**BARLEY MARKETING ACT AMENDMENT BILL 1988**

**Legislative Assembly, 5 November 1987, page 1736**

Second reading

**The Hon. Lynn Arnold, for the Hon. M.K. MAYES (Minister of Agriculture**), obtained leave and introduced a Bill for an Act to amend the Barley Marketing Act 1947. Read a first time.

The Hon. LYNN ARNOLD: I move: That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

Explanation of Bill

The issue of the personal liability of board members was raised with the Government by the board as a result of amendments made to the Companies (South Australia) Code regarding the personal liability of directors and senior officers for certain decisions taken in their official capacities. While the Australian Barley Board is not subject to the Code, board members expressed concern about their personal liability as members of the board. As a result, the Government has decided to amend the Barley Marketing Act 1947 to expressly exclude the personal liability of board members for decisions made by the board.

The Australian Barley Board is empowered to trade on futures markets in accordance with guidelines determined by the responsible Ministers in South Australia and Victoria. Since the board will soon be issued with these guidelines, and since futures trading will be confined to trading for hedging purposes, a definition of hedging is required to be incorporated into the Act.

The board has conducted investigations into suspected illegal barley trading and encountered significant problems in obtaining satisfactory evidence for prosecution.

Section l0a of the Act allows the board to serve notice on a person requiring that person to provide information specified in the notice. The person cannot without reasonable excuse fail to comply with the notice or provide false or misleading information.

While the intention of this section is clear, the board has found that a grower can successfully claim a common law right against self incrimination for failure to comply on the grounds the information provided may lead to some pecuniary penalty.

The board has requested an amendment to overcome this situation, and the Government has agreed with that request by introducing an amendment to give the Australian Barley Board the same powers in this regard as are given to the Australian Wheat Board in relation to wheat trading.

Rural producers from time to time execute bills of sale over their crops in order to secure ongoing finance. It is the Australian Barley Board’s policy to act on: (1) Garnishee Orders of the Australian Taxation Office. (2) Bills of sale granted by the Minister of Agriculture. (3) Registered bills of sale. The board acts in good faith on these bills and makes payments to the grantee until advised the bill has been discharged.

However, the board has experienced difficulty with one particular grower who delivered barley subject to a bill of sale from his property under another name and the board, without any knowledge of this, paid him. The grantee of the bill of sale naturally took action against the grower concerned and cited the board as a party in this case.

The board is unable to police the actions of every grower in this State and was not a party to this scheme to defraud the grantee.

The board has requested, and the Government has agreed, to amend the Act to protect the board from prosecution in these circumstances. While the Barley Marketing Act empowers the board to market barley (and oats) up to (and including) the 1987-88 season, so as not to inhibit the commercial flexibility of the board, the Government has decided to move now to extend the life of the Barley Marketing Act by a further five years.

Clauses 1 and 2 are formal. Clause 3 inserts new subsection (5) into section 4. The new provision is a standard provision excluding liability of members of the board. Clause 4 inserts a definition of ‘hedging purposes’ in relation to futures contracts. The provision is identical to the provision currently before the Victorian Parliament for insertion into the Victorian Act. Clause 5 inserts a provision into section l0a requiring self incriminating information. However, the information can only be used against the person giving it in proceedings for an offence against the Act. Clause 6 inserts a provision that protects the board against claims by the holders of a bill of sale or other security over a barley or oat crop. Clause 7 extends the operation of the Act to the 1992-93 season.

Mr GUNN secured the adjournment of the debate.