Commonwealth Coat of Arms

Wheat Export Marketing Act 2008

No. 65, 2008 as amended

**Compilation start date:** 1 January 2013

**Includes amendments up to:** Act No. 170, 2012

**About this compilation**

**The compiled Act**

This is a compilation of the *Wheat Export Marketing Act 2008* as amended and in force on 1 January 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 28 March 2013.

The notes at the end of this compilation (the ***endnotes***) include information about amending Acts and instruments and the amendment history of each amended provision.

**Uncommenced provisions and amendments**

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

**Application, saving and transitional provisions for amendments**

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is set out in the endnotes.

**Modifications**

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

**Provisions ceasing to have effect**

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

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

Part 1—Introduction

1 Short title

This Act may be cited as the *Wheat Export Marketing Act 2008*.

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 and 2 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 30 June 2008 |
| 2. Sections 3 to 90 | 1 July 2008. | 1 July 2008 |

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 Objects

The objects of this Act are as follows:

(a) to promote the operation of an efficient and profitable bulk wheat export marketing industry that supports the competitiveness of all sectors through the supply chain; and

(b) to provide a regulatory framework in relation to participants in the bulk wheat export marketing industry.

4 Simplified outline

The following is a simplified outline of this Act:

• This Act provides a system for regulating exports of wheat (other than wheat in bags or containers).

• A provider of a port terminal service who exports wheat, or who is an associated entity of a person who exports wheat, must pass the access test in relation to the port terminal service.

• An exporter of wheat:

(a) who provides a port terminal service; or

(b) who has an associated entity that provides the port terminal service;

must not export wheat using the port terminal service if a person who was required to pass the access test in relation to the port terminal service at a time during the previous 12 months did not pass the access test at that time.

• The Minister may approve a code of conduct dealing with the provision to wheat exporters of access to port terminal services by the providers of port terminal services.

5 Definitions

In this Act:

***ACCC*** means the Australian Competition and Consumer Commission.

***access test*** has the meaning given by section 9.

***access undertaking*** has the same meaning as in Part IIIA of the *Competition and Consumer Act 2010*.

***associated entity*** has the same meaning as in the *Corporations Act 2001*.

***civil penalty order*** means an order under subsection 76(1).

***civil penalty provision*** means a provision declared by this Act to be a civil penalty provision.

***continuous disclosure rules*** has the meaning given by subsection 9(4).

***customs officer*** means:

(a) the Chief Executive Officer of Customs; or

(b) an officer of customs within the meaning of the *Customs Act 1901*.

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

***Federal Court*** means the Federal Court of Australia.

***penalty unit*** has the meaning given by section 4AA of the *Crimes Act 1914*.

***port terminal facility*** means a ship loader that is:

(a) at a port; and

(b) capable of handling wheat in bulk;

and includes any of the following facilities:

(c) an intake/receival facility;

(d) a grain storage facility;

(e) a weighing facility;

(f) a shipping belt;

that is:

(g) at the port; and

(h) associated with the ship loader; and

(i) capable of dealing with wheat in bulk.

***port terminal service*** means a service (within the meaning of Part IIIA of the *Competition and Consumer Act 2010*) provided by means of a port terminal facility, and includes the use of a port terminal facility.

***provider***, in relation to a port terminal service, means the entity that is the owner or operator of the port terminal facility that is used (or is to be used) to provide the service.

***Secretary*** means the Secretary of the Department.

***WEA*** means Wheat Exports Australia.

Part 2—Access test

Division 1—Requirement to pass the access test

7 Requirement to pass the access test—general rule

Who must pass the access test

(1) A provider of a port terminal service must pass the access test in relation to the port terminal service if:

(a) the provider exports wheat using the port terminal service; or

(b) the provider is an associated entity of a person who exports wheat using the port terminal service.

(2) Subsection (1) does not apply to the export of wheat in:

(a) a bag; or

(b) a container;

that is capable of holding not more than 50 tonnes of wheat.

When the access test must be passed

(3) The provider must pass the access test in relation to the port terminal service at all times during the 12‑month period beginning on the day of the export of the wheat.

Exception

(4) The Secretary may, by writing, determine that this section does not apply in relation to a specified provider and to a specified period if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

Determination not a legislative instrument

(5) A determination under subsection (4) is not a legislative instrument.

7A Requirement to pass the access test—transitional rule

Who must pass the access test

(1) A provider of a port terminal service must pass the access test in relation to the port terminal service if the provider was, immediately before the commencement of this section:

(a) an accredited wheat exporter; or

(b) an associated entity of an accredited wheat exporter.

