

HOUSE OF REPRESENTATIVES

(As read a first time)

WHEAT MARKETING BILL 1984

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1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 13 September 1984

(Minister for Primary Industry)

A BILL

FOR

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

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Wheat Marketing Act 1984*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“appropriate Minister”, in relation to a State, means the Minister of State administering the Department of the State dealing with agricultural

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- matters, and includes a Minister of State of that State acting on behalf of that Minister;
- “Australian standard white wheat” means wheat other than wheat that is wheat of a prescribed category of wheat;
- “authorized person” means a person appointed under section 59 for the purposes of the provision in which the expression occurs;
- “authorized receiver” means a State corporation authorized to receive wheat on behalf of the Board under section 10 or under a corresponding provision of a State Act;
- “Board” means the Australian Wheat Board continued in existence by this Act;
- “Chairperson” means the Chairperson of the Board;
- “currency contract” means a contract with respect to currency futures or a forward exchange contract;
- “financial market” means a market, exchange or other place at which currency contracts or futures contracts are regularly made or traded;
- “futures contract” means a contract with respect to financial futures, corn futures or wheat futures (including such a contract relating to corn harvested outside Australia or overseas wheat);
- “guaranteed minimum price”, in relation to wheat of a category, means the guaranteed minimum price for wheat of that category determined by the Minister under section 15;
- “member” means a member of the Board;
- “net pool return” means a net pool return determined by the Minister under section 16;
- “net pool return rate” means a net pool return rate determined by the Minister under section 17;
- “officer of the Board” means an officer of the Board appointed under section 45;
- “overseas wheat” means wheat harvested outside Australia;
- “preliminary guaranteed minimum price”, in relation to wheat of a category, means the preliminary estimate of the guaranteed minimum price for wheat of that category made by the Minister under sub-section 26 (3);
- “season” means the period of 12 months commencing on 1 July 1984 and each of the next 6 succeeding periods of 12 months;
- “security” includes a bond, debenture, bill of exchange, promissory note or unsecured note or any similar instrument or document;
- “State Act” means a State Act relating to the marketing of wheat and includes regulations or other instruments made under, or by virtue of, that Act;
- “State Board” means—
- (a) in relation to a State other than Western Australia—a Board or Committee established (whether before or after the

commencement of this Act) by a law of the State to perform functions in relation to wheat and having power (whether conferred specifically or otherwise) to act as agent of the Australian Wheat Board; or

- (b) in relation to Western Australia—the Western Australian Wheat Board;

“State corporation” means any of the following bodies corporate:

- (a) the Grain Handling Authority of New South Wales constituted under the *Grain Handling Act*, 1954 of New South Wales;
- (b) the Grain Elevators Board incorporated by the *Grain Elevators Act 1934* of Victoria and constituted under the *Grain Elevators Act 1958* of that State;
- (c) the State Wheat Board constituted under the *Wheat Pool Act 1920-1983* of Queensland;
- (d) Co-operative Bulk Handling Limited incorporated and deemed to be registered under the *Companies Co-operative Act*, 1943-1976 of Western Australia;
- (e) South Australian Co-operative Bulk Handling, Limited incorporated and registered under the *Companies (South Australia) Code* of South Australia;
- (f) the Tasmanian Grain Elevators Board constituted under the *Grain Reserve Act 1950* of Tasmania;

“Territory” means an internal Territory;

“wheat” does not include—

- (a) wheat harvested after 30 June 1991; or
- (b) overseas wheat;

“wheat products” means a substance (other than bran or pollard) produced by the gristing, crushing, grinding, milling or other processing of wheat, and includes—

- (a) any of the following products made from wheat, namely, flour, semolina, sharps, wheatmeal, starch, gluten, rice substitutes and breakfast foods;
- (b) except as otherwise provided by the regulations, any of the following products, namely, biscuits, cake mixes, pet foods, poultry foods and stock foods; and
- (c) any other commodity that is produced mainly from wheat products or from wheat;

“Wheat Tax Acts” means the *Wheat Tax Act 1957* and the *Wheat Tax Act 1979*;

“Wheat Tax (Permit) Acts” means the *Wheat Tax (Permit) Act 1984* and the *Wheat Tax (Permit) Collection Act 1984*.

(2) A reference in this Act to dealing with a security shall be read as a reference to anything done in relation to a security under sub-section 46 (1).

(3) In this Act—

(a) a reference to wheat of a category is a reference to—

- (i) Australian standard white wheat; or
- (ii) wheat of a prescribed category; and

(b) a reference to wheat of a prescribed category is a reference to wheat of a category determined by the Board.

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(4) A reference in this Act to wheat acquired by the Board under an Act (whether this Act or a State Act) shall be read as a reference to wheat of a season that, after 30 June 1984, has become the property of the Board by force of that Act or of an Act repealed by that Act.

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(5) A reference in this Act to wheat of a season shall be read as a reference to wheat harvested during that season.

(6) In this Act, unless the contrary intention appears, a reference to a final advance payment under section 26 in respect of any wheat is a reference to the final advance payment under that section in respect of that wheat before any reduction or increase is made under sub-section 26 (9) or (12).

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PART II—AUSTRALIAN WHEAT BOARD

Australian Wheat Board

4. (1) The Australian Wheat Board that was, immediately before the commencement of this Act, in existence by virtue of the *Wheat Marketing Act 1979* is continued in existence.

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(2) The Board is a body corporate with perpetual succession and a common seal, and may acquire, hold and dispose of real and personal property and is capable of suing and being sued in its corporate name.

(3) All courts, judges and persons acting judicially—

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(a) shall take judicial notice of the imprint of the common seal of the Board appearing on a document and shall presume that the document was duly sealed; and

(b) shall take judicial notice of the signature of a person who is or has been the Chairperson and of the fact that the person is or was the Chairperson.

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(4) The exercise or performance of a power or function by the Board is not invalidated by reason only of a vacancy or vacancies in the membership of the Board.

(5) A notice, authority, communication or instrument given or made by the Board is sufficiently authenticated if signed by the Chairperson on behalf of the Board, and a notice, authority, communication or instrument so signed shall, in the absence of proof to the contrary, be deemed to have been given or made with the authority of the Board.

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Objects, functions and powers of Board

5. (1) The Board shall perform its functions with the objects of securing, developing and maintaining markets for wheat and maximizing the return to growers from the marketing of wheat.

(2) The functions of the Board are—

- (a) to control the interstate marketing of wheat;
- (b) to control the marketing of wheat in the Territories;
- (c) to control the export of wheat from Australia;
- (d) to control the overseas marketing of wheat;
- (e) in appropriate circumstances, to import overseas wheat into Australia and to market such wheat;
- (f) to encourage and promote the use and sale of wheat both in Australia and overseas;
- (g) to co-operate, consult and enter into agreements with, and make recommendations to, authorized receivers with respect to services provided by them and other matters relating to the marketing of wheat;
- (h) to determine, after consultation with the authorized receivers, standards for the classification of wheat delivered to the Board and, having regard to those standards, to determine categories of wheat containing one or more classes and grades of wheat;
- (j) to determine, after consultation with the authorized receivers, standards for the condition and quality of wheat delivered by authorized receivers to purchasers;
- (k) to promote, fund, and arrange for the conduct of, research into matters relating to the marketing of wheat;
- (m) to provide advice and make recommendations to the Minister and the appropriate Ministers of the States with respect to matters relating to the marketing of wheat; and
- (n) to perform any other function conferred on the Board by this Act or the regulations or by any other Act and, subject to any direction by the Minister under sub-section 58 (2), any function conferred on the Board by a State Act.

(3) The Board has power to do all things that are necessary or convenient to be done for or in connection with, or that are incidental to, the performance of its functions.

(4) Without limiting the generality of sub-section (3), the Board may—

- (a) purchase wheat;
- (b) accept the delivery of wheat to it;
- (c) sell or dispose of, or make arrangements for the sale or disposal of, wheat;

- (d) require, in circumstances where the Board considers it appropriate, a purchaser of wheat from the Board to give the Board a guarantee or other security for the payment of the purchase price of the wheat;
 - (e) enter into an arrangement under which, in consideration of goods supplied, or to be supplied, by a purchaser of wheat from the Board, a third party makes payments to the Board for or in respect of the wheat;
 - (f) enter into an arrangement under which, if the Board so requests, a third party provides to a purchaser of wheat from the Board finance for the purchase of the wheat;
 - (g) enter into agreements with respect to the carriage of wheat by rail;
 - (h) enter into contracts with respect to, or charter vessels for, the carriage, by sea, of wheat (including overseas wheat) and other grains and commodities acquired by the Board;
 - (j) arrange for, or establish, maintain and operate facilities for, the handling and storage outside Australia of wheat (including overseas wheat); and
 - (k) charge such fees as are fair and proper for the provision of services by the Board or the use by other persons of the facilities of the Board when not required by the Board.
- (5) Except with the approval of the Minister, the Board shall not enter into a contract (not being a currency contract or futures contract) or agreement in connection with the purchase of real or personal property (not being grain, including grain harvested outside Australia, or an interest in a vessel) for an amount exceeding \$500,000.
- (6) The Board may, on behalf of the Australian Development Assistance Bureau, purchase, or arrange for the purchase of, overseas wheat or arrange for the delivery of overseas wheat to countries to which the Bureau has agreed to provide wheat.
- (7) The Board may keep its accounts and records in respect of costs and revenues relating to wheat in such manner as will, in its judgment, attribute those costs and revenues to wheat of different seasons in an equitable manner, and costs and revenues so attributed to wheat of a season shall be deemed to relate to wheat of that season.
- (8) Where—
- (a) an authority established by a law of a State engaged in the marketing of grain other than wheat requests the Board to export any such grain on its behalf; or
 - (b) a co-operative or body corporate engaged in a State in the marketing of grain other than wheat requests the Board to export any such grain on its behalf and no authority established by a law of the State is engaged in the marketing of such grain,
- the Board may export the grain on behalf of the authority, co-operative or body corporate, as the case may be.

(9) The Board may enter into a contract for the export sale or sale for export by the Board of wheat together with any other grain where—

(a) the Board enters into the contract as a result of—

- (i) an offer made by the purchaser under the contract to purchase wheat and other grain from a single supplier; or
- (ii) an invitation made by the purchaser under the contract to single suppliers to tender for the supply of wheat and other grain; and

(b) either—

- (i) the Board has not purchased any of that other grain from a grower; or
- (ii) the Board sells that other grain on behalf of—
 - (A) an authority established by or under a law of a State engaged in the marketing of such grain; or
 - (B) a co-operative or body corporate that is engaged in the marketing of such grain on behalf of growers in a State, or in a region of a State, where no authority established by or under a law of the State is engaged in the marketing of such grain in the State, or in that region of the State, as the case may be.

(10) Where the Board exports or sells grain on behalf of an authority, co-operative or body corporate under sub-section (8) or under a contract referred to in sub-section (9), the Board may—

- (a) accept payment from that authority, co-operative or body corporate, as the case may be, of such amounts as are mutually agreed upon as remuneration for the services of the Board, for facilities made available by the Board and for expenses incurred by the Board, in connection with the export or sale of the grain; and
- (b) use any money paid to the Board under paragraph (a) as remuneration for services and facilities made available, and for expenses incurred, by the Board during a season to offset the costs incurred by the Board in relation to wheat of that season.

(11) In sub-section (7), “season” includes any period that is a season for the purposes of an Act repealed by this Act.

Currency contracts and futures contracts

6. (1) Subject to sub-section (3), the Board may, in relation to—

- (a) a sale or proposed sale of wheat by the Board; or
- (b) a borrowing or raising of moneys by the Board or a proposed borrowing or raising of moneys by the Board (including a borrowing or raising of moneys by the Board by dealing with securities),

enter into and deal with currency contracts or futures contracts for hedging purposes at a financial market (whether at a place in or outside Australia).

(2) The Minister may, by determination in writing—

- (a) set guidelines for the purpose of the exercise by the Board of its power under sub-section (1); and
- (b) revoke or vary guidelines set for that purpose or set new guidelines for that purpose,

and shall give to the Board a copy of each determination made under this sub-section.

(3) The Board shall not enter into or deal with currency contracts or futures contracts otherwise than in accordance with the guidelines having effect from time to time under sub-section (2).

(4) A currency contract or futures contract shall be taken to be entered into or dealt with for hedging purposes if, and only if—

- (a) in the case of a contract with respect to corn futures or wheat futures—the contract is entered into or dealt with for the purpose of minimizing the risks of adverse variations in the price obtainable for wheat under a contract for the sale of wheat that has been, or is to be, entered into by the Board; and
- (b) in the case of a currency contract or a contract with respect to financial futures—the contract is entered into or dealt with for the purpose referred to in paragraph (a) or for the purpose of minimizing the risks of adverse variations in the costs of a borrowing or raising of moneys by the Board or a proposed borrowing or raising of moneys by the Board (including a borrowing or raising of moneys by dealing with securities).

Reserves

7. (1) The Board may, in accordance with the accounting principles generally applied in commercial practice, establish and maintain reserve accounts for the purpose of facilitating the future performance of its functions.

(2) Without limiting the generality of sub-section (1), the Board may deduct amounts from the proceeds of the disposal of wheat acquired by the Board under this Act or a State Act and pay the amounts so deducted into an account established pursuant to sub-section (1).

(3) If moneys standing to the credit of an account established pursuant to sub-section (1) are no longer required for the purposes for which the account was established, the Board shall apply those moneys for the benefit of the wheat industry in such manner as is approved by the Minister.

Transfer of wheat to another season

8. (1) Subject to sub-section (3), where, after the end of a season (in this section referred to as the “first season”), the Board has in its possession any unsold wheat, being wheat of that season that became at any time the property of the Board under an Act (whether this Act, a State Act or an Act repealed by this Act or a State Act), the Board may transfer some or all of that wheat to another season (in this section referred to as the “second season”) that has ended (whether before or after the end of the first season) and, where the

Board so transfers any wheat, that wheat shall be deemed to be wheat of the second season and not wheat of the first season.

(2) Subject to sub-section (3), the Board may attribute to wheat transferred from the first season to the second season under sub-section (1) such price as the Board considers appropriate.

(3) The Board shall not transfer a quantity of wheat from the first season to the second season at a particular price if the transfer of that quantity of wheat at that price would result in—

(a) an amount becoming payable to the Board under section 49 of the *Wheat Marketing Act 1979* or section 49 of this Act in respect of the first season or the second season; or

(b) an amount becoming payable to the Board under that section in respect of the first season or the second season that is greater than the amount that would have become so payable if that quantity of wheat had not been transferred at that price.

(4) Where wheat is transferred from the first season to the second season under sub-section (1)—

(a) the net pool return for wheat of the first season shall be taken to be increased by an amount equal to the total price attributed by the Board to the wheat so transferred;

(b) the net pool return for wheat of the second season shall be taken to be reduced by an amount equal to that total price;

(c) for the purposes of calculating the net pool return rate for the first season, the net pool return for wheat of that season shall be divided by a number of tonnes of wheat that includes the number of tonnes of wheat so transferred; and

(d) for the purposes of calculating the net pool return rate for the second season, the net pool return for wheat of that season shall be divided by a number of tonnes of wheat that does not include the number of tonnes of wheat so transferred.

(5) In this section—

“net pool return” and “net pool return rate” include a net pool return and net pool return rate as defined in sub-section 4 (1) of the *Wheat Marketing Act 1979*;

“season” includes a period that is a season for the purposes of an Act repealed by this Act.

Importation and sale by Board of overseas wheat

9. (1) The Board may—

(a) import overseas wheat into Australia;

(b) sell or dispose of, or make arrangements for the sale or disposal of, overseas wheat imported into Australia by the Board; and

- (c) manage and control all matters connected with, or arising out of, the handling, storage, protection, treatment, transfer, shipment or sale of overseas wheat imported into Australia by the Board.

(2) The price at which the Board, at a particular time, sells overseas wheat that has been imported into Australia by the Board for human consumption in Australia, for a stockfeed use in Australia or for an industrial use in Australia shall not be less than the price that would be applicable in respect of the sale of that overseas wheat for that use at that time in accordance with the provisions of section 32 (other than sub-section 32 (8)) if that overseas wheat were wheat harvested in Australia. 5 10

Authorized receivers

10. (1) Each State corporation is authorized to receive wheat on behalf of the Board.

(2) An authorized receiver may carry on operations as such a receiver by means of, and on the premises of, an agent of the authorized receiver, being such an agent approved by the Board. 15

(3) An authorized receiver shall comply with any standards referred to in paragraph 5 (2) (h) or (j).

Directions by Minister

11. The Minister may give directions in writing to the Board concerning the performance of its functions and the exercise of its powers, and the Board shall comply with those directions. 20

Board may establish consultative groups

12. (1) The Board may establish consultative groups of persons for the purpose of considering, and advising the Board on, any matter relating to the performance of the functions of the Board (whether conferred by this Act or by a State Act) that is referred to them by the Board, and may appoint in writing the members of such groups. 25

(2) The Minister may determine the terms and conditions of appointment, including remuneration and allowances, of a member of a consultative group. 30

Consultations with Australian Wheatgrowers' Federation

13. The Board shall, from time to time, consult with the Australian Wheatgrowers' Federation with respect to the performance by the Board of its functions (whether conferred by this Act or a State Act).

PART III—MARKETING OF WHEAT

Division 1—Guaranteed minimum price and net pool return

Interpretation

14. In this Division, a reference to wheat acquired by the Board shall be read as a reference to wheat acquired by the Board under this Act or a State Act.

Guaranteed minimum price

15. (1) The Minister shall, before 1 March of each season, by notice published in the *Gazette*, determine the guaranteed minimum price for wheat of each category of that season acquired by the Board.

(2) The guaranteed minimum price per tonne for Australian standard white wheat of a season (in this sub-section referred to as the “current season”) acquired by the Board is the higher of the 2 following amounts or, if those amounts are the same, that amount:

- (a) an amount equal to 90% of the preliminary guaranteed minimum price for that wheat;
- (b) the amount obtained by—
 - (i) calculating the gross return per tonne for Australian standard white wheat of each of the following 3 seasons acquired by the Board:
 - (A) the current season;
 - (B) whichever of the 3 preceding seasons had the lowest gross return per tonne;
 - (C) whichever of the 3 preceding seasons had the second lowest gross return per tonne;
 - (ii) taking the average of the 3 amounts calculated in accordance with sub-paragraph (i);
 - (iii) deducting from the amount calculated in accordance with sub-paragraph (ii) the amount obtained by—
 - (A) taking the aggregate of the amounts referred to in paragraph 16 (1) (b) in relation to the current season calculated in the same manner as they would be calculated for the purposes of determining the net pool return for that season; and
 - (B) dividing that aggregate by the number of tonnes of all wheat of the current season acquired by the Board; and
 - (iv) taking 95% of the amount calculated in accordance with sub-paragraph (iii).

(3) The guaranteed minimum price per tonne for wheat of a prescribed category of a season acquired by the Board is the higher of the 2 following amounts or, if those amounts are the same, that amount:

- (a) an amount equal to 90% of the preliminary guaranteed minimum price for that wheat; 5
- (b) the amount obtained by calculating the gross return per tonne for that wheat and—
 - (i) where that gross return exceeds the notional gross return per tonne for that wheat—by adding the amount of the difference between those returns to the guaranteed minimum price per tonne for Australian standard white wheat of that season acquired by the Board; or 10
 - (ii) where that gross return does not exceed the notional gross return per tonne for that wheat—by deducting the amount of the difference (if any) between those returns from the guaranteed minimum price per tonne for Australian standard white wheat of that season acquired by the Board. 15

(4) A reference in sub-section (3) to the notional gross return per tonne for wheat of a prescribed category of a season is a reference to the gross return per tonne for that wheat that would, in the opinion of the Minister, be received by the Board from the disposal of that wheat if that wheat were Australian standard white wheat sold at the same times and in the same quantities as that wheat has been, or is likely to be, sold. 20

(5) For the purposes of determining the guaranteed minimum price for wheat of each category of a season, the Minister may make any necessary estimates having regard to any advice or information given to the Minister by the Board or the Bureau of Agricultural Economics. 25

(6) In this section—

“preceding season” includes a period that is a season for the purposes of an Act repealed by this Act; 30

“season” does not include the season that commences on 1 July 1989 or the next succeeding season.

Net pool return

16. (1) For the purposes of this Act, the Minister shall determine the net pool return for wheat of a season acquired by the Board by— 35

- (a) taking the aggregate of the following amounts:
 - (i) the gross return from the disposal by the Board of all Australian standard white wheat of that season acquired by the Board;
 - (ii) an amount equal to the gross return that the Board would have received from the disposal of all wheat, other than Australian standard white wheat, of that season acquired and disposed of by the Board if that wheat had been Australian standard white wheat at the time when it was disposed of; and 40

(b) deducting from that aggregate the aggregate of the following amounts:

(i) the costs incurred by the Board to the extent that they relate wholly to wheat of that season or may be reasonably allocated to such wheat;

(ii) an amount determined by the Board having regard to the extent to which freight charges per tonne in respect of the export of wheat of that season from Western Australia to places outside Australia are, or in the opinion of the Board are likely to be, lower than freight charges per tonne in respect of the export of wheat of that season from other places in Australia to places outside Australia.

(2) In determining the net pool return for wheat of a season—

(a) moneys received by the Board under a policy of insurance in respect of wheat of that season, or in respect of a transaction in relation to any such wheat, shall be deemed to be proceeds of the disposal of that wheat;

(b) each of the following amounts shall be taken to be costs incurred by the Board in relation to that season:

(i) allowances as finally ascertained by the Board for the matter referred to in sub-paragraph 26 (6) (b) (iii) or the corresponding provision of a State Act in respect of wheat of that season;

(ii) any amount payable to the Board by a person under sub-section 28 (5) or the corresponding provision of a State Act that should, in the opinion of the Board, having regard to whether or not that amount may reasonably be recovered by action taken under sub-section 28 (6) or (7) or a corresponding provision of a State Act, be written off by the Board as a bad debt in relation to that season;

(c) moneys paid into a reserve account under section 7 shall not be taken to be costs incurred by the Board; and

(d) no account shall be taken of the following:

(i) if the Board has entered into or dealt with a currency contract or futures contract in relation to that season otherwise than in accordance with guidelines having effect under sub-section 6 (2)—the result of that contract or dealing;

(ii) amounts taken into account under sub-section 26 (9) or the corresponding provision of a State Act representing the amounts by which the price received by the Board under a contract of sale of wheat entered into under section 23 or the corresponding provision of a State Act differs from the price that would be the appropriate price if the wheat were Australian standard white wheat sold under a contract of sale to which section 32 or the corresponding provision of a State Act applied;

- (iii) allowances (other than the allowances referred to in sub-paragraph (b) (i)) as finally ascertained by the Board for the matters referred to in sub-sections 26 (6) and (7) or in the corresponding provisions of a State Act;
- (iv) moneys to which section 33, or a corresponding provision of a State Act, applies or of costs of the Board payable out of those moneys. 5

Net pool return rate

17. For the purposes of this Act, the Minister shall, by notice published in the *Gazette*, determine the net pool return rate for wheat of a season acquired by the Board by dividing the net pool return for wheat of that season by the number of tonnes of that wheat acquired by the Board. 10

Division 2—Delivery of, and dealings with, wheat

Delivery of wheat in a Territory to Board

18. (1) Subject to this Act, a person who is in possession of wheat of a season, other than exempt wheat, in a Territory shall deliver that wheat to the Board before the expiration of the season. 15

(2) Upon the delivery of wheat to the Board in accordance with this section, the wheat becomes the absolute property of the Board, freed from all mortgages, charges, liens, pledges, interests and trusts. 20

(3) A person who—

- (a) fails to comply with sub-section (1); or
- (b) delivers to the Board wheat that has previously been sold by the Board, is guilty of an offence punishable, on conviction, by a fine not exceeding—
- (c) in the case of a person not being a body corporate—\$10,000; or 25
- (d) in the case of a body corporate—\$50,000.

(4) In this section, “exempt wheat” means—

- (a) wheat retained by the grower for use on the farm where it was grown;
- (b) wheat in respect of which a permit has been issued under section 21 or the corresponding provision of a State Act; 30
- (c) wheat purchased under a permit under section 22 or the corresponding provision of a State Act; or
- (d) wheat that has been sold by the Board.

Delivery to authorized receiver

19. (1) Delivery of wheat to the Board may be made by delivering the wheat to an authorized receiver and not otherwise, and the delivery is not effective unless and until the delivery is accepted by the authorized receiver. 35

(2) A person who delivers wheat to an authorized receiver shall, at the time of the delivery of the wheat, furnish to the authorized receiver a declaration in

writing signed by the person stating, in the opinion of the person, the variety of the wheat so delivered.

Penalty: \$1,000.

(3) A person who delivers wheat to an authorized receiver shall, not later than the time of the delivery of the wheat, furnish to the authorized receiver a statement in writing signed by the person of the names and addresses of all persons known by the person to have, or to claim, an interest in the wheat or the payment to be made for the wheat, and of all particulars known to the person of those interests.

Penalty: \$1,000.

(4) A statement may be furnished by a person under sub-section (3) with respect to more than one delivery, or with respect to all deliveries, of wheat to be made by the person to an authorized receiver within such period as is specified in the statement.

(5) Nothing in this Act shall be taken to affect the operation of a provision of a law of a State with respect to the acceptance, or refusal of acceptance, by an authorized receiver of the delivery of wheat.

Act not to apply to certain wheat

20. (1) A person who has possession in a Territory of—

- (a) seed wheat; or
- (b) wheat that satisfies none of the standards determined by the Board for the classification of wheat delivered to it,

may, by notice served on the Board, notify the Board accordingly.

(2) Where, on receipt by the Board of a notice by a person under sub-section (1), an authorized person is satisfied—

- (a) in the case of wheat stated by the notice to be seed wheat—that the wheat will be used as seed wheat; or
- (b) in any other case—that the wheat is wheat to which paragraph (1) (b) applies,

the authorized person may, on behalf of the Board, issue to the first-mentioned person a declaration that this Act (other than sub-section 25 (2)) does not apply to that wheat.

(3) A declaration under sub-section (2) shall be in writing and shall specify—

- (a) the name and address of the person to whom the declaration is issued;
- (b) whether the wheat to which the declaration applies is seed wheat or wheat to which paragraph (1) (b) applies;
- (c) the quantity of the wheat;
- (d) the address of the place where the wheat is when the declaration is issued;
- (e) the date of the issue of the declaration; and
- (f) such other particulars (if any) as the Board specifies from time to time.

Permits for movement of wheat

21. (1) A person who has possession of wheat in a Territory on a farm may, by notice served on the Board, notify the Board that the person wishes to deliver the wheat to a miller for gristing with the object of having the produce of the gristing returned to the farm for use on the farm. 5

(2) On receipt by the Board of a notice by a person under sub-section (1), an authorized person may, on behalf of the Board, issue to the person a permit for the movement of the wheat from the farm to the mill and the movement of the produce of the gristing from the mill to the farm.

(3) A person who has possession of wheat in a Territory on the farm on which the wheat was grown may, by notice served on the Board, notify the Board that the person wishes— 10

(a) to move the wheat from that farm to an associated farm; or

(b) where the owner of that farm owns stock that are being agisted on another farm—to move the wheat from that farm to the other farm for the purpose of feeding those stock. 15

(4) On receipt by the Board of a notice by a person under sub-section (3) in relation to the movement of wheat between 2 farms, an authorized person may, on behalf of the Board, if the authorized person is satisfied that—

(a) the proposed movement of the wheat would not detrimentally affect the orderly marketing of wheat by the Board; and 20

(b) the proposed movement of the wheat is of a kind described in paragraph (3) (a) or (b),

issue to the first-mentioned person a permit for the movement of the wheat between those farms. 25

(5) A permit under this section shall be in writing and shall specify—

(a) the name and address of the person to whom the permit is issued;

(b) the quantity of the wheat to which the permit applies;

(c) the date of the issue of the permit;

(d) in the case of a permit issued under sub-section (2)— 30

(i) the address of the farm where the wheat is at the time of the issue of the permit; and

(ii) the address of the miller who is to grist the wheat;

(e) in the case of a permit issued under sub-section (4)—

(i) the address of the farm where the wheat is at the time of the issue of the permit; and 35

(ii) the address of the farm to which the wheat is to be moved; and

(f) such other particulars (if any) as the Board specifies from time to time.

(6) For the purposes of this section, 2 farms shall be deemed to be associated farms if— 40

(a) they are owned, operated or controlled by the same person or the same partnership;

- (b) each of them is owned, operated or controlled by a partnership and the 2 partnerships have at least one common partner;
- (c) one of them is owned, operated or controlled by a person and the other is owned, operated or controlled by a partnership of which that person is a member; or
- (d) they are, in some other manner, so associated with the same person that the Board is of the opinion that they should be treated as associated farms for the purposes of this section.

Permits for purchase of wheat for stockfeed use

22. (1) The Board may, on application made to it by a prescribed person and on payment of the prescribed fee, issue to the person a permit authorizing the person to make, during a season, purchases of wheat from growers for a stockfeed use.

(2) An application under sub-section (1) shall be in accordance with a form approved by the Board.

(3) A person to whom a permit has been issued under this section shall, not later than the expiration of the month immediately succeeding a month in which wheat was purchased under the permit, by notice in accordance with a form approved by the Board served on the Board, notify the Board, with respect to each such purchase during the last-mentioned month, of—

- (a) the name and address of the person from whom the wheat was purchased;
- (b) the date of the purchase;
- (c) the quantity of wheat so purchased; and
- (d) any other matter required to be specified by the notice.

(4) A permit under this section shall be in writing and shall specify—

- (a) the name and address of the person to whom the permit is issued;
- (b) the date of the issue of the permit;
- (c) the season during which purchases authorized by the permit may be made;
- (d) the total quantity of wheat authorized by the permit to be purchased; and
- (e) such other particulars (if any) as the Board specifies from time to time.

(5) The Minister may, by determination in writing—

- (a) set guidelines for the purpose of the exercise by the Board of its power to issue permits under this section; and
- (b) revoke or vary guidelines set for that purpose or set new guidelines for that purpose,

and shall give to the Board a copy of each determination made under this sub-section.

(6) The Board shall not issue a permit under this section otherwise than in accordance with the guidelines having effect from time to time under sub-section (5).

(7) This section has effect subject to the Wheat Tax (Permits) Acts.

(8) In this section, "prescribed person" means a person who—

(a) is ordinarily resident in a Territory;

(b) carries on business in a Territory; or

(c) if the person is a body corporate—is incorporated under a law in force in a Territory.

Contracts for sale of wheat entered into on behalf of Board

23. (1) Where a person (in this section referred to as the "offeror") offers to purchase for use in Australia wheat that is in the possession of another person (in this section referred to as the "grower") in a Territory, the grower may, by notice served on the Board, notify the Board accordingly.

(2) Sub-section (1) does not apply in relation to the proposed purchase of wheat for a stockfeed use that is authorized by a permit in force under section 22.

(3) A notice under sub-section (1) shall be in accordance with a form approved by the Board and shall specify—

(a) the name and address of the grower;

(b) the name and address of the offeror;

(c) the quantity of wheat to which the offer made by the offeror relates;

(d) that the wheat is proposed to be purchased for human consumption, for a stockfeed use or for an industrial use, whichever is applicable;

(e) the terms and conditions of the offer made by the offeror; and

(f) such other information as is required to be specified by the notice.

(4) Where, on the receipt by the Board of a notice under sub-section (1), an authorized person is satisfied that acceptance of the proposed offer would not detrimentally affect the orderly marketing of wheat by the Board, the authorized person may authorize the grower, in writing, to accept the offer on behalf of the Board.

(5) On the receipt by the grower of an authorization under sub-section (4), the grower shall set aside wheat for sale in accordance with that authorization and, thereupon, the wheat so set aside becomes the absolute property of the Board, freed from all mortgages, charges, liens, pledges, interests and trusts.

(6) A contract for the sale of wheat entered into by the grower, on behalf of the Board, under an authorization given under sub-section (4) shall provide that the price for the wheat shall be paid directly to the Board.

(7) A contract for the sale of wheat under this section shall not be entered into in a season other than a season in relation to which section 32 operates.

Unauthorized dealings with wheat

24. (1) Except for the purpose of compliance with section 18 or in accordance with a permit under section 21 or 22 or an authority under section 23 or with the consent in writing of the Board—

- (a) a person shall not sell or deliver to a person or transfer to a person the possession of, or take possession of, or grist or otherwise process, or mix with any other grain or substance, wheat in a Territory, other than wheat that has been sold by the Board;
- (b) a person shall not move wheat in a Territory, or cause or permit wheat in a Territory to be moved, from the farm where the wheat was grown or from the farm or other place to which the wheat has been moved in accordance with a permit under section 21;
- (c) where a person has purchased wheat under a permit under section 22—the person shall not use the wheat for a use other than a stockfeed use; and
- (d) where wheat has been sold by the Board under a contract of sale entered into in a Territory, being a contract that specifies a purpose for which the wheat is to be used—the purchaser under the contract shall not use the wheat for any other purpose.

(2) A person who contravenes sub-section (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a person not being a body corporate—\$10,000; or
- (b) in the case of a body corporate—\$50,000.

(3) Paragraph (1) (a) does not prohibit the use of wheat on the farm on which the wheat was grown.

Export of wheat and certain wheat products

25. (1) A person shall not export—

- (a) wheat sold under a permit under section 22; or
- (b) wheat products containing any wheat sold under a permit under section 22.

(2) Except with the consent in writing of the Board, a person shall not export wheat (not being wheat referred to in paragraph (1) (a)).

(3) The prohibitions of export contained in sub-sections (1) and (2) are in addition to, and not in substitution for, any prohibition contained in regulations (whether made before or after the commencement of this Act) in force under the *Customs Act 1901* or the *Export Control Act 1982*.

(4) A person who contravenes sub-section (1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a person not being a body corporate—\$10,000; or
- (b) in the case of a body corporate—\$50,000.

