



The Rice Marketing Board of New South Wales

Application Package for Authorised Buyer's Licence

BACKGROUND FOR POTENTIAL AUTHORISED BUYER'S LICENCE APPLICANTS

INTRODUCTION

The Rice Marketing Board for the State of New South Wales (the Board) was the first commodity marketing board established in New South Wales, under the *Marketing of Primary Products Act 1927*.

The Board's objects are:

1. To encourage the development of a competitive domestic market for rice
2. To ensure the best possible returns from rice sold outside Australia based on the quality differentials or attributes of Australian grown rice.
3. To liaise with and represent the interest of all NSW rice growers in relation to the Board's function and objects.

Interested parties can participate in the domestic rice market by becoming an Authorised Buyer, as defined under the [Rice Marketing Act 1983](#) (the Act). Under the Act, the Board is empowered to grant Authorised Buyer's Licences for rice grown in New South Wales and encourages interested parties to make an application to become an Authorised Buyer in the domestic rice market.

The Board has granted Ricegrowers' Limited the sole and exclusive right to export rice at this time. The Board will therefore not licence an applicant as an Authorised Buyer of NSW rice unless it is satisfied that the rice is intended exclusively for use in Australia.

ABOUT DOMESTIC DEREGULATION

Vesting facilitates the ongoing delivery of an export premium price to rice growers and assists Australian growers compete in a global market where over 98% of world production is subsidised. It is a critical part of enabling NSW rice growers access into the most distorted market in the world, without imposing any import barriers to foreign rice or costs to the Australian consumer.

In 2006 the domestic rice market was deregulated meaning interested parties can participate in the domestic rice market by becoming an Authorised Buyer, as defined under the Act.

All rice grown in New South Wales, which is defined as unprocessed paddy grain, milled whole grain and milled broken grain, will continue to be held, or vested, in the Board.

However, Authorised Buyers are entitled to enter into direct commercial arrangements with producers of rice destined for use in the Australian domestic market. They are not entitled to sell or supply rice grown in New South Wales outside of Australia without the Board's written approval.

ABOUT AUTHORISED BUYERS

All rice grown in New South Wales must be sold and delivered to an Authorised Buyer(s). Unless a grower is also an Authorised Buyer they cannot retain any of the rice they grow.

A current list of [Authorised Buyers](#) is available on the Board's website.

Under section 51 (1)(c) of the Act, the Board may refuse to appoint a person as an Authorised Buyer if and only if:

- an earlier order appointing the person as an Authorised Buyer has been revoked during the previous 2 years (otherwise than at the person's request); or
- the Board reasonably believes that the person would not comply with the conditions to which the Authorised Buyer would be subject to if the appointment were made.

The appointment, if made, will apply from the date made and will remain in force, unless revoked by the Board, as long as the Authorised Buyer continues to adhere to the conditions of the licence, including:

- the Authorised Buyer completes and returns to the Board the Annual Return provided by the Board each year. The form will be sent by the Board prior to 30th June each year and must be lodged with the Board by 31 July each year, even if no rice has been purchased for the year; and
- the Authorised Buyer pays the annual licence renewal by 31 July each year. The licence is made up of a base component of \$500.00 Australian (plus GST), plus a per tonne purchased component (plus GST). The per tonne purchased component may vary each year and will be advised by the Board when it sends the annual return form to licensed Authorised Buyers each year.

Before proceeding with the application process, applicants are advised to familiarise themselves with the provisions of the Act including the amendments made to the Act by the [Rice Marketing Amendment \(Prevention of National Competition Policy Penalties\) Act 2005](#), that relate to Authorised Buyers.

