# BARLEY EXPORTING BILL 2007

# Legislative Council, 13 March 2007, pages 1572-1574

## Second Reading

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

The Hon. CARMEL ZOLLO (Minister for Emergency Services): 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.

South Australia's Barley Marketing Act 1993 (the Act) restricts the export of bulk barley from this State to one entity, ABB Grain Export Ltd, a subsidiary of ABB Grain Ltd. Pressure to change this arrangement has been building for several years.

In particular, the arrangement does not comply with National Competition Policy, to which all State and Territory Governments and the Commonwealth Government remain committed. South Australia's failure to reform the Act to comply with National Competition Policy has cost the State more than $9 million in competition reform payments over the period 2002/03-2004/05, to the detriment of the entire South Australian community.

There, is also a growing belief amongst growers that a move towards deregulation will provide them with a better opportunity to improve returns for the quality grain they produce.

Last year, in response to this continuing pressure for change, the South Australian Farmers Federation (SAFF) Grains Council agreed to the establishment of a Barley Marketing Working Group to deliver a marketing model that will satisfy both the Government's and growers' needs.

Respected former House of Representatives Speaker, Neil Andrew, agreed to chair the Working Group, which comprised three barley growers nominated by the SAFF Grains Council, Messrs Garry Hansen from Coomandook, Stuart Murdoch from Warooka, and Michael Schaefer from Buckleboo, together with two senior officers, Mr Geoff Knight and Dr Don Plowman, from Primary Industries & Resources SA.

The Working Group made an open call for submissions from relevant stakeholders who might be interested in contributing to the process. This included mailing a letter of invitation to all South Australian grain growers registered on the National Grower Register in July 2006, mailing specific letters of invitation to companies and groups who might wish to make a submission and advertisements in the Stock Journal.

The Working Group's report records that 26 written submissions were received and that after reviewing all the submissions i4 of the respondents were invited to make a further presentation to the working group at individual consultations. In addition, the Working Group held a series of consultations with other people who had specific advice and input that was relevant to the deliberations of the Working Group.

After reviewing four options for barley marketing in South Australia, ranging from the status quo to deregulation, the Working Group concluded that there should be a phased transition to deregulation. Since the Working Group submitted its report in December 2006, the SAFF Grains Council has commended the Working Group and unanimously adopted the report's seven recommendations as being the most effective way forward for bulk export barley marketing in South Australia.

The purpose of this Bill is to establish a three-year licensing scheme for exporters of barley to operate from 1 July 2007 with -in independent regulator, the Essential Services Commission of South Australia (ESCOSA), administering the licensing scheme. The Bill also repeals the Barley Marketing Act 1993, thereby allowing South Australian barley growers to deliver bulk barley to whomever they choose, including exporters licensed by ESCOSA.

The proposed Bill requires the Minister to establish an advisor, committee to provide advice on matters relevant to the administration of the licensing scheme. The committee will include an independent chair, two barley growers, an industry representative with specialist skills, someone with a legal, commercial or economics background and a Government representative and must meet at least twice a year, reporting to the Minister on the outcome of their meetings. ESCOSA is obliged to take into account those reports when exercising us powers under this measure.

Provision is made in the Bill for the Act to be repealed by proclamation of the Governor or, if no such proclamation is made, for the Act to expire on the fourth anniversary of its commencement. Following the repeal or expiry of the Act (whichever comes first), the marketing of bulk barley in South Australia will be deregulated.

A plethora of independent reviews of "single desk" marketing arrangements, including South Australia's barley marketing arrangements, have found little or no benefit consequent upon a 'single desk'. Nevertheless, Members familiar with this issue would be aware that growers who favour retention of the export barley 'single desk' cite four major benefits: buyer of last resort; access to pools; security of payment; and maximising returns to growers. I take this opportunity to offer comment on each.

• Buyer of last resort

The reality, as the Working Group observed, is that there is no buyer of last resort as the current 'single desk' manager: ABB Grain Export Ltd, has the power under the Act to not receive a delivery of barley if it does not meet specification.

• Access to "pools

. In a deregulated market it is anticipated that multiple export pools will be offered, most likely by ABB Grain, Graincorp and Elders, as is the case now in the deregulated Victorian and New South Wales barley markets.

• Security of payment

The proposed licensing process will include a prudential assessment of barley exporters by ESCOSA. To the extent possible, this process will address grower and industry concerns about 'rogue traders' who might default on payments to growers and damage the reputation of the industry.

• Maximising returns to growers

The current 'single desk' manager is required to maximise returns to growers. While an open market may bring about increased price volatility, it will increase competition for barley and provide growers with an opportunity to capitalise on this competitive pressure. According to the Working Group, there is evidence of greater returns to growers in Victoria, where the export barley market was deregulated in 2001, and Western Australia, where the export barley market is partially deregulated. Only SA and WA regulate barley marketing.

While most mixed farmers are familiar with open market for their minor crops and for their wool and livestock, barley and wheat dominate their cropping income and they have relied on the barley and wheat "single desks" to market their grain. To facilitate the transition to an open market, the Government will underwrite an education and training program for barley growers in South Australia. In addition to explaining the changes to barley marketing and introducing growers to price and other risk management tools, the program may include Victorian barley growers presenting "case studies" of Victoria's transition to an open barley market.

It is the Government's view that deregulation should pose no risk to either ABB Grain Export Ltd or ABB Grain Ltd.

