



Wheat Marketing Legislation Amendment Act 1998

No. 103, 1998



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**An Act to amend legislation relating to wheat
marketing, and for related purposes**

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No. 103, 1998

An Act to amend legislation relating to wheat marketing, and for related purposes

[Assented to 30 July 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Wheat Marketing Legislation
Amendment Act 1998*.

2 Commencement

- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.

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- (2) The amendments of the *Wheat Marketing Act 1989* commence on 1 July 1999.
- (3) The repeal of section 18 of the *Wheat Marketing Amendment Act 1997* commences on 1 July 1999.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Definitions

In this Act, unless the contrary intention appears:

Board means the Australian Wheat Board.

constitution, in relation to a company, has the same meaning as in the Corporations Law.

Fund unit means a unit of equity in the Wheat Industry Fund that is held by a person (other than the Board) under regulations made under the *Wheat Marketing Act 1989*.

nominated company means nominated company A, nominated company B or nominated company C.

nominated company A has the same meaning as in the *Wheat Marketing Act 1989*, as in force immediately before the commencement of this section.

nominated company B has the same meaning as in the *Wheat Marketing Act 1989*, as in force immediately before the commencement of this section.

nominated company C has the same meaning as in the *Wheat Marketing Act 1989*, as in force immediately before the commencement of this section.

transfer time means the beginning of 1 July 1999.

5 Amendment of constitutions of nominated companies

- (1) Not later than 31 March 1999, the Minister must make a written determination that amends the constitutions of the nominated companies.
- (2) The determination takes effect according to its terms.
- (3) After the transfer time, the determination cannot be revoked or amended.
- (4) The fact that the constitution of a nominated company has been amended under this section does not prevent the later amendment of the constitution in accordance with the Corporations Law.

6 Cancellation of old shares in nominated company A

- (1) Immediately before the transfer time, all shares in nominated company A are cancelled, by force of this section.
- (2) Notice of the cancellation does not have to be given to the company's creditors.
- (3) The company's creditors are not entitled to object to the cancellation.
- (4) The cancellation does not have to be confirmed by a court.
- (5) This section has effect despite anything in the Corporations Law.

7 Issue of B Class shares to holders of Fund units

- (1) At the transfer time:
 - (a) B Class shares in nominated company A are taken to be issued to the persons who held Fund units immediately before the transfer time, at the rate of one B Class share in respect of each Fund unit; and
 - (b) those Fund units are extinguished.

Note: B Class shares are provided for in the constitution of nominated company A.

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- (2) Each person to whom shares are issued under subsection (1) becomes a member of nominated company A, and is taken to have consented to be a member of the company.
 - (3) If shares are issued according to this section, a court is not to make an order reversing the issue of the shares.
 - (4) Nothing in this section prevents the issue of additional B Class shares in accordance with the constitution of nominated company A.

8 Payment to nominated company A in respect of final levy payments

- (1) If an amount would have become payable to the Board after the transfer time, and before the cutoff time, under section 86 of the *Wheat Marketing Act 1989* (if the amendments made by this Act had not been made), then the amount is payable instead to nominated company A.
- (2) The Consolidated Revenue Fund is appropriated for the purposes of payments under subsection (1).

- (3) In this section:

cutoff time means a time prescribed by the regulations for the purposes of this section.

9 Continuation of Commonwealth underwriting of borrowings

- (1) Nominated company A may continue to borrow money after the transfer time under section 77A of the *Wheat Marketing Act 1989* as if that section, and any related provisions, had not been repealed.
- (2) Section 78 of the *Wheat Marketing Act 1989*, and any related provisions, continue to have effect after the transfer time in relation to the following borrowings as if those provisions had not been repealed:
 - (a) money borrowed by nominated company A before the transfer time under section 77A of the *Wheat Marketing Act 1989*; and

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- (b) money borrowed by nominated company A after the transfer time under 77A of the *Wheat Marketing Act 1989* (as having effect after the transfer time because of subsection (1) of this section).