GUIDELINES FOR PREPARATION OF APPLICATION FORM

SECTION 1: CONTACT INFORMATION

- Applicant's name is the full name of the trading entity.
- Contact Name(s) is the full name of the person or persons authorised by the Applicant as their contact.
- ABN number is required
- ACN number (if applicable) is required.
- Postal address is the address correspondence is mailed to.
- Business address is the physical address or the registered office of the Applicant.
- Email address of the Applicant or Contact Name(s) is required
- Telephone and mobile telephone (if applicable) numbers of the Applicant or Contact Name(s) are required.
- Facsimile number of the Applicant or Contact Name(s) is required.

SECTION 2: CONDITIONS OF APPOINTMENT

This section lists the conditions that will be imposed upon applicants who are appointed as Authorised Buyers. This section should be read carefully in conjunction with the Introduction, Right of Appeal and Penalties Imposed by the Act sections that head these Guidelines.

Condition 1(g) covers the annual fee paid in arrears within 31 days of the end of the relevant financial year. Note the annual return of quantities from Authorised Buyers is also due by the 31st July each year (being within 31 days of the end of the relevant financial year).

The annual licence fee is calculated as a base component of AU\$500.00 (plus GST), plus a component per tonne (plus GST) for tonnage purchased by Authorised Buyers, or of tonnage grown and retained by growers who are also Authorised Buyers.

The Board will notify all Authorised Buyers by 30 June of each relevant year of the fee per tonne to be charged which may vary from year to year, depending on crop size and Board operating costs.

For example, the fee at 30 June 2013 was \$0.38 per tonne purchased from a crop size of 1.170.000 tonnes, the 30 June 2014 fee was set at \$0.62 for a crop size of 825,000 tonnes.

SECTION 3: APPLICATION FEE

A non-refundable application fee of \$500.00 Australian (plus GST) must be lodged with the application form or paid at that time to the Board by an Electronic Funds Transfer (EFT). Note the funds must clear before the application process can be finalised.

SECTION 4: DECLARATION

Once you have confirmed that the application form has been fully completed including part 2) of the declaration, the declaration is to be signed and dated by the individual with the power to sign on behalf of the applicant seeking to obtain an Authorised Buyers Licence.

RIGHT OF APPEAL

Under section 51 of the Act:

A person who applies to the Board for appointment as an Authorised Buyer may apply to the [NSW Civil and Administrative Tribunal](#)¹ (NCAT) for a review of any decision made by the Board with respect to their application.

A person whose appointment as an Authorised Buyer is varied, suspended or revoked by the Board may apply to NCAT for a review of the Board's decision to vary, suspend or revoke the appointment.

However, these provisions do not apply to a decision by the Board to impose on a person's appointment as an Authorised Buyer any condition of the kind referred to in section 51A(2) (that is, that the Authorised Buyer cannot sell or supply the rice outside of Australia).

PENALTIES IMPOSED BY THE ACT

Under section 51A of the Act:

An Authorised Buyer who contravenes a condition of appointment (otherwise than as referred to below) is guilty of an offence against this Act.

Maximum penalty: 200 penalty units.²

An Authorised Buyer who sells or supplies rice in contravention of a condition of appointment (eg exports rice) is guilty of an offence against this Act.

Maximum penalty: 2,000 penalty units.

On the application of the Minister, the Supreme Court may order a person who has sold or supplied rice in contravention of a condition of appointment (being rice purchased by the person as an Authorised Buyer) to pay to the Minister, for payment to the Consolidated Fund, an amount equivalent to its estimate of:

- the proceeds of the sale of the rice, or
- the value of the rice supplied.

¹ NCAT commenced operating on 1 January 2014 replacing more than 20 of the [State's existing Tribunals](#) including the Administrative Decisions Tribunal and provides a single gateway for tribunal services in NSW.

² Note: One penalty unit currently equals \$110 Australian

An order may be made against a person whether or not the person has been prosecuted or convicted for payment of a penalty.

NOTIFICATION TO LEVIES REVENUE SERVICE

The Board will notify the Levies Revenue Service (LRS) of the Australian Government Department of Agriculture of the name, address and other contact details of all Authorised Buyers appointed by the Board.

