

## **GRAIN MARKETING BILL 2002**

### *Consideration in Detail*

Resumed from 25 September.

#### **Clause 3: Meaning of terms used in this Act -**

Debate was interrupted after the clause had been partly considered.

Mr B.J. GRYLLS: The National Party seeks further clarification about the definition of grain to ensure that the export of value-added grain can occur uninhibited. The clarification is required before the legislation is debated in the Council so that National Party members can consider whether an amendment to this definition is required. The definition of prescribed grain is important so that members understand that the definition is a weakening of the current single-desk arrangements. Currently, all three grains - barley, lupins and canola - are prescribed in the Act, with only lupins and canola being able to be removed by ministerial order. The new definition read in conjunction with clause 44 of the Bill allows all three grains to be removed by regulation.

Mr F.M. LOGAN: The definition of grain in clause 3 is self-explanatory, so I will explain what it does not mean. It does not include what may be referred to as processed grain, which is grain dealt with in a way that the regulations exclude it from the definition; nor does it include things that are made from a seed of a crop species but are not seed. In other words, the Act will apply only to raw grain, not to processed grain for products manufactured from grain. Yesterday we had significant debate on the other three grains that are referred to in the definition of prescribed grain. The discussion between the Liberal Party and the National Party yesterday in this House dealt with their views, and my response to the debate clearly laid out the Government's intention that those three grains remain as prescribed grains.

**Clause put and passed.**

**Clause 4 put and passed.**

#### **Clause 5: Authority established -**

Mr B.J. GRYLLS: This point was raised by all National Party members during the second reading debate. Under this clause the minister is to appoint five persons to a body called the Grain Licensing Authority. However, this clause makes no reference to how the minister will make these appointments. Will he call for nominations, consult with anyone and use a selection panel? We ask that the parliamentary secretary clarify the minister's intention with regard to the process of appointments to the authority. We also asked in the second reading debate whether the minister would agree to consult with key farmer groups and the National Party on suitable appointments to the authority.

Mr F.M. LOGAN: The member for Merredin indicated a number of ways in which the minister might be able to deal with the appointment of five persons to the Grain Licensing Authority. The minister intends to establish a selection panel for the purpose of gaining names for the appointment. Expressions of interest from those people who seek to be members of the authority will be called soon after the proclamation of the Bill. The selection panel will then come up with names to be appointed by the minister.

**Clause put and passed.**

#### **Clause 6: Membership -**

Mr B.J. GRYLLS: I move -

Page 4, lines 8 to 10 - To delete "from amongst persons who would not be eligible for appointment under another paragraph".

I would like the parliamentary secretary's thoughts on this amendment.

Mr F.M. LOGAN: I responded to matters raised in the second reading debate about the intention of members of the National Party who would like the Chairman of the Grain Licensing Authority to be selected from within their own ranks or to be a grower or someone with a background of grain growing or selling or with a relationship to the industry. My response was that the National Competition Council advised the Minister for Agriculture that the chairperson had to be seen to be independent. I imagine that independence means not having a direct relationship with the grain growing industry. Clause 6(a) has been structured in such a manner as to ensure that the independence is real and is seen to be real.

Mr B.J. GRYLLS: Obviously the National Party and the Government have a philosophical difference about this point. The National Party would like someone with experience to be appointed to the authority. Although the National Party agrees that the chairman should be independent, he or she should also have experience in the grain industry.

**Amendment put and negatived.**

Mr B.J. GRYLLS: On behalf of the member for Stirling, I move -

Page 4, lines 19 to 21 - To delete the lines and substitute the following -

have experience in financial markets, international trade, marketing, law or other such relevant field.

The National Party seeks to replace the Treasury representative on the five-man board with a representative who has the above-mentioned level of experience.

Mr F.M. LOGAN: I have already responded to the issues raised by members opposite, particularly National Party members, about the inclusion of a representative from the public service, principally from Treasury, on the Grain Licensing Authority. Clause 6 reflects not only the insistence of the National Competition Council to appoint somebody from Treasury to the Grain Licensing Authority but also the Government's willingness to ensure that that takes place. I indicated in the second reading speech that during the discussions about the structuring of the Bill and the direction of the new entity, the National Competition Council made it clear to the minister that the chairperson must be independent and must be seen to be independent. For the purposes of financial accountability and openness to public scrutiny, the National Competition Council insisted that a representative from Treasury be appointed to the Grain Licensing Authority. It was dinkum in that request and in its request that we do not include another public servant who did not have the same background as a person from Treasury. As such, the Government has left the Bill in the form required by the National Competition Council. Therefore, clause 6(a) provides for an independent chairman and clause 6(d) provides that one of the two public servants appointed to the authority be a Treasury representative.

Mr R.N. SWEETMAN: I do not support the National Party's amendment, although I did not have a problem with its previous amendment, which was put to the vote and defeated. There is an undercurrent to the National Party's amendments. It is clear that the National Party is trying to ensure that the Grain Licensing Authority is of a favourable disposition to the single-desk, and, from that, that it be less inclined to issue special export licences. In this regard, I am pleased that someone with the stature and calibre of a Treasury appointee will be a part of the Grain Licensing Authority. I am certain that that person will bring independence and circumspection to the way that the Grain Licensing Authority considers special licence applications. I oppose the amendment. I am in favour of clause 6(d) as it stands.