When the access test must be passed

(2) The provider must pass the access test in relation to the port terminal service at all times during the period:

(a) beginning at the commencement of this item; and

(b) ending at the earlier of the following times:

(i) the first time the provider is required by section 7 to pass the access test in relation to the port terminal service;

(ii) the end of the 12‑month period beginning on the day this item commences.

Exception

(3) The Secretary may, by writing, determine that this section does not apply in relation to a specified provider and to a specified period if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

Determination not a legislative instrument

(4) A determination under subsection (3) is not a legislative instrument.

Definitions

(5) For the purposes of this section:

***accredited wheat exporter*** has the same meaning as in the old Act.

8 Exports of wheat

Scope

(1A) This section applies to a person if:

(a) the person is the provider of a port terminal service; or

(b) an associated entity of the person is the provider of a port terminal service.

Exports of wheat

(1) The person (the ***relevant exporter***) must not export wheat using the port terminal service if:

(a) both:

(i) a person (whether the relevant exporter, the associated entity or another person) was required by this Act to pass the access test in relation to the port terminal service at a time during the 12‑month period ending on the day of the export; and

(ii) the person mentioned in subparagraph (i) did not pass the access test at that time; or

(b) the accreditation of an accredited wheat exporter was cancelled because a person (whether the relevant exporter, the associated entity or another person) failed the old access test in relation to the port terminal service at a time during the 12‑month period ending on the day of the export.

Exceptions

(2) The Secretary may, by writing, determine that subsection (1) does not apply in relation to a specified person and to a specified export if the Secretary is satisfied that there are special circumstances that justify the Secretary doing so.

(3) Subsection (1) does not apply if the wheat is exported in:

(a) a bag; or

(b) a container;

that is capable of holding not more than 50 tonnes of wheat.

(4) A person who wishes to rely on subsection (3) bears an evidential burden in relation to that matter.

Note: For ***evidential burden***, see section 5.

Ancillary contraventions

(5) A person must not:

(a) aid, abet, counsel or procure a contravention of subsection (1); or

(b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or

(c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or

(d) conspire with others to effect a contravention of subsection (1).

Civil penalty provisions

(6) Subsections (1) and (5) are civil penalty provisions.

Note: Part 8 provides for pecuniary penalties for breaches of civil penalty provisions.

Determination not a legislative instrument

(7) A determination under subsection (2) is not a legislative instrument.

Definitions

(8) For the purposes of this section:

***accredited wheat exporter*** has the same meaning as in the old Act.

***old access test*** means the access test within the meaning of the old Act.

Division 2—Access test

9 Access test

Access test—access undertaking

(1) A person passes the ***access test*** in relation to a port terminal service at a particular time if:

(a) at that time, there is in operation, under Division 6 of Part IIIA of the *Competition and Consumer Act 2010*, an access undertaking relating to the provision to wheat exporters of access to the port terminal service for purposes relating to the export of wheat; and

(b) the access undertaking obliges the person to comply, at that time, with the continuous disclosure rules in relation to the port terminal service (see subsection (4)); and

(c) at that time, the person complies with the continuous disclosure rules in relation to the port terminal service.

(2) For the purposes of paragraph (1)(a):

(a) assume that subsection 44ZZBA(1) of the *Competition and Consumer Act 2010* had never been enacted; and

(b) assume that an access undertaking comes into operation at the time when the ACCC publishes its decision to accept the undertaking.

Access test—effective access regimes

(3) A person passes the ***access test*** in relation to a port terminal service at a particular time if:

(a) at that time:

(i) there is in force a decision under Division 2A of Part IIIA of the *Competition and Consumer Act 2010* that a regime established by a State or Territory for access to the port terminal service is an effective access regime; and

(ii) under that regime, wheat exporters have access to the port terminal service for purposes relating to the export of wheat; and

(b) at that time, the person complies with the continuous disclosure rules in relation to the port terminal service (see subsection (4)).

