

SOUTH AUSTRALIA

BARLEY MARKETING ACT 1993

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **15 October 1998**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Citation
2. Commencement
3. Definitions
4. Grain
5. Application of Parts 4 and 5
6. Joint South Australian and Victorian Scheme
7. Delegation by Minister

PART 2 AUSTRALIAN BARLEY BOARD

8. The Board
9. Board not representing Crown
10. Common seal
11. Members
12. Selection Committee
13. Selection criteria
14. Chairperson
15. Deputy Chairperson
16. Remuneration
17. Term of office and re-appointment
18. Vacancies, resignation, removal from office
19. Casual vacancy
20. Disclosure of interests by members
21. Ministerial direction
22. Proceedings of the Board
23. Validity of decisions
24. Staff of the Board
25. Immunity
26. Dismissal of Board

PART 3 OBJECTIVES, FUNCTIONS AND POWERS

27. Objectives
28. Functions
29. Powers
30. Delegation
31. Obtaining information
32. Corporate plan

PART 4 MARKETING

33. Delivery of barley and oats
34. Property in barley and oats passes to Board on delivery
35. Authorised receivers
36. Declaration of season of barley or oats delivered to Board
37. Board to market barley and oats
38. Pools
39. Distribution of proceeds of sale of pooled barley or oats
41. No claim against Board in respect of rights in barley or oats

Barley Marketing Act 1993

**PART 5
MALTSTERS LICENCES**

43. Licence to purchase barley for malting or other processing

**PART 6
FINANCIAL**

44. Board is semi-government authority
45. Reserve fund
46. Joint ventures
47. Requirements where Board has controlling interest

**PART 7
ACCOUNTS AND REPORTS**

48. Accounts and records
49. Annual reports
50. Audit
51. Separate accounts for different pools
52. Copies of annual report to be provided

**PART 8
DISSOLUTION OF BOARD**

53. Dissolution of the Board
54. Petition and polls
55. Request
56. Winding-up and dissolution
57. Report to be published in connection with poll
58. Provisions as to polls
59. Expenses

**PART 9
BARLEY MARKETING CONSULTATIVE COMMITTEE**

60. Establishment of Barley Marketing Consultative Committee
61. Functions
62. Members
63. Chairperson
64. Proceedings of the Committee
65. Remuneration
66. Term of office and re-appointment
67. Vacancies, resignation, removal from office
68. Casual vacancy

**PART 10
GENERAL**

69. Authorised officers
70. Powers of authorised officers
71. Offence to obstruct authorised officer
72. Evidentiary
73. Service
74. Regulations

**PART 11
TRANSITIONAL PROVISIONS**

75. Repeal of Barley Marketing Act 1947
76. Transitional provisions relating to the Board

SCHEDULE

Grains

APPENDIX 1

LEGISLATIVE HISTORY

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

BARLEY MARKETING ACT 1993

being

Barley Marketing Act 1993 No. 23 of 1993
[Assented to 15 April 1993]¹

as amended by

Barley Marketing (Application of Parts 4 and 5) Amendment Act 1998 No. 6 of 1998 [Assented to 2 April 1998]

Barley Marketing (Deregulation of Stockfeed Barley) Amendment Act 1998 No. 37 of 1998 [Assented to 30 July 1998]²

Wheat Marketing (Grain Deductions) Amendment Act 1998 No. 44 of 1998 [Assented to 27 August 1998]³

¹ Came into operation 11 October 1993: *Gaz.* 7 October 1993, p. 1677.

² **Came into operation 15 October 1998: *Gaz.* 13 August 1998, p. 400.**

³ **Came into operation 15 October 1998: *Gaz.* 8 October 1998, p. 1058.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix 1.*

An Act relating to the marketing of barley and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Citation

1. This Act may be cited as the *Barley Marketing Act 1993*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Definitions

3. (1) In this Act—

"**authorised receiver**" means a person authorised under Part 4 to receive barley, oats or other grain on behalf of the Board;

"**barley**" includes the grain known by that name, growing crops of that grain, gristed grain of that name and grain of that name treated in any other manner or by any process converted into the product of grain of that name;

"**Board**" means the Australian Barley Board constituted under this Act;

"**Committee**" means the Barley Marketing Consultative Committee appointed under Part 9;

"**grain**" means grain of any variety, species or kind of the genera specified in the schedule or any other genera, or variety, species or kind of genera, declared by the Minister and the Victorian Minister by notice under section 4;

"**grower**" means—

- (a) a person by whom or on whose behalf, barley is grown or produced for sale; and
- (b) where barley is grown or produced for sale by a partnership or under a share-farming agreement, the members of the partnership or the parties to that agreement,

but does not include a person who grows or produces barley for sale as an employee of another person;

"**marketing**" includes buying, selling, financing, collecting, quality control, cleaning, grading, packing, treating, processing, carrying, storing, warehousing, handling, distributing (by wholesale or retail), delivering and promoting;

"**oats**" includes the grain known by that name, growing crops of that grain and any product produced by gristing that grain or any other form of processing, that are grown in this State but does not include any of the following species of the genus *avena*:

- (a) *A. barbata*, Pott ex Link.;
- (b) *A. fatua*, L.;
- (c) *A. ludoviciana*, Durieu.;

Barley Marketing Act 1993

(d) *A. sterilis*, L.;

"**season**" means a period of 12 months commencing on 1 July;

"**Selection Committee**" means the Committee appointed under Part 2 for the purpose of nominating members for appointment to the Board;

"**South Australian Department**" means the Department of Primary Industries of South Australia;

"**Victorian Act**" means the *Barley Marketing Act 1993* of Victoria;

"**Victorian Department**" means the Department of Agriculture or, if the name of that Department is changed, that Department by its name for the time being;

"**Victorian Minister**" means the Minister of the Crown administering the Victorian Act.

