



New South Wales

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

Explanatory note

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

Overview of Bill

The *Marketing of Primary Products Act 1983* (the *principal Act*), originally enacted to provide for the marketing of primary products generally (referred to in that Act as “commodities”), now applies only to the marketing of rice. Under the principal Act, most rice grown in New South Wales is vested in the Rice Marketing Board (the *Board*) for the purpose of its being marketed by the Board. Rice that is not vested in the Board may be purchased only by authorised buyers. The Board has appointed Ricegrowers’ Co-operative Limited (trading as Sunrice) (the *Co-operative*) as the Board’s agent to market the rice vested in the Board, and as an authorised buyer to purchase all other rice. At present, there are no other authorised agents or authorised buyers. National Competition Policy requires that other persons be entitled to be appointed as authorised buyers in relation to the sale or supply of rice within Australia.

The object of this Bill is to amend the principal Act so as:

- (a) to provide that, with limited exceptions, any person is entitled to be appointed as an authorised buyer of rice, subject to a condition prohibiting the person from selling or supplying rice in the export market except with the Board’s written approval, and

- (b) to allow a person to apply to the Administrative Decisions Tribunal for a review of the Board's decision in relation to an appointment or application for appointment, other than a decision with respect to a condition referred to in paragraph (a), and
- (c) to provide that the existing appointment of the Co-operative as an authorised buyer of rice is not to be construed as an exclusive appointment in relation to the sale or supply of rice within Australia, and
- (d) to make other provision of a minor, consequential and ancillary nature.

Outline of provisions

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 July 2006.

Clause 3 is a formal provision that gives effect to the amendments to the *Marketing of Primary Products Act 1983* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to other Acts and the instrument set out in Schedule 2.

Schedule 1 **Amendment of Marketing of Primary Products Act 1983**

Appointment of authorised buyers

Schedule 1 [4] inserts new subsections (1A), (1B) and (1C) into section 51 of the principal Act (Appointment of authorised buyers). The proposed subsections provide for the manner and form in which an application for appointment as an authorised buyer is to be made, the fees payable by applicants and appointees and the grounds on which appointment may be refused.

Schedule 1 [6] inserts new subsections (6), (7) and (8) into section 51 of the principal Act. The proposed subsections enable decisions of the Board with respect to applicants and appointees (other than conditions of the kind referred to in proposed section 51A (2)) to be reviewed by the Administrative Decisions Tribunal.

Schedule 1 [5] clarifies the intent of section 51 (3) of the principal Act.

Conditions of appointment for authorised buyers

Schedule 1 [7] inserts a new section 51A into the principal Act. The proposed section is intended:

- (a) to make it clear that appointment as an authorised buyer can be made subject to such conditions as the board considers appropriate (see proposed subsection (1)), and
- (b) to require the conditions of appointment to which an authorised buyer is to be subject to include a condition prohibiting (except with the board's written

- approval) any sale or supply, to persons outside Australia, of commodities purchased by the authorised buyer (see proposed subsection (2)), and
- (c) to provide that appointment as an authorised buyer cannot be limited as to time (see proposed subsection (3)), and
 - (d) to provide that a contravention of a condition of appointment forms the sole ground for suspending or revoking a person's appointment as an authorised buyer (see proposed subsection (4)), and
 - (e) to provide that contravention of a condition of appointment constitutes an offence for which a person may become liable:
 - (i) where it does not involve the sale or supply of a commodity, to a fine of 200 penalty units (\$22,000) (see proposed subsection (5)), or
 - (ii) where it involves the sale or supply of a commodity, to a fine of 2,000 penalty units (\$220,000) (see proposed subsection (6)), and
 - (f) to provide that contravention of a condition of appointment that involves the sale or supply of a commodity may give rise to a Supreme Court order for the payment to the State of an amount equivalent to the proceeds of the sale or the value of the commodity supplied, as the case may be (see proposed subsection (7)), and
 - (g) to provide that an order under proposed subsection (7) may be made whether or not there have been criminal proceedings under proposed subsection (6) (see proposed subsection (8)).

Schedule 1 [10] amends section 156 of the principal Act so as to enable proceedings for the offence under proposed section 51A (6) of selling or supplying a commodity in contravention of a condition of appointment to be dealt with by the Supreme Court in its summary jurisdiction.

Schedule 1 [3] inserts new subsections (1A) and (1B) into section 50 of the principal Act. The proposed subsections make it clear that appointment as an authorised agent can be made subject to specified conditions (including conditions as to the circumstances in which, and the manner in which, the authorised agent may exercise the Board's functions). **Schedule 1 [2]** makes a consequential amendment. The proposed amendments parallel the amendments proposed in relation to authorised buyers.

