

South Australia

Barley Exporting Act 2007

An Act relating to the exporting of barley; to repeal the *Barley Marketing Act 1993*; to make a related amendment to the *Essential Services Commission Act 2002*; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Barley Exporting Act 2007*.

2—Commencement

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

3—Interpretation

In this Act, unless the contrary intention appears—

barley means the grain derived from the barley plant in unprocessed form but does not include grain excluded from the ambit of this definition by the regulations;

barley exporter means a person licensed under Part 2 to export barley and includes (where the context requires) a person who has been licensed to export barley under that Part whose licence has been suspended or cancelled or has expired;

barley plant means the cereal plant of the genus *Hordeum*;

Commission means the Essential Services Commission established under the *Essential Services Commission Act 2002*;

District Court or *Court* means the Administrative and Disciplinary Division of the District Court;

export of barley means export to which this Act applies—see section 4;

licence means a licence to export barley issued under Part 2.

4—Application of Act

- (1) This Act applies to the export of barley from a South Australian port to a destination outside Australia.
- (2) This Act does not apply to the export of barley that is packed in a bag or container capable of holding not more than 50 tonnes of barley.

Part 2—Regulation of barley exporting

Division 1—Declaration of barley exporting as regulated industry

5—Declaration of barley exporting as regulated industry

Barley exporting constitutes a regulated industry for the purposes of the *Essential Services Commission Act 2002*.

Division 2—Licensing of barley exporters

6—Obligation of barley exporters to be licensed

A person must not export barley except as authorised by a licence issued under this Part.

Maximum penalty:

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

7—Application for licence

- (1) An application for the issue of a licence to export barley must—
 - (a) be made to the Commission in a form approved by the Commission; and
 - (b) contain the information specified in the form.
- (2) The applicant must pay to the Commission an application fee fixed by the Minister of an amount that the Minister considers appropriate to meet the reasonable costs of determining the application.
- (3) The applicant must give the Commission further relevant information requested by the Commission.

8—Consideration of application

- (1) The Commission must consider an application for the issue of a licence to export barley and may, subject to this Division, issue, or refuse to issue, the licence.
- (2) The Commission must have regard to the general factors specified in Part 2 of the *Essential Services Commission Act 2002* and, subject to this section, may only issue a licence if satisfied that—
 - (a) the applicant is a suitable person to hold the licence; and
 - (b) the applicant will be able to meet reasonably foreseeable obligations under contracts for the export of barley; and
 - (c) the grant of the licence would be consistent with criteria (if any) prescribed by regulation for licences to export barley.
- (3) In deciding whether an applicant is a suitable person to hold a licence, the Commission may consider—
 - (a) the applicant's previous commercial and other dealings and the standard of honesty and integrity shown in those dealings; and

- (b) the financial, technical and human resources available to the applicant; and
- (c) the officers and, if applicable, major shareholders of the applicant and their previous commercial and other dealings and the standard of honesty and integrity shown in those dealings (including breaches of statutory and other legal obligations); and
- (d) any other matter prescribed by regulation.

9—Authority conferred by licence

A licence authorises the person named in the licence to export barley in accordance with the terms and conditions of the licence.

10—Term of licence

A licence may be issued for an indefinite period or for a term specified in the licence.

11—Licence fees and returns

- (1) A person is not entitled to the issue of a licence to export barley unless the person first pays to the Commission the annual licence fee, or the first instalment of the annual licence fee, as the case may require.
- (2) The holder of a licence issued for a term of 2 years or more must—
 - (a) in each year lodge with the Commission, before the date prescribed for that purpose, an annual return containing the information required by the Commission by condition of the licence or by written notice; and
 - (b) in each year (other than a year in which the licence is due to expire) pay to the Commission, before the date prescribed for that purpose, the annual licence fee, or the first instalment of the annual licence fee, as the case may require.
- (3) The annual licence fee for a licence is the fee fixed, from time to time, by the Minister in respect of that licence as an amount that the Minister considers to be a reasonable contribution towards administrative costs.
- (4) The Minister may take the following matters into account (on the basis of any estimates or determinations made by the Minister) when considering what constitutes a reasonable contribution towards administration costs by the holder of a licence:
 - (a) the estimated administrative costs for the next year;
 - (b) the likely extent to which administrative costs are apportionable to the activities of the holder of the licence;
 - (c) any other matter that the Minister thinks fit.
- (5) An annual licence fee may, if the Commission so determines, be paid in equal instalments at intervals fixed by the Commission.
- (6) If the holder of a licence fails to lodge the annual return or pay the annual licence fee (or an instalment of the annual licence fee) in accordance with this section, the Commission may, by written notice, require the holder to make good the default and, in addition, to pay to the Commission the amount prescribed as a penalty for default.
- (7) An annual licence fee (including any instalment of an annual licence fee or any penalty for default) payable under this section is recoverable as a debt due to the Crown.