Continuous disclosure rules

(4) The ***continuous disclosure rules*** in relation to a port terminal service are as follows:

(a) there is available on the person’s website a current statement setting out the person’s policies and procedures for managing demand for the port terminal service (including the person’s policies and procedures relating to the nomination and acceptance of ships to be loaded using the port terminal service);

(b) there is available on the person’s website a current statement (a ***loading statement***) setting out a unique slot reference number for each ship (a ***loading ship***) scheduled to load grain using the port terminal service;

(c) the loading statement also sets out, for each loading ship:

(i) if the person knows the name of the ship—the name; and

(ii) the time when the ship was nominated to load grain using the port terminal service; and

(iii) the time when the ship was accepted as a ship scheduled to load grain using the port terminal service; and

(iv) the estimated time when the ship will arrive at the port terminal service; and

(v) the estimated time when grain is to start being loaded by the ship using the port terminal service; and

(vi) the estimated time when the ship will leave the port terminal service; and

(vii) the name of the exporter of the grain; and

(viii) the quantity of grain to be loaded by the ship using the port terminal service; and

(ix) the type of grain to be loaded by the ship using the port terminal service; and

(x) if grain has started to be loaded by the ship, but the loading has not been completed—that fact; and

(xi) if the ship has completed loading grain using the port terminal service—the time when the loading was completed;

(d) the person updates the loading statement each business day;

(e) both:

(i) the ACCC has a copy of the information set out in the most recently updated loading statement; and

(ii) the information was given to the ACCC in the manner and form approved, in writing, by the ACCC.

Export of wheat

(5) In this section, a reference to the export of wheat does not include a reference to the export of wheat in:

(a) a bag; or

(b) a container;

that is capable of holding not more than 50 tonnes of wheat.

Division 3—Application of the Customs Act 1901

10 Application of the *Customs Act 1901*

If:

(a) an exportation of wheat contravenes section 8; and

(b) the Secretary notifies the Chief Executive Officer of Customs in writing that the Secretary wishes the *Customs Act 1901* to apply to that exportation;

the *Customs Act 1901* has effect as if the goods included in that exportation were goods described as forfeited to the Crown under section 229 of that Act because they were prohibited exports within the meaning of that Act.

11 Delegation by the Secretary

(1) The Secretary may, by writing, delegate any or all of his or her functions or powers under this Division to an SES employee, or acting SES employee, in the Department.

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

(2) In exercising powers under a delegation, the delegate must comply with any directions of the Secretary.

Division 4—Code of conduct

12 Minister to approve code of conduct

(1) The Minister may, by notice published in the *Gazette*, approve a code of conduct for the purposes of this section.

(2) The Minister must not approve a code of conduct under subsection (1) unless the Minister is satisfied that the code of conduct:

(a) deals with the fair and transparent provision to wheat exporters of access to port terminal services by the providers of port terminal services; and

(b) requires providers of port terminal services to comply with continuous disclosure rules; and

(c) is consistent with the operation of an efficient and profitable wheat export marketing industry that supports the competitiveness of all sectors through the supply chain; and

(d) is consistent with any guidelines made by the ACCC relating to industry codes of conduct.

(3) A notice under subsection (1) is not a legislative instrument.

Part 3—Information‑gathering powers

Division 1—Secretary may obtain information and documents

25 Secretary may obtain information and documents

Scope

(1) This section applies if the Secretary has reason to believe that a person has information or a document that is relevant to:

(a) determining whether the person is required to pass the access test in relation to a particular port terminal service; or

(b) determining whether the person passed the access test in relation to a particular port terminal service at a particular time; or

(c) a function or power of WEA under the old Act.

Requirement

(2) The Secretary may, by written notice given to the person, require the person:

(a) to give to the Secretary, within the period and in the manner and form specified in the notice, any such information; or

(b) to produce to the Secretary, within the period and in the manner specified in the notice, any such documents.

(3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

Compliance

(5) A person must comply with a requirement under subsection (2).

Ancillary contraventions

(6) A person must not:

(a) aid, abet, counsel or procure a contravention of subsection (5); or

(b) induce, whether by threats or promises or otherwise, a contravention of subsection (5); or

(c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (5); or

(d) conspire with others to effect a contravention of subsection (5).

Civil penalty provisions

(7) Subsections (5) and (6) are ***civil penalty provisions***.

Note: Part 8 provides for pecuniary penalties for breaches of civil penalty provisions.

27 Copies of documents

The Secretary may:

(a) inspect a document produced under subsection 25(2); and

(b) make and retain copies of, or take and retain extracts from, such a document.

28 Secretary may retain documents

(1) The Secretary may take, and retain for as long as is necessary, possession of a document produced under subsection 25(2).

(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Secretary to be a true copy.

(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(4) Until a certified copy is supplied, the Secretary must, at such times and places as the Secretary thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

Division 2—ACCC may obtain information and documents etc.

