



# **Wheat Export Marketing Act 2008**

**No. 65, 2008**

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

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



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# Wheat Export Marketing Act 2008

No. 65, 2008

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

[Assented to 30 June 2008]

The Parliament of Australia enacts:

### Part 1—Introduction

#### 1 Short title

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

## Section 2

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### 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 development of a bulk wheat export marketing industry that is efficient, competitive and advances the needs of wheat growers;
- (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:



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- This Act sets up a system for regulating exports of wheat (other than wheat in bags or containers).
- Exporters of wheat must be accredited under the wheat export accreditation scheme.
- An exporter will not be eligible for accreditation unless the exporter is a company that satisfies the eligibility criteria set out in the scheme.
- The eligibility criteria include being a fit and proper company.
- An accredited wheat exporter must comply with conditions of accreditation (including reporting conditions).
- Wheat Exports Australia (WEA) will administer the wheat export accreditation scheme.
- WEA has power to:
  - (a) obtain information from accredited wheat exporters; and
  - (b) direct the audit of an accredited wheat exporter.
- The Minister may direct WEA to carry out an investigation.
- WEA will report to growers on an annual basis.

**5 Definitions**

In this Act:

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

**access test** has the meaning given by section 24.

**access undertaking** has the same meaning as in Part IIIA of the *Trade Practices Act 1974*.

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**accredited wheat exporter** means a company that is accredited as an accredited wheat exporter under the wheat export accreditation scheme.

**ACN** has the same meaning as in the *Corporations Act 2001*.

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

**Australian law** means a law of the Commonwealth or of a State or Territory.

**business** includes a venture or concern in trade or commerce, whether or not conducted on a regular, repetitive or continuous basis.

**business day** means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the place concerned.

**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.

**company** includes a co-operative.

**continuous disclosure rules** has the meaning given by subsection 24(4).

**co-operative** means a body corporate incorporated under a law of a State or Territory relating to:

- (a) co-operatives; or
- (b) co-operative societies.

**customs officer** means:

- (a) the Chief Executive Officer of Customs; or
- (b) an officer of customs within the meaning of the *Customs Act 1901*.

***designated sanitary or phytosanitary measure*** means a measure applied by or under a law of a foreign country:

- (a) to protect animal or plant life or health from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms; or
- (b) to protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs; or
- (c) to protect human life or health from:
  - (i) risks arising from diseases carried by animals or plants; or
  - (ii) risks arising from diseases carried by products of animals or plants; or
  - (iii) the entry, establishment or spread of pests; or
- (d) to prevent or limit other damage from the entry, establishment or spread of pests;

to the extent to which the measure relates to the importation into the foreign country of:

- (e) barley; or
- (f) canola; or
- (g) lupins; or
- (h) oats; or
- (i) wheat.

***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.

***executive officer*** of a company means:

- (a) a director of the company; or
- (b) the chief executive officer (however described) of the company; or
- (c) the chief financial officer (however described) of the company; or
- (d) the secretary of the company.

***external auditor*** means a person authorised under section 32 to be an external auditor for the purposes of this Act.

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***externally-administered body corporate*** has the same meaning as in the *Corporations Act 2001*.

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

***foreign country*** includes a region where:

- (a) the region is a colony, territory or protectorate of a foreign country; or
- (b) the region is part of a foreign country; or
- (c) the region is under the protection of a foreign country; or
- (d) a foreign country exercises jurisdiction or control over the region; or
- (e) a foreign country is responsible for the region's international relations.

***foreign law*** means a law of a foreign country.

***individual producer*** means a wheat producer who deals solely in wheat which that individual producer has grown himself or herself.

***involved in a contravention*** has the meaning given by section 6.

***marketing year*** means a 12-month period beginning on 1 October.

***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.

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**port terminal service** means a service (within the meaning of Part IIIA of the *Trade Practices Act 1974*) provided by means of a port terminal facility, and includes the use of a port terminal facility.

**post-cancellation compliance report** has the meaning given by subsection 21(4).

**post-cancellation export report** has the meaning given by subsection 21(2).

**pre-cancellation period** has the meaning given by subsection 21(5).

**pre-surrender compliance report** has the meaning given by subsection 22(5).

**pre-surrender export report** has the meaning given by subsection 22(3).

**pre-surrender period** has the meaning given by subsection 22(6).

**protected confidential information** has the meaning given by section 73.

**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.

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

**United Nations sanctions provision** means:

- (a) a provision of regulations made for the purposes of section 6 of the *Charter of the United Nations Act 1945*; or
- (b) any of the following provisions of the *Charter of the United Nations Act 1945*:
  - (i) subsection 20(1);
  - (ii) subsection 20(3C);
  - (iii) subsection 21(1);
  - (iv) subsection 21(2C);
  - (v) subsection 27(1);

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- (vi) subsection 27(2);
- (vii) subsection 27(5);
- (viii) subsection 27(6);
- (ix) subsection 28(1);
- (x) subsection 28(2);
- (xi) subsection 32(1); or
- (c) any of the following provisions of the *Customs Act 1901*:
  - (i) subsection 233BABAB(1);
  - (ii) subsection 233BABAB(6);
  - (iii) subsection 233BABAC(1);
  - (iv) subsection 233BABAC(6);
  - (v) subsection 233C(1);
  - (vi) subsection 233C(2).

**WEA** means Wheat Exports Australia.

**WEA Chair** means the Chair of WEA.

**WEA member** means a member of WEA, and includes the WEA Chair.

**WEA staff** means the staff described in section 61.

**wheat export accreditation scheme** means the scheme under subsection 8(1).

**wheat export charge amounts** means:

- (a) amounts of charge imposed by Part 5 of Schedule 14 to the Primary Industries (Customs) Charges Regulations 2000; and
- (b) amounts payable under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to that charge.

## 6 Involved in a contravention

For the purposes of this Act, a person has been **involved in a contravention** if, and only if, the person:

- (a) has aided, abetted, counselled or procured the contravention;
- or

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- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

## **Part 2—Wheat export accreditation scheme**

### **Division 1—Compliance with the wheat export accreditation scheme**

#### **7 Compliance with the wheat export accreditation scheme**

- (1) A person must not export wheat if the person is not an accredited wheat exporter.
- (1A) Notwithstanding subsection (1), an individual producer may export wheat provided that it is wheat produced by that individual producer.
- (2) 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.
- (3) A person who wishes to rely on subsection (2) bears an evidential burden in relation to that matter.

