



New South Wales

Marketing of Primary Products Amendment (Wine Grapes Marketing Board) Act 1997 No 125

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Marketing of Primary Products Amendment (Wine Grapes Marketing Board) Act 1997 No 125

Act No 125, 1997

An Act to amend the *Marketing of Primary Products Act 1983* to make further provision with respect to the functions of the Wine Grapes Marketing Board constituted under that Act; and for other purposes. [Assented to 15 December 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Marketing of Primary Products Amendment (Wine Grapes Marketing Board) Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Marketing of Primary Products Act 1983 No 176

The *Marketing of Primary Products Act 1983* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Part 3, Division 5

Insert after Division 4 of Part 3:

Division 5 Special provisions relating to Wine Grapes Marketing Board

67A Special provisions relating to Wine Grapes Marketing Board

Schedule 5 has effect.

[2] Section 160 Liability

Insert "an authority," after "the Director," in section 160 (a).

[3] Section 164 Authorisations for section 51 of Trade Practices Act 1974 (Cth) and Competition Code

Insert in alphabetical order in section 164 (1):

Competition Code means the *Competition Code of New South Wales*.

[4] Section 164 (2)

Omit "acts and " wherever occurring.

[5] Section 164 (2), (3) and (6)

Insert "and the Competition Code" after "the Commonwealth Act" wherever occurring.

[6] Section 164 (4)

Insert "or the Competition Code" after "the Commonwealth Act".

[7] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

Marketing of Primary Products Amendment (Wine Grapes Marketing Board) Act 1997

[8] Schedule 4, Part 4

Insert after Part 3:

Part 4 Provisions consequent on enactment of Marketing of Primary Products Amendment (Wine Grapes Marketing Board) Act 1997

14 Prices for sale of vested wine grapes

If, before the commencement of this clause, the Wine Grapes Marketing Board has set a price for which vested wine grapes that comprise the 1998 crop may be sold, the last price so set immediately before the commencement of this clause is taken to have been set under and for the purposes of clause 7 of Schedule 5 (as inserted by the *Marketing of Primary Products Amendment (Wine Grapes Marketing Board) Act 1997*).

[9] Schedule 5

Insert after Schedule 4:

Schedule 5 Special provisions relating to Wine Grapes Marketing Board

(Section 67A)

Part 1 Preliminary

1 Purpose of Schedule

The purpose of this Schedule is:

- (a) to provide for the vesting in the Wine Grapes Marketing Board until the end of 31 July 2000 of all wine grapes grown in the Board's area for sale other than wine grapes that are the subject of long-term supply contracts, and

- (b) to impose various constraints on the exercise of functions by the Board as a marketing board under Part 3 of this Act.

2 Definitions

- (1) In this Schedule:

Board means the Wine Grapes Marketing Board constituted as a board under this Act.

Board's area means the area constituted by the City of Griffith and the local government areas of Carrathool, Leeton and Murrumbidgee.

long-term supply contract means a contract for the supply of wine grapes by a producer to a wine maker for a period (including any period for which the contract may be renewed by the exercise of an option) of 3 years or more.

minimum price means the minimum price for vested wine grapes set under clause 7.

vested wine grapes means wine grapes that are vested in the Board by the operation of clause 10.

- (2) For the purposes of this Schedule, a reference to a producer or wine maker includes a reference to any person, other than the Board, who is acting on behalf of the producer or wine maker.
- (3) Notes included in this Schedule are explanatory notes and do not form part of this Act.

3 Application

- (1) This Act (other than this Schedule) and, in particular, Part 3 of this Act, have effect subject to this Schedule.
- (2) The provisions of this Act (other than this Schedule) that apply with respect to the Board apply with such modifications as are necessary for the purposes of this Schedule and with such modifications (if any) as may be prescribed by the regulations.

Part 2 General functions of Board

4 No voluntary deliveries of commodity to Board

The Board may not arrange with a producer for the delivery to it of any commodity or other primary product in the manner described in section 45 (Voluntary deliveries of the commodity) and, accordingly, that section has no application to the Board.

5 Board prohibited from processing wine grapes

- (1) This clause applies to all wine grapes, whether the grapes are vested wine grapes or not.
- (2) The Board must not process wine grapes to which this clause applies and must not arrange for the processing of such grapes by any person on its behalf.
- (3) This section has effect despite sections 46 (Board may deal in the commodity), 48 (Manufacturing and processing of the commodity) and 49 (Board may deal in other products etc).