**Amendment put and negatived.**

**Clause put and passed.**

**Clauses 7 to 9 put and passed.**

**Clause 10: Quorum -**

Mr B.J. GRYLLS: A quorum for a meeting of the authority shall be any three members. Obviously, following along the same arguments that National Party members have stated in the second reading debate, this would allow the two government-appointed members and the independent chairman to form the quorum. Effectively, this would mean that a decision could be made without the presence of the two members who have grain growing experience and an interest in the grain growing industry. On behalf of the member for Stirling, I move -

Page 5, line 24 - To delete "3" and substitute "4".

Mr F.M. LOGAN: The Government opposes the amendment because it would make the authority unworkable. The National Party's paranoia about deals being done behind growers' backs is not realistic.

Mr B.J. Grylls: It is not paranoia. It is important that we get the legislation right.

Mr F.M. LOGAN: The interjection from the member for Merredin is keenly felt. I understand where he is coming from; however, the member must look at this provision in terms of the whole Bill and the restrictions that are placed on the members of the Grain Licensing Authority. The members of the authority will not be able to act outside the provisions of the Bill, nor will they be able to act outside the minister's guidelines. The member should not be concerned about decisions emerging from the Grain Licensing Authority that are carried by a small meeting - that is, three representatives - none of whom represents the growers. I say that simply because of the way the Bill has been structured and the guidelines under which the Grain Licensing Authority has been structured and to which it will have to adhere in dealing with specific cases. Growers might be concerned about the issuing of special export licences that would have an effect on the market in which the main licence holder already operates. However, a series of steps must be gone through prior to the issuing of such a licence. The guidelines will give further credence to those steps. The chance of a decision by a quorum of three

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people to issue a special export licence to deliberately get around any opposition by the grower representatives is negligible.

Mr B.J. GRYLLS: The National Party recognises the necessity to expedite this Bill through the lower House. Therefore, we will not argue back and forth across the Chamber on the amendments that we have moved. However, I put on record that the National Party seeks to have the quorum increased. The history of grain storage and marketing in Western Australia has been based on bodies that have been formed and run by growers, which has brought these great organisations to where they are today. We will continue to support those growers who have done so much to bring that industry forward.

**Amendment put and negatived.**

**Clause put and passed.**

**Clauses 11 to 13 put and passed.**

**Clause 14: Staff and other resources of Authority -**

Mr B.J. GRYLLS: This clause provides for the executive officer of the Grain Licensing Authority, plus other staff, services and facilities, to be made available by the Department of Agriculture. My comments also relate to clause 15; therefore, must a motion be moved before I can talk on the next clause or can I be given some leeway?

The ACTING SPEAKER (Mr J.P.D. Edwards): I will give the member some leeway but he must keep his comments relevant to the clause with which we are dealing. If the member strays and talks about clause 15, that is fine.

Mr B.J. GRYLLS: I seek the Acting Speaker's direction at all times. Clause 15 provides that the activities of the authority are under the control of the Department of Agriculture for the application of the Financial Administration and Audit Act; that is, that the chief executive officer of the Department of Agriculture is the accountable officer. Clauses 14 and 15 read in conjunction with clause 40 in relation to appeals raise a number of questions about the funding for the authority and its independence and, therefore, the licensing process.

The second reading speech stated that licence and application fees imposed under this legislation will fund the authority. Can the parliamentary secretary address the issue that the operating budget for the authority might be in the vicinity of \$500 000 a year? Is that a figure with which the parliamentary secretary agrees; and, if not, what will the operating budget be? The National Party has estimated that \$500 000 will be necessary to support a five-member board, an executive officer, other staff and operating expenses. The potential fees proposed for the special export licence holders may cause the licence and application fees to be prohibitively high and/or the authority may propose to grant a higher number of licences, which may result in the authority having a budget shortfall. How will this shortfall be funded? Will it receive a new funding allocation from the Government or will it be drawn from the department's already depleted budget?

I refer now to the independence of the Grain Licensing Authority. The staffing arrangements in the Department of Agriculture outlined in clause 14 and the Financial Administration and Audit Act responsibilities of the department outlined in clause 15, combined with the appeals process on which decisions are likely to be made on the advice received from the department outlined in clause 40, all appear to offer little independence in the authority or licensing process. If this authority is to be independent, it is not clearly provided for in the Bill. The National Party would argue that the authority itself will be independent but, again, two of the five members will be from government, one of whom will be from the Department of Agriculture.

The ACTING SPEAKER: I gave the member for Merredin a fair amount of leeway so I will give the parliamentary secretary the same amount of leeway.

Mr F.M. LOGAN: The member raised the issue of the funding of the authority by the Department of Agriculture and the fees that will be collected to assist in that process. His party's estimate of \$500 000 as the amount of money needed to run the authority is correct. The Government is considering that the operation of the Grain Licensing Authority will be cost neutral, which means that the \$500 000 will have to be raised from fees. Those fees will be attracted from both the main licence holder and any growers or other bodies that wish to apply for a special export licence.

Mr R.N. SWEETMAN: As a consequence of something the parliamentary secretary just said, does he believe that the minister has in mind the imposition of a levy at a certain rate per tonne of grain delivered, or will there be a lump sum application fee; and will the special export licence holder have a similar fee levied against it? I want to make sure that fees are proportionate to the main export licence holder and that they are relevant to the special export licence holder.