10 Cessation of mobility rights

- (1) This section is enacted for the avoidance of doubt.
- (2) If Division 2 or 3 of Part IV of the *Public Service Act 1922* applies to an employee of a nominated company immediately before the transfer time, then that Division ceases to apply to the employee at the transfer time.
- (3) If Division 4 of Part IV of the *Public Service Act 1922* applies to an employee of a nominated company immediately before the transfer time, then:
 - (a) the *Officers' Rights Declaration Act 1928*; and
 - (b) Division 4 of Part IV of the *Public Service Act 1922*;cease to apply to the employee at the transfer time.
- (4) If subsection (2) or (3) would have caused the termination of a person's return rights at a particular time after the commencement of this section if the *Public Service Act 1922* had not been repealed, then section 6 or 7 of the *Public Employment (Consequential and Transitional) Amendment Act 1998* does not apply to the person after that time.
- (5) The reference in subsection (4) to the termination of a person's return rights is a reference to any of the following ceasing to apply to the person:
 - (a) Division 2, 3 or 4 of Part IV of the *Public Service Act 1922*;
 - (b) the *Officers' Rights Declaration Act 1928*.

11 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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- (2) In particular, regulations may be made for matters of a transitional or saving nature arising from the amendments made by this Act.
- (3) Without limiting subsection (2), regulations may be made for the following matters of a transitional or saving nature arising from the amendments made by this Act:
- (a) the operation of the *Privacy Act 1988* or the *Freedom of Information Act 1982*;
 - (b) the rights and entitlements of persons who are, or have been, employees of the Board or of a nominated company;
 - (c) the taxation liabilities of the Board, a nominated company or any other person.

Schedule 1—Amendments

Wheat Marketing Act 1989

1 Title

Omit “**marketing**”, substitute “**export**”.

2 Section 2

Repeal the section.

3 Sections 3 and 3A

Repeal the sections, substitute:

3 Definitions

In this Act, unless the contrary intention appears:

Authority means the Wheat Export Authority referred to in section 4.

Chairperson means the Chairperson of the Authority.

Grains Council means:

- (a) the Grains Council of Australia; or
- (b) if the Grains Council of Australia no longer exists—a body that represents grain growers and is prescribed by the regulations for the purposes of this definition.

member means a member of the Authority (including the Chairperson).

nominated company B means the company that was nominated company B for the purposes of the repealed Part 3A.

repealed Part 3A means Part 3A of this Act that was repealed by the *Wheat Marketing Legislation Amendment Act 1998*.

4 Parts 2, 3 and 3A

Repeal the Parts, substitute:

Part 2—The Wheat Export Authority

Division 1—Establishment and functions

4 The Wheat Export Authority

- (1) The Australian Wheat Board that existed under this Act immediately before the commencement of this section continues in existence as the Wheat Export Authority.

Note 1: The *Commonwealth Authorities and Companies Act 1997* applies to the Authority.

Note 2: Section 25B of the *Acts Interpretation Act 1901* deals with the consequences of the change of name.

- (2) The Authority:
- (a) is a body corporate with perpetual succession; and
 - (b) is to have a common seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of the Authority on a document, and must presume that the document was duly sealed.
- (4) A document signed by the Chairperson on behalf of the Authority is taken to have been signed with the authority of the Authority, unless the contrary is proved.

5 Functions and powers of the Authority

- (1) The Authority has the following functions:
- (a) to control the export of wheat from Australia;
 - (b) to monitor nominated company B's performance in relation to the export of wheat and examine and report on the benefits to growers that result from that performance.

- (2) The Authority has power to do all things that are necessary or convenient to be done in connection with the performance of its functions.

Division 2—Membership

6 Membership of the Authority

- (1) The Authority consists of the following members:
 - (a) a Chairperson;
 - (b) 2 members who have been nominated by the Grains Council;
 - (c) a government member;
 - (d) one other member.
- (2) One of the members referred to in paragraph (1)(b) must be a person who is ordinarily resident, at the time of appointment, in New South Wales, Victoria, Queensland or Tasmania. The other must be a person who is ordinarily resident, at the time of appointment, in Western Australia or South Australia.
- (3) The appointment of a member referred to in paragraph (1)(b) is not ineffective, and is not to be questioned, on the ground of a defect or irregularity in connection with the member's nomination or appointment.
- (4) Each member is to be appointed by the Minister, in writing, for a specified term of up to 3 years.
- (5) The members hold office on a part-time basis.
- (6) The performance of functions, or the exercise of powers, by the Authority is not affected by a vacancy or vacancies in its membership.

