



Wheat Marketing Act 1989

No. 58 of 1989

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SCHEDULE



Wheat Marketing Act 1989

No. 58 of 1989

An Act relating to the marketing of wheat, and for other purposes

[Assented to 15 June 1989]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Wheat Marketing Act 1989*.

Commencement

2. (1) Except for Part 6, subsections 85 (1) and (2) and section 86, this Act commences on 1 July 1989.

(2) Part 6, subsections 85 (1) and (2) and section 86 commence on a day to be fixed by Proclamation.

(3) Part 6, subsections 85 (1) and (2) and section 86 are repealed on 30 June 1990 if their commencement has not been fixed by a Proclamation published in the *Gazette* before that day.

Interpretation

3. (1) In this Act, unless the contrary intention appears:

“Board” means the Australian Wheat Board;

“Board auditor” means:

- (a) if an appointment of a company auditor under subsection 68 (6) is in effect—that company auditor; or
- (b) in any other case—the Auditor-General;

“Chairperson” means the Chairperson of the Board;

“Committee” or “Selection Committee” means an Australian Wheat Board Selection Committee established under section 29;

“currency contract” means a forward exchange contract or a contract with respect to currency futures;

“equal employment opportunity program”, in relation to the Board, means a program of the Board that is designed to ensure:

- (a) that appropriate action is taken to eliminate any discrimination by the Board against women and persons in designated groups in relation to employment matters; and
- (b) that appropriate measures are taken by the Board to promote equal opportunity for women and persons in designated groups in relation to employment matters;

being a program that includes provision for assessment action, consultation action, employee information action, and policy action, in relation to the program;

“Fund” means the Wheat Industry Fund;

“futures contract” means a contract with respect to financial futures or grain futures (including a contract relating to grain harvested outside Australia);

“grain” means wheat, barley, triticale, maize, grain sorghum, soybeans, safflower seed, sunflower seed, linseed, oats, rye, rapeseed, rice, field peas, lupins, millet, canaryseed, grain legumes, pulses, and any product of the soil declared by the Minister, by regulation, to be grain for the purposes of this Act;

“Grains Council” means the body known as the Grains Council of Australia but known, prior to 9 October 1986, as the Australian Wheatgrowers’ Federation;

“member” means a member of the Board, including the Chairperson;

“nominated member” includes a person appointed under subsection 17 (3) to replace a nominated member;

“pool” means a pool established under section 61;

“pool return wheat” means wheat bought by the Board for sale as part of a pool and on terms requiring payment for the wheat to be made according to Division 3 of Part 4;

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“Presiding Member” means the Presiding Member of the Committee, and includes a person appointed to act as the Presiding Member of the Committee;

“quality standards” means standards in force under section 59;

“season” means the period of 12 months commencing on 1 July 1989 or any subsequent 1 July;

“security” includes a bond, debenture, bill of exchange, promissory note or unsecured note or any similar instrument or document;

“Territory” means an internal Territory;

“1984 Act” means the *Wheat Marketing Act 1984*.

(2) A reference in this Act to wheat of a season is a reference to wheat harvested in that season.

(3) For the purposes only of sections 47 and 48 and the definition of “equal employment opportunity program”, the following expressions have the meanings set out in the Schedule:

- (a) assessment action;
- (b) consultation action;
- (c) designated group;
- (d) discrimination;
- (e) employee;
- (f) employee information action;
- (g) employment matters;
- (h) policy action;
- (j) woman.

(4) Without affecting the meaning of subsection (3), the definition of “employee” set out in the Schedule does not have effect for the purpose of any provision of this Act other than subsection (3) and sections 47 and 48.

PART 2—AUSTRALIAN WHEAT BOARD

Division 1—Continuance, functions and powers of Board

Australian Wheat Board continued in existence

4. (1) The Australian Wheat Board that existed, immediately before 1 July 1989, under the 1984 Act continues in existence.

(2) The Board:

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (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 shall take judicial notice of the imprint of the seal of the Board on a document and shall presume that the document was duly sealed.

(4) A document signed by the Chairperson on behalf of the Board shall be taken to have been signed with the authority of the Board unless the contrary is proved.

Objects of the Board

5. The objects of the Board are:

- (a) to maximise the net returns to Australian wheat growers who sell pool return wheat to the Board by securing, developing and maintaining markets for wheat and wheat products and by minimising costs as far as is practicable; and
- (b) by participating, in a commercial manner, in the market for grain and grain products, to provide Australian grain growers, and especially wheat growers, with a choice of marketing options.

Functions of the Board

6. (1) The functions of the Board are:

- (a) to export wheat from Australia;
- (b) to trade in wheat in the course of, or for the purposes of:
 - (i) trade and commerce among the States;
 - (ii) trade and commerce between a State and a Territory or between Territories; or
 - (iii) trade and commerce within a Territory;
- (c) to make arrangements for the growing of wheat for the purposes of:
 - (i) the export of wheat from Australia;
 - (ii) trade and commerce among the States;
 - (iii) trade and commerce between a State and a Territory or between Territories; or
 - (iv) trade and commerce within a Territory;
- (d) to control the export of wheat from Australia;
- (e) to control the marketing overseas of Australian wheat;
- (f) to promote, fund or undertake research into matters related to the marketing of wheat;
- (g) to provide advice and make recommendations to the Minister with respect to matters relating to the marketing of wheat;
- (h) to export grain other than wheat and to trade in such grain in the course of, or for the purposes of:
 - (i) trade and commerce among the States;
 - (ii) trade and commerce between a State and a Territory or between Territories; or
 - (iii) trade and commerce within a Territory;

to the extent that the export of, or trading in, such grain will promote an object of the Board;

- (j) for the purpose of the performance of its functions under paragraph (h) but only so far as the Minister approves, to make arrangements for the growing of grain other than wheat;
- (k) in respect of wheat products, the same functions as the Board has in respect of wheat, except the functions conferred by paragraphs (c), (d), (e) and (g);
- (m) in respect of grain products, the same functions as the Board has in respect of grain other than wheat under paragraph (h); and
- (n) such other functions as are given to the Board by this Act.

(2) An approval for the purpose of paragraph (1) (j) may be of general application or relate to a particular case.

(3) The Board shall not perform any of its functions:

- (a) otherwise than for a purpose in respect of which the Parliament has power to make laws; or
- (b) so as to give preference to one State or part of a State over any other State or a part of any other State.

(4) In spite of paragraph (3) (a), it is the intention of the Parliament that, where a State law relating to the marketing of wheat confers a power or function on the Board, the Board may, with the written approval of the Minister, exercise that power or perform that function, as the case may be.

(5) The Board may perform any of its functions outside Australia.

Powers of the Board

7. (1) Notwithstanding any prescribed State or Territory enactment, the Board has power to do all things that are necessary or convenient to be done in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the powers of the Board include power:

- (a) to buy wheat in Australia or overseas;
- (b) to import wheat into Australia;
- (c) to sell or dispose of wheat, or arrange to sell or dispose of wheat, in Australia or overseas;
- (d) to require a purchaser of wheat from the Board to provide to the Board a guarantee or other security for the payment of the purchase price of the wheat;
- (e) to engage in any other trading arrangements (including countertrade and bartertrade) designed to maximise returns from the sale or disposal of wheat;
- (f) to enter into agreements or arrangements for the financing by third parties of purchases of wheat from the Board;
- (g) to store, handle and transport wheat;

- (h) to buy, establish, own and operate facilities for the storage, handling, loading and unloading of wheat, including such facilities at ports;
- (j) to arrange for the provision of storage, handling, transport and other marketing services for wheat;
- (k) to make charges for storage, handling, transport and other marketing services provided or arranged by the Board;
- (m) to obtain insurance cover in respect of any property or activity of the Board;
- (n) to appoint agents, whether in Australia or overseas; and
- (p) to enter into contracts, and make agreements and arrangements, with any person in Australia or elsewhere and, with the consent of the Minister, with a State or Territory.

(3) In relation to its functions with respect to grain other than wheat, the Board has the same powers as it has in relation to wheat and may provide the same services as in relation to wheat.

(4) Where the Board, in the performance of its functions, enters into a contract, or makes an agreement or arrangement, with a person (in this subsection called "the other party"):

- (a) the contract, agreement or arrangement is not rendered unlawful or unenforceable by any prescribed State or Territory enactment;
- (b) the other party does not incur any liability, penalty or forfeiture under any prescribed State or Territory enactment by virtue only of having entered into the contract, agreement or arrangement;
- (c) nothing in any prescribed State or Territory enactment operates to prevent the Board or the other party discharging obligations under the contract according to its terms;
- (d) in the case of a contract for the sale of grain to the Board or for the growing of grain and the sale of the grain to the Board, nothing in any prescribed State or Territory enactment operates to prevent the property in the grain passing to the Board according to the terms of the contract and this Act;
- (e) a person who, under a contract (including a contract of service), agreement or arrangement with the other party, does anything on behalf of the other party in the discharge of an obligation under the first-mentioned contract, agreement or arrangement does not incur any liability, penalty or forfeiture under any prescribed State or Territory enactment by virtue only of having done that thing;
- (f) the contract, agreement or arrangement between that person and the other party is not rendered unlawful or unenforceable by any prescribed State or Territory enactment; and
- (g) nothing in any prescribed State or Territory enactment operates to prevent the person or the other party discharging obligations under the contract, agreement or arrangement according to its terms.

(5) Paragraph (4) (d) does not affect the rights of the holder of a security over grain for moneys owing.

(6) Subject to subsection (7), a reference in this section to a prescribed State or Territory enactment is a reference to:

- (a) a State or Territory enactment declared by the regulations to be a prescribed State or Territory enactment for the purposes of this section; or
- (b) a State or Territory enactment included in a class of State or Territory enactments declared by the regulations to be prescribed State or Territory enactments for the purposes of this section.

(7) The regulations shall not prescribe a State or Territory enactment except in relation to the storage, handling and transport of grain, or the marketing of wheat.

(8) The regulations may provide that a State or Territory enactment, or a State or Territory enactment included in a class of State or Territory enactments, is a prescribed State or Territory enactment only to the extent, or only in the circumstances, specified in the regulations.

(9) In this section:

“State or Territory enactment” means:

- (a) a State Act;
- (b) an enactment of a Territory; or
- (c) an instrument made or issued under such an Act or enactment.