The LRS will contact all Authorised Buyers in relation to their collection obligations in respect to [Rice Research and Development Levies](#) ("R&D levies"). The Rice R&D levies are charged at the request of the rice industry and fund research, development and extension, plant biosecurity programs and emergency pest and disease responses. Authorised Buyers must collect the R&D levy from rice growers, for remitting to the Australian Government.

**APPLICATION FOR AUTHORISED BUYERS LICENCE UNDER THE RICE
MARKETING ACT 1983****SECTION 1
CONTACT INFORMATION**

Applicant/s name:	
Contact/s name:	
ABN:	ACN:
Postal Address:	
City/Town:	
State:	Postcode:
Email:	
Telephone:	Mobile:
Facsimile:	

SECTION 2

CONDITIONS THAT WILL APPLY IF AN AUTHORISED BUYERS LICENCE IS GRANTED BY THE BOARD

The following conditions are imposed on the appointment of an Authorised Buyer in accordance with Section 51A(1) and 51A(2) of the Act.

1. Appointment

Pursuant to Section 51(1) of the Act, the Rice Marketing Board for the State of New South Wales (the "Board") appoints the person identified in the Schedule as an authorised buyer of rice grown in New South Wales ("the Authorised Buyer") (the "Appointment").

The Appointment:

- (a) is non-exclusive;
- (b) is non-transferable;
- (c) operates solely for the purpose of purchasing rice grown in New South Wales and planted on or after 1 July 2006, on the Authorised Buyer's own account, from a producer of rice (the "Producer") or any other person which that producer or other person is entitled to sell rice to; and
- (d) is subject to the terms and conditions imposed on this Appointment of the Authorised Buyer in accordance with sub-sections 51A(1) and 51A(2) of the Act.

2. Sale of Rice

- (a) Except with the Board's prior written approval, any sale or supply of rice purchased by the Authorised Buyer pursuant to the power conferred by Section 51(2) of the Act to persons outside Australia is prohibited.
- (b) The Authorised Buyer must not sell or supply rice purchased by it pursuant to the power conferred by Section 51(2) of the Act to a person within Australia ("the Purchaser"), other than an authorised buyer appointed by the Board pursuant to section 51(1) of the Act or an end-user, unless the sale or supply is made under a written contract including provisions that:
 - (i) prohibit the Purchaser from selling or supplying any of the rice to persons outside of Australia;
 - (ii) prohibit the Purchaser from selling or supplying any of the rice to persons within Australia (the "Subsequent Purchaser"), other than end-user, unless the sale or supply is made under a written contract including provisions that prohibit the Subsequent Purchaser from selling or supplying any of the rice to persons outside of Australia; and

- (iii) require the Purchaser to ensure that any subsequent sale or supply of any of the rice is made under a written contract including provisions in the same terms, with any necessary changes, to those referred to in paragraphs (a) and (b) of this Condition 2.
- (c) The Authorised Buyer must not sell or supply rice purchased by it pursuant to the power conferred by Section 51(2) of the Act to a person, other than an authorised buyer appointed by the Board pursuant to section 51(1) of the Act, if it is aware that the person intends to sell or supply any of the rice to persons outside of Australia.
- (d) The Authorised Buyer must keep records that correctly record and explain its transactions in quantity terms relating to:
 - (i) rice purchased by the Authorised Buyer pursuant to the power conferred by section 51(2) of the Act;
 - (ii) any sales or supply of such rice to purchasers;
 - (iii) any rice used where the Authorised Buyer is the end user; or
 - (iv) any rice in storage at the end of the financial year (the “relevant year ended 30th June”).
- (e) The Authorised Buyer must allow the Board or its duly authorised agent to inspect the records kept by the Authorised Buyer at all reasonable times.
- (f) The Authorised Buyer must, within 31 days after the relevant year ended 30th June, provide a written report to the Board (in the form provided by the Board) which includes the following particulars:
 - (i) the quantity of rice purchased by the Authorised Buyer pursuant to the power conferred by section 51(2) of the Act in the relevant year;
 - (ii) the quantity of rice sold or supplied to Purchasers;
 - (iii) the quantity of rice used, where the Authorised Buyer is the end user;
 - (iv) the quantity of rice stored as at 30th June of the relevant year; and
 - (v) a statement confirming that the Authorised Buyer is not in breach of any of the conditions of this Appointment.
- (g) Within 31 days of the end of the financial year, the Authorised Buyer must pay to the Board an annual fixed fee of \$550 (inclusive of GST), plus an annual variable fee (on a per tonne basis) plus GST (if applicable), in respect of the relevant year ending 30th June. The Board will notify the Authorised Buyer of the amount payable in respect of the variable fee in June of the relevant year.
- (h) The Authorised Buyer must not purchase or supply rice which has been derived or developed from an organism which has been modified by gene technology.