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

#### *Ancillary contraventions*

- (4) 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*

- (5) Subsections (1) and (4) are **civil penalty provisions**.



Note 1: Part 8 provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For transitional provisions, see Schedule 3 to the *Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008*.

## **Division 2—Formulation of the wheat export accreditation scheme**

### **8 Wheat export accreditation scheme**

- (1) WEA may, by legislative instrument, formulate a scheme (to be known as the **wheat export accreditation scheme**) about any or all of the following matters:
  - (a) the accreditation of companies as accredited wheat exporters;
  - (b) a matter required or permitted by this Act to be included in the wheat export accreditation scheme;
  - (c) ancillary or incidental matters.

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

- (2) To avoid doubt, the wheat export accreditation scheme is taken to be a law of the Commonwealth.

### **9 Administrative decisions under the wheat export accreditation scheme**

- (1) The wheat export accreditation scheme may make provision in relation to a matter by conferring a power to make a decision of an administrative character on WEA.
- (2) The wheat export accreditation scheme may empower WEA to make any or all of the following decisions:
  - (a) a decision to grant an accreditation otherwise than by way of renewal;
  - (b) a decision to grant an accreditation by way of renewal;
  - (c) a decision to suspend an accreditation;
  - (d) a decision to cancel an accreditation;
  - (e) a decision to consent to the surrender of an accreditation;
  - (f) a decision to impose one or more conditions to which an accreditation is subject;
  - (g) a decision to revoke or vary a condition imposed as mentioned in paragraph (f);

- (h) a decision to vary an accreditation otherwise than as mentioned in paragraph (f) or (g).
- (3) Subsection (2) does not limit subsection (1).
- (4) The wheat export accreditation scheme must require WEA to consult a company before making any of the following decisions under the scheme:
  - (a) a decision to refuse the company's application for accreditation;
  - (b) a decision to cancel the company's accreditation;
  - (c) a decision to suspend the company's accreditation;
  - (d) a decision to impose one or more conditions to which the company's accreditation is subject;
  - (e) a decision to revoke or vary a condition of the company's accreditation, where the condition was imposed as mentioned in paragraph (2)(f);
  - (f) a decision to vary the company's accreditation otherwise than as mentioned in paragraph (2)(f) or (g).

Note: For review of decisions, see Part 6.

## **10 Application fees**

- (1) The wheat export accreditation scheme may provide that an application under the scheme must be accompanied by the fee (if any) specified in the scheme.
- (2) A fee under subsection (1) must not be such as to amount to taxation.

## **11 Accreditation is not transferable**

The wheat export accreditation scheme must provide that an accreditation is not transferable.

## **12 Duration of accreditation**

- (1) The wheat export accreditation scheme must provide that, unless a company's accreditation is sooner cancelled or surrendered, the

**Part 2** Wheat export accreditation scheme

**Division 2** Formulation of the wheat export accreditation scheme

**Section 12**

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accreditation remains in force for the period specified by WEA in the instrument of accreditation.

- (2) Subsection (1) does not prevent the scheme making provision for a suspension of accreditation.
- (3) Subsection (1) does not prevent the scheme making provision for a grant of accreditation by way of renewal.

## **Division 3—Eligibility for accreditation**

### **13 Eligibility for accreditation**

- (1) The wheat export accreditation scheme must provide that a company is not eligible for accreditation unless:
  - (a) the company is:
    - (i) registered as a company under Part 2A.2 of the *Corporations Act 2001*; or
    - (ii) a co-operative; and
  - (b) the company is a trading corporation to which paragraph 51(xx) of the Constitution applies; and
  - (c) WEA is satisfied that the company is a fit and proper company, having regard to the following:
    - (i) the financial resources available to the company;
    - (ii) the company's risk management arrangements;
    - (iii) the company's business record;
    - (iv) the company's record in situations requiring trust and candour;
    - (v) the business record of each executive officer of the company;
    - (vi) the experience and ability of each executive officer of the company;
    - (vii) the record in situations requiring trust and candour of each executive officer of the company;
    - (viii) whether the company, or an executive officer of the company, has been convicted of an offence against an Australian law or a foreign law, where the offence relates to dishonest conduct;
    - (ix) whether the company, or an executive officer of the company, has been convicted of an offence against an Australian law or a foreign law, where the offence relates to the conduct of a business;
    - (x) whether an order for a pecuniary penalty has been made against the company, or an executive officer of the

**Section 13**

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- company, under section 1317G of the *Corporations Act 2001* or section 76 of the *Trade Practices Act 1974*;
- (xi) if the company is or has been accredited under the wheat export accreditation scheme—whether the company has contravened a condition of the company’s accreditation;
  - (xii) whether an executive officer of the company has been involved in a contravention of a condition of an accreditation under the wheat export accreditation scheme;
  - (xiii) whether the company, or an executive officer of the company, has been convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
  - (xiv) whether the company, or an executive officer of the company, has committed or been involved in repeated contraventions, or a serious contravention, of a designated sanitary or phytosanitary measure;
  - (xv) whether the company, or an executive officer of the company, has committed or been involved in a contravention of a United Nations sanctions provision;
  - (xvi) whether the company, or an executive officer of the company, has committed or been involved in a contravention of an Australian law or a foreign law, where the contravention relates to trade in barley, canola, lupins, oats or wheat;
  - (xvii) such other matters (if any) as WEA considers relevant; and
- (d) WEA is satisfied that the company is not an externally-administered body corporate; and
  - (e) if the company, or an associated entity, is the provider of one or more port terminal services—WEA is satisfied that the company or associated entity, as the case may be, passes the access test in relation to each of those services; and
  - (f) if the wheat export accreditation scheme specifies one or more other eligibility requirements—WEA is satisfied that those requirements are met.

*Fit and proper company—5-year limit*

- (2) Subparagraphs (1)(c)(i) to (xvii) do not apply to an act, omission, matter or thing that occurred:
- (a) if the company is not, and has never been, accredited under the wheat export accreditation scheme—before the start of the 5-year period that ended when the company made its application for accreditation; or
  - (b) if the company is or has been accredited under the wheat export accreditation scheme—before the start of the 5-year period that ended when the company first became accredited under the wheat export accreditation scheme.

