

Wine Grapes Marketing Board (Reconstitution) Bill 2003

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to provide for the abolition of the Wine Grapes Marketing Board (***the former Board***) established under the *Marketing of Primary Products Act 1983* and its reconstitution as an agricultural industry services committee (***the Board***) under the *Agricultural Industry Services Act 1998*,
- (b) to provide temporarily for the regulation of the terms and conditions of payment for MIA wine grapes sold to wineries by wine grape growers,
- (c) to amend the *Agricultural Industry Services Act 1998* so as to enact savings and transitional provisions consequent on the constitution of the Board,
- (d) to amend the *Marketing of Primary Products Act 1983* so as to repeal the provisions of that Act relevant solely to the former Board.

Outline of provisions

Part 1 Preliminary

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 January 2004.

Clause 3 defines certain expressions (including ***Board, complying contract, duly contracted delivery, former Board, MIA wine grapes*** and ***price schedule***) for the purposes of the proposed Act.

Part 2 Wine grapes marketing

Division 1 Establishment of prices, and terms and conditions of payment, for MIA wine grapes

Clause 4 enables a person to furnish the Board with the person's price schedule for MIA wine grapes delivered otherwise than pursuant to a complying contract. The schedule must indicate the minimum prices that the person will pay for deliveries of MIA wine grapes and any factors, conditions or circumstances that may operate to reduce the prices offered by the person for MIA wine grapes. A price schedule may be varied by notice in writing given to the Board, in particular to increase or reduce any price, but not so as to reduce any price until at least 24 hours after the notice has been given (48 hours after the notice has been given in the case of reductions occurring prior to 30 January).

Clause 5 empowers the Board to make orders regulating the terms and conditions of payment for MIA wine grapes delivered otherwise than pursuant to a complying contract. The proposed power is specifically authorised for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

Division 2 Regulation of deliveries and payments for MIA wine grapes

Clause 6 provides that the proposed Division is to apply to any delivery of MIA wine grapes, other than a duly contracted delivery.

Clause 7 provides that a person must not accept delivery of a consignment of MIA wine grapes unless a price schedule applicable to that delivery has been provided to the Board on or before 30 January in that year.

Clause 8 requires a person who accepts a delivery of MIA wine grapes to provide the consignor with documentation that specifies the date of the delivery, the quantity and variety of grapes delivered, the relevant provisions of the price schedule applicable to the consignment and any factor, condition or circumstance that operates to reduce the price payable for the consignment.

Clause 9 provides that the minimum price to be paid for MIA wine grapes delivered to a person is to be the greater of the price offered by the consignee for the wine grapes and the minimum price set out in the person's price schedule or, if the person has not published a price schedule in due time, the greater of the price offered by the consignee for the wine grapes and the average price for such a delivery (calculated by reference to the prices set out in other price schedules in relation to wine grapes of the same grade delivered on the same day).

Clause 10 provides that, unless the Board directs otherwise, payments by consignees for deliveries of MIA wine grapes must be made to the Board, which will then remit the payments to the consignor (less any rates payable to the Board).

Division 3 General

Clause 11 provides that the proposed Division applies to any delivery of MIA wine grapes, including a duly contracted delivery.

Clause 12 requires each consignee to furnish the Board with reports as to the deliveries of MIA wine grapes that have been made to it during the season just ended (the first report being for the period up to 14 April, the second for the period from 15 April to 31 May).

Clause 13 enables the Board to approve certain contracts for MIA wine grapes that are entered into on or after the first Monday of the previous December. A contract so approved becomes a complying contract for the purposes of the proposed Act.

Clause 14 requires consignees who accept duly contracted deliveries of MIA wine grapes (and to whom clause 10 does not therefore apply) to deduct any rates payable to the Board in relation to the delivery from money payable to the consignor in relation to the delivery.

Clause 15 enables the Minister to exempt persons, either conditionally or unconditionally, from the operation of the proposed Part or any specified provision of the proposed Part.

Clause 16 makes void any contract or agreement to the extent to which it purports or tends to exclude, modify or restrict the operation of the proposed Part.

Part 3 Miscellaneous

Clause 17 requires the Director-General to have regard to submissions or nominations by the Board when appointing Departmental inspectors under the *Agricultural Industry Services Act 1998* in relation to MIA wine grapes, prohibits a member of the Board or its staff from being appointed as a Departmental inspector in relation to MIA wine grapes, augments the powers of a Departmental inspector in relation to MIA wine grapes and requires the Board to contribute towards the costs and expenses of Departmental inspectors in relation to MIA wine grapes.

