

STATUTES AMENDMENT (BULK GOODS) BILL – 25 Nov 08

Adjourned debate on second reading.

(Continued from 13 November 2008. Page 975.)

Mr PEDERICK (Hammond) (11:27): I support the bill, and I commend the shadow attorney-general for her brief but very comprehensive contribution on this matter. I declare an interest here. I am a farmer by trade. I have not put in a crop since I took my last crop off at the end of 2004, early 2005. I have had a few things to do since then. I have been a bit busy. Since that time I have leased out my property. I commend the people operating my place. Sometimes you can run into problems letting other people operate your land, but they are doing a great job in trying conditions.

There have been drought conditions over the last several years. They would not have made a lot of money. I know that in 2006, during the harshness of the drought, one of our best paddocks only went about one or 1½ bags to the acre. Anyone with any farming blood in their veins knows that that is not profitable or sustainable. In a similar dry year last year they grew a 14-bag wheat crop on a sandy paddock. I used to curse the sand on our place because it would not yield as much as the good ground, but you do notice that in the tough times that is where the yield comes from because the heavy ground cannot sustain the growth and runs out of puff.

But the rains will come, and the farmers from right around the state with their initiatives, with no till farming practices and getting their crops in on time are showing the way forward. Yes, sometimes it does not work for the year but most times it does. People must get over the amount of crop they put in and do it in one pass. I firmly believe that the farmers who hang on and wait for what was considered in the old days a reasonable amount of rain to sow will lose out because, if you sow a crop in August, well, you have halved your yield already. You have essentially wasted your time.

Certainly, I have done it. As the member for Kavel indicated: get in and sow dry and get it under way. I want to make a comment on grain marketing. Before deregulation people did have the opportunity to sell to private buyers. I can say that I almost got caught, and plenty of people did get caught out. This was prior to deregulation of both barley and wheat. I just want to put that on the record. I know families who were \$120,000 down one season, and that is very hard to take. If someone has a cash price on the board at the silo and it is \$15 to \$20 ahead of everyone else, you must ask questions.

I know that some of these companies were smart. They would pay for grain early in the season. The word would get around that such and such a company is fine. You can deal with them; they have paid full up, so they would get a bit of confidence out there and people would start contracting around the state. Tens of thousands of tonnes could be contracted to certain companies and, suddenly, after 30 days, there is no money—major strife. Also, in regard to deregulation, people can still market their grain under pools. I notice that the bill talks about payment in full or some payment being made, and I will be interested in the Attorney's response.

I know that pool payments can go for at least 18 months, so some working out must be done on who does retain the title. If the storer of the goods becomes insolvent in that time, I know that the bill says 'some or all', so, perhaps, that is what explains it. Certainly, from my experience, you can sell your grain for 30 days cash—sell it for pool payments or through different other contractual agreements. In regard to whether or not pool payments or selling grain into pools is a good option, neighbours of mine have done the research over quite a few years comparing cash selling versus pool selling, and they believe that cash wins 98 per cent of the time.

Over time, as the pool payments get paid, different fees come out. Suddenly, a belt charge, an export charge or some other storage charge turns up. You might think you are getting a \$15 payment and you end up with about \$7. Certainly, they are things to take into account. One thing people need to be assured of is that the pool system is still there—not just ABB but other buyers will go with that system. People have taken on board other marketing strategies as well, and a lot of that was done before deregulation. People were storing grain

on the farm so they could take advantage of the peaks and troughs. I believe that later this year there will be a peak in the grain market. We are in a trough at the moment.

Early this year prices were probably treble where they are now for feed barley. I know of one case where a friend of mine was offered about \$100 a tonne for grain at harvest and then sold it close to \$400 six months down the track. In light of the harvest in the Victorian Wimmera Mallee (where farmers are really suffering), I believe that, down the track, there will be some real marketing opportunities. I am not trying to influence what people do with their grain, but a lot of choices are to be made. I know for a fact that, when a farmer is going seven days a week and the harvest is on, sometimes it can get a bit confusing, so it might be best for the farmer to get an adviser or someone else to assist them with their grain marketing. There is certainly money to be made by smart marketing, and that will vary from property to property.

I note that this bill does not directly protect sellers of grain against buyers defaulting. At the moment, if a seller of grain (a farmer) deposits grain into a bulk store and if the owner of the bulk store becomes insolvent, the farmer is an unsecured creditor. However, under the provisions of this bill, the farmer is protected from that happening. This bill also provides protection to the buyer of the grain if the holder of the storage facility (the third party) falls over; that is, the buyer will no longer be an unsecured creditor, as is the case at present. On my reading of the legislation, this bill affords total protection for the seller against the buyer becoming insolvent; it is possibly the third party that holds the goods.

