

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HONEY MARKETING BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Primary Industries and Energy
the Hon John Kerin, MP)

HONEY MARKETING BILL 1988

GENERAL OUTLINE

1. The object of this Bill is to reconstitute the Australian Honey Board with revised functions and powers, changed membership provisions, and enhanced accountability to the industry which provides the Board's funds through levies and an export charge.

2. The changes are designed to bring the structure and charter of the Honey Board into line with the policy principles adopted by the Government for primary industry marketing authorities generally. In addition, it is proposed to remove those powers of the present Board which have seen little or no use in recent years. The proposed changes were discussed in detail with industry leadership.

FINANCIAL IMPACT STATEMENT

3. The new arrangements are not expected to impose any additional costs on the Commonwealth. Little change is expected in the cost to industry of maintaining the Board.

HONEY MARKETING BILL 1988

NOTES ON INDIVIDUAL CLAUSES

PART I - PRELIMINARY

Clause 1: Short title

4. Short title of the Act for citation purposes.

Clause 2: Commencement

5. Part I and Division 4 of Part II into operation on the day on which the Act receives the Royal Assent.

6. (2) The remaining provisions are to commence on a day to be fixed by Proclamation.

Clause 3: Interpretation

7. Defines terms used in the Act.

PART II - AUSTRALIAN HONEY BOARD

DIVISION 1: CONSTITUTION, OBJECTIVES, FUNCTIONS AND POWERS OF THE BOARD

Clause 4: Australian Honey Board

8. This clause provides for the continuance of the Australian Honey Board as established under section 6 of the Honey Industry Act 1962.

Clause 5: Objectives of Board

9. This clause states the objectives of the Board which are to maximise returns to the Australian honey industry from the export of honey; and to generate demand for Australian honey in domestic and overseas markets.

Clause 6: Function of Board

10. This clause outlines the key function areas of the Board and refers to the specific functions detailed elsewhere in this Bill. The clause permits the Board to perform any of its functions outside Australia.

Clause 7: Powers of Board

11. Provides the Board with powers sufficient for it to adequately perform its functions.

Clause 8: Directions to Board

12. (1) Provides that the Minister may in exceptional circumstances give directions to the Board in order to ensure that the Board does not act in a way that conflicts with major Government policies, and requires the Board to comply with any such direction.

13. (2) Provides that the Chairperson is to have adequate opportunity to discuss with the Minister the need for a proposed direction before any direction is given.

14. (3) Outlines certain public disclosure procedures that the Minister must adopt when a direction to the Corporation is given. Such disclosure is by way of Gazettal notice, tabling in the Parliament and inclusion in the annual report of the Corporation.

15. (4) Provides for these procedures for public disclosure to be waived where the Minister determines such action would be contrary to either the commercial interests of the Corporation the public interest.

Clause 9: Consultation

16. (1) Enables the Board to consult with persons and bodies representative of different sectors of the honey industry.

17. (2) Enables the Board to meet the travel expenses reasonably incurred in connection with such consultation and, subject to written guidelines given to the Board by the Minister, to meet expenses other than travel expenses reasonably incurred in connection with such consultation.

Clause 10: Committees

18. Permits the Board to appoint committees, not necessarily composed of Board members, and abolish any such committees. The clause provides for the Board to determine the manner in which committees carry out their functions and their meeting procedures.

DIVISION 2: CORPORATE PLAN AND ANNUAL OPERATIONAL PLANSClause 11: Corporate plan

19. (1) Requires the Board to prepare a corporate plan.

20. (2) Requires the Board to review and revise the corporate plan by 1 April each year.

21. (3) Allows the Board to revise the corporate plan at any other time and requires it to revise the plan if the Minister requests a revision in writing and gives reasons for the request.

22. (4) Requires the corporate plan to include a statement of the Board's goals and an assessment of the market and economic outlook for the honey industry over the period covered by the plan.

23. (5) Specifies similar requirements for a revised plan.

24. (6) Requires inclusion in the corporate plan of an outline of the strategies and policies which the Board intends to adopt in order to achieve its goals.

25. (7) Requires the corporate plan and revisions of the corporate plan to be submitted to the Minister as soon as practicable after they have been prepared and requires written approval from the Minister before the plan and revisions of the plan have effect.

26. (8) Consultation with the producers' and packers' organisations is required prior to preparation or revision of the corporate plan.

Clause 12: Annual operation plans

27. (1) Requires the Board to prepare annual operational plans.