Clause 18 allows the Board's costs under the proposed Act to be funded by payments out of its general fund under the *Agricultural Industry Services Act 1998*.

Clause 19 allows the Board and the Director-General to recover unpaid money as a debt.

Clause 20 allows an authorised officer of the Board to take proceedings for an offence against the proposed Act in the name of the Board.

Clause 21 provides that directors and other persons concerned in the management of a corporation may be proceeded against and convicted for offences committed by the corporation if they knowingly authorised or permitted the contravention.

Clause 22 is a formal provision that gives effect to Schedule 1. Schedule 1 sets out the provisions of a proposed regulation establishing the Board. **Clause 23** abolishes the former Board.

Clause 24 is a formal provision that gives effect to Schedule 2. Schedule 2 sets out amendments to the *Agricultural Industry Services Act 1998*.

Clause 25 amends the *Marketing of Primary Products Act 1983* by omitting Schedule 5 to that Act, and by consequentially omitting section 67A of that Act (the formal provision that gives effect to Schedule 5).

Clause 26 provides for the expiry of the proposed Act on 31 December 2007.

Schedule 1 Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003

Schedule 1 sets out the following provisions for a foundation regulation under the *Agricultural Industry Services Act 1998* for the Board:

Part 1 Preliminary

Proposed clause 1 sets out the name of the foundation regulation.

Proposed clause 2 defines certain words and expressions for the purposes of the foundation regulation.

Part 2 Establishment and functions of Board

Proposed clause 3 establishes the Board and provides that it is to be a continuation of the former Board.

Proposed clause 4 prescribes growers who have harvested more than 20 tonnes of MIA wine grapes in the previous calendar year (other than wineries, growers owned or controlled by wineries and directors of wineries who, as growers, deliver all their produce to the wineries) to be the class of primary producers for which the Board is constituted.

Proposed clause 5 prescribes the City of Griffith, and the local government areas of Carrathool, Leeton and Murrumbidgee, as the area of operations of the Board.

Proposed clause 6 prescribes MIA wine grapes to be the commodity for which the Board is constituted.

Proposed clause 7 prescribes the agricultural industry services for which the Board is constituted to be as follows:

(a) the development of a code of conduct for contract negotiations between wine grape growers and wineries,

(b) the development of draft contract provisions with respect to the sale of MIA wine grapes to wineries, including provisions with respect to:

(i) the prices to be paid by wineries, and (ii) the terms and conditions of payment to be observed by wineries, in relation to MIA wine grapes delivered to them by wine grape growers,

(c) the promotion of private contracts for the sale of MIA wine grapes to wineries by wine grape growers,

(d) the collection and dissemination of market and industry information, including the production and publication of indicator prices for MIA wine grapes grown in the Board's area of operations, (e) the conduct of research and development into plant health in relation to wine grapes, (f) the provision of education and training in relation to wine grape production and marketing,

(g) the promotion, in association with organisations representing wineries, of wine made from MIA wine grapes,

(h) the promotion of regional industry, including regional wine-making, within the Board's area of operations,

(i) the representation of the wine grape industry in relation to the matters referred to in paragraphs

(a)–(h).

Part 3 Other provisions relating to Board

Proposed clause 8 provides that the Board is to have 7 members, 5 elected by the Board's constituents and 2 appointed by the elected members.

Proposed clause 9 provides that 4 members of the Board constitute a quorum at any meeting of the Board.

Proposed clause 10 provides that each of the Board's constituents is entitled to one vote for both polls and elections.

Proposed clause 11 provides that 30 of the Board's constituents constitute a quorum at any meeting of the Board's constituents.

Proposed clause 12 establishes the Board's financial year as the year ending on 31 December.

Schedule 2 Amendment of Agricultural Industry

Services Act 1998

Schedule 2 [1] amends clause 1 of Schedule 4 to the *Agricultural Industry Services Act 1998* so as to enable the regulations under that Act to make provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 [2] inserts a new Part into Schedule 4 to the *Agricultural Industry Services Act 1998*. The new Part contains a single clause that ensures that the foundation regulation set out in Schedule 1 to the proposed Act has the same effect as a foundation regulation made under section 5 of the *Agricultural Industry Services Act 1998*.