



Wheat Marketing Amendment Act 2007

No. 108, 2007

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title	1
2	Commencement	1
3	Schedule(s)	2
Schedule 1—Information-gathering and investigative powers etc.		3
	<i>Wheat Marketing Act 1989</i>	3
Schedule 2—Veto power etc.		7
	<i>Wheat Marketing Act 1989</i>	7
Schedule 3—Replacement of nominated company B etc.		8
	<i>Wheat Marketing Act 1989</i>	8
Schedule 4—Non-bulk export of wheat etc.		13
	<i>Wheat Marketing Act 1989</i>	13
Schedule 5—Governance review implementation		17
	<i>Financial Management and Accountability Regulations 1997</i>	17
	<i>Wheat Marketing Act 1989</i>	17
Schedule 6—Transitional provisions		30
	Part 1—Introduction	30
	Part 2—Assets, liabilities and legal proceedings	32
	Part 3—References to Authority etc.	34
	Part 4—Appointments of office-holders	36
	Part 5—Export Wheat Commission Special Account	37
	Part 6—Reporting and record-keeping obligations	38
	Part 7—Miscellaneous	40



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No. 108, 2007

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

[Assented to 28 June 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Wheat Marketing Amendment Act 2007*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	28 June 2007
2. Schedules 1 and 2	The day on which this Act receives the Royal Assent.	28 June 2007
3. Schedule 3	1 March 2008.	1 March 2008
4. Schedule 4	The 60th day after the day on which this Act receives the Royal Assent.	27 August 2007
5. Schedules 5 and 6	1 October 2007.	1 October 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

- (1) Each Act, and each set of regulations, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

Schedule 1—Information-gathering and investigative powers etc.

Wheat Marketing Act 1989

1 At the end of subsection 5(1)

Add:

; (c) such other functions as are conferred on the Authority by this Act.

2 After section 5D

Insert:

5DA Power to request information and documents

Scope

- (1) This section applies to a person if the Authority believes on reasonable grounds that the person has information or a document that is relevant to the functions of the Authority.

Request

- (2) The Authority may, by written notice given to the person, request the person:
- (a) to give to the Authority, within the period and in the manner specified in the notice, any such information; or
 - (b) to produce to the Authority, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to the Authority, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

5DB Power to request a report

Scope

- (1) This section applies to a person if the Authority believes on reasonable grounds that:
 - (a) the person has information or a document that is relevant to the functions of the Authority; and
 - (b) the person is capable of using the information or document to prepare a report about a particular matter that is relevant to the functions of the Authority.

Request

- (2) The Authority may, by written notice given to the person, request the person:
 - (a) to prepare such a report; and
 - (b) to give the report to the Authority within the period specified in the notice.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

5DC Minister may direct investigations

- (1) If, in the Minister's opinion, it is in the public interest for a particular matter to which subsection (2) applies to be investigated, the Minister may, by written notice given to the Authority, direct the Authority to investigate that matter.
- (2) This subsection applies to a matter relating to any of the following:
 - (a) the operation of a pool mentioned in section 84;
 - (b) the export of wheat by nominated company B;
 - (c) the export of wheat by a person other than nominated company B;
 - (d) the provision of services to nominated company B, where those services relate to:
 - (i) the operation of a pool mentioned in section 84; or
 - (ii) the export of wheat;

- (e) the provision of services to a person other than nominated company B, where those services relate to the export of wheat;
 - (f) a function conferred on the Authority by this Act;
 - (g) an alleged or suspected contravention of this Act.
- (3) It is immaterial whether a matter occurred before, at or after the commencement of this section.
- (4) The Authority must comply with a direction under subsection (1).

Report on investigation

- (5) At the end of an investigation under this section, the Authority must prepare a report about the investigation.
- (6) A report under this section must set out:
 - (a) the Authority's findings about the matter investigated; and
 - (b) the evidence and other material on which those findings are based; and
 - (c) such other matters relating to, or arising out of, the investigation as:
 - (i) the Authority thinks fit; or
 - (ii) the Minister directs.

Distribution of report

- (7) As soon as practicable after preparing a report under this section, the Authority must give a copy of the report to the Minister.
- (8) If a report, or a part of a report, under this section relates to an alleged or suspected contravention of a law of the Commonwealth or of a State or Territory, the Authority may give a copy of the whole or a part of the report to:
 - (a) the Australian Federal Police; or
 - (b) the police force of a State or Territory; or
 - (c) the Australian Securities and Investments Commission; or
 - (d) the Australian Prudential Regulation Authority; or
 - (e) the Commissioner of Taxation; or
 - (f) the Australian Competition and Consumer Commission; or
 - (g) a prescribed agency.

