

Version No. 012
Barley Marketing Act 1993
Act No. 7/1993

Version incorporating amendments as at 17 June 2003

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

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.

3. Definitions

(1) In this Act—

S. 3
amended by
No. 46/1998
s. 7(Sch. 1)
(ILA s. 39B(1)).

"**ABB Grain Ltd**" means ABB Grain Ltd A.C.N.
084 962 130;

S. 3(1) def. of
"ABB Grain
Ltd"
inserted by
No. 1/1999
s. 4(1).

"**ABB Grain Export Ltd**" means ABB Grain
Export Ltd A.C.N. 084 962 112;

S. 3(1) def. of
"ABB Grain
Export Ltd"
inserted by
No. 1/1999
s. 4(1).

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S. 3(1) def. of
"authorised
receiver"
amended by
No. 1/1999
s. 4(2)(a).

"authorised receiver" means a person authorised under Part 4 to receive barley on behalf of ABB Grain Export Ltd;

"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;

S. 3(1) def. of
"Board"
amended by
No. 1/1999
s. 4(2)(b).

"Board" means the Australian Barley Board constituted under this Act as in force before the commencement of section 12 of the **Barley Marketing (Amendment) Act 1999**;

S. 3(1) def. of
"Board
instrument"
inserted by
No. 1/1999
s. 4(1).

"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;

S. 3(1) def. of
"Committee"
repealed by
No. 1/1999
s. 4(2)(c).

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* * * * *

S. 3(1) def. of
"grain"
repealed by
No. 1/1999
s. 4(2)(c).

"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—

but does not include a person who grows or produces barley for sale as an employee of another person;

"instrument" includes a document and an oral agreement;

S. 3(1) def. of
"instrument"
inserted by
No. 1/1999
s. 4(1).

"liabilities" means all liabilities, duties and obligations, whether actual, contingent or prospective;

S. 3(1) def. of
"liabilities"
inserted by
No. 1/1999
s. 4(1).

* * * * *

S. 3(1) def. of
"marketing"
repealed by
No. 1/1999
s. 4(2)(c).

"pooled grain" means barley of a season commencing before 1 July 1999 delivered to the Board and that became part of a pool established by the Board;

S. 3(1) def. of
"pooled grain"
inserted by
No. 1/1999
s. 4(1).

"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;

S. 3(1) def. of
"property"
inserted by
No. 1/1999
s. 4(1).

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S. 3(1) def. of
"relevant
date"
inserted by
No. 1/1999
s. 4(1).

"**relevant date**" means the date fixed under sub-section (3) or 30 June 1999, whichever is the earlier;

S. 3(1) def. of
"rights"
inserted by
No. 1/1999
s. 4(1).

"**rights**" means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

"**season**" means a period of 12 months commencing on 1 July;

S. 3(1) def. of
"Selection
Committee"
repealed by
No. 1/1999
s. 4(2)(c).

* * * * *

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

"**South Australian Minister**" means the Minister of the Crown administering the South Australian Act;

"**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;

S. 3(1) def. of
"transferred
property"
inserted by
No. 1/1999
s. 4(1).

"**transferred property**" means property, rights and liabilities that, under Part 12, have vested in, or become liabilities of, ABB Grain Ltd or ABB Grain Export Ltd;

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Part 1—Preliminary

s. 5

"Victorian Department" means the Department of Primary Industries or, if the name of that Department is changed, that Department by its name for the time being.

S. 3(1) def. of "Victorian Department" amended by Nos 46/1998 s. 7(Sch. 1), 56/2003 s. 11(Sch. item 3.1).

(2) If under the **Public Sector Management and Employment Act 1998** the name of the Department of Primary Industries is changed, a reference in the definition of "Victorian Department" in sub-section (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

S. 3(2) inserted by No. 46/1998 s. 7(Sch. 1), amended by No. 56/2003 s. 11(Sch. item 3.2).

(3) The Minister, after consultation with the South Australian Minister, may, by notice published in the Government Gazette, fix a date as the relevant date for the purposes of Part 12.

S. 3(3) inserted by No. 1/1999 s. 4(3).

* * * * *

S. 4 repealed by No. 1/1999 s. 4(4).

5. Application of Parts 4 and 5

(1) Parts 4 and 5 apply to barley harvested in the season commencing on 1 July 1993 and each of the next 7 seasons but do not apply to barley grown in a later season.

S. 5(1) amended by Nos 26/1998 s. 5, 1/1999 s. 5(a).

* * * * *

S. 5(2) repealed by No. 1/1999 s. 5(b).

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Part 1—Preliminary

s. 6

6. Joint South Australian and Victorian Scheme

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.

