

Barley Marketing Bill

No.

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SCHEDULE 1

Grains

LEGISLATIVE ASSEMBLY

Read 1° 10 March 1993

(Brought in by Mr McGrath (Wimmera) and Mr Gude)

A BILL

relating to the marketing of barley and for other purposes.

Barley Marketing Act 1993

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

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The purpose of this Act is to make new provision for the joint South Australian and Victorian Australian Barley Board and for the marketing of barley.

2. Commencement

This Act comes into operation on a day or days to be proclaimed.

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3. Definitions

In this Act—

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984.**)

- “authorised receiver”** means a person authorised under Part 4 to receive barley 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; 5
- “Board”** means the Australian Barley Board constituted under this Act; 10
- “Committee”** means the Barley Marketing Consultative Committee appointed under Part 9;
- “grain”** means any variety, species or kind of the genera specified in Schedule 1 or any other genera, or variety, species or kind of genera, declared by notice under section 4; 15
- “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— 20
- but does not include a person who grows or produces barley for sale as an employee of another person; 25
- “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; 30
- “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; 35

“**South Australian Act**” means the **Barley Marketing Act 1993** of South Australia as in force for the time being;

5 “**South Australian Minister**” means the Minister of the Crown administering the South Australian Act;

10 “**South Australian Department**” means the Department of Primary Industries of South Australia or, if the name of that Department is changed, that Department by its name for the time being;

15 “**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.

4. Grain

20 (1) The Minister and the South Australian Minister may, by notice published in the Government Gazette, declare any genera or variety, species or kind of genera to be grain for the purposes of this Act.

(2) The Minister and the South Australian Minister may, by notice published in the Government Gazette, vary or revoke a notice under sub-section (1).

5. Application of Parts 4 and 5

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

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

6. Joint South Australian and Victorian Scheme

- (1) It is declared that it is the intention of the Parliament that this Act and the South Australian Act implement a joint South Australian and Victorian Scheme for marketing barley grown in South Australia or Victoria. 5
- (2) It is also declared that it is the intention of the Parliament that this Act not be amended in any manner that may affect the operation of the joint Scheme except on the joint recommendation of the Minister and the South Australian Minister. 10

7. Delegation by Minister

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 South Australian Minister; or 15
- (b) this power of delegation.

PART 2—AUSTRALIAN BARLEY BOARD**8. The Board**

- (1) The Australian Barley Board is established. 20
- (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; 25
- (d) may do and suffer all other acts and things that a body corporate may by law do and suffer.

9. Board not representing Crown

The Board does not represent, and is not part of, the Crown. 30

10. Common seal

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.

5 **11. Members**

(1) The Board consists of 8 members appointed jointly by the Minister and the South Australian Minister of whom—

(a) one shall be a person nominated by the Minister;

10 (b) one shall be a person nominated by the South Australian Minister;

15 (c) 2 shall be persons by whom or on whose behalf barley is grown in South Australia, elected in accordance with the regulations under the South Australian Act;

(d) one shall be a person by whom or on whose behalf barley is grown in Victoria nominated by the Selection Committee;

20 (e) 2 shall be persons with a knowledge of the barley industry, one of whom is resident in Victoria, nominated by the Selection Committee;

(f) one shall be a person nominated by the Selection Committee with expertise in one or more of the following—

25 (i) business management;

(ii) finance;

(iii) exporting;

(iv) product promotion;

30 (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.

12. Selection Committee

- (1) The Selection Committee consists of 5 persons appointed jointly by the Minister and the South Australian Minister of whom—
- (a) 2 shall be persons appointed from a panel of not less than 4 persons nominated by the South Australian Farmers Federation Incorporated or any other body that in the opinion of the Ministers, has replaced that body; 5
 - (b) 2 shall be persons appointed from a panel of not less than 4 persons nominated by the Victorian Farmers Federation or any other body that in the opinion of the Ministers, has replaced that body; 10
 - (c) one, who shall be the chairperson of the Committee, shall be jointly nominated by the chief executive officer of the Victorian Department and the chief executive officer of the South Australian Department. 15
- (2) A body referred to in sub-section (1) (a) or (b) may submit panels of names for the purposes of sub-section (1) within such period as the Minister and the South Australian Minister request. 20
- (3) If a body referred to in sub-section (1) (a) or (b) fails to submit a panel of names in accordance with a request, the Minister and the South Australian Minister may appoint such persons as they determine to fill the vacancies. 25
- (4) The members of the Selection Committee shall be appointed for such period and on such terms and conditions, including payment of allowances, as the Minister and the South Australian Minister determine. 30
- (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. 35
- (6) The Selection Committee may engage consultants to assist it in nominating persons for appointment as members of the Board.