*Ancillary provisions*

- (3) For the purposes of the application of subparagraph (1)(c)(viii), (ix) or (xiii) to a person who is an executive officer of a company, it is immaterial whether a conviction occurred before or after the person became an executive officer of the company. This rule has effect subject to subsection (2).
- (4) For the purposes of the application of subparagraph (1)(c)(x) to a person who is an executive officer of a company, it is immaterial whether an order for a pecuniary penalty was made before or after the person became an executive officer of the company. This rule has effect subject to subsection (2).
- (5) For the purposes of the application of subparagraph (1)(c)(xii), (xiv), (xv) or (xvi) to a person who is an executive officer of a company, it is immaterial whether a contravention occurred before or after the person became an executive officer of the company. This rule has effect subject to subsection (2).
- (6) For the purposes of paragraph (1)(c), it is immaterial whether an act, omission, matter or thing occurred before or after the commencement of this section. This rule has effect subject to subsection (2).
- (7) Subparagraphs (1)(c)(i) to (xvi) do not limit subparagraph (1)(c)(xvii).

**Part 2** Wheat export accreditation scheme

**Division 3** Eligibility for accreditation

**Section 13**

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- (8) This section extends to acts, omissions, matters and things outside Australia.
- (9) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).



## **Division 4—Conditions of accreditation**

### **14 Conditions of accreditation**

The wheat export accreditation scheme must provide that an accreditation is subject to the following conditions:

- (a) a condition that an accredited wheat exporter must comply with a requirement under subsection 25(2) or 31(1);
- (b) the conditions that, under section 15, 16 or 17, are required to be imposed by the scheme;
- (c) such other conditions (if any) as are specified in the scheme;
- (d) such conditions (if any) as are imposed under the scheme by WEA.

### **15 Condition—annual export report**

- (1) The wheat export accreditation scheme must provide that it is a condition of accreditation that an accredited wheat exporter must, within:
  - (a) 30 days after the end of each marketing year; or
  - (b) if WEA allows a longer period—that longer period;give WEA a written report setting out:
  - (c) the quantity of wheat exported by the accredited wheat exporter during that year, broken down by specification and country of destination; and
  - (d) the terms and conditions on which the accredited wheat exporter, or a related body corporate, acquired wheat from growers during that year for export by the accredited wheat exporter.
- (2) Paragraphs (1)(c) and (d) do not apply:
  - (a) to the export of wheat in:
    - (i) a bag; or
    - (ii) a container;that is capable of holding not more than 50 tonnes of wheat;or

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- (b) to an individual producer exporting wheat produced by that individual producer.

### **16 Condition—annual compliance report**

The wheat export accreditation scheme must provide that it is a condition of accreditation that an accredited wheat exporter must, within:

- (a) 30 days after the end of each marketing year; or
  - (b) if WEA allows a longer period—that longer period;
- give WEA a written report relating to the accredited wheat exporter's compliance, during that year, with:
- (c) the conditions of the accredited wheat exporter's accreditation under the wheat export accreditation scheme; and
  - (d) Australian laws, and foreign laws, that are applicable to the accredited wheat exporter's export trade in wheat; and
  - (e) the United Nations sanctions provisions.

### **17 Condition—report about notifiable matters**

The wheat export accreditation scheme must provide that it is a condition of accreditation that, if:

- (a) an event occurs or a circumstance comes into existence; and
- (b) the event or the circumstance is:
  - (i) a ground on which WEA could cancel an accredited wheat exporter's accreditation under the wheat export accreditation scheme; or
  - (ii) likely to result in a conclusion that the company is not a fit and proper company within the meaning of the wheat export accreditation scheme;

the accredited wheat exporter must, within 14 days after the occurrence of the event or the coming into existence of the circumstance, give WEA a written report about the matter.

## **18 Compliance with conditions of accreditation**

### *Compliance with certain conditions etc.*

- (1) An accredited wheat exporter must comply with a condition of accreditation referred to in paragraph 14(c) or (d) or section 15 or 16.
- (2) 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).

### *Compliance with condition relating to notifiable matters etc.*

- (3) An accredited wheat exporter must comply with the condition of accreditation referred to in section 17.
- (4) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (3); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (3); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (3); or
  - (d) conspire with others to effect a contravention of subsection (3).

### *Civil penalty provisions*

- (5) Subsections (1), (2), (3) and (4) are ***civil penalty provisions***.

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

## Division 5—Cancellation of accreditation

### 19 Cancellation of accreditation

#### *Mandatory cancellation*

- (1) The wheat export accreditation scheme must provide that WEA must cancel the accreditation of a company if:
- (a) the company is neither:
    - (i) registered as a company under Part 2A.2 of the *Corporations Act 2001*; nor
    - (ii) a co-operative; or
  - (b) the company is not a trading corporation to which paragraph 51(xx) of the Constitution applies; or
  - (c) WEA is satisfied that the company is not a fit and proper company, having regard to the following:
    - (i) the financial resources available to the company;
    - (ii) the company's risk management arrangements;
    - (iii) the company's business record;
    - (iv) the company's record in situations requiring trust and candour;
    - (v) the business record of each executive officer of the company;
    - (vi) the experience and ability of each executive officer of the company;
    - (vii) the record in situations requiring trust and candour of each executive officer of the company;
    - (viii) whether the company, or an executive officer of the company, has been convicted of an offence against an Australian law or a foreign law, where the offence relates to dishonest conduct;
    - (ix) whether the company, or an executive officer of the company, has been convicted of an offence against an Australian law or a foreign law, where the offence relates to the conduct of a business;

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- (x) whether an order for a pecuniary penalty has been made against the company, or an executive officer of the company, under section 1317G of the *Corporations Act 2001* or section 76 of the *Trade Practices Act 1974*;
- (xi) whether the company has contravened a condition of the company's accreditation under the wheat export accreditation scheme;
- (xii) whether an executive officer of the company has been involved in a contravention of a condition of an accreditation under the wheat export accreditation scheme;
- (xiii) whether the company, or an executive officer of the company, has been convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
- (xiv) whether the company, or an executive officer of the company, has committed or been involved in repeated contraventions, or a serious contravention, of a designated sanitary or phytosanitary measure;
- (xv) whether the company, or an executive officer of the company, has committed or been involved in a contravention of a United Nations sanctions provision;
- (xvi) whether the company, or an executive officer of the company, has committed or been involved in a contravention of an Australian law or a foreign law, where the contravention relates to trade in barley, canola, lupins, oats or wheat;
- (xvii) such other matters (if any) as WEA considers relevant; or
- (d) if the company, or an associated entity, is the provider of one or more port terminal services—WEA is satisfied that the company or associated entity, as the case may be, fails the access test in relation to any of those services; or
- (e) if the wheat export accreditation scheme specifies one or more other grounds for mandatory cancellation—WEA is satisfied that at least one of those grounds is applicable to the company.

