

### BARLEY MARKETING (MISCELLANEOUS) AMENDMENT BILL

Received from the House of Assembly and read a first time.

**The Hon. K.T. GRIFFIN (Attorney-General):** I move:  
*That this Bill be now read a second time.*

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The Victorian and South Australian Governments commissioned, in 1997, independent consultants to conduct a public benefits test of the Barley Marketing Acts of South Australia and Victoria under National Competition Policy (NCP) principles.

The consultants recommended that the domestic markets for feed and malting barley in South Australia and Victoria be formally deregulated, and that the Australian Barley Board (ABB) retain its single desk for export barley sales for the shortest practicable transition period. They also recommended that all markets for South Australian oats be deregulated.

Since the release of the NCP review report in December 1997, the Government has consulted extensively with the Victorian Government and the grains industry on the outcome of the review and the marketing arrangements which will best serve all South Australian and Victorian barley growers in the future.

In a joint government response to the review, two key objectives were specified as being needed in future marketing arrangements.

The first objective was to achieve a fully commercial approach to marketing through the early establishment of a grower-owned commercial entity to take over the marketing responsibilities of the ABB.

The second objective was to protect the current value of the ABB by providing an appropriate period of transition to a fully deregulated market. The ABB is a valuable entity which has an enviable reputation and goodwill, and holds substantial grower assets.

The two Governments determined that a grower-owned commercial company to succeed the ABB would be established by a committee, with representatives from the South Australian Farmers Federation, the Victorian Farmers Federation, the ABB, the South Australian Department of Primary Industries and Resources, and the Victorian Department of Natural Resources and Environment.

The restructure committee is to be highly commended for its excellent work in developing and gaining grower support for the structure of the companies and in meeting the tight deadlines set by the two Governments.

Two grower-owned companies have now been established to succeed the ABB: ABB Grain Ltd, which will receive the non-barley assets and liabilities of the ABB; and ABB Grain Export Ltd, which will receive the existing stocks of pooled barley and be granted the statutory marketing powers.

- ABB Grain Ltd will be an incorporated company based on the dual share class model.
- A class shareholders will be current growers who will elect the majority of the board of the company.
- The capital value of the company will be represented by B class shares which will be distributed to persons according to their contribution to the general reserves of the former ABB.
- ABB Grain Export Ltd will be wholly owned by ABB Grain Ltd and will be required by its constitution to maximise export returns to growers.

The two company structure is intended to ensure transparency between the export and domestic markets through:

- ABB Grain Export Ltd, with statutory marketing powers, operating the export pools;
- ABB Grain Ltd conducting domestic trading and other functions;
- trading rules for both companies will ensure that all grain sales and grain swaps are transparent and auditable.

With the domestic market for both feed and malting barley deregulated, all parties concerned will have an opportunity to observe market conduct and performance by the new grower-owned companies and by other market participants in these changed marketing arrangements. These observations, along with consultation with the Victorian Government, with growers and with barley markets, will help shape future decisions regarding the status of the 'single export desk' for barley in South Australia. Single desk powers are likely to continue in this State until it can be clearly demonstrated that it is not in the interests of the South Australian community to continue the arrangement.

The Minister for Primary Industries and Resources will consult with the Victorian Minister for Agriculture and Resources regarding any changes in the future to the barley marketing arrangements. The Ministers will also consult on the appropriateness of continuing any statutory marketing arrangements in the event of a merger, joint venture, acquisition or substantial corporate restructuring involving one or both of the successor companies and one or more other commercial entities prior to 30 June 2001.

Deregulation of the domestic feed barley market in South Australia was accomplished prior to the 1998 harvest. The *Barley Marketing (Deregulation of Feedstock Barley) Amendment Bill 1998* was passed in July 1998 and came into operation on 15 October 1998.

I now turn to the main provisions in the Bill now being introduced.

The Bill amends the *Barley Marketing Act 1993* to:

- deregulate the domestic malting barley market;
- deregulate all oat markets;
- transfer the assets, liabilities and staff of the ABB to the grower-owned successor companies;
- confer on ABB Grain Export Ltd marketing arrangements similar to those currently held by the ABB; and
- dissolve the ABB and the Barley Marketing Consultative Committee.

Once the law is in force, the domestic market for barley sold for malting and other processing purposes in Australia and all markets for oats will be deregulated.

The Bill confers on ABB Grain Export Ltd the single export desk marketing arrangements until 30 June 2001 through minor amendments to the existing restrictions on the sale, delivery, transport and purchase of barley harvested in South Australia.