(10) In relation to the functions conferred on the Board by paragraph 6 (1) (j):

- (a) the Board has the same powers as it has for the performance of its corresponding functions in relation to wheat; and
- (b) it may provide the same kinds of services as in the performance of those corresponding functions.

(11) In relation to the functions conferred on the Board by paragraph 6 (1) (m):

- (a) the Board has the same powers as it has for the performance of its corresponding functions in relation to grain other than wheat; and
- (b) it may provide the same kinds of services as in the performance of those corresponding functions.

Directions to the Board

8. (1) Subject to subsection (2), the Minister may give written directions to the Board concerning the performance of its functions and the exercise of its powers, and the Board shall obey the directions.

(2) The Minister may only give a direction if:

- (a) the Minister is satisfied that, because of the existence of exceptional circumstances, the direction is necessary to ensure that the

performance of the functions, or the exercise of the powers, of the Board does not conflict with major government policies;

- (b) the Minister has informed the Board in writing that he or she is considering giving the direction; and
 - (c) the Minister has given the Chairperson an adequate opportunity to discuss with the Minister the need for the direction.
- (3) The Minister shall:
- (a) cause a notice giving particulars of a direction to be published in the *Gazette* as soon as practicable after the giving of the direction; and
 - (b) cause a copy of the notice to be laid before each House of the Parliament within 15 sitting days of that House after the publication of the notice in the *Gazette*.

Consultation generally

9. (1) The Board may establish consultative groups to advise the Board on matters referred to them by the Board.

(2) The Board may refer to a consultative group any matter relating to the performance of the Board's functions (including functions conferred by a State Act).

- (3) The Board may:
- (a) appoint the members of a consultative group; and
 - (b) determine the terms and conditions of appointment, including remuneration and allowances, of the members.

(4) The Board may consult with a person, body or group (including the members of a consultative group).

(5) The Board may agree to meet expenses reasonably incurred by a person in connection with a consultation.

Consultation with Grains Council

10. (1) The Board shall make arrangements with the Grains Council for consultations between the 2 bodies with respect to the performance by the Board of its functions to be held at least once in every financial year.

- (2) The consultations:
- (a) shall take the form of a meeting of a member or members of the Board with representatives of the Grains Council; and
 - (b) may concern any matter of a general policy nature relating to the marketing of grain.

(3) Subject to any guidelines given to the Board by the Minister arrangements entered into by the Board in relation to a consultation may include the Board's agreeing to meet expenses reasonably incurred in relation to the consultation by the Grains Council or a representative of the Grains Council.

(4) The Board shall ensure that any payments made by it under subsection (3) are clearly identified in the accounting records of the Board.

Report to meeting of Grains Council

11. Where an annual report has been laid before the Houses of Parliament under subsection 89 (5), the Chairperson shall:

- (a) present the annual report to a meeting of the Grains Council occurring within 12 months after the end of the year to which the report relates;
- (b) report to the meeting on the operations of the Board during the year to which the report relates; and
- (c) make himself or herself available to answer questions arising out of the reports mentioned in paragraphs (a) and (b).

Delegation

12. (1) The Board may delegate any of its powers and functions to:

- (a) a person holding an appointment under this Act, other than a member of a Selection Committee or of a consultative group established under section 9; or
- (b) an employee of the Board under section 44.

(2) A delegation under subsection (1) shall be in writing.

Subsidiary companies etc.

13. (1) The Board may, with the written permission of the Minister:

- (a) arrange for the formation of a company;
- (b) acquire, hold or dispose of shares or stock in the capital of a company;
- (c) acquire, hold or dispose of debentures or other securities of a company;
- (d) enter into a partnership, or arrange for the sharing of profits and losses, with a natural person or with a company or other body; or
- (e) participate in a joint venture with a natural person or with a company or other body.

(2) The Minister shall not give permission in relation to a company or body unless the objects or functions of the company or body are, or will be, consistent with the objects and functions of the Board.

(3) The permission of the Minister may be subject to any conditions the Minister thinks appropriate.

(4) Where the Minister gives permission, he or she shall cause to be laid before each House of the Parliament, within 15 sitting days of that House, a notice:

- (a) stating that the permission has been given; and
- (b) setting out any conditions to which the permission is subject.

(5) Subsection (4) does not apply in a particular case if the Minister declares in writing that compliance with the subsection in that case would be likely to prejudice the operations of the Board.

(6) An agreement or arrangement between the Board and a natural person or a company or other body shall include provision empowering the Board to end the agreement or arrangement if the person, company or body:

- (a) no longer carries on a business that relates to a matter within the objects and functions of the Board; or
- (b) commences to carry on a business that is not a business of the kind referred to in paragraph (a).

(7) This section does not apply to the acquisition by the Board of shares in, or debentures or other securities of, a company if the acquisition is authorised by another provision of this Act.

The Board to act according to corporate plan and annual operational plan

14. (1) The Board shall, as far as practicable, ensure that its acts are designed to give effect to the corporate plan and the annual operational plan.

(2) Subsection (1) has effect subject to any directions given by the Minister under section 8.

Division 2—Membership and meetings

Membership of the Board

15. (1) The Board shall consist of:

- (a) a Chairperson;
- (b) if an appointment has effect under section 45, the Managing Director;
- (c) a government member; and
- (d) 8 nominated members.

(2) A member, other than the Managing Director, shall be appointed by the Minister in writing.

(3) The nominated members shall be appointed from persons nominated by the Selection Committee.

(4) The Chairperson may be appointed in an executive or non-executive capacity.

(5) The government member and the nominated members shall be appointed on a part-time basis.

(6) Subject to subsection (7), a person who has reached 65 years shall not be appointed as a member, and a person shall not be appointed as a member for a period extending beyond the day on which the person will reach 65 years.

(7) A person who has reached 65 years may be appointed as a member if the Minister is satisfied that the person possesses special skills that the Board requires for the performance of its functions.

(8) The President and members of the executive of the Grains Council shall not be appointed as members.

(9) A member of the Board ceases to hold office if the member becomes the President or a member of the executive of the Grains Council.

(10) The terms and conditions on which a member holds office are:

- (a) the terms and conditions provided by this Act; and
- (b) any other terms and conditions determined in writing by the Minister.

(11) The performance of the Board's functions and the exercise of its powers are not affected by a vacancy or vacancies in its membership.

(12) The appointment of a person as a nominated member is not ineffective, and shall not be questioned, because of a defect or irregularity in connection with the person's nomination.

(13) The Chairperson may be referred to as the Chairman or the Chairwoman, as the case requires.

Deputy Chairperson

16. (1) The Minister shall, as occasion requires, appoint a member, other than the Chairperson, the government member or the Managing Director, to be the Deputy Chairperson of the Board.

(2) The Minister shall not make an appointment unless he or she has consulted with the Chairperson concerning the appointment.

(3) The Minister may at any time terminate an appointment.

(4) A person ceases to hold office as Deputy Chairperson if:

- (a) the person ceases to be a member; or
- (b) the person resigns the office by giving to the Minister a signed notice of resignation.

(5) The Deputy Chairperson shall act as Chairperson in the following situations:

- (a) there is no Chairperson;
- (b) the Chairperson is absent from duty or from Australia;
- (c) the Chairperson is, for any other reason, unable to perform the duties of his or her office.

(6) The validity of anything done by the Deputy Chairperson when purporting to act under subsection (5) shall not be questioned on the ground that the occasion for the Deputy Chairperson to act had not arisen.

(7) When acting under subsection (5), the Deputy Chairperson has all the powers, and shall perform all the duties and functions, of the Chairperson.

(8) The Deputy Chairperson may be referred to as the Deputy Chairman or Deputy Chairwoman, as the case requires.

Term of office of members

17. (1) A member of the Board, other than the Managing Director and the government member, shall be appointed for a specified period no longer than 3 years, but is eligible for re-appointment.

(2) The government member holds office at the pleasure of the Minister.

(3) If the Chairperson or a nominated member ceases to be a member before the end of his or her term of office, the Minister may appoint a person to replace the former member until the end of the term.

(4) The Minister shall not appoint a person to replace a nominated member except in accordance with a nomination by the Committee.

Resignation

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

Leave of absence for Chairperson

19. The Minister may grant leave of absence to the Chairperson on such terms and conditions as to remuneration and otherwise as the Minister determines.

Termination of appointment of member

20. (1) The Minister may terminate the appointment of a member, other than the government member, for misbehaviour or physical or mental incapacity.

(2) If:

(a) a member:

(i) 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

(ii) fails, without reasonable excuse, to comply with his or her obligations under section 21;

(b) a member to whom subsection 24 (5) applies fails, without reasonable excuse, to comply with the condition referred to in that subsection;

(c) the Chairperson (when appointed in an executive capacity):

(i) engages, without the consent of the Minister, in paid employment outside the duties of his or her office; or

(ii) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months; or

(d) a part-time member is absent, without the prior consent of the Board, from 3 consecutive meetings of the Board otherwise than on business of the Board undertaken with the approval of the Board; the Minister shall terminate the appointment of the member.

(3) Nothing in this section applies to a person holding an appointment as Managing Director.

Disclosure of interests by members

21. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure shall be recorded in the minutes of the meeting and, unless the Board decides otherwise, the member shall not:

- (a) be present during any consideration of the matter by the Board; or
- (b) take part in any decision of the Board with respect to the matter.

(3) For the purpose of the making of a decision by the Board under subsection (2) in relation to a member who has made a disclosure under subsection (1), the member shall not:

- (a) be present during any deliberation of the Board for the purpose of making the decision; or
- (b) take part in the making of the decision.

(4) This section does not apply to a pecuniary interest that a member has because he or she is a wheat grower and has in common with other wheat growers.

Meetings of the Board

22. (1) Meetings of the Board shall be held at such times and places as the Board determines.

(2) The Chairperson may convene a meeting of the Board.

(3) At a meeting, a majority of members constitute a quorum.

(4) The Chairperson shall preside at all meetings of the Board at which he or she is present.

(5) If neither the Chairperson nor the Deputy Chairperson is present at a meeting, the members present shall elect a member to preside.

(6) A question arising at a meeting of the Board shall be decided by a majority of the votes of the members present and voting.