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*Discretionary cancellation*

- (2) The wheat export accreditation scheme must provide that WEA may cancel the accreditation of a company if:
- (a) the company is an externally-administered body corporate; or
  - (b) WEA is satisfied that the company has not complied with a condition of the company's accreditation under the wheat export accreditation scheme; or
  - (c) if the wheat export accreditation scheme specifies one or more other grounds for discretionary cancellation—WEA is satisfied that at least one of those grounds is applicable to the company.
- (3) Subsection (1) does not limit subsection (2).

*Fit and proper company—5-year limit*

- (4) Subparagraphs (1)(c)(i) to (xvii) do not apply to an act, omission, matter or thing that occurred before the start of the 5-year period that ended when the company first became accredited under the wheat export accreditation scheme.

*Ancillary provisions*

- (5) For the purposes of the application of subparagraph (1)(c)(viii), (ix) or (xiii) to a person who is an executive officer of a company, it is immaterial whether a conviction occurred before or after the person became an executive officer of the company. This rule has effect subject to subsection (4).
- (6) For the purposes of the application of subparagraph (1)(c)(x) to a person who is an executive officer of a company, it is immaterial whether an order for a pecuniary penalty was made before or after the person became an executive officer of the company. This rule has effect subject to subsection (4).
- (7) For the purposes of the application of subparagraph (1)(c)(xii), (xiv), (xv) or (xvi) to a person who is an executive officer of a company, it is immaterial whether a contravention occurred before or after the person became an executive officer of the company. This rule has effect subject to subsection (4).

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- (8) For the purposes of paragraph (1)(c), it is immaterial whether an act, omission, matter or thing occurred before or after the commencement of this section. This rule has effect subject to subsection (4).
- (9) Subparagraphs (1)(c)(i) to (xvi) do not limit subparagraph (1)(c)(xvii).
- (10) This section extends to acts, omissions, matters and things outside Australia.
- (11) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

## **20 Civil penalty orders and cancellation**

- (1) If:
  - (a) a company has not complied with a condition of its accreditation under the wheat export accreditation scheme;  
and
  - (b) a civil penalty order relating to that non-compliance has been made against the company;

WEA may exercise a power of cancellation of accreditation under the wheat export accreditation scheme on the ground of that non-compliance, even though the civil penalty order has been made.

- (2) If:
  - (a) a company has not complied with a condition of its accreditation under the wheat export accreditation scheme;  
and
  - (b) WEA has exercised a power of cancellation of accreditation under the wheat export accreditation scheme on the ground of that non-compliance;a civil penalty order may be made against the company, even though the company's accreditation has been cancelled.

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### 21 Post-cancellation reports

- (1) The wheat export accreditation scheme must provide that, if WEA cancels the accreditation of a company, the company must, within:
  - (a) 30 days after the day on which the company was notified of the cancellation; or
  - (b) if WEA allows a longer period—that longer period;give WEA:
  - (c) a post-cancellation export report (see subsection (2)); and
  - (d) a post-cancellation compliance report (see subsection (4)).

#### *Post-cancellation export report*

- (2) For the purposes of this Act, a ***post-cancellation export report*** is a written report setting out:
  - (a) the quantity of wheat exported by the company during the pre-cancellation period, broken down by specification and country of destination; and
  - (b) the terms and conditions on which the company, or a related body corporate, acquired wheat from growers during the pre-cancellation period for export by the company.
- (3) Paragraphs (2)(a) and (b) do not apply:
  - (a) to the export of wheat in:
    - (i) a bag; or
    - (ii) a container;that is capable of holding not more than 50 tonnes of wheat; or
  - (b) to an individual producer exporting wheat produced by that individual producer.

#### *Post-cancellation compliance report*

- (4) For the purposes of this Act, a ***post-cancellation compliance report*** is a written report relating to the company's compliance, during the pre-cancellation period, with:
  - (a) the conditions of the company's accreditation under the wheat export accreditation scheme; and



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- (b) Australian laws, and foreign laws, that are applicable to the applicant's export trade in wheat; and
- (c) the United Nations sanctions provisions.

*Pre-cancellation period*

- (5) For the purposes of this Act, the ***pre-cancellation period*** is the period:
  - (a) beginning at the start of the marketing year in which the company was notified of the cancellation of its accreditation; and
  - (b) ending when the company was notified of the cancellation of its accreditation.

*Compliance*

- (6) A company must comply with a requirement referred to in subsection (1).

*Ancillary contraventions*

- (7) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (6); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (6); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (6); or
  - (d) conspire with others to effect a contravention of subsection (6).

*Civil penalty provisions*

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

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

## Division 6—Surrender of accreditation

### 22 Surrender of accreditation

- (1) The wheat export accreditation scheme must provide that an accredited wheat exporter may apply to WEA for consent to surrender its accreditation.
- (2) The wheat export accreditation scheme must provide that WEA may refuse to consent to the surrender sought by the applicant unless:
  - (a) the applicant has complied with the conditions referred to in sections 15 and 16; and
  - (b) the applicant has given WEA a pre-surrender export report (see subsection (3)); and
  - (c) the applicant has given WEA a pre-surrender compliance report (see subsection (5)).

#### *Pre-surrender export report*

- (3) For the purposes of this Act, a **pre-surrender export report** is a written report setting out:
  - (a) the quantity of wheat exported by the applicant during the pre-surrender period, broken down by specification and country of destination; and
  - (b) the terms and conditions on which the accredited wheat exporter, or a related body corporate, acquired wheat from growers during the pre-surrender period for export by the accredited wheat exporter.
- (4) Paragraphs (3)(a) and (b) do not apply:
  - (a) to the export of wheat in:
    - (i) a bag; or
    - (ii) a container;that is capable of holding not more than 50 tonnes of wheat; or
  - (b) to an individual producer exporting wheat produced by that individual producer.