(2) For the purposes of this Act, a reference to a body in this Act is a reference to that body or any other body that, in the opinion of the Minister and the Victorian Minister, has replaced that body.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Grain

4. (1) For the purposes of this Act, the Minister and the Victorian Minister may, by notice in the *Gazette*, declare that grain of a specified genera, variety, species or kind of genera is grain to which this Act applies.

(2) The Minister and the Victorian Minister may, by notice in the *Gazette*, vary or revoke a notice under subsection (1).

Application of Parts 4 and 5

5. (1) Parts 4 and 5 apply to barley and oats harvested in the season commencing on 1 July 1993 and each of the next five seasons but do not apply to barley grown in a later season.

(2) The Minister must consult with the Victorian Minister before the end of the season commencing on 1 July 1996 about the arrangements for the marketing of barley grown in South Australia or Victoria.

Joint South Australian and Victorian Scheme

6. (1) It is declared that it is the intention of the Parliament that this Act and the Victorian Act implement a joint South Australian and Victorian Scheme for marketing—

(a) barley grown in South Australia; and

(b) barley grown in Victoria.

(2) It is also declared that it is the intention of the Parliament that this Act is not to be amended in any manner that may affect the operation of the joint Scheme except on the joint recommendation of the Minister and the Victorian Minister.

Delegation by Minister

7. The Minister may, in writing, delegate to any person any of the Minister's powers under this Act, other than—

- (a) any power which is to be exercised jointly with the Victorian Minister; or
- (b) this power of delegation.

Barley Marketing Act 1993

**PART 2
AUSTRALIAN BARLEY BOARD**

The Board

8. (1) The Australian Barley Board is established.

(2) The Board—

- (a) is a body corporate with perpetual succession;
- (b) has a common seal;
- (c) may acquire, hold and dispose of real and personal property;
- (d) may do and suffer all other acts and things that a body corporate may by law do and suffer.

Board not representing Crown

9. The Board does not represent, and is not part of, the Crown.

Common seal

10. The common seal of the Board must be kept in such custody as the Board directs and may be used only as authorised by resolution of the Board.

Members

11. (1) The Board consists of eight members appointed jointly by the Minister and the Victorian Minister of whom—

- (a) one will be a person nominated by the Minister;
- (b) one will be a person nominated by the Victorian Minister;
- (c) two will be growers by whom or on whose behalf barley is grown in South Australia (who are entered on the roll of growers in accordance with section 58) elected in accordance with the regulations;
- (d) one will be a person by whom or on whose behalf barley is grown in Victoria nominated by the Selection Committee;
- (e) two will be persons with knowledge of the barley industry, one of whom is resident in Victoria, nominated by the Selection Committee;
- (f) one will be a person nominated by the Selection Committee with expertise in one or more of the following:
 - (i) business management;
 - (ii) finance;
 - (iii) exporting;
 - (iv) product promotion;
 - (v) any other area of expertise which the Selection Committee considers relevant.

(2) A person who is a member of the Selection Committee is not eligible for appointment as a member of the Board.

Selection Committee

12. (1) The Selection Committee consists of five persons appointed jointly by the Minister and the Victorian Minister of whom—

- (a) two will be persons appointed from a panel of not less than four persons (who may—but need not be—members of the South Australian Farmers Federation Incorporated) nominated by the South Australian Farmers Federation Incorporated;
- (b) two will be persons appointed from a panel of not less than four persons nominated by the Victorian Farmers Federation;
- (c) one (the Chairperson) will be jointly nominated by the chief executive officer of the South Australian Department and the chief executive officer of the Victorian Department.

(2) A body referred to in subsection (1)(a) or (b) may submit panels of names for the purposes of subsection (1) within such period as the Minister and the Victorian Minister request.

(3) If a body referred to in subsection (1)(a) or (b) fails to submit a panel of names in accordance with a request, the Minister and Victorian Minister may appoint such persons as they determine to fill the vacancies.

(4) The members of the Selection Committee are appointed for such period and on such terms and conditions, including payment of allowances, as the Minister and Victorian Minister determine.

(5) A decision may not be made at a meeting of the Committee unless all members are present or, in the case of a meeting conducted by telephone, unless all members participate by telephone.

(6) The Selection Committee may engage consultants to assist it in nominating persons for appointment as members of the Board.

(7) Subject to this section, the procedure of the Committee is in its discretion.

(8) The Board must pay the allowances payable to members of the Committee and any reasonable expenses of the Committee.

Selection criteria

13. (1) The Minister and the Victorian Minister may determine selection criteria to be applied by the Selection Committee in selecting persons for nomination.

(2) A determination must be in writing.

(3) The Minister and the Victorian Minister must give a copy of the determination, including a determination varying or revoking a determination, to the Chairperson of the Committee.

Chairperson

14. The Minister and the Victorian Minister will appoint one of the members of the Board appointed under section 11(1)(a) or (b) to be the Chairperson of the Board for such period as the Ministers determine.

Deputy Chairperson

15. The members of the Board may elect another member of the Board to be the Deputy Chairperson of the Board.

Barley Marketing Act 1993

Remuneration

16. A member of the Board, unless an officer or employee of the public service, is entitled to be paid by the Board the remuneration and allowances (if any) fixed by the Minister and the Victorian Minister.