7. Joint Scheme not to be altered without consent of Ministers

It is 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.

Pt 2 (Heading and ss 8–26) amended by No. 46/1998 s. 7(Sch. 1), repealed by No. 1/1999 s. 6.

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Pt 3 (Heading and ss 27–32) repealed by No. 1/1999 s. 6.

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Part 4—Marketing of Barley

s. 33

PART 4—MARKETING OF BARLEY

33. Delivery of barley

- | | |
|--|---|
| (1) Subject to this Act, a person must not sell or deliver barley to a person other than ABB Grain Export Ltd. | S. 33(1)
amended by
No. 1/1999
s. 8(1)(a). |
| (2) A person must not transport barley which has been sold or delivered in contravention of subsection (1) or bought in contravention of subsection (4). | |
| (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 ABB Grain Export Ltd; | S. 33(3)(b)
amended by
No. 1/1999
s. 8(1)(a). |
| (c) barley sold or delivered for consumption in Australia; | S. 33(3)(c)
substituted by
No. 1/1999
s. 8(1)(b). |
| * * * * * | S. 33(3)(d)
repealed by
No. 1/1999
s. 8(1)(b). |
| * * * * * | S. 33(3)(da)
inserted by
No. 1/1999
s. 7(a),
repealed by
No. 1/1999
s. 8(1)(b). |
| (e) barley which does not meet the standards determined by ABB Grain Export Ltd. | S. 33(3)(e)
amended by
No. 1/1999
s. 8(1)(a). |

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Part 4—Marketing of Barley

s. 33A

S. 33(4)
amended by
No. 1/1999
s. 7(b),
substituted by
No. 1/1999
s. 8(2).

(4) A person, other than ABB Grain Export Ltd, must not buy barley from another person except for consumption in Australia.

S. 33(5)
substituted by
No. 1/1999
s. 8(2).

(5) Sub-sections (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).

Penalty applying to this section:

- (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.

S. 33A
inserted by
No. 1/1999
s. 9.

33A. Authorisation

- (1) 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;

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Part 4—Marketing of Barley

s. 34

(b) anything done by ABB Grain Export Ltd in connection with the export of barley.

(2) This section does not apply to the export of barley harvested on or after 1 July 2001.

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

S. 34 amended by No. 1/1999 s. 10(1)(a)(b).

Upon 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

S. 34(a) amended by No. 1/1999 s. 10(1)(a).

(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 being applicable.

S. 34(b) amended by No. 1/1999 s. 10(1)(a)(c).

35. Authorised receivers

(1) ABB Grain Export Ltd may, by instrument, appoint a person as an authorised receiver for the purposes of this Act.

S. 35(1) amended by No. 1/1999 s. 10(2).

(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 ABB Grain Export Ltd.

S. 35(3) amended by No. 1/1999 s. 10(2).

(4) An authorised receiver—

(a) holds, on behalf of ABB Grain Export Ltd, all barley the property of ABB Grain Export Ltd which is at any time in the receiver's possession; and

S. 35(4)(a) amended by No. 1/1999 s. 10(2).

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Part 4—Marketing of Barley

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S. 35(4)(b)
amended by
No. 1/1999
s. 10(2).

- (b) must not part with the possession of any such barley except in accordance with instructions from ABB Grain Export Ltd or from a person authorised by ABB Grain Export Ltd to give such instructions.

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

- (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.

Penalty: 10 penalty units.

S. 36(2)
amended by
No. 1/1999
s. 10(2).

- (2) For the purposes of this section, "**declared day**" means the day which, in respect of a season, is declared by ABB Grain Export Ltd by notice published in the Government Gazette to be the final day for the delivery of barley of that season.

37. ABB Grain Export Ltd to market barley

ABB Grain Export Ltd must market or otherwise dispose of, to the best advantage, all barley delivered to it under this Act.

S. 37
amended by
No. 1/1999
s. 10(2).

Ss 38—40
repealed by
No. 1/1999
s. 11(1).

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S. 41
amended by
No. 1/1999
s. 10(2).

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

A person does not have a claim against ABB Grain Export Ltd in respect of any right, title or interest in barley delivered to ABB Grain Export Ltd.

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s. 42

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					Pt 5 (Heading and ss 42, 43) repealed by No. 1/1999 s. 11(2).

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					Pt 6 (Heading and ss 44–47) amended by No. 93/1997 s. 28(Sch. item 2.1), repealed by No. 1/1999 s. 11(2).