*Pre-surrender compliance report*

- (5) For the purposes of this Act, a ***pre-surrender compliance report*** is a written report relating to the applicant's compliance, during the pre-surrender period, with:
- (a) the conditions of the accredited wheat exporter's accreditation under the wheat export accreditation scheme; and
  - (b) Australian laws, and foreign laws, that are applicable to the applicant's export trade in wheat; and
  - (c) the United Nations sanctions provisions.

*Pre-surrender period*

- (6) For the purposes of this Act, the ***pre-surrender period*** is the period:
- (a) beginning at the start of the marketing year in which the application for surrender was made; and
  - (b) ending when the application for surrender was made.

## **Division 7—Register of accredited wheat exporters**

### **23 Register of accredited wheat exporters**

- (1) WEA is to maintain a register in which WEA sets out:
  - (a) the name and ACN of each accredited wheat exporter; and
  - (b) for each accredited wheat exporter—the conditions of the accredited wheat exporter’s accreditation under the wheat export accreditation scheme.
- (2) The register may be maintained by electronic means.
- (3) The register is to be made available for inspection on the Internet.

**Division 8—Access test****24 Access test—port terminal service***Before 1 October 2009*

- (1) For the purposes of this Act, a person passes the **access test** in relation to a port terminal service at a particular time if:
- (a) that time is before 1 October 2009; and
  - (b) at that time, the person complies with the continuous disclosure rules in relation to the port terminal service (see subsection (4));
- and either:
- (c) at that time, there is available on the person's Internet site a current statement to the effect that the person is willing to:
    - (i) provide accredited wheat exporters with access to the port terminal service for purposes relating to the export of wheat; and
    - (ii) do so on such terms and conditions as are set out in the statement; or
  - (d) at that time:
    - (i) there is in force a decision under Division 2A of Part IIIA of the *Trade Practices Act 1974* 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, accredited wheat exporters have access to the port terminal service for purposes relating to the export of wheat.

*On or after 1 October 2009*

- (2) For the purposes of this Act, a person passes the **access test** in relation to a port terminal service at a particular time if:
- (a) that time is on or after 1 October 2009; and
  - (b) at that time, the person complies with the continuous disclosure rules in relation to the port terminal service (see subsection (4));

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and either:

- (c) at that time, there is in operation, under Division 6 of Part IIIA of the *Trade Practices Act 1974*, an access undertaking relating to the provision to accredited wheat exporters of access to the port terminal service for purposes relating to the export of wheat; or
  - (d) at that time:
    - (i) there is in force a decision under Division 2A of Part IIIA of the *Trade Practices Act 1974* 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, accredited wheat exporters have access to the port terminal service for purposes relating to the export of wheat.
- (3) For the purposes of paragraph (2)(c):
- (a) assume that subsection 44ZZBA(1) of the *Trade Practices Act 1974* 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.

### *Continuous disclosure rules*

- (4) For the purposes of this Act, a person complies with the ***continuous disclosure rules*** in relation to a port terminal service at a particular time if:
- (a) at that time, there is available on the person's Internet site 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); and
  - (b) at that time, there is available on the person's Internet site a current statement setting out:
    - (i) the name of each ship scheduled to load grain using the port terminal service; and

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- (ii) for each ship referred to in subparagraph (i)—the time when the ship was nominated to load grain using the port terminal service; and
- (iii) for each ship referred to in subparagraph (i)—the time when the ship was accepted as a ship scheduled to load grain using the port terminal service; and
- (iv) for each ship referred to in subparagraph (i)—the quantity of grain to be loaded by the ship using the port terminal service; and
- (v) for each ship referred to in subparagraph (i)—the estimated date on which grain is to be loaded by the ship using the port terminal service; and
- (c) at that time, the person had a policy of updating the paragraph (b) statement each business day.

*Exceptions*

- (5) Subsections (1) and (2) do 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.

*Failure*

- (6) For the purposes of this Act, a person fails the **access test** in relation to a port terminal service at a particular time if the person does not pass the access test in relation to the service at that time.

**Part 3** Information-gathering and audit powers

**Division 1** WEA may obtain information and documents from accredited wheat exporters etc.

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**Part 3—Information-gathering and audit powers**

**Division 1—WEA may obtain information and documents from accredited wheat exporters etc.**

**25 WEA may obtain information and documents from accredited wheat exporters etc.**

*Scope*

- (1) This section applies if WEA has reason to believe that a company that is, or has been, an accredited wheat exporter has information or a document that is relevant to the functions or powers of WEA.

*Requirement*

- (2) WEA may, by written notice given to the company, require the company:
- (a) to give to WEA, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to WEA, 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 WEA, within the period and in the manner specified in the notice, those copies.

Note: See also paragraph 14(a) (condition of accreditation).

- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.
- (4) This section does not limit section 29 or 30.

*Compliance*

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



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*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.

## **26 Copying documents—compensation**

A person is entitled to be paid by WEA, on behalf of the Commonwealth, reasonable compensation for complying with a requirement covered by paragraph 25(2)(c).

## **27 Copies of documents**

- (1) WEA may:
- (a) inspect a document or copy produced under subsection 25(2); and
  - (b) make and retain copies of, or take and retain extracts from, such a document.
- (2) WEA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 25(2)(c).

## **28 WEA may retain documents**

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

**Part 3** Information-gathering and audit powers

**Division 1** WEA may obtain information and documents from accredited wheat exporters etc.

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- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by WEA 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, WEA must, at such times and places as WEA 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—WEA's other information-gathering powers**

### **29 Power to request information and documents**

#### *Scope*

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

#### *Request*

- (2) WEA may, by written notice given to the person, request the person:
- (a) to give to WEA, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to WEA, 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 WEA, 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.

### **30 Power to request a report**

#### *Scope*

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

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**Division 2** WEA's other information-gathering powers

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*Request*

- (2) WEA may, by written notice given to the person, request the person:
  - (a) to prepare such a report; and
  - (b) to give the report to WEA 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.