29 ACCC may obtain information and documents etc.

For the purposes of this Act, section 155 of the *Competition and Consumer Act 2010* applies as if compliance with paragraphs 9(1)(c) and 9(3)(b) of this Act were a matter referred to in subsection 155(1) of the *Competition and Consumer Act 2010*.

Part 5—Wheat Industry Special Account

Division 6—Wheat Industry Special Account

58 Wheat Industry Special Account

(1) The Wheat Exports Australia Special Account that was, immediately before the commencement of this subsection, in existence under this Act, is continued in existence as the Wheat Industry Special Account.

(2) The Wheat Industry Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

59 Credits to the Wheat Industry Special Account

There must be credited to the Wheat Industry Special Account amounts equal to amounts received for the purpose of the Wheat Industry Special Account.

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.

60 Purpose of the Wheat Industry Special Account

The purpose of the Wheat Industry Special Account is funding a measure or program, if the following conditions are satisfied:

(a) the purpose of the measure or program is to assist the wheat export industry, or a sector of that industry;

(b) the Minister has approved the funding.

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

Part 6—Review of decisions

72 Review by the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Secretary:

(a) a decision under subsection 7(4) to determine that section 7 does not apply in relation to a specified provider and to a specified period;

(aa) a decision under subsection 7A(3) to determine that section 7A does not apply in relation to a specified provider and to a specified period;

(b) a decision under subsection 8(2) to determine that subsection 8(1) does not apply in relation to a specified person and to a specified export.

Part 8—Civil penalty orders

75 Simplified outline

The following is a simplified outline of this Part:

• Pecuniary penalties are payable for contraventions of civil penalty provisions.

76 Civil penalty orders

(1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Federal Court may order the person to pay the Commonwealth a pecuniary penalty.

(2) An order under subsection (1) is to be known as a ***civil penalty order***.

Determining amount of pecuniary penalty

(3) In determining the pecuniary penalty, the Federal Court must have regard to all relevant matters, including:

(a) the nature and extent of the contravention; and

(b) the nature and extent of any loss or damage suffered as a result of the contravention; and

(c) the circumstances in which the contravention took place; and

(d) whether the person has previously been found by a court in proceedings under this Act or the *Customs Act 1901* to have engaged in any similar conduct.

(4) The pecuniary penalty payable under subsection (1) by a body corporate must not exceed:

(a) in the case of a contravention of subsection 8(1) or (5)—3,000 penalty units for each contravention; or

(b) in the case of a contravention of subsection 25(5) or (6)—1,500 penalty units for each contravention.

(5) The pecuniary penalty payable under subsection (1) by a person other than a body corporate must not exceed:

(a) in the case of a contravention of subsection 8(1) or (5)—600 penalty units for each contravention; or

(b) in the case of a contravention of subsection 25(5) or (6)—300 penalty units for each contravention.

Civil enforcement of penalty

(6) A pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

77 Who may apply for a civil penalty order

(1) Only the Secretary may apply for a civil penalty order in relation to a contravention of any of the following provisions:

(a) subsection 8(1) or (5);

(b) subsection 25(5) or (6).

(2) Subsection (1) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

78 2 or more proceedings may be heard together

The Federal Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

79 Time limit for application for an order

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.

80 Civil evidence and procedure rules for civil penalty orders

The Federal Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

81 Civil proceedings after criminal proceedings

The Federal Court must not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

82 Criminal proceedings during civil proceedings

(1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged toconstitute the contravention.

(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

83 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

84 Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings

Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

85 Mistake of fact

(1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:

(a) at or before the time of the conduct constituting the contravention, the person:

(i) considered whether or not facts existed; and

(ii) was under a mistaken but reasonable belief about those facts; and

(b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.

(2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:

(a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

(b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

(3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

86 State of mind

Scope

(1) This section applies to proceedings for a civil penalty order against a person for a contravention of any of the following provisions:

(a) subsection 8(1);

(e) subsection 25(5).

State of mind

(2) In the proceedings, it is not necessary to prove:

(a) the person’s intention; or

(b) the person’s knowledge; or

(c) the person’s recklessness; or

(d) the person’s negligence; or

(e) any other state of mind of the person.

(3) Subsection (2) does not affect the operation of section 85.

Part 9—Miscellaneous

86A Operation of certain State and Territory laws

(1) In this section:

***corporation*** means a trading corporation formed within the limits of the Commonwealth.

***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; or

(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; or

(ii) between a State and a Territory or between Territories; or

(iii) within a Territory.