For the purposes of this clause, 'gene technology' is defined as:

Any technique for the modification of genes or other genetic material, but does not include:

- (i) sexual reproduction; or
- (ii) homologous recombination.

3. Undertakings

The Authorised Buyer undertakes to the Board that:

- (a) in its handling or storage of the rice, the Authorised Buyer will maintain, as far as practicable, the wholesomeness and purity of the rice, in the interests of public health;
- (b) it will pay the Producer for the rice in accordance with the written agreement between itself and the Producer;
- (c) it will promptly surrender its appointment as an Authorised Buyer if it ceases to carry on business as an authorised buyer of rice;
- (d) it will promptly surrender its appointment as an Authorised Buyer if it suffers an insolvency event, which means the happening of any of the following events in relation to an Authorised Buyer:
 - (i) except for the purposes of a bona fide and solvent reconstruction or amalgamation:
 - (A) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or any other corporate action is taken or an application to a court or other steps are taken for the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, official management, bankruptcy, administration, or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of it; or
 - (B) it enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them;
 - (ii) it ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of its business;
 - (iii) it is, or is deemed under section 95A of the *Corporations Act 2001 (Cwlth)* to be, unable to pay its debts when they fall due (other than as a result of the failure to pay a debt or claim the subject of a good faith dispute) or stops or suspends or threatens to stop or suspend the payment of all or any class of its debts;

- (iv) a liquidator, receiver, compulsory manager, administrator, administrative receiver or similar officer is appointed to it or in respect of any of its assets or a distress, attachment or other execution is levied or enforced;
 - (v) it goes into liquidation, dies or commits an act of bankruptcy;
 - (vi) a moratorium is declared in respect of any indebtedness of it;
 - (vii) an event occurs which would result in the crystallisation or enforcement of any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect, over its business, undertaking, property or assets;
 - (viii) it is dissolved; or
 - (ix) it suffers any event which is analogous to any of the events described in paragraphs (i) to (viii) under the laws of the jurisdiction in which it is incorporated;
- (e) it will notify the Board in writing if a change in control occurs in the operations of the Authorised Buyer, which means a change in the corporate structure of the Authorised Buyer or of any company which is a holding company of the Authorised Buyer, which results in a person other than the shareholders of the Authorised Buyer as at the time of the Appointment:
- (i) controlling the composition of the board of directors of the Authorised Buyer;
 - (ii) controlling the voting power of the board of directors or any class of shareholders of the Authorised Buyer, or both; or
 - (iii) holding more than one half of the issued share capital (either beneficially or otherwise of the Authorised Buyer).

For the purposes of this definition control has the meaning set out in section 50AA of the *Corporations Act 2001*.

