

EXPLANATORY STATEMENT

Issued by the Wheat Export Authority

Non-bulk Wheat Quality Assurance Scheme

Legislative basis

Under section 67(1) of the *Wheat Marketing Act 1989* (the Act) the Wheat Export Authority (the Authority) may, by legislative instrument, formulate a scheme directed towards the achievement of the objective of ensuring that wheat exported in bags or containers corresponds with the relevant contractual description of the wheat. The WEA has formulated the Non-bulk Wheat Quality Assurance Scheme (the Scheme) accordingly.

Background

The *Wheat Marketing Amendment Act 2007* (the Amendment Act) provides for the removal of the requirement that exporters first obtain an export consent from the Authority before exporting wheat in bags or containers. The Government decided to liberalise this part of the market to encourage further investment in the industry and allow further development of high value niche and new markets. This change will commence on 27 August 2007.

The requirement that exporters first obtain an export consent from the Authority before exporting wheat in bulk will remain.

In developing its policy on wheat marketing arrangements the Government received strong representations from industry that the reputation of Australian wheat in export markets must be protected in any revised arrangements. In response to these concerns the Amendment Act provides for the Authority to establish a Non-bulk Wheat Quality Assurance Scheme (the Scheme). The purpose of the Scheme, as stated in the Explanatory Memorandum to the Amendment Act, is 'to protect the international reputation of Australian wheat by ensuring that exporters deliver to their contract specifications'. It is not the intention of the Scheme to dictate the quality of wheat that may be exported, but rather to make sure that exporters are delivering to customers what they promised and thereby protect the reputation of Australian wheat exports.

The Scheme has been developed by the Authority in consultation with industry. The Authority was tasked with having the Scheme in place as soon as possible so that all parties know what will be required. It is the Government's intention that the Scheme work with existing industry standards and practices, and impose as small a regulatory burden as possible, on exporters.

Reviews of decisions under the Scheme

The Amendment Act specifically did not provide for merits review by the Administrative Appeals Tribunal for administrative decisions made by the Authority under the Scheme. The Government decided that protecting the reputation of Australian wheat exports was of such importance that the Authority should be the

final decision maker under the Scheme and that an appeal mechanism under the *Administrative Decisions (Judicial Review) Act 1977* would be sufficient.

Consultation

Prior to developing the Scheme, the Authority held three formal consultation meetings with different export wheat industry representatives. Representatives at these meetings included: State grain merchant associations (representing small to medium grain businesses), container-packing organisations, quality analysis laboratories, superintendence companies, large and small exporters, independent grain consultants, the Australian Seed Federation, the National Agricultural Commodities Marketing Association, the Grains Council of Australia, Department of Agriculture Fisheries and Forestry, the Australian Quarantine and Inspection Service, and the Australian Customs Service.

The Authority also consulted with various industry representatives throughout the drafting process. Drafts of the Scheme were sent to laboratories, container-packing organisations and exporters who will have specific roles under the Scheme. Overall, the Authority received positive feedback and has taken into consideration all comments and suggested changes to ensure the Scheme is aligned with industry standards and practices where possible.

Financial impact

The Authority consulted with the Office of Best Practice Regulation (OBPR) and the OBPR concluded, “that the impacts on business and individuals or the economy would be low, and preparation of a Regulation Impact Statement (RIS) or quantification of compliance costs is not required.” (OBPR reference number 9239).

Section 1 Name of Scheme

1. Section 1 provides that the Scheme is the *Non-bulk Wheat Quality Assurance Scheme 2007*.

Section 2 Commencement

2. The Scheme commences on the same day as Schedule 4 to the Amendment Act. This day is 27 August 2007.
3. Schedule 1 commences immediately after the commencement of Schedule 5 to the Amendment Act. This takes account of the change in the name of the Authority from the Wheat Export Authority to the Export Wheat Commission.
4. Schedule 2 commences immediately after the commencement of Schedule 3 to the Amendment Act. This takes into account of the substitution of “nominated company B” to the “designated company”.

Part 1 – Preliminary

Section 3 Amendment of this Scheme

5. Schedules 1 and 2 amend the Scheme to reflect the amendments to the Act referred to above.

Section 4 Overview of Scheme

6. Section 4 provides an overview of the Scheme. In order to achieve the purpose of the Scheme, the Scheme provides for the sampling and quality testing of wheat to be exported in bags and containers to ensure the wheat corresponds with the relevant contractual description of the wheat. The Scheme imposes requirements on exporters, whose responsibility it is to ensure their exported wheat corresponds to the contract. The Scheme also provides for the accreditation of persons as accredited packers and accredited testing laboratories. The purpose of providing for such accreditation is to ensure that wheat is sampled and tested in accordance with the Scheme.