- (9) If a report, or a part of a report, under this section relates to a person's affairs to a material extent, the Authority may:
- (a) at the person's request; or
 - (b) on its own initiative;
- give the person a copy of the report or a part of the report.

Publication of report

- (10) The Minister may cause the whole or a part of a report under this section to be published (whether on the Internet or otherwise), so long as the publication does not involve the disclosure of information that could reasonably be expected:
- (a) to cause financial loss or detriment to a person; or
 - (b) to reduce the return for a pool mentioned in section 84.

3 After paragraph 5E(3)(d)

Insert:

- (da) under subsection 5DC(7), (8) or (9); or

Schedule 2—Veto power etc.

Wheat Marketing Act 1989

1 Section 65 (paragraph (b) of the definition of *temporary period*)

Omit “2007”, substitute “2008”.

Schedule 3—Replacement of nominated company B etc.

Wheat Marketing Act 1989

1 Section 3

Insert:

designated company has the meaning given by section 3AA.

2 After section 3

Insert:

3AA Designated company

Declaration

- (1) The Minister may, by writing, declare that, with effect from a specified time, a specified company is the *designated company* for the purposes of this Act.
- (2) The specified time must be after the declaration is made.
- (3) At the time the declaration is made, the company must be registered under the *Corporations Act 2001*.
- (4) The Minister must cause a copy of the declaration to be published on the Internet.
- (5) The declaration is not a legislative instrument.

Revocation of declaration

- (6) The Minister may, by writing, revoke a declaration made under subsection (1), with effect from a specified time.
- (7) The specified time must be after the revocation is made.
- (8) The Minister must cause a copy of the revocation to be published on the Internet.
- (9) The revocation is not a legislative instrument.

(10) Subsection (6) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

(11) If:

- (a) a declaration is in force under subsection (1) in relation to a company; and
- (b) the company ceases to be registered under the *Corporations Act 2001*;

the declaration is taken to have been revoked at the time of the cessation.

Nominated company B

(12) Until the first declaration under subsection (1) takes effect, nominated company B is the **designated company** for the purposes of this Act.

Sunset

(13) After 30 June 2008, the Minister must not exercise a power conferred by subsection (1) or (6).

3 Paragraph 5(1)(b)

Omit “nominated company B’s”, substitute “the designated company’s”.

4 Subsections 5A(1) and (2)

Omit “nominated company B”, substitute “the designated company”.

5 Paragraphs 5C(1)(a) and (3)(a)

Omit “nominated company B’s”, substitute “the designated company’s”.

Note: The heading to section 5C is altered by omitting “**nominated company B’s**” and substituting “**the designated company’s**”.

6 At the end of section 5C (before the note)

Add:

Replacement of designated company

- (5) If there are different designated companies during different parts of a financial year, subsections (1) and (3) have effect, in relation to the year, as if the references in those subsections to the designated company's performance for the year were read as a reference to each designated company's performance for the relevant part of the year.

Nominated company B

- (6) For the purposes of the application of this section to the financial year in which this subsection commenced:
- (a) if nominated company B ceased to be the designated company during the year—nominated company B is taken to have been the designated company throughout so much of the year as occurred before the cessation; or
 - (b) in any other case—nominated company B is taken to have been the designated company throughout the year.

7 Subsection 5D(1)

Before “nominated company B” (first and second occurring), insert “the designated company or”.

8 Paragraph 5D(1)(b)

Before “nominated company B”, insert “the designated company,”.

9 Paragraphs 5DC(2)(b), (c), (d) and (e)

Omit “nominated company B”, substitute “the designated company”.

10 Paragraph 5E(1)(f)

After “under”, insert “repealed”.

11 Paragraph 5E(3)(e)

Omit “1984; or”, substitute “1984.”.

12 Paragraph 5E(3)(f)

Repeal the paragraph.

13 Subsections 57(1A), (3A), (3B) and (6)

Omit “nominated company B” (wherever occurring), substitute “the designated company”.

13A After subsection 57(3B)

Insert:

(3C) Subsection (3B) does not apply at a time after 30 June 2008 if, at that time:

- (a) nominated company B; or
- (b) a related body corporate of nominated company B; is the designated company.

14 Subsections 57(7) to (12)

Repeal the subsections.

15 Subsections 58(3) and (6)

Omit “nominated company B”, substitute “the designated company”.