Term of office and re-appointment

17. (1) A member is appointed for the term, not exceeding three years, specified in the instrument of appointment on such terms and conditions as are so specified.

(2) A member is eligible for re-appointment.

Vacancies, resignation, removal from office

18. (1) The office of a member of the Board becomes vacant if the member—

(a) without the Board's approval, fails to attend two consecutive meetings; or

(b) becomes bankrupt; or

(c) is convicted of an offence punishable by imprisonment for 12 months or more.

(2) A member of the Board may resign by writing delivered to the Minister or the Victorian Minister.

(3) The Minister and the Victorian Minister may remove a member of the Board from office if in the opinion of the Ministers the member—

(a) becomes incapable of performing his or her duties; or

(b) is negligent in the performance of those duties; or

(c) engages in improper conduct; or

(d) fails to disclose a pecuniary interest as required by section 20; or

(e) is convicted of an offence against this Act or the Victorian Act.

Casual vacancy

19. (1) If the office of a member of the Board becomes vacant for some reason other than the expiry of the term of office of the member, a person nominated or elected for appointment to the office in accordance with section 11 will be appointed to fill the vacancy and to hold office, subject to this Act, for the remainder of the term.

(2) If the vacancy occurs within six months of the expiry of the term of office of the member, the office may be left vacant for the remainder of the term.

Disclosure of interests by members

20. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure must be recorded in the minutes of the meeting and, unless the Board decides otherwise, the member must not—

(a) be present during any consideration of the matter by the Board; or

(b) take part in any decision of the Board with respect to the matter.

(3) For the purpose of the making of a decision by the Board under subsection (2) in relation to a member who has made a disclosure under subsection (1), the member must not—

(a) be present during any deliberation of the Board for the purpose of making the decision;
or

(b) take part in the making of the decision.

(4) This section does not apply to a pecuniary interest that a member has because of his or her qualification to be a member if that is an interest in common with other persons holding a corresponding qualification.

Ministerial direction

21. (1) The Board is subject to—

(a) the general direction and control of the Minister and the Victorian Minister; and

(b) any specific written directions given by the Minister and the Victorian Minister or by either Minister with the written consent of the other Minister.

(2) A Minister must not give a written direction unless satisfied that, because of exceptional circumstances, the direction is necessary to ensure that the performance of the functions, or the exercise of the powers, of the Board does not conflict with major government policies.

(3) The Board must include in each annual report under section 49 a copy of any specific written directions given under this section during the year to which the report relates.

Proceedings of the Board

22. (1) A meeting of the Board will be chaired by the Chairperson or, in his or her absence, by the Deputy Chairperson and, in the absence of both the Chairperson and the Deputy Chairperson, the members present at a meeting of the Board must choose one of their number to preside at the meeting.

(2) Five members of the Board constitute a quorum of the Board and no business may be transacted at a meeting of the Board unless a quorum is present.

(3) The Board must meet at least once every three months.

(4) A question arising at a meeting must be determined by a majority of votes of members present and voting on that question, and if voting is equal, the person presiding has a casting, as well as a deliberative vote.

(5) The Board must ensure that—

(a) minutes are kept of each meeting; and

(b) a copy of the confirmed minutes of each meeting is sent to the Minister and the Victorian Minister within two weeks after being confirmed.

(6) Subject to this Act, the Board may regulate its own proceedings.

Barley Marketing Act 1993

Validity of decisions

23. An act or decision of the Board is not invalid by reason only—

- (a) of a defect or irregularity in, or in connection with, the appointment of a member; or
- (b) of a vacancy in membership including a vacancy arising out of the failure to appoint an original member.

Staff of the Board

24. (1) The Board may employ staff (including a chief executive) on such terms and conditions as it thinks fit and may make arrangements for using the services of any officers and employees of the public service or any public authority.

(2) The chief executive of the Board is responsible for the administration of the Board's undertaking subject to its general direction and control.

Immunity

25. (1) A member of the Board is not personally liable for anything done or omitted to be done in good faith—

- (a) in the exercise of a power or discharge of a duty under this Act; or
- (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.

(2) Any liability resulting from an act or omission that, but for subsection (1), would attach to a member of the Board attaches instead to the Board.

Dismissal of Board

26. (1) The Governor may, if of the opinion that circumstances have arisen rendering it advisable to do so, by notice in the *Gazette*, remove all the members of the Board from office, but they or any of them are eligible (if otherwise qualified) for re-appointment.

(2) A notice under subsection (1) comes into effect on the day on which it is published in the *Gazette* or, if a corresponding order has not been published under the Victorian Act, on the date on which such a notice is published under that Act.

(3) The Minister must cause a report of, and of the reasons for the removal of, the members of the Board under this section to be laid before each House of Parliament within 14 sitting days of that House after the date of publication of the notice under subsection (1).

PART 3
OBJECTIVES, FUNCTIONS AND POWERS

Objectives

27. The objectives of the Board are—

- (a) to supply, effectively and efficiently, marketing services to South Australian and Victorian growers and to producers of other grains; and
- (b) to maximise the net returns to South Australian and Victorian growers who deliver barley, oats or other grain to a pool of the Board by securing, developing and maintaining markets for grain and by minimising costs as far as practicable.

Functions

28. The functions of the Board are—

- (a) to control the marketing—
 - (i) of barley and oats grown in this State; and
 - (ii) of barley grown in Victoria;
- (b) to market and promote, efficiently and effectively, grain in domestic and overseas markets;
- (c) to co-operate, consult and enter into agreements with—
 - (i) authorised receivers relating to the handling and storage of grain;
 - (ii) carriers relating to the transport of grain;
- (d) to determine standards for the classes and categories of grain delivered to the Board;
- (e) to determine standards for the condition and quality of grain delivered by authorised receivers to purchasers;
- (f) to provide advice, as requested, to the Minister and the Victorian Minister about the marketing of grain.