Section 5 Definitions

7. Section 5 provides definitions of terms used in the Scheme. For the purpose of this Scheme wheat includes *Triticum aestivum* (bread wheat), *Triticum spelta* (spelt) *Triticum durum* (durum) and *Triticum tauschii* (soft wheat).

Section 6 Shipments of wheat

8. Sections 6(1) and (2) enable an exporter to split one shipment into lots covered by one contract of sale. This mechanism may be used by exporters in circumstances where, for example, one contract contains more than one identified grade of wheat, and more than one identified grade of wheat will be exported in that shipment. In these circumstances, an exporter would need to give separate notices to the Authority for each identified grade of wheat. This will be completed on the Authority Notification Form which will be available on the Authority's website.

Part 2 – Core provisions of Scheme

Division 1 Exemptions from the Scheme

Section 7 When application for exemption must be made

9. Section 7 enables an exporter of wheat who has a contract of sale to apply to the Authority for an exemption from the Scheme prior to the commencement of packing the wheat. If an exemption is not applied nor granted, the exporter must comply with Division 2 of the Scheme.

Section 8 Application for exemption from Scheme

10. Section 8(1) requires an exporter of wheat to apply to the Authority to be exempt from the exporter's requirements under Division 2 of the Scheme. Exemptions may only be granted to an exporter for one contract of sale.
11. Section 8(2) requires the exporter of wheat who applies for an exemption to do so in a form approved by the Authority. The Exemption Application Form contains information required by the Authority and its purpose is to streamline the process. The Exemption Application Form will be accessible on the Authority's website and will assist the Authority in the decision making process.
12. Section 8(3)(a) to (d) outlines a number of the factors that the Authority may take into consideration when assessing an exporter's application for exemption. The factors listed are not exhaustive and all applications will be assessed on a case by case basis. Circumstances where an exemption may be granted include where the

cost of complying with the Scheme outweighs the financial return to the exporter, or where the export is for scientific or research purposes.

Section 9 Authority to decide on exemption

13. Section 9(1) provides the Authority the power to exempt an exporter from complying with the requirements as set out in Division 2 of the Scheme. Division 2 lists the requirements of the exporter under the Scheme.
14. Sections 9(2) and (3) require the Authority to make a decision on an application for exemption within 14 days after receiving the application. If the Authority has not made a decision within this period, then on the twenty-second day after receiving the applications, the exporter's wheat is automatically exempted from the requirements as set out in Division 2 of the Scheme. These provisions are designed to ensure that a prompt decision is made.
15. Sections 9(4) and (5) require the Authority to give the exporter notice of the Authority's decision in writing within seven days of making it. In the event the Authority rejects an application, it must provide reasons for its decision. The Authority's decision to refuse an exemption will be subject to the *Administrative Decisions (Judicial Review) Act 1977*.

Division 2 Requirements on exporters

Section 10 Application

16. Section 10(1) provides that an exporter must comply with the requirements under Division 2 of the Scheme unless the exporter has been granted an exemption for one contract of sale under Division 1 of the Scheme. Requirements under Division 2 are requirements to which section 66(1)(b) of the Act relates.
17. Section 10(2) states that the exporter must comply with the requirements of the Scheme for each shipment of wheat. There may be multiple shipments of wheat in relation to one contract and this provision clarifies that each shipment must comply with the Scheme.

Section 11 Exporter to give notice

18. Section 11(1)(a) requires an exporter to give a notice to an accredited packer under the Scheme providing instructions regarding the packing and sampling of the wheat to be exported. The exporter will complete the Packer Notification Form which will be available on the Authority's website. This form must be given to the packer before the wheat is packed for export.
19. Section 11(1)(b) requires an exporter to give a notice to an accredited testing laboratory under the Scheme providing instructions regarding which things to test for in order to correspond with the quality specifications listed on the contract. The exporter will complete the Laboratory Notification Form which will be available on the Authority's website. This form must be given to the laboratory before the wheat is packed for export.
20. Section 11(1)(c) requires an exporter to give a notice to the Authority under the Scheme advising of their intention to export and providing the wheat quality

specifications listed on the contract. The exporter will complete the Authority Notification Form which will be available on the Authority's website. This form must be given to the Authority before the wheat is packed for export.

