



NSW Legislative Council Hansard

Sale of Goods and Warehousemen's Liens Amendment (Bulk Goods) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 22 November 2006.

Second Reading

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.52 p.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate my second reading speech in *Hansard*.

Leave granted.

The Sale of Goods and Warehousemen's Liens Amendment (Bulk Goods) Bill 2006 addresses potentially serious implications for producers who, in good faith, have placed their product in the hands of a third party for storage purposes. Every country representative in this place would be familiar with grain storage facilities as they are a common sight in most communities. These large concrete structures dominate the landscape, and are often located adjacent to main highways or railways.

Following consultation with a group of farmers who were facing the loss of around \$150,000 worth of grain held in bulk storage, the Member for Tamworth, Mr Peter Draper, raised their concerns in the Parliament in October 2005 and called on the Government to amend grain storage agreements to reflect title ownership of the produce by the farmer.

This call was prompted by the collapse of Liverpool Plains-based Creasy Grain Enterprises in August 2005. Afterwards, the administrator, Ferrier Hodgson, told six-grain producers, who had 1,000 tonnes of sorghum and barley stored in the company's Premier silos, that they could no longer claim ownership to their grain. This antiquated stance was based on a 1933 court case involving *Chapman Bros v Verco Bros. and Company Limited and Another* over the ownership of bagged grain.

The court ruled that, as ownership of the mingled grain could not be determined, the owner of the storage facility was deemed to be the owner of the grain. Lawyers acting for Ferrier Hodgson revived this precedent, leaving the six Premier producers potentially out of pocket.

At the time of the group's collapse, it had debts of more than \$23 million. Despite initial assurances that their grain would be returned, the farmers were later told that they no longer held title to the grain. Growers whose grain was held by Creasy launched a legal challenge against Ferrier Hodgson to win back their rights. The matter, however, was never fully tested in the court system and was settled out of court for \$97,000, representing the then market value of the grain plus a proportion of legal costs.

The matter settled without either party admitting liability. However, it was unclear whether the growers would have been successful in their campaign to win back their produce had it been completed through the court system, and it was perhaps the high level of publicity that the case had generated which prompted Ferrier Hodgson to make the settlement.

While the result was excellent news for the farmers, who stood to lose their grain from a dispute that should have never arisen in the first place, the risk remains that other farmers could find themselves in similar circumstances should there be another collapse.

Mr Draper first raised this issue in the Parliament in October 2005 and he later received written notification from the Attorney General, Bob Debus, that the Government would "closely examine the question of grain ownership and the practicalities, legal and otherwise, of farmers recovering an interest in grain that has been delivered to a silo".

Following this reassurance little progress was made towards securing farmers against similar action to the Ferrier Hodgson debacle. In the interests of preventing more farmers from being robbed of what is rightfully theirs, Mr Draper drafted this bill.

The bill was introduced by Mr Draper in the other place on the 14th November, and was passed unanimously on the 16th November and I am honoured to have carriage of the bill in the Legislative Council.

Given the broad impacts of the ongoing drought in New South Wales, there is a significant risk that more agriculturally dependent businesses, including storage facilities, may be forced into receivership through difficult

market conditions.

Such circumstances could create a similar situation as occurred with Creasy, tangling other farmers up in a legal battle over product ownership.

Australia has one of the most variable rainfall climates in the world. The likelihood of the drought continuing into the near future is high. Over the long term, farmers experience about three good years and three bad years out of 10. With the current weather patterns continuing to affect temperature and rainfall in New South Wales, the risk of drought-induced financial difficulties for rural business remains significant.

The bill will clarify ownership of bulk goods, such as grain, wine or other goods, that are produced by individuals but are stored in a communal facility. Bulk goods are goods that have been deposited by their owners into storage with goods of the same kind that are owned by others.

As such, the goods of one owner become intermingled with the goods of another—for example, with grain or wine.

The bill will prevent farmers from going through the legal minefield that the Premier grain growers had to endure. Their case was long and protracted and was finally settled out of court but there is no legal precedent to stop the antiquated 1933 ruling being used again.

Under section 21 of the Sale of Goods Act 1923, where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. Currently the storage of goods in bulk facilities is considered unascertained.

The goods become ascertained only once they have been separated from the bulk. In the case of grain, this is when it is loaded on a truck for delivery. Schedule 1 inserts into the Sale of Goods Act 1923 a new section 25A that generally follows the provisions of section 10A and section 20B of the United Kingdom's Sale of Goods Act 1979.

The bill will amend the Sale of Goods Act 1923 to ensure that a purchaser of goods to be delivered from a bulk storage can, by paying for them, obtain a proprietary right to the goods before they are separated out from the bulk. It will also amend the Warehousemen's Liens Act 1935 to ensure that an owner of goods delivered into bulk storage retains a proprietary right to those goods after they have become part of bulk storage.

Schedule 2 inserts new section 9A into the Warehousemen's Liens Act 1935 to reflect the approach taken in schedule 1 in respect of the Sale of Goods Act 1923.

The bill will remove the uncertainty facing our farmers in these difficult times of drought. Mr Draper has consulted with the honourable member for the Northern Tablelands and the honourable member for Dubbo, who all share concerns that unless the bill is passed by Parliament, farmers may face further legal disadvantage in the future.

This is a fine example of how the Independents in Lower House and Minor Parties such as the Australian Democrats in the Upper House can and do work together to help our constituents.

I share the Honourable members concerns and I am pleased to have carriage of this bill in the Upper House. The Member for Tamworth and I urge both sides of the House to consider the positive implications of this bill and vote accordingly.

Farmers are facing considerable hardship from what is now being dubbed the worst drought in 1,000 years. They need to be protected against any unnecessary legal disputes. The bill is an excellent solution that will prevent future situations that may be similar to that faced by the Premier farmers in the Creasy incident. On behalf of the Member for Tamworth and the grain growers who have been affected by the collapse of Creasy Grain Enterprises, I commend the bill to the House.