

South Australia



BARLEY MARKETING (MISCELLANEOUS) AMENDMENT ACT 1999

No. 31 of 1999

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ELIZABETHAE II REGINAE

A.D. 1999

No. 31 of 1999

An Act to amend the Barley Marketing Act 1993.

[Assented to 10 June 1999]

The Parliament of South Australia enacts as follows:

Short title

- 1. (1) This Act may be cited as the *Barley Marketing (Miscellaneous) Amendment Act 1999*.
- (2) The *Barley Marketing Act 1993* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 3—Definitions

- 3. Section 3 of the principal Act is amended—

- (a) by striking out the definition of "authorised receiver" in subsection (1) and substituting the following definitions:

"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;;

- (b) by inserting in the definition of "Board" in subsection (1) after "Act" "as in force before the commencement of section 17 of the *Barley Marketing (Miscellaneous) Amendment Act 1999*";

- (c) by striking out the definitions of "Committee" and "grain" from subsection (1) and substituting the following definition:

"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;;

- (d) by striking out the definitions of "marketing" and "oats" from subsection (1) and substituting the following definitions:

"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;;

- (e) by striking out the definitions of "Selection Committee" and "South Australian Department" from subsection (1) and substituting the following definition:

"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;;

- (f) by striking out the definition of "Victorian Department" from subsection (1);

- (g) by striking out subsection (2) and substituting the following subsection:

(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.

Substitution of ss. 4 and 5

4. Sections 4 and 5 of the principal Act are repealed and the following section is substituted:

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.

Repeal of Parts 2 and 3

5. Parts 2 and 3 of the principal Act are repealed.

Amendment of s. 33—Delivery of barley

6. Section 33 of the principal Act is amended—

- (a) by striking out from subsection (1) "or oats";
- (b) by striking out from subsection (1) "the Board" and substituting "ABB Grain Export Ltd";
- (c) by striking out from subsection (2) "or oats";
- (d) by striking out from subsection (3)(a) "or oats";
- (e) by striking out paragraphs (b) to (f) (inclusive) of subsection (3) and substituting the following paragraphs:
 - (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.;
- (f) by striking out subsections (4) to (6) (inclusive) and substituting the following subsections:
 - (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).
 - (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.

Insertion of new section

7. The following section is inserted in the principal Act after section 33:

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.

Substitution of s. 34

8. Section 34 of the principal Act is repealed and the following section is substituted:

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.

Amendment of s. 35—Authorised receivers

9. Section 35 of the principal Act is amended—

- (a) by striking out from subsection (1) "The Board" and substituting "ABB Grain Export Ltd";
- (b) by striking out "the Board", wherever occurring, and substituting, in each case, "ABB Grain Export Ltd";
- (c) by striking out "or oats" wherever occurring;
- (d) by striking out from subsection (4)(a) "and oats".

Amendment of s. 36—Declaration of season of barley delivered to ABB Grain Export Ltd

10. Section 36 of the principal Act is amended—

- (a) by striking out "or oats" wherever occurring;
- (b) by striking out from subsection (1) "were harvested" and substituting "was harvested";
- (c) by striking out the penalty provision from subsection (1) and substituting the following penalty provision:

Maximum penalty: \$10 000.;

- (d) by striking out from the definition of "declared day" in subsection (2) "the Board" and substituting "ABB Grain Export Ltd".

Amendment of s. 37—ABB Grain Export Ltd to market barley

11. Section 37 of the principal Act is amended—

- (a) by striking out from subsection (1) "The Board" and substituting "ABB Grain Export Ltd";
- (b) by striking out from subsection (1) "and oats";
- (c) by striking out subsection (2).

Repeal of ss. 38 and 39

12. Sections 38 and 39 of the principal Act are repealed.

Amendment of s. 41—No claim against ABB Grain Export Ltd in respect of rights in barley

13. Section 41 of the principal Act is amended—

- (a) by striking out "the Board", wherever occurring, and substituting, in each case, "ABB Grain Export Ltd";
- (b) by striking out "or oats".

Repeal of Parts 5 to 9

14. Parts 5 to 9 (inclusive) of the principal Act are repealed.

Repeal of ss. 69 to 73

15. Sections 69 to 73 (inclusive) of the principal Act are repealed.

Amendment of s. 74—Regulations

16. Section 74 of the principal Act is amended by striking out paragraph (d) of subsection (2) and substituting the following paragraph:

- (d) may impose a maximum penalty of \$10 000 for a breach of a regulation.

Substitution of Part 11

17. Part 11 of the principal Act is repealed and the following Part is substituted:

**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;

"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.

Repeal of Schedule

18. The Schedule of the principal Act is repealed.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor