

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 2 December 1999.

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.

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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

Barley Marketing (Miscellaneous) Amendment Act 1999 No. 31 of 1999 [Assented to 10 June 1999]⁴

Barley Marketing (Miscellaneous No. 2) Amendment Act 1999 No. 77 of 1999 [Assented to 2 December 1999]

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.

⁴ Came into operation 1 July 1999: *Gaz.* 1 July 1999, p. 2.

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.

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—

"**ABB Grain Ltd**" means ABB Grain Ltd A.C.N. 084 962 130;

"**ABB Grain Export Ltd**" means ABB Grain Export Ltd A.C.N. 084 962 112;

"**authorised receiver**" means a person authorised under Part 4 to receive barley on behalf of ABB Grain Export Ltd;

"**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 as in force before the commencement of section 17 of the *Barley Marketing (Miscellaneous) Amendment Act 1999*;

"**Board instrument**" means an instrument (including a legislative instrument other than this Act) subsisting immediately before the relevant date—

- (a) to which the Board was a party; or
- (b) that was given to or in favour of the Board; or
- (c) that refers to the Board; or
- (d) under which—
 - (i) money is, or may become, payable to or by the Board; or
 - (ii) other property is to be, or may become liable to be, transferred to or by the Board;

"**grower**" means—

- (a) a person by whom or on whose behalf, barley is grown or produced for sale; and

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- (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;

"**instrument**" includes a document and an oral agreement;

"**liabilities**" means all liabilities, duties and obligations, whether actual, contingent or prospective;

"**pooled grain**" means barley of a season commencing before 1 July 1999 delivered to the Board that became part of a pool established by the Board;

"**property**" means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

"**relevant date**" means the date fixed under subsection (2) or 30 June 1999, whichever is the earlier;

"**rights**" means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

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

"**transferred property**" means property, rights and liabilities that, under Part 11, have vested in, or become liabilities of, ABB Grain Ltd or ABB Grain Export Ltd;

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

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

(2) The Minister, after consultation with the Victorian Minister, may, by notice published in the *Gazette*, fix a date as the relevant date for the purposes of Part 11.

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Application of Part 4

5. Part 4 applies to barley harvested in the season commencing on 1 July 1993 and each of the next seven seasons but does not apply to barley grown in a later season.

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.

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**PART 4
MARKETING**

Delivery of barley

33. (1) Subject to this Act, a person must not sell or deliver barley to a person other than ABB Grain Export Ltd.

(2) A person must not transport barley which has 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 retained by the grower for use on the farm where it is grown; or
- (b) barley purchased from ABB Grain Export Ltd;
- (c) barley sold or delivered for consumption in Australia;
- (d) barley which does not meet the standards determined by ABB Grain Export Ltd.

(4) A person, other than ABB Grain Export Ltd, must not buy barley from another person except for consumption in Australia.

(5) Subsections (1) and (4) do not apply to a sale, delivery or purchase of barley for consumption outside Australia if the barley is packed in a bag or in a container not capable of holding more than 50 tonnes of barley and the barley—

- (a) meets the prescribed standards (if any); and
- (b) is so packed in accordance with the prescribed requirements (if any).

(5a) Subsections (1) and (4) do not apply to a sale, delivery or purchase of propagating material of a plant variety covered by a plant breeder's right if the sale, delivery or purchase is for use of the propagating material for a purpose involving the production or reproduction of the propagating material (terms used in this subsection having the same meanings as in the *Plant Breeder's Rights Act 1994* of the Commonwealth as in force from time to time).

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

- (a) for a first offence—\$500 000;
- (b) for a subsequent offence—\$1 000 000.

Authorisation

33A. For the purposes of Part IV of the *Trade Practices Act 1974* of the Commonwealth and the Competition Code, the following are specifically authorised:

- (a) the export of barley by ABB Grain Export Ltd;
- (b) anything done by ABB Grain Export Ltd in connection with the export of barley.

Property in barley passes to ABB Grain Export Ltd on delivery

34. On delivery of barley to ABB Grain Export Ltd, unless it is otherwise agreed or the barley does not meet the standards determined by ABB Grain Export Ltd—

- (a) the property in the barley immediately passes to ABB Grain Export Ltd; and
- (b) the owner of the barley is to be taken to have sold it to ABB Grain Export Ltd at the price for the time applicable.

Authorised receivers

35. (1) ABB Grain Export Ltd may, by instrument, appoint a person to be an authorised receiver for the purposes of this Act.

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

(3) Delivery of barley to an authorised receiver is, for the purposes of this Act, delivery to ABB Grain Export Ltd.