Division 3—Payments for wheat**Advance payments for wheat of season other than last 2 seasons**

26. (1) The Board shall make an interim advance payment determined by the Board in accordance with sub-section (2) in respect of wheat of each category of a season acquired before 1 March of that season by the Board under this Act if, at the time when the wheat is so acquired, the guaranteed minimum price for wheat of that category of that season has not been determined. 5

(2) The amount of an interim advance payment under sub-section (1) in respect of wheat of a particular category of a season is an amount calculated at 90% of the preliminary guaranteed minimum price for wheat of that category of that season increased or decreased, as the case may be, by such allowances as the Board considers proper for the matters set out in sub-section (6). 10

(3) For the purposes of sub-section (2), the Minister shall—

(a) in relation to the season commencing on 1 July 1984—as soon as practicable after the commencement of this Act; or 15

(b) in relation to every other season—before 1 October of that season, having regard to any advice or information furnished to the Minister by the Board or the Bureau of Agricultural Economics, make a preliminary estimate of the guaranteed minimum price for wheat of each category of that season.

(4) The Board shall make a final advance payment determined by the Board in accordance with sub-section (5) in respect of wheat of each category of a season acquired by the Board under this Act as soon as practicable after the guaranteed minimum price for that wheat has been determined. 20

(5) The amount of a final advance payment under sub-section (4) in respect of wheat of a particular category of a season is an amount calculated at the guaranteed minimum price for Australian standard white wheat of that season increased or decreased, as the case may be, by such allowances as the Board considers proper for the matters set out in sub-sections (6) and (7). 25

(6) The following matters are matters for which allowances referred to in sub-section (2) or (5) in respect of wheat of a particular category of a season may be calculated: 30

(a) where the wheat is wheat of a prescribed class of that category—the characteristics of the variety or varieties of wheat included in that class and—

(i) where the wheat was delivered to the Board—the place at which the wheat was so delivered; or 35

(ii) in any other case—the place at which, if the wheat had been delivered to the Board, it would, in the opinion of the Board, have been so delivered;

(b) where the wheat was delivered to the Board— 40

(i) charges by the Board in respect of costs of the transport of the wheat to a terminal port from the place at which the wheat was so delivered;

(ii) charges by the Board in respect of so much of the cost to the Board of remuneration payable under an agreement in force between the Board and the authorized receiver to whom the wheat was so delivered as is applicable to the wheat; and

(iii) the time of delivery of the wheat;

(c) where the wheat was not delivered to the Board —

(i) charges that the Board would have made if the wheat had been delivered to the Board in respect of the cost of the transport of the wheat from the place at which, in the opinion of the Board, the wheat would have been so delivered to the appropriate terminal port in relation to that place; and

(ii) charges by the Board in respect of so much of the cost to the Board of that proportion of the remuneration payable by the Board to the authorized receiver at the place referred to in sub-paragraph (i) that is specified in a notice from the authorized receiver to the Board under the relevant provision of the State Act as would be applicable to the wheat if the wheat had been delivered to the authorized receiver at that place;

(d) other necessary adjustments.

(7) An additional matter for which allowances referred to in sub-section (5) in respect of wheat of a particular category of a season may be calculated is the quality of the wheat.

(8) The power of the Board to determine allowances referred to in sub-section (2) or (5) includes a power to determine allowances with respect to some only of the matters set out in sub-sections (6) and (7) and to determine different allowances with respect to different grades or different prescribed classes of any category of wheat.

(9) Where the price received by the Board under a contract of sale of wheat entered into under section 23 differs from the price that would be the appropriate price for the wheat if the wheat were Australian standard white wheat sold under a contract of sale to which section 32 applied, the amount of an advance payment that would, but for this sub-section, be payable under sub-section (1) or (4) in respect of that wheat shall—

(a) where the first-mentioned price is less than the second-mentioned price—be reduced by the amount of the difference between the 2 prices; or

(b) where the first-mentioned price exceeds the second-mentioned price—be increased by the amount of the difference between the 2 prices.

(10) The Board may make advances to a person on account of interim advance payments under sub-section (1) in respect of wheat of each category of a season.

(11) An interim advance payment under sub-section (1) in respect of wheat shall be reduced by an amount equal to the aggregate of—

- (a) the amount of any advance under sub-section (10); and
- (b) the amount of any advance payment made by the Board under an Act repealed by this Act,

in respect of that wheat.

(12) A final advance payment under sub-section (4) in respect of wheat shall be reduced by the amount of any interim advance payment under sub-section (1) in respect of that wheat.

(13) An advance payment in respect of wheat of a category of a season under sub-section (1) or (4)—

- (a) may be paid as a lump sum on, or as soon as practicable after, delivery of the wheat to the Board; or
- (b) if the Board and the person to whom the payment is to be made agree, may be paid at such later time as is, or may comprise 2 or more payments to be made at such later times as are, determined by agreement between the Board and that person, and shall be paid on such conditions (including conditions relating to the payment to that person of interest on the amount of the advance payment that is from time to time unpaid) as are so determined.

(14) The Board shall not enter into an agreement of a kind referred to in paragraph (13) (b) with a person in relation to an advance payment under this section in respect of wheat of a particular category of a season on conditions that are inequitable as regards other persons who have received, or will receive, such advance payments under this section in respect of wheat of that category of that season.

(15) Where—

- (a) wheat is delivered to the Board at a particular place on a day (in this sub-section referred to as the “delivery day”) within a prescribed period in relation to that place;
- (b) the wheat was available for delivery on the prescribed day in relation to that place; and
- (c) an interim advance payment under sub-section (1) is payable in respect of the wheat,

the Board may, in calculating an allowance for the matter referred to in sub-paragraph (6) (b) (iii), include an amount equal to the amount of interest that the person to whom the interim advance payment is payable would have received if that person—

- (d) had delivered the wheat to the Board on the prescribed day; and
- (e) had, on that day, entered into an agreement under paragraph (13) (b) providing for the payment of the whole of the interim advance payment on the delivery day.

(16) The obligations of the Board under this section in respect of any wheat are subject to the operation of the Wheat Tax Acts.

(17) In this section—

“prescribed class”, in relation to wheat of a particular category, means a class determined by the Board of wheat of that category, being a class so determined by reference to a variety or varieties of wheat, whether or not it is also so determined by reference to another criterion or other criteria;

“prescribed day”, in relation to the delivery of wheat to the Board at a particular place, is the day on which, in the opinion of the Board, wheat would normally become available for delivery at that place;

“prescribed period”, in relation to a particular place, means the period of 12 weeks commencing on the expiration of the period of 2 weeks after the prescribed day in relation to that place;

“season” does not include the season commencing on 1 July 1989 or the next succeeding season.

Final payment for wheat of season other than last 2 seasons

27. (1) Where the net pool return rate for wheat of a season exceeds the guaranteed minimum price for Australian standard white wheat of that season, the Board shall make a final payment of an amount determined in accordance with sub-section (2) for Australian standard white wheat of that season acquired by the Board under this Act.

(2) Subject to sub-section (6), the Board shall determine an amount payable under sub-section (1) in respect of Australian standard white wheat of a season by—

(a) calculating the amount that the final advance payment under section 26 in respect of that wheat would have been if—

(i) the reference in section 26 to the guaranteed minimum price for Australian standard white wheat were a reference to the net pool return rate for wheat of that season;

(ii) the net pool return for that season were reduced by an amount (if any) equal to the amount, or the sum of the amounts, deducted by the Board from the disposal of wheat of that season and paid into a reserve account under section 7; and

(iii) the net pool return for that season were adjusted to take into account the result of any contract or dealing of the kind referred to in sub-paragraph 16 (2) (d) (i) that was entered into or that took place in relation to that season; and

(b) deducting from the amount calculated in accordance with paragraph (a) the amount of the final advance payment under section 26 in respect of that wheat.