16 Subsection 84(1)

Omit “Nominated company B”, substitute “The designated company”.

Note: The heading to section 84 is altered by omitting “**Nominated company B**” and substituting “**Designated company**”.

17 Subsection 84(3)

Omit “nominated company B”, substitute “the designated company”.

18 Transitional—section 3AA of the *Wheat Marketing Act 1989*

Subsection 4(1) of the *Acts Interpretation Act 1901* does not apply to a power conferred on the Minister by section 3AA of the *Wheat Marketing Act 1989*.

19 Transitional—investigations and reports under section 5DC of the *Wheat Marketing Act 1989*

- (1) This item applies to an investigation under section 5DC of the *Wheat Marketing Act 1989* if:
 - (a) the investigation started before the commencement of this item; and

- (b) the investigation relates to a matter concerning nominated company B.
- (2) Despite the amendments of section 5DC of the *Wheat Marketing Act 1989* made by this Schedule, that section continues to apply, in relation to:
 - (a) the investigation; and
 - (b) a report about the investigation;as if those amendments had not been made.

Schedule 4—Non-bulk export of wheat etc.

Wheat Marketing Act 1989

1 Section 3

Insert:

accredited testing laboratory means a person or body that is accredited as an accredited testing laboratory under the non-bulk wheat quality assurance scheme.

2 Section 3

Insert:

non-bulk wheat quality assurance scheme means the scheme under subsection 67(1).

3 At the end of paragraph 5(1)(a)

Add “(other than the export of wheat in bags or containers)”.

4 Paragraph 5(1)(c)

Repeal the paragraph, substitute:

- (c) such other functions as are conferred on the Authority by:
 - (i) this Act; or
 - (ii) the non-bulk wheat quality assurance scheme.

5 Subsection 5A(1)

After “Australia”, insert “(other than the export of wheat in bags or containers)”.

6 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Bulk export of wheat

7 Subsection 57(1) (penalty)

Repeal the penalty, substitute:

Penalty: 600 penalty units.

Note: The heading to section 57 is altered by inserting “**bulk**” before “**export**”.

8 After subsection 57(1)

Insert:

(1AA) The prohibition in subsection (1) does not apply to the export of wheat in bags or containers.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1AA)—see subsection 13.3(3) of the *Criminal Code*.

9 Subsection 57(3B)

Omit “bulk-export”.

10 Subsection 57(3B)

Omit “For this purpose a consent is a **bulk-export consent** unless it is limited to export in bags or containers.”.

11 Subsections 60(1) and (2)

Omit “bulk-export”.

12 Paragraphs 62(1)(a) and (b)

Omit “bulk-export”.

13 Section 65 (definition of *bulk-export consent*)

Repeal the definition.

14 After Part 5

Insert:

Part 6—Non-bulk export of wheat

66 Compliance with non-bulk wheat quality assurance scheme

(1) A person commits an offence if:

(a) the person exports wheat in bags or containers; and

- (b) the person contravened a requirement imposed on the person by the non-bulk wheat quality assurance scheme in relation to the export of the wheat.

Penalty: 600 penalty units.

- (2) Subsection (1) does not apply if the export of the wheat occurs in circumstances specified in the regulations.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) does not apply if the Authority gave its consent to the export of the wheat under subsection 57(1) before the commencement of this section.

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

67 Non-bulk wheat quality assurance scheme

- (1) The Authority may, by legislative instrument, formulate a scheme directed towards the achievement of the objective of ensuring that wheat exported in bags or containers corresponds with the relevant contractual description of the wheat.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The scheme under subsection (1) is to be known as the ***non-bulk wheat quality assurance scheme***.

- (3) The non-bulk wheat quality assurance scheme may:

- (a) provide for the accreditation of persons or bodies as accredited testing laboratories; and
- (b) require exporters of wheat in bags or containers:
 - (i) to obtain a certificate from an accredited testing laboratory; and
 - (ii) to do so under a contract entered into with the accredited testing laboratory; and
- (c) set out other requirements to be complied with by exporters in relation to the export of wheat in bags or containers; and
- (d) set out requirements that must be complied with by accredited testing laboratories in relation to the issue of certificates.