21. Section 11(2) requires the notices given by the exporter to the accredited packer, accredited testing laboratory and the Authority to be completed in the form approved by the Authority. Each notice under the Scheme must contain the EDN. The EDN is unique, and consists of nine alphanumeric characters provided by the Australian Customs Service to exporters who intend to ship. For the purposes of the Scheme the EDN provides a reference number to identify wheat in relation to various functions of the Scheme. All approved forms (Packer Notification Form, Laboratory Notification Form, and Authority Notification Form) will be accessible on the Authority's website.
22. Section 11(3) clarifies that if an industry identified wheat grade is described on the contract of sale, the exporter must request the accredited testing laboratory to conduct tests for the five things referred to. Depending on terms of the contract of sale the exporter may also have to request the accredited testing laboratory to conduct additional tests. The expression 'Falling Number' is capitalised for the reason that this is the current industry standard. Falling Number is included in the minimum tests as it is the commercially recognised test for determining sprouted wheat.
23. Section 11(4) provides that if an industry identified wheat grade is described on the contract of sale, the exporter must request the accredited testing laboratory to conduct tests for the five things referred to section 11(3). If the exporter's notice to the accredited testing laboratory does not request to test these things, the notice is taken never to have been given. The exporter must request for the five tests to be conducted unless the contract explicitly states a test or tests are not required.
24. Section 11(5) provides that if a notice under section 11(1) does not contain the EDN for the wheat, the notice is taken never to have been given. This provision is designed to ensure that the EDN is placed on all documentation so the Authority has a clear tacking and traceability system for relevant samples of wheat.
25. Section 11(6) provides that if a description of the wheat set out in the relevant contract is not contained in the exporter's notice to the Authority, the notice is taken never to have been given. The Authority requires the full contract specifications to determine whether the necessary tests have been requested.
26. Section 11(7) requires the Authority to inform the exporter that if the notices given to the accredited packer, accredited testing laboratory and Authority do not contain the EDN, the notices will be taken not to have been given. The Authority must also make the exporter aware that:
 - the notice to the accredited testing laboratory must include the things that need to be tested for; and
 - the notice to the Authority must include the full description of the wheat as set out in the relevant contract; orthe notices will be taken not to have been given. The Authority will make the exporter aware of this by including this information on each of the approved

forms (Packer Notification Form, Laboratory Notification Form, and Authority Notification Form) which the exporter is required to complete and sign.

Section 12 Sampling and testing

27. Section 12(1) requires that an exporter must have the wheat sampled in accordance with the Scheme before the wheat is exported.
28. Section 12(2) requires that an exporter must ensure that only an accredited packer packs the wheat in bags or containers. The Authority will accredit packers that have satisfactory certification and/or accreditation.
29. Section 12(3) requires that an exporter must have the wheat quality tested in accordance with the Scheme. The Scheme provides that certain samples of the wheat must be tested by an accredited testing laboratory to ensure that they correspond with the relevant contractual description of the wheat.
30. Section 12(4) requires that an exporter must ensure that only an accredited packer takes samples of the wheat for testing for the purposes of the Scheme. This is to ensure that relevant samples are taken in a way that ensures their integrity.
31. Section 12(5) requires that an exporter must ensure that only an accredited testing laboratory carries out the quality testing required by the Scheme. This is to ensure that relevant samples are tested in an appropriate way.
32. Section 12(6) requires an exporter to comply with a direction given by the Authority to use an accredited testing laboratory and accredited packer, and who is independent to the exporter. This power may be exercised when the Authority is not satisfied that the exporter is complying with all requirements under the Scheme and wants to ensure that wheat is being sampled and quality tested in accordance with the Scheme.

Section 13 Wheat must correspond to contractual description

33. Section 13(1) requires an exporter to ensure that a sample of wheat taken in accordance with the Scheme corresponds with the description of the wheat in the relevant contract. Section 25 sets out the circumstances in which wheat is taken to correspond to the description in the relevant contract.
34. Section 13(2) clarifies that the requirement in section 13(1) only applies in relation to those aspects of the description of the wheat that are capable of being objectively tested.

Section 14 Requirements on exporters who are accredited persons

35. Section 14 requires that if an exporter is an accredited packer or accredited testing laboratory, or both, the exporter must comply with the sampling or quality testing requirements under the Scheme or both (as relevant).

Division 3 Sampling and quality testing

Subdivision A Sampling requirements

Section 15 When must samples be taken etc

36. Section 15 requires that, if a notice is received by an accredited packer from an exporter, and the accredited packer decides to take samples of the wheat following the notice, then the accredited packer must take samples of the wheat as it is being packed into bags or containers, and must sample the wheat according to the requirements of the Scheme. This provision is designed to ensure the integrity of samples of wheat taken for the purposes of the Scheme.

Section 16 What samples must be taken

37. Section 16(1) describes the sampling methodology that must be followed by an accredited packer. This methodology was designed to ensure that the wheat samples taken are representative of the entire shipment that is to be exported. It is the minimum sampling requirement. The accredited packer may sample the wheat at a greater frequency or volume if required by the exporter.
38. Section 16(2) sets out the sampling methodology that must be followed by an accredited packer if the shipment contains less than 25 tonnes, or if after complying with section 16(1) there is a remainder of less than 25 tonnes. This provision is designed to ensure that the wheat samples taken are representative of the entire shipment.