## **Division 3—External audits of accredited wheat exporters**

### **31 WEA may direct external audit**

- (1) WEA may, by written notice given to an accredited wheat exporter, require the accredited wheat exporter to:
  - (a) appoint:
    - (i) an external auditor identified in the notice; or
    - (ii) if no external auditor is identified in the notice—an external auditor chosen by the accredited wheat exporter; and
  - (b) arrange for the external auditor to carry out an external audit of whichever of the following is specified in the notice:
    - (i) the accredited wheat exporter's compliance with one or more conditions of accreditation under the wheat export accreditation scheme;
    - (ii) the accuracy of information given to WEA by the accredited wheat exporter (whether orally, in a document or in any other way);
    - (iii) the accuracy of one or more statements made in the application that resulted in the accreditation of the accredited wheat exporter; and
  - (c) arrange for the external auditor to give the accredited wheat exporter a written report (the **audit report**) setting out the results of the audit; and
  - (d) give WEA a copy of the audit report within:
    - (i) the period specified in the notice; or
    - (ii) if WEA allows a longer period—that longer period.

Note: See also paragraph 14(a) (condition of accreditation).

- (2) The notice must specify:
  - (a) the matters to be covered by the audit; and
  - (b) the form of the audit report and the kinds of details it is to contain.
- (3) If subparagraph (1)(b)(i) applies, the matters that may be specified under paragraph (2)(a) may include either or both of the following:

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- (a) an assessment of the accredited wheat exporter's existing capacity to comply with one or more conditions of accreditation under the wheat accreditation scheme;
  - (b) an assessment of what the accredited wheat exporter will need to do, or continue to do, to comply with one or more conditions of accreditation under the wheat accreditation scheme.
- (4) Subsection (3) does not limit paragraph (2)(a).

### *Eligibility for appointment as an external auditor*

- (5) An individual is not eligible to be appointed an external auditor by an accredited wheat exporter if the individual is a director, employee or agent of:
  - (a) the accredited wheat exporter; or
  - (b) a related body corporate.

### *Reimbursement*

- (6) If an accredited wheat exporter has incurred reasonable expenses in complying with a requirement under subsection (1), WEA must, on behalf of the Commonwealth, reimburse those expenses.

### *Compliance*

- (7) An accredited wheat exporter must comply with a requirement under subsection (1).

### *Ancillary contraventions*

- (8) A person must not:
  - (a) aid, abet, counsel or procure a contravention of subsection (7); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (7); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (7); or
  - (d) conspire with others to effect a contravention of subsection (7).

*Civil penalty provisions*

- (9) Subsections (7) and (8) are ***civil penalty provisions***.

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

**32 External auditors**

- (1) WEA may, by writing, authorise a specified individual to be an external auditor for the purposes of this Act.

Note 1: For specification by class, see subsection 46(3) of the *Acts Interpretation Act 1901*.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) An authorisation under subsection (1) is not a legislative instrument.

## Part 4—Investigations

### 33 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 WEA, direct WEA to investigate that matter.
- (2) This subsection applies to a matter relating to any of the following:
  - (a) a function or power conferred on WEA;
  - (b) an alleged or suspected contravention of:
    - (i) a condition of accreditation under the wheat export accreditation scheme; or
    - (ii) this Act.
- (3) WEA must comply with a direction under subsection (1).

### 34 Report on investigation

- (1) At the end of an investigation under section 33, WEA must prepare a written report about the investigation.
- (2) A report under subsection (1) must set out:
  - (a) WEA'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) WEA thinks fit; or
    - (ii) the Minister directs.

#### *Distribution of report*

- (3) As soon as practicable after preparing a report under subsection (1), WEA must give a copy of the report to the Minister.



- (4) If a report, or a part of a report, under subsection (1) relates to an alleged or suspected contravention of an Australian law, WEA 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 ACCC; or
  - (g) a prescribed agency.
- (5) If a report, or a part of a report, under subsection (1) relates to a person's affairs to a material extent, WEA 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*

- (6) The Minister may cause the whole or a part of a report under subsection (1) 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 to cause financial loss or detriment to a person.

## **Part 5—Wheat Exports Australia**

### **Division 1—WEA's establishment, functions, powers and liabilities**

#### **35 Wheat Exports Australia**

The body corporate known immediately before the commencement of this section as the Export Wheat Commission is continued in existence with the new name Wheat Exports Australia.

Note 1: In this Act, **WEA** means Wheat Exports Australia—see section 5.

Note 2: See also section 25B of the *Acts Interpretation Act 1901*.

#### **36 WEA's functions**

WEA has the following functions:

- (a) such functions as are conferred on WEA by this Act;
- (b) such functions as are conferred on WEA by the wheat export accreditation scheme;
- (c) to do anything incidental to or conducive to the performance of any of the above functions.

#### **37 WEA's powers**

- (1) WEA has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) WEA's powers include, but are not limited to, the power to enter into contracts.
- (3) Any contract entered into by WEA is to be entered into on behalf of the Commonwealth.
- (4) Any real or personal property held by WEA is held for and on behalf of the Commonwealth.
- (5) Any money received by WEA is received for and on behalf of the Commonwealth.

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- (6) WEA cannot hold real or personal property, or money, on trust for a person other than the Commonwealth.

Note: The Commonwealth may hold real or personal property or money on trust.

- (7) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).

**38 WEA's financial liabilities are Commonwealth liabilities**

- (1) Any financial liabilities of WEA are taken to be liabilities of the Commonwealth.

- (2) In 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.

## **Division 2—WEA's constitution and membership**

### **39 WEA's constitution**

- (1) WEA:
  - (a) is a body corporate with perpetual succession; and
  - (b) must have a seal; and
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued in its corporate name.
- (2) The seal of WEA is to be kept in such custody as WEA directs and must not be used except as authorised by WEA.
- (3) All courts, judges and persons acting judicially must:
  - (a) take judicial notice of the imprint of the seal of WEA appearing on a document; and
  - (b) presume that the document was duly sealed.

### **40 WEA's membership**

WEA consists of the following members:

- (a) a Chair;
- (b) at least 3, and not more than 5, other members.

### **41 Appointment of WEA members**

- (1) Each WEA member is to be appointed by the Minister by written instrument.

Note: The WEA member is eligible for reappointment: see subsection 33(4A) of the *Acts Interpretation Act 1901*.
- (2) A person is not eligible for appointment as a WEA 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) foreign exchange trading;
- (g) finance;
- (h) economics;
- (i) regulation;
- (j) public policy;
- (k) business;
- (l) law;
- (m) grain production;
- (n) grain handling.