(7) The member presiding at a meeting of the Board has a deliberative vote and, if there is an equality of votes, also has a casting vote.

(8) The Board shall keep a record of its proceedings.

(9) The procedure of the Board shall be as determined by the Board.

Executive committee

23. (1) The Board may appoint 2 or more of its members to be an executive committee.

(2) The Board may delegate any of its powers and functions to an executive committee.

(3) A delegation under subsection (2) shall be in writing.

Remuneration and allowances

24. (1) Subject to subsections (4) and (5), a member (other than the Managing Director) shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination is in operation, the member shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

(4) If:

(a) a person who is a member of the Board is also a member of, or a candidate for election to, the Parliament of a State; and

(b) under the law of that State, the person would not be eligible to remain, or to be elected as, a member of that Parliament if he or she were entitled to remuneration under this Act;

the person shall not be paid remuneration or allowances under this Act but shall be reimbursed such expenses as the person reasonably incurs in performing the functions of a member.

(5) If a person who is a member of the Board is also:

(a) a member of the Parliament of a State (other than a State referred to in subsection (4)); or

(b) in the service or employment of a State or an authority of a State, on a full-time basis;

it is a condition of the person's holding the office of member that the person pay to the State, within one month of receiving an amount of remuneration under this Act, an amount equal to that first-mentioned amount, and the person:

(c) shall not be paid allowances under this Act; and

(d) shall be reimbursed such expenses as the person reasonably incurs in performing the functions of a member.

(6) An amount payable to a State by a person under subsection (5) is a debt due to the State, and the State may recover that amount by action against the person in a court.

(7) In this section:

“member” does not include a member who is an employee of the Board;

“Parliament” means:

- (a) in relation to the Australian Capital Territory, the Legislative Assembly for the Australian Capital Territory; and
- (b) in relation to the Northern Territory, the Legislative Assembly of the Northern Territory;

“State” includes the Australian Capital Territory and the Northern Territory.

Indemnity

25. A member is not personally liable for an act of the Board or of the member acting as a member.

Management of affairs of Board

26. (1) Subject to subsections (2) and (3), the affairs of the Board shall, to the extent determined by the Board, be managed:

- (a) at any time when the Chairperson is appointed in an executive capacity—by the Chairperson; and
- (b) at any other time—by the Managing Director.

(2) If:

- (a) the Deputy Chairperson is acting as Chairperson in the situation described in paragraph 16 (5) (a); and
- (b) the last person to hold the office of Chairperson did so in an executive capacity;

the affairs of the Board shall be managed by the Deputy Chairperson:

- (c) until he or she ceases to act as Chairperson;
- (d) until a Managing Director is appointed; or
- (e) a person is appointed under section 46;

whichever first occurs.

(3) If:

- (a) the Deputy Chairperson acts as Chairperson in a situation described in paragraph 16 (5) (b) or (c); and
- (b) the Chairperson holds office in an executive capacity;

the affairs of the Board shall be managed by the Deputy Chairperson while he or she acts as Chairperson.

(4) A person managing the affairs of the Board under this section shall do so in accordance with the policy and directions of the Board.

Division 3—Nomination and selection process for membership of Board

Presiding Member

27. (1) The Minister shall appoint a person to be the Presiding Member of the Australian Wheat Board Selection Committee.

(2) The Presiding Member shall be appointed on a part-time basis.

(3) Subject to this Division, the Presiding Member holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible to be re-appointed once.

(4) The Minister may appoint a person to act as Presiding Member:

- (a) during a vacancy in the office of Presiding Member (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Presiding Member is absent from Australia or is, for any other reason, unable to perform the duties of his or her office;

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

(5) An appointment under subsection (4) may be expressed to have effect only in specified circumstances.

(6) The Minister may determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Presiding Member.

(7) The Minister may terminate an appointment under subsection (4) at any time.

(8) If the office of Presiding Member becomes vacant while a person is acting in accordance with paragraph (4) (b), the person may continue to act until the Minister directs otherwise, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

Request for nominations

28. (1) The Minister may, by written notice given to the Presiding Member, request the Presiding Member to establish a Selection Committee for the purpose of:

- (a) nominating a person or persons for appointment as a nominated member or nominated members of the Board; or
- (b) where it is necessary to make an appointment under subsection 17 (3) to replace a nominated member—nominating a person for appointment.

(2) The Minister shall specify in the notice a period within which the Committee is to comply with the notice.

Selection Committee

29. (1) When the Presiding Member receives a request under section 28, he or she shall:

- (a) establish an Australian Wheat Board Selection Committee for the purpose of nominating a person or persons for appointment to the Board; and

- (b) give to the Grains Council a written notice requesting the Council to nominate to the Minister persons for appointment to the Selection Committee.

(2) The function of the Selection Committee is, in accordance with the request of the Minister, to nominate a person or persons for appointment to the Board.

(3) The Selection Committee has power to do all things that are necessary or convenient to be done in connection with the performance of its function.

Selection criteria

30. (1) The Minister may determine selection criteria to be applied by the Committee in selecting persons for nomination.

(2) A determination shall be in writing.

(3) The Minister shall give a copy of a determination, including a determination varying or revoking a determination, to the Presiding Member.

Selection of nominees

31. (1) The Committee shall only nominate for appointment as members of the Board persons who have expertise in one or more of the following fields:

- (a) the production, marketing or processing of grain;
- (b) the production or marketing of other products;
- (c) business management;
- (d) product promotion;
- (e) finance.

(2) In selecting persons for appointment as nominated members of the Board, the Committee shall endeavour to ensure, as far as practicable, that there is among the nominated members a balance of skills in the areas of production, marketing and finance.

(3) Where selection criteria are applicable to the selection of a person for nomination, the Committee may only nominate a person who, in the opinion of the Committee, meets the criteria.

(4) A person who is, or who has at any time been, a member of a particular Selection Committee is not entitled to be nominated by that Selection Committee.

Nomination

32. (1) Within the period specified in a notice under section 28:

- (a) the Committee shall select a person or persons for nomination according to the request; and
- (b) the Presiding Member shall, on behalf of the Committee, nominate the person or persons selected by the Committee.

- (2) A nomination shall:
- (a) be in writing; and
 - (b) be given to the Minister.
- (3) The Committee shall select only one person in respect of each appointment to be made by the Minister.
- (4) Where a person is nominated for appointment as a nominated member, the Presiding Member shall attach to the nomination a statement setting out:
- (a) details of the person's qualifications and experience;
 - (b) where selection criteria are applicable to the selection of the person—the Committee's opinion that the person meets those criteria; and
 - (c) any other information regarding the person that the Committee thinks will assist the Minister in deciding whether to appoint the person.
- (5) The Committee may nominate a person even though the Minister has previously rejected a nomination of the person or the Committee has previously decided not to nominate the person.

Rejection of nominations

33. (1) If the Minister is not satisfied that a person nominated by the Committee is suitable for appointment, the Minister may give the Presiding Member written notice that he or she rejects the nomination of the person.

(2) The Minister may include in a notice of rejection a further request under section 28 for a nomination of a person for appointment to the position concerned.

Membership of Committee

34. (1) The Committee shall consist of the following members:
- (a) a Presiding Member;
 - (b) not fewer than 3 nor more than 6 other members appointed by the Minister on a part-time basis on the nomination of the Grains Council.
- (2) A member of the Board cannot be appointed as a member of the Committee.
- (3) The appointment of a member of the Committee is not ineffective, and shall not be questioned, because of a defect or irregularity in connection with the member's nomination.
- (4) The performance of the Committee's functions and the exercise of its powers are not affected by a vacancy or vacancies in its membership.
- (5) If the Minister is not satisfied that a person nominated by the Grains Council for appointment to the Selection Committee is suitable for that appointment, the Minister may reject the nomination and ask the Grains Council to make a further nomination.

Remuneration and allowances

35. (1) A member of the Committee shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination is in operation, the member shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Leave of absence

36. (1) The Minister may grant to the Presiding Member leave of absence from a meeting of the Committee.

(2) The Presiding Member may grant to another member of the Committee leave of absence from a meeting of the Committee.

Resignation

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

Termination of appointment of member of Committee

38. (1) The Minister may terminate the appointment of a member of the Committee for misbehaviour or physical or mental incapacity.

(2) If a member of the Committee:

- (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 remuneration for their benefit;
- (b)** fails, without reasonable excuse, to comply with his or her obligations under section 39; or
- (c)** is absent, without leave of absence, from 3 consecutive meetings of the Committee;

the Minister shall terminate the appointment of the member.

Disclosure of interests by members of Committee

39. (1) A member of the Committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.

(2) A disclosure shall be recorded in the minutes of the meeting and, unless the Minister or the Committee decides otherwise, the member shall not:

- (a)** be present during any consideration of the matter by the Committee; or
- (b)** take part in any decision of the Committee with respect to the matter.

(3) For the purpose of the making of a decision by the Committee under subsection (2) in relation to a member of the Committee who has made a disclosure under subsection (1), the member shall not:

- (a) be present during any deliberation of the Committee for the purpose of making the decision; or
- (b) take part in the making by the Committee of the decision.

(4) A member of the Committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee in accordance with section 42 shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the Presiding Member.

(5) A member of the Committee who is required to make a disclosure under subsection (4) in respect of a matter shall not, unless the Minister otherwise determines, sign a document with respect to that matter in accordance with section 42.

Meetings of the Committee

40. (1) Meetings of the Committee shall be held at such times and places as the Committee determines.

(2) The Presiding Member may convene a meeting of the Committee.

(3) At a meeting, the Presiding Member and 3 other members constitute a quorum.

(4) The Presiding Member shall preside at all meetings of the Committee.

(5) A question arising at a meeting of the Committee shall be decided by a majority of the votes of the members present and voting.

(6) At a meeting of the Committee, the Presiding Member has a deliberative vote and, if there is an equality of votes, also has a casting vote.

(7) The Committee shall keep a record of its proceedings.

(8) The procedure of the Committee shall be as determined by the Committee.

Consultants etc.

41. (1) The Presiding Member may, on behalf of the Committee, engage persons as consultants to assist the Committee in the performance of its functions.

(2) The Presiding Member may only engage persons who have suitable qualifications and experience.