Existing appointment of Co-operative as authorised buyer

The Co-operative is currently appointed as the Board's only authorised buyer. **Schedule 1 [12]** inserts a new Part 7 into Schedule 4 to the principal Act (Savings, transitional and other provisions). Proposed clause 17, the sole provision of the proposed Part, provides that the appointment is not to be construed as being exclusive in relation to the sale or supply of rice within Australia, and that accordingly neither the Board nor the State is to be liable for any loss or damage suffered by the Co-operative if further persons are appointed as authorised buyers in relation to such sales or supplies.

Schedule 1 [11] amends clause 1A (1) of Schedule 4 to the principal Act so as to allow the regulations under that Act to make savings and transitional provisions consequent on the enactment of the proposed Act.

Minor, consequential and ancillary matters

Schedule 1 [9] amends section 155 of the principal Act so as to increase, from 20 penalty units to 200 penalty units, the maximum fine that may be imposed for an offence under that Act.

Section 1 of the principal Act sets out its title. **Schedule 1 [1]** substitutes that section so as to rename the principal Act as the *Rice Marketing Act 1983*.

Section 56 of the principal Act provides for the vesting of commodities in the Board. Section 57 of the principal Act enables the Board to grant certain exemptions from the operation of that section. **Schedule 1 [8]** amends section 57 to provide a further exemption in favour of sales to authorised buyers.

Clauses 4 and 5 of Schedule 6 to the principal Act currently impose certain limitations on the Board's power to appoint authorised agents and authorised buyers and to enter into, or terminate, agreements with authorised agents and authorised buyers. **Schedule 1 [13]** omits those clauses.

Schedule 2 Amendment of other Acts and instrument

Schedule 2 amends a number of Acts and an instrument as a consequence of Schedule 1 [1] which renames the principal Act as the *Rice Marketing Act 1983*.

First print



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No. , 2005

A Bill for

An Act to amend the *Marketing of Primary Products Act 1983* with respect to the marketing of rice; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Act 2005</i> .	3 4
2 Commencement	5
This Act commences on 1 July 2006.	6
3 Amendment of Marketing of Primary Products Act 1983 No 176	7
The <i>Marketing of Primary Products Act 1983</i> is amended as set out in Schedule 1.	8 9
4 Amendment of other Acts and instrument	10
Each Act and instrument listed in Schedule 2 is amended as set out in that Schedule.	11 12

Schedule 1	Amendment of Marketing of Primary Products Act 1983	1
		2
	(Section 3)	3
[1] Section 1		4
	Omit the section. Insert instead:	5
	1 Name of Act	6
	This Act is the <i>Rice Marketing Act 1983</i> .	7
[2] Section 50 Appointment of authorised agents		8
	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).	9
	Insert instead “such of the board’s functions as may be specified in the order”.	10
[3] Section 50 (1A) and (1B)		11
	Insert after section 50 (1):	12
	(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.	13
	(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.	14
[4] Section 51 Appointment of authorised buyers		15
	Insert after section 51 (1):	16
	(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.	17
	(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.	18
	(1C) A board may refuse to appoint a person as an authorised buyer if and only if:	19
	(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	20
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(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.	1 2 3
[5] Section 51 (3)		4
	Omit “for the purpose of exercising any functions, those functions may be carried out”.	5 6
	Insert instead “the powers conferred by subsection (2) may be exercised”.	7
[6] Section 51 (6), (7) and (8)		8
	Insert after section 51 (5):	9
(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.	10 11 12 13
(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.	14 15 16 17
(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).	18 19 20
[7] Section 51A		21
	Insert after section 51:	22
51A Conditions of appointment as authorised buyer		23
(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 (<i>conditions of appointment</i>).	24 25 26 27
(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).	28 29 30 31 32
(3)	A condition of appointment may not limit the period for which a person’s appointment as an authorised buyer is to have effect.	33 34
(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.	35 36 37

(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.	1
	Maximum penalty: 200 penalty units.	2
(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.	3
	Maximum penalty: 2,000 penalty units.	4
(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:	5
	(a) the proceeds of the sale of the commodity, or	6
	(b) the value of the commodity supplied,	7
	as the case may be.	8
(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).	9
[8]	Section 57 Exemption by board	10
	Insert after section 57 (7):	11
(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.	12
[9]	Section 155 Offences and penalty	13
	Omit “20” from section 155 (2). Insert instead “200”.	14
[10]	Section 156 Proceedings for offences	15
	Insert after section 156 (1):	16
(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.	17
(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.	18