Powers

29. The Board may do all things necessary for the performance of its functions and, in particular, has the following powers:

- (a) to acquire barley, oats and other grain (including barley, oats or other grain grown outside the States or grown outside Australia);
- (b) to dispose of barley, oats and other grain;
- (c) to appoint agents, or to act as an agent, whether in or outside Australia;
- (d) to give guarantees or indemnities;
- (e) to arrange the marketing of barley, oats and other grain;

Barley Marketing Act 1993

- (f) to promote, carry out or fund research and development that will assist in the production or marketing of barley, oats and other grain;
- (g) all other powers conferred on it by or under this Act or the Victorian Act.

Delegation

30. The Board may, in writing, delegate to any member of the Board, or to any employee, any of its powers under this Act, other than this power of delegation.

Obtaining information

31. (1) For the purposes of this Act, the Board may, by notice in writing served on the person to whom it is addressed either—

- (a) personally; or
- (b) by post to the person's last known place of residence or business,

require the person to give to the Board, in writing, within the time specified in the notice, such information relating to barley and oats, barley and oat products or substances containing barley or oats as is specified in the notice.

(2) A person must not, without reasonable excuse—

- (a) refuse or fail to comply with a requirement under this section; or
- (b) give to the Board any information that is false or misleading in any particular.

Penalty: Division 7 fine.

Corporate plan

32. (1) Before the first anniversary of the commencement of this section, the Board must submit to the Minister and the Victorian Minister a plan of its intended operations during the remaining seasons to which this Act applies.

(2) Thereafter, with each annual report it submits to the Minister and the Victorian Minister, the Board must also submit a plan of operations for the remaining seasons to which this Act applies.

(3) Each plan of operations must include indicators against which the performance of the Board may be measured.

- (4) A plan of operations must—
 - (a) define what the Board thinks should be its principal objectives during the period to which the plan relates;
 - (b) give a broad outline of the strategies that the Board thinks should be pursued during that period for achieving those objectives;
 - (c) set out the Board's assessment of the market outlook for the barley industry for that period and the reasons for that assessment;
 - (d) set out the Board's assessment of the market outlook for the oats industry in South Australia for that period and the reasons for that assessment.

**PART 4
MARKETING**

Delivery of barley and oats

33. (1) Subject to this Act, a person must not sell or deliver barley or oats to a person other than the Board.

(2) A person must not transport barley or oats which have been sold or delivered in contravention of subsection (1) or bought in contravention of subsection (4).

(3) Subsections (1) and (2) do not apply to—

(a) barley or oats retained by the grower for use on the farm where it is grown; or

(b) barley or oats purchased from the Board; or

(c) barley of a season sold or delivered to the holder of a licence for that season issued under section 43; or

(d) barley or oats which do not meet the standards determined by the Board; or

(da) barley sold to a person who purchases the barley for use in Australia for stockfeed purposes; or

(e) oats sold to a person who purchases the oats for the purpose of—

(i) converting the oats into chopped, crushed, or milled oats or any other manufactured product; and

(ii) reselling the oats in that form; or

(f) oats sold to a person who purchases the oats for use and not for resale.

(4) A person must not buy—

(a) barley from the grower except—

(i) under a licence issued by the Board under section 43; or

(ii) for use in Australia for stockfeed purposes; or

(b) oats from the grower except with the written approval of the Board.

(4a) A person must not use barley sold for use in Australia for stockfeed purposes for any other purpose.

(5) Subsections (1), (4) and (4a) do not apply to a sale, delivery or purchase of barley or oats made with the express written approval of the Board.

(6) The penalty for an offence against this section is—

(a) in the case of a natural person—

(i) for a first offence—division 7 fine;

Barley Marketing Act 1993

- (ii) for a subsequent offence—division 5 fine;
- (b) in the case of a body corporate—
 - (i) for a first offence—division 6 fine;
 - (ii) for a subsequent offence—division 2 fine.

Property in barley and oats passes to Board on delivery

34. On delivery of barley and oats to the Board, unless it is otherwise agreed—

- (a) the property in the barley and oats immediately passes to the Board; and
- (b) the owner of the barley and oats is to be taken to have sold it to the Board at the price to be paid under this Act.

Authorised receivers

35. (1) The Board may, by instrument, appoint a person to be an authorised receiver for the purposes of this Act.

(2) A person may deliver barley or oats to an authorised receiver.

(3) Delivery of barley or oats to an authorised receiver is, for the purposes of this Act, delivery to the Board.

(4) An authorised receiver—

- (a) holds, on behalf of the Board, all barley and oats the property of the Board which is at any time in the receiver's possession;
- (b) must not part with the possession of any such barley or oats except in accordance with instructions from the Board or from a person authorised by the Board to give such instructions.

(5) An authorised receiver appointed to receive barley or oats in South Australia must not, except with the written approval of the Board, have a direct or indirect interest in a business involving the buying or selling of barley or oats or in a body corporate carrying on such a business.

Declaration of season of barley or oats delivered to Board

36. (1) Any person who, after the declared day in relation to a season, consigns or delivers to an authorised receiver any barley or oats harvested before that day, must make and forward to the authorised receiver a declaration stating the season during which that barley or oats were harvested.

Penalty: Division 8 fine.

(2) For the purposes of this section—

"**declared day**" means the day which, in respect of a season, is declared by the Board by notice in the *Gazette*, to be the final day for delivery of barley or oats of that season.

