proven success story for the New South Wales economy.

Consultation on this bill has also had to comply with the time constraints imposed by the Federal Government. Nevertheless, we have had a number of discussions with representatives of the Rice Marketing Board and SunRice over the contents of the bill, and the requirements of the Federal Government and its interpretation of national competition policy. This bill is the best we can do in the circumstances and I share with the industry its concerns over the Federal Government's bulldozing tactics. I also make it clear that the Minister for Primary Industries is prepared to use the regulation-making powers under the principal Act, as amended by this bill, should refinements be required as we work towards deregulating the domestic market for rice from next July. I reluctantly commend the bill to the House.