(3) For the purpose of determining whether or not to make a final payment for wheat of a prescribed category of a season acquired by the Board under this Act, the Board shall make a calculation in accordance with sub-section (4) in

relation to wheat of that category of that season, and, where the amount per tonne for that wheat calculated in accordance with that sub-section is a positive amount, the Board shall make a final payment per tonne for that wheat of an amount calculated by—

- (a) taking the aggregate of that positive amount and the guaranteed minimum price for wheat of that category of that season; and 5
 - (b) deducting from that aggregate the amount per tonne of the final advance payment under section 26 in respect of that wheat.
- (4) For the purposes of the application of sub-section (3) in relation to wheat of a prescribed category of a season— 10
- (a) the guaranteed minimum price for Australian standard white wheat of that season shall be deducted from the net pool return rate for wheat of that season; and
 - (b) where—
 - (i) the gross return per tonne for wheat of that category of that season does not exceed the gross return per tonne for Australian standard white wheat of that season—the amount per tonne of the final difference in relation to wheat of that category shall be deducted from the amount per tonne of the original difference in relation to wheat of that category and the amount so obtained shall be added to the amount calculated in accordance with paragraph (a); and 20
 - (ii) the gross return per tonne for wheat of that category of that season exceeds the gross return per tonne for Australian standard white wheat of that season—the amount per tonne of the original difference referred to in sub-paragraph (i) shall be deducted from the amount per tonne of the final difference referred to in that sub-paragraph and the amount so obtained shall be added to the amount calculated in accordance with paragraph (a). 25 30
- (5) In sub-section (4)—
- “final difference”, in relation to wheat of a prescribed category, means the difference between—
- (a) the gross return per tonne for wheat of that category; and
 - (b) the gross return per tonne for that wheat that would, in the opinion of the Board, have been received by the Board from the disposal of that wheat if that wheat had been Australian standard white wheat sold at the same times and in the same quantities as that wheat was sold; 35
- “original difference”, in relation to wheat of a prescribed category, means the difference that was calculated for the purposes of paragraph 15 (3) (b) between the gross return per tonne, and the notional gross return per tonne, for wheat of that category. 40

(6) An amount payable under sub-section (1) or (3) in respect of wheat of a season to a person who has purchased a quantity of wheat of that season (in this sub-section referred to as the "purchased quantity of wheat") from the Board in accordance with sub-section 32 (8) shall be calculated in accordance

5 with the formula $A - \frac{AB}{C}$, where—

10 **A** is the amount that, but for this sub-section, would be the amount required to be paid by the Board to the person under sub-section (1) or (3), as the case requires, in respect of that season;

B is the purchased quantity of wheat; and

C is the total quantity of wheat of that season acquired by the Board from the person under this Act.

15 (7) The Board may make advances on account of final payments under sub-section (1) or (3).

20 (8) For the purposes of calculating the amount referred to in paragraph (2) (a) in respect of Australian standard white wheat, the amount of the final advance payment under section 26 in respect of that wheat shall be increased or decreased, as the case may be, by the same amount of allowances in respect of the matters referred to in sub-sections 26 (6) and (7) as the amount of that final advance payment was increased or decreased.

25 (9) For the purposes of this section, the net pool return rate for wheat of a season shall be calculated as if the net pool return for that season were calculated taking into account the adjustments referred to in sub-paragraphs (2) (a) (ii) and (iii).

(10) In this section, "season" does not include the season commencing on 1 July 1989 or the next succeeding season.

Adjustments for allowances made under section 26

30 **28. (1)** In this section, "adjusted advance payment", in relation to a person who has received a final advance payment under sub-section 26 (4) in respect of a season, means, subject to sub-section (2), the amount that, in the opinion of the Board, would have been the amount of the final advance payment made to that person under that sub-section in respect of that season if the amount of that payment had been calculated at the time when the amount of allowances for the matters referred to in sub-sections 26 (6) and (7) in relation to that person could be finally ascertained.

40 (2) The amount of an adjusted advance payment under this section in respect of wheat sold under a contract entered into by a person under section 23 shall be determined as if the amount of allowances for the matter referred to in sub-section 26 (7) was the same as the amount of allowances for that matter calculated for the purpose of determining the amount of the final advance payment under sub-section 26 (4) in respect of that wheat.

(3) The amount of the adjusted advance payment for a season in relation to a person who has purchased a quantity of wheat of that season from the Board

in accordance with sub-section 32 (8) shall be adjusted by such allowances as the Board considers proper for the quality of wheat of that season acquired by the Board from the person under this Act compared to the quality of the wheat so purchased by the person from the Board, having regard to allowances that were taken into account by the Board in determining the price for the wheat so purchased. 5

(4) Where the adjusted advance payment in relation to a person in respect of a season is greater than the amount of the final advance payment made to that person under sub-section 26 (4) in respect of that season, the Board shall pay to that person an amount equal to the difference between that adjusted advance payment and the amount of that final advance payment. 10

(5) Where the amount of the final advance payment made to a person under sub-section 26 (4) in respect of a season is greater than the adjusted advance payment in relation to the person in respect of that season, the person is liable to pay to the Board an amount equal to the difference between the amount of that final advance payment and that adjusted advance payment. 15

(6) The Board may deduct the whole or a part of an amount payable by a person to the Board under sub-section (5) or the corresponding provision of the *Wheat Marketing Act 1979* from an amount payable by the Board to the person under section 26, 27 or 29 or a corresponding provision of a State Act or of the *Wheat Marketing Act 1979*. 20

(7) An amount payable by a person to the Board under sub-section (5) is a debt due by the person to the Board and may be recovered as a debt due to the Board by action against the person in a court of competent jurisdiction.

(8) The Board may make advances on account of payments under sub-section (4). 25

(9) Where a person has received final advance payments under sub-section 26 (4) in respect of 2 or more categories of wheat of a season, a reference in this section to the amount of the final advance payment received by the person shall be read as a reference to the aggregate of the amounts of those final advance payments. 30

Payment in lieu of payment under section 27

29. (1) A person may, at any time after payment to the person of a final advance payment under section 26 in respect of wheat and before payment of a final payment under section 27 in respect of the wheat, apply to the Board for a payment under this section in respect of the wheat. 35

(2) Where a person to whom a final advance payment under section 26 has been made dies, an application may be made under sub-section (1) by the trustee of the estate of the person.

(3) An application under sub-section (1) shall be in accordance with a form approved by the Board. 40

(4) Subject to this section, the Board shall grant each application under sub-section (1).

(5) The Board shall not grant an application under sub-section (1) in respect of wheat where, in the opinion of the Board, the amount of the final payment under section 27 in respect of that wheat cannot reasonably be estimated or no final payment under that section is likely to be made.

(6) The Board may refuse to grant an application under sub-section (1) in respect of wheat if the Board proposes to make a final payment under section 27 in respect of that wheat within 3 months after the receipt by the Board of the application, but, if at the expiration of that 3 months the Board has not made such a final payment, the Board shall, subject to sub-section (5), grant the application.

(7) A person to whom a payment is made under this section in respect of wheat is not entitled to a final payment under section 27 in respect of that wheat.

(8) The amount of a payment in respect of wheat of a season under this section shall be the amount estimated by the Board of the final payment that would, if the first-mentioned payment were not made, be payable to the person under section 27 reduced by such amount as the Board considers proper having regard to—

- (a) the cost to the Board of borrowing moneys for the purpose of making payments under this section in respect of wheat of that season;
- (b) the administrative costs incurred by the Board in dealing with the application; and
- (c) such other factors as the Board considers relevant.

Payment for wheat of last 2 seasons

30. (1) In this section, “season to which this section applies” means the season commencing on 1 July 1989 or the next succeeding season.

(2) Where any wheat of a season to which this section applies is acquired by the Board under this Act, the Board shall pay for that wheat such amount as is determined by the Minister in accordance with sub-section (3).

(3) The Minister shall determine an amount payable under sub-section (2) in respect of wheat of a season by calculating an amount equal to the amount that the final advance payment in respect of the wheat under sub-section 26 (4) would have been if—

- (a) section 26 were applicable to wheat of that season;
- (b) references in that section to the guaranteed minimum price for wheat of any category were references to the net pool return rate for wheat of that season;
- (c) the net pool return for that season were reduced by an amount (if any) equal to the amount, or the sum of the amounts, deducted by the Board

from the disposal of wheat of that season and paid into a reserve account under section 7; and

- (d) the net pool return for that season were adjusted to take into account the result of any contract or dealing of the kind referred to in sub-paragraph 16 (2) (d) (i) that was entered into or that took place in relation to that season. 5

(4) The Board may, with the approval of the Minister, make advances on account of payments referred to in sub-section (2).

(5) The obligation of the Board under this section in respect of any wheat is subject to the operation of the Wheat Tax Acts. 10

(6) For the purposes of this section, the net pool return rate for wheat of a season shall be calculated as if the net pool return for that season were calculated taking into account the adjustments referred to in paragraphs (3) (c) and (d).

Payment by Board 15

31. (1) Subject to sub-sections (4) and (5) and to any other law to which the Board is subject, an amount payable under section 26, 27, 28, 29 or 30 in respect of any wheat is payable to the person who would have been entitled to receive the price of the wheat if the wheat had been lawfully sold to the Board at the time of the acquisition of the wheat by the Board. 20

(2) The same rights (if any) exist against the person receiving an amount paid by the Board under section 26, 27, 28, 29 or 30 in respect of wheat as would exist if the moneys so paid were the proceeds of a sale or purported sale of the wheat by the person, and any such rights may be enforced by action in any court that would have had jurisdiction if the moneys were the proceeds of such a sale or purported sale. 25

(3) Payment in good faith by the Board of any moneys payable under this Act to the person appearing to the Board to be entitled to receive them discharges the Board from any further liability in respect of those moneys.

