



Wheat Marketing Amendment Act 2003

No. 78, 2003

**An Act to amend the *Wheat Marketing Act 1989*,
and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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An Act to amend the *Wheat Marketing Act 1989*, and for related purposes

[Assented to 22 July 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Wheat Marketing Amendment Act 2003*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

The Authority must prepare and publish the first reports under section 5C of the *Wheat Marketing Act 1989* as amended by this Act for the financial year ending on 30 June 2003. However, the Authority is not required to publish a report under section 5C earlier than 4 months after the commencement of this Act.

Schedule 1—Amendments

Wheat Marketing Act 1989

1 Section 3

Insert:

wheat export charge amounts means:

- (a) amounts of charge identified by the regulations for the purposes of this definition; and
- (b) amounts payable under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to that charge.

Note: The charge mentioned in paragraph (a) is to be imposed by regulations that specify the period for which the charge is to apply.

1A Section 3

Insert:

related body corporate has the same meaning as in the *Corporations Act 2001*.

2 At the end of Division 1 of Part 2

Add:

5A Performance of the Authority's wheat export control function

- (1) In performing its function of controlling the export of wheat from Australia, the Authority must seek to complement any objective of nominated company B to maximise net returns for pools operated by that company, while at the same time seeking to facilitate the development of niche and other markets where the Authority considers that this may benefit both growers and the wider community.
- (2) Subsection (1) does not apply after the time that subsection 57(1) commences to apply to nominated company B.

5B Delegation by the Authority

- (1) The Authority may, by writing under its common seal, delegate all or any of its functions or powers (other than its powers under section 14) to the employee of the Authority who holds, or performs the duties of, the position of chief executive officer of the Authority.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Authority.

5C Reports about nominated company B's performance

Report for Minister

- (1) The Authority must prepare and give to the Minister each financial year a report in relation to:
 - (a) nominated company B's performance in relation to the export of wheat for the year; and
 - (b) the benefits to growers that resulted from that performance.
- (2) The Authority must give the report for a financial year to the Minister on or before 31 December in the next financial year.

Report for growers

- (3) The Authority must prepare and publish a report for growers each financial year in relation to:
 - (a) nominated company B's performance in relation to the export of wheat for the year; and
 - (b) the benefits to growers that resulted from that performance.
- (4) The Authority must publish the report for a financial year on or before 31 December in the next financial year.

Note: Information that is protected from disclosure by subsection 5E(2) must not be included in a report for growers.

5D Power to obtain information

- (1) The Authority may direct nominated company B, or a related body corporate of nominated company B, to give to the Authority:
 - (a) information; or

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- (b) documents, or copies of documents, in the custody or under the control of nominated company B or the related body corporate;
- that the Authority considers relevant to the operation of pools mentioned in section 84 (including the costs of operating the pools and the returns to growers that result from the pools).
- (2) A direction must:
- (a) be in writing; and
 - (b) specify the information that is, or documents that are, to be given; and
 - (c) specify the date by which the information is, or documents are, to be given.
- (3) A direction may specify the manner and form in which the information is, or documents are, to be given.
- (4) The directed company must comply with a direction.
- (5) If the directed company does not comply with a direction by the specified date, the Authority may apply to the Federal Court for an order under subsection (6).
- (6) If the Federal Court is satisfied that:
- (a) the directed company has not complied with the direction; and
 - (b) if information is specified in the direction—the information is relevant to the operation of pools mentioned in section 84 (which may include the costs of operating the pools and the returns to growers that result from the pools); and
 - (c) if documents are specified in the direction—the documents are in the custody or under the control of the directed company and are relevant to the operation of pools mentioned in section 84 (which may include the costs of operating the pools and the returns to growers that result from the pools);
- the Federal Court may make the following orders:
- (d) an order granting an injunction requiring the directed company to comply with the direction;
 - (e) any other order that the Court considers appropriate.
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- (7) The Federal Court may exercise powers under subsection (6) whether or not:
 - (a) it appears to the Court that the directed company intends to continue to fail to comply with the direction; or
 - (b) the directed company has previously failed to comply with a direction.
- (8) The Federal Court may discharge or vary an injunction granted under this section.

5E Dealing with confidential information

- (1) This section applies to a person who is or has been:
 - (a) a member of the Authority; or
 - (b) a member of the staff of the Authority; or
 - (c) a person who performs services in connection with the functions of the Authority; or
 - (d) the Minister; or
 - (e) a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*; or
 - (f) a person appointed by the Minister to conduct the review under subsection 57(7); or
 - (g) a person who assists a person mentioned in paragraph (f) in the conduct of the review.
- (2) The person must not disclose information if:
 - (a) either:
 - (i) it is information given to the Authority under section 5D and the company that gave the information claims it is commercial-in-confidence information; or
 - (ii) it is information contained in a document given to the Authority under section 5D and the company that gave the document claims that the information is commercial-in-confidence information; and
 - (b) the disclosure of the information could reasonably be expected:
 - (i) to cause financial loss or detriment to the directed company or a related body corporate of the directed company; or

- (ii) to directly benefit a competitor of the directed company or of a related body corporate of the directed company; or
- (iii) to reduce the return for a pool mentioned in section 84.