28. (2) Provides for inclusion in the operational plan of an estimate of the Board's receipts and expenditure for the financial year and information on the programs proposed including information on the resources to be allocated to each program.

29. (3) Provides for requests by the Minister for changes to the operational plan if the Minister believes the operational plan to be inconsistent with the corporate plan.

30. (4) Allows the Board to revise the operational plan at any time and requires it to revise the plan if the Minister requests a revision in writing and gives reasons for the request.

31. (5) Requires the operational plan and revisions of the operational plan to be submitted to the Minister as soon as practicable after they have been prepared and requires written approval from the Minister before the plan and revisions of the plan have effect.

32. (6) Requires the Minister to approve an operational plan or revised operational plan unless he/she believes it to be inconsistent with the corporate plan.

Clause 13: Board to comply with corporate plan and annual operational plans

33. Requires the Board operate in accordance with the corporate and operational plans in force at that time.

DIVISION 3: MEMBERSHIP AND MEETINGS OF BOARDClause 14: Membership of Board

34. The Board is to have eight members, serving part time and appointed by the Minister. Prospective members other than the Chairperson and Government member are to be nominated by the Selection Committee established under Division 4.

Clause 15: Term of office of members

35. Except for the government member, who holds office at the Minister's pleasure, a member can be appointed for a period of up to 3 years and will be eligible for re-appointment. Members shall not normally hold office beyond the age of 65 years and if they resign the resignation is not effective until it is accepted by the Minister.

Clause 16: Deputies of Chairperson and government member

36. Provides that the Minister shall appoint a member to be the deputy of the Chairperson and may appoint a person to be deputy of the government member.

Clause 17: Disclosure of interest

37. This clause covers a situation where a Board member has a direct or indirect interest in a matter being considered, by the Board. It requires the member to disclose the nature of that interest and for the disclosure to be recorded in the Board's minutes.

Clause 18: Leave of absence

38. Provides that the Minister may grant leave of absence to the Chairperson and government member, and the Chairperson may grant leave of absence to other members.

Clause 19: Termination of appointments

39. Specifies the circumstances in which the Minister has power to terminate a member's appointment.

Clause 20: Meetings of Board

40. Contains provisions governing meetings of the Board. Establishes a quorum of 5 Board members. Except for delegation of powers (clause 61) questions are to be resolved by a majority vote.

Clause 21: Resolutions without formal meetings

41. Establishes a procedure whereby the Board can take decisions outside formal meetings by a form of "postal voting".

DIVISION 4: NOMINATION AND SELECTION FOR MEMBERSHIP OF BOARDClause 22: Selection Committee

42. Provides for the establishment of the Australian Honey Board Selection Committee and specifies its functions as being to select and nominate persons to the Minister for appointment as members of the Board (other than to the positions of government member and Chairperson).

Clause 23: Minister may request nominations

43. Procedure for seeking Selection Committee nominations for Board membership including nominations to fill casual vacancies.

Clause 24: Selection of nominees

44. (1) & (2) Specifies the types of expertise to be held by nominees and requires the Selection Committee to nominate persons who collectively possess qualifications or experience in all the fields of activity listed in subclause 24(1).

45. (3) A person who is or has been a member of the Selection Committee cannot be nominated until at least one year has elapsed since that person ceased to be a Committee member.

46. (4) A person who is President or Vice President of either the producers' or packers' organisation cannot be nominated.

47. (5) A person can be nominated even though the Minister has previously rejected a nomination of that person.

Clause 25: Nominations

48. Specifies procedures to be followed by the Selection Committee in nominating persons to the Minister. Only one nomination is to be made in respect of each appointment to be made. The Selection Committee is required to provide a statement supporting its nomination(s) and the Minister may ask the Committee to provide additional information.

Clause 26: Minister may reject nomination

49. The clause permits the Minister to reject in writing a nomination if the Minister is not satisfied as to the suitability of the person nominated and to require the Committee to submit a new nomination.

Clause 27: Membership of Selection Committee

50. The Selection Committee is to consist of a Presiding Member appointed by the Minister, 2 members appointed by the Minister on the nomination of the honey producers' organisation, 2 members appointed by the Minister on the nomination of the honey packers' organisation, and a sixth member who has professional experience in the selection of staff, appointed by the Minister on the nomination of the honey producer and packer organisations. A Committee member is appointed on a part time basis and can hold office for up to 3 years and is eligible for re-appointment. Board members cannot be Committee members.