Mr F.M. LOGAN: No, the rate will not be based on per tonne of grain delivered. No examination has been done of how those fees will be structured for each of the applicants. However, I can indicate, as I did in the second reading speech, that for those people making application for special export licences, the fees will be

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reasonable, given that the per tonne of grain that they will be shifting will be significantly less than that of the main licence holder.

Mr R.N. SWEETMAN: Is there likely to be an application fee and an additional fee in the event a licence is issued, or will the authority simply make its money out of the applications?

Mr F.M. LOGAN: The member is correct. There will be an application fee as well as a licence fee.

Mr B.J. GRYLLS: My understanding is that the main export licence holder - the Grain Pool Pty Ltd - will not be required to pay any fees. Therefore, the funding will need to be raised from the applications for special export licences. How many special export licence applications does the parliamentary secretary think will be received in any one year? If the main exporters - the Grain Pool and Co-operative Bulk Handling Ltd - do not pay a licence fee and no special licences are granted in the first year, how will the funding be arrived at for the first year?

Mr F.M. LOGAN: I dealt with this in the second reading speech. The main export licence holder will be required to pay an annual fee. The start-up capital for the Grain Licensing Authority will be drawn from the licence fee paid by the main licence holder.

Mr B.J. GRYLLS: Correct me if I am wrong, but did the parliamentary secretary say that, initially, \$250 000 from the consolidated fund would be used to set up the Grain Licensing Authority?

Mr F.M. LOGAN: No, that is wrong. I indicated that in order to start the funding for the Grain Licensing Authority, the main export licence holder will be able to pay the annual licence fee up-front.

Mr B.J. Grylls: Will that require about \$500 000?

Mr F.M. LOGAN: The amount has not yet been determined; however, that is the approximate cost to fund the GLA. The Minister for Agriculture, Forestry and Fisheries is yet to determine the fee for the main export licence holder. That fee is not specified in the Bill, but it is under consideration by the minister.

Mr B.J. GRYLLS: How many special export licence applications does the authority expect to receive in a year? Has the parliamentary secretary done any research into that?

Mr F.M. LOGAN: No research has been done into that and the Department of Agriculture has not given any indication of how many applications it expects to receive.

Mr B.J. GRYLLS: Does that mean that the fees for special export licence holder applicants will be variable? Given that the parliamentary secretary is not sure how many applications will be made, how will he strike those fees?

Mr F.M. LOGAN: Those fees will be consistent, and they will be reasonable for special export licence holder applicants.

**Clause put and passed.**

**Clause 15 put and passed.**

**Clause 16: Ministerial guidelines -**

Mr R.N. SWEETMAN: The parliamentary secretary did not respond to this matter of ministerial guidelines when I raised it during the second reading debate. I suppose I am stepping over the bounds of this clause by referring to other ministerial powers, but I think the parliamentary secretary can answer my questions on those matters in his response to this clause. I want the parliamentary secretary to clarify what the ministerial powers will be. Under the Bill, it appears that the minister can be the Grain Licensing Authority and perform every function that the Grain Licensing Authority will perform. Is that right? When would the minister be likely to perform those functions? As I indicated during the second reading debate, there might be occasions when the licensing authority would recommend the approval of an export licence and the minister, for whatever reason, could disallow it. I want to know the extent of these ministerial powers.

Mr F.M. LOGAN: I thought I cleared up this matter during the second reading debate when I responded to the member for Ningaloo. This clause sets out the minister's authority very clearly. It indicates that the minister has the power to establish guidelines and amend them from time to time. It is not a matter of affecting or influencing the decisions of the authority -

Mr R.N. Sweetman: Not in this clause

Mr F.M. LOGAN: We are dealing with this clause. Under this clause, the minister has the authority to establish the guidelines to give direction to the authority on the way in which it deals with applications. Quite rightly, the minister can amend those guidelines. The member must distinguish between affecting or influencing the

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decisions of the authority and the minister's ability to establish the guidelines given to the authority. The minister can amend the guidelines; however, the authority must use those guidelines when it determines the applications. The minister will not directly influence the authority.

Mr R.N. Sweetman: Having observed those guidelines, does the minister have to take any notice of the decision the authority makes?

Mr F.M. LOGAN: The minister must be cognisant of all the decisions the authority makes. It will be an independent tribunal, because the minister will be bound by its decisions unless, for example, during the appeal process the authority rejects an application. We will deal with that part of the Bill later. I will allay the member's fear that under this clause the minister can interfere with the operational workings of the GLA. He cannot. However, he can issue guidelines to the authority.

**Clause put and passed.**

**Clauses 17 and 18 put and passed.**

**Clause 19: Licensing -**

Mr B.J. GRYLLES: This clause states -

It is a function of the Authority to administer the licensing scheme in Part 3.

Will the functions described in this clause include the monitoring of the main export licence holder's performance with regard to the export of prescribed grains? Under this legislation, will a review be conducted into the main licence holder's use of its prescribed grain export rights? If not, will the parliamentary secretary clarify whether the authority will monitor the performance of the main export licence holder and inform me where that is provided for in the Bill.

Mr F.M. LOGAN: When the licence is issued, the GLA will be compelled only to report to the minister annually on the performance of all licence holders.

**Clause put and passed.**

**Clause 20: Reports to the Minister -**

Mr B.J. GRYLLES: Under this clause, when directed, the authority is to report to the minister on the operation and effectiveness of the licensing scheme and any other matters that relate to the operation of this Bill. Will the parliamentary secretary clarify whether he deems that the reports described include monitoring the main export licence holder's performance? If not, will he clarify whether a function of the authority will be to monitor the performance of the main export licence holder and explain where that is provided for in the Bill? In addition, will he clarify whether the reports referred to will be laid before each House of Parliament and if so, in what time frame?