- (4) The non-bulk wheat quality assurance scheme may provide that an accredited testing laboratory may charge a fee for issuing a certificate under the scheme. A fee must not be such as to amount to taxation.
- (5) The non-bulk wheat quality assurance scheme may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Authority.
- (6) The non-bulk wheat quality assurance scheme may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.
- (7) Subsection (6) has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*.
- (8) If the non-bulk wheat quality assurance scheme makes provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in any other instrument or writing, the Authority must ensure that the text of the matter applied, adopted or incorporated is made publicly available on its Internet site.
- (9) Subsections (3), (4), (5) and (6) do not limit subsection (1).
- (10) Before exercising a power conferred by subsection (1), the Authority must consult the Minister.

Note: For other consultation requirements, see Part 3 of the *Legislative Instruments Act 2003*.

Schedule 5—Governance review implementation

Financial Management and Accountability Regulations 1997

1 Part 1 of Schedule 1 (after table item 122B)

Insert:

- | | | |
|------|--|-------------|
| 122C | Export Wheat Commission, comprising: | Chairperson |
| | (a) the Chairperson and the other members of the Export Wheat Commission; and | |
| | (b) the staff mentioned in section 14 of the <i>Wheat Marketing Act 1989</i> ; and | |
| | (c) the persons whose services are made available to the Export Wheat Commission under section 15 of that Act. | |

See Note B

Wheat Marketing Act 1989

2 Section 3 (definition of *Authority*)

Repeal the definition.

3 Section 3 (definition of *Chairperson*)

Omit “Authority”, substitute “Commission”.

4 Section 3

Insert:

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

5 Section 3 (definition of *Grains Council*)

Repeal the definition.

6 Section 3 (definition of *member*)

Omit “Authority”, substitute “Commission”.

7 Part 2 (heading)

Repeal the heading, substitute:

Part 2—Export Wheat Commission

8 Subsection 4(1)

Repeal the subsection, substitute:

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

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

- (1A) To avoid doubt, a reference in a law of the Commonwealth to the Export Wheat Commission must, in relation to matters that occurred before the commencement of this subsection, be construed as a reference to the Wheat Export Authority.

Note: The heading to section 4 is replaced by the heading “**Export Wheat Commission**”.

9 Subsection 4(2)

Omit “Authority”, substitute “Commission”.

10 Paragraph 4(2)(c)

Repeal the paragraph.

11 Subsections 4(3) and (4)

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

12 Subsections 5(1) and (2)

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

Note: The heading to section 5 is altered by omitting “**Authority**” and substituting “**Commission**”.

13 Subsection 5(2)

Omit “functions.”, substitute:

functions, other than the power:

- (a) to acquire, hold and dispose of real and personal property; or
- (b) to enter into contracts; or

- (c) to lease the whole or any part of any land or building for the purposes of the Commission.

Note: For the power to enter into contracts etc. on behalf of the Commonwealth for the benefit of the Commission, see section 44 of the *Financial Management and Accountability Act 1997* as it applies in relation to the Commission as an Agency.

14 At the end of section 5

Add:

- (3) A right to sue is taken not to be personal property for the purposes of paragraph (2)(a).

15 After section 5

Insert:

5AA Commission's financial liabilities are Commonwealth liabilities

- (1) Any financial liabilities of the Commission are taken to be liabilities of the Commonwealth.
- (2) For the purposes of this section:

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

16 Subsection 5A(1)

Omit "Authority" (wherever occurring), substitute "Commission".

Note: The heading to section 5A is altered by omitting "**Authority's**" and substituting "**Commission's**".

17 Subsection 5B(1)

Repeal the subsection, substitute:

- (1) The Commission may, by writing, delegate any or all of its functions and powers to a person who is:
- (a) a member of the staff of the Commission; and
 - (b) an SES employee or acting SES employee.

Note: The expressions ***SES employee*** and ***acting SES employee*** are defined in section 17AA of the *Acts Interpretation Act 1901*.

Note: The heading to section 5B is altered by omitting “**Authority**” and substituting “**Commission**”.

18 Subsection 5B(2)

Omit “Authority”, substitute “Commission”.

19 Subsections 5C(1), (2), (3) and (4)

Omit “Authority”, substitute “Commission”.

20 Subsections 5D(1) and (5)

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

21 Subsections 5DA(1) and (2)

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

22 Subsections 5DB(1) and (2)

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

23 Subsections 5DC(1), (2), (4) and (5)

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

24 Paragraph 5DC(6)(a)

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

25 Subparagraph 5DC(6)(c)(i)

Omit “Authority”, substitute “Commission”.

26 Subsections 5DC(7), (8) and (9)

Omit “Authority”, substitute “Commission”.

27 Paragraphs 5E(1)(a), (b) and (c)

Omit “Authority”, substitute “Commission”.

