

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**WHEAT EXPORT MARKETING (REPEAL AND CONSEQUENTIAL
AMENDMENTS) BILL 2008**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry,
the Hon. Tony Burke MP)

WHEAT EXPORT MARKETING (REPEAL AND CONSEQUENTIAL AMENDMENTS) BILL 2008

OUTLINE

The purpose of this Bill is to deal with consequential matters arising from the enactment of the Wheat Export Marketing Bill 2008 and the repeal of the *Wheat Marketing Act 1989*.

To ensure the effective operation of the Wheat Export Marketing Bill 2008, various amendments to other legislation need to be made. Of particular importance are changes to the *Customs (Prohibited Exports) Regulations 1958* to reflect the fact that the export of bulk wheat is prohibited without accreditation from Wheat Exports Australia (WEA).

Other important provisions help the transition from the Export Wheat Commission (EWC) to WEA and amend the *Criminal Code Act* to make it an offence to provide false information to WEA in an application for accreditation under the Wheat Export Marketing Bill 2008.

This Bill also allows for the continued operation of Australia's bulk wheat export industry during a transitional time where companies will be subjected to the provisions of the Wheat Export Marketing Bill 2008, while not yet having the opportunity to complete the accreditation process. For example, it includes provisions for AWB (International) Ltd to market wheat from the 2007-08 National Pool and for those exporters who have been granted bulk export permits to complete shipments under those consents.

The legislation amended or repealed by the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008 (the Bill) does not represent an exhaustive list of legislation assisting in the facilitation, control and operation of the Australian wheat industry. The Bill and the Wheat Export Marketing Bill 2008 should therefore be read in conjunction with other legislation controlling trade and commerce such as the *Trade Practices Act 1974*.

FINANCIAL IMPACT STATEMENT

Nil.

REGULATION IMPACT STATEMENT

The regulation impact statement for this Bill is contained within the Wheat Export Marketing Bill 2008 regulation impact statement.

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NOTES ON CLAUSES

Clause 1: Short title

1. Clause 1 provides that the Bill be referred to as the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008.

Clause 2: Commencement

2. Clause 2 provides that the Bill commences upon Royal Assent with the following exceptions:
 - Schedules 1 and 2, items 2 to 6 of schedule 3, and items 8 to 10 of schedule 3 commence on 1 July 2008
 - Items 1 and 7 of schedule 3 commence upon Royal Assent of the Wheat Export Marketing Bill 2008.

Clause 3: Schedule(s)

3. Clause 3 provides that the legislation and regulations referred to in each schedule of the Bill will be amended or repealed in accordance with the items in that schedule.

SCHEDULE 1 – Repeal

Wheat Marketing Act 1989

Schedule 1, Item 1

4. This item repeals the whole of the *Wheat Marketing Act 1989*.

SCHEDULE 2 – Consequential Amendments

Criminal Code Act 1995

Schedule 2, Items 1 – 4

5. These items amend the *Criminal Code Act 1995* to extend the offence of making a false or misleading statement in, or in connection with, an application to cover an application for accreditation under the wheat export accreditation scheme. This means that officers of an applicant can be prosecuted for making a false or misleading statement, either knowingly or recklessly, in connection with an application for accreditation. The maximum penalty for such an offence is 12 months imprisonment.

Schedule 2, Item 5

6. This item defines the term 'wheat export accreditation scheme' within the *Criminal Code Act 1995* and gives it the same meaning as it has in the Wheat Export Marketing Bill 2008. This means offences under the wheat export accreditation scheme are subject to the provisions of the *Criminal Code Act 1995*.

Customs (Prohibited Exports) Regulations 1958

Schedule 2, Item 6

7. This item repeals subregulation 5(4) of the *Customs (Prohibited Exports) Regulations 1958* which exempts nominated company B (AWB (International) Ltd) from the prohibition of exporting bulk wheat. This subregulation is repealed in conjunction with the repeal of the *Wheat Marketing Act 1989*.