Mr F.M. LOGAN: As I indicated in response to the member's previous question, the Grain Licensing Authority will be required to report to the minister annually on not only the issuing and administration of the licences but also the performance of all licence holders. The minister is not bound under the legislation to present those reports to Parliament, but my understanding is that he will present them.

**Clause put and passed.**

**Clause 21 put and passed.**

**Clause 22: Power of entry -**

Mr R.N. SWEETMAN: Who will be granted the powers of entry? Will it be someone from the Department of Agriculture, or will the Grain Licensing Authority or the Department of Agriculture call upon the police to investigate or search, or whatever, under this clause? There does not seem to be any specific reference to who will be empowered to do the investigations and searches.

Mr F.M. LOGAN: The point the member for Ningaloo is referring to is made in clause 22(5), which states that a person authorised by the authority to enter may do so lawfully. I am advised that that person may be an inspector from the Department of Agriculture, another person authorised by the authority, or a police officer.

**Clause put and passed.**

**Clause 23: Offence of buying prescribed grain for export in bulk -**

Mr R.N. SWEETMAN: I made reference to this clause in my contribution to the second reading debate. This part of the legislation is dealing with special export licences. In many instances, these licences will be given for small volumes. The question is the difference between 5 000 tonnes and 100 000 tonnes, and if the fines were to kick in at \$60 000, it would seem very harsh. As I indicated in the second reading debate, if the fine were set at

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between \$5 000 and \$60 000, there would be no problem in dealing with offences by degrees. Is the minister likely to consider, when the regulations are drafted, including another schedule of penalties?

Mr F.M. LOGAN: The intent of this Bill is for the \$60 000 and \$120 000 fines to be the ceilings for those offences, not the starting points. The fine for a first offence would be up to \$60 000.

**Clause put and passed.**

**Clauses 24 to 29 put and passed.**

**Clause 30: Details to be specified in application -**

Mr R.N. SWEETMAN: I move -

Page 14, line 15 - To insert after "licence" the following -

to which a prerequisite under section 31(2)(b) applies

In speaking to this amendment I must be clear and consistent in my argument for differentiating between the two categories of licence. The legislation goes on to talk about the licence category that, currently, only the main export licence holder can access. I do not want to spend too much time talking about that, because I want to concentrate on what is commonly referred to as a B-category licence, for markets that potentially exist in a country or an area that the main export licence holder is currently not accessing. There can be a different set of criteria for applications for those licences.

I am sorry, I have the amendments back to front, but I am sure the parliamentary secretary will understand the gist of what I am saying. The legislation must clearly prescribe markets that are easily accessible under application for a special export licence, and those applications can be considered without any constraints on whether the main export licence holder is currently exporting into those markets.

I really need to speak only to the amendment presently under consideration, because I have another amendment that gets more to the point of the B-category licences. I will have to see whether this amendment will be considered by the minister when the Bill gets to the other place, so I will allow the parliamentary secretary to respond just on the present amendment.

Mr F.M. LOGAN: There are two amendments in the name of the member for Ningaloo. One is to clause 30, and the next is to insert a new clause after clause 30.

The ACTING SPEAKER (Mr J.P.D. Edwards): I point out to the parliamentary secretary that, at this stage, the member for Ningaloo has only moved the first amendment, to clause 30.

Mr F.M. LOGAN: I appreciate that. The amendment refers to clause 30, but his following amendment seeks to insert a complete new clause. On the list of amendments put forward by the member for Ningaloo, he has accidentally made the next amendment to clause 31, when it should be to replace the existing clause 30, and includes the words we are referring to right now.

[Quorum formed.]

Mr R.N. SWEETMAN: I can forgive the parliamentary secretary for being confused. It is my amendment and I am still confused. I will try to put it simply. I appreciate the efforts of the Clerk to give expression and definition to what I am trying to achieve through this amendment. It may be better if I cut to the chase. I wish that I could say that I could put it simply, but I cannot. I am simply trying to differentiate between the two categories defined under clause 31(2)(a) and (b). There should be different application criteria for special export licences when a market or a potential market is not in any way controlled or accessed by the main licence holder. I am suggesting two simple changes. One is that an applicant for a special export licence would not have to nominate the market to which it wants to send products. The applicant could notify the authority of the market within 14 days after shipment. That is set out in proposed new clause 31(2)(b) and is what we are trying to achieve. On the face of it, it should be far easier to obtain those licences than licences to export to markets that the main export licence holder can clearly demonstrate it is selling a product to and extracting a premium from as a consequence of its market power in that particular market. I hope the parliamentary secretary understands what I am trying to get at. One category of licence should be easier to obtain than the other. I do not think that the Government would take exception to that logic.