I want to make some comments about the submission that the South Australian Farmers Federation sent to the Liberal Party. The South Australian Farmers Federation stated that it is very pleased that the state government has taken this initiative to amend the legislation to cover bulk products such as grain and wine grapes. The federation is also pleased that it has been asked to contribute to the consultation process.

SAFF policy is that retention of title be mandatory on all agricultural products, and the proposed amendments to the South Australian legislation is a move towards providing this. With the deregulation of both barley and wheat marketing, it is very timely that it is proposed to amend both the Sales of Goods Act 1895 and the Warehouse Liens Act 1990 to clarify the situation with products stored in bulk.

SAFF has recently conducted, with federal government funding, six wheat marketing workshops across the state to discuss the implications of the deregulation of wheat marketing. Grain growers can now sell their wheat for export to any accredited company. Thirteen companies have so far been accredited by Wheat Exports Australia. Previously, growers could sell only through AWB Limited. With this change, it is now essential that growers enter into valid contracts that cover a number of specific aspects, including retention of title.

To assist in this process, the National Agricultural Commodities Marketing Association (NACMA) has prepared standard contracts. Of relevance are the standard terms and conditions for ownership and passing of title and choice of law. Through the Grains Council of Australia, SAFF Grains Council, as a member, has been able to get the 'ownership and passing of title' clause altered so that this now reads:

Ownership and Passing of Title: Risk in any goods supplied by the seller to the buyer shall pass to the buyer when they leave the possession of the seller. However, title shall not pass until payment in full has been received by the seller. Until full payment is received, the buyer and/or its agents and third parties hold the goods as bailees only.

On breach of any payment terms, the buyer on its own behalf and on behalf of its agents and third parties authorises the seller to enter any premises and retake possession of the goods without notice to the buyer, its agents and third parties. Where the goods have been commingled with other goods, the buyer becomes an owner in common of the bulk goods and the undivided share of the seller shall be such share as the quantity of seller's goods bears to the quantity of the goods in the bulk.

Until such time as the seller has received payment in full, any on-sale by the buyer is made as the seller's agent and the buyer holds the proceeds of any on-sale of the goods as trustee for and on behalf of the seller and must account to the seller for those proceeds, on

demand. Where at the time of default in any payment terms to the seller the buyer has not received proceeds of any on-sale, the seller is expressly authorised to receive proceeds of on-sale direct from the buyer's customer.

There are details on NACMA contracts which assist with this. There is the NACMA Contract No. 3, which is contract confirmation, and Contract No. 2, which is 'Grain and Oilseeds in Bulk—Basis Track'. Those are the two contracts that have the retention of title clause. In Contract No. 3 is the 'Ownership and passing of title' clause, in Contract No. 2 it is called the 'Retention of title' clause, and it is No. 9 in this contract.

The NACMA contracts are currently based on both the New South Wales Sale of Goods Act 1923 and the Warehousemen's Liens Act 1935. As was pointed out in the consultation paper, these New South Wales acts were amended to produce the mirror image of the United Kingdom amendment. To strengthen the use of the NACMA contracts in this state it is now timely to alter the two relevant South Australian acts to ensure South Australian farmers are covered by South Australian legislation.

While SAFF supports the amendments it would like the changes to go further, with retention of title clauses added—as in NACMA—so that passing of title does not occur until payment in full has been received by the seller. This needs to be for all goods, and not just those in bulk. I appreciate what the South Australian Farmers Federation is saying but, as I indicated earlier, I wonder how it works with pooling of grain.

SAFF believes that, with grain marketing becoming much broader under deregulation, it is essential that the legislation be amended before this year's harvest—and, as the member for Schubert rightly said, we are probably halfway through the state's harvest, with an early start and a dry finish. SAFF has also made a brief comment in relation to wine grapes, noting that while there are similar difficulties with the South Australian Wine Grapes Industry Act 1991, it does provide some protection by stipulating the terms and conditions of payments by processors to producers.

Another comment from a SAFF member is that SAFF is keen for this bill to go forward and would like to encourage NACMA to include reference to other states in the documentation in order to make it more broadly usable. SAFF would also like to see an industry standard adopted across all states. I believe that, for farmers trading grain and buyers buying grain—especially in the tough economic times we have now entered, with the world financial crisis—the more protections for either end of the deal, the better off the industry will be. From my perspective (as a farmer, originally) this gives a lot of strength to people putting their grain on the market. Some people would be putting up \$2 million or \$3 million of grain in any one season, or even more, and they certainly need to know that there is some surety that their money is flowing in. The work is too hard and the inputs are too expensive to lose it in one hit.

I see the amendments being moved today, in conjunction with people being careful with their marketing and selling grain with NACMA contracts, as a positive, and I commend the bill to the house.