28 After paragraph 5E(1)(c)

Insert:

(ca) a person whose services are made available to the Commission under section 15; or

29 Paragraphs 5E(2)(a) and (3)(c)

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

30 Subparagraph 5E(3)(c)(iii)

Omit “or”.

31 At the end of paragraph 5E(3)(c)

Add:

- (iv) a person whose services are made available to the Commission under section 15; or

32 Subsections 6(1), (2), (3) and (4)

Repeal the subsections, substitute:

- (1) The Commission consists of the following members:
 - (a) a Chairperson;
 - (b) at least 3, and not more than 5, other members.
- (2) Each member is to be appointed by the Minister by written instrument.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

- (3) A person is not eligible for appointment as a member unless the Minister is satisfied that the person has:
 - (a) substantial experience or knowledge; and
 - (b) significant standing;in at least one of the following fields:
 - (c) international trade;
 - (d) international marketing;
 - (e) commodity trading;
 - (f) commodity logistics;
 - (g) foreign exchange trading;
 - (h) finance;
 - (i) regulation;
 - (j) public policy;
 - (k) business;
 - (l) law;
 - (m) grain production;
 - (n) export wheat production.

(3A) The Minister must ensure that at least 1, but not more than 2, of the members are appointed on the basis of:

- (a) substantial experience or knowledge; and
- (b) significant standing;

in the field of export wheat production.

(4) The Minister must ensure that at least 1, but not more than 2, of the members are appointed on the basis of:

- (a) substantial experience or knowledge; and
- (b) significant standing;

in the field of grain production.

(4A) A member holds office for the period specified in his or her instrument of appointment. The period must not exceed 3 years.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

Note: The heading to section 6 is altered by omitting “**Authority**” and substituting “**Commission**”.

33 Subsection 6(6)

Omit “Authority”, substitute “Commission”.

34 Section 7

Repeal the section, substitute:

7 Resignation

(1) A member may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

35 Paragraph 8(2)(b)

Repeal the paragraph, substitute:

- (b) fails, without reasonable excuse, to comply with section 9A or 9B; or

36 Paragraph 8(2)(c)

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

37 At the end of Division 2 of Part 2

Add:

9A Standing obligation to disclose interests

- (1) A member must disclose any interest he or she has if that interest could conflict with the proper performance of the functions of his or her office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
- (2) The disclosure must be by notice in writing given to the Minister, and to each of the other members, as soon as practicable after the member becomes aware of the potential for conflict of interest.
- (3) Subsection (1) applies to interests:
 - (a) whether direct or indirect, and whether or not pecuniary; and
 - (b) whether acquired before or after the member's appointment.

9B Obligation to disclose interests before deliberating on or deciding a particular matter

- (1) A member (the **discloser**) who has an interest that could conflict with the proper performance of the functions of his or her office, as they give him or her a role in the deliberations or decisions of the Commission in relation to a particular matter, must not perform that role in relation to that matter unless:
 - (a) he or she has disclosed that interest to each of the other members; and
 - (b) each of those members has consented to the discloser performing that role in relation to that matter despite the possible conflict of interest.
- (2) A member, other than the Chairperson, who gives a consent under paragraph (1)(b) must, as soon as practicable, advise the Chairperson that he or she has given the consent.
- (3) If an interest is disclosed under subsection (1), the Chairperson must, as soon as practicable, give the Minister a written notice:
 - (a) describing the interest and the matter; and
 - (b) advising the Minister whether the members have consented as mentioned in paragraph (1)(b).

- (4) Subsection (1) applies to interests:
 - (a) whether direct or indirect, and whether or not pecuniary; and
 - (b) whether acquired before or after the discloser's appointment.

9C Other terms and conditions

A member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

9D Acting Chairperson

Acting Chairperson

- (1) The Minister may appoint a person to act as the Chairperson:
 - (a) during a vacancy in the office of the Chairperson, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Chairperson:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Qualifications

- (2) A person is not eligible for appointment to act as the Chairperson unless the person is eligible for appointment as a member.

Note: See subsection 6(3).

Validation

- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: See section 33A of the *Acts Interpretation Act 1901*.

38 Subsections 10(1) and (2)

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

Note: The heading to section 10 is altered by omitting “**Authority**” and substituting “**Commission**”.

39 Subsection 10(3)

Omit “, one of whom is a member nominated by the Grains Council,”.