6 Board generally prohibited from fixing or negotiating price for wine grapes

Despite any other provision of this Act (including section 47 (b)), the Board must not, except as expressly authorised by this Schedule, fix or negotiate a price for the sale of wine grapes.

7 Board may set minimum price for sale of vested wine grapes

- (1) For the purposes of Part 4 of this Schedule, the Board may set the minimum price for which vested wine grapes, or classes or grades of vested wine grapes, may be sold.
- (2) The Board must review regularly any minimum price set under this clause to ensure that, so far as possible, all vested wine grapes are sold.

- (3) The Board must disseminate details of any minimum price set under this clause, including by publication in at least one newspaper circulating in the Board's area as soon as practicable after the price has been set.

8 Producers of vested wine grapes appointed as authorised agents of Board

- (1) Each producer of vested wine grapes is appointed as an authorised agent to act as the Board's agent for the purpose of selling to wine makers, in accordance with this Schedule, vested wine grapes that the producer has grown.
- (2) Any contract entered into by a producer as an authorised agent pursuant to subclause (1) is taken to include a term under which the agent, and not the Board, is the person who may take proceedings or be proceeded against in relation to any matter arising under the contract.
- (3) Nothing in this clause limits the power of the Board to appoint authorised agents under section 50 (Appointment of authorised agents) for the purpose of exercising other functions of the Board under this Act.

9 Producer may decline to act as authorised agent

- (1) A producer of vested wine grapes who does not wish to act as an authorised agent of the Board for the purpose of selling wine grapes grown in a particular season may decline to act as an authorised agent by giving the Board written notice of that fact.
- (2) The notice must be given to the Board before the wine grapes are harvested.
- (3) A producer who gives such a notice to the Board is not entitled to sell the wine grapes to be harvested.

Note. Clause 20 describes the other consequences of the giving of a notice under this clause that follow in relation to the sale or re-vesting of wine grapes to which the notice relates.

Part 3 Vesting of wine grapes in Board

10 Vesting of certain wine grapes in Board until 31 July 2000

- (1) On and from the commencement of this clause until the end of 31 July 2000, all wine grapes grown in the Board's area for sale, other than those referred to in subclause (2), are divested from the producers of the wine grapes and become absolutely vested in and are the property of the Board subject to the provisions of this Schedule and despite any other provisions of this Act.
- (2) Subclause (1) does not apply to wine grapes grown in the Board's area that are the subject of a long-term supply contract.
- (3) Wine grapes grown in the Board's area for sale that cease to be the subject of a long-term supply contract vest in the Board by the operation of this clause when the contract ceases to have effect.
- (4) Wine grapes vested in the Board by the operation of this clause are taken to have been so vested by a proclamation under section 56 (Vesting of commodity in board) and, subject to this Schedule, that section and the other provisions of this Act apply (with any necessary modifications) with respect to this clause in the same way that they apply with respect to a proclamation made under that section.
- (5) Nothing in this clause prevents the Board from exercising a power of exemption under section 57 (Exemption by board) in relation to the operation of subclause (1).
- (6) This clause ceases to have effect at the end of 31 July 2000.

11 Vesting of wine grapes vested by proclamation

- (1) In this clause, *the proclamation* means the proclamation under section 56 dated 6 August 1997 vesting wine grapes in the Board that was published in Gazette No 91 on 15 August 1997 at page 6338.

- (2) All wine grapes vested in the Board pursuant to the proclamation (other than wine grapes that are the subject of a long-term supply contract entered into before the commencement of this clause) are taken to be vested in the Board by the operation of clause 10 and to be subject to the provisions of this Schedule.
- (3) Wine grapes that were, immediately before the commencement of this Schedule, the subject of a long-term supply contract are taken not to have been vested in the Board by the proclamation, or at all.

12 Revesting of wine grapes sold on long-term supply contracts

- (1) This clause applies to wine grapes that:
 - (a) are vested in the Board at the commencement of this clause and are, at that commencement, the subject of a long-term supply contract, or
 - (b) vest in the Board by the operation of clause 10 and subsequently become the subject of a long-term supply contract.
- (2) Wine grapes to which subclause (1) (a) applies revert in the producer of the wine grapes on the commencement of this clause.
- (3) Wine grapes to which subclause (1) (b) applies revert in the producer of the wine grapes when the long-term supply contract in respect of the wine grapes commences.