(8) In this section—

administrative costs means—

- (a) the costs of administration of this Act; and
- (b) any costs of administration of the *Essential Services Commission Act 2002* relating to barley exporting; and
- (c) other costs prescribed by regulation;

holder of a licence includes the holder of a licence that has been suspended.

12—Licence conditions

- (1) The Commission may grant a licence to export barley subject to any conditions that the Commission thinks appropriate.
- (2) Without limiting the conditions that may be imposed under subsection (1), the conditions may include the following:
 - (a) a condition requiring compliance with applicable codes or rules made under the *Essential Services Commission Act 2002* as in force from time to time;
 - (b) a condition relating to the barley exporter's financial or other capacity to continue operations under the licence;
 - (c) a condition requiring the barley exporter to include specified standard terms and conditions in contracts for the export of barley;
 - (d) a condition requiring the barley exporter to have all or part of the operations authorised by the licence audited and to report the results of the audit to the Commission;
 - (e) a condition requiring the barley exporter to notify the Commission about changes to officers and, if applicable, major shareholders of the exporter;
 - (f) a condition requiring the barley exporter to provide, in the manner and form determined by the Commission, such other information as the Commission may from time to time require.
- (3) The Commission may, at the request of a barley exporter or on its own initiative, by notice in writing to the exporter, vary or revoke a condition of the licence or impose a new condition.

13—Offence to contravene licence conditions

A barley exporter must not contravene a condition of its licence.

Maximum penalty: \$50 000.

14—Variation of licence

- (1) The Commission may vary the terms or conditions of a barley exporter's licence by written notice to the exporter as the Commission considers appropriate.
- (2) A variation may only be made—
 - (a) on application by the barley exporter or with the exporter's agreement; or

- (b) after giving the barley exporter reasonable notice of the proposed variation and allowing the exporter a reasonable opportunity to make representations about the proposed variation.

15—Surrender of licence

A barley exporter may, by written notice given to the Commission, surrender its licence.

16—Register of licences

- (1) The Commission must keep a register of the licences currently held by barley exporters under this Act.
- (2) The register must include—
 - (a) the terms and conditions of each licence; and
 - (b) other information required under the regulations.
- (3) A person may, without payment of a fee, inspect the Register.

17—Suspension or cancellation of licences

- (1) The Commission may, if satisfied that—
 - (a) the holder of a licence obtained the licence improperly; or
 - (b) the holder of a licence has been guilty of a material contravention of a condition of the licence; or
 - (c) the holder of a licence has ceased to export barley; or
 - (d) there has been any act or default or change of circumstances such that the holder of a licence would no longer be entitled to the issue of such a licence,suspend or cancel the licence with effect from a specified date.
- (2) A suspension under this section may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Commission.
- (3) Before the Commission acts under this section, the Commission must—
 - (a) notify the holder of the licence in writing of the proposed action specifying the reasons for the proposed action; and
 - (b) allow the holder of the licence at least 14 days within which to make submissions to the Commission in relation to the proposed action.

Part 3—Reviews and appeals

18—Review of licensing decisions by Commission

- (1) An application may be made to the Commission—
 - (a) by an applicant for the issue or variation of the terms or conditions of a licence under Part 2 for review of the decision by the Commission to refuse the application; or

- (b) by a barley exporter for review of a decision of the Commission under Part 2 to suspend or cancel the exporter's licence or to vary the terms or conditions of the exporter's licence.
- (2) An application for review must—
 - (a) be in writing; and
 - (b) set out the decision to which the application relates; and
 - (c) set out in detail the grounds on which the applicant seeks review and the decision sought on the review; and
 - (d) be accompanied by any information that the applicant considers should be taken into account by the Commission on the review; and
 - (e) be lodged with the Commission within 10 working days after written notice of the decision is given to the applicant.
 - (3) The Commission may stay the operation of the decision to which the application relates.
 - (4) A review must be decided within 4 weeks of the application being lodged.
 - (5) If a review is not decided within that period, the Commission is to be taken to have confirmed the decision.
 - (6) After considering the application, the Commission may confirm, amend or substitute the decision.
 - (7) The Commission must give the applicant written notice of the decision, and the reasons for the decision, on the review.