(3) The Presiding Member may, on behalf of the Committee, engage persons to perform clerical or administrative services in connection with the performance of the Committee's functions.

(4) The terms and conditions of engagement of persons under subsection (1) or (3) shall be those determined by the Committee.

Resolutions without meetings

42. (1) Where:

- (a) copies of a document setting out a proposed resolution of the Committee are received by at least 4 members of the Committee, of whom one is the Presiding Member; and
 - (b) at least 3 of those members sign a copy of the document;
- the Committee shall be taken to have passed a resolution in the terms set out in the document at a meeting of the Committee.

(2) The resolution shall be taken to have been passed:

- (a) on the day on which copies of the document were signed by members; or
- (b) if the copies were signed on different days, on the latest of those days.

Presiding Member to abolish Selection Committee

43. Where:

- (a) the Minister has appointed to the Board a person nominated by the Selection Committee;
 - (b) the Committee has not made any nominations for appointment that have yet to be accepted or rejected by the Minister; and
 - (c) there are no matters in a request by the Minister under section 28 or 33 that are still to be dealt with by the Committee;
- the Presiding Member shall abolish the Committee.

Division 4—Staff of Board

Employees

44. (1) The Board may employ such persons as it thinks necessary for the purposes of this Act.

(2) Subject to subsections (3) and (4), persons shall be employed on such terms and conditions as are determined by the Board.

(3) When the Chairperson is holding office in an executive capacity, a person shall not be employed by the Board on terms and conditions more favourable than those applying to the Chairperson.

(4) When the Chairperson is not holding office in an executive capacity, a person shall not be employed by the Board on terms and conditions more favourable than those for the time being determined under subsection 45 (2) except with the approval of the Minister.

(5) A person who was an officer of the Board under the 1984 Act immediately before its repeal shall be regarded as having been employed under this section.

(6) A determination of terms and conditions of appointment that was in force under section 45 of the 1984 Act immediately before the repeal of

that Act continues in force as if it had been made under this section and as if any reference in the determination to officers of the Board were a reference to employees of the Board.

Managing Director

45. (1) At any time when the Chairperson is not appointed in an executive capacity, there shall be a Managing Director of the Board who shall be appointed by the Board.

(2) The Board may:

- (a)** determine, subject to the approval of the Minister, the terms and conditions of service of the Managing Director in respect of matters not provided for by this Act, including terms and conditions relating to remuneration and allowances; and
- (b)** at any time terminate such an appointment.

(3) The Board shall terminate the appointment of the Managing Director if the Chairperson is or becomes appointed in an executive capacity.

(4) Subsection (3) shall not be taken to limit, by implication, the grounds upon which the appointment of the Managing Director may be terminated.

(5) The office of Managing Director is not a public office within the meaning of the *Remuneration Tribunals Act 1973*.

Acting Managing Director

46. (1) The Board may, by resolution, appoint a person to act as Managing Director:

- (a)** during a vacancy in the office of Managing Director, whether or not an appointment has previously been made to the office; or
- (b)** during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office of Managing Director;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) Subject to subsection (4), an appointment of a person may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) Subject to subsection (4), the Board may:

- (a)** determine the terms and conditions, including remuneration and allowances (if any), on which a person is to act under this section; and
- (b)** terminate an appointment under this section at any time.

(4) An appointment of a person under subsection (1) shall not have effect whenever there is a Chairperson holding office in an executive capacity.

(5) If the office of Managing Director becomes vacant while a person is acting in accordance with paragraph (1) (b), that person may continue so to act until the Board otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred ends, whichever first happens.

(6) The appointment of a person to act as Managing Director ceases to have effect if the person resigns the appointment by giving to the Chairperson a signed notice of resignation.

(7) A person acting as Managing Director has all the powers, and shall perform all the duties and functions, of the Managing Director.

(8) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that:

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Equal employment opportunity

47. (1) The Board shall develop and implement an equal employment opportunity program for the Board.

(2) The Board shall take whatever action is necessary to give effect to the program, and any person who exercises powers in matters relating to employment matters in the Board shall have regard to the program in exercising those powers.

Merit principle to apply

48. Nothing in this Act requires anyone to do anything incompatible with the principle that employment matters should be dealt with on the basis of merit.

PART 3—CORPORATE AND ANNUAL PLANS

Division 1—Corporate plans

Development

49. (1) The Board shall, before 1 September 1989 and before 1 July in each subsequent calendar year, give to the Minister a corporate plan.

(2) A corporate plan shall be prepared after consultation with the Grains Council.

(3) A corporate plan shall relate to a period commencing on the following 1 October and extending for 3, 4 or 5 years, as the Board chooses.

- (4) A corporate plan shall:
- (a) define what the Board thinks should be its principal objectives during the period to which the plan relates;
 - (b) give a broad outline of the strategies that the Board thinks should be pursued during that period for achieving those objectives;
 - (c) set out the Board's assessment of the market outlook for the wheat industry for that period and the reasons for that assessment; and
 - (d) include the equal employment opportunity program developed under section 47.

Approval

50. (1) The Minister may, by written notice given to the Board:
- (a) approve the plan; or
 - (b) if the Minister thinks that the interests of the wheat industry or a particular part of the wheat industry so require—request the Board to revise the plan appropriately.
- (2) If the Minister makes a request under paragraph (1) (b), the Minister shall set out the reasons for the request in the notice.
- (3) The Board shall consider a request for the revision of a plan and the reasons for the request, make such revision of the corporate plan as it considers appropriate and submit the revised plan to the Minister for approval.
- (4) A corporate plan comes into force:
- (a) at the commencement of the period to which the plan relates; or
 - (b) on the day on which the Board receives notice of the Minister's approval;
- whichever is the later.

Variation by the Board

51. (1) The Board shall review a corporate plan annually, but shall not vary it except with the approval of the Minister.
- (2) If the Board wishes to vary a corporate plan, the Board shall prepare a written proposal for the variation and give a copy of the proposal to the Minister, together with a statement of the Board's reasons for the proposal.
- (3) After considering a proposal and the reasons for the proposal, the Minister may give the Board written notice approving or rejecting the proposal.
- (4) Nothing in this section prevents the Board making variations of a minor nature to a corporate plan.

Variation at request of Minister

52. (1) The Minister may, at any time, give the Board written notice requesting it to vary a corporate plan in the manner set out in the notice.
- (2) The Minister shall set out in the notice the reasons for the request.

(3) The Board shall consider the request and reasons, prepare written proposals for such variations of the plan as the Board considers appropriate and submit those proposals to the Minister.

(4) The Minister may give the Board written notice approving or rejecting the proposals.

Date of effect of variations

53. Where:

- (a) a corporate plan has come into force; and
- (b) a variation of the plan is approved by the Minister under section 51 or 52 or the Board makes a variation of a minor nature;

the variation takes effect on the day on which the Board receives notice of the Minister's approval or makes the variation of a minor nature, as the case may be.

Division 2—Annual operational plans

Development

54. (1) The Board shall, before 1 September 1989 and before 1 August in each subsequent calendar year, give to the Minister an annual operational plan relating to the period of 12 months commencing on the following 1 October.

(2) An annual operational plan shall:

- (a) set out particulars of the action that the Board intends to take in order to give effect to or further, during the period to which the plan relates, the objectives set out in the corporate plan applicable to the period; and
- (b) propose action to implement the equal employment opportunity program developed under section 47.

Approval

55. (1) The Minister may, by written notice given to the Board:

- (a) approve an annual operational plan; or
- (b) if the Minister thinks that the plan is inconsistent with the provisions of the relevant corporate plan—request the Board to revise the annual operational plan appropriately.

(2) If the Minister makes a request under paragraph (1) (b), the Minister shall set out the reasons for the request in the notice.

(3) The Board shall consider a request under paragraph (1) (b) and the statement of reasons, make such revision of the annual operational plan as it considers appropriate and submit the revised plan to the Minister for approval.

(4) An annual operational plan comes into force:

- (a) at the commencement of the period to which the plan relates; or

(b) on the day on which the Board receives notice of the Minister's approval;
whichever is the later.

Variation

56. (1) Sections 51, 52 and 53 apply to annual operational plans in the same way as they apply to corporate plans.

(2) When submitting to the Minister proposals for variation of a corporate plan, the Board shall also submit to the Minister proposals for any consequential variations of a relevant operational plan.

PART 4—MARKETING OF WHEAT

Division 1—Control of export

Control of export of wheat

57. (1) A person, other than the Board, shall not export wheat unless:

- (a) the Board has given its written consent to the export of the wheat;
and
- (b) the export of the wheat is in accordance with the terms of that consent.

Penalty:

- (a) in the case of a natural person—\$60,000; or
- (b) in the case of a body corporate—\$300,000.

(2) An offence against subsection (1) is an indictable offence.

(3) The Board's consent to the export of wheat may be limited to the export of the wheat in specified circumstances, in accordance with specified requirements or by a specified person.

(4) In proceedings for an offence against subsection (1), a certificate signed by the Chairperson and:

- (a) stating that the Board did not consent to the export of particular wheat; or
- (b) setting out the terms of a consent given by the Board;

is *prima facie* evidence of the matters set out in the certificate.

(5) The prohibition in subsection (1) is in addition to, and not in substitution for, any prohibition by or under the *Customs Act 1901* or the *Export Control Act 1982*.

Division 2—Purchase of wheat by the Board

Classification of wheat

58. (1) The Board shall classify wheat offered for purchase by the Board.

(2) The Board may classify wheat according to any one, or any combination, of the following matters:

- (a) quality;
- (b) variety;
- (c) any other matter determined by the Board after consultation with the Grains Council.

(3) The Board shall determine the classifications to be used for the purpose of subsection (1).

(4) The Board shall determine the standards by reference to which wheat is to be classified.

(5) A determination shall be in writing.

(6) The Board shall cause a copy of every determination (including a determination varying or revoking a determination) to be brought to the attention of wheat growers in such manner as the Board thinks appropriate.

Quality control

59. (1) The Board may determine quality standards to be observed in relation to wheat or other grain offered or to be offered for sale by the Board.

(2) The matters that may be dealt with by quality standards include, but are not limited to:

- (a) storage;
- (b) handling; and
- (c) transport.

(3) A determination shall be in writing.