Section 17 Dealing with the samples

39. Sections 17(1) and (2) provides that samples taken under section 16 must be placed in a container, the condition of which must not affect the quality of the sample. The samples must also be mixed thoroughly so that the sub-samples taken in section 17(3) are representative of the entire shipment.
40. Section 17(3) provides that the accredited packer must divide the newly mixed composite sample into at least two equally representative sub-samples called Sample A and Sample B. This division must occur as soon as practicable after the composite sample is taken and mixed. Samples A and B may only be quality tested by an accredited testing laboratory.
41. Section 17(4) provides that Samples A and B must be taken from the composite sample at the same time. This is to ensure that the quality of the samples are as similar as possible for testing purposes under the Scheme.
42. Section 17(5) provides that Samples A and B must be stored in separate containers. This is to maintain the integrity of the samples and for identification purposes.
43. Section 17(6) provides that Samples A and B must be large enough in quantity to allow quality testing to occur. The Authority consulted with industry on sample size and it was decided that the Scheme would not specify the exact sample size for Samples A and B as the preference of each exporter, packer and testing

laboratory differs. It is sufficient for the Scheme to provide that the samples must be of a quantity large enough for testing to occur.

44. Section 17(7) imposes record keeping obligations on accredited packers in relation to wheat sampled. This record must be kept for the purposes of proof that packing and sampling occurred at that particular accredited packer's premises and may be requested by the Authority.
45. Sections 17(8) and (9) provide that the accredited packer must make a record as soon as practicable after sending the sample to the accredited testing laboratory. This is to ensure records are accurate and completed in a timely manner. This record must be kept for seven years from the time the record is made. The Authority may, for instance, request that the accredited packer provide these records to the Authority.

Section 18 Method of securing samples

46. Sections 18(a) and (b) require that Samples A and B must each be placed into separate sample containers, the condition of which must not affect the quality of the sample, and which must be securely sealed. These provisions are designed to avoid possible tampering with the samples of wheat that could affect the integrity of the samples.
47. Section 18(c) requires Samples A and B to be placed in containers that cannot be opened without breaking the containers themselves, or the seal. This is another safeguard designed to ensure that, if the samples are tampered with in any way, such tampering may be detected.
48. Section 18(d) requires that the sample containers for Samples A and B must be labelled with certain information. Labels are required for purposes including identification by the accredited packer and the accredited testing laboratory. Certain information required to be included on the labels will also be required to be included on a testing certificate issued by an accredited testing laboratory under subsection 22(3).

Section 19 Sending of samples to accredited testing laboratory

49. Section 19 (1) requires that by the end of the accredited packer's next business day after collecting Samples A and B, the accredited packer must send the samples to the accredited testing laboratory which has been nominated by the exporter. The accredited testing laboratory's contact details are included on the Packer Notification Form, given by the exporter to the accredited packer.
50. Section 19(2) provides that Samples A and B must be stored and transported in a way that preserves the integrity of the samples. The accredited packer must take into account the specifications of the wheat in considering the appropriate storage and transportation methods and requirements.

Section 20 Return of samples

51. Section 20 clarifies that the exporter may request the return of any unused portion of the composite sample from the accredited packer that was collected under section 16 of the Scheme. This section clarifies that the composite sample

remaining after compilation of Samples A and B is the property of the exporter and is returnable to the exporter at the exporter's expense.

Subdivision B Testing the samples

Section 21 General

52. Section 21(1) provides that, for the purposes of the Scheme, the accredited testing laboratory needs only to test for things contained in the exporter's notice that can be objectively tested. Aspects of the description of wheat that cannot be objectively tested are those aspects that depend on an individual's subjective opinion. This provision does not prevent an exporter from requesting an accredited testing laboratory to undertake other tests.
53. Section 21(2) provides that it is a requirement of the Scheme that accredited testing laboratories conduct testing in accordance with their current accreditation and/or certification standards.
54. Section 21(3) provides for how the accredited testing laboratory stores and secures Samples A and B. This provision is designed to ensure the integrity of the samples is maintained.

Section 22 Sample A

55. Sections 22(1) and (2) require an accredited testing laboratory, which has agreed to test an exporter's wheat after receiving the exporter's notice, to test the wheat it receives from the accredited packer. For the purpose of the Scheme the accredited testing laboratory must test Sample A for things contained in the exporter's notice that can be objectively tested.
56. Section 22(3) requires the accredited testing laboratory to issue a notice to the Authority and the exporter containing all the information described in this section. This information is required in order to identify the wheat and provide evidence of the quality of Sample A. The notice must be provided to the Authority and the exporter by the end of the next business day after the results become known to the accredited testing laboratory. The time limit is designed to ensure that the exporter and Authority are informed of the test results in a timely manner.
57. Section 22(4) requires the notice to include verification by the accredited laboratory's authorised person stating that Sample A was tested in accordance with current accreditation and/or certification standards. This is to ensure that the testing was conducted appropriately.
58. Sections 22(5) and (6) impose record keeping obligations on accredited testing laboratories in relation to wheat tested. This record must be kept for the purpose of proof that testing occurred at that particular accredited testing laboratory and may be requested by the Authority. The accredited testing laboratory must make a record as soon as practicable after sending a testing certificate. This is to ensure records are accurate and completed in a timely manner. This record must be kept for seven years from the time the record is made.