7 Resignation

A member may resign by giving the Minister a signed notice of resignation.

8 Termination of appointment

- (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of a member if the member:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (b) fails, without reasonable excuse, to comply with his or her obligations under section 21 of the *Commonwealth Authorities and Companies Act 1997*; or
 - (c) is absent, without the prior consent of the Authority, from 3 consecutive meetings of the Authority otherwise than on business of the Authority undertaken with the approval of the Authority.

9 Remuneration and allowances

- (1) A member is to be paid the remuneration that is determined by the Remuneration Tribunal. However, if no determination of that remuneration by the Tribunal is in operation, a member is to be paid the remuneration that is prescribed by the regulations.
- (2) A member is to be paid such allowances as are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Division 3—Meetings

10 Meetings of the Authority

- (1) Meetings of the Authority are to be held at such times and places as the Authority determines.
- (2) The Chairperson may convene a meeting of the Authority.

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- (3) At a meeting, 3 members, one of whom is a member nominated by the Grains Council, is a quorum.
 - (4) The Chairperson is to preside at all meetings at which he or she is present.
 - (5) If the Chairperson is not present at a meeting, the members present must elect a member to preside.
 - (6) A question arising at a meeting is to be decided by a majority of the votes of the members present and voting.
 - (7) The member presiding at a meeting has a deliberative vote and, if there is an equality of votes, also has a casting vote.
 - (8) The Authority must keep a record of its proceedings.
 - (9) The procedure of the Authority is to be determined by the Authority.

Note: Section 33B of the *Acts Interpretation Act 1901* allows for meetings to be held by telephone or by other means.

Division 4—Finances

11 Expenditure

- (1) Money of the Authority may only be spent:
 - (a) in payment or discharge of expenses and liabilities incurred by the Authority in the performance of its functions under this Act; or
 - (b) in payment of remuneration and allowances payable under this Act; or
 - (c) in reimbursing the Grains Council, in accordance with any guidelines issued by the Minister, for expenditure reasonably incurred by the Grains Council in connection with meetings of the Grains Council referred to in section 15.
- (2) Subsection (1) does not prevent investment of surplus money of the Authority under subsection 19(3) of the *Commonwealth Authorities and Companies Act 1997*.

12 Borrowing

- (1) The Authority must not borrow money except in accordance with a written approval of the Minister.
- (2) An approval by the Minister may be given in relation to a particular transaction, or in relation to a class of transactions.

13 Financial year

For the purposes of the *Commonwealth Authorities and Companies Act 1997*, the Authority's financial year is a period of 12 months starting on 1 October.

Division 5—Miscellaneous

14 Staff of the Authority

The Authority may employ such persons as it thinks necessary for the purposes of this Act, on such terms and conditions as the Authority determines.

15 Reports to meetings of Grains Council

- (1) When an annual report of the Authority has been laid before the Houses of Parliament under subsection 9(3) of the *Commonwealth Authorities and Companies Act 1997*, the Chairperson must:
 - (a) present the annual report to a meeting of the Grains Council within 6 months after the year to which the report relates; and
 - (b) report to the meeting on the operations of the Authority during the year to which the report relates; and
 - (c) make himself or herself available to answer questions arising out of the annual report or the report mentioned in paragraph (b).
- (2) When an interim report of the Authority has been laid before the Houses of Parliament under subsection 13(5) of the *Commonwealth Authorities and Companies Act 1997*, the Chairperson must:

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- (a) present the interim report to a meeting of the Grains Council within 3 months after the period to which the report relates; and
 - (b) report to the meeting on the operations of the Authority during the period to which the report relates; and
 - (c) make himself or herself available to answer questions arising out of the interim report or the report mentioned in paragraph (b).
- (3) In addition to reporting to meetings of the Grains Council under subsections (1) and (2), the Authority:
- (a) must report to other meetings of the Grains Council, at least once every 6 months, on the operations of the Authority; and
 - (b) may arrange with the Grains Council for the Authority to report to other meetings of the Grains Council on the operations of the Authority.

16 Operational plan

- (1) Before the start of each financial year, the Authority must prepare an operational plan for the financial year and give it to the Minister.
- (2) The plan must include details of the strategies and policies that are to be followed by the Authority in performing its functions during the financial year.
- (3) The Chairperson must keep the Minister informed about:
 - (a) changes to the plan; and
 - (b) matters that might affect significantly the Authority's ability to perform its functions in accordance with the plan.
- (4) The Minister may give the Chairperson written guidelines that are to be used by the Chairperson in deciding whether a matter is covered by paragraph (3)(b).