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- (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.

13. *Selection criteria*

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- (1) The Minister and the South Australian 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 South Australian Minister must give a copy of the determination, including a determination varying or revoking a determination, to the chairperson of the Committee.
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14. *Chairperson*

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The Minister and the South Australian Minister must appoint one of the members of the Board appointed under section 11 (1) (a) or (b) as Chairperson of the Board for such period as the Ministers determine.

15. *Deputy Chairperson*

The members of the Board may elect another member of the Board as Deputy Chairperson of the Board.

16. *Remuneration*

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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 South Australian Minister.

17. Term of office and re-appointment

- (1) A member is appointed for the term, not exceeding 3 years, specified in the instrument of appointment on such terms and conditions as are so specified.
- (2) A member is eligible for re-appointment. 5

18. Vacancies, resignation, removal from office

- (1) The office of a member of the Board becomes vacant if the member—
- (a) without the Board's approval, fails to attend 2 consecutive meetings; or 10
- (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 South Australian Minister. 15
- (3) The Minister and the South Australian 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; 20
- (b) is negligent in the performance of those duties;
- (c) engages in improper conduct;
- (d) fails to disclose a pecuniary interest as required by section 20; or
- (e) is convicted of an offence against this Act or the South Australian Act. 25

19. Casual vacancy

- (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 or elected for appointment to the office in accordance with section 11 shall be appointed to fill the vacancy and to hold office, subject to this Act, for the remainder of the term. 30

- (2) If the vacancy occurs within 6 months of the expiry of the term of office of the member, the office may be left vacant for the remainder of the term.

20. *Disclosure of interests by members*

- 5 (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.
- 10 (2) A disclosure must be recorded in the minutes of the meeting and, unless the Board decides otherwise, the member must not—
- 15 (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.
- 20 (3) For the purpose of the making of a decision by the Board under sub-section (2) in relation to a member who has made a disclosure under sub-section (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.
- 25 (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.

21. *Ministerial direction*

- 30 (1) The Board is subject to—
- (a) the general direction and control of the Minister and the South Australian Minister; and
- (b) any specific written directions given by the Minister and the South Australian 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. 5
- (3) The Board must include in each annual report under section 49 a copy of any specific written directions given under this section by the Minister and the South Australian Minister during the year to which the report relates. 10

22. *Proceedings of the Board*

- (1) A meeting of the Board must 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. 15 20
- (2) 5 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 3 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. 25
- (5) The Board must ensure that— 30
- (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 South Australian Minister within 2 weeks after being confirmed.
- (6) Subject to this Act, the Board may regulate its own proceedings. 35

23. Validity of decisions

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

- 5 (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.

24. Staff of the Board

- 10 (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.
- 15 (2) The chief executive of the Board is responsible for the administration of the Board's undertaking subject to its general direction and control.

25. Immunity

- 20 (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
 - 25 (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 sub-section (1), would attach to a member of the Board attaches instead to the Board.

26. Dismissal of Board

- 30 (1) The Governor in Council, if of the opinion that circumstances have arisen rendering it advisable to do so, by Order published in the Government Gazette, may remove all the members of the Board from office, but

they or any of them are eligible (if otherwise qualified) for re-appointment.

- (2) An Order under sub-section (1) comes into effect on the day on which it is published in the Government Gazette or, if a corresponding notice has not been published under the South Australian Act, on the date on which such a notice is published under that Act. 5
- (3) The Minister shall cause a report of, and 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 Order under sub-section (1). 10

PART 3—OBJECTIVES, FUNCTIONS AND POWERS

27. Objectives

- The objectives of the Board are— 15
- (a) to supply effectively and efficiently marketing services to Victorian and South Australian growers and to producers of other grains;
- (b) to maximise the net returns to Victorian and South Australian growers who deliver barley 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. 20

28. Functions

- The functions of the Board are— 25
- (a) to control the marketing of barley grown in Victoria or South Australia;
- (b) to market and promote efficiently and effectively grain in domestic and overseas markets;
- (c) to co-operate, consult and enter into agreements with— 30
- (i) authorised receivers relating to the handling and storage of grain;
- (ii) carriers relating to the transport of grain;

- 5
- (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 South Australian Minister about the marketing of grain.