Clause 28: Acting Presiding Member

51. The Minister may appoint, for a period of up to 12 months, a person to act as Presiding Member if the office of Presiding Member is vacant or if, for any reason, the Presiding Member is unable to perform the duties of his office.

Clause 29: Disclosure of interests

52. This clause covers a situation where a Committee member has a direct or indirect interest in a matter being considered, or about to be considered, by the Committee at a meeting of the Committee or in accordance with clause 33. It requires the member to disclose the nature of that interest and for the disclosure to be recorded in the Committee's minutes.

Clause 30: Leave of absence

53. Provides that the Minister may grant leave of absence to the Presiding Member, and the Presiding Member may grant leave of absence to other members.

Clause 31: Termination of appointments

54. Specifies grounds for termination of a member's appointment.

Clause 32: Meetings of Selection Committee

55. Contains provisions governing meetings of the Selection Committee. Establishes a quorum of five.

Clause 33: Resolutions without formal meetings

56. Provides a procedure whereby the Selection Committee can take decisions outside formal meetings.

Clause 34: Staff and consultants

57. Gives the Presiding Member the authority to engage administrative and clerical staff to facilitate the functioning of the committee, and to engage personnel search consultants to assist in finding persons suitable for nomination to the Minister. The terms and conditions of engagement of persons engaged under this clause are to be determined by the Committee and paid by the Board.

Clause 35: Remuneration and allowances

58. Provides for payments to Committee members in accordance with determinations by the Remuneration Tribunal or, if no determination is in force, as are prescribed.

DIVISION 5: STAFF

Clause 36: Employees

59. Enables the Board to employ such staff as it considers necessary to function effectively. Terms and conditions of employment of the principal employee are determined by the Board but must be approved by the Minister. Terms and conditions of other employees will be determined by the Board and require the Minister's approval if they are more favourable than those of the principal employee.

Clause 37: Consultants

60. The Board can engage such consultants as it thinks appropriate on terms and conditions decided by the Board.

PART III - EXPORT CONTROL

Clause 38: Regulation of honey exports

61. Exports of honey will be prohibited except by persons holding export licences issued by the Board. Licensees must observe the conditions of their licences and any regulations relating to honey exports.

Clause 39: Issuing of export licences

62. To obtain a licence, a person will have to apply to the Board and meet 5 basic criteria. He/she must not have any convictions for serious offences or for any offences against this Act or the regulations during the preceding 5 years, must be a person of sound financial and business standing, must have experience in the export of honey or other products and must be able to obtain honey for export. The Board may attach conditions to a licence including the price at which honey exported by the licensee may be sold. An applicant must be advised in writing of a refusal to grant a licence.

Clause 40: Variation of export licences

63. Enables the Board at any time to vary the terms and conditions of an export licence.

Clause 41: Duration of export licences

64. Enables the Board to stipulate the period for which an export licence remains in force.

Clause 42: Renewal of export licences

65. Provides for renewal of export licences. To obtain renewal of a licence, the applicant must demonstrate reasonable performance and past compliance with Board controls and requirements. The new licence may or may not be subject to the same terms and conditions as the old one.

Clause 43: Cancellation etc of export licences

66. Enables the Board to cancel a licensee's licence at the licensee's request and suspend or cancel a licence, as appropriate, in cases where the licensee provided false information in applying for a licence or licence renewal, became bankrupt, was charged with a serious offence, failed to comply with his/her obligations to the Board or acted in a way which was seriously prejudicial to the honey industry.

Clause 44: Review of decisions

67. Provides for applications to be made to the Administrative Appeals Tribunal for review of Board decisions to grant or refuse to grant an export licence, vary an export licence, renew or refuse to renew an export licence, cancel or suspend an export licence.

Clause 45: Statement to accompany notice of decisions

68. Provides that a notice in writing of a Board decision of the kind referred to in clause 44, must state that the decision can be reviewed by the Administrative Appeals Tribunal. The notice must also state that an application can be made under Section 28 of the Administrative Appeals Tribunal Act 1975 to obtain reasons for the Board's decision.

Clause 46: Returns etc relating to honey exports

69. Provides for a \$500 penalty if a licensee fails to submit a return(s) of information which the Board may require, relating to exports of honey.

Clause 47: Regulations relating to honey exports

70. Enables the Board to recommend to the Minister that it be granted additional export control powers by regulation.

Clause 48: Review of export controls

71. The Board is required to review, as soon as practicable after 1 July each year, the application of the controls on honey exports and report the outcome of its review to the honey industry associations.