(4) An authorised receiver—

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

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Declaration of season of barley delivered to ABB Grain Export Ltd

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

Maximum penalty: \$10 000.

(2) For the purposes of this section—

"**declared day**" means the day which, in respect of a season, is declared by ABB Grain Export Ltd by notice in the *Gazette*, to be the final day for delivery of barley of that season.

ABB Grain Export Ltd to market barley

37. (1) ABB Grain Export Ltd must market or otherwise dispose of, to the best advantage, all barley delivered to it under this Act.

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No claim against ABB Grain Export Ltd in respect of rights in barley

41. A person does not have a claim against ABB Grain Export Ltd in respect of any right, title or interest in barley delivered to ABB Grain Export Ltd.

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**PART 10
GENERAL**

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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 maximum penalty of \$10 000 for a breach of a regulation.

(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
TRANSFER OF PROPERTY**

Transfer of property and dissolution of Board

75. (1) On the relevant date—

- (a) the property and rights of the Board, wherever located, other than property and rights in pooled grain or which relate to pooled grain or in shares in ABB Grain Ltd, vest in ABB Grain Ltd; and
- (b) the liabilities of the Board, wherever located, other than liabilities in respect of pooled grain, become liabilities of ABB Grain Ltd.

(2) On the relevant date—

- (a) the property and rights of the Board, wherever located, in pooled grain or which relate to pooled grain vest in ABB Grain Export Ltd; and
- (b) the liabilities of the Board, wherever located, in respect of pooled grain, become liabilities of ABB Grain Export Ltd.

(3) The Board is dissolved on the day after the relevant date.

Issue and vesting of shares

76. (1) Before the relevant date, in consideration for the transfer of property of the Board under section 75—

- (a) a number of A class shares in ABB Grain Ltd are to be issued to the Board, being a number equal to the number of persons who are to have shares vested in them in accordance with an arrangement determined by the Minister and the Victorian Minister, notice of which has been published in the *Gazette*; and
- (b) a number of B class shares in ABB Grain Ltd are to be issued to the Board, being a number equal to the sum of the number of those shares that are to be vested in persons in accordance with an arrangement determined by the Minister and the Victorian Minister, notice of which has been published in the *Gazette*.

(2) On the day after the relevant date—

- (a) a number of A class shares in ABB Grain Ltd are vested in the persons who are to have such shares vested in them in accordance with the arrangement referred to in subsection (1)(a), each such person receiving one such share;
- (b) a number of B class shares in ABB Grain Ltd are vested in the persons who are to have such shares vested in them in accordance with the arrangement referred to in subsection (1)(b), each such person receiving the number of such shares determined in accordance with that arrangement.

(3) Each person in whom a share is vested under this section becomes a member of ABB Grain Ltd and will be taken to have consented to be such a member.

(4) In this section—

"A class share" means an A class share as provided for in the constitution of ABB Grain Ltd;

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"**B class share**" means a B class share as provided for in the constitution of ABB Grain Ltd.

(5) This section has effect despite anything in the *Corporations (South Australia) Act 1990*.

Substitution of party to agreement

77. If, under section 75, rights and liabilities of the Board under an agreement vest in, or become liabilities of, ABB Grain Ltd or ABB Grain Export Ltd—

- (a) ABB Grain Ltd or ABB Grain Export Ltd, as the case requires, becomes, on the relevant date, a party to the agreement in place of the Board; and
- (b) on and after the relevant date, the agreement has effect as if ABB Grain Ltd or ABB Grain Export Ltd, as the case requires, had always been a party to the agreement.

Board instruments

78. Each Board instrument relating to transferred property continues to have effect according to its tenor on and after the relevant date as if a reference in the instrument to the Board were a reference to ABB Grain Ltd or ABB Grain Export Ltd, as the case requires.

Proceedings

79. If, immediately before the relevant date, proceedings (including arbitration proceedings) relating to transferred property to which the Board was a party were pending or existing in any court or tribunal, then, on and after the relevant date, ABB Grain Ltd or ABB Grain Export Ltd, as the case requires, is substituted for the Board as a party to the proceedings and has the same rights in the proceedings as the Board.

Stamp duty

80. No stamp duty is chargeable in respect of anything done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part.

Staff

81. A person who, immediately before the relevant date, was an employee of the Board—

- (a) becomes, on that date, an employee of ABB Grain Ltd with the same rights and entitlements as he or she had immediately before that date; and
- (b) is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the Board.

Operation of this Part does not place a person in breach of contract, etc.