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					Pt 7 (Heading and ss 48–52) amended by No. 93/1997 s. 28(Sch. item 2.2), repealed by No. 1/1999 s. 11(2).

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					Pt 8 (Heading and ss 53–59) repealed by No. 1/1999 s. 11(2).

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					Pt 9 (Heading and ss 60–68) amended by No. 46/1998 s. 7(Sch. 1), repealed by No. 1/1999 s. 11(2).

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Part 10—General

s. 76

PART 10—GENERAL

S. 69
substituted by
No. 52/1998
s. 311(Sch. 1
item 6),
repealed by
No. 1/1999
s. 11(3).

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Ss 70–75
repealed by
No. 1/1999
s. 11(3).

* * * * *

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.
- (2) The regulations—
 - (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—
 - (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

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Part 10—General

s. 76

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- (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.
- (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 taken to have not been so amended until notice of the amendment is published in the Government Gazette.
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PART 11—TRANSITIONAL PROVISIONS

77. Repeal of Barley Marketing Act 1958

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.
- (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**.
- (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.
- (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.
- (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.

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Part 12—Transfer of Property

s. 79

PART 12—TRANSFER OF PROPERTY

Pt 12
(Heading and
ss 79–87)
inserted by
No. 1/1999
s. 12.

79. Transfer of property and dissolution of Board

S. 79
inserted by
No. 1/1999
s. 12.

- (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.

80. Issue and transfer of shares

S. 80
inserted by
No. 1/1999
s. 12.

- (1) Before the relevant date, in consideration for the transfer of property of the Board under section 79—
 - (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

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Part 12—Transfer of Property

s. 80

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- by the Minister and the South Australian Minister, notice of which has been published in the Government 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 South Australian Minister, notice of which has been published in the Government 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 is deemed 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 (Victoria) Act 1990**.

81. Substitution of party to agreement

If, under section 79, 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.

S. 81
inserted by
No. 1/1999
s. 12.

82. 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.

S. 82
inserted by
No. 1/1999
s. 12.

83. Proceedings

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.

S. 83
inserted by
No. 1/1999
s. 12.

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Part 12—Transfer of Property

s. 84

S. 84
inserted by
No. 1/1999
s. 12.

84. Stamp Duty

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.

S. 85
inserted by
No. 1/1999
s. 12.

85. Staff

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.

S. 86
inserted by
No. 1/1999
s. 12.

86. Operation of this Part does not place a person in breach of contract etc

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.

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Part 12—Transfer of Property

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87. Annual reports

ABB Grain Ltd must give to the Minister and the South Australian Minister a copy of each financial report and directors' report it prepares under Chapter 2M of the Corporations Act together with such information about the operations of ABB Grain Ltd or ABB Grain Export Ltd under this Act or the South Australian Act as the Minister and the South Australian Minister require.

S. 87
inserted by
No. 1/1999
s. 12,
amended by
No. 44/2001
s. 3(Sch.
item 11).

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Sch.

SCHEDULE

Section 3

GRAINS

Common Name	Genera	Common Name	Genera
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

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Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 11 March 1993

Legislative Council: 20 April 1993

The long title for the Bill for this Act was "A Bill relating to the marketing of barley and for other purposes."

The **Barley Marketing Act 1993** was assented to on 4 May 1993 and came into operation on 11 October 1993: Government Gazette 7 October 1993 page 2712.

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Barley Marketing Act 1993** by Acts and subordinate instruments.

Audit (Amendment) Act 1997, No. 93/1997

Assent Date: 16.12.97
Commencement Date: S. 28(Sch. item 2) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Barley Marketing Act 1993**

Agriculture Acts (Amendment) Act 1998, No. 26/1998

Assent Date: 19.5.98
Commencement Date: S. 5 on 19.5.98: s. 2(1)
Current State: This information relates only to the provision/s amending the **Barley Marketing Act 1993**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Barley Marketing Act 1993**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 6) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Barley Marketing Act 1993**

Barley Marketing (Amendment) Act 1999, No. 1/1999

Assent Date: 28.4.99
Commencement Date: Ss 1–3, 7 on 28.4.99: s. 2(1); rest of Act on 30.6.99: s. 2(3)
Current State: All of Act in operation

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 11) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Barley Marketing Act 1993**

Fisheries (Amendment) Act 2003, No. 56/2003

Assent Date: 16.6.03
Commencement Date: S. 11(Sch. items 3.1, 3.2) on 17.6.03: s. 2
Current State: This information relates only to the provision/s amending the **Barley Marketing Act 1993**

Barley Marketing Act 1993
Act No. 7/1993

Endnotes

3. Explanatory Details

No entries at date of publication.