29. Powers

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

- 15
- (a) to acquire barley and other grain (whether or not the barley or other grain is grown in Australia);
 - (b) to dispose of barley 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 and other grain;

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

25 **30. Delegation**

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.

31. Obtaining information

- 30
- (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, barley products or substances containing barley as is specified in the notice. 5

(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. 10

Penalty: 20 penalty units.

32. Corporate plan

(1) Before the first anniversary of the commencement of this section, the Board must submit to the Minister and the South Australian Minister a plan of its intended operations during the remaining seasons to which this Act applies. 15

(2) Thereafter, with each annual report it submits to the Minister and the South Australian Minister, the Board must also submit a plan of operations for the remaining seasons to which this Act applies. 20

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

(4) A plan of operations must— 25

(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; 30

(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 OF BARLEY

5 **33. *Delivery of barley***

- (1) Subject to this Act, a person must not sell or deliver barley to a person other than the Board.
- (2) A person must not transport barley which has been sold or delivered in contravention of sub-section (1) or bought in contravention of sub-section (4).
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- (3) Sub-sections (1) and (2) do not apply to—
- (a) barley retained by the grower for use on the farm where it is grown;
- (b) barley purchased from the Board;
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- (c) barley of a season sold or delivered to the holder of a permit for that season issued by the Board under section 42;
- (d) barley of a season sold or delivered to the holder of a licence for that season issued by the Board under section 43;
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- (e) barley which does not meet the standards determined by the Board.
- (4) A person must not buy barley from the grower except under a licence or permit issued by the Board.
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- (5) Sub-sections (1) and (4) do not apply to a sale, delivery or purchase of barley made with the express written approval of the Board.

Penalty applying to this section:

- 30
- (a) In the case of a natural person—
- for a first offence: 20 penalty units;
- for a second or subsequent offence: 100 penalty units.

- (b) In the case of a body corporate—
 for a first offence: 50 penalty units;
 for a second or subsequent offence: 500 penalty units.

34. *Property in barley passes to Board on delivery* 5

Upon delivery of barley to the Board, unless it is otherwise agreed—

- (a) the property in the barley immediately passes to the Board; and
 (b) the owner of the barley is to be taken to have sold it to the Board at the price to be paid under this Act. 10

35. *Authorised receivers*

- (1) The Board may, by instrument, appoint a person as an authorised receiver for the purposes of this Act. 15
- (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 the Board.
- (4) An authorised receiver—
 (a) holds, on behalf of the Board, all barley the property of the Board which is at any time in the receiver's possession; and 20
 (b) must not part with the possession of any such barley except in accordance with instructions from the Board or from a person authorised by the Board to give such instructions. 25

36. *Declaration of season of barley delivered to Board*

- (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. 30

Penalty: 10 penalty units.

- (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 published in the Government Gazette to be the final day for the delivery of barley of that season.

5 **37. Board to market barley**

The Board must market or otherwise dispose of, to the best advantage, all barley delivered to it under this Act.

38. Board to have regard to certain matters

10 In marketing or disposing of barley, the Board must have regard to the reasonable requirements of persons requiring barley for malting in Victoria.

39. Pools

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

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

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

25 (3) The Board may, at any time—

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

30 (4) The Board must keep separate accounting records in respect of each pool.

40. Distribution of proceeds of sale of pooled barley

- (1) If the Board sells barley from a pool, the net proceeds of sale must be distributed among the growers who contributed barley to the relevant pool in proportion to the quantity contributed by each grower. 5
- (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 and administering this Act.
- (3) The following deductions from the grower's share of the net proceeds are authorised— 10
- (a) deductions made by the Board for the reserve fund established by the Board under section 45.
 - (b) any deduction to be made on account of the quality of the barley delivered by the grower; and 15
 - (c) any debts owing by the grower to the Board.
- (4) In determining the Board's expenditure under sub-section (2), the Board may take into account—
- (a) the State in which barley was grown and the place at which barley was delivered to the Board; and 20
 - (b) any other circumstances affecting the value of barley.
- (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. 25
- (6) If, after the Board has made payments under this section for barley 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. 30

41. *No claim against Board in respect of rights in barley*

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

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PART 5—PERMITS AND LICENCES

42. *Permit to purchase barley for stockfeed*

- (1) A person may apply to the Board, in a form approved by the Board, for a permit for a specified season authorising that person to purchase barley harvested in that season directly from growers for stockfeed purposes in Australia.
- (2) An application must be accompanied by such reasonable fee as is set by the Board.
- (3) The Board must issue the permit within 21 days of the Board receiving the application.