***State or Territory enactment*** means:

(a) a State Act; or

(b) an enactment of a Territory; or

(c) an instrument made or issued under such an Act or enactment.

(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 money 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 must 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) Regulations prescribing a State or Territory enactment for the purposes of this section must 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.

87 Sharing information

Department

(1) An officer or employee of the Department may give:

(b) Customs; or

(c) the ACCC;

information that is relevant to determining either or both of the following:

(d) whether a person is required to pass the access test in relation to a particular port terminal service;

(e) whether a person passed the access test in relation to a particular port terminal service at a particular time.

Customs

(2) A customs officer, or a member of the staff referred to in subsection 15(1) of the *Customs Administration Act 1985*, may give:

(b) the Department; or

(c) the ACCC;

information that is relevant to determining either or both of the following:

(d) whether a person is required to pass the access test in relation to a particular port terminal service;

(e) whether a person passed the access test in relation to a particular port terminal service at a particular time.

ACCC

(3) A member of the staff of the ACCC may give:

(b) Customs; or

(c) the Department;

information that is relevant to determining either or both of the following:

(d) whether a person is required to pass the access test in relation to a particular port terminal service;

(e) whether a person passed the access test in relation to a particular port terminal service at a particular time.

88 Compensation for acquisition of property

(1) If the operation of:

(a) this Act; or

(b) the wheat export accreditation scheme;

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 a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this section:

***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.

89 Review of Act etc.

(1) By 1 January 2010, the Productivity Commission must begin to conduct a review of such matters relating to:

(a) this Act; or

(b) the wheat export accreditation scheme;

as are set out in a written notice given to the Productivity Commission by the Minister.

(2) The Minister must ensure that a notice under subsection (1) sets out the following matter, namely, the costs and benefits of the operation of:

(a) this Act; and

(b) the wheat export accreditation scheme.

(3) A notice under subsection (1) is not a legislative instrument.

Report

(4) The Productivity Commission must:

(a) prepare a report of a review under subsection (1); and

(b) give the report to the Minister before 1 July 2010.

(5) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

90 Regulations

The Governor‑General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Wheat Export Marketing Act 2008.*

| **Act** | **Number and year** | **Assent date** | **Commencement date** | **Application, saving and transitional provisions** |
| --- | --- | --- | --- | --- |
| Wheat Export Marketing Act 2008 | 65, 2008 | 30 June 2008 | ss. 3–90: 1 July 2008  Remainder: Royal Assent |  |
| Statute Law Revision Act 2010 | 8, 2010 | 1 Mar 2010 | Schedule 5 (items 135, 136): Royal Assent  Schedule 5 (item 137(a)): *(a)* | — |
| Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010 | 103, 2010 | 13 July 2010 | Schedule 6 (items 1, 144–149, 190, 191): 1 Jan 2011 | — |
| Acts Interpretation Amendment Act 2011 | 46, 2011 | 27 June 2011 | Schedule 2 (items 1184–1190) and Schedule 3 (items 10, 11): 27 Dec 2011 | Sch. 3 (items 10, 11) |
| Financial Framework Legislation Amendment Act (No. 1) 2011 | 89, 2011 | 4 Aug 2011 | Schedule 7: 5 Aug 2011 | Sch. 7 (item 2) |
| Wheat Export Marketing Amendment Act 2012 | 170, 2012 | 3 Dec 2012 | Schedule 1 (items 1–29, 31–62): 10 Dec 2012  Schedule 2: 1 Jan 2013 | Sch. 2 (items 23–39) |

*(a)* Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provides as follows:

(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** |
| 31. Schedule 5, items 1 to 51 | The day this Act receives the Royal Assent. | 1 March 2010 |
| 38. Schedule 5, Parts 2 and 3 | Immediately after the provision(s) covered by table item 31. | 1 March 2010 |

Endnote 2—Amendment history

This endnote sets out the amendment history of the *Wheat Export Marketing Act 2008.*

| ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted exp. = expired or ceased to have effect | |
| --- | --- |
| **Provision affected** | **How affected** |
| **Part 1** |  |
| s. 3 | am. No. 170, 2012 |
| s. 4 | rs. No. 170, 2012 |
| s. 5 | am. No. 103, 2010; No. 46, 2011; No. 170, 2012 |
| s. 6 | rep. No. 170, 2012 |
| **Part 2** |  |
| Part 2 | rs. No. 170, 2012 |
| **Division 1** |  |
| s. 7 | rs. No. 170, 2012 |
| s. 7A | ad. No. 170, 2012 |
| s. 8 | rs. No. 170, 2012 |
| **Division 2** |  |
| s. 9 | rs. No. 170, 2012 |
| **Division 3** |  |
| s. 10 | rs. No. 170, 2012 |
| s. 11 | rs. No. 170, 2012 |
| **Division 4** |  |
| s. 12 | rs. No. 170, 2012 |
| s. 13 | am. No. 103, 2010 |
|  | rep. No. 170, 2012 |
| s. 14 | rep. No. 170, 2012 |
| s. 15 | rep. No. 170, 2012 |
| s. 16 | rep. No. 170, 2012 |
| s. 17 | rep. No. 170, 2012 |
| s. 18 | rep. No. 170, 2012 |
| s. 19 | am. No. 103, 2010 |
|  | rep. No. 170, 2012 |
| s. 20 | rep. No. 170, 2012 |
| s. 21 | rep. No. 170, 2012 |
| s. 22 | rep. No. 170, 2012 |
| s. 23 | am. No. 8, 2010 |
|  | rep. No. 170, 2012 |
| s. 24 | am. Nos. 8 and 103, 2010 |
|  | rep. No. 170, 2012 |
| **Part 3** |  |
| Heading to Part 3 | rs. No. 170, 2012 |
| **Division 1** |  |
| Heading to Div. 1 of Part 3 | rs. No. 170, 2012 |
| Heading to s. 25 | rs. No. 170, 2012 |
| s. 25 | am. No. 170, 2012 |
| Note to s. 25(2) | rep. No. 170, 2012 |
| s. 26 | rep. No. 170, 2012 |
| s. 27 | am. No. 170, 2012 |
| Heading to s. 28 | rs. No. 170, 2012 |
| s. 28 | am. No. 170, 2012 |
| **Division 2** |  |
| Div. 2 of Part 3 | rs. No. 170, 2012 |
| s. 29 | rs. No. 170, 2012 |
| s. 30 | rep. No. 170, 2012 |
| Div. 3 of Part 3 | rep. No. 170, 2012 |
| s. 31 | rep. No. 170, 2012 |
| s. 32 | rep. No. 170, 2012 |
| Note 1 to s. 32(1) | am. No. 46, 2011 |
|  | rep. No. 170, 2012 |
| Part 4 | rep. No. 170, 2012 |
| s. 33 | rep. No. 170, 2012 |
| s. 34 | am. No. 8, 2010 |
|  | rep. No. 170, 2012 |
| **Part 5** |  |
| Heading to Part 5 | rs. No. 170, 2012 |
| Div. 1 of Part 5 | rep. No. 170, 2012 |
| s. 35 | rep. No. 170, 2012 |
| s. 36 | rep. No. 170, 2012 |
| s. 37 | rep. No. 170, 2012 |
| s. 38 | rep. No. 170, 2012 |
| Div. 2 of Part 5 | rep. No. 170, 2012 |
| s. 39 | rep. No. 170, 2012 |
| s. 40 | rep. No. 170, 2012 |
| s. 41 | rep. No. 170, 2012 |
| Note to s. 41(1) | am. No. 46, 2011 |
|  | rep. No. 170, 2012 |
| s. 42 | rep. No. 170, 2012 |
| Note to s. 42 | rs. No. 46, 2011 |
|  | rep. No. 170, 2012 |
| s. 43 | am. No. 46, 2011 |
|  | rep. No. 170, 2012 |
| Note to s. 43(1) | ad. No. 46, 2011 |
|  | rep. No. 170, 2012 |
| Div. 3 of Part 5 | rep. No. 170, 2012 |
| s. 44 | rep. No. 170, 2012 |
| s. 45 | rep. No. 170, 2012 |
| s. 46 | rep. No. 170, 2012 |
| s. 47 | rep. No. 170, 2012 |
| s. 48 | rep. No. 170, 2012 |
| s. 49 | rep. No. 170, 2012 |
| s. 50 | rep. No. 170, 2012 |
| Div. 4 of Part 5 | rep. No. 170, 2012 |
| s. 51 | rep. No. 170, 2012 |
| s. 52 | rep. No. 170, 2012 |
| s. 53 | rep. No. 170, 2012 |
| s. 54 | rep. No. 170, 2012 |
| s. 55 | rep. No. 170, 2012 |
| s. 56 | rep. No. 170, 2012 |
| Div. 5 of Part 5 | rep. No. 170, 2012 |
| s. 57 | am. No. 170, 2012 |
|  | rep. No. 170, 2012 |
| Note to s. 57(1) | am. No. 46, 2011 |
|  | rep. No. 170, 2012 |
| **Division 6** |  |
| Div. 6 of Part 5 | rs. No. 170, 2012 |
| s. 58 | rs. No. 170, 2012 |
| s. 59 | rs. No. 89, 2011 |
|  | am. No. 170, 2012 |
|  | rs. No. 170, 2012 |
| s. 60 | am. No. 170, 2012 |
|  | rs. No. 170, 2012 |
| Div. 7 of Part 5 | rep. No. 170, 2012 |
| s. 61 | rep. No. 170, 2012 |
| s. 62 | rep. No. 170, 2012 |
| Div. 8 of Part 5 | rep. No. 170, 2012 |
| s. 63 | rep. No. 170, 2012 |
| s. 64 | rep. No. 170, 2012 |
| s. 65 | rep. No. 170, 2012 |
| Div. 9 of Part 5 | rep. No. 170, 2012 |
| s. 66 | rep. No. 170, 2012 |
| **Part 6** |  |
| s. 67 | rep. No. 170, 2012 |
| s. 68 | rep. No. 170, 2012 |
| s. 69 | rep. No. 170, 2012 |
| s. 70 | rep. No. 170, 2012 |
| s. 71 | rep. No. 170, 2012 |
| s. 72 | rs. No. 170, 2012 |
| Part 7 | rep. No. 170, 2012 |
| s. 73 | am. No. 170, 2012 |
|  | rep. No. 170, 2012 |
| s. 74 | rep. No. 170, 2012 |
| **Part 8** |  |
| s. 76 | am. No. 170, 2012 |
| s. 77 | am. No. 170, 2012 |
| s. 86 | am. No. 170, 2012 |
| **Part 9** |  |
| s. 87 | rs. No. 170, 2012 |
|  | am. No. 170, 2012 |