82. To avoid doubt, the operation of this Part is not to be regarded as—

- (a) placing a person in breach of contract or confidence; or
- (b) otherwise making a person guilty of a civil wrong; or
- (c) placing a person in breach of any contractual provision prohibiting, restricting or regulating—
 - (i) the assignment or transfer of any asset, liability, right or obligation; or
 - (ii) the disclosure of any information; or
- (d) releasing any surety from any of the surety's obligations in relation to a liability or obligation that is transferred under this Part.

Annual reports

83. ABB Grain Ltd must give to the Minister and the Victorian Minister a copy of its annual report under the Corporations Law together with such information about the operations of ABB Grain Ltd or ABB Grain Export Ltd under this Act or the Victorian Act as the Minister and the Victorian Minister require.

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APPENDIX**LEGISLATIVE HISTORY****Repeals**

The *Barley Marketing Act 1993* repealed the *Barley Marketing Act 1947*.

Legislative History

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

Section 3(1):	definitions of "ABB Grain Ltd" and "ABB Grain Export Ltd" inserted by 31, 1999, s. 3(a) definition of "authorised receiver" substituted by 31, 1999, s. 3(a) definition of "Board" amended by 31, 1999, s. 3(b) definition of "Board instrument" inserted by 31, 1999, s. 3(c) definitions of "Committee" and "grain" repealed by 31, 1999, s. 3(c) definitions of "instrument" and "liabilities" inserted by 31, 1999, s. 3(d) definitions of "marketing" and "oats" repealed by 31, 1999, s. 3(d) definitions of "pooled grain", "property", "relevant date" and "rights" inserted by 31, 1999, s. 3(d) definitions of "Selection Committee" and "South Australian Department" repealed by 31, 1999, s. 3(e) definition of "transferred property" inserted by 31, 1999, s. 3(e) definition of "Victorian Department" repealed by 31, 1999, s. 3(f)
Section 3(2):	substituted by 31, 1999, s. 3(g)
Section 4:	repealed by 31, 1999, s. 4
Section 5:	amended by 6, 1998, s. 2; substituted by 31, 1999, s. 4
	Part 2 comprising ss. 8 - 26 and heading repealed by 31, 1999, s. 5
	Part 3 comprising ss. 27 - 32 and heading repealed by 31, 1999, s. 5
Section 33(1):	amended by 31, 1999, s. 6(a), (b)
Section 33(2):	amended by 31, 1999, s. 6(c)
Section 33(3):	amended by 37, 1998, s. 3(a)-(c); 31, 1999, s. 6(d), (e)
Section 33(4):	amended by 37, 1998, s. 3(d); substituted by 31, 1999, s. 6(f)
Section 33(4a):	inserted by 37, 1998, s. 3(e)
Section 33(5):	amended by 37, 1998, s. 3(f); substituted by 31, 1999, s. 6(f)
Section 33(5a):	inserted by 77, 1999, s. 2
Section 33(6):	substituted by 31, 1999, s. 6(f)
Section 33A:	inserted by 31, 1999, s. 7
Section 34:	substituted by 31, 1999, s. 8
Section 35(1):	amended by 31, 1999, s. 9(a)
Section 35(2):	amended by 31, 1999, s. 9(c)
Section 35(3):	amended by 31, 1999, s. 9(b), (c)
Section 35(4):	amended by 31, 1999, s. 9(b)-(d)
Section 35(5):	amended by 31, 1999, s. 9(b), (c); repealed by 77, 1999, s. 3
Section 36(1):	amended by 31, 1999, s. 10(a)-(c)
Section 36(2):	definition of "declared day" amended by 31, 1999, s. 10(a), (d)
Section 37(1):	amended by 31, 1999, s. 11(a), (b)
Section 37(2):	repealed by 31, 1999, s. 11(c)

Sections 38 and 39:	repealed by 31, 1999, s. 12
Section 40:	repealed by 44, 1998, s. 4
Section 41:	amended by 31, 1999, s. 13
	Part 5 comprising s. 42, 43 and heading amended by 37, 1998, ss. 4, 5; repealed by 31, 1999, s. 14
	Part 6 comprising ss. 44-47 and heading repealed by 31, 1999, s. 14
	Part 7 comprising ss. 48-52 and heading repealed by 31, 1999, s. 14
	Part 8 comprising ss. 53-59 and heading repealed by 31, 1999, s. 14
	Part 9 comprising ss. 60-68 and heading repealed by 31, 1999, s. 14
Sections 69 - 73:	repealed by 31, 1999, s. 15
Section 74(2):	amended by 31, 1999, s. 16
	Part 11 comprising ss. 75, 76 and heading repealed and ss. 75 - 83 and heading inserted in its place by 31, 1999, s. 17
Schedule:	repealed by 31, 1999, s. 18