(4) The Board shall cause a copy of every determination (including a determination varying or revoking a determination) to be brought to the attention of wheat growers and persons engaged in the storage, handling and transport of wheat in such manner as the Board thinks appropriate.

Purchase of wheat for pools

60. (1) Wheat bought by the Board for sale as part of a pool of wheat may be bought on terms requiring payment for the wheat to be made according to Division 3.

(2) Subject to subsections (3) and (4), the Board shall buy wheat offered to it on the basis that payment is to be made according to Division 3.

(3) The Board is not obliged to buy:

- (a) wheat that has been treated for the purpose of being used as seed;
or
- (b) wheat that has previously been sold by the Board.

(4) The Board is not obliged to buy wheat if:

- (a) the wheat is not able to be classified under section 58; or
- (b) the Board is not satisfied that the quality standards have been observed in relation to the wheat.

(5) Where wheat is accepted by the Board for sale as part of a pool, the Board shall give to the person from whom the wheat is bought written notice specifying the pool to which the wheat has been allocated.

(6) For the purposes of this section, the offer or delivery of wheat to a person or body authorised by the Board to receive wheat on its behalf constitutes an offer or delivery to the Board.

(7) A person who offers wheat to the Board for sale as part of a pool is liable to pay to the Board the amount of any expense incurred by it:

- (a) in connection with examination of the wheat for the purpose of ascertaining whether the quality standards have been observed; or
- (b) in relation to steps taken to ensure that the quality standards are observed in relation to the wheat.

(8) The Board may require a person who sells to the Board wheat for sale by the Board to deliver with the wheat a written declaration by the person stating:

- (a) what the person believes to be the variety of the wheat; and
- (b) particulars of any chemical substances used in connection with the growing of the wheat or the storage, handling or transport of the wheat by the person.

Pools

61. (1) For the purpose of the marketing of wheat bought under section 60, the Board shall establish pools for the wheat of a season.

(2) Each pool shall be established for wheat of a particular description.

(3) A description of wheat for the purpose of subsection (2) may relate to:

- (a) the time at which the wheat is delivered to the Board;
- (b) the quality, grade or variety of the wheat; or
- (c) any other matter determined by the Board after consultation with the Grains Council.

(4) Pool return wheat bought by the Board shall be regarded as part of the pool established for wheat of the appropriate description.

(5) The Board shall keep separate accounting records in respect of each pool.

(6) A pool may include both pool return wheat and other wheat.

(7) Nothing in this section requires that quantities of wheat forming part of the same pool be physically merged or stored, handled or transported together.

Division 3—Payment for wheat

Advance payments

62. Where wheat is bought by the Board and payment for the wheat is to be according to this Division, the contract of sale may provide for the making of an advance payment or advance payments to the person selling the wheat to the Board.

Closure of pool

63. (1) The Board may declare a pool closed if it is satisfied that the financial results of the operation of the pool will not be significantly affected by continuing the pool any longer.

(2) If any unsold wheat remains in the pool, the Board may transfer the wheat out of the pool.

(3) The Board shall attribute to the transferred wheat, in the accounting records relating to the pool, such sale price as the Board thinks appropriate.

(4) After transfer from the pool, transferred pool return wheat shall be treated as wheat for which payment was not to be made by way of pool return.

(5) Wheat transferred out of a pool under subsection (2) shall be regarded as part of such pool as the Board directs.

Payment in lieu of final payment

64. (1) A person who has sold to the Board wheat for which payment is to be according to this Division may apply to the Board for a payment in lieu of a final payment for the wheat.

(2) If a person who could have applied under subsection (1) dies without making an application, the application may be made by the trustee of the person's estate.

(3) An application shall be in a form approved by the Board.

(4) Subject to subsections (6) and (7), the Board shall grant an application.

(5) The payment to be made to an applicant is the amount estimated by the Board as the amount of the final payment that would have become payable to the applicant under section 66 reduced by any amount the Board thinks proper having regard to:

- (a)** the cost to the Board of borrowing money for the purpose of making payments under this section;
- (b)** the administrative costs incurred by the Board in dealing with the application; and
- (c)** any other factors the Board considers relevant.

(6) The Board shall not grant an application if it is satisfied that the amount of the final payment for the wheat concerned cannot reasonably be estimated or that it is likely that no final payment will be made in respect of the wheat.

(7) The Board may refuse to grant an application if it proposes to make a final payment for the wheat concerned within 3 months after receipt of the application.

(8) If, at the end of 3 months, the Board has not made a final payment, it shall grant the application unless subsection (6) applies.

Actual net return from pool

65. (1) When the Board declares a pool closed, it shall determine the actual net return per tonne from the sale or disposal of pool return wheat in the pool.

(2) The actual net return per tonne from the sale or disposal of pool return wheat in a pool shall be determined according to the formula:

$$\frac{TR - TC}{T}$$

where:

TR is the amount determined by the Board to be the total revenue attributable to wheat in the pool or to grain other than wheat sold or disposed of in association with wheat in the pool;

TC is the amount determined by the Board to be the total of the costs attributable to the purchase, sale or disposal of the wheat or other grain;

T is the total quantity, expressed in tonnes, of pool return wheat included in the pool.

(3) For the purpose of subsection (1), wheat to which a sale price has been attributed under subsection 63 (3) shall be taken to have been sold at that price.

(4) A determination under subsection (1) shall be made:

- (a) when the Board declares the pool closed; or
- (b) if that is not possible, as soon as possible after that time.

(5) Without limiting the meaning of subsection (2), in determining the amount represented by the component TR for the purpose of subsection (2), the Board shall treat as revenue:

- (a) money received under a policy of insurance relating to wheat included in the pool or its sale; and
- (b) interest earned by the investment of money derived from the disposal of wheat or by the investment of money borrowed by the Board.

(6) Without limiting the meaning of subsection (2), in determining the amount represented by the component TC for the purpose of subsection (2), the Board shall treat as costs:

- (a) the cost of buying wheat for inclusion in the pool where payment for the wheat is not made under this Division;
- (b) the cost of buying grain other than wheat for sale in association with wheat in the pool;
- (c) money required to be credited to the Fund in respect of the use of money from the Fund in relation to wheat included in the pool; and
- (d) bad debts.

(7) In making a determination under subsection (2):

- (a) the Board is entitled to make a deduction from revenue for money paid into a reserve account under subsection 73 (2); and
- (b) the Board shall not take into account any cost incurred by the Board in the provision of a service for which the Board has made a charge.

(8) Where the Board, in making a determination under subsection (2), has taken into account a cost incurred in the provision of a service, the Board is not entitled to make a charge for the service.

Final payment

66. (1) If, on the basis of the actual net return per tonne, the total amount payable to a person for pool return wheat exceeds the total of advance payments made in respect of the wheat, the Board shall pay the amount of the excess to the person.

(2) If, on the basis of the actual net return per tonne, the total amount payable to the person is less than the total of the advance payments, the Board shall not make any further payments to the person in respect of the wheat.

PART 5—FINANCE

Application of Division 2 of Part XI of Audit Act

67. (1) The Board is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

(2) Division 2 of Part XI of the *Audit Act 1901* applies to the Board:

- (a) as if the reference in subsection 63D (1) of that Act to an approved bank or approved banks included a reference to the Reserve Bank of Australia;
- (b) as if sections 63E and 63H were omitted; and
- (c) where an auditor has been appointed under section 68—as if references in section 63G of that Act to the Auditor-General were references to the auditor so appointed.

(3) In spite of section 63F of the *Audit Act 1901*, the Board may keep its accounting records relating to dealings in wheat in a way that will, in

the Board's opinion, attribute costs and revenues to wheat of different seasons and pools in an equitable manner.

(4) Costs and revenues so attributed to wheat of a season or forming part of a pool shall be regarded as relating to wheat of that season or wheat forming part of that pool, as the case may be.

(5) In spite of section 63F of the *Audit Act 1901*, the Board shall keep separate accounting records relating to money of the Fund.

(6) For the purposes of this Act, a reference in Division 2 of Part XI of the *Audit Act 1901* to the appropriate Minister is a reference to the Minister administering this Act.

(7) For the purposes of the application of Division 2 of Part XI of the *Audit Act 1901*:

- (a) a reference to the Board includes a reference to a company that is a subsidiary of the Board; and
- (b) the question whether a company is a subsidiary of the Board shall be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined by the purposes of the *Companies Act 1981*.

Appointment of commercial auditor

68. (1) The Board may, after consultation with the executive of the Grains Council, request the Minister, in writing, to appoint a specified company auditor to be the auditor of the Board.

(2) The Minister shall cause particulars of the request to be given to the Auditor-General.

(3) The Auditor-General shall consider whether or not the company auditor is suitable to be the auditor of the Board and shall inform the Minister in writing of the Auditor-General's opinion and of the reasons for that opinion.

(4) Where the Auditor-General has informed the Minister that the Auditor-General is satisfied that a company auditor is suitable to be the auditor of the Board, the Minister shall cause to be given to the Chairman of the Joint Committee of Public Accounts particulars of the request and of the Auditor-General's opinion.

(5) The Joint Committee of Public Accounts shall consider the opinion of the Auditor-General and shall inform the Minister in writing whether or not that Committee agrees to the appointment of the company auditor as the auditor of the Board.

(6) If the Joint Committee of Public Accounts informs the Minister that it agrees to the appointment of the company auditor as the auditor of the Board, the Minister may, in writing, appoint that auditor accordingly.

(7) Where an appointment has been made under subsection (6), the Minister may, by writing, revoke that appointment.

(8) Where the Minister makes an appointment under subsection (6), the Minister shall inform the Board in writing of the making of the appointment.

(9) Where:

(a) the Auditor-General is of the opinion that a particular company auditor is not suitable to be the auditor of the Board;

(b) the Minister refuses to make an appointment under subsection (6);
or

(c) the Minister revokes an appointment made under subsection (6);
the Minister shall inform the Board, in writing, of the decision and of the reasons for the decision.

(10) Where the Joint Committee of Public Accounts informs the Minister that that Committee does not agree to the appointment of a particular company auditor as the auditor of the Board, the Minister shall inform the Board in writing of the decision.

(11) In this section:

“company auditor” means a firm carrying on the business of auditing accounts.