- (3) A WEA member holds office on a part-time basis.

#### **42 Period of appointment for WEA members**

A WEA member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

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

#### **43 Acting WEA Chair**

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

Note: See subsection 41(2).

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*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 sections 20 and 33A of the *Acts Interpretation Act 1901*.

## **Division 3—Terms and conditions for WEA members**

### **44 Remuneration**

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

### **45 Disclosure of interests to the Minister**

A WEA member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

### **46 Disclosure of interests to WEA**

- (1) A WEA member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by WEA must disclose the nature of the interest to a meeting of WEA.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the WEA member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of WEA.
- (4) Unless WEA otherwise determines, the WEA member:
  - (a) must not be present during any deliberation by WEA on the matter; and
  - (b) must not take part in any decision of WEA with respect to the matter.

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- (5) For the purposes of making a determination under subsection (4), the WEA member:
  - (a) must not be present during any deliberation of WEA for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of WEA.

### **47 Leave of absence**

- (1) The Minister may grant the WEA Chair leave of absence on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (2) The WEA Chair may grant leave of absence to any other WEA member on the terms and conditions that the WEA Chair determines.

### **48 Resignation**

- (1) A WEA 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.

### **49 Termination of appointment**

- (1) The Minister may terminate the appointment of a WEA member for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of a WEA member if:
  - (a) the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or



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- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the member fails, without reasonable excuse, to comply with section 45 or 46; or
- (c) the member is absent, except on leave of absence, from 3 consecutive meetings of WEA.

**50 Other terms and conditions**

A WEA 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.

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## **Division 4—Decision-making by WEA**

### **51 Holding of meetings**

- (1) WEA is to hold such meetings as are necessary for the performance of its functions.
- (2) The WEA Chair may convene a meeting at any time.

### **52 Presiding at meetings**

- (1) The WEA Chair presides at all meetings at which he or she is present.
- (2) If the WEA Chair is not present at a meeting, the WEA members present must appoint one of themselves to preside.

### **53 Quorum**

At a meeting of WEA, 3 WEA members constitute a quorum.

### **54 Voting at meetings etc.**

- (1) At a meeting of WEA, a question is decided by a majority of the votes of WEA members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

### **55 Conduct of meetings**

WEA may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

### **56 Minutes**

WEA must keep minutes of its meetings.

## Division 5—Delegation

### 57 Delegation by WEA

- (1) WEA may, by writing, delegate any or all of its functions and powers to:
  - (a) a WEA member; or
  - (b) a person who is:
    - (i) a member of WEA staff; and
    - (ii) 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*.

- (2) Subsection (1) does not apply to the power conferred by section 8 or paragraph 69(2)(c).
- (3) A delegate must comply with any written directions of WEA.

## **Division 6—Wheat Exports Australia Special Account**

### **58 Wheat Exports Australia Special Account**

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

### **59 Credits of amounts to the Wheat Exports Australia Special Account**

- (1) There are to be credited to the Wheat Exports Australia Special Account amounts equal to the wheat export charge amounts received by the Commonwealth.
- (2) There are to be credited to the Wheat Exports Australia Special Account amounts equal to amounts received by way of fees referred to in section 10.

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 Purposes of the Wheat Exports Australia Special Account**

The purposes of the Wheat Exports Australia Special Account are as follows:

- (a) paying or discharging the costs, expenses and other obligations incurred in connection with the operation of WEA;
- (b) paying remuneration and allowances of WEA members;
- (c) paying remuneration, and other employment-related costs and expenses, in respect of WEA staff;
- (d) paying compensation under section 26;

(e) reimbursing an accredited wheat exporter under subsection 31(6).

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

## **Division 7—WEA staff etc.**

### **61 Staff**

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

### **62 Persons assisting WEA**

WEA 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 WEA in connection with the performance of any of its functions.

## **Division 8—Planning and reporting obligations**

### **63 Corporate plan**

- (1) WEA must prepare a corporate plan at least once each 3-year period and give it to the Minister.
- (2) The plan must cover a 3-year period.
- (3) The plan must include details of the following matters:
  - (a) the objectives of WEA;
  - (b) the strategies and policies that are to be followed by WEA in order to achieve those objectives;
  - (c) such other matters (if any) as the Minister requires.
- (4) The WEA Chair 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 WEA Chair written guidelines that are to be used by the WEA Chair in deciding whether a matter is covered by paragraph (3)(c) or (4)(b).
- (6) A guideline given under subsection (5) is not a legislative instrument.
- (7) WEA must ensure that the first corporate plan is prepared within 12 months after the commencement of this section.

### **64 Annual report**

WEA must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on its operations during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

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**65 Report for growers**

- (1) WEA must prepare and publish a report for growers each marketing year in relation to the operation of the wheat export accreditation scheme during that year.
- (2) WEA must publish the report for a marketing year on or before 31 December in the next marketing year.
- (3) This section does not apply to the marketing year that began on 1 October 2007.



## **Division 9—Other matters**

### **66 WEA Chair not subject to direction by WEA on certain matters**

To avoid doubt, the WEA Chair is not subject to direction by WEA in relation to the WEA Chair'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 WEA.

## **Part 6—Review of decisions**

### **67 Simplified outline**

The following is a simplified outline of this Part:

- Decisions of WEA under the wheat export accreditation scheme may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by WEA.

### **68 Decisions that may be subject to reconsideration by WEA**

An application may be made to WEA for reconsideration of a decision made by WEA under the wheat export accreditation scheme.

### **69 Applications for reconsideration of decisions**

- (1) A person affected by a decision of a kind referred to in section 68 who is dissatisfied with the decision may apply to WEA for WEA to reconsider the decision.
- (2) The application must:
  - (a) be in a form approved in writing by WEA; and
  - (b) set out the reasons for the application; and
  - (c) be accompanied by the fee (if any) specified in a legislative instrument made by WEA.
- (3) The application must be made within:
  - (a) 28 days after the applicant is informed of the decision; or
  - (b) if, either before or after the end of that period of 28 days, WEA extends the period within which the application may be made—the extended period.
- (4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

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- (5) A fee specified under paragraph (2)(c) must not be such as to amount to taxation.