Section 23 Sample B

59. Section 23(1) requires the accredited testing laboratory to hold Sample B for 14 days after the day that the testing certificate for Sample A is given. The time specified in this provision is designed to limit the burden on accredited testing laboratories for the storage of samples.
60. Section 23(2) provides that an exporter may ask the accredited testing laboratory to test Sample B within 14 days after the testing certificate relating to Sample A is given. According to industry consultation, if an exporter is not satisfied with a result on the testing certificate the exporter will order another test immediately. The time limit is imposed to ensure the request to test Sample B is done quickly, and by necessity prior to the arrival of the shipment at the destination.
61. Section 23(3) requires that if an exporter requests the accredited testing laboratory to test Sample B, the accredited testing laboratory must conduct the objective tests requested by the exporter as per the exporter's notice.
62. Section 23(4) requires that any request made by the exporter for the accredited testing laboratory to test Sample B must be made within 14 days after the testing certificate is given for Sample A. The time limit is imposed to ensure that any request to test Sample B is made quickly.
63. Section 23(5)(a) requires the accredited testing laboratory to produce a testing certificate for Sample B containing all information described in section 22(3). The testing certificate must be provided to the Authority and the exporter by the end of the next business day after the results become known to the accredited testing laboratory. The time limit ensures the exporter and the Authority are informed of the test results in a timely manner.
64. Section 23(5)(b) requires the testing certificate to include verification by the accredited testing laboratory's authorised person stating that the sample was tested in accordance with current accreditation and/or certification standards. This is to ensure that the testing was conducted appropriately.
65. Section 23(6) and (7) imposes a record keeping obligation on accredited testing laboratories once they have tested the wheat. This record must be kept for the purposes of proof that testing occurred at that particular accredited testing laboratory and may be requested by the Authority. The record must be made as soon as practicable after sending the testing certificate to the exporter. This is to ensure records are accurate and completed in a timely manner. This record must be kept for seven years from the time the record is made.

Section 24 Return of samples

66. Section 24(1) clarifies that the exporter may request the return of any unused portions of the Samples A and B. This provision clarifies that the sample is the property of the exporter and is returnable to the exporter at the exporter's expense.
67. Section 24(2) outlines the timeframes when Samples A and B can be requested to be returned. Sample A cannot be returned prior to testing, as it is a requirement of the Scheme that the Sample A is tested. The return of Sample B can be requested

after testing or if it has not been tested, after the 14 day time period has ended. In all cases the exporter has up to three months to request the return of any samples. After the 14 day period has lapsed, the samples are no longer the concern of the Authority. The length of time the laboratory should store the samples should depend upon the agreement between the exporter and accredited testing laboratory.

Subdivision C When wheat is taken to meet the contract description

Section 25 Outcomes of testing

68. Section 25(1) provides that wheat is taken to correspond with the description of the wheat in the relevant contract if the testing outcome is as provided for in sections 25(2) or (3).
69. Section 25(2) provides that the testing certificate for Sample A must correspond with the exporter's notice to the Authority and the description of the wheat in the relevant contract, in order for the exporter's requirement under section 13 to be satisfied. Section 13 requires an exporter to ensure that a sample of wheat taken in accordance with the Scheme corresponds with the description of the wheat in the relevant contract.
70. Section 25(3) provides that if the testing certificate for Sample A does not correspond with the exporter's notice to the Authority, then the testing certificate for Sample B must correspond with the exporter's notice to the Authority and the description of the wheat in the relevant contract, in order for the exporter's requirement under section 13 to be satisfied. Section 13 requires an exporter to ensure that a sample of wheat taken in accordance with the Scheme corresponds with the description of the wheat in the relevant contract.
71. Section 25(4) clarifies that the requirement in section 25 only applies in relation to those aspects of the description of the wheat in the notice to the Authority, testing certificate and in the relevant sales contract that are capable of being objectively tested.

Subdivision D Evidentiary Certificates

Section 26 Proceedings to which Subdivision applies

72. Section 26 provides that Subdivision D of the Scheme applies to any proceedings for an offence against section 66 of the Act.