Schedule 2, Item 7

8. This item inserts new regulation 9AAA into the *Customs (Prohibited Exports) Regulations 1958*. This new regulation provides that exporting bulk wheat is prohibited under the *Customs (Prohibited Exports) Regulations 1958* unless the exporter is accredited as an accredited wheat exporter under the wheat export accreditation scheme.
9. New regulation 9AAA also creates an interim arrangement where AWB (International) Ltd will have a temporary exemption to allow it to continue to market wheat from the 2007-08 National Pool until a decision on its accreditation is completed. Companies that have an export consent permit will also have a temporary exemption in line with their permit. The exemption is for the period 1 July 2008 to 1 October 2008.
10. Exports of wheat in bags and containers, capable of holding not more than 50 tonnes of wheat, are not subject to the prohibition under new regulation 9AAA.

Schedule 2, Item 8

11. This item removes bulk wheat from the list of goods in Schedule 3 to the *Customs (Prohibited Exports) Regulations 1958*. The addition of new regulation 9AAA of the *Customs (Prohibited Exports) Regulations 1958*, by item 7 above, means it is unnecessary to include bulk wheat in the list of goods which are prohibited by regulation 5 of the *Customs (Prohibited Exports) Regulations 1958* from being exported. Regulation 5 prohibits the export, without permission, of goods specified in Schedule 3 to the *Customs (Prohibited Exports) Regulations 1958*.

Financial Management and Accountability Regulations 1997

Schedule 2, Items 9-10

12. These items replace the EWC with WEA as a prescribed agency under the *Financial Management and Accountability Regulations 1997* in terms of the requirements for financial accountability. For the purposes of the *Financial Management and Accountability Act 1997*, the Chief Executive of WEA shall be the Chair.

Freedom of Information Act 1982

Schedule 2, Item 11

13. This item removes a reference to the *Wheat Marketing Act 1989* in the *Freedom of Information Act 1982* which currently exempts the EWC from producing documents relating to its commercial activities. This reference is redundant due to the fact that neither the EWC nor WEA conduct, or will conduct, commercial activities. The amendment eliminates what is now an unnecessary exemption under the *Freedom of Information Act 1982* and means WEA will be subject to the normal provisions of the *Freedom of Information Act 1982*.

Primary Industries and Energy Research and Development Act 1989

Schedule 2, Items 12-14

14. These items insert 'repealed' before '*Wheat Marketing Act 1989*' in several sections of the *Primary Industries and Energy Research and Development (PIERD) Act 1989* in order to properly refer to the *Wheat Marketing Act 1989* as repealed legislation. This means the provisions referred to in the *PIERD Act 1989* will still apply under that legislation.

Primary Industries Levies and Charges Collection Act 1991

Schedule 2, Item 15

15. This item inserts 'repealed' before '*Wheat Marketing Act 1989*' in subsection 27(2) of the *Primary Industries Levies and Charges Collection (PILCC) Act 1991* in order to properly refer to the *Wheat Marketing Act 1989* as repealed legislation. This means the provisions referred to in the *PILCC Act 1991* will still apply under that legislation.

SCHEDULE 3 – Transitional Provisions

Schedule 3, Item 1

16. This item defines several terms used in the Bill.

Schedule 3, Item 2

17. This item provides that references to the EWC shall mean references to WEA for the purposes of the operation of any Act appropriating money for expenditure out of the Consolidated Revenue Fund.

This item is necessary to transfer funding from the EWC to WEA.

Schedule 3, Item 3

18. This item provides that members of the EWC shall cease to be members of the EWC upon this Bill coming into force. It also provides that such members are not precluded from becoming members of WEA.

Schedule 3, Item 4

19. This item abolishes the EWC special account and transfers funds held by the EWC to WEA upon this Bill coming into force. The Wheat Export Marketing Bill 2008 establishes a new special account for WEA.

Schedule 3, Item 5

20. This item provides that WEA must provide the Minister with an annual report on behalf of the EWC as soon as practicable after 30 June 2008. The Minister must table the report in both houses of parliament within 15 days of receiving the report.
21. This item also provides that the report shall be a 'regular report' under s34C of the *Acts Interpretation Act 1901*. This means the report must be given to the Minister by 31 December 2008 and where the Minister grants an extension, the extension request must be tabled in both houses of parliament within 3 sitting days of the extension being granted.