5 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Control of wheat exports

6 Division 1 of Part 4 (heading)

Repeal the heading.

7 Subsection 57(1)

Omit “, other than the Board,”.

8 Paragraph 57(1)(a)

Omit “Board”, substitute “Authority”.

9 After subsection 57(1)

Insert:

- (1A) The prohibition in subsection (1) does not apply to nominated company B.

10 Subsection 57(3)

Omit “Board’s”, substitute “Authority’s”.

11 After subsection 57(3)

Insert:

- (3A) Before giving a consent, the Authority must consult nominated company B.
- (3B) The Authority must not give a bulk-export consent without the prior approval in writing of nominated company B. For this purpose a consent is a *bulk-export consent* unless it is limited to export in bags or containers.
- (3D) An application for a consent under this section must be accompanied by such fee (if any) as is prescribed by the regulations. The fee is payable to the Authority.
- (3E) The Authority must issue guidelines about the matters it will take into account in exercising its powers under this section.

12 Subsection 57(4)

Omit “Board” (wherever occurring), substitute “Authority”.

13 At the end of section 57

Add:

- (6) For the purposes of subsection 51(1) of the *Trade Practices Act 1974*, the following things are to be regarded as specified in this section and specifically authorised by this section:
 - (a) the export of wheat by nominated company B;
 - (b) anything that is done by nominated company B under this section or for the purposes of this section.
- (7) Before the end of 2004, the Authority must conduct a review of the following matters, and give the Minister a report on the review:
 - (a) the operation of subsection (1A) in relation to nominated company B;
 - (b) the conduct of nominated company B in relation to:
 - (i) consultations for the purposes of subsection (3A); and
 - (ii) the granting or withholding of approvals for the purposes of subsection (3B).

14 Divisions 1A, 2 and 3 of Part 4

Repeal the Divisions.

15 Parts 5 and 6

Repeal the Parts.

16 Sections 84 to 86

Repeal the sections, substitute:

84 Nominated company B obliged to purchase wheat

- (1) Nominated company B must purchase all wheat that:
 - (a) is offered to the company for inclusion in a pool operated by the company; and
 - (b) meets the standards required by the company.
- (2) The purchase price must be calculated by reference to the net return for the pool in which the wheat is included.

- (3) Subsection (1) does not apply to any offer made after subsection 57(1) commences to apply to nominated company B.

17 Subsection 88(1) (definition of *corporation*)

Omit “, but does not include the Board”.

18 Sections 88A to 93

Repeal the sections.

19 Subsection 94(2)

Omit “section 7 or”.

20 Subsections 94(3) to (5)

Repeal the subsections.

21 Schedule

Repeal the Schedule.

Wheat Marketing Amendment Act 1997

22 Section 18

Repeal the section.

23 At the end of Division 3 of Part 2

Add:

Subdivision C—Miscellaneous

18A Required extent of exercise of Board’s transfer powers

- (1) Subject to subsection (2), the Board must exercise its powers under this Division so that, immediately before 1 July 1999, the Board no longer has any assets, liabilities, rights or employees that could have been transferred by the Board under this Division.
- (2) The Board must ensure that, on 1 July 1999, the Board still has the amount of money determined by the Minister under subsection (3).

- (3) Before 1 April 1999, the Minister must make a written determination that specifies an amount for the purposes of subsection (2). The specified amount cannot be more than \$6 million.

18B Transfer of WIF assets

- (1) On 1 July 1999, the following assets of the Board vest in nominated company A without any conveyance, transfer or assignment:
 - (a) money in the Wheat Industry Fund;
 - (b) an investment of the Wheat Industry Fund;
 - (c) any other asset that was acquired using money in the Wheat Industry Fund.
- (2) Nominated company A becomes the Board's successor in law in relation to those assets.
- (3) Divisions 4 and 7 apply in relation to the vesting of assets under this section in the same way as they apply in relation to the vesting of assets under section 9.

*[Minister's second reading speech made in—
House of Representatives on 14 May 1998
Senate on 22 June 1998]*

(75/98)