Section 27 Signing of certificate by accredited packer etc

73. Section 27(1) provides that a certificate signed by an accredited packer, or the accredited packer's authorised person, stating the matters described in the provision is admissible as prima facie evidence of the matters stated in the certificate in proceedings for an offence against section 66 of the Act. Accredited packers are not required to produce the certificate every time they pack. The Authority will advise an accredited packer when the certificate must be produced.
74. Section 27(2) provides that a certificate signed by an accredited testing laboratory, or the accredited laboratory's authorised person, stating the matters described in

the provision is admissible as prima facie evidence of the matters stated in the certificate in proceedings for an offence against section 66 of the Act. A notice given by an accredited testing laboratory under sections 22(3) or 23(5) of the Scheme will constitute such a certificate. Accredited testing laboratories may also be required to produce such a certificate under section 32 of the Scheme. Accredited testing laboratories are not required to produce a certificate under this section every time they test samples. The Authority will advise an accredited testing laboratory when the full certificate must be produced.

Section 28 Document taken to be a certificate unless contrary intention established

75. Section 28 provides that a document purporting to be a certificate referred to in section 27 is, unless the contrary intention is established, taken, in any proceedings for an offence against section 66 of the Act, to be such a certificate and to have been duly given.

Section 29 Certificate not to be admitted unless copy given

76. Section 29 provides that a certificate must not be admitted in evidence under section 27 unless certain persons in connection with the offence proceedings have been given a copy of the certificate and certain evidence at least 14 days before the certificate is sought to be admitted.

Section 30 Person signing the certificate may be called to give evidence

77. Section 30(1) provides that if a certificate under section 27 is admitted in evidence in offence proceedings, the person charged with the offence may require the person who signed the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.

78. Section 30(2) provides that section 30(1) does not entitle the person charged to require the person who signed the certificate to be called as a witness for the prosecution unless certain conditions have been satisfied. These conditions are that the prosecutor is given at least four days notice of the intention to require the person who signed the certificate to be called as a witness, or a Court order allows the person charged to require the person who signed the certificate to be called as a witness.

Section 31 Rebuttal evidence

79. Section 31 provides that any evidence given in support, or in rebuttal, of a matter stated in a certificate given under section 27 must be considered on its merits and the credibility and probative value of such evidence must neither be increased or diminished by reason of any provision in Subdivision D of the Scheme.

Section 32 Authority may ask for full certificate

80. Sections 32(1) and (2) provides the Authority with the power under the Scheme to ask, in writing, an accredited packer or an accredited testing laboratory to produce certificates containing all information listed in section 27. The Authority must give the accredited packer or accredited testing laboratory a notice stating the requirement and they must comply with the notice within seven days.

Subdivision E Direction to exporter

Section 33 Direction to use a particular type of accredited person

81. Section 33(1) provides the Authority with the power under the Scheme to direct an exporter who intends to export wheat in bags or containers to use a person who has certain characteristics to take samples from and quality test the exporter's wheat. Those characteristics are that the person is both an accredited packer and accredited testing laboratory and is at arm's length from (ie., is independent of) the exporter. This power may, for instance, be exercised when the Authority is not satisfied that the exporter is complying with all requirements under the Scheme and wants to ensure that wheat is being sampled and quality tested in accordance with the Scheme.
82. Section 33(2) provides that the Authority must give a direction to an exporter to use a person that is an accredited packer and accredited testing laboratory and is at arm's length from (ie., is independent of) the exporter, in writing. The written direction must specify certain details about the period for which it applies, and outline the reasons for the direction being given. This decision will be reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.
83. Section 33(3) provides that the direction must be complied with by the exporter for all exports during the period specified unless the exporter has been granted an exemption under section 9.
84. Section 33(4) provides that the date the exporter must comply with the direction cannot be before the exporter is notified of the direction.

Division 4 Accreditation of packers

Section 34 Application for accreditation

85. Sections 34(1) and (2) provide that applicants who apply for packer accreditation under this Scheme must apply on a form approved by the Authority. This form is the Packer Accreditation Form. The Authority may require certain additional information to accompany the form. The Packer Accreditation Form will be available on the Authority's website.

Section 35 Further information

86. Sections 35(1), (2) and (3) permit the Authority to request further information in writing from an applicant to assist the Authority to make a decision on accreditation. A request for information must specify what information the Authority seeks and the time within which the packer must respond to the request.
87. Section 35(4) provides that the Authority is not obliged to make a decision on the application while it is waiting for further information to be provided by the applicant. This informs the applicant that no decisions will be made by the Authority until the information is provided.
88. Section 35(5) provides that if the information requested by the Authority is not provided by the applicant within the timeframe specified in the Authority's

written notice, then the application is withdrawn. There is scope for an applicant to request an extension of this deadline.

Section 36 Decision on application for accreditation

89. Section 36(1)(a) provides that the packer may receive accreditation by the Authority if the packer holds relevant accreditation and/or certification that the Authority acknowledges is appropriate.
90. Section 36(1)(b) provides the Authority with the power to accredit a packer under the Scheme if the Authority is satisfied the packer will comply with all requirements of the Scheme throughout the length of accreditation.
91. Section 36(2) provides the Authority with the power under the Scheme to impose conditions to an applicant's accreditation. Such conditions may include restricting the packer to only sampling the wheat of a certain exporter or exporters.
92. A decision under section 36 will be reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.