Endnote 3—Application, saving and transitional provisions

This endnote sets out applications, saving and transitional provisions for amendments of the *Wheat Export Marketing Act 2008.*

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

Schedule 3

10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

11 Transitional regulations

The Governor‑General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.

Financial Framework Legislation Amendment Act (No. 1) 2011 (No. 89, 2011)

Schedule 7

2 Application of amendment made by item 1

The amendment made by item 1 of this Schedule applies in respect of an amount received on or after the commencement of that item.

Wheat Export Marketing Amendment Act 2012 (No. 170, 2012)

Schedule 2

23 Definitions

In this Part:

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

***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.

***assets official***, in relation to an asset other than land, means the person or authority who, under:

(a) a law of the Commonwealth, a State or a Territory; or

(b) a trust instrument; or

(c) otherwise;

has responsibility for keeping a register in relation to assets of the kind concerned.

***commencement time*** means the commencement of this Part.

***departmental item*** means a departmental item in the most recent Appropriation Act.

***Finance Minister*** means the Minister who administers the *Financial Management and Accountability Act 1997*.

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

***land registration official***, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

***liability*** means any liability, duty or obligation, whether actual, contingent or prospective.

***Secretary*** means the Secretary of the Department.

***WEA*** has the same meaning as in the *Wheat Export Marketing Act 2008*.

24 Vesting of assets of WEA

(1) This item applies to the assets of WEA immediately before the commencement time.

(2) At the commencement time, the assets cease to be assets of WEA and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the assets.

25 Vesting of liabilities of WEA

(1) This item applies to the liabilities of WEA immediately before the commencement time.

(2) At the commencement time, the liabilities cease to be liabilities of WEA and become liabilities of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the liabilities.

26 Certificates relating to vesting of land

(1) This item applies if:

(a) any land vests in the Commonwealth under this Division; and

(b) there is lodged with a land registration official a certificate that:

(i) is signed by the Minister; and

(ii) identifies the land, whether by reference to a map or otherwise; and

(iii) states that the land has become vested in the Commonwealth under thisDivision.

(2) The land registration official may:

(a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and

(b) deal with, and give effect to, the certificate.

(3) A certificate made under subitem (1) is not a legislative instrument.

27 Certificates for vesting of assets other than land

(1) This item applies if:

(a) an asset other than land vests in the Commonwealth under this Division; 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 Division.

(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 in relation to assets of that kind as are necessary, having regard to the effect of this Division.

(3) A certificate made under subitem (1) is not a legislative instrument.