To assure minor niche markets overseas are served, trading and transport of barley in bags and containers of capacity of up to 50 tonnes will be exempted from the marketing restrictions. The exemption for bags and containers is subject to any other requirements that may be prescribed in regulations from time to time in relation to the quality, quantity and description of barley packed in that manner.

The export of barley by ABB Grain Export Ltd and anything done by the company under the Act in connection with barley exports are specifically authorised for the purposes of section 51(1) of the Trade Practices Act 1974 of the Commonwealth and the Competition Code to ensure that the legislated activities of ABB Grain Export Ltd do not breach Part IV of the Trade Practices Act.

The Bill inserts a new Part 11 in the Act to transfer the business of the ABB to the successor companies and facilitate the transfer of shares to eligible growers.

Provision is made that the property, rights and liabilities of the ABB are transferred to ABB Grain Ltd and ABB Grain Export Ltd on a date to be proclaimed or, if the date is not proclaimed, on 30 June 1999.

The Bill provides that, immediately before the date on which the property of the ABB is transferred, A and B class shares in ABB Grain Ltd will be issued to the ABB in consideration for the transfer to ABB Grain Ltd of the board's property. The numbers of shares will be equal to the total number of shares to which growers are entitled in accordance with an arrangement determined by the South Australian and Victorian Ministers and published in the Government Gazette. The A and B class shares will then be vested in eligible growers and these growers will become shareholders of ABB Grain Ltd. Following the distribution of shares, the ABB will be dissolved.

The Bill provides for the repeal of various parts of the Act dealing with the establishment or operation of the ABB which are no longer required after the ABB is dissolved.

The Bill makes the two companies the successors in law of the ABB through a number of provisions relating to agreements and legal proceedings.

The Bill provides that no stamp duty is chargeable in respect of any act or transaction that needs to be carried out by reason of the Act.

Provision is made for the transfer of employees of the ABB to ABB Grain Ltd on the basis that the employees' rights and entitlements are preserved and that they are not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the ABB.

The Bill provides that ABB Grain Ltd must provide to the Minister and the Victorian Minister a copy of its annual report under the Corporations Law together with such additional information about the operations of the company or ABB Grain Export Ltd as the Ministers require.

#### Explanation of Clauses

##### General comments

The general purpose of the Bill is to deregulate the market for oats and the domestic market for malting barley and to dissolve the Australian Barley Board (the Board). The Board's assets and liabilities will be transferred to ABB Grain Ltd (a company registered under the Corporations Law) the shares of which will be issued to the Board which will then transfer those shares to persons in accordance with an arrangement determined by the South Australian and Victorian Ministers. It is proposed that ABB Grain Export Ltd (a subsidiary of ABB Grain Ltd) will assume the function of exporting barley.

##### Clause 1: Short title

##### Clause 2: Commencement

These clauses are formal.

##### Clause 3: Amendment of s. 3—Definitions

Amendments are proposed that are consequential on the general purpose of the Bill. For example, definitions of ABB Grain Ltd and ABB Grain Export Ltd are inserted and definitions made obsolete by the amendments to the principal Act are deleted. All references to "oats" are deleted.

##### Clause 4: Substitution of ss. 4 and 5

Current section 4 is no longer required as the principal Act (as amended) only deals with the marketing of barley.

New section 5 extends the application of Part 4 of the principal Act to barley harvested in each of the seasons until the end of the season commencing 1 July 2000.

##### Clause 5: Repeal of Parts 2 and 3

Part 2 provides for the establishment and constitution of the Board. Part 3 sets out the objectives, functions and powers of the Board. This clause provides for the repeal of these Parts.

##### Clause 6: Amendment of s. 33—Delivery of barley

Section 33 provides for the current marketing scheme for barley and oats. Currently, subsection (1) provides that a person must not sell or deliver barley or oats to a person other than the Board and subsection (2) provides that a person must not transport barley or oats sold or delivered in contravention of subsection (1) or bought in contravention of subsection (4).

The marketing scheme for oats is to be completely deregulated and, as a consequence, it is proposed to delete all references to "oats" occurring in the section.

References to "the Board" are substituted by references to "ABB Grain Export Ltd" and the other amendments proposed achieve the deregulation of the domestic market for barley.