Mr F.M. LOGAN: I understand the logic but I do not understand the way the member has expressed it in those amendments, because they are confusing. First, for the Grain Licensing Authority to consider an application for a special export licence, there must be a market. The member suggested that there could be no market. There has to be a market for the application to be dealt with by the Grain Licensing Authority. If there is a market and the main licence holder is operating in that market, there will be a premium. Any new player coming into that

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market would have to put forward a case about whether it would affect the premium that has already been established for the main export licence holder before the GLA could make a decision about whether to issue it with a special export licence for that market. It cannot be done in the way suggested by the member for Ningaloo; that is, for an exporter to find a buyer, enter into a contractual relationship and then come back to the GLA for a special export licence. The GLA has to analyse whether the granting of a special export licence will affect the premium of the main export licence holder. The member is saying that this would effectively occur after the applicant had initiated a contractual relationship for a market. That defeats the whole purpose of establishing the GLA. The GLA is being set up to ensure that somebody will not do that. The Government cannot accept the amendment, because it would defeat the reason for establishing the GLA; that is, to consider applications for special export licences and the effect of those applications on the premium in markets currently accessed by the main export licence holder, before the special export licence is issued.

Mr R.N. SWEETMAN: We are getting closer. I think the parliamentary secretary has almost understood what I am trying to achieve through this amendment. Clearly, the people who couched this particular clause have not been close to the trade or involved in marketing. There needs to be flexibility in opportunities to access markets, because quite often an opportunity to access a potential market may last for only a day or two or a week. The Grain Licensing Authority will stifle innovation and the opportunities for growers to access markets if those growers have to trundle off for a special export licence once they have been presented with an opportunity, especially when the buyer requires, within a set period - a day or two - notification of whether the grower can supply that quantum of grain to that market. I reiterate that I am talking about markets other than those to which the main export licence holder already exports. There is a clear differentiation. There needs to be flexibility in the system for people to take advantage of opportunities and markets that the main export licence holder is not accessing. In the event that the Government does not agree to this amendment, it needs to come up with a clearly defined time frame within which the Grain Licensing Authority must make a decision. The Grain Licensing Authority would potentially have to delegate power to the chief executive officer of the Department of Agriculture or his nominee to issue the licence so that growers could take advantage of an opportunity that had arisen for a market with which the main licence export holder was not trading.

Mr F.M. LOGAN: This Bill does not stop a grower or his representative from applying for a special export licence to create a market where none exists. It specifically deals with what the Grain Licensing Authority would have to do if an application were made for a special export licence to a market in which the main export licence holder was a main player and had a premium. The Bill deals specifically with what the Grain Licensing Authority will do in those circumstances. It does not stop a person from applying for a special export licence and then going out and creating a market where no market had existed. I strongly suggest that this is what the Bill outlines that a person should do before seeking a contract; that is, that an application should be made before a person gets involved in negotiating contractual obligations. An application for a special export licence could be made to the GLA and could indicate that there was no player in a particular market or that there was no market in a particular country and that the applicant would establish one. The applicant could get approval from the GLA for a one-year special export licence. That is what it would be issued for. The GLA will ensure that where a market exists and Grain Pool Pty Ltd, as the main export licence holder, has established a premium, a new special export licence applicant will not be able to undercut that premium.

Mr R.N. SWEETMAN: I will put it another way. The Grain Pool Pty Ltd could provide the Grain Licensing Authority with an up-to-date list of all the markets that it supplies, either regularly or intermittently. They would become no-go areas under the B category; they would be subject to further assessment under an application for a special export licence. That effectively would leave the rest of the world. Surely an export licence could be issued on the basis that a special licence holder could potentially develop a market in those areas. Why can the licence holder not be allowed to do that, because it is of no consequence to the main export licence holder in that event? The parliamentary secretary is suggesting that an applicant could develop a market and apply up front for a special licence, but the contract to export to that market could not be put in place because it would be subject to the Grain Licensing Authority approving the application for a special licence to export to that market. In that case, the licence holder would signal well in advance that there was an opportunity in a particular market. I am sure the Grain Licensing Authority would not be able to keep that information in-house. It would circulate among a lot of people. I am sure the intelligence-gathering ability of the main export licence holder will be good enough to enable it to know well in advance of a special export licence being granted that an opportunity exists, but one that is not of its making. That is what I am trying to get around, to ensure that there is an opportunity for innovative growers to access other markets and expand the volume of Western Australian produce that is exported. That is what this should be about.

Mr F.M. LOGAN: Clause 31(2) specifies what the Grain Licensing Authority is required to do when a person applies for a special export licence.

Mr R.N. Sweetman: No; there are two categories.

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Mr F.M. LOGAN: No, there are not.

Mr R.N. Sweetman: We will get to clause 31.

Mr F.M. LOGAN: That is fine. However, there are not two categories. Clause 31 sets out quite clearly what the Grain Licensing Authority is expected to do. No system will be established whereby a grower can identify all the countries to which Grain Pool Pty Ltd exports and then identify all the other countries, so that the grower can apply for a special licence to export to the other countries. It does not work that way. This clause provides that if an innovative grower, to which the member referred, seeks to attain a special export licence, whether within an existing market or within a country that has no market for those grains at the time, the grower must apply for a special export licence and the matter will be dealt with. That is all that needs to be done.

Mr R.N. SWEETMAN: I have moved an amendment to clause 30, but the parliamentary secretary is speaking to clause 31. My amendment has significant relevance to clause 31. There seems to be some shaking of heads. The parliamentary secretary's interpretation of clause 31(2)(a) and (b) suggests that there are not two categories. The information we have received from the minister's office - I do not know who provided that information - indicates that effectively there will be category A and B licences. Clause 31(2) states -

Before deciding whether to grant any other special export licence, the Authority is to -

- (a) ascertain whether the main export licence holder exports prescribed grain to the market for which the special export licence is sought; and
- (b) if so, -

That is the dividing line, so there are two categories -

decide whether the price at which the main export licence holder exports that grain incorporates a premium resulting from the exercise by it of its market power as the main export licence holder.