Part 4 Sale and delivery of wine grapes

13 Sale of vested wine grapes by producers as authorised agents for Board

- (1) A producer of wine grapes who is an authorised agent of the Board is authorised to sell vested wine grapes that the producer grows to one or more wine makers.

- (2) A producer is required to obtain the Board's approval to conclude such a sale only if:
 - (a) the Board has set a minimum price for the wine grapes, and
 - (b) the price at which the producer proposes to sell the wine grapes is lower than that minimum price.

14 Approval of sale at price lower than minimum price

If an application is made to the Board for the approval of a sale at a price that is lower than the minimum price, the Board must approve the sale unless the Board is able, within a reasonable time, to refer the producer to a wine maker who is prepared to buy the wine grapes for a higher price.

15 Avoidance of certain contracts

- (1) A contract made after the commencement of this clause, or any provision in any such contract, in so far as the contract or provision relates to the sale of vested wine grapes in a manner that does not comply with the requirements of this Schedule, is and is taken to have been void and of no effect from the date on which the contract was made or purported to be made.
- (2) Any provision in a contract of a kind referred to in subclause (1) is taken to be severable.
- (3) Any transaction or contract with respect to vested wine grapes that is the subject of any contract or provision of a contract declared by this clause to be void is also void and of no effect, and any money paid pursuant to any such contract or provision or to any such transaction is repayable.
- (4) This clause has effect in place of the provisions of section 58 (Avoidance of contracts for sale of commodity).

16 Delivery following sale

- (1) A producer who sells vested wine grapes in accordance with this Schedule is to deliver the wine grapes to the person to whom the producer and wine maker have agreed the wine grapes should be delivered.
- (2) Subclause (1) has effect despite section 60 (Delivery of commodity).

17 Delivery without sale

- (1) If a producer delivers vested wine grapes to a wine maker without first selling the wine grapes in accordance with this Schedule:
 - (a) the authorisation of the producer to act as an authorised agent of the Board for the sale of the wine grapes is revoked, and
 - (b) the wine maker to whom the wine grapes are delivered must inform the Board that the wine grapes have been delivered before being sold in accordance with this Schedule.
- (2) A wine maker who contravenes subclause (1) (b) is guilty of an offence against this Act.
- (3) In proceedings for an offence under subclause (2), it is a defence if it is established that the defendant did not know, and could not reasonably have been expected to have ascertained, that the vested wine grapes were delivered before being sold in accordance with this Schedule.

18 Offences relating to delivery

- (1) A producer who supplies, sells or delivers vested wine grapes other than:
 - (a) as authorised by this Schedule, or
 - (b) if the Board is negotiating the sale of the wine grapes—contrary to the written direction of the Board,is guilty of an offence against this Act.

- (2) A person who buys or receives any vested wine grapes that are supplied, sold or delivered in contravention of subclause (1) is guilty of an offence against this Act.
- (3) In proceedings for an offence under subclause (2), it is a defence if it is established that the defendant did not know, and could not reasonably have been expected to have ascertained, that the vested wine grapes were supplied, sold or delivered in contravention of subclause (1).

19 Disposal of wine grapes delivered before sale

- (1) The Board may negotiate a price for the sale of vested wine grapes that have been delivered to a wine maker in the circumstances described in clause 17 with the wine maker if the wine maker wishes to buy the wine grapes.
- (2) If the Board is unable to sell the wine grapes to the wine maker to whom they have been delivered, the Board may:
 - (a) sell the wine grapes to another person, or
 - (b) by written notice served on the producer, re-vest the wine grapes in the producer.
- (3) The Board may sell vested wine grapes to which subclause (2) (a) applies for whatever price the Board can negotiate, even if this price is lower than the minimum price (if any) set by the Board for the wine grapes.

20 Consequences of producer declining to act as authorised agent

- (1) If the Board receives written notice under clause 9 that a producer does not wish to be an authorised agent of the Board for the purpose of selling vested wine grapes, the Board is entitled to sell the wine grapes for whatever price the Board can negotiate, even if this price is lower than the minimum price (if any) set by the Board for the wine grapes.