Expenditure of money of the Board

69. Money of the Board may only be expended:

(a) in payment or discharge of expenses and liabilities incurred by the Board in the performance of its functions under this Act or a State Act;

(b) in payment of remuneration and allowances payable under this Act;

(c) in payment or discharge of expenses or liabilities incurred in connection with the operations of the Selection Committee; and

(d) in making any other payments that the Board is authorised or required to make by or under this or any other Act.

Investment

70. (1) Money of the Board (other than pool funds) not immediately required for the purposes of the Board may be invested:

(a) on deposit with an approved bank;

(b) in Commonwealth securities; or

(c) in any other manner consistent with sound commercial practice.

(2) Pool funds are funds earned by the Board from the sale or disposal of pool return wheat or funds obtained under a borrowing to which subsection 78 (1) applies.

(3) Pool funds not immediately required for the purposes of the Board may be invested:

(a) on deposit with an approved bank;

(b) in Commonwealth securities; or

(c) in any other manner approved by the Treasurer.

(4) In this section:

“approved bank” means:

- (a) the Reserve Bank of Australia;
- (b) a bank within the meaning of subsection 5 (1) of the *Banking Act 1959*;
- (c) a bank established by or under a State Act; or
- (d) a bank approved for the purposes of this section by the Treasurer or by a person authorised by the Treasurer to give approvals for the purposes of this section.

Raising of money by the Board

71. (1) Subject to subsection (2), the Board may:

- (a) borrow money; or
- (b) raise money by dealing with securities.

(2) The Board shall not borrow or raise money except with the written approval of the Minister.

(3) An approval may be given in relation to a particular transaction or a class of transactions.

(4) A borrowing or raising of money under an approval shall be on terms and conditions specified in, or consistent with, the approval.

(5) Subject to subsection (4), a borrowing or raising of money may be made in whole or in part in a currency other than Australian currency.

(6) The Board may give security over the whole or any part of its assets for:

- (a) the repayment of money borrowed in accordance with this section and the payment of money (including interest) that the Board is otherwise liable to pay in respect of such borrowings; and
- (b) the payment of any money (including interest) that the Board is liable to pay in respect of dealing with securities in accordance with this section.

(7) The Treasurer may, on behalf of the Commonwealth, guarantee the repayment of amounts borrowed under subsection (1) and the payment of interest on amounts so borrowed.

(8) The Board shall not borrow or otherwise raise money except in accordance with this section or section 77.

(9) A reference in this section to dealing with securities includes a reference to:

- (a) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or reselling securities;
- (b) creating, selling, purchasing or reselling rights or options in respect of securities; and

- (c) entering into agreements or other arrangements relating to securities.

Discounting of letters of credit

72. (1) The Board may discount a letter of credit held by the Board.

(2) In this section:

“letter of credit” includes any document that acknowledges or evidences that a person owes money to the Board.

(3) The Minister may give the Board written guidelines as to the discounting of letters of credit.

(4) The Board shall not discount a letter of credit except in accordance with any guidelines that are in force.

(5) For the purpose of subsection (1), to discount a letter of credit means:

- (a) to sell the letter of credit before it matures; or
- (b) to assign the right of the Board to a payment under the letter of credit before the payment becomes due.

Reserves

73. (1) The Board may establish reserve accounts according to the accounting principles generally applied in commercial practice.

(2) Without limiting the effect of subsection (1), the Board may deduct amounts from the proceeds of the disposal of wheat and pay them into a reserve account.

(3) If money standing to the credit of a reserve account is no longer required for the purposes for which the account was established, the Board shall apply the money for the benefit of the wheat industry in a manner approved by the Minister.

Futures contracts

74. (1) Subject to subsection (3), the Board, in the application of its risk management policies, may enter into and deal with contracts to which this section applies for hedging purposes in relation to:

- (a) a purchase or proposed purchase of wheat or other grain by the Board;
- (b) a sale or proposed sale of wheat or other grain by the Board;
- (c) a borrowing or raising, or a proposed borrowing or raising, of money by the Board;
- (d) a shipment of wheat (including wheat from overseas) or other grain purchased, or to be purchased, by the Board; or
- (e) an investment of money by the Board.

(2) The Minister may, by written determination, set guidelines for the exercise by the Board of its powers under subsection (1), and shall give the Board a copy of each determination.

- (3) The Board shall not:
- (a) enter into or deal with a contract to which this section applies except for hedging purposes; or
 - (b) enter into or deal with such a contract contrary to any guidelines in force under subsection (2).
- (4) A contract shall be taken to be entered into or dealt with for hedging purposes only if the contract is entered into or dealt with for the purpose of reducing the risks of adverse variations in:
- (a) the price obtainable by the Board for wheat (including overseas wheat) or other grain purchased, or to be purchased, by the Board;
 - (b) the price payable by the Board for wheat (including overseas wheat) or other grain;
 - (c) the costs of a borrowing or raising, or a proposed borrowing or raising, of money by the Board;
 - (d) the cost of shipment of wheat (including wheat from overseas) or other grain purchased, or to be purchased, by the Board; or
 - (e) the revenues obtainable by the Board from the investment of money of the Board.
- (5) This section applies to contracts of the following kinds:
- (a) currency contracts;
 - (b) futures contracts;
 - (c) contracts relating to dealings known as interest swaps;
 - (d) contracts relating to dealings known as currency swaps;
 - (e) contracts relating to both dealings referred to in paragraph (c) and dealings referred to in paragraph (d);
 - (f) options;
 - (g) contracts of a kind approved by the Minister by written notice.

Board to provide breakdown of charges

75. (1) When accounting to a grower for a payment due in respect of pool return wheat, the Board shall, if practicable, specify separately charges made by the Board for each of the following:

- (a) storage;
- (b) handling;
- (c) transport, whether by land or sea;
- (d) provision of port services.

(2) Subsection (1) does not apply if compliance with it would subject the Board to significant additional costs.

Credit sales at direction of Minister

76. (1) The Minister shall not give a direction under section 8 that requires the Board to sell wheat on terms involving an extended credit period unless he or she has first consulted with the Board.

(2) In subsection (1):

“extended credit period” means a period of credit longer than the period the Board would have been prepared to allow on a strictly commercial basis.

(3) Where:

- (a) at the direction of the Minister, the Board has sold wheat on terms involving an extended credit period;
- (b) the Board has incurred loss because of the failure of the purchaser to pay an amount within the extended credit period applicable to the amount; and
- (c) the Minister is satisfied that the Board has taken all reasonable steps to recover from the purchaser the amount of the loss;

the Minister for Finance shall pay to the Board, out of money appropriated by Parliament for the purpose, the amount of the loss.

(4) The amount paid to the Board by the Minister for Finance shall be regarded as part of the proceeds of sale of the wheat.

Borrowings to fund advance payments etc.

77. (1) If the Minister approves, the Board may borrow money for any of the following purposes:

- (a) the making of advance payments for pool return wheat;
- (b) the making of payments in lieu of final payments for such wheat;
- (c) the meeting of operational expenses incurred by the Board in connection with the sale or disposal of such wheat.

(2) The Board shall not use money borrowed under subsection (1) otherwise than for a purpose mentioned in that subsection.

(3) Nothing in this section shall be read as limiting the power to borrow conferred on the Board by section 71.

Commonwealth to underwrite certain borrowings

78. (1) If, when a borrowing under subsection 77 (1) becomes due for repayment, the amount of the Board's liability under the borrowing exceeds the amount of money available to the Board for the repayment of the borrowing, the Commonwealth shall pay to the Board the amount of the excess.

(2) Subsection (1) has effect subject to subsection (4).

(3) For the purposes of subsection (1):

- (a) money in the Fund shall not be regarded as money available to the Board for the repayment of a borrowing; and
- (b) money representing revenue attributable to the disposal of wheat of one season shall not be regarded as money available to the Board for the repayment of a borrowing relating to wheat of another season.

(4) The total amount paid under subsection (1) in respect of borrowings relating to pool return wheat of a particular season shall not exceed the appropriate percentage of the aggregate estimated net pool return from the disposal by the Board of that wheat.

(5) The Minister shall determine, in writing, the aggregate estimated net pool return from wheat of a season.

(6) A copy of a determination (including a determination varying or revoking a determination) shall be published in the *Gazette*.

(7) A determination may only be made during the season to which it relates.

(8) The Minister shall so exercise the power to make determinations that:

- (a) the first determination in relation to a season is made before 1 October in that season; and
- (b) at least one further determination is made, being a determination made on a day as near as practicable to 1 March in that season.

(9) The Minister shall not exercise the power:

- (a) to revoke a determination and make a new determination; or
- (b) to vary a determination;

in such a way as to reduce the amount of the aggregate estimated net pool return already determined in relation to a season.

(10) The aggregate estimated net pool return from wheat of a season shall be determined according to the formula:

$$\text{ETR} - \text{ETC}$$

where:

ETR is the amount estimated by the Minister as the total of the revenue that will be attributable to the sale or disposal of wheat of that season;

ETC is the amount estimated by the Minister as the total of the costs that will be attributable to the purchase, sale or disposal of wheat of that season.

(11) Without limiting the meaning of subsection (10), in estimating the amount represented by the factor ETR for the purpose of subsection (10), the Minister shall treat as revenue:

- (a) money received under a policy of insurance relating to wheat or its sale; and
- (b) interest earned by the investment of money derived from the sale or disposal of wheat or from the investment of money borrowed by the Board.

(12) Without limiting the meaning of subsection (10), in estimating the amount represented by the factor ETC for the purpose of subsection (10), the Minister shall treat as costs:

- (a) the cost of buying wheat, other than pool return wheat, for sale or disposal by the Board;
- (b) money required to be credited to the Fund in respect of the use of money from the Fund; and
- (c) bad debts.

(13) In making a determination, the Minister shall have regard to any advice or information given to him or her by the Board or the Australian Bureau of Agricultural and Resource Economics.

(14) The appropriate percentage is:

- (a) for the season commencing on 1 July 1989—90%;
- (b) for the season commencing on 1 July 1990—87.5%;
- (c) for the season commencing on 1 July 1991—85%;
- (d) for the season commencing on 1 July 1992—82.5%; and
- (e) for the season commencing on 1 July 1993—80%.

(15) Borrowings in relation to which the Commonwealth is liable to make a payment under subsection (1) shall be discharged before other borrowings of the Board under section 77.

