

THE RICE MARKETING BOARD FOR THE STATE OF NEW SOUTH WALES



AUTHORISED BUYERS APPLICATION POLICY

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1 Application for an Authorised Buyers Licence (ABL)

One of the objects of the Rice Marketing Board for the State of New South Wales (the Board) is to encourage the development of a competitive domestic market for rice. The purpose of the ABL process is to open up the rice growing industry to competition in the buying and selling of New South Wales rice.

To this aim, the *Rice Marketing Act 1983* (the Act) empowers the Board to appoint any person to be an Authorised Buyer of rice.

The Board's policy, consistent with the Act, is to appoint all applicants as Authorised Buyers unless a licence has been revoked in the past two years or there is logically probative material that the buyer would not comply with the ABL conditions. "Logically probative material" is material that tends to logically prove the existence or non-existence of a fact.

2 Board Consideration

2.1 General

The Board will receive and consider each application for an ABL on a case by case basis, on the advice of the ABL Committee.

Where the Board reasonably believes that the applicant would not comply with the ABL conditions to which it would be subject if the appointment were made, a decision to refuse a licence must be supported by logically probative material.

It is the policy of the Board that licences shall be granted unless there are extenuating circumstances, documented by logically probative material, which could not be overcome by imposing appropriate conditions on the licence.

2.2 Conflicts of interest

All ABL applications are considered by the Authorised Buyers Licensing Committee, comprised of the four nominated Board Members. The role of the Committee is to give confidential consideration to ABL applications, seek further information where required, and make recommendations to and/or advise the Board.

Where a Board Member has a potential conflict of interest in reviewing an application and the supporting material of an applicant that Board Member will not be provided with the commercially confidential or sensitive information, and will not participate in the consideration of the application.

2.3 Further information

Where the Board or the ABL Committee does not feel it has adequate information in order to make a determination on an application, the Board or the ABL Committee may request further information from the applicant or it may carry out background checks and due diligence.

Such requests for further information must be reasonable and appropriate in the circumstances.

2.4 Factors to be considered in granting a licence

By way of guidance, the Board considers that the following factors are not likely to be, on their own, a sufficient reason to refuse to grant an ABL, however they may be taken into consideration:

- previous operating losses by an applicant;
- an application from a person who previously held an ABL which has been revoked or suspended more than 2 years prior; and/or
- an application from a person who previously held an ABL but who surrendered it.
- An incomplete application.

The Board will not refuse an application from a new entrant into the rice market solely for the reason that they are a new entrant.

3 Standard ABL conditions

The Board has adopted standard terms and conditions for an ABL which are set out in the pro forma licence (attached).

The Board considers these conditions will generally provide sufficient protection to growers from any inability of a licensee to fulfil their obligation under the ABL.

In particular, under the pro forma licence an Authorised Buyer specifically undertakes, amongst other things, to:

- maintain the wholesomeness and purity of the rice it buys;
- pay the grower for the rice it purchases in accordance with the agreement between itself and the grower;
- promptly surrender its ABL if it ceases to carry on a business as an Authorised Buyer of rice, noting the licence is not transferable;
- promptly surrender its ABL where it suffers an insolvency event (as defined in the licence), noting the licence is not transferable;

- if a licence is relinquished, suspended or revoked, all rice on hand must be sold to an authorised buyer
- notify the Board where there is a change in control in the operations of the authorised buyer;
- not act in a manner that is inconsistent with the objectives of the Board;
- annually provide the Board with a signed declaration and proof to the Board's satisfaction, of its good commercial standing; and;
- comply with all applicable legislation and regulations relating to the operation of its business; and
- pay its annual fees promptly.

The Board is satisfied that for most applications the standard ABL conditions, undertakings and representations and warranties will sufficiently protect growers and the industry.

4 Appropriate conditions

The Act empowers the Board to impose appropriate conditions on an Authorised Buyer's Licence.

In exercising this discretion the Board will do so in accordance with the purpose of the ABL process and the objects of the Board.

The Board will consider the necessity for any further conditions based on the evidence and circumstances of each applicant. Any condition imposed on an Authorised Buyer will be appropriate and proportionate in the circumstances.

When considering what conditions are appropriate the Board will make an assessment based on all the evidence it has before it.

The policy of the Board is to issue the standard terms and conditions for each ABL unless there is clear evidence that additions or amendments to the standard conditions are required.

5 Reasons for declining an application

The Act allows an unsuccessful applicant to appeal to the NSW Civil and Administrative Tribunal for a review of any decision made by the Board in relation to the application.

The *Civil and Administrative Tribunal Act 2013 (NSW)* requires the Board to notify the applicant of a decision affecting them and of any review rights they might have. Under this provision the Board is also required to provide reasons for their decisions on request from the applicant.

Consequently, the Board will notify unsuccessful applicants of any decision and inform them of their right to appeal. The Board will provide written reasons for its decision to unsuccessful applicants on request.

Further Information

For further information concerning how the Board handles authorised buyers fees, please contact:

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Document Approval and Control

a. Version

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2017-2	11/4/19	Referred to ABL Committee	Gov Committee
2020-1	29/1/20	ABL Committee: removal of last sentence in first paragraph in section 2.2	C Chiswell

c. Document Approval

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