(4) An assignment of moneys payable by the Board in respect of wheat delivered to the Board (not including a registered crop lien) is voidable at the instance of the Board. 30

(5) An assignment of moneys payable by the Board in respect of wheat delivered to the Board, being a registered crop lien, is voidable at the instance of the Board unless and until notice in writing of the registration of the lien has been furnished to the Board by the holder of the lien. 35

Division 4—Sale of wheat by Board for use in Australia

Home consumption price of wheat

32. (1) The price at which, during a season, the Board shall, by a contract made in a Territory (other than a contract entered into under section 23), sell 40

wheat for use in Australia is the appropriate price that is applicable in accordance with this section.

(2) Subject to sub-section (5), during a quarter (in this sub-section referred to as the "relevant quarter") the price per tonne of Australian standard white wheat in bulk sold free on rail at a port of export for human consumption in Australia is the price determined by the Minister, or by a person authorized in writing by the Minister, by—

(a) taking the average amount per tonne of the export price, f.o.b., quoted by the Board on each of the 20 business days immediately preceding the 16th day of the month immediately preceding—

(i) the relevant quarter; and

(ii) the quarter immediately preceding the relevant quarter, for Australian standard white wheat to be disposed of on each day of the relevant quarter or the quarter immediately preceding the relevant quarter, as the case requires, by the Board by way of export sale or sale for export; and

(b) adding to the amount calculated in accordance with paragraph (a) such amount (if any) as is determined by the Minister, after consultation with the Board, in relation to the relevant quarter or in relation to one or more quarters that include the relevant quarter, to be the amount per tonne by which the costs incurred by the Board in marketing wheat for human consumption in Australia exceed the costs incurred by the Board in marketing wheat for export.

(3) Subject to sub-sections (4) and (5)—

(a) the price for Australian standard white wheat in bulk sold free on rail at a port of export for a use (in this section referred to as the "relevant use") in Australia that is a stockfeed use is such price as is determined from time to time by the Board in respect of the relevant use; and

(b) the price for Australian standard white wheat in bulk sold free on rail at a port of export for a use (in this section also referred to as the "relevant use") in Australia that is an industrial use is such price as is determined from time to time by the Board in respect of the relevant use.

(4) A price determined for a relevant use under sub-section (3)—

(a) shall not vary as between wheat at one port of export and wheat at another port of export; and

(b) shall be the same as any corresponding price determined by the Board under a provision of a State Act that corresponds to sub-section (3).

(5) There shall be added to a price determined under sub-section (2) or (3) such amount as the Minister, after consultation with the Board, considers from time to time to be necessary to be included in the price of all wheat sold by the Board for use in Australia for the purpose of enabling the Board to meet the

costs of shipment of wheat (including overseas wheat) that it is required by section 33 to meet.

(6) The price in respect of wheat that is not Australian standard white wheat in bulk sold free on rail at a port of export is such price as the Board determines by adding to, or deducting from, the price that would be applicable to the wheat if it were Australian standard white wheat in bulk sold free on rail at a port of export an amount by way of allowances in respect of the quality of the wheat, the conditions of sale and the place of delivery of the wheat. 5

(7) The Board may discount a price for wheat sold by the Board other than for human consumption on the basis of the quantity of wheat so sold. 10

(8) The price for Australian standard white wheat in bulk, being wheat of a season sold free on rail at a port of export before the final purchasing day for that season to a person who has delivered wheat of that season to the Board for a stockfeed use by the person in Australia, is the price determined from time to time by the Board to be an equitable price in respect of the sale of wheat of that season to the person in respect of that stockfeed use, being a price that is not less than the price per tonne paid to the person by the Board under sub-section 26 (4) for wheat of that season increased or decreased by such allowances as the Board considers proper for— 15

- (a) the costs incurred by the Board in handling and storing that wheat before it is sold to the person; 20
- (b) any costs incurred by the Board in delivering that wheat to the person; and
- (c) other necessary adjustments.

(9) The Board may, in determining a price in respect of the sale of wheat of a season under sub-section (8) to a person who has delivered wheat of that season to the Board, make allowances for the quality of the wheat sold to the person under that sub-section compared to the quality of the wheat of that season delivered by the person to the Board. 25

(10) For the purposes of sub-section (8), wheat shall be taken to be sold to a person for a stockfeed use by the person if it is sold to the person for a stockfeed use— 30

- (a) by the person at the farm at which the wheat of that season that was delivered to the Board by the person was harvested; or
- (b) by the person or by another person at an associated farm approved by the Board. 35

(11) The Board shall not sell to a person under sub-section (8) a total amount of wheat of a season that is greater than the total amount of wheat of that season delivered to the Board by the person.

(12) Where a person other than the Board exports wheat products containing any wheat sold by the Board under this section, the Board shall, on application made to it by the person, refund to the person an amount equal to the aggregate of the amounts referred to in paragraph (2) (b) and sub-section 40

(5) that were applicable in relation to the wheat at the time when the wheat was sold by the Board.

(13) An application under sub-section (12) shall be in accordance with a form approved by the Board.

5 (14) In this section—

“associated farm” has the same meaning as in section 21;

“business day” means a day other than—

(a) a Saturday;

(b) a Sunday; or

10 (c) a day that is a public holiday in the place where the head office of the Board is situated;

“final purchasing day”, in relation to a season, means—

(a) the day immediately succeeding the expiration of the season; or

15 (b) such other day (whether or not during the season) as the Minister, by notice published in the *Gazette* before the expiration of the season, determines;

“quarter” means a period of 3 months commencing on any 1 January, 1 April, 1 July or 1 October;

20 “season” does not include the season commencing on 1 July 1989 or the next succeeding season.

Special account for freight to Tasmania

33. (1) Subject to this section, the Board shall keep a separate account of—

25 (a) moneys received by the Board by reason of the inclusion in the price for a sale of wheat to which section 32 applies or a sale in Australia of overseas wheat of an amount referred to in sub-section 32 (5);

30 (b) such proportion of the moneys received by the Board under section 50 as is equal to the amounts referred to in paragraph 6 (c) of the *Wheat Tax (Permit) Act 1984* that would have been received under that Act in respect of all permits issued by the Board under section 22 of this Act or the corresponding provision of a State Act with respect to a season if the total quantity of wheat authorized by those permits to be purchased during that season had been the same as the total quantity of wheat that was purchased under those permits during that season; and

35 (c) payments made out of the moneys referred to in paragraphs (a) and (b),

and the Board shall not apply those moneys except in accordance with this section.

40 (2) The Board may combine the account required to be kept under sub-section (1) with any similar account or accounts to be kept by it under a State Act.

(3) The Board shall use the moneys referred to in sub-section (1) in meeting the costs of shipment of wheat (including overseas wheat) by the Board to a port in Tasmania, and shall not use for that purpose any other moneys derived by it from the sale of wheat acquired by it under this Act or from the sale in Australia of overseas wheat.

5

(4) The Board shall not meet any costs of shipment of wheat under sub-section (3) to the extent that those costs exceed the costs of shipment of that wheat from whichever of the following ports in Victoria the costs of that shipment are lower:

(a) Geelong;

10

(b) Portland.

(5) Any moneys referred to in sub-section (1) that are not, and in the opinion of the Board are not likely to be, required for the purpose of payments under sub-section (3) shall be applied by the Board for the benefit of the wheat industry in such manner as the Minister, after consultation with the appropriate Minister of each State, directs.

15

(6) Any moneys referred to in sub-section 27 (1) of the *Wheat Marketing Act 1979*, as continued in force by section 65 of this Act, that remain unexpended after the Board has made the final payment required to be made under sub-section 27 (3) of that Act shall be deemed to be moneys referred to in sub-section (1) of this section.

20

(7) In relation to sales of wheat (including overseas wheat) by the Board for shipment to a port in Tasmania in respect of which the Board bears the cost of shipment, the Board shall take such measures as are practicable to obtain recoupment of the cost of the shipment in respect of such of that wheat as is used in the production in Tasmania of wheat products (including wheat products made in whole or in part from overseas wheat) that are sent to other States for use in Australia, and may include in any contracts made by the Board provisions for that purpose.

25

(8) Any moneys received by the Board in accordance with sub-section (7) by way of recoupment of costs of shipment shall be deemed to be moneys referred to in sub-section (1).

30

(9) In this section—

(a) a reference to the costs of shipment of wheat includes a reference to the costs of unloading the wheat; and

35

(b) a reference to a port in Tasmania is a reference to the port, or the first port, at which the wheat (including overseas wheat) concerned is landed.