Clause 49: Operation of other laws

72. The export control powers of this legislation will not impinge on the Customs Act 1901, the Commerce (Trade Description Act 1905) or the Export Control Act 1982 nor on any regulations made under any of those Acts.

PART IV - FINANCE

Clause 50: Payments to Board

73. Requires the Commonwealth Government to pay to the Board the levy and export charge monies which it collects from the honey industry.

Clause 51: Bank accounts

74. Requires the Board to open and maintain at least one bank account and pay all money of the Board into a bank account.

Clause 52: Investment of money of Board

75. Specifies where surplus monies of the Board can be invested.

Clause 53: Proper accounts to be kept

76. Requires the Board to keep proper accounts, to properly authorise payments and to maintain adequate control over its assets and over the incurring of liabilities.

Clause 54: Expenditure of money of Board

77. Specifies the payments which the Board may make. This includes payments that the Board is authorised or required to make under this or other legislation and payments to cover expenses of the Selection Committee.

Clause 55: Audit

78. Provides for auditing of the Board's accounts and requires the auditor to bring to the attention of the Minister any irregularity which he deemed to be of importance. The auditor is entitled to full and free access to the Board's records relating to the receipt or payment of monies and is required to report at least annually to the Minister on the results. The auditor or person authorised by the auditor can require a person to furnish information and there are penalties of \$1,000 for an individual and \$5,000 for a corporate body for failure to comply with this requirement.

Clause 56: Appointment of company auditors

79. This clause makes provision for the appointment of a company auditor and sets out the steps to be taken in engaging such an auditor. The Board may, after consultation with the honey producer and packer organisations, request that a particular auditor be appointed. The Minister is required to consult with the Auditor-General and with the Joint Committee on Public Accounts in appointing an auditor.

Clause 57: Remuneration and allowances

80. 1) & (2) Provides that remuneration for members of the Board and of committees established under clause 10, be paid as determined by the Remuneration Tribunal, or if no determination is in force, such remuneration as is prescribed. These persons are also to be paid such allowances as are prescribed.

81. (3) - (6) These subclauses govern remuneration and allowances payable to members of, and candidates for election to, the Parliament of a State and to persons in the service or employment of a State.

Clause 58: Liability to taxation

82. Establishes that the Board is subject to Commonwealth taxes (other than income tax) but not to State or Territory taxes (other than stamp duty).

PART V - MISCELLANEOUSClause 59: Annual Report

83. Requires the Board each year to prepare and give to the Minister a report on the operation of the legislation together with financial statements for that year. The report shall include assessments of the extent to which the Board's corporate and operational plan objectives were met and details as to variations agreed to during the year by the Minister to the Corporate and Operational Plans. The Board's financial statements shall be submitted to its auditor before being submitted to the Minister. The Minister shall lay before Parliament the annual report and financial statements together with the report of the Board's auditor.

Clause 60: Accountability to honey industry

84. Provides a formal mechanism by which the Board will report each year to the principal honey industry organisations.

Clause 61: Delegation

85. Allows the Board, by unanimous decision to delegate, any of its powers to a Board member, a committee appointed by the Board or to a Board employee.

Clause 62: Cessation of Act

86. This is a "sunset" provision. Unless extended, the Act will lapse in 6 years' time.

Clause 63: Regulations

87. Provides for the Governor-General to make regulations consistent with the Act.

PART VI - REPEAL AND TRANSITIONAL

Clause 64: Repeal

88. Provides for the repeal of the Honey Industry Act 1962 which established the existing Australian Honey Board.

Clause 65: Continuation of appointments to Board

89. Enables members of the present Board to continue holding office for an interim period after the repeal of the Act under which they were appointed. They will hold office until the end of their respective terms of office or until the Minister terminates their holding of office. The Minister may take such action if he receives nominations, from the Selection Committee, of 6 persons for Board membership whom he considers suitable for appointment.

Clause 66: Continuation of Executive Committee

90. Provides for the present Executive Committee of the Board to continue holding office for an interim period after the repeal of the Act under which they were appointed.

Clause 67: Continuation of export licences

91. Provides for licences issued under the existing Act to continue in force for an interim period after repeal of the Act under which they were issued.

Clause 68: Expenditure of money of Board

92. Requires the present Board to pay the expenses of the Australian Honey Board Selection Committee.

Clause 69: 1987-88 annual report

93. Requires both the Board and the Minister to observe their obligations under the existing Act with regard to production and tabling of the Board's annual report and financial statements for 1987-88, even though the existing Act will be repealed before the end of the period to be covered by the report.