I agree that my argument is critically flawed in the event that there will not be two categories. However, we have been told that there will be two categories. That is why we have moved an amendment to this clause, so that if there are two categories, the main export licence holder will not be affected, and a set of criteria and protocols will be in place for the other category.

Mr F.M. LOGAN: Again I refer the member for Ningaloo to clause 31. We are not dealing with clause 31, but maybe we should move to that clause, because that is what the member is concentrating on.

Mr R.N. Sweetman: Let us have a cognate debate on clauses 30 and 31.

The DEPUTY SPEAKER: To some extent I am allowing that to happen. I am allowing members some latitude.

Mr F.M. LOGAN: Clause 31(2) states -

Before deciding whether to grant any other special export licence, the Authority is to -

- (a) ascertain whether the main export licence holder exports prescribed grain to the market for which the special export licence is sought; and
- (b) if so, decide whether the price at which the main export licence holder exports that grain incorporates a premium resulting from the exercise by it of its market power as the main export licence holder.

Two different categories will not emerge from that clause. The clause indicates that there will be a category A when the main export licence holder already has a presence in and receives a premium from the market, which is what the Grain Licensing Authority must assess under clause 31. Clause 31(2)(a) and (b) does not establish categories A and B. It simply deals with the special export licence applicant and examines whether the application is for an area to which the main export licence holder exports grain. The Grain Licensing Authority would look at the application for a special licence and decide whether the price at which the main export licence holder exports the grain incorporates a premium and whether the special licence holder would have an effect on the premium. Paragraphs (a) and (b) identify the main export licence holder in category A because it already has a presence in and receives a premium from that market. The paragraphs ensure that the person applying for a special export licence will not have an effect on the premium. That is what this clause deals with. It does not create category A and B licences.

**Amendment put and negatived.**

**Clause put and passed.**

**New clause 31 -**



Mr R.N. SWEETMAN: I move -

Page 14, after line 22 - To insert the following -

**31. Details to be specified in application**

- (1) An application for a special export licence to which the prerequisite under section 31(2)(a) applies is to specify –
  - (a) the prescribed grain for which the licence is sought;
  - (b) the term for which the licence is sought;
  - (c) the season of production of the prescribed grain for which the licence is sought; and
  - (d) the quantity of prescribed grain for which the licence is sought.
- (2) Within 14 days of an export transaction taking place, advice is to be given by the special export licence holder to the Authority about the market into which the grain was supplied.

As I have said previously in the debate, my argument and amendment are critically flawed in the event that there is no differentiation between category A and B export licences. If that is the case, I ask that the parliamentary secretary and the minister seriously consider this amendment, because it is a good amendment in that it effectively differentiates between the two categories. The amendment is worth looking at, because opportunities can be created by having two sets of criteria and protocols. One of those will be of no consequence to the main export licence holder in the event that it does not already export into those markets. The other will create opportunities and foster innovation and enterprise; and I do not think that would be lost on either the parliamentary secretary or the minister. I ask the parliamentary secretary to seriously consider how significant and earth-shattering to this legislation these simple amendments would be.

Mr F.M. LOGAN: I knew this was where we were going with this series of amendments by the member for Ningaloo! The member is effectively trying to create a category A and B-type licence situation.

Mr R.N. Sweetman: I thought all along that there were two categories, and so too did a lot of other people.

Mr F.M. LOGAN: Only in so far as the main category A will effectively apply in cases in which the main licence holder already has a presence and receives a premium; and category B will apply in cases in which the main licence holder does not have a presence. As I have indicated, clause 31(2) deals with that matter. The Grain Licensing Authority cannot make a decision to issue a licence unless it knows the market for which the application is being made and the details of that market. If no market exists, the person will still make an application and indicate that fact to the Grain Licensing Authority. I think that deals with the issue that the member is raising.

Mr R.N. Sweetman: You do not understand marketing.

Mr F.M. LOGAN: I may not clearly understand marketing, but I understand the intention of the Liberal Party on this Bill and what it is trying to achieve by its amendments. As I have indicated, we oppose these amendments because, in the first instance, applications for special export licences come through the Grain Licensing Authority. If it establishes category A and B licences, it will be simply if a special licence is sought to be issued for a market that already exists and the main export licence holder already has a premium in that market.

That is the key to this Bill. The application will have to be examined in detail, and all the justification by the special export licence holder will have to be put to the Grain Licensing Authority before it can issue any licence that will affect the established premium in those markets.

New clause put and a division taken with the following result -

Mr Brendon Grylls; Mr Fran Logan; Mr Rod Sweetman; Acting Speaker; Deputy Speaker; Mr Ross Ainsworth

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Ayes (16)

Mr M.J. Birney	Mrs C.L. Edwardes	Mr B.K. Masters	Mr R.N. Sweetman
Mr M.F. Board	Mr J.P.D. Edwards	Mr P.D. Omodei	Ms S.E. Walker
Dr E. Constable	Ms K. Hodson-Thomas	Mr P.G. Pendal	Dr J.M. Woollard
Mr J.H.D. Day	Mr R.F. Johnson	Mr D.F. Barron-Sullivan	Mr J.L. Bradshaw ( <i>Teller</i> )

Noes (28)