28 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) An ***exempt matter*** is:

(a) the vesting of an asset or liability under this Division; or

(b) the operation of this Part 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) A certificate made under subitem (3) is not a legislative instrument.

29 Certificates taken to be authentic

A document that appears to be a certificate made or issued under this Part:

(a) is taken to be such a certificate; and

(b) is taken to have been properly given;

unless the contrary is established.

30 Transitional—acts of WEA to be attributed to the Commonwealth

(1) This item applies to anything done by, or in relation to, WEA before the commencement time.

(2) After the commencement time, the thing has effect as if it had been done by, or in relation to, the Commonwealth.

31 Transitional—substitution of the Commonwealth as a party in certain proceedings

(1) This item applies to any proceedings:

(a) that were pending in any court or tribunal immediately before the commencement time; and

(b) to which WEA was a party.

(2) The Commonwealth is substituted for WEA, from the commencement time, as a party to those proceedings.

32 Transitional—transfer of records to the Department

(1) This item applies to any records or documents that:

(a) were in the possession of WEA immediately before the commencement time; and

(b) relate to WEA.

(2) The records and documents are to be transferred to the Department after the commencement time.

33 Transitional—transfer of Ombudsman investigations

If:

(a) before the commencement time, a complaint was made to the Ombudsman, or the Ombudsman began an investigation, under the *Ombudsman Act 1976* in relation to action taken by WEA; and

(b) immediately before the commencement time, the Ombudsman had not finally disposed of the matter in accordance with the *Ombudsman Act 1976*;

the *Ombudsman Act 1976* applies after the commencement time as if that action had been taken by the Department.

34 References in certain instruments to Wheat Exports Australia

(1) If:

(a) an instrument is in force immediately before the commencement of this item; and

(b) the instrument contains a reference to Wheat Exports Australia;

the instrument has effect from the commencement time as if the reference to Wheat Exports Australia was a reference to the Commonwealth.

(2) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified reference.

(3) A determination under subitem (2) is not a legislative instrument.

35 Transitional—secrecy of information obtained under the *Wheat Export Marketing Act 2008*

(1) This item applies in relation to the following provisions (the ***information provisions***) of the *Wheat Export Marketing Act 2008* as in force immediately before the commencement time:

(a) the definition of ***WEA*** in section 5;

(b) the definition of ***WEA member*** in section 5;

(c) the definition of ***WEA staff*** in section 5;

(d) the definition of ***protected confidential information*** in section 5;

(e) Part 7.

(2) Despite the repeal of the information provisions by this Schedule, those provisions continue to apply, in relation to protected confidential information disclosed to, or obtained by, a person before the commencement time, as if those repeals had not happened and as if the following paragraph were added at the end of subsection 74(3) of that Act:

; (p) the disclosure is to an officer or employee of the Department for a purpose that is relevant to a function of the Department.

36 Appropriation of money

(1) For the purposes of the operation of an Appropriation Act after the commencement time, references to WEA are to be read as references to the Department.

(2) If an amount (the ***Account balance***) stands to the credit of the Wheat Industry Special Account immediately after the commencement time, the Minister must, by writing, determine that one or more specified departmental items for the Department are to be increased by specified amounts.

(3) The sum of the amounts specified in the determination must equal:

(a) if the Account balance is not more than $500,000—the Account balance; and

(b) otherwise—$500,000.

(4) In making the determination, the Minister must comply with any written directions given by the Finance Minister.

(5) If the Minister makes a determination under subitem (2):

(a) the sum of the amounts specified in the determination is debited from the Wheat Industry Special Account; and

(b) the departmental items specified in the determination are taken to be increased in accordance with the determination.

(6) Neither a determination made under subitem (2) nor a direction under subitem (4) is a legislative instrument.

37 Compensation for acquisition of property

(1) If the operation of this Part 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 a court of competent jurisdiction 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.

38 Delegation by Minister

(1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Part to a person.

(2) The delegate must be:

(a) the Secretary; or

(b) an SES employee, or acting SES employee, in the Department.

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

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

39 Transitional—regulations

(1) The Governor‑General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.

(2) The regulations may provide that the provisions of this Part are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.

(3) Subitem (2) does not limit subitem (1).

Endnote 4—Uncommenced amendments

This endnote sets out amendments of the *Wheat Export Marketing Act 2008* that have not yet commenced.

There are no uncommenced amendments.

Endnote 5—Misdescribed amendments

This endnote sets out amendments of the *Wheat Export Marketing Act 2008* that have been misdescribed.

There are no misdescribed amendments.