Board to market barley and oats

37. (1) The Board must market or otherwise dispose of, to the best advantage, all barley and oats delivered to it under this Act.

(2) In marketing or disposing of barley, the Board must have regard to the reasonable requirements of persons requiring barley for malting in South Australia.

Pools

38. (1) For the purpose of the marketing of barley and oats of which the Board has taken delivery, the Board may establish pools in relation to barley and oats of a season.

(2) Separate pools may be established by reference to any combination of any of the following factors:

- (a) the time of delivery of the barley or oats;
- (b) the place of production;
- (c) the quality of the barley or oats;
- (d) the grade of the barley or oats;
- (e) the variety of the barley or oats;
- (f) any other matter determined by the Board after taking into account the advice of the Committee.

(3) The Board may, at any time—

- (a) transfer any barley or oats remaining in a particular pool to another pool;
- (b) declare a pool closed.

Distribution of proceeds of sale of pooled barley or oats

39. (1) If the Board sells barley or oats from a pool, the net proceeds of sale must be distributed among the growers who contributed barley or oats to the relevant pool in proportion to the quantity contributed by each grower.

(2) The net proceeds of sale are the gross proceeds or estimated gross proceeds less the Board's expenditure incurred or estimated to be incurred in marketing the barley or oats and administering this Act.

(3) The following deductions from the grower's share of the net proceeds are authorised:

- (a) deductions made by the Board for the reserve fund established by the Board under section 45; and
- (b) any deduction to be made on account of the quality of the barley or oats delivered by the grower; and
- (c) any debts owing by the grower to the Board.

(4) In determining the price to be paid for any barley or oats, the Board may take into account—

- (a) the State in which and the place at which the barley or oats were delivered to the Board; and
- (b) any other circumstances affecting the value of the barley or oats.

Barley Marketing Act 1993

(5) The Board may make progress payments, of such amount as the Board considers reasonable, on account of any money payable or about to become payable by the Board to any grower as the price of barley or oats.

(6) If, after the Board has made payments under this section for barley or oats of any season, there remains a balance of funds so small that in the Board's opinion it is undesirable to distribute it separately, the Board may transfer the balance to the reserve fund under section 45.

* * * * *

No claim against Board in respect of rights in barley or oats

41. A person does not have a claim against the Board in respect of any right, title or interest in barley or oats delivered to the Board.

**PART 5
MALTSTERS LICENCES**

* * * * *

Licence to purchase barley for malting or other processing

43. (1) A person who—

(a) is engaged in, or proposes to be engaged in, the business of malting or other processing of barley in Australia for human consumption; and

(b) is a party to a deed of arrangement—

(i) referred to in subsection (5); or

(ii) entered into with the Board before the enactment of this Act and to the same effect as a deed referred to in subsection (5)—

may apply to the Board for a licence for a specified season to purchase barley harvested in that season directly from growers for malting or other processing in Australia for human consumption purposes.

(2) An application must be accompanied by such reasonable fee as is set by the Board.

(3) The Board must issue the licence within 21 days of the Board receiving the application but must not issue a licence if there is not in force a deed of arrangement referred to in subsection (5) between the Board and the applicant.

(4) The licence is subject to the terms and conditions (if any) contained in the deed of arrangement referred to in subsection (5).

(5) A deed of arrangement is a deed entered into between the Board and a person engaged in, or proposing to engage in, the business of malting or other processing of barley in Australia for human consumption purposes containing—

(a) provisions about barley required or likely to be required for that business; and

(b) the terms and conditions (if any) agreed by the Board and that person as the terms and conditions to which a licence under this section is to be subject.

(6) The terms and conditions must not include a term or condition relating to the price of barley or to the costs or expenses of delivery of barley to the purchaser.

(7) A deed of arrangement continues in force until revoked or varied by agreement between the parties.

Barley Marketing Act 1993

**PART 6
FINANCIAL**

Board is semi-government authority

44. (1) The Board is a semi-government authority within the meaning of the *Public Finance and Audit Act 1987*.

(2) The Board must—

- (a) before 31 December of each year, apply to the Treasurer for consent to its proposed financial program for the following financial year; and
- (b) on obtaining consent from the Treasurer, forward a copy of the consent and any conditions attached to it, to the Minister and the Victorian Minister.

Reserve fund

45. (1) The Board may establish a reserve fund.

(2) The Board may pay into the reserve fund an amount not exceeding five per cent of the net proceeds derived from the sale of barley, oats or other grain.

(3) The Board may pay out of the reserve fund the costs of administering the marketing scheme and any other costs of the Board.

(4) The balance of the reserve fund must not exceed the amount set by the Minister and the Victorian Minister.

Joint ventures

46. (1) Any of the functions of the Board may be exercised—

- (a) by the Board; or
- (b) by an affiliate of the Board; or
- (c) by the Board or an affiliate, or both, in a partnership, joint venture or other association with other persons or bodies.

(2) For the purpose of exercising its functions, the Board—

- (a) may join in the formation of a corporation to be incorporated; and
- (b) may purchase, hold, dispose of or deal with shares in, or subscribe to the issue of shares by, a corporation.

(3) The Board must not do any of the things mentioned in subsection (2) otherwise than in accordance with such guidelines (if any) as are from time to time determined by the Minister and the Victorian Minister.

(4) An affiliate of the Board must not, except with the approval of the Minister and the Victorian Minister, engage in any activities which the Board may not engage in.

(5) If any function of the Board may be exercised only with an approval under this Act, the function requires the same approval when exercised under an arrangement, or by a company, or in a partnership, joint venture or other association, as referred to in this section.