**70 Reconsideration by WEA**

- (1) Upon receiving such an application, WEA must:
  - (a) reconsider the decision; and
  - (b) affirm, vary or revoke the decision.
- (2) When reconsidering a decision, WEA must not consider information provided by the applicant unless:
  - (a) the information was before WEA when it made the decision; or
  - (b) WEA is satisfied that there are special circumstances.
- (3) WEA's decision on reconsideration of a decision has effect as if it had been made under the provision of the wheat export accreditation scheme under which the original decision was made.
- (4) WEA must give to the applicant a written notice stating its decision on the reconsideration.
- (5) Within 28 days after making its decision on the reconsideration, WEA must give the applicant a written statement of its reasons for its decision.

**71 Deadline for reconsideration**

- (1) WEA must make its decision on reconsideration of a decision within 30 days after receiving an application for reconsideration.
- (2) WEA is taken, for the purposes of this Part, to have made a decision affirming the original decision if it has not informed the applicant of its decision on the reconsideration before the end of the period of 30 days.

**72 Review by the Administrative Appeals Tribunal**

Applications may be made to the Administrative Appeals Tribunal to review a decision of a kind referred to in section 68 if WEA has affirmed or varied the decision under section 70.

## Part 7—Protection of confidential information

### 73 Protected confidential information

For the purposes of this Act, information is ***protected confidential information*** if:

- (a) any of the following subparagraphs applies:
  - (i) the information was given in, or in connection with, an application made to WEA under the wheat export accreditation scheme, and the person who made the application claims the information is commercial-in-confidence information;
  - (ii) the information is contained in a report given to WEA under the wheat export accreditation scheme, and the person who gave the report claims the information is commercial-in-confidence information;
  - (iii) the information is given to WEA under subsection 25(2) or 29(2), and the person who gave the information claims it is commercial-in-confidence information;
  - (iv) the information is contained in a document or copy produced to WEA under subsection 25(2) or 29(2), and the person who produced the document or copy claims the information is commercial-in-confidence information;
  - (v) the information is contained in a report given to WEA under subsection 30(2), and the person who gave the report claims the information is commercial-in-confidence information;
  - (vi) the information is contained in a report a copy of which was given to WEA under paragraph 31(1)(d), and the person the subject of the report claims the information is commercial-in-confidence information; and
- (b) the disclosure of the information could reasonably be expected:
  - (i) to cause financial loss or detriment to the person; or

- (ii) if the person is a body corporate—to cause financial loss or detriment to a related body corporate; or
- (iii) to directly benefit a competitor of the person; or
- (iv) if the person is a body corporate—to directly benefit a competitor of a related body corporate.

#### **74 Protection of confidential information**

- (1) This section restricts what a person (the *entrusted public official*) who is or was:
  - (a) a WEA member; or
  - (b) a member of WEA staff; or
  - (c) a person whose services are made available to WEA under section 62; or
  - (d) the Minister; or
  - (e) a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*;may do with protected confidential information.
- (2) The entrusted public official commits an offence if:
  - (a) the official has obtained protected confidential information; and
  - (b) the official discloses the information to another person.Penalty: Imprisonment for 1 year.
- (3) Each of the following is an exception to the prohibition in subsection (2):
  - (a) the disclosure is with the consent of the person who gave the information;
  - (b) the disclosure is in accordance with an order of a court;
  - (c) the disclosure is to any of the following persons, for a purpose in connection with the performance of the functions, or the exercise of the powers, of WEA:
    - (i) a WEA member;
    - (ii) a member of WEA staff;

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- (iii) a person whose services are made available to WEA under section 62;
- (d) the disclosure is to the Minister;
- (e) the disclosure is authorised by subsection 34(3), (4) or (5);
- (f) the disclosure is to a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*;
- (g) the disclosure is to an APS employee in the Australian Quarantine and Inspection Service, for a purpose that is relevant to the duties of the APS employee;
- (h) the disclosure is to a customs officer, for a purpose that is relevant to the duties of the customs officer;
- (i) the disclosure is to a member or special member of the Australian Federal Police, for a purpose that is relevant to the duties of the member or special member;
- (j) the disclosure is to a member of the police force of a State or Territory, for a purpose that is relevant to the duties of the member;
- (k) the disclosure is to the Australian Securities and Investments Commission, for a purpose that is relevant to the functions or powers of the Australian Securities and Investments Commission;
- (l) the disclosure is to the Australian Prudential Regulation Authority, for a purpose that is relevant to the functions or powers of the Australian Prudential Regulation Authority;
- (m) the disclosure is to the Commissioner of Taxation, for a purpose that is relevant to the functions or powers of the Commissioner of Taxation;
- (n) the disclosure is to the ACCC, for a purpose that is relevant to the functions or powers of the ACCC;
- (o) the disclosure is to a prescribed agency, for a purpose that is relevant to the functions or powers of the prescribed agency.

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

## 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 7(1) or (4)—3,000 penalty units for each contravention; or
  - (b) in the case of a contravention of any of the following provisions:

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- (i) subsection 18(3);
    - (ii) subsection 18(4);
    - (iii) subsection 25(5);
    - (iv) subsection 25(6);
    - (v) subsection 31(7);
    - (vi) subsection 31(8);
  - 1,500 penalty units for each contravention; or
  - (c) in the case of a contravention of:
    - (i) subsection 18(1) or (2); or
    - (ii) subsection 21(6) or (7);
  - 1,000 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 7(1) or (4)—600 penalty units for each contravention; or
  - (b) in the case of a contravention of subsection 18(4), 25(6) or 31(8)—300 penalty units for each contravention; or
  - (c) in the case of a contravention of subsection 18(2) or 21(7)—200 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 WEA may apply for a civil penalty order.
- (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 to constitute 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.

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**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:

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- (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 7(1);
  - (b) subsection 18(1);
  - (c) subsection 18(3);
  - (d) subsection 21(6);
  - (e) subsection 25(5);
  - (f) subsection 31(7).

*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.

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- (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

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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***AQIS*

- (1) APS employees in the Australian Quarantine and Inspection Service may provide WEA with information that is relevant to the functions or powers of WEA.

*Customs*

- (2) Customs officers may provide WEA with information that is relevant to the functions or powers of WEA.

**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

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- (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.



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*[Minister's second reading speech made in—  
House of Representatives on 29 May 2008  
Senate on 16 June 2008]*

(89/08)

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