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43. *Licence to purchase barley for malting or other processing*

- (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 sub-section (5); or
 - (ii) entered into with the Australian Barley Board before the enactment of this Act and to the same effect as a deed referred to in sub-section (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.

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- (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 sub-section (5) between the Board and the applicant. 5
- (4) The licence is subject to the terms and conditions (if any) contained in the deed of arrangement referred to in sub-section (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— 10
- (a) provisions about barley required or likely to be required for that business; and 15
- (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. 20
- (7) A deed of arrangement continues in force until revoked or varied by agreement between the parties.

PART 6—FINANCIAL

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44. *Financial powers*

- (1) In addition to its powers under this Act, the Board has the borrowing, investment and other powers conferred on it by or under the South Australian Act or the **Public Finance and Audit Act 1987** of South Australia, as in force for the time being. 30
- (2) The Board must—
- (a) before 31 December of each year, apply to the Treasurer of South Australia for consent to its proposed program for the following year; and 35

- (b) on obtaining consent from the Treasurer, forward a copy of the consent and any conditions attached to it, to the Minister and the South Australian Minister.

5 **45. Reserve fund**

- (1) The Board may establish a reserve fund.
- (2) The Board may pay into the reserve fund an amount not exceeding 5 per centum of the net proceeds derived from the sale of barley or other grain.
- 10 (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 South Australian Minister.
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46. Joint ventures

- (1) Any of the functions of the Board may be exercised—
 - (a) by the Board;
 - (b) by an affiliate of the Board; or
 - 20 (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
 - 25 (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 sub-section (2) otherwise than in accordance with such guidelines (if any) as are from time to time determined by the Minister and the South Australian Minister.
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- (4) An affiliate of the Board must not, except with the approval of the Minister and the South Australian

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. 5
- (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 10
- (b) a corporation the memorandum and articles of association of which provide that any or all of the directors of the corporation shall be persons who are, or who are nominated by, persons for the time being holding office as members of the Board. 15

47. Requirements where Board has controlling interest

- (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 20
- (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 25
- (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 to the Treasurer. 30
- (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 sub-section (3). 35

- 5 (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 that Law to the prescribed percentage were a reference to 50 per centum.
- 10 (4) If the Board is a member of, or forms or participates in the formation of, a limited company to which sub-section (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 South Australian Auditor-General.
- 15 (5) The requirements of sub-section (4) are in addition to the requirements of the **Corporations Law**.
- (6) The Board must pay the costs and expenses of an audit under sub-section (4).

PART 7—ACCOUNTS AND REPORTS

48. *Accounts and records*

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

49. *Annual reports*

- (1) In this section—
- “**financial year**” means each 12 month period ending on the date fixed by the Board.
- 25 (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;
- (b) financial statements for the financial year;
- 30 (c) appropriate certification of those financial statements;

- (d) a copy of any specific written directions given to the Board during the financial year by the Minister and the South Australian Minister; and
 - (e) any further information required by the Minister and the South Australian Minister— 5
- and submit the report to the Minister and the South Australian Minister no later than 4 months after the end of the financial year, or by any later date that the Minister and the South Australian Minister approve.
- (3) The Minister must cause each annual report to be laid before each House of the Parliament before the expiration of the seventh sitting day of that House after the report is received by the Minister. 10
 - (4) If the Board fails to submit an annual report to the Minister within 4 months after the end of the financial year, or by any later date that the Minister and the South Australian Minister approve, the Minister must cause each House of the Parliament to be advised of that failure and the reasons for it. 15
- 50. Audit** 20
- (1) The Board must cause its accounts to be audited at least once each year by the Auditor-General or the South Australian Auditor-General or a registered company auditor appointed by the Minister and the South Australian Minister on the recommendation of the Board. 25
 - (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. 30
 - (3) The auditor of the Board's accounts must advise the Minister and the South Australian Minister of any serious deficiencies in the Board's accounts and the nature of those deficiencies. 35
 - (4) The Board must pay the costs and expenses of the audit.