(6) In this section—

"**affiliate**" in relation to the Board, means—

- (a) a corporation in which the Board has a controlling interest by virtue of its shareholding; or
- (b) a corporation the memorandum and articles of association of which provide that any or all of the directors of the corporation must be persons who are, or who are nominated by, persons for the time being holding office as members of the Board.

Requirements where Board has controlling interest

47. (1) If—

- (a) the Board is a member of, or forms or participates in the formation of, a limited company within the meaning of the *Corporations Law*; and
- (b) the Board has a controlling interest in the company,

the Board must—

- (c) include in its annual report a copy of the accounts of the company in respect of the financial year ended during the period to which the Board's annual report relates; and
- (d) within 14 days after lodging any report, statement or return in respect of the company with the Australian Securities Commission under the *Corporations Law*, submit a copy of the report, statement or return with the Treasurer.

(2) The Board has a controlling interest in a company if the Board is a substantial shareholder within the meaning of the *Corporations Law* as varied by subsection (3).

(3) For the purposes of determining whether the Board is a substantial shareholder in a company, the *Corporations Law* applies as if a reference in section 708 of the *Law* to the prescribed percentage were a reference to 50 per cent.

(4) If the Board is a member of, or forms or participates in the formation of, a limited company to which subsection (1) applies, the accounts of the limited company must be audited annually by the Auditor-General or, with the agreement of the Auditor-General, by the Victorian Auditor-General.

(5) The requirements of subsection (4) are in addition to the requirements of the *Corporations Law*.

(6) The Board must pay the costs and expenses of an audit under subsection (4).

Barley Marketing Act 1993

**PART 7
ACCOUNTS AND REPORTS**

Accounts and records

48. The Board must keep proper accounts and records of all money received and paid by or on account of the Board.

Annual reports

49. (1) In this section—

"**financial year**" means each 12 month period ending on the date fixed by the Board.

(2) The Board must, in respect of each financial year, prepare an annual report containing—

(a) a summary of its operations during the financial year; and

(b) financial statements for the financial year; and

(c) appropriate certification of those financial statements; and

(d) a copy of any specific written directions given to the Board during the financial year by the Minister and the Victorian Minister; and

(e) any further information required by the Minister and the Victorian Minister.

(3) The Minister must cause each annual report to be laid before each House of Parliament before the expiration of the seventh sitting day of that House after the report is received by the Minister.

(4) If the Board fails to submit an annual report to the Minister within four months after the end of the financial year, or by any later date that the Minister and the Victorian Minister approve, the Minister must cause each House of Parliament to be advised of that failure and the reasons for it.

Audit

50. (1) The Board must cause its accounts to be audited at least once each year by the Auditor-General or the Victorian Auditor-General or a registered company auditor appointed by the Minister and the Victorian Minister on the recommendation of the Board.

(2) The auditor—

(a) has the right of access at all times to the books of the Board; and

(b) may require from an employee of the Board any information, assistance and explanations necessary for the performance of the duties of the auditor in relation to the audit.

(3) The auditor of the Board's accounts must advise the Minister and the Victorian Minister of any serious deficiencies in the Board's accounts and the nature of those deficiencies.

(4) The Board must pay the costs and expenses of the audit.

Separate accounts for different pools

51. The accounts of the Board relating to—

(a) barley or oats of a season delivered to a pool of the Board in South Australia;

- (b) barley of a season delivered to a pool of the Board in Victoria;
- (c) any other grain of a season delivered to the Board,

must be kept separately.

Copies of annual report to be provided

52. The Board must give a copy of each annual report to the South Australian Farmers Federation Incorporated and to the Victorian Farmers Federation when the report is submitted to the Minister and the Victorian Minister.

Barley Marketing Act 1993

**PART 8
DISSOLUTION OF BOARD**

Dissolution of the Board

53. The Board may be dissolved in accordance with this Part—

- (a) on a poll taken under section 54; or
- (b) at the request of the Board under section 55; or
- (c) on the recommendation of the Minister under section 56(1) and of the Victorian Minister under the corresponding provision of the Victorian Act.

Petition and polls

54. (1) The Minister must, by notice in the *Gazette*, direct that a poll be taken of growers on the question that the Board be dissolved—

- (a) if the Minister is satisfied, on representations made during a permitted period by growers by petition to the Minister, that at least half those growers desire that the Board be dissolved; or
- (b) if the Minister has received notice that representations have been made to the Victorian Minister under a provision of the Victorian Act corresponding to this section.

(2) If subsection (1)(b) applies, the poll must be held on the same day as the poll under the Victorian Act.

(3) Section 58 applies to the taking of a poll under this section.

(4) In this section—

"permitted period" means—

- (a) until the expiration of three years after members of the Board are first appointed to a term of office, the period beginning 18 months after the appointment of the members for that term and ending six months before the end of that term; and
- (b) in any other case, the period beginning six months after the appointment of members of the Board to a term of office and ending six months before the end of that term.

Request

55. (1) The Board may, by instrument under its seal, request the Minister to take action to dissolve the Board.

(2) The Minister may refuse to consider such a request unless the request is confirmed by the Board, by a similar instrument, within such period as the Minister determines.

Winding-up and dissolution

56. (1) If the Minister—

(a) is satisfied—

- (i) that more than one-half of the growers, at a poll conducted in accordance with section 58 and at a poll held on the same day under the Victorian Act, are in favour of the dissolution of the Board; or
- (ii) that a request has been made in accordance with section 55 by the Board; or
- (iii) that it is in the best interest of growers that the Board be dissolved; and

(b) recommends to the Governor that the Minister is satisfied as to the matters mentioned in paragraph (a)(i), (a)(ii) or (a)(iii),

the Governor may, by notice in the *Gazette*, direct the Board to wind-up its affairs.