Subsection (6) containing the penalty provision is amended to remove the differences in penalties between natural persons and bodies corporate and to increase substantially the penalties for a contravention of this section (to \$500 000 for a first offence and \$1 000 000 for a subsequent offence).

*Clause 7: Insertion of new section 33A. Authorisation*  
New section 33A provides that, for the purposes of Part IV of the Trade Practices Act 1974 of the Commonwealth and the Competition Code, the following are specifically authorised:

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

##### Clause 8: Substitution of s. 34

##### 34. Property in barley passes to ABB Grain Export Ltd on delivery

New section 34 provides that 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—

- property in the barley immediately passes to ABB Grain Export Ltd; and
- 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.

This amendment is consequential on the amendments proposed to section 33.

##### Clause 9: Amendment of s. 35—Authorised receivers

These amendments are consequential on the amendments proposed to section 33.

##### Clause 10: Amendment of s. 36—Declaration of season of barley delivered to ABB Grain Export Ltd

As well as making amendments that are consequential on the amendments proposed to section 33, the opportunity has been taken to increase the maximum penalty for breach of this section to \$10 000.

##### Clause 11: Amendment of s. 37—ABB Grain Export Ltd to market barley

These amendments are consequential on the amendments proposed to section 33.

##### Clause 12: Repeal of ss. 38 and 39

The repeal of these sections is consequential on the amendments proposed to section 33.

##### Clause 13: Amendment of s. 41—No claim against ABB Grain Export Ltd in respect of rights in barley

These amendments are consequential on the amendments proposed to section 33.

##### Clause 14: Repeal of Parts 5 to 9

##### Clause 15: Repeal of ss. 69 to 73

Parts 5 to 9 (inclusive) and sections 69 to 73 (inclusive) of the principal Act are otiose as a consequence of the amendments proposed to section 33. Hence they are to be repealed.

##### Clause 16: Amendment of s. 74—Regulations

The amendment to the penalty provision of the regulation making power is to match current drafting styles and to increase substantially the penalty for a breach of a regulation (to a maximum penalty of \$10 000).

##### Clause 17: Substitution of Part 11

It is proposed to repeal Part 11 of the principal Act (containing transitional provisions which are now exhausted) and substitute a new Part 11 to provide for the issue, and vesting of, shares in ABB Grain Ltd and for the transfer of property from the Board to the company.

#### PART 11: TRANSFER OF PROPERTY

##### 75. Transfer of property and dissolution of Board

On the relevant date (*see s. 3*)—

- the property and rights of the Board, other than property and rights in pooled grain (*see s. 3*) or shares in ABB Grain Ltd, vest in ABB Grain Ltd;
- the liabilities of the Board (other than liabilities in respect of pooled grain) become liabilities of ABB Grain Ltd;
- the property and rights of the Board in pooled grain or which relate to pooled grain vest in ABB Grain Export Ltd;
- the liabilities of the Board in respect of pooled grain become liabilities of ABB Grain Export Ltd.

On the day after the relevant date, the Board is dissolved.

##### 76. Issue and vesting of shares

Before the relevant date, in consideration for the transfer of property of the Board under new section 75, a number of A and B class shares in ABB Grain Ltd are to be issued to the Board.

The number of A and B class shares is to be decided in accordance with an arrangement determined by the Minister and the Victorian Minister and published in the *Gazette*.

On the day after the relevant date—

- 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 determined by the Ministers, with each person receiving one share;
- 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 determined by the Ministers, with each person receiving the number of shares determined in accordance with that arrangement.

Each person in whom a share is vested becomes a member of ABB Grain Ltd and will, for the purposes of the Corporations Law, be taken to have consented to be a member. This new section has effect despite anything in the *Corporations (South Australia) Act 1990*.

*77. Substitution of party to agreement*

If rights and liabilities of the Board under an agreement vest in or become liabilities of ABB Grain Ltd or ABB Grain Export Ltd—

- 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
- 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.

*78. Board instruments*

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.

*79. Proceedings*

If immediately before the relevant date 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.

*80. Stamp duty*

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

*81. Staff*

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

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

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

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

- placing a person in breach of contract or confidence; or
- otherwise making a person guilty of a civil wrong.

*83. Annual reports*

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 the Act or the Victorian Act as the Minister and the Victorian Minister require.

*Clause 18: Repeal of Schedule*

The Schedule of the principal Act is otiose as a consequence of the striking out of the definition of grain from section 3 and the repeal of section 4.

**The Hon. P. HOLLOWAY** secured the adjournment of the debate.