Mr R.A. Ainsworth	Mr B.J. Grylls	Ms S.M. McHale	Mr E.S. Ripper
Mr P.W. Andrews	Mr S.R. Hill	Mr A.D. McRae	Mr D.A. Templeman
Mr J.J.M. Bowler	Mr J.N. Hyde	Mr N.R. Marlborough	Mr M.W. Trenorden
Mr C.M. Brown	Mr J.C. Kobelke	Mrs C.A. Martin	Mr T.K. Waldron
Mr A.J. Dean	Mr F.M. Logan	Mr M.P. Murray	Mr P.B. Watson
Mr J.B. D'Orazio	Mr J.A. McGinty	Mr A.P. O'Gorman	Mr M.P. Whitely
Dr J.M. Edwards	Mr M. McGowan	Mr J.R. Quigley	Ms M.M. Quirk ( <i>Teller</i> )

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Pairs

Mr W.J. McNee	Dr G.I. Gallop
Mr A.D. Marshall	Ms A.J. MacTiernan

**New clause thus negatived.**

**Clause 31: Prerequisites for grant of special export licence -**

Mr B.J. GRYLLS: I move -

Page 14, line 25 - To delete "year" and substitute "two years".

This clause outlines the prerequisites for grant of a special export licence. These prerequisites are clearly aimed at protecting the major licence holders from competition in the markets in which they have established a premium. Subclause (1) provides that the authority cannot grant a special export licence until after the first year after the Act has come into operation. This is a simple amendment. Rather than a one-year period to allow the main export licence holders to develop their markets and come to terms with these major changes in the industry, we are seeking to extend that to two years to give them extra time to get their house in order and get into these markets. Will the parliamentary secretary comment on not only clause 31, but also the National Party's amendment?

Mr F.M. LOGAN: The Government opposes the amendment. Subclause (1) provides that the authority cannot grant a special export licence, the term of which begins during the year commencing on the day on which the Act comes into operation, unless the minister authorises the granting of a licence. The intention is that a special export licence would not apply until one year after the proclamation of the Act, which would be the following November. In all practicality, those licences would not be issued until the following harvest, which would be in the following year. In practice, the effect of those licences would not apply for nearly two years. Although the licences could be issued they would not apply for two years. The National Competition Council did not want the Act to reflect any time frame. After negotiations between the minister, the department and the National Competition Council, it was agreed that one year would be the appropriate time to allow for the establishment of the Grain Licensing Authority and for all the administrative structures to be in place, so licences could be issued one year after proclamation. The National Competition Council agreed to that, but it would have preferred its view of the regulation of the industry to have effect immediately. We have reached agreement on one year. We cannot go back on that.

Mr B.J. Grylls: Of course you can.

Mr F.M. LOGAN: We will not, regardless of whether the member for Merredin thinks we should. The practicality is that those licences will have effect in the following year anyway.

Mr B.J. GRYLLS: I will reflect on the parliamentary secretary's comments. I understand that the main export licence holder will carry out this year's harvest in that one-year time frame. However, if a special licence can be granted in November 2003, when that first year expires, that will give him the right to get a special export licence for the following year's harvest. I cannot see how it can be two years. All we are specifying is that it be this year's harvest.

Mr F.M. LOGAN: It depends on when they are pulling in their harvest and whether it is early or late.

Mr Brendon Grylls; Mr Fran Logan; Mr Rod Sweetman; Acting Speaker; Deputy Speaker; Mr Ross Ainsworth

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Mr B.J. Grylls: We hope the parliamentary secretary knows when they will be harvesting.

Mr F.M. LOGAN: I am told some people are harvesting now. The member is correct. The practicality of issuing a licence is as the member explained to the House.

Mr R.N. SWEETMAN: I thought that the parliamentary secretary and I might have found some common ground after the battles we have had over the last few clauses. However, I am disturbed to hear the advice he is giving to the member for Merredin. The National Party's amendment is to change one year to two years. That will take us effectively to 2004. Coincidentally, that is the year that the single-desk policy will be reviewed; that is, the Australian Wheat Board's monopoly will be up for review. It will be 18 months before there will be any income to the Grain Licensing Authority, by the time it is set up and appropriations have been made to fund it, on the assumption that there will be some applications for special licences to help fund it. If it will be two years before anyone can get a special export licence we are talking about November 2004 instead of November 2003. I need some clarification. If that is the case, opportunities that this Bill was initially supposed to foster will be significantly restricted.

Mr F.M. LOGAN: Should the legislation be proclaimed this year - we hope that it will be proclaimed as soon as possible once it passes the upper House - an application can be made for a special export licence at any stage. However, it cannot come into effect until November next year.

Mr R.N. Sweetman: So we are still talking November next year?

Mr F.M. LOGAN: That is correct.

Mr B.J. GRYLLS: Subclause (1) states "unless the Minister authorises the grant of the licence". Does that give the minister the power to override that one-year period?

Mr F.M. LOGAN: The Grain Licensing Authority would still have to be established in the year after proclamation and the application would be made within the year after proclamation. The GLA would ask the minister whether he agreed to issue a licence, given the fact that no licences should be issued until November next year. The minister does have that power if the GLA comes to the minister with special reasons to issue that licence.

Mr B.J. GRYLLS: Can the parliamentary secretary confirm that the minister will not override the GLA on this? I read that subclause as allowing the minister to grant a special export licence in that first year of operation.

Mr F.M. LOGAN: The minister would be guided by the recommendation of the GLA. The minister would issue what would in effect be an extraordinary special export licence only on the recommendation of the GLA.

