

[Act 1997 No 125]



New South Wales

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

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to provide for the vesting in the Wine Grapes Marketing Board (*the 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 powers of the Board as a marketing board under the *Marketing of Primary Products Act 1983* (*the Principal Act*) including constraints relating to the processing of wine grapes by the Board, the involvement of the Board in the sale of wine grapes, the fixing of prices for the sale of wine grapes and the making of payments in connection with the sale of grapes, and
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- (c) to make it clear that an exculpation from liability provision in respect of anything done bona fide under and for the purposes of the Principal Act extends to authorities (which include, by definition, marketing boards) within the meaning of the Principal Act, and
- (d) to make it clear that functions of marketing boards in general and the Board in particular that are exercised in accordance with the Principal Act are authorised for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*, and
- (e) to enact other provisions of a consequential, ancillary, savings or transitional 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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the Principal Act set out in Schedule 1.

Schedule 1 Amendments

Special provisions relating to the Wine Grapes Marketing Board

Schedule 1 [1] inserts proposed Division 5 in Part 3 of the Principal Act and proposed section 67A, a formal provision that gives effect to a new Schedule, proposed Schedule 5, to the Principal Act. **Schedule 1 [9]** inserts Schedule 5. The new Division and Schedule deal with special provisions relating to the Board.

Proposed Schedule 5 is divided into 6 Parts.

Part 1 (clauses 1–3) deals with preliminary matters. It sets out the objects of the proposed Schedule (as referred to in paragraphs (a) and (b) above), defines certain terms used in the proposed Schedule and states how the provisions of the Principal Act and the proposed Schedule operate in relation to each other.

Part 2 (clauses 4–9) deals with matters having to do with the functions of the Board and includes provisions:

- prohibiting the Board from processing or arranging for the processing on its behalf of wine grapes, and
- prohibiting the Board from fixing prices (other than setting a minimum price) for wine grapes or being involved in the sale of wine grapes other than as provided for by the proposed Schedule, and
- appointing wine grape producers (other than those who decline to act) as authorised agents of the Board for the purpose of selling to wine makers wine grapes that they grow.

Part 3 (clauses 10–12) deals with the vesting of wine grapes in the Board. The Part makes provision for all wine grapes grown in the Board's area for sale to vest in the Board until the end of 31 July 2000 other than those wine grapes that are the subject of long-term supply contracts between producers and wine makers. (These contracts are defined in Part 1 of the proposed Schedule as contracts of a duration of 3 years or more.) In addition, the Part makes provision as to the treatment of wine grapes that were vested in the Board by a proclamation made under the Principal Act in August 1997.

Provision is made for the re-vesting in producers of wine grapes that are at the commencement of clause 12 in the proposed Schedule or subsequently become the subject of a long-term supply contract.

Part 4 (clauses 13–23) deals with the sale and delivery of wine grapes. Wine grape producers are authorised to act as authorised agents of the Board under the Principal Act for the sale of vested wine grapes to wine makers. Producers do not need the Board's approval to sell unless the Board has set a minimum price for the wine grapes and the proposed price is lower than the minimum price. However, the Board cannot refuse to approve a sale unless it can refer the producer to a wine maker who is prepared to pay a higher price for the wine grapes.

Provision is made for the avoidance of certain contracts entered into contrary to the requirements of the proposed Schedule.

A producer who sells vested wine grapes to a wine maker in accordance with this procedure is authorised to deliver the wine grapes to the destination agreed to by the producer and the wine maker.

If a producer delivers vested wine grapes without concluding a sale in accordance with the Part, the producer's authorisation to sell the wine grapes is revoked and the wine maker to whom the wine grapes are delivered is

required to inform the Board that they have been delivered before sale. A wine maker who fails to do this is guilty of an offence unless able to demonstrate that the wine maker did not know, and could not reasonably be expected to have ascertained, that the wine grapes were delivered before sale.

Offences are created in respect of producers who unlawfully supply, sell or deliver vested wine grapes and persons who buy or receive vested wine grapes that are unlawfully supplied, sold or delivered by a producer.

Provision is made for the disposal of vested wine grapes that are delivered before sale, either by sale by the Board or by rejection by the Board and re-vesting in the producer.

If a producer declines to act as an authorised agent for the sale of vested wine grapes, the Board may sell the wine grapes or, if unable to sell them, re-vest them in the producer.

A producer is authorised by the Part to sell vested wine grapes for a purpose other than for making wine. If such a sale is effected, the wine grapes are taken never to have vested in the Board but vest in the person to whom they are sold.

Among other matters, the Part makes provision for the renegotiation of certain concluded contracts, including long-term contracts, if the price negotiated for the sale of the wine grapes to which they relate was based on a price set by the Board. If such negotiations are not undertaken or are unsuccessful, provision is made for the termination of the contracts concerned.

Part 5 (clauses 24-26) deals with payments for wine grapes, being payments by purchasers for wine grapes purchased and payments by the Board to producers. Among other things, the Part requires that all payments for wine grapes grown in the Board's area for sale (including grapes sold under long-term supply contracts) are to be made to the Board or as it directs.

Payments by the Board to producers must be for the price negotiated for the sale of the wine grapes concerned less any charges or fees to which the Board is entitled under the Principal Act. The payments must be made within a reasonable time after the Board has received payment for the wine grapes from purchasers and must be made without discrimination as to time or manner of payment between producers. The Board must provide producers with a statement identifying the nature and amount of all deductions made by the Board from payments received by the Board for the wine grapes.

Part 6 (clause 27) specifically authorises the exercise of functions by the Board under the proposed Schedule for the purposes of section 51 of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

The proposed Schedule also includes provisions of a consequential or ancillary nature.

Exculpation from liability

Schedule 1 [2] makes an amendment for the purpose of ensuring that an exculpation from liability provision in the Principal Act extends to authorities constituted under the Principal Act (and hence, by definition, to marketing boards) as referred to in paragraph (c) of the Overview that sets out the objects of this Bill.

Authorisations for the purposes of Trade Practices Act 1974 (Cth) and Competition Code

Schedule 1 [3]–[6] make amendments for the purpose of making it clear that things done by marketing boards in accordance with the Principal Act are authorised for the purposes of section 51 of the *Trade Practices Act 1974* (Cth) and of the *Competition Code*. Section 51 of that Act and of that Code empower the making of such authorisations by State legislation, with the result that the authorised matters will be disregarded in deciding whether a person has contravened Part IV of that Act and that Code. Part IV deals with restrictive trade practices.

Savings and transitional provisions

Schedule 1 [7] and **[8]** make amendments to Schedule 4 (Savings, transitional and other provisions) to the Principal Act.

Schedule 1 [7] enables the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act. **Schedule 1** enacts a transitional provision.