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Schedule 1 Amendment of Marketing of Primary Products Act 1983

[11] Schedule 4 Savings, transitional and other provisions	1
Insert at the end of clause 1A (1):	2
<i>Rice Marketing Amendment (Prevention of National Competition Policy Penalties) Act 2005</i>	3
	4
[12] Schedule 4, Part 7	5
Insert after Part 6:	6
Part 7 Provisions consequent on enactment of	7
Rice Marketing Amendment (Prevention of	8
National Competition Policy Penalties) Act	9
2005	10
17 Nature of certain appointments	11
(1) Nothing in:	12
(a) the order under section 51, dated 28 April 2005, by which	13
the Co-operative is appointed as an authorised buyer in	14
relation to rice, or	15
(b) the agreement, dated 28 April 2005, between the Board	16
and the Co-operative,	17
is to be construed as appointing the Co-operative as an exclusive	18
authorised buyer in relation to rice for sale or supply within	19
Australia.	20
(2) Accordingly, neither the Board nor the State is liable to the	21
Co-operative for any loss or damage suffered by the	22
Co-operative, or by any person claiming through the	23
Co-operative, as a consequence of the Board's appointment of	24
any other person as an authorised buyer in relation to rice for sale	25
or supply within Australia.	26
(3) In this clause:	27
<i>the Board</i> means the Rice Marketing Board.	28
<i>the Co-operative</i> means Ricegrowers' Co-operative Limited.	29
[13] Schedule 6 Special provisions relating to Rice Marketing Board	30
Omit clauses 4 and 5.	31

Schedule 2	Amendment of other Acts and instrument	1
		2
	(Section 4)	3
2.1	Fair Trading Act 1987 No 68	4
	Schedule 1 Paramount legislation	5
	Omit “ <i>Marketing of Primary Products Act 1983</i> ”.	6
	Insert instead, in alphabetical order of Acts, “ <i>Rice Marketing Act 1983</i> ”.	7
2.2	Grain Marketing Act 1991 No 15	8
[1]	Section 34 Voluntary deliveries of the commodity	9
	Omit “ <i>Marketing of Primary Products Act 1983</i> ” from section 34 (4).	10
	Insert instead “ <i>Rice Marketing Act 1983</i> ”.	11
[2]	Section 35 Board may deal in commodity	12
	Omit “ <i>Marketing of Primary Products Act 1983</i> ” from section 35 (3).	13
	Insert instead “ <i>Rice Marketing Act 1983</i> ”.	14
[3]	Section 38 Board may deal in other products etc	15
	Omit “ <i>Marketing of Primary Products Act 1983</i> ” from section 38 (3).	16
	Insert instead “ <i>Rice Marketing Act 1983</i> ”.	17
[4]	Section 41 Board may act as marketing agent	18
	Omit “ <i>Marketing of Primary Products Act 1983</i> ” from section 41 (5).	19
	Insert instead “ <i>Rice Marketing Act 1983</i> ”.	20
2.3	Law Enforcement (Powers and Responsibilities) Act 2002 No 103	21
		22
	Schedule 2 Search warrants under other Acts	23
	Omit “ <i>Marketing of Primary Products Act 1983</i> , section 138”.	24
	Insert instead, in alphabetical order of Acts, “ <i>Rice Marketing Act 1983</i> , section 138”.	25
		26

2.4 Public Authorities (Financial Arrangements) Regulation 2005	1 2
[1] Schedule 1 Definitions of “authority” and “controlled entity”	3
Omit from Part 2:	4
Marketing board constituted under the <i>Marketing of Primary Products Act 1983</i>	5 6
Marketing committee constituted under the <i>Marketing of Primary Products Act 1983</i>	7 8
[2] Schedule 1, Part 3	9
Omit:	10
Marketing board constituted under the <i>Marketing of Primary Products Act 1983</i>	11 12
Marketing committee constituted under the <i>Marketing of Primary Products Act 1983</i>	13 14
2.5 Public Finance and Audit Act 1983 No 152	15
Schedule 2 Statutory bodies	16
Omit:	17
A marketing board constituted under the <i>Marketing of Primary Products Act 1983</i>	18 19
A marketing committee constituted under the <i>Marketing of Primary Products Act 1983</i>	20 21
Insert instead, in alphabetical order of statutory bodies:	22
Rice Marketing Board constituted under the <i>Rice Marketing Act 1983</i>	23 24