40 Subsections 10(8) and (9)

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

41 Division 4 of Part 2

Repeal the Division, substitute:

Division 4—Export Wheat Commission Special Account

11 Export Wheat Commission Special Account

- (1) The Export Wheat Commission Special Account is established by this section.
- (2) The Export Wheat Commission Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

12 Credits of amounts to the Export Wheat Commission Special Account

- (1) There are to be credited to the Export Wheat Commission Special Account amounts equal to the wheat export charge amounts received by the Commonwealth.
- (2) There are to be credited to the Export Wheat Commission Special Account amounts equal to amounts received by the Commonwealth by way of fees under subsection 57(3D).

13 Purposes of the Export Wheat Commission Special Account

The purposes of the Export Wheat Commission Special Account are as follows:

- (a) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in connection with the operation of the Export Wheat Commission;
- (b) paying remuneration and allowance of members;
- (c) paying remuneration, and other employment-related costs and expenses, in respect of members of the staff of the Commission.

Note: See section 21 of the *Financial Management and Accountability Act 1997* (debits from Special Accounts).

42 Division 5 of Part 2 (heading)

Repeal the heading, substitute:

Division 5—Staff

43 Sections 14 and 15

Repeal the sections, substitute:

14 Staff

- (1) The staff of the Commission are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Chairperson and the staff together constitute a Statutory Agency; and
 - (b) the Chairperson is the Head of that Statutory Agency.

15 Persons assisting the Commission

The Commission may also be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of authorities of the Commonwealth;

whose services are made available to the Commission in connection with the performance of any of its functions.

Division 6—Planning and reporting obligations

44 Subsections 16(1) and (2)

Omit “Authority”, substitute “Commission”.

45 Paragraph 16(3)(b)

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

46 At the end of Part 2

Add:

17 Corporate plan

- (1) The Commission must prepare a corporate plan at least once a year and give it to the Minister.
- (2) The plan must cover a period of at least 3 years.
- (3) The plan must include details of the following matters:
 - (a) the objectives of the Commission;
 - (b) the strategies and policies that are to be followed by the Commission in order to achieve those objectives;
 - (c) such other matters (if any) as the Minister requires.
- (4) The Chairperson must keep the Minister informed about:
 - (a) changes to the plan; and
 - (b) matters that might significantly affect the achievement of the objectives set out in the plan.
- (5) The Minister may give the Chairperson written guidelines that are to be used by the Chairperson in deciding whether a matter is covered by paragraph (3)(c) or (4)(b).

18 Annual report

- (1) The Commission must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report of the Commission’s operations during the financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*.

- (2) The Minister must cause a copy of each report under this section to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Division 7—Other matters

19 Chairperson not subject to direction by the Commission on certain matters

To avoid doubt, the Chairperson is not subject to direction by the Commission in relation to the Chairperson's performance of functions, or exercise of powers, under:

- (a) the *Financial Management and Accountability Act 1997*; or
 - (b) the *Public Service Act 1999*;
- in relation to the Commission.

47 Paragraph 57(1)(a)

Omit "Authority", substitute "Commission".

48 Subsection 57(3)

Omit "Authority's", substitute "Commission's".

49 Subsections 57(3A) and (3B)

Omit "Authority", substitute "Commission".

50 Subsection 57(3D)

Omit "Authority", substitute "Commonwealth".

51 Subsection 57(3E)

Omit "Authority", substitute "Commission".

52 Subsection 57(4)

Omit "Authority" (wherever occurring), substitute "Commission".

53 Subsections 58(1), (2), (3), (4) and (6)

Omit "Authority" (wherever occurring), substitute "Commission".

54 Subsections 59(1) and (2)

Omit “Authority”, substitute “Commission”.

55 Subsections 60(1), (2), (3) and (4)

Omit “Authority”, substitute “Commission”.

Note: The heading to section 60 is altered by omitting “**Authority**” and substituting “**Commission**”.

56 Section 61

Omit “Authority”, substitute “Commission”.

57 Subsections 62(1) and (2)

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

58 Section 64

Omit “Authority”, substitute “Wheat Export Authority”.

Note: The heading to section 64 is altered by omitting “**Authority**” and substituting “**Wheat Export Authority**”.

59 At the end of section 64

Add:

Note: See subsection 4(1).

60 Subsection 66(3)

Omit “Authority”, substitute “Commission”.

61 Subsections 67(1), (5), (8) and (10)

Omit “Authority”, substitute “Commission”.

