



New South Wales

Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Act 2005 No 97

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New South Wales

Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Act 2005 No 97

Act No 97, 2005

An Act to amend the *Marketing of Primary Products Act 1983* with respect to the marketing of rice; and for other purposes. [Assented to 24 November 2005]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Act 2005*.

2 Commencement

This Act commences on 1 July 2006.

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.

4 Amendment of other Acts and instrument

Each Act and instrument listed in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Marketing of Primary Products Act 1983

(Section 3)

[1] Section 1

Omit the section. Insert instead:

1 Name of Act

This Act is the *Rice Marketing Act 1983*.

[2] Section 50 Appointment of authorised agents

Omit “, in such circumstances as may be specified in the order, such of the functions of the board as may be so specified” from section 50 (1).

Insert instead “such of the board’s functions as may be specified in the order”.

[3] Section 50 (1A) and (1B)

Insert after section 50 (1):

(1A) Subject to the regulations, an order under subsection (1) may impose on a person’s appointment as an authorised agent such conditions as the board considers appropriate.

(1B) Without limiting subsection (1A), such conditions may include conditions as to the circumstances in which, and the manner in which, the authorised agent may exercise the board’s functions.

[4] Section 51 Appointment of authorised buyers

Insert after section 51 (1):

(1A) Subject to the regulations, the manner in which an application for appointment as an authorised buyer is to be made to a board, or dealt with by a board, is to be as determined by the board.

(1B) The regulations may make provision for or with respect to the fees payable to a board by authorised buyers and by applicants for appointment as authorised buyers.

(1C) A board may refuse to appoint a person as an authorised buyer if and only if:

(a) an earlier order appointing the person as an authorised buyer has been revoked during the previous 2 years (otherwise than at the person’s request), or

- (b) the board reasonably believes that the person would not comply with the conditions to which the authorised buyer would be subject if the appointment were made.

[5] Section 51 (3)

Omit “for the purpose of exercising any functions, those functions may be carried out”.

Insert instead “the powers conferred by subsection (2) may be exercised”.

[6] Section 51 (6), (7) and (8)

Insert after section 51 (5):

- (6) A person who applies to a board for appointment as an authorised buyer may apply to the Administrative Decisions Tribunal for a review of any decision made by the board with respect to the application.
- (7) A person whose appointment as an authorised buyer is varied, suspended or revoked by a board may apply to the Administrative Decisions Tribunal for a review of the board’s decision to vary, suspend or revoke the appointment.
- (8) Subsections (6) and (7) do not apply to a decision by the board to impose on a person’s appointment as an authorised buyer any condition of the kind referred to in section 51A (2).

[7] Section 51A

Insert after section 51:

51A Conditions of appointment as authorised buyer

- (1) Subject to the regulations, an order under section 51 (1) may impose on a person’s appointment as an authorised buyer such conditions as the board considers appropriate (*conditions of appointment*).
- (2) Without limiting subsection (1), the conditions of appointment of an authorised buyer must include a condition prohibiting, except with the board’s written approval, any sale or supply to persons outside Australia of any commodity purchased by the authorised buyer pursuant to the power conferred by section 51 (2).
- (3) A condition of appointment may not limit the period for which a person’s appointment as an authorised buyer is to have effect.
- (4) A board may suspend or revoke a person’s appointment as an authorised buyer if and only if it is satisfied that the person has contravened a condition of appointment.

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- (5) An authorised buyer who contravenes a condition of appointment (otherwise than as referred to in subsection (6)) is guilty of an offence against this Act.
Maximum penalty: 200 penalty units.
- (6) An authorised buyer who sells or supplies a commodity in contravention of a condition of appointment is guilty of an offence against this Act.
Maximum penalty: 2,000 penalty units.
- (7) On the application of the Minister, the Supreme Court may order a person who has sold or supplied a commodity in contravention of a condition of appointment (being a commodity purchased by the person as an authorised buyer) to pay to the Minister, for payment to the Consolidated Fund, an amount equivalent to its estimate of:
- (a) the proceeds of the sale of the commodity, or
 - (b) the value of the commodity supplied,
- as the case may be.
- (8) An order under subsection (7) may be made against a person whether or not the person has been prosecuted or convicted in respect of an offence under subsection (6).