51. *Separate accounts for barley and other grains*

(1) Subject to section 39 (4), the accounts of the Board relating to—

(a) barley of each season; or

(b) other grain of each season—

must be kept separately.

(2) Subject to section 39 (4), the accounts of the Board relating to—

(a) barley harvested and delivered to the Board in Victoria; or

(b) barley harvested and delivered to the Board in South Australia—

must be kept separately.

52. *Copies of annual reports*

The Board must give a copy of each annual report to the Victorian Farmers Federation and to the South Australian Farmers Federation Incorporated or to any other body or bodies that in the opinion of the Ministers has replaced either or both those bodies, when the Report is submitted to the Minister and the South Australian Minister.

PART 8—DISSOLUTION OF BOARD

53. *Dissolution of the Board*

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) (a) (iii) and of the South Australian Minister under the corresponding provision of the South Australian Act.

54. Petition and polls

- (1) The Minister, by Order published in the Government Gazette, must 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 5
- (b) if the Minister has received notice that representations have been made to the South Australian Minister under a provision of the South Australian Act corresponding to this section. 10
- (2) If sub-section (1) (b) applies, the poll must be held on the same day as the poll under the South Australian Act.
- (3) Section 58 applies to the taking of a poll under this section. 15
- (4) In this section, “**permitted period**” means—
- (a) until the expiration of 3 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 6 months before the end of that term; and 20
- (b) in any other case, the period beginning 6 months after the appointment of members of the Board to a term of office and ending 6 months before the end of that term. 25

55. Request

- (1) The Board, by instrument under its seal, may 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. 30

56. *Winding-up and dissolution*

(1) If the Minister—

(a) is satisfied—

5 (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 South Australian Act, are in favour of the dissolution of the Board; or

10 (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

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

the Governor in Council, by Order published in the Government Gazette, may direct the Board to wind-up its affairs.

20 (2) Upon an Order under sub-section (1) taking effect, the Board must proceed to wind-up its affairs.

25 (3) If an Order is made under sub-section (1), the Governor in Council, in that Order or by another Order published in the Government Gazette, may, despite sub-section (2), appoint a person to be liquidator for the purpose of the winding-up.

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

30 (5) An Order under sub-section (3) may contain such provisions of a savings or transitional nature as the Governor in Council thinks appropriate in consequence of the appointment.

35 (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, shall be 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. 5
- (8) If the Minister is of the opinion that the affairs of the Board are wound-up, the Governor in Council, by Order published in the Government Gazette, may dissolve the Board and all money and other assets of the Board shall become the property of bodies or organisations representing growers in such proportions as are specified in the Order and shall be dealt with and disposed of as the Governor in Council may direct. 10
- (9) An Order under sub-section (1), (3) or (8) takes effect on the date on which it is published in the Government Gazette or, if a similar notice has not been published under the South Australian Act, on the date on which a similar notice is published under that Act. 15
- (10) If the Minister makes a recommendation under sub-section (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 7 sitting days of that House after the recommendation is made. 20
25

57. Report to be published in connection with poll

As soon as practicable after an Order under this Act is published in the Government 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. 30

58. Provisions as to polls

- (1) The regulations may, subject to this Act, make provision for or with respect to the conduct of polls. 35

- 5 (2) The Electoral Commissioner, or a person employed in the office of and nominated by the Electoral Commissioner, shall be the returning officer for the poll, and shall have and may exercise the functions conferred or imposed on the returning officer by the regulations in relation to the poll.
- (3) A roll of growers shall be prepared by the Board in accordance with the prescribed requirements (if any).
- 10 (4) The growers entitled to vote in accordance with the regulations at a poll shall be the growers who have delivered to the Board not less than 15 tonnes of barley in one of the 3 years ending on 31 March last preceding the poll and who have such other qualifications (if any) as may be prescribed.
- 15 (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 on the roll prepared under sub-section (3) to vote at the poll.

20 **59. Expenses**

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

PART 9—BARLEY MARKETING CONSULTATIVE COMMITTEE

25 **60. Constitution**

The Barley Marketing Consultative Committee is established.

61. Functions

30 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.