- (2) The producer of wine grapes that are sold pursuant to subclause (1) must deliver the wine grapes in accordance with the Board's direction.
- (3) If the Board is unable to sell vested wine grapes after a producer has declined to act as authorised agent for their sale, the Board must serve written notice to this effect on the producer.
- (4) On the service of a notice under subclause (3), the vested wine grapes revert in the person who would have been the owner of the wine grapes if this Schedule had not applied to the wine grapes.

21 Sale of wine grapes for purpose other than wine making

- (1) A producer may sell vested wine grapes for a purpose other than for processing into wine.
- (2) If vested wine grapes are sold for a purpose other than for processing into wine, on completion of the sale, the wine grapes:
 - (a) are taken never to have vested in the Board, and
 - (b) vest in the person to whom they have been sold.
- (3) Part 5 of this Schedule does not apply to wine grapes sold in accordance with this clause.

22 Acceptance of wine grapes

The Board must not exercise functions under section 61 (Acceptance of commodity) in respect of vested wine grapes.

23 Renegotiation of earlier contracts

- (1) This clause applies to contracts, including long-term supply contracts, entered into before the commencement of this clause for the sale of wine grapes harvested after that commencement at a price negotiated by reference to any price set by the Board under this Act before that commencement for the sale of wine grapes.

- (2) The parties to a contract to which this clause applies may, in accordance with this Schedule, renegotiate the price for which the wine grapes that are the subject of the contract are to be sold.
- (3) The producer of the wine grapes that are the subject of any contract to which the Board is a party as vendor is authorised to act as an authorised agent of the Board for the purpose of the renegotiation referred to in subclause (2).
- (4) If the parties are or either of them is unable or unwilling to renegotiate a new price for the wine grapes, the parties must notify the Board in writing of that fact.
- (5) The Board may, on receiving a notification under subclause (4), terminate the contract by written notice to the producer and purchaser.
- (6) If a contract is terminated under subclause (5), neither party to the contract has any liability to the other arising out of the termination.
- (7) If a long-term supply contract is terminated under subclause (5) and the wine grapes to which it relates have not been delivered to the purchaser:
 - (a) the wine grapes are taken to have vested in the Board by the operation of clause 10, and
 - (b) the provisions of this Schedule apply with respect to the wine grapes, and
 - (c) the producer of the wine grapes, as an authorised agent of the Board, is authorised to sell the wine grapes to another purchaser.

Part 5 Payment for wine grapes

24 Board prohibited from equalising price of vested wine grapes

Section 64 (Payments) has no application in respect of payments made by the Board to producers of vested wine grapes and, in particular, the Board is prohibited from making payments to producers at a uniform rate in the manner prescribed by that section.

25 Payment for wine grapes by purchasers

- (1) Despite any other provision of this Act or of any contract, the purchase price for all wine grapes grown in the Board's area for sale (including wine grapes that are the subject of long-term supply contracts, whether entered into before or after the commencement of this clause) is to be paid to the Board or as directed by the Board, on such terms and conditions as the Board may determine and notify in writing to the purchaser.
- (2) A notice under subclause (1) directing that payment need not be made to the Board may be made subject to a condition that the person making the payment deduct from the price being paid for the wine grapes and pay to the Board any charges or fees to which the Board is entitled pursuant to section 106 (Charges and fees).

26 Payments by Board to producers

- (1) Despite any other provisions of this Act, the Board must make payments to producers of wine grapes in accordance with the price negotiated for the sale of the wine grapes less any charges or fees to which the Board is entitled pursuant to section 106.
- (2) The payments must be made:
 - (a) within a reasonable time after payments for the wine grapes have been received by the Board from purchasers, and
 - (b) without discrimination as to time or manner of payment between producers.
- (3) The Board must, when making payments to producers, provide the producers with a statement that identifies clearly the nature and amount of all deductions made by the Board from payments received by the Board for the producers' wine grapes.
- (4) Section 65 (Schemes for payments) does not apply in relation to payments payable by the Board to producers under this Schedule.

Part 6 Miscellaneous

27 Specific authorisation for section 51 of Trade Practices Act 1974 (Cth) and Competition Code

Without affecting the generality of section 164 (Authorisations for section 51 of Trade Practices Act 1974 (Cth) and Competition Code), the exercise of any function by the Board in accordance with this Schedule 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*.

[Minister's second reading speech made in—
Legislative Assembly on 20 November 1997
Legislative Council on 2 December 1997]

BY AUTHORITY