Schedule 6—Transitional provisions

Part 1—Introduction

1 Definitions

In this Schedule:

ADI (short for authorised deposit-taking institution) means:

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or
- (b) the Reserve Bank of Australia; or
- (c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective;

but does not include a right, power, privilege or immunity conferred by an Act or by regulations or other subordinate legislation made under an Act.

assets official, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

Authority means the Wheat Export Authority.

Commission means the Export Wheat Commission.

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

liability means any liability, duty or obligation, whether actual, contingent or prospective, but does not include a liability, duty or obligation imposed by an Act or by regulations or other subordinate legislation made under an Act.

modifications includes additions, omissions and substitutions.

transition time means the commencement of this Schedule.

Part 2—Assets, liabilities and legal proceedings

2 Vesting of assets of Authority

- (1) This item applies to the assets of the Authority immediately before the transition time.
- (2) At the transition time, the assets cease to be assets of the Authority and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the assets.

3 Vesting of liabilities of Authority

- (1) This item applies to the liabilities of the Authority immediately before the transition time.
- (2) At the transition time, the liabilities cease to be liabilities of the Authority and become liabilities of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the liabilities.

4 Certificates relating to vesting of assets other than land

- (1) This item applies if:
 - (a) any asset other than land vests in the Commonwealth under this Part; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the Commonwealth under this Part.
- (2) The assets official may:
 - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of this Part.
- (3) A certificate under paragraph (1)(b) is not a legislative instrument.

5 Substitution of Commonwealth as a party to certain pending proceedings

- (1) If:
- (a) any proceedings to which the Authority was a party were pending in any court or tribunal immediately before the transition time; and
 - (b) the proceedings were, or were related to:
 - (i) proceedings taken by the Authority in the exercise of a right that is vested in the Commonwealth by item 2; or
 - (ii) proceedings taken against the Authority in respect of a liability that is vested in the Commonwealth by item 3;
- the Commonwealth is substituted for the Authority, from the transition time, as a party to the proceedings.
- (2) To avoid doubt, if:
- (a) any proceedings to which the Authority was a party were pending in any court or tribunal immediately before the transition time; and
 - (b) the proceedings were not, and were not related to:
 - (i) proceedings taken by the Authority in the exercise of a right that is vested in the Commonwealth by item 2; or
 - (ii) proceedings taken against the Authority in respect of a liability that is vested in the Commonwealth by item 3;
- section 25B of the *Acts Interpretation Act 1901* applies in relation to the proceedings.
- Note: After the transition time, the Commission will be a party to the proceedings. This is because the body corporate that is the Authority continues in existence as the Commission after the transition time (see section 4 of the *Wheat Marketing Act 1989* and section 25B of the *Acts Interpretation Act 1901*).
- (3) The regulations may determine that one of subitems (1) and (2), rather than the other of those subitems, applies in relation to a particular proceeding or a class of proceedings.

Part 3—References to Authority etc.

6 References in certain instruments to Authority

- (1) If:
- (a) an instrument was in force immediately before the transition time; and
 - (b) the instrument is an instrument covered by one or more of the following subparagraphs:
 - (i) an instrument that was made by the Authority;
 - (ii) an instrument to which the Authority was a party;
 - (iii) an instrument that was given to, or in favour of, the Authority;
 - (iv) an instrument under which any right or liability accrues or may accrue to the Authority;
 - (v) any other instrument in which a reference is made to the Authority; and
 - (c) a reference in the instrument to the Authority is a reference to the Authority as an entity with a particular power or capacity (for example, as party to a contract or the holder of real or personal property); and
 - (d) the Commission does not have that power or capacity;
- the reference has effect after the transition time as if it were a reference to the Commonwealth.
- (2) To avoid doubt, if:
- (a) an instrument was in force immediately before the transition time; and
 - (b) the instrument is an instrument covered by one or more of the following subparagraphs:
 - (i) an instrument that was made by the Authority;
 - (ii) an instrument to which the Authority was a party;
 - (iii) an instrument that was given to, or in favour of, the Authority;
 - (iv) an instrument under which any right or liability accrues or may accrue to the Authority;
 - (v) any other instrument in which a reference is made to the Authority; and

- (c) a reference in the instrument to the Authority is a reference to the Authority as an entity with a particular power or capacity; and

- (d) the Commission has that power or capacity;

section 25B of the *Acts Interpretation Act 1901* applies in relation to the reference.

Note: After the transition time, the reference to the Authority will be construed as a reference to the Commission. This is because the body corporate that is the Authority continues in existence as the Commission after the transition time (see section 4 of the *Wheat Marketing Act 1989* and section 25B of the *Acts Interpretation Act 1901*).