While ABB Grain Export Ltd will lose the exclusive right to export bulk barley from South Australia, it enjoys grower loyalty established over many decades, providing it with a competitive advantage over new entrants into the barley exporting industry. Consequently, it is expected to remain dominant in the barley exporting industry—a position the company has maintained in Victoria since deregulation in that State in 2001.

ABB Grain Ltd is an integrated agribusiness with diverse investments and activity across the supply chain: from farm inputs, production, storage and handling and logistics to marketing and processing of a range of commodities. Only a quarter of ABB Grain Ltd's grain marketing activities now relate to the export of barley. Members may be aware that ABB Grain Ltd is a member of one of the consortiums recently granted a wheat export licence.

The Government is keen to progress these reforms of the bulk barley export industry at the earliest opportunity so as to provide surety for growers and marketers as they make plans for the 2007 barley crop.

I commend the Bill to Members.

EXPLANATION OF CLAUSES Part 1—Preliminary

1— Short title

2— Commencement These clauses are formal.

3— Interpretation

This clause contains definitions of expressions for the purposes of this measure. In particular, barley is defined as the grain derived from the barley plant in unprocessed form (but will not include grain excluded from the ambit of the definition by the regulations).

4— Application of Act

This clause provides that this measure applies to the export . of barley from a South Australian port to a destination outside Australia, but does not apply to the export of barley 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

This clause declares that barley exporting constitutes a regulated industry for the purposes of the Essential Services Commission Act 2002. As a result of this declaration (and the related amendment proposed to the Essential Sendees Commission Act 2002—see Schedule 3), the Essential Services Commission (the Commission) may perform the licensing functions conferred on the Commission by this measure.

Division 2—Licensing of barley exporters

6— Obligation of barley exporters to be licensed

This clause makes it an offence for a person to export barley except as authorised by a licence issued under Part 2 of this measure. The penalty for the first such offence is a fine of S500 000 and, for a subsequent offence, $1 000 000.

7— Application for licence

This clause provides that applications for export licences must be made to the Commission in a form approved by the Commission, contain the information as specified in the form and be accompanied by the application fee.

8— Consideration of application

This clause provides that the Commission must have regard to the general factors specified in Part 2 of the Essential Services Commission Act 2002 and only issue a licence if satisfied that—

• the applicant is a suitable person to hold the licence; and

• the applicant will be able to meet reasonably forseeable obligations under contracts for the export of barley; and the grant of the licence would be consistent with criteria (if any) prescribed by regulation for licences to export barley.

9— Authority conferred by licence

This clause provides that 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

This clause provides that a licence may be issued for an indefinite period or for a term specified in the licence.

11— Licence fees and returns

This clause provides that a person is only entitled to the issue of a licence once the person has paid the annual licence fee, or the first installment of the fee (as required by the Commission).

12— —Licence conditions

This clause provides that the Commission may grant a licence to export barley subject to any conditions that the Commission thinks appropriate.

13— Offence to contravene licence conditions

This clause makes it an offence for a licensed barley exporter to contravene a condition of the licence (penalty $50, 000).

14— Variation of licence

This clause provides for the Commission to vary the terms and conditions of a licence.

15— Surrender of licence

This clause allows a barley, exporter to surrender its licence by written notice.

16— Register of licences

Under this clause, the Commission must keep a register of barley export licences and make it available for inspection.

17— Suspension or cancellation of licences

This clause empowers the Commission to suspend or cancel a barley export licence on certain grounds.

Part 3—Reviews and appeals

18— Review of licensing decisions by Commission This clause enables the Commission to review certain decisions of the Commission relating to licences under Part 2 of the measure on application. After consideration of the application, the Commission may confirm, amend or substitute the decision.

19— Appeal

This clause allows an applicant for review who is dissatisfied with the decision on the review to appeal against the decision to the Administrative and Disciplinary Division of the District Court (the ADD). On an appeal, the ADD may affirm the decision or remit the matter to the Commission for further consideration in accordance with any directions of the ADD.

20— Minister's power to intervene

This clause provides that the Minister may intervene in a review or appeal under this proposed Part for the purpose of introducing evidence or making submissions on a question relevant to the public interest. Part 4—Miscellaneous

21— Advisory committee

This clause makes provision for the Minister to establish an advisory committee to advise the Minister on the operation of and any matter arising under this measure. The clause sets out the qualifications for membership of the advisory committee, and provides that the Commission must, when exercising its functions under this measure, take into account the reports of the advisory committee to the Minister.

22— Regulations

This clause makes provision for the Governor to make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this measure.

23— —Expiry or earlier repeal of Act

This clause makes provision for the expiry or earlier repeal of this measure by providing that the Governor may, by proclamation, fix a date for its repeal. However, if no date for the repeal of this measure has been fixed by proclamation, it will expire on the fourth anniversary of its commencement.

Schedule 1—Appointment and selection of experts for District Court

This Schedule provides for the appointment and selection of experts for the purposes of appeals to be heard under this measure by the ADD.

Schedule 2—Repeal of Barley Marketing Act 1993

This Schedule provides for the repeal of the Barley Marketing Act 1993.

Schedule 3—Related amendment of Essential Services Commission Act 2002

This Schedule proposes to amend the Essential Services Commission Act 2002 by inserting "grain handling services" as an essential service. The effect of including grain handling services as an essential service means that barley exporting may be declared to be a regulated industry for the purposes of that Act thus enabling the Essential Services Commission to be able to exercise the powers conferred on it by this measure.

The Hon. J.M.A. LENSINK secured the adjournment of the debate.