[8] Section 57 Exemption by board

Insert after section 57 (7):

- (8) Without limiting subsection (1), sales of the commodity to an authorised buyer for that commodity are, by operation of this subsection, exempt from the operation of section 56.

[9] Section 155 Offences and penalty

Omit “20” from section 155 (2). Insert instead “200”.

[10] Section 156 Proceedings for offences

Insert after section 156 (1):

- (1A) Despite subsection (1), proceedings for an offence under section 51A (6) may be dealt with summarily before a Local Court or before the Supreme Court in its summary jurisdiction.
- (1B) If proceedings for an offence under section 51A (6) are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units.

[11] Schedule 4 Savings, transitional and other provisions

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

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

[12] Schedule 4, Part 7

Insert after Part 6:

Part 7 Provisions consequent on enactment of Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Act 2005

17 Nature of certain appointments

- (1) Nothing in:
 - (a) the order under section 51, dated 28 April 2005, by which the Co-operative is appointed as an authorised buyer in relation to rice, or
 - (b) the agreement, dated 28 April 2005, between the Board and the Co-operative,is to be construed as appointing the Co-operative as an exclusive authorised buyer in relation to rice for sale or supply within Australia.
- (2) Accordingly, neither the Board nor the State is liable to the Co-operative for any loss or damage suffered by the Co-operative, or by any person claiming through the Co-operative, as a consequence of the Board's appointment of any other person as an authorised buyer in relation to rice for sale or supply within Australia.
- (3) In this clause:

the Board means the Rice Marketing Board.
the Co-operative means Ricegrowers' Co-operative Limited.

[13] Schedule 6 Special provisions relating to Rice Marketing Board

Omit clauses 4 and 5.

Schedule 2 Amendment of other Acts and instrument

(Section 4)

2.1 Fair Trading Act 1987 No 68

Schedule 1 Paramount legislation

Omit “*Marketing of Primary Products Act 1983*”.

Insert instead, in alphabetical order of Acts, “*Rice Marketing Act 1983*”.

2.2 Grain Marketing Act 1991 No 15

[1] Section 34 Voluntary deliveries of the commodity

Omit “*Marketing of Primary Products Act 1983*” from section 34 (4).

Insert instead “*Rice Marketing Act 1983*”.

[2] Section 35 Board may deal in commodity

Omit “*Marketing of Primary Products Act 1983*” from section 35 (3).

Insert instead “*Rice Marketing Act 1983*”.

[3] Section 38 Board may deal in other products etc

Omit “*Marketing of Primary Products Act 1983*” from section 38 (3).

Insert instead “*Rice Marketing Act 1983*”.

[4] Section 41 Board may act as marketing agent

Omit “*Marketing of Primary Products Act 1983*” from section 41 (5).

Insert instead “*Rice Marketing Act 1983*”.

2.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Omit “*Marketing of Primary Products Act 1983*, section 138”.

Insert instead, in alphabetical order of Acts, “*Rice Marketing Act 1983*, section 138”.

2.4 Public Authorities (Financial Arrangements) Regulation 2005

[1] Schedule 1 Definitions of “authority” and “controlled entity”

Omit from Part 2:

Marketing board constituted under the *Marketing of Primary Products Act 1983*

Marketing committee constituted under the *Marketing of Primary Products Act 1983*

[2] Schedule 1, Part 3

Omit:

Marketing board constituted under the *Marketing of Primary Products Act 1983*

Marketing committee constituted under the *Marketing of Primary Products Act 1983*

2.5 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit:

A marketing board constituted under the *Marketing of Primary Products Act 1983*

A marketing committee constituted under the *Marketing of Primary Products Act 1983*

Insert instead, in alphabetical order of statutory bodies:

Rice Marketing Board constituted under the *Rice Marketing Act 1983*

[Second reading speech made in—

Legislative Assembly on 9 November 2005

Legislative Council on 16 November 2005]

BY AUTHORITY