Section 37 Notice of accreditation decision

93. Sections 37(1) and (2)(a) require the Authority to give the applicant notice of any decision regarding accreditation within 14 days of making the decision. The notice must be in writing for verification, transparency of the Authority's decision making processes and for record keeping purposes.
94. Section 37(2)(b) clarifies that if the Authority decides to grant an accreditation to the applicant and if the Authority imposes conditions on the packer's accreditation, then the conditions that the Authority imposes must be set out in the written notice of the decision.
95. Section 37(c) and (d) sets out that if the decision is to grant accreditation to the applicant then the Authority will specify the day from which the accreditation comes into effect and the period of the accreditation in the written notice of the decision.
96. Section 37(e) provides that if the Authority's decision is to not approve an applicant's accreditation then the Authority will provide reasons for this decision in the notification. The Authority will advise the applicant if re-accreditation is possible. This decision is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.

Section 38 Period of accreditation

97. Sections 38(1) and (2) provide that a person's accreditation commences on the day the Authority's notice sets out. The date of the person's accreditation must not be an earlier date than when the Authority's notice of accreditation is given.
98. Section 38(3) and (4) reflects that the Authority may not accredit a packer for a period exceeding two years. If the Authority's accreditation is granted to a packer, then it is in force for the duration specified by the Authority unless the Authority decides to revoke or suspend the packer's accreditation at an earlier date. The

maximum two year period aims at ensuring the packer will reassess its processes every two years before reapplying for another accreditation.

Division 5 Accreditation of laboratories

Section 39 Application for accreditation

99. Sections 39(1) and (2) provide that applicants who apply for laboratory accreditation under this Scheme must apply on a form approved by the Authority. This form is the Laboratory Accreditation Form. The Authority may require certain additional information to accompany the form. The Laboratory Accreditation Form will be available on the Authority's website.

Section 40 Further information

100. Section 40(1), (2) and (3) permit the Authority to request further information in writing from an applicant to assist the Authority to make a decision on accreditation. A request for information must specify what information the Authority seeks and the time within which the laboratory must respond to the request.
101. Section 40(4) provides that the Authority is not obliged to make a decision on the application while it is waiting for further information to be provided by the applicant. This ensures the applicant that no decisions will be made by the Authority until the information is provided.
102. Section 40(5) provides that if the information requested by the Authority is not provided by the applicant within the timeframe specified in the Authority's written notice, then the application is withdrawn. There is scope for an applicant to request an extension of this deadline.

Section 41 Decision on application for accreditation

103. Section 41(1)(a) provides that the laboratory may receive accreditation by the Authority if the laboratory holds relevant accreditation and/or certification that the Authority acknowledges is appropriate.
104. Section 41(1)(b) provides the Authority with the power to accredit a laboratory under the Scheme if the Authority is satisfied the laboratory will comply with all requirements of the Scheme throughout the length of accreditation.
105. Section 41(2) provides the Authority with the power under the Scheme to impose conditions to an applicant's accreditation. Such conditions may include restricting the laboratory to only testing the wheat of a certain exporter or exporters.
106. A decision under section 41 will be reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.

Section 42 Notice of accreditation decision

107. Sections 42(1) and (2)(a) require the Authority to give the applicant notice of any decision regarding accreditation within 14 days of making the decision. The notice must be in writing for verification, transparency of the Authority's decision making processes and for record keeping purposes.

108. Section 42(2)(b) clarifies that if the Authority decides to grant an accreditation to the applicant and if the Authority imposes conditions on the laboratory's accreditation, then the conditions that the Authority imposes must be set out in the written notice of the decision.
109. Section 42(c) and (d) sets out that if the decision is to grant accreditation to the applicant then the Authority will specify the day from which the accreditation comes into effect and the period of the accreditation in the written notice of the decision.
110. Section 42(e) provides that if the Authority's decision is to not approve an applicant's accreditation then the Authority will provide reasons for this decision in the notification. The Authority will advise the applicant if re-accreditation is possible. This decision is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.

Section 43 Period of accreditation

111. Section 43(1) and (2) provide that a person's accreditation commences on the day the Authority's notice sets out. The date of the person's accreditation must not be an earlier date than when the Authority's notice of accreditation is given.
112. Section 43(3) and (4) reflects that the Authority may not accredit a laboratory for a period exceeding two years. If the Authority's accreditation is granted to a laboratory, then it is in force for the duration specified by the Authority unless the Authority decides to revoke or suspend the laboratory's accreditation at an earlier date. The maximum two year period aims at ensuring the laboratory will reassess its processes every two years before reapplying for another accreditation.