(16) In making an estimate for the purpose of subsection (10), the Minister shall not:

- (a) make any deduction from revenue for money paid into a reserve account under subsection 73 (2); or
- (b) treat as a cost the payment of an amount into such an account.

(17) Payments under subsection (1) shall be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

(18) This section ceases to be in force when the last pool that includes wheat of the season commencing on 1 July 1993 is closed.

(19) When this section ceases to be in force, it shall be regarded, for the purposes of section 8 of the *Acts Interpretation Act 1901*, as having been repealed by an Act other than this Act.

Liability to taxation

79. (1) Subject to subsection (4), the Board is subject to taxation (other than income tax) under the laws of the Commonwealth.

(2) Subject to the regulations, the Board is not subject to taxation under a law of a State or Territory.

(3) The regulations may provide that subsection (2) does not apply to taxation under a specified law of a State or Territory.

(4) The Minister may determine, by notice published in the *Gazette*, that stamp duty, or any similar tax, is not payable by the Board under a law of the Commonwealth, or by a person other than the Board under a law of the Commonwealth or of a State or Territory, in respect of:

- (a) a security dealt with by the Board;
- (b) the issue, redemption, transfer, sale, purchase, acquisition or discounting of such a security by the Board or any other person, excluding a transaction entered into without consideration or for an inadequate consideration; or
- (c) a document executed by or on behalf of the Board, or any transaction, in relation to the borrowing or raising of money by the Board.

PART 6—WHEAT INDUSTRY FUND

Wheat Industry Fund

- 80. (1)** A fund to be known as the Wheat Industry Fund is established.
- (2)** The Board may establish separate accounts within the Fund.

Payments into the Fund

- 81.** The Board shall credit to the Fund:
- (a) money paid to the Board under section 86;
 - (b) interest earned by the investment of money of the Fund;
 - (c) profits derived by the Board from the use of money of the Fund; and
 - (d) money required by the regulations to be credited to the Fund.

Use of Fund money

- 82. (1)** Subject to the regulations, money standing to the credit of the Fund may be used by the Board:
- (a) for any purpose in connection with the performance of the Board's functions relating to trading in grain other than pool return wheat;
 - (b) for the making of advance payments referred to in section 62 in respect of wheat of a season where the payments, when added to all advance payments already made in respect of wheat of that season, would exceed the appropriate percentage of the aggregate estimated net pool return from pool return wheat of that season;
 - (c) for the obtaining of insurance cover in respect of any property or activity of the Board;
 - (d) in payment to the Commonwealth of amounts equal to the expenses incurred by the Commonwealth in relation to:
 - (i) the collection or recovery of levy; and
 - (ii) the administration of section 86; and
 - (e) for any other purpose approved in writing by the Minister.
- (2)** In subsection (1):
- “aggregate estimated net pool return” and “appropriate percentage” have the same meaning as in section 78;
- “levy” has the same meaning as in Part 7.

(3) Regulations that would affect the operation of subsection (1) shall not be made except after consideration by the Minister of a report by the Grains Council made after consultation with the Board.

Management of the Fund

83. (1) The Fund shall be managed according to the regulations.

(2) The provisions that may be made by the regulations include, but are not limited to, provisions regarding:

- (a) the conditions subject to which money of the Fund may be used by the Board;
- (b) the replacement in the Fund of money used by the Board;
- (c) the giving by the Treasurer of guarantees in relation to borrowings made by the Board for the purposes of activities involving the use of money of the Fund;
- (d) the making of payments to wheat growers out of, or in relation to, money of the Fund;
- (e) the issue to wheat growers of certificates of equity in the Fund;
- (f) the rights of the holder of a certificate of equity, including rights relating to the transfer of the certificate; and
- (g) the manner in which accounting records relating to the Fund are to be kept by the Board.

(3) Regulations for the purpose of subsection (1) shall not be made except after consideration by the Minister of a report by the Grains Council made after consultation with the Board.

PART 7—MISCELLANEOUS

Interpretation

84. In this Part:

“leviable wheat” means wheat on which levy is payable;

“levy” means:

- (a) levy imposed by the *Wheat Industry Fund Levy Act 1989*; and
- (b) any amount payable by way of penalty under section 7 of the *Wheat Industry Fund Levy Collection Act 1989*;

“Research Fund” means the Wheat Research Trust Fund established by section 6 of the *Rural Industries Research Act 1985*;

“value” has the same meaning as in the *Wheat Industry Fund Levy Collection Act 1989*.

Determination of apportionment of wheat industry fund levy

85. (1) Before the commencement of each season, the Grains Council shall determine the percentage of the value of leviable wheat on which levy is imposed during that season that is to be paid to the Board for crediting to the Fund.

(2) The percentage determined under subsection (1) shall be at least 2%.

(3) Before the commencement of each season, the Grains Council shall determine the percentage of the value of leviable wheat on which levy is imposed during that season that is to be paid into the Research Fund.

(4) In respect of a season that begins before the commencement of subsection (1), the percentage determined under subsection (3) shall equal the percentage that represents the rate at which levy is imposed during that season.

(5) Where percentages are determined under subsections (1) and (3) in respect of a season:

- (a) the percentage determined under subsection (3) shall be at least 0.25%; and
- (b) the sum of the percentages shall equal the percentage that represents the rate at which levy is imposed during that season.

(6) Before determining a percentage, the Grains Council shall take into account any recommendations with respect to the percentage made by the Board.

(7) As soon as practicable, the Grains Council shall notify the Minister and the Board of a percentage determined under subsection (1) or (3).

(8) As soon as practicable after receiving the notification, the Minister shall cause notice of the determination to be published in the *Gazette*.

Payments to Board

86. (1) Where an amount in respect of levy payable on particular wheat has been received by the Commonwealth, there is payable to the Board an amount calculated according to the formula:

$$LR \times \frac{PV}{TP}$$

where:

LR is the amount received;

PV is the percentage determined under subsection 85 (1) in respect of the season in which levy was imposed on the wheat;

TP is the sum of the percentages determined under subsections 85 (1) and (3) in respect of that season.

(2) Money payable to the Board under subsection (1) is payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

Payments to Wheat Research Trust Fund

87. (1) In this section:

“Levy Act” means the *Wheat Industry Fund Levy Act 1989*;

“Research Act” means the *Rural Industries Research Act 1985*.

(2) At any time during a season when regulations are in force under section 39E of the Research Act in respect of the levy imposed by the Levy Act, the research component of that levy, for the purposes of section 7 of the Research Act, is so much of the levy as is represented by the percentage fixed by the determination under subsection 85 (3) made in respect of that season.

Operation of certain State and Territory laws

88. (1) In this section:

“corporation” means a trading corporation formed within the limits of the Commonwealth, but does not include the Board;

“sale contract” means a contract for the sale of grain or for the growing of grain and the sale of the grain, being a contract to which a corporation is a party and which is entered into by a corporation in the course of, or for the purposes of:

- (a) the export of the grain; or
- (b) trade and commerce:
 - (i) among the States;
 - (ii) between a State and a Territory or between Territories;
or
 - (iii) within a Territory;

“service contract” means a contract, agreement or arrangement for the storage, handling or transport of grain for a corporation, being a contract to which a corporation is a party and which is entered into by the corporation in the course of, or for the purposes of:

- (a) the export of the grain; or
- (b) trade and commerce:
 - (i) among the States;
 - (ii) between a State and a Territory or between Territories;
or
 - (iii) within a Territory.

(2) A sale contract or a service contract is not rendered unlawful or unenforceable by any prescribed State or Territory enactment.

(3) A party to a sale contract or a service contract does not incur any liability, penalty or forfeiture under a prescribed State or Territory enactment by virtue only of having entered into the contract.

(4) Nothing in any prescribed State or Territory enactment operates to prevent a party to a sale contract or a service contract discharging obligations under the contract according to the terms of the contract.

(5) In the case of a sale contract, nothing in any prescribed State or Territory enactment operates to prevent the property in the grain passing to the purchaser according to the terms of the contract.

(6) A person who, under a contract (including a contract of service), agreement or arrangement with a party to a sale contract or a service contract, does anything on behalf of that party in the discharge of an obligation under the sale contract or the service contract does not incur any liability, penalty or forfeiture under any prescribed State or Territory enactment by virtue only of having done that thing, and the contract, agreement or arrangement between that person and the party is not rendered unlawful or unenforceable by any prescribed State or Territory enactment.

(7) A corporation does not incur any liability, penalty or forfeiture under a prescribed State or Territory enactment by virtue only of storing, handling or transporting grain for a purpose referred to in the definition of "service contract" in subsection (1).

(8) Nothing in any prescribed State or Territory enactment prevents a corporation storing, handling or transporting grain for a purpose referred to in the definition of "service contract" in subsection (1).

(9) A person who, under a contract (including a contract of service), agreement or arrangement with a corporation does anything for the corporation in, or in connection with, the storage, handling or transport of grain by the corporation does not incur any liability, penalty or forfeiture under any prescribed State or Territory enactment by virtue only of having done that thing, and the contract, agreement or arrangement between that person and the corporation is not rendered unlawful or unenforceable by any prescribed State or Territory enactment.

(10) Nothing in any prescribed State or Territory enactment operates to prevent a party to a contract, agreement or arrangement referred to in subsection (6) or (9) discharging obligations under the contract, agreement or arrangement according to its terms.

(11) Subsection (5) does not affect the rights of the holder of a security over grain for moneys owing.

(12) Subject to subsection (13), a reference in this section to a prescribed State or Territory enactment is a reference to:

- (a) a State or Territory enactment declared by the regulations to be a prescribed State or Territory enactment for the purposes of this section; or
- (b) a State or Territory enactment included in a class of State or Territory enactments declared by the regulations to be prescribed State or Territory enactments for the purposes of this section.

(13) The regulations shall not prescribe a State or Territory enactment except in relation to the storage, handling and transport of grain or the marketing of wheat.

(14) The regulations may provide that a State or Territory enactment, or a State or Territory enactment included in a class of State or Territory

enactments, is a prescribed State or Territory enactment only to the extent, or only in the circumstances, specified in the regulations.

(15) In this section:

“State or Territory enactment” means:

- (a) a State Act;
- (b) an enactment of a Territory; or
- (c) an instrument made or issued under such an Act or enactment.