19—Appeal

- (1) An applicant for review who is dissatisfied with a decision as confirmed, amended or substituted by the Commission on the review under this Part may appeal against the decision to the District Court.
- (2) The Court must sit with experts selected in accordance with Schedule 1.
- (3) An appeal must be made within 10 working days after receipt of the written notice of the decision appealed against or, if the Commission failed to make a decision on the review within the allowed period, within 10 working days after the end of that period.
- (4) The Court may, on an appeal—
 - (a) affirm the decision appealed against; or
 - (b) remit the matter to the Commission for consideration or further consideration in accordance with any directions of the Court.
- (5) An appeal under the *District Court Act 1991* will lie against a decision of the Court under this section on a question of law (but not on a question of fact).

20—Minister's power to intervene

The Minister may intervene, personally or by counsel or other representative, in a review or appeal under this Part for the purpose of introducing evidence, or making submissions, on any question relevant to the public interest.

Part 4—Miscellaneous

21—Advisory committee

- (1) The Minister must establish an advisory committee to advise the Minister on the operation of, and any matter arising under, this Act.
- (2) The advisory committee must consist of at least 7 but not more than 10 persons, of whom—
 - (a) 1 (the presiding member) must have knowledge of, or experience in, but be independent of, the barley industry; and
 - (b) at least 2 must be barley growers; and
 - (c) at least 1 (who must not be a barley grower) must have knowledge of, or experience in, a particular area of grain handling services; and
 - (d) at least 1 must have knowledge of, or experience in, the fields of law, commerce or economics; and
 - (e) at least 1 must represent the Government.
- (3) The members of the advisory committee will hold office on such terms and conditions as the Minister thinks fit.
- (4) The Minister must ensure that a meeting of the advisory committee is convened at least twice in each year.
- (5) The procedures to be observed in relation to the conduct of the business of the advisory committee will be—
 - (a) as prescribed by the regulations;
 - (b) insofar as the procedure is not determined under paragraph (a)—as determined by the Minister;
 - (c) insofar as the procedure is not determined under paragraph (a) or (b)—as determined by the committee.
- (6) The presiding member of the advisory committee must, as soon as practicable after a meeting of the committee, make a report to the Minister on the business transacted at, and any advice arising from, the meeting.
- (7) The Minister must, as soon as practicable after receipt of a report from the advisory committee, provide a copy of the report to the Commission.
- (8) The Commission must, when exercising its functions under this Act, take into account the advisory committee's report.

22—Regulations

The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

23—Review and expiry of Act

- (1) The Minister must, within 2 years after the commencement of this Act, cause a review of the Act to be undertaken and the outcome of the review to be incorporated into a report.
- (2) The Minister must, within 6 sitting days after receipt of the report, ensure that a copy of the report is laid before each House of Parliament.
- (3) This Act will expire on the third anniversary of its commencement.
- (4) On the expiry of this Act, the amendment made by Schedule 3 of this Act to the *Essential Services Commission Act 2002* is cancelled and the text of that Act is restored to the form in which that statutory text would have existed if this Act had not been passed.

Schedule 1—Appointment and selection of experts for District Court

- 1 The Minister must establish a panel of experts who may sit as assessors with the District Court consisting of persons with knowledge of, or experience in, the barley exporting industry, grain handling services generally or the fields of commerce or economics.
- 2 A member of a panel is to be appointed by the Minister for a term of office not exceeding 3 years and on conditions determined by the Minister and specified in the instrument of appointment.
- 3 A member of a panel is, on the expiration of a term of office, eligible for reappointment.
- 4 Subject to subclause 5 and except in the case of an appeal limited to a question of law, a judicial officer of the Court must select 2 members from the panel to sit with the Court on an appeal.
- 5 A member of a panel who has a direct or indirect pecuniary or other interest in a matter before the Court is disqualified from participating in the hearing of the matter.
- 6 Subclause 5 does not apply if the interest is as a result of the supply of goods or services that are available to members of the public on the same terms and conditions.
- 7 If a member of a panel sitting with the Court dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other member of the panel sitting with the Court may, if the judicial officer so determines, continue and complete the proceedings.
- 8 If proceedings are reheard, the Court may have regard to any record of proceedings made in the earlier proceedings (including a record of evidence taken in those proceedings).

Schedule 2—Repeal of *Barley Marketing Act 1993*

1—Repeal

The *Barley Marketing Act 1993* is repealed.

Schedule 3—Related amendment of *Essential Services Commission Act 2002*

1—Amendment of section 3—Interpretation

Section 3, definition of *essential services*—after paragraph (e) insert:

- (ea) grain handling services;