- (3) The regulations may determine that one of subitems (1) and (2), rather than the other of those subitems, applies in relation to a particular reference or class of references.

7 Transfer of appropriated money

- (1) For the purposes of the operation of an Appropriation Act after the transition time, references to the Authority are to be read as references to the Commission.

- (2) In this item:

Appropriation Act means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

Part 4—Appointments of office-holders

8 Termination of Authority appointments

- (1) This item applies to a person who, immediately before the transition time, held office as a member of the Authority.
- (2) Despite the *Wheat Marketing Act 1989*, the person ceases to hold that office at the transition time.
- (3) Neither this Act nor the *Wheat Marketing Act 1989* prevents the person from being appointed as a member of the Commission.

Part 5—Export Wheat Commission Special Account

9 Export Wheat Commission Special Account

- (1) This item applies if:
 - (a) immediately before the transition time, the Wheat Export Authority held an account with an ADI; and
 - (b) the account had a credit balance.
- (2) There is to be credited to the Export Wheat Commission Special Account an amount equal to the credit balance.

Part 6—Reporting and record-keeping obligations

10 First annual report for the Commission

Section 18 of the *Wheat Marketing Act 1989* has effect as if the 3-month period beginning on 1 July 2007 were not part of a financial year.

11 Commission must prepare final annual report for the Authority

- (1) For the 12-month period beginning on 1 October 2006, the Commission must prepare the report referred to in section 9 of the *Commonwealth Authorities and Companies Act 1997* for the Authority.
- (2) The obligation under section 9 of the *Commonwealth Authorities and Companies Act 1997* imposed on the final directors of the Authority to prepare an annual report for that 12-month period is satisfied if the report is prepared by the Commission.
- (3) For the purposes of the application of the *Commonwealth Authorities and Companies Act 1997* to the Authority, that 12-month period is taken to be a financial year.
- (4) In this item:
final director means a person who was a director (as defined in the *Commonwealth Authorities and Companies Act 1997*) of the Authority immediately before the transition time.

12 Other reporting requirements

- (1) If:
 - (a) immediately before the transition time, a law of the Commonwealth (other than section 9 of the *Commonwealth Authorities and Companies Act 1997*) required the Authority or a member of the Authority to provide a report for a period; and
 - (b) the period ends after the transition time;the Chairperson of the Commission must provide the report, as required, for so much of the period as occurs before the transition time.
- (2) If:

- (a) under subitem (1), the Chairperson of the Commission is required to provide a report for a part of a period; and
 - (b) the Chairperson of the Commission is also required to provide a similar report for the remainder of the period;
- the Chairperson of the Commission may meet the requirements in a single report for the period.

- (3) If:
- (a) a law of the Commonwealth (other than section 9 of the *Commonwealth Authorities and Companies Act 1997*) required the Authority or a member of the Authority to provide a report for a period that ended before the transition time; and
 - (b) the report has not been provided by the transition time;
- the Chairperson of the Commission must provide the report as required.

13 Continuing obligation to retain accounting records etc.

- (1) This item applies to accounting records kept by the Authority immediately before the transition time under subsection 20(1) of the *Commonwealth Authorities and Companies Act 1997*.
- (2) Subsections 20(2), (3) and (4) of that Act continue to apply, in relation to those accounting records, as if the Commission were a Commonwealth authority subject to that Act.

Part 7—Miscellaneous

14 Exemption from stamp duty and other State or Territory taxes

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (2) For the purposes of this item, an **exempt matter** is:
 - (a) the vesting of an asset or liability under this Schedule; or
 - (b) the operation of this Schedule in any other respect.
- (3) The Minister may certify in writing:
 - (a) that a specified matter is an exempt matter; or
 - (b) that a specified thing was connected with a specified exempt matter.
- (4) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subitem (3) is prima facie evidence of the matters stated in the certificate.

15 Constitutional safety net

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

16 Certificates taken to be authentic

A document that appears to be a certificate made or issued under a particular provision of this Schedule:

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

17 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Schedule to:

- (a) the Secretary of the Department; or
- (b) an SES employee, or acting SES employee, in the Department.

Note: The expressions **SES employee** and **acting SES employee** are defined in section 17AA of the *Acts Interpretation Act 1901*.

- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

18 Regulations

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by Schedule 5.

*[Minister's second reading speech made in—
House of Representatives on 14 June 2007
Senate on 20 June 2007]*

(111/07)

42 *Wheat Marketing Amendment Act 2007* *No. 108, 2007*