- (f) it will not act in a manner that it is inconsistent with the objectives of the Board (as set out in the Proclamation published in the New South Wales Government Gazette, dated 28 June 1985 and reproduced in Annexure A);
- (g) on the date of this Appointment and within 31 days of the end of the financial year for each successive 12 month period, it will provide the Board with a signed declaration as to its good commercial standing, along with proof of its good commercial standing to the Board's satisfaction. This information will form part of the annual return prepared each year by the Authorised Buyers; and
- (h) it will comply with all applicable federal and state legislation and regulations relating to the operation of its business, including all laws relating to state and federal quarantine, occupational health and safety and environment.

4. Representations and Warranties of the Authorised Buyer

4.1. If the Authorised Buyer is a body corporate, the Authorised Buyer represents and warrants to the Board that:

- (a) it is duly incorporated and validly exists under the laws of its place of incorporation;
- (b) it is not bankrupt or insolvent, and no receiver has been appointed over any part of its assets and no such appointment has been threatened;
- (c) it is not bankrupt or in liquidation, and no proceedings have been brought or threatened for the purpose of winding up the Authorised Buyer;
- (d) to the best of the Authorised Buyer's knowledge and belief, there are no facts, matters or circumstances which give any person the right to apply to liquidate, wind up or have a trustee in bankruptcy appointed to the Authorised Buyer;
- (e) no administrator has been appointed to the Authorised Buyer nor has any deed of company arrangement been executed or proposed in respect of the Authorised Buyer;
- (f) it has not entered into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
- (g) it is not (or is not taken to be under applicable legislation) unable to pay its debts, other than a debt or claim the subject of a good faith dispute, and has not stopped or suspended, or threatened to stop or suspend, the payment of all or a class of its debts;
- (h) it is not in default under a document or agreement which relates to the operation of its business as an Authorised Buyer, and nothing has occurred which constitutes an event of default, cancellation event, prepayment event or similar event (whatever called) under those documents or agreements, whether immediately or after notice or lapse of time or both;
- (i) the execution and delivery of this Appointment has been properly authorised by all necessary action of the Authorised Buyer;
- (j) it has full power and lawful authority to execute and deliver this Appointment and to consummate and perform or cause to be performed its obligations under this Appointment and each transaction contemplated by this Appointment to be performed by the Authorised Buyer;
- (k) this Appointment constitutes a legal, valid and binding obligation of the Authorised Buyer enforceable in accordance with its terms by appropriate legal remedy;
- (l) the execution, delivery and performance by the Authorised Buyer of this Appointment and each transaction contemplated by this Appointment does not or will not (with or without the lapse of time, the giving of notice or both) contravene, conflict with or result in a breach of or default under:

- (i) any provision of the constitution of the Authorised Buyer;
 - (ii) any material term or provision of any security arrangement, undertaking, agreement or deed; or
 - (iii) any writ, order or injunction, judgement, or law to which it is a party or is subject or by which it is bound; and
- (m) all information provided by the Authorised Buyer to the Board is true in all material respects at the date of this Appointment or, if later, when provided.

4.2. If the Authorised Buyer is an individual, partnership or other entity (that is not a body corporate), it gives the representations and warranties to the Board in 4.1(b) to (m) above.

4.3. The representations and warranties are given as at the date of this Appointment and will survive the execution and delivery of this Appointment.

5. Financial Standing of the Authorised Buyer

On the date of this Appointment and thereafter at the Board's discretion, the Board will conduct whatever searches it deems reasonably necessary, including but not limited to credit checks, in order to establish the Authorised Buyer's financial standing and solvency, and to ensure the Authorised Buyer has not defaulted on any payment related to carrying on business as an authorised buyer.

6. Authorised Buyer's dealings with a Producer

- (a) The terms of any agreement between the Authorised Buyer and a Producer, in respect of the sale and purchase of rice, must be set out in writing. These terms must include the delivery and payment obligations of the parties.
- (b) The Authorised Buyer must notify the Producer in any agreement between the Authorised Buyer and the Producer that the Producer is contracting only with the Authorised Buyer and that the Board does not accept any responsibility for the contractual arrangements that the Producer and Authorised Buyer enter into.