**Amendment put and negatived.**

Mr R.A. AINSWORTH: This clause highlights a major deficiency in the Bill in that it does not provide a definition of premium. The premium, as interpreted from the wording of the clause, is tied solely and specifically to the issue of pricing. I argue very strongly that premium means much more than price in grain marketing. For example, part of the special benefits given to the Australian Wheat Board - an organisation I had much to do with in a former life - in its access to secure long-term markets was not just the price premium that it might have been able to extract in any given year. Its long-term commitment to provide security of supply, for example, to a particular market meant that in times of a world oversupply - that is, when plenty of people are selling and not too many are buying - the traditional markets, which otherwise might have been able to take advantage of cheaper grain, still purchased wheat from Australia for probably a dollar or two - maybe more - above what they would otherwise have been able to secure on the world market. Conversely, during a period of undersupply, the market was assured of grain from the Australian Wheat Board because there was a continuing marketing arrangement. If we isolate a single year and question whether a particular grain selling organisation was able to demonstrate a price premium in that year, the answer could easily be no. However, on a long-term basis, it could easily be demonstrated that there was a definite benefit to the grower - which is, in effect, a premium - that could not necessarily be demonstrated in a specific year. For that reason, if price is the only determinant used to establish what constitutes a premium, that is a very short-sighted and dangerous way to interpret a market at any given time. If that is all that is being done - as far as I can tell that is what the Bill will do - it will severely undermine the ability of the major grain exporter, the Grain Pool of WA, which has built up relationships with markets over many years and has ensured not only continuity of supply but also continuity of a quality supply, which is the other aspect that is vitally important in dealing with premiums. Given that such market relationships have been built up over a long period, it is difficult to gauge their benefits by looking only at the price in a given year. If that is all the Bill will do, and if that is all the Government is suggesting we do by determining whether an export licence or a special permit should be granted to somebody who, in a given year, is able to extract a price premium, and who, on a long-term basis, could damage the growers by fragmenting or interrupting the continual flow of grain on a traditional long-term basis from a single supplier, then we will be moving in a backward direction, and I oppose such a move.

Mr Brendon Grylls; Mr Fran Logan; Mr Rod Sweetman; Acting Speaker; Deputy Speaker; Mr Ross Ainsworth

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Mr F.M. LOGAN: I draw the member's attention to clause 31(2)(b) which states -

if so, decide whether the price at which the main export licence holder exports that grain incorporates a premium resulting from the exercise by it of its market power as the main export licence holder.

Clause 31(2)(b) refers the premium to the exercise of its market power. When I was questioned by the member for Merredin on the definition of premium, one of the examples I gave was that a premium can be achieved through the exercise of market power; that is, by restricting supply to particular markets and increasing average returns. That has nothing to do with price, but relates to the way in which the market power is exercised as a single-selling entity. I also refer the member to clause 31(4) which states -

Before deciding whether to grant any special export licence, the Authority is to consider the effect, if any, that granting the licence would be likely to have on the State's reputation as a grain exporter and on the State's grain industry generally.

That too does not relate to price, but to the reputation of the State as a grain producer and a consistent supplier of high quality grains. That should be read in conjunction with clause 31(2) in terms of how the single-selling desk exercises its market power and achieves a consistent price. I would not be too concerned about the effect of issuing special export licences as an immediate attack on the price that is achieved through the single-selling desk entity. The Bill deals with those concerns.

Mr R.A. AINSWORTH: I accept the parliamentary secretary's explanation. However, I would like to see a more specific provision because the State's reputation as a grain exporter could hinge on such factors as the quality and cleanliness of the grain, the ability to ship on time and to specification and the like, all of which are vital in today's markets. It may not necessarily include the longer-term trading benefit that the State gained by having a contractual arrangement or a mutual understanding between the supplier and the consumer that transcends price. If it is the Government's intention that price is by no means the only determinant of premiums, that is fine. However, if price is the primary determinant of premiums, I still have a problem. I accept what the parliamentary secretary has said, and, in the event of the question being raised by the licensing authority in determining whether a special licence should be granted, I hope that all of the factors will be taken into account and that a fairly heavy weighting will be given to the relationship between the purchaser and the supplier, rather than to just the price.

Mr F.M. LOGAN: Of course such factors are taken into account in the assessment, because that is what makes up the essence of market power in terms of reliability and quality. The long-term relationship of the supplier and the buyer is dealt with in clause 31(4). Such matters have been dealt with.

Mr R.A. AINSWORTH: I am grateful to the parliamentary secretary for his remarks. Another concern I have in the practical application of what the parliamentary secretary is saying would arise when there is a shortage of grain on the world market. A traditional market may be paying a little less than would otherwise be the case if the Grain Pool of WA or the new grain marketing organisation were to go to another market and get a higher price. If a group of growers went to the Government and said that its grain could have been sold into market X at a price premium of \$3 a tonne, but its pool grain had been sold at a discount into another market, and the Australian Competition and Consumer Commission should investigate the matter, would that sort of political pressure influence future decisions to grant export licences?

Mr F.M. LOGAN: The Grain Licensing Authority will deal with these issues on a case-by-case basis. To hypothesise on future scenarios is virtually impossible. However, the GLA is bound by the Act to take all those issues into consideration, in particular the long-term relationship that has been established in that market regardless of the world price at the time or the political pressure that might be brought to bear on the GLA.

Debate interrupted, pursuant to standing orders.

[Continued on page 1714.]