Schedule 3, Item 6

22. This item relates to information that was collected from AWB (International) Ltd, or a related body corporate, by the EWC, on the basis that such information was commercial-in-confidence. The information retains the protection of Section 5E of the *Wheat Marketing Act 1989* as if it had not been repealed, and cannot be released where such a release could reasonably be expected to cause financial loss or detriment to AWB (International) Ltd or a related body corporate or directly benefit a competitor.

Schedule 3, Item 7

23. This item allows the EWC to exercise powers conferred upon WEA between the date the Wheat Export Marketing Bill 2008 receives Royal Assent and 1 July 2008. This allows the EWC to develop the accreditation scheme before 1 July

2008. This will enable the scheme to come into operation at the same time, or soon after, WEA is established on 1 July 2008.

24. This item also prevents the EWC delegating the powers and functions it holds on behalf of WEA. This means the EWC must develop the accreditation scheme itself.

Schedule 3, Item 8

25. This item allows the EWC to prepare and approve a form under the scheme, on behalf of WEA, prior to 1 July 2008. This includes, but is not limited to, an accreditation application form.

Schedule 3, Item 9

26. This item allows AWB (International) Ltd to export bulk wheat up to 1 October 2008 without being an accredited exporter.
27. This item also allows the same exemption for companies holding consents to export bulk wheat that were issued by the EWC under subsection 57(1) of the *Wheat Marketing Act 1989* under the terms and conditions of those consents.
28. This has been done to ensure that there are no delays in finalising the 2007-08 National Pool, or executing export consents, while the companies are having their accreditation applications assessed by WEA.

Schedule 3, Item 10

29. This item compels WEA to deliver a report to the Minister on the performance of AWB (International) Ltd in relation to the benefits to growers arising from that performance. This report must be given to the Minister within six months of the final distribution of payments to participants of the 2007-08 National Pool unless the Minister agrees to an extension.
30. This item also compels WEA to deliver a similar report to growers. This report must also be published within six months of the final distribution of payments to participants of the 2007-08 National Pool, unless the Minister agrees to an extension.
31. These reports would normally have been prepared by the EWC and mean the obligations required under the existing legislation will be completed.
32. This item also allows WEA to obtain information from AWB (International) Ltd using section 5D of the *Wheat Marketing Act 1989* despite its repeal. This can be done for a period of 6 months following the final distribution of payments to pool participants of the 2007-2008 National Pool, unless the Minister agrees to an extension.

33. This gives WEA the power to obtain information from AWBI for the purpose of preparing the above reports. This is not a new power. It is the power currently held by the Export Wheat Commission under section 5D of the *Wheat Marketing Act 1989* and is necessary for it to fulfil its duty in preparing the final report on AWBI's operation of the national pool. While WEA will have the power to obtain information from accredited exporters under the new arrangements, it is possible that AWBI will never be accredited. There is a period from 1 July 2008 to 30 September 2008 in which it is exempt from accreditation and AWB Ltd has indicated that it is likely to seek accreditation rather than AWBI. Therefore, the operation of section 5D of the *Wheat Marketing Act 1989* must be extended to cover AWBI until the reports on the 2007-08 national pools are finalised.
34. Confidential information collected by WEA using section 5D of the *Wheat Marketing Act 1989* will be afforded the same protection under subitem 10(6) as was previously provided by the repealed section 5E of the *Wheat Marketing Act 1989*. This is done by classifying the information 'protected confidential information' for the purposes of the Wheat Export Marketing Bill 2008 where its disclosure may cause detriment to AWB (International) Ltd, or directly benefit a competitor.

Schedule 3, Item 11

35. This item provides that where the EWC has commenced an investigation prior to 1 July 2008, WEA must complete the investigation and corresponding report, following the requirements of section 5DC of the repealed *Wheat Marketing Act 1989*.