7. Release

The Authorised Buyer releases and discharges the Board from all claims, actions, demands and liabilities of any nature (including any costs, whether or not the subject of a court order) arising under this Appointment.

8. Indemnity

The Authorised Buyer must indemnify the Board against all losses, costs, charges, liabilities or expenses which the Board may sustain or incur as a direct or indirect result in connection with:

- (a) all third party claims arising in connection with the terms of the Appointment; and

- (b) its Appointment and any act or omission it makes in its capacity as an Authorised Buyer, or otherwise.

9. Suspension or Revocation

The Board may suspend or revoke the Appointment if the Authorised Buyer is in breach of any term of this Appointment, including without limitation, the undertakings, representations and warranties.

10. Amendment of Terms

The Board reserves the right to amend the terms of the Appointment upon written notice to the Authorised Buyer.

11. Governing Law

The Appointment is governed by New South Wales Law.

SECTION 3

APPLICATION FEE

The non-refundable application fee may be paid by a cheque made payable to the Rice Marketing Board for the State of New South Wales or by an Electronic Funds Transfer (EFT). EFT payments are to be paid to the Board's bank account, details of which are shown below.

Notification of the date of EFT payment, amount and name of payer (licence applicant) is to be sent to the Board, either by facsimile on 02 6953 7684 or email secretary@rmbnsw.org.au on or before the date of payment.

Note the Board will not finalise processing of the application until it has received cleared funds.

Bank Account Name:	Rice Marketing Board of NSW
Bank:	Westpac Banking Corporation
Branch:	Leeton NSW
Account No:	00-0121
BSB No:	032-757

SECTION 4

DECLARATION

I/We declare as follows:

1. That the information provided under Section 1 is true and accurate
2. That if granted a licence by the Board I/we..... agree to be bound by the conditions that will apply to the licence as set out in Section 2

Dated this.....day of.....20.....

Signature..... Full Name

THE PROCESS FOR APPROVING AN AUTHORISED BUYERS LICENCE

When an application for an Authorised Buyers License is received, and the application fee has cleared, the following process will take place.

In order to verify the applicant's credentials and protect the integrity of the Authorised Buyers Scheme the Secretary will contact the applicant and request the following:

- Two years financial statements.
- A completed declaration by the applicant's accountant or bank manager

The Secretary will also ask the following questions of the applicant:

- Please give a brief background to your business/farm operations.
- How long have you been in business
- How much do you plan to purchase/grow?
- Have you ever been bankrupt in the last five years?
- Have you ever had proceedings brought against you for non payment of accounts?
- Do you have any other information that will support your application?
- Are you aware this license does not allow you to export NSW grown rice or to on-sell rice to another person/s or entity who you know intends to export the rice in a non-value added/ unchanged form

The Secretary will invite all parties to add any other, relevant comments in support of the application.

The application is then considered by the Authorised Buyers Licence Committee of the Board.

APPLICATION FOR AUTHORISED BUYER'S LICENCE

DECLARATION BY ACCOUNTANT / BANK MANAGER

Please answer all questions

Authorised Buyer's Licence Applicant/s details	
Authorised Buyer's Licence Applicant name:	
ABN:	ACN:
How long has the applicant been your client?	
Do you consider the applicant to be of good character?	
Are you aware of the applicant having been declared bankrupt?	
Are you aware of any problems the applicant has had paying their accounts?	
Do you have any other information that might support the applicant's application for an Authorised Buyer's Licence?	
Accountant / Bank Manager Details:	
Company name:	
Contact/s name:	
ABN:	ACN:
Postal Address:	

City/Town:	
State:	Postcode:
Email:	
Telephone:	Mobile:
Declaration: I am the applicant's accountant / bank manager and declare this information to be true and correct.	
Signed	
Dated	