Annual report

89. (1) As soon as practicable after 30 September 1989 and each succeeding 30 September, the Board shall give the Minister a written report of its operations during the year that ended on that date, together with financial statements for that year in a form approved by the Minister for Finance.

(2) Before submitting financial statements to the Minister under subsection (1), the Board shall submit them to the Board auditor, who shall report to the Minister:

- (a) whether, in the opinion of the Board auditor, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in the opinion of the Board auditor, show fairly the financial transactions and the state of affairs of the Board;
- (c) whether, in the opinion of the Board auditor, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the Board during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Board auditor thinks should be reported to the Minister.

(3) Without limiting the generality of subsection (1), the Board shall include in each report under that subsection:

- (a) an assessment of the extent to which its operations during the year have:
 - (i) achieved the objectives stated in the corporate plan; and
 - (ii) implemented the annual operational plan applicable to the year;
- (b) particulars of:
 - (i) export trading activities undertaken by the Board during the year;
 - (ii) significant capital works programs (if any) undertaken by the Board during the year;
 - (iii) significant acquisitions and dispositions of real property by the Board during the year;

- (iv) companies formed under arrangements made by the Board, and companies in whose formation the Board participated, during the year;
 - (v) shares and securities subscribed for, purchased or disposed of by the Board during the year;
 - (vi) partnerships entered into by the Board during the year;
 - (vii) joint ventures, and arrangements for the sharing of profits, entered into by the Board during the year; and
 - (viii) variations to the corporate plan, and to the applicable annual operational plan, agreed to by the Minister during the year;
- (c) the text of all directions given to the Board under section 8 during the year to which the report relates and a statement setting out the effect that, in the opinion of the Board, those directions had on the operations of the Board;
 - (d) details of any contract (other than a contract referred to in section 74) or agreement in connection with the purchase of real or personal property (other than grain or an interest in a vessel) for an amount exceeding \$500,000 entered into by the Board during the year to which the report relates;
 - (e) a summary of the action taken by the Board to develop and implement its equal opportunity program; and
 - (f) the result of any monitoring, evaluation or assessment referred to in the definition of "assessment action" in the Schedule.

(4) Financial statements referred to in subsection (1) in relation to a year shall include details of each reserve account established under section 73 that was current in that year.

(5) The Minister shall cause copies of the report and financial statements together with the report of the Board auditor to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

(6) For the purposes of subsection (1) in relation to the year ending on 30 September 1989, the operations of the Board during that year shall be taken to include the operations of the Board during that year under the 1984 Act.

Certificate of entitlements

90. (1) A person who has sold pool return wheat to the Board is entitled, on request, to receive from the Board a certificate stating the total of:

- (a) amounts that the person is entitled to receive, but has not yet received; and
 - (b) amounts that the person is likely to receive;
- from the Board in respect of the wheat.

- (2) The issue of a certificate does not:
- (a) constitute an acknowledgment by the Board;
 - (b) constitute a promise by the Board to pay money; or
 - (c) affect the recipient's rights or liabilities under this Act.

Repeal

91. Subject to sections 92 and 93, the *Wheat Marketing Act 1984* is repealed.

Transitional provision: continuance of Board etc.

92. (1) Subsections (2) and (3) cease to have effect:
- (a) at the end of the period of 6 months commencing on the day on which this Act receives the Royal Assent; or
 - (b) if a day before the end of that period is fixed by the Minister by notice published in the *Gazette*, on that day.
- (2) The persons who, immediately before the commencement of this section, hold office as members of the Board continue in office as follows:
- (a) the Chairperson continues as Chairperson in an executive capacity;
 - (b) the member to represent the Commonwealth continues as the government member of the Board;
 - (c) the members holding office by virtue of paragraph 34 (1) (c) or (d) of the 1984 Act continue as nominated members of the Board.
- (3) For the purposes only of subsection (2), section 15 of this Act has effect as if it provided for the appointment of 9 nominated members.
- (4) An appointment under section 15 of this Act made while subsection (2) of this section is in force takes effect:
- (a) when subsection (2) ceases to have effect; or
 - (b) if a later date is specified in the instrument of appointment—on that later date.
- (5) The person holding office as Presiding Member of the Australian Wheat Board Selection Committee immediately before the commencement of this section holds office as the Presiding Member under this Act as if:
- (a) section 27 of this Act had been in force when the person was appointed under the 1984 Act; and
 - (b) the person had been appointed under that section for the same term as that for which the person was appointed under the 1984 Act.

Other transitional provisions

93. (1) Part III of the 1984 Act (other than sections 15, 18 and 32) continues to have effect for the purposes only of the disposal of wheat delivered to the Board before 1 July 1989 or in respect of which a permit was issued under the 1984 Act or under a corresponding provision of a State Act, the making of payments for such wheat and the determination and enforcement of rights and liabilities in connection with the disposal of

such wheat or in connection with payments made before 1 July 1989 in relation to such wheat.

(2) For the purpose of subsection (1), a reference in Part III of the 1984 Act to the Australian Wheat Board shall, in relation to anything done or to be done after the commencement of this section, be read as a reference to the Board as continued in existence by this Act.

(3) In spite of section 91 of this Act, sections 49, 50, 51 and 52, subsections 56 (4) and (5) and section 60 of the 1984 Act continue in force for the purposes referred to in subsection (1).

(4) Section 49 of the 1984 Act, as continued in force, has effect as if subsection (3) were omitted and the following subsection substituted:

“(3) In this section, ‘season’ does not include a season commencing on or after 1 July 1989.”.

(5) Section 60 of the 1984 Act, as continued in force, has effect as if it included the following subsection:

“(5) In this subsection:

‘wheat’ means wheat harvested before 1 July 1989;

‘wheat products’ means products made from wheat harvested before 1 July 1989.”.

(6) A reserve account established under section 7 of the 1984 Act and in existence immediately before the repeal of that Act continues as if it had been established under section 73 of this Act.

(7) If, on the repeal of the 1984 Act, there is money standing to the credit of the account kept under subsection 33 (1) of that Act, that money shall be applied for the benefit of the wheat industry in such manner as the Minister, after consultation with the Grains Council, directs.

(8) A determination under subsection 54 (4) of the 1984 Act in force immediately before the repeal of that Act continues in force as if it had been made under subsection 79 (4) of this Act.

(9) Regulations in force under subsection 54 (2) or (3) of the 1984 Act immediately before the commencement of this section continue in force as if they had been made under the corresponding subsection of section 79 of this Act.

(10) A person who held an appointment under section 55A of the 1984 Act immediately before the commencement of this section shall be taken to hold an appointment under section 68 of this Act as if:

(a) section 68 had been in force when the person was appointed; and

(b) the person had been appointed under that section.

(11) An approval in force under section 63E of the *Audit Act 1901* immediately before the commencement of this Act and relating to money of

the Board continues to have effect as if it had been given under section 70 of this Act.

Regulations

94. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all 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.

(2) Regulations prescribing a State or Territory enactment for the purposes of section 7 or section 88 shall not be made unless the Minister has notified the Minister of the State or Territory responsible for the administration of the enactment of the subject-matter of the regulations.

SCHEDULE

Subsection 3 (3)

DEFINITIONS RELATED TO SECTIONS 47 AND 48

1. For the purposes of the definition of “equal employment opportunity program” and the definitions of expressions used in that definition:

“assessment action”, in relation to the equal employment opportunity program of the Board, means action by the Board to do all of the following things:

- (a) to collect and record statistics and related information concerning employment by the Board, including the number and types of jobs undertaken by, or job classifications of:
 - (i) employees of either sex; and
 - (ii) persons in designated groups;
- (b) to monitor and evaluate the implementation of the program;
- (c) to assess:
 - (i) the achievement of the objectives of the program; and
 - (ii) the effectiveness of the program by comparing statistics and information referred to in paragraph (a) with the indicators set under the policy action of the program;

“consultation action”, in relation to the equal employment opportunity program of the Board, means action by the Board to:

- (a) consult with its employees, particularly employees who are women or in designated groups; and
- (b) consult with each trade union having members affected by the program;

in relation to the development and implementation of the program;

“designated group” has the same meaning as in the *Public Service Act 1922*;

“discrimination” means:

- (a) discrimination that is unlawful under the *Racial Discrimination Act 1975* or the *Sex Discrimination Act 1984*; or
- (b) discrimination by which a person with a physical or mental disability is, because of the disability, treated less favourably than a person without the disability;

“employee” means a natural person appointed or engaged:

- (a) under a contract of service, whether on a full-time, part-time, permanent, casual or temporary basis; or
- (b) under a contract for services;

being a contract that is made in Australia, whether or not the person is, or may be, required to perform duties outside Australia under the contract;

“employee information action”, in relation to the equal employment opportunity program of the Board, means action by the Board to

SCHEDULE—continued

inform its employees of the content of the program and of the results of any assessment action;

“employment matters” includes:

- (a) recruitment procedure, and selection criteria, for appointment or engagement of persons as employees;
- (b) promotion and transfer of employees;
- (c) training and staff development for employees; and
- (d) conditions of service of employees;

“policy action”, in relation to the equal opportunity program of the Board, means action by the Board to do all of the following things:

- (a) confer responsibility for the development and implementation of the program (including a continuous review of the program) on a person having sufficient authority and status within the management of the Board to enable the person properly to develop and implement the program;
- (b) examine policies and practices of the Board, in relation to employment matters, to identify:
 - (i) any policies or practices that constitute discrimination against women or persons in designated groups; and
 - (ii) any patterns (whether ascertained statistically or otherwise) of lack of equality of opportunity for women or persons in designated groups;
- (c) set:
 - (i) the objectives to be achieved by the program; and
 - (ii) the quantitative and other indicators against which the effectiveness of the program is to be assessed;

“woman” means a member of the female sex irrespective of age.

2. A reference in the definition of “equal employment opportunity program” to discrimination in relation to employment matters does not include a reference to discrimination that:

- (a) is essential for the effective performance of the duties to which the employment matters relate; and
- (b) is not unlawful under the *Racial Discrimination Act 1975* or the *Sex Discrimination Act 1984*.

[Minister's second reading speech made in—
House of Representatives on 13 April 1989
Senate on 9 May 1989]