PART IV—MEMBERSHIP AND ORGANIZATION OF BOARD

Division 1—Constitution and meetings of Board

Membership of Board

34. (1) The Board shall consist of—

- (a) the Chairperson, who shall be a wheat grower at the time of appointment;
- (b) one member to represent the Commonwealth;
- (c) one wheat grower representing wheat growers in New South Wales;
- (d) one wheat grower representing wheat growers in Victoria;
- (e) one wheat grower representing wheat growers in Queensland;
- (f) one wheat grower representing wheat growers in South Australia;
- (g) one wheat grower representing wheat growers in Western Australia; and
- (h) such number of other members, being not less than 3 or more than 9, as is determined by the Minister in writing.

(2) The Chairperson and the members referred to in paragraphs (1) (b) and (h) shall be appointed by the Minister.

(3) The Minister may appoint as members referred to in paragraph (1) (h) not more than 4 persons who have not been nominated by the Australian Wheatgrowers' Federation.

(4) The Minister may appoint one officer of the Board as a member referred to in paragraph (1) (h).

(5) A member representing wheat growers in a State shall be appointed in the following manner:

- (a) if there is a State Board in relation to the State—the member shall be appointed by the Minister from the members of the State Board, on the nomination of the State Board; or
- (b) if there is no State Board in relation to the State—the member shall be appointed by the Minister after being elected by wheat growers in the State in accordance with the regulations.

(6) A member referred to in paragraph (1) (h) shall be a person qualified for appointment—

- (a) by reason of experience in, or qualifications relevant to, the growing or marketing of wheat or the marketing of other products; or
- (b) by reason of other experience in commerce, finance, economics, science or industrial matters.

(7) The Chairperson shall be a full-time member and the other members shall be part-time members.

(8) The appointment of a member is not invalidated, and shall not be called in question, by reason of a deficiency or irregularity in, or in connection

with, that appointment or, in the case of a member appointed under sub-section (5), the election, of the member.

(9) The Chairperson may be referred to as the Chairman or the Chairwoman, as the case requires.

Term of office of members

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35. (1) Subject to this Act, a member ceases to hold office on the expiration of each successive period of 3 years after 30 June 1985, but is eligible for re-appointment.

(2) The member referred to in paragraph 34 (1) (b), or any member referred to in paragraph 34 (1) (h) who is an officer of the Board, holds office during the pleasure of the Minister. 10

(3) A person who has attained the age of 65 years shall not be appointed as the Chairperson and a person who attains the age of 65 years ceases to hold office as the Chairperson on the day on which the person attains the age of 65 years. 15

(4) A member appointed in accordance with paragraph 34 (5) (a) ceases to hold office if the member ceases to be a member of the State Board concerned.

(5) Where, after the appointment of a member in accordance with paragraph 34 (5) (b) to represent wheat growers in a State, a State Board is constituted in that State, that member ceases to hold office on the day immediately preceding the day on which members of the Board are appointed from the members of the State Board. 20

(6) Where a member (other than a member to whom sub-section (2) applies) ceases to hold office before the expiration of the term of office of the member— 25

(a) in the case of a member representing wheat growers in a State—the Minister may, after consultation with the appropriate Minister of the State, appoint a wheat grower in the State to that office until the expiration of that term; or 30

(b) in the case of any other member—the Minister may appoint a person who is eligible for appointment under section 34 to that office until the expiration of that term.

Acting Chairperson

36. (1) The Board may appoint a member to act as Chairperson— 35

(a) during a vacancy in the office of Chairperson; or

(b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office of Chairperson,

but a member appointed to act during a vacancy shall not continue so to act for more than 12 months. 40

(2) An appointment of a member under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Minister may determine the terms and conditions of appointment, including remuneration and allowances, of a member acting as the Chairperson.

(4) Remuneration and allowances payable to a member acting as Chairperson are in addition to his or her remuneration and allowances as a member.

(5) The Board may terminate an appointment under sub-section (1) at any time.

(6) Where a member is acting as Chairperson in accordance with paragraph (1) (b) and the office of Chairperson becomes vacant while the member is so acting, then, subject to sub-section (2), the member may continue so to act until the Board otherwise directs, the vacancy is filled or a period of 12 months after the date on which the vacancy occurred expires, whichever first happens.

(7) The appointment of a member to act as Chairperson ceases to have effect if the member resigns that appointment by writing signed by the member delivered to the Minister.

(8) While a member is acting as Chairperson the member has and may exercise all the powers, and shall perform all the functions, of the Chairperson under this Act.

(9) The validity of anything done by a member purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for the appointment of the member had not arisen, that there is a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the member to act had not arisen or had ceased.

Remuneration and allowances

37. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the member shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

(4) In this section, "member" does not include a member who is an officer of the Board.

Resignation

38. A member may resign from the office of member by writing signed by the member delivered to the Minister.

Leave of absence for Chairperson

39. The Minister may grant leave of absence to the Chairperson on such terms and conditions as to remuneration or otherwise as the Minister determines. 5

Termination of appointments

40. (1) The Minister may terminate the appointment of a member by reason of the misbehaviour, or the physical or mental incapacity, of the member. 10

(2) If—

(a) any member—

(i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or 15

(ii) fails, without reasonable excuse, to comply with his or her obligations under section 41;

(b) the Chairperson— 20

(i) engages, without the consent of the Minister, in paid employment outside the duties of his or her office; or

(ii) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months; or 25

(c) a part-time member is absent, without the prior consent of the Board, from 3 consecutive meetings of the Board otherwise than on business of the Board undertaken with the approval of the Board,

the Minister shall terminate the appointment of the member.

Disclosure of interests by members 30

41. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of that interest at a meeting of the Board.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Board and the member shall not, unless the Minister or the Board otherwise determines— 35

(a) be present during any deliberation of the Board with respect to that matter; or

(b) take part in any decision of the Board with respect to that matter. 40

(3) For the purpose of the making of a determination by the Board under sub-section (2) in relation to a member who has made a disclosure under sub-section (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- 5 (a) be present during any deliberation of the Board for the purpose of making the determination; or
(b) take part in the making by the Board of the determination.

Meetings of Board

10 **42. (1)** Meetings of the Board shall be held at such times and places as the Board from time to time determines.

(2) A meeting of the Board may be called by the Chairperson.

(3) At a meeting of the Board a majority of the persons who are for the time being members forms a quorum.

15 (4) The Chairperson shall preside at all meetings of the Board at which the Chairperson is present.

(5) If neither the Chairperson nor the acting Chairperson is present at a meeting, the members present shall elect a member to preside.

(6) A question arising at a meeting of the Board shall be decided by a majority of the votes of the members present and voting.

20 (7) The member presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Executive Committees

25 **43. (1)** The Board may appoint 2 or more of its members to be an Executive Committee, and may delegate to any such Committee such of its powers and functions as the Board, subject to any direction of the Minister, determines.

(2) A delegation under this section is revocable by the Board, and does not prevent the exercise of a power or the performance of a function by the Board.

Indemnity

30 **44.** A member is not personally liable for an act of the Board or of the member acting as such a member.

Division 2—Staff of Board

Appointment of officers

35 **45. (1)** The Board may appoint such officers of the Board as are necessary to assist the Board in carrying out its functions or exercising its powers.

(2) Officers appointed under this section shall be employed on such terms and conditions with respect to matters not provided for by this Act as are determined by the Board with the approval of the Public Service Board.

(3) A person employed by the Board immediately before the commencement of this Act shall be deemed to have been appointed under this section.

(4) A determination by the Board of terms and conditions of employment of officers of the Board that was in force immediately before the commencement of this Act continues in force, subject to any determination made under this section.

PART V—FINANCE

Raising of moneys by Board

46. (1) The Board may—

- (a) with the approval of the Minister but not otherwise—create, execute, enter into, draw, make, accept, indorse, issue, discount and sell securities; and
- (b) enter into any related agreements or arrangements.

(2) The power of the Minister to give approvals for the purposes of paragraph (1) (a) extends to the giving of approvals in respect of securities included in a specified class or specified classes of securities.

(3) The Board may, with the approval of the Minister but not otherwise, borrow moneys otherwise than by dealing with securities in accordance with sub-section (1).

(4) The powers of the Board under sub-sections (1) and (3) may be exercised in or outside Australia.

(5) Where the Board borrows or raises moneys by dealing with securities in accordance with sub-section (1), being securities included in a class of securities specified by the Minister for the purposes of this sub-section by notice published in the *Gazette*, the repayment by the Board of the amounts borrowed or raised or the payment of any amounts that the Board is otherwise liable