Division 6 Conditions on accreditation

Section 44 Conditions that apply to all accredited persons

113. Section 44(a) imposes a condition that an accredited person must comply with Division 3 of the Scheme which relates to taking wheat samples or quality testing. This provision is designed to ensure the uniformity and correctness of processes.
114. Section 44(b) imposes a condition that an accredited person must comply with a notice given by the Authority under section 32. Section 32 provides the Authority with the power under the Scheme to request an accredited person to produce a full certificate under section 27.
115. Section 44(c) imposes a condition that an accredited person must continue to hold relevant accreditation and/or certification under sections 36 or 41 (as relevant) for the duration of their accreditation under the Scheme.
116. Section 44(d) imposes a condition that an accredited person must inform the Authority in writing as soon as practicable after ceasing to hold relevant accreditation and/or certification under sections 36 or 41 (as relevant). This provision is designed to ensure that the Authority remains informed of the status of a person's accreditation and/or certification.

117. Section 44(e) imposes a condition that an accredited person must comply with the conditions of accreditation.

Section 45 Authority may impose further conditions

118. Sections 45 (1) to (3) provide with the power under the Scheme to impose conditions to a person's accreditation after that person's accreditation, and in addition to any conditions imposed by the Authority at the time of accreditation or under section 44. Further conditions will be given to the person in writing by the Authority stating the reasoning for the conditions that have been imposed. This decision is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.

Division 7 Breach of conditions on accreditation

Section 46 Breach of conditions

119. Section 46(1)(a) provides the Authority with the power under the Scheme to impose further conditions of accreditation in the event that an accredited person breaches a condition of accreditation. A decision to impose a further condition is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.
120. Section 46(1)(b) provides the Authority with the power under the Scheme to suspend a person's accreditation for a period of time in the event that an accredited person breaches a condition of accreditation. A decision to suspend a person's accreditation is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.
121. Section 46(1)(c) provides the Authority with the power under the Scheme to revoke a person's accreditation. This does not preclude such a person from re-applying for accreditation. A decision to revoke a person's accreditation is reviewable under the *Administrative Decisions (Judicial Review) Act 1977* applies.
122. Section 46(2) provides that if the Authority imposes a further condition on accreditation or suspends an accreditation, and the accredited person is non-compliant with an accreditation condition, the Authority has the power under the Scheme to revoke the person's accreditation at any time. If re-accreditation is possible, the Authority will specify a timeframe within which the accredited person can re-apply. This decision is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.

Section 47 Notices under this Division

123. Section 47(1) provides that the Authority must give an accredited person notice in writing of any decision regarding imposing a condition on accreditation. The notice will inform the person of the terms of the condition and the date on which the condition must take effect.
124. Section 47(2) provides that the Authority must give the person notice in writing of any decision regarding the suspension of accreditation. The notice will inform the person of the reasoning behind the Authority's decisions to suspend the accreditation, the date that the suspension begins and the length of the suspension.

125. Section 47(3) provides that the Authority must give the person notice in writing of any decision regarding the revocation of accreditation. The notice will inform the person of the reasoning behind the Authority's decision to revoke the accreditation and the date that the revocation takes effect.
126. Section 47(4) clarifies the date the accredited person must comply with a notice relating to the imposition of conditions, suspension or revocation of accreditation. The date for compliance must not be a date before the notice is given.
127. Section 47(5) provides that a notice given by the Authority relating to the imposition of conditions, suspension or revocation of a person's accreditation must include a statement setting out the reasons for the decision. These decisions are reviewable under the *Administrative Decisions (Judicial Review) Act 1977*.

Division 8 Miscellaneous

Section 48 Fees may be charged

128. Section 48(1) and (2) provides that an accredited person may charge a fee for a service provided to an exporter of wheat under the Scheme. This fee can reflect the costs of providing the service, and a fair return on capital, but must not be set at a level which would amount to a tax.

Section 49 Authority may approve forms

129. Section 49 provides that the Authority may, in writing, approve a form for the purposes of a provision of the Scheme. All forms will be available on the Authority's website.

Schedule 1 Amendments commencing immediately after the commencement of Schedule 5 to the *Wheat Marketing Amendment Act 2007*

130. Schedule 1 and section 3 replace all references to the 'Authority' with 'Commission' in the Scheme. This reflects certain amendments to the Act to be made by the *Wheat Marketing Amendment Act 2007* commencing on 1 October 2007.

Schedule 2 Amendments commencing immediately after the commencement of Schedule 3 to the *Wheat Marketing Amendment Act 2007*

131. Schedule 2 and section 3 replace all references to 'nominated company B' to the 'the designated company' in the Scheme. This reflects certain amendments to the Act to be made by the *Wheat Marketing Amendment Act 2007* commencing on 1 March 2008.