Penalty: Imprisonment for 1 year.

- (3) Subsection (2) does not prevent the person from disclosing information:
- (a) with the consent of the company that gave the information; or
 - (b) in accordance with an order of a court; or
 - (c) to any of the following persons, for a purpose in connection with the performance of the functions of the Authority:
 - (i) a member of the Authority;
 - (ii) a member of the staff of the Authority;
 - (iii) a person who performs services in connection with the functions of the Authority; or
 - (d) to the Minister; or
 - (e) to a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*; or
 - (f) to any of the following persons, for a purpose in connection with the conduct of the review under subsection 57(7):
 - (i) a person appointed by the Minister to conduct the review;
 - (ii) a person who assists a person mentioned in subparagraph (i) in the conduct of the review.

Note: The defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

3 Before section 11 of Division 4 of Part 2

Insert in Division 4:

10A Money to be paid to the Authority

- (1) The Commonwealth must pay to the Authority amounts equal to the wheat export charge amounts received by the Commonwealth.
- (2) Amounts payable under subsection (1) are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

10B Recovery by the Commonwealth of certain expenses

- (1) It is a condition of each payment under subsection 10A(1) that, if the Commonwealth incurs an expense in relation to collecting or recovering wheat export charge amounts or administering provisions relating to wheat export charge amounts, the Authority must pay an amount equal to the amount of the expense to the Commonwealth.

Note: Subsection 18(3) of the *Primary Industries Levies and Charges Collection Act 1991* has the effect that the Authority must also refund wheat export charge amounts paid to the Authority that represent overpayments.

- (2) Amounts that the Commonwealth and the Authority owe each other under subsection 10A(1) and subsection (1) of this section may be set off.

4 Subsection 11(2)

Omit “subsection 19(3)”, substitute “subsection 18(3)”.

4A Subsection 57(7)

Repeal the subsection, substitute:

- (7) Before the end of 2004, the Minister must cause an independent review to be conducted of the following matters:
- (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);
 - (c) whether benefits to growers have resulted from the performance of nominated company B in relation to the export of wheat;
 - (d) the Authority’s performance of its functions under this Act.
- (8) The persons who are to conduct the review are to be appointed by the Minister.
- (9) The persons who conduct the review must:
- (a) be assisted by the Authority; and

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- (b) make use of reports under section 5C and other information collected by the Authority.
 - (10) The persons who conduct the review must give the Minister a report of the review before the end of 2004.
 - (11) The persons who conduct the review must publish a report of the review for growers before the end of 2004.
 - Note: Information that is protected from disclosure by subsection 5E(2) must not be included in a report for growers.
 - (12) The Minister must cause a copy of the report referred to in subsection (11) to be tabled in each House of the Parliament within 25 sitting days of that House after the day on which the Minister receives the report.

5 At the end of Part 4

Add:

58 Variation of consents

- (1) The Authority may vary a consent given under subsection 57(1), on request by the person to whom the consent was given.
- (2) If the Authority makes a variation, the variation must be:
 - (a) in accordance with the request; or
 - (b) if not in accordance with the request—not less favourable than the consent to which the request relates.
- (3) Before making a variation, the Authority:
 - (a) must consult nominated company B; and
 - (b) must take into account the matters included in any guidelines issued under subsection 57(3E).
- (4) Paragraph (3)(a) does not apply to a variation if, in the opinion of the Authority, the variation is of a minor nature.
- (5) Without limiting subsection (4), a variation is taken to be of a minor nature if:
 - (a) it relates only to the tonnage of wheat to be exported; and
 - (b) it varies that tonnage by not more than 500 tonnes.

- (6) If the Authority makes a variation to which subsection (4) applies, the Authority must inform nominated company B of that variation as soon as practicable.
- (7) A consent cannot be varied otherwise than in accordance with this section.

59 Sharing information

- (1) Information (including personal information) collected by the Authority in connection with the performance of its functions under section 57 may be disclosed to another agency for the purpose of the control of wheat exports.
- (2) APS employees of the administrative unit in the Department known as the Australian Quarantine and Inspection Service may provide the Authority with information (including personal information) for the purpose of the control of wheat exports.
- (3) In this section:

agency has the same meaning as in section 6 of the *Privacy Act 1988*.

personal information has the same meaning as in section 6 of the *Privacy Act 1988*.

*[Minister's second reading speech made in—
House of Representatives on 12 December 2002
Senate on 13 May 2003]*

(269/02)