62. Members

The Committee shall consist of a Chairperson (who must not be a grower) appointed by the Minister and the South Australian Minister jointly and 4 other members so appointed of whom—

5

(a) 2 shall be persons resident in Victoria nominated by the Minister from a panel of 4 names submitted by the Victorian Farmers Federation or any other body that, in the opinion of the Ministers, has replaced that body;

10

(b) 2 shall be persons resident in South Australia nominated by the South Australian Minister from a panel of 4 names submitted by the South Australian Farmers Federation Incorporated or any other body that, in the opinion of the Ministers, has replaced that body.

15

63. Chairperson

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

64. Proceedings of the Committee

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(1) 3 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 6 months.

(3) A question arising at a meeting shall 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.

25

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

65. Remuneration

30

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 South Australian Minister.

66. *Term of office and re-appointment*

5 A member's term of office must not exceed 3 years and a member is eligible for re-appointment.

67. *Vacancies, resignation, removal from office*

- 10 (1) The office of a member of the Committee becomes vacant if the member—
- (a) without the Committee's approval, fails to attend 2 consecutive meetings; or
 - (b) becomes bankrupt; or
 - (c) is convicted of an offence punishable by imprisonment for 12 months or more.
- 15 (2) A member of the Committee may resign by writing delivered to the Minister or the South Australian Minister.
- (3) The Minister and the South Australian Minister may remove a member of the Committee from office if the member—
- 20 (a) becomes incapable of performing his or her duties;
 - (b) is negligent in the performance of those duties;
 - (c) engages in improper conduct;
 - (d) is convicted of an offence against this Act.

25 **68. *Casual vacancy***

- 30 (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 shall 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 6 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

69. *Review of decisions*

5

A person may apply to the Administrative Appeals Tribunal for review of a decision by the Board under section 31 requiring a person to give the Board information.

70. *Authorised officers*

10

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

71. *Powers of authorised officers*

An authorised officer or any member of the police force at any reasonable time and with any necessary assistants—

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(a) may enter and search any premises, other than premises used mainly as a residence, that the officer or member of the police force reasonably believes are used for or in connection with the storage or sale of barley;

20

(b) may search for, inspect and make copies of any documents relating to the storage or sale of barley;

(c) may require the occupier of premises entered and searched under this section to produce any documents relating to the sale of barley and answer questions.

25

72. *Offence to obstruct authorised officer*

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

30

- 5
- (b) without reasonable excuse, refuse or fail to comply with any requirement made under section 71; or
 - (c) give false or misleading information in response to a requirement made under section 71.

Penalty: 20 penalty units.

73. *Police may detain vehicles*

10 A member of the police force may, for the purposes of exercising any of the functions under section 71 stop and detain any motor vehicle in a public street or public place in which the member has reasonable grounds to believe there is any barley or any documents relating to any such barley.

74. *Evidentiary*

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- 20
- 25
- (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; and
 - (b) that barley bought from the grower was bought without the approval of the Board—

is evidence of the correctness of the statements.

75. *Service*

- 30
- (1) A notice or other document required or authorised by this Act or the regulations to be served on or given to a person shall be deemed 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. 5
- (2) This section is in addition to and does not derogate from sections 109x and 109y of the **Corporations Law**.

76. Regulations

- (1) The Governor in Council, on the recommendation of the Minister after consultation with the South Australian Minister, may 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. 10
- (2) The regulations— 15
 - (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstances;
 - (c) may apply, adopt or incorporate any matter contained in a code, standard, or other document prepared or approved by a body or authority referred to in the regulations whether— 20
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as prepared or approved at the time the regulations are made or at any time before then; or 25
 - (iii) as prepared or approved from time to time;
 - (d) may impose a penalty not exceeding 5 penalty units for a breach of the regulations. 30
- (3) If under sub-section (2) (c) (iii) a regulation has applied, adopted or incorporated any matter contained in a code, standard or other document as prepared or approved from time to time and that code, standard or other document is at any time amended, the code, standard or other document is for the purpose of the regulation to be 35

taken to have not been so amended until notice of the amendment is published in the Government Gazette.

PART 11—TRANSITIONAL PROVISIONS

77. Repeal of Barley Marketing Act 1958

5 The **Barley Marketing Act 1958** is repealed.

78. Transitional provisions relating to the Board

(1) On the commencement of this section, the Australian Barley Board under the **Barley Marketing Act 1958** (“the old Board”) goes out of office.

10 (2) The Board constituted under this Act (“the new Board”) is the successor in law of the old Board under the **Barley Marketing Act 1958**.

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

20 (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.

25 (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.

SCHEDULE 1

s. 3

GRAINS

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