(2) On a notice under subsection (1) taking effect, the Board must proceed to wind-up its affairs.

(3) If a notice is published under subsection (1), the Governor may, in that notice or by another notice published in the *Gazette*, despite subsection (2), appoint a person to be liquidator for the purpose of the winding-up.

(4) A liquidator appointed under subsection (3) has and may exercise such powers of the Board as may be necessary for the purpose of the winding-up.

(5) A notice under subsection (3) may contain such provisions of a savings or transitional nature as the Governor thinks appropriate in consequence of the appointment.

(6) The reasonable costs and expenses (including remuneration) incurred by or in connection with the appointment of, and exercise of the functions of, a liquidator appointed under this section, as certified from time to time by the Minister, are payable from the funds of the Board.

(7) The members of the Board may not exercise any functions as members while a person holds office as liquidator of the Board.

(8) If the Minister is of the opinion that the affairs of the Board are wound-up, the Governor may, by notice in the *Gazette*, dissolve the Board and all money and other assets of the Board will become the property of bodies or organisations representing growers in such proportions as are specified in the notice and must be dealt with and disposed of as the Governor may direct.

(9) A notice under subsection (1), (3) or (8) takes effect on the date on which it is made or, if a similar order has not been published under the Victorian Act, on the date on which a similar notice is published under that Act.

(10) If the Minister makes a recommendation under subsection (1) because the Minister is satisfied it is in the best interests of growers that the Board be dissolved, the Minister must cause a report on the making of the recommendation to be laid before each House of the Parliament within seven sitting days of that House after the recommendation is made.

Barley Marketing Act 1993

Report to be published in connection with poll

57. As soon as practicable after a notice under this Act is published in the *Gazette* directing that a poll be taken, and before the day fixed for the taking of the poll, the Minister must cause a report relating to the proposal to which the poll relates to be published in such manner as the Minister considers appropriate.

Provisions as to polls

58. (1) The regulations may, subject to this Act, make provision for or with respect to the conduct of polls.

(2) The Electoral Commissioner, or a person employed in the office of and nominated by the Electoral Commissioner, is the returning officer for the poll with all of the powers and functions conferred or imposed on the returning officer by the regulations in relation to the poll.

(3) A roll of growers must be prepared by the Board in accordance with the prescribed requirements (if any).

(4) Despite anything to the contrary in this Act, and if the regulations so provide—

(a) the growers entitled to vote in accordance with the regulations at a poll are the growers who have delivered to the Board 15 tonnes of barley in one of the three years ending on 31 March last preceding the poll and who have such other qualifications as may be prescribed; and

(b) only those growers may vote at the poll.

(5) The regulations may make provision for or with respect to fixing or postponing the date for the taking of a poll.

(6) The regulations may provide that it is compulsory for growers whose names appear on the roll to vote at the poll.

(7) A poll may be taken under this section—

(a) for a purpose contemplated by this Act; or

(b) for the purpose of determining any other question that should, in the Minister's opinion, be submitted to a poll.

Expenses

59. The Board must pay the costs and expenses of a poll under this Act.

PART 9
BARLEY MARKETING CONSULTATIVE COMMITTEE

Establishment of Barley Marketing Consultative Committee

60. The Barley Marketing Consultative Committee is established.

Functions

61. The function of the Committee is to provide advice to the Board about its general policies, particularly with respect to the use of financial reserves and the establishment of joint venture companies.

Members

62. The Committee consists of a Chairperson (who must not be a grower) appointed by the Minister and the Victorian Minister jointly and four other members so appointed of whom—

- (a) two will be persons resident in South Australia nominated by the Minister from a panel of four names of persons (who may—but need not be—members of the South Australian Farmers Federation Incorporated) submitted by the South Australian Farmers Federation Incorporated;
- (b) two will be persons resident in Victoria nominated by the Victorian Minister from a panel of four names submitted by the Victorian Farmers Federation.

Chairperson

63. The Chairperson of the Committee must preside at a meeting of the Committee.

Proceedings of the Committee

64. (1) Three members of the Committee one of whom must be the Chairperson constitute a quorum of the Committee.

(2) The Committee must meet at least once every six months.

(3) A question arising at a meeting must be determined by a majority of votes of members present and voting on that question, and if voting is equal, the Chairperson has a casting, as well as a deliberative, vote.

(4) Subject to this Act, the Committee may regulate its own proceedings.

Remuneration

65. A member of the Committee, unless an officer or employee of the public service, is entitled to be paid from the funds of the Board the remuneration and allowances (if any) fixed by the Minister and the Victorian Minister.

Term of office and re-appointment

66. A member's term of office must not exceed three years and a member is eligible for re-appointment.

Vacancies, resignation, removal from office

67. (1) The office of a member of the Committee becomes vacant if the member—

- (a) without the Committee's approval, fails to attend two consecutive meetings; or
- (b) becomes bankrupt; or
- (c) is convicted of an offence punishable by imprisonment for 12 months or more.

Barley Marketing Act 1993

(2) A member of the Committee may resign by writing delivered to the Minister or the Victorian Minister.

(3) The Minister and the Victorian Minister may remove a member of the Committee from office if the member—

- (a) becomes incapable of performing his or her duties; or
- (b) is negligent in the performance of those duties; or
- (c) engages in improper conduct; or
- (d) is convicted of an offence against this Act or the Victorian Act.

Casual vacancy

68. (1) If the office of a member becomes vacant otherwise than by reason of the expiry of the term of office of the member, a person nominated for appointment to the office in accordance with section 62 must be appointed to fill the vacancy and to hold office, subject to this Act, for the remainder of the term.

(2) If the vacancy occurs within six months of the expiry of the term of office of the member, the office may be left vacant for the remainder of the term.

**PART 10
GENERAL**

Authorised officers

69. The Board may appoint persons as authorised officers for the purposes of this Act.

Powers of authorised officers

70. (1) An authorised officer or any member of the police force may, for the purposes of exercising any power conferred on the officer by this Act or determining whether this Act is being or has been complied with, at any reasonable time and with any necessary assistants—

- (a) enter and search any land, premises, vehicle or place;
- (b) where reasonably necessary, break into or open any part of, or anything in or on, the land, premises, vehicle or place or, in the case of a vehicle, give directions with respect to the stopping or moving of the vehicle;
- (c) search for, inspect and make copies of any documents;
- (d) require the occupier of premises entered and searched under this subsection to produce any documents and to answer questions.

(2) An authorised officer must not exercise the power conferred by subsection (1)(b) in relation to any residential premises except on the consent of the occupier or on the authority of a warrant issued by a justice.

(3) A justice must not issue a warrant under subsection (2) unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.

Offence to obstruct authorised officer

71. A person must not—

- (a) delay or obstruct an authorised officer or member of the police force in the exercise of powers under this Act; or
- (b) without reasonable excuse, refuse or fail to comply with any requirement made under section 70; or
- (c) give false or misleading information in response to a requirement made under section 70.

Penalty: Division 7 fine.

Evidentiary

72. (1) In proceedings for an offence against this Act, if it is alleged that any grain, growing crop, treated grain or product of grain is barley, the court before which those proceedings are brought must, unless it is proved to the contrary, presume that the grain, growing crop treated grain or product of grain (as the case may be) is barley.

(2) In proceedings for an offence against this Act, a document purporting to be signed by the Chairperson or the Deputy Chairperson or chief executive officer of the Board stating—

- (a) that a person is a grower of barley or oats; and

Barley Marketing Act 1993

- (b) that barley or oats bought from the grower were bought without the approval of the Board,

is evidence of the correctness of the statements.

Service

73. A notice or other document required or authorised by this Act or the regulations to be served on or given to a person is to be taken to have been duly served on or given to the person—

- (a) if it is delivered personally to or left with an adult at the last known place of abode or business of the person or, where no adult person is present, it is affixed to a conspicuous part of the premises; or
- (b) if it is sent to the person by post.

Regulations

74. (1) The Governor may, on the recommendation of the Minister after consultation with the Victorian Minister, make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) The regulations—

- (a) may be of general or limited application;
- (b) may apply, adopt or incorporate, with or without modification, any code, standard or other document prepared or approved by a body or authority referred to in the regulation as in force from time to time or as in force at a specified time;
- (c) may differ according to differences in time, place or circumstances;
- (d) may impose a penalty not exceeding a division 9 fine for a breach of the regulations.

(3) Where a code, standard or other document is applied, adopted or incorporated in a regulation—

- (a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at the office of the Board; and
- (b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document apparently certified by or on behalf of the Minister as a true copy of the code, standard or other document.

**PART 11
TRANSITIONAL PROVISIONS**

Repeal of Barley Marketing Act 1947

75. The *Barley Marketing Act 1947* is repealed.

Transitional provisions relating to the Board

76. (1) On the commencement of this section, the Australian Barley Board under the *Barley Marketing Act 1947* ("**the old Board**") goes out of office.

(2) The Board constituted under this Act ("**the new Board**") is the successor in law of the old Board under the *Barley Marketing Act 1947*.

(3) Without affecting the generality of subsection (1), the assets and liabilities of the old Board as at the commencement of this section are assets and liabilities of the new Board.

(4) On and after that commencement, unless the context otherwise requires, a reference in any Act or subordinate instrument or in any document whatever to the old Board is a reference to the new Board.

(5) Any person who, immediately before that commencement, was employed by the old Board becomes, on that commencement, an employee of the new Board with the same rights and entitlements as he or she had before that commencement.

Barley Marketing Act 1993**SCHEDULE***Grains*

<i>Common Name</i>	<i>Genera</i>
Barley	Hordeum
Oats	Avena
Wheat	Triticum
Sorghum	Sorghum
Maize	Zea
Rye	Secale
Triticale	Triticale
Millet	Panicum Echinochloa Setaria Pennisetum Phalaris
Buckwheat	Fagopyrum
Oilseeds	Brassica Carthamus Helianthus Linum
Soybeans	Glycine
Peas	Cajanus Pisum Cicer Lathyrus Vigna
Lupins	Lupinus
Lentils	Lens
Beans	Vigna Canavalia Cyamopsis Macrotyloma Lablab Mucuna Phaseolus Psophocarpus Vicia

APPENDIX 1

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 5(1):	amended by 6, 1998, s. 2
Section 33(3):	amended by 37, 1998, s. 3(a)-(c)
Section 33(4):	amended by 37, 1998, s. 3(d)
Section 33(4a):	inserted by 37, 1998, s. 3(e)
Section 33(5):	amended by 37, 1998, s. 3(f)
Section 40:	repealed by 44, 1998, s. 4
Part 5 heading:	amended by 37, 1998, s. 4
Section 42:	repealed by 37, 1998, s. 5

Barley Marketing Act 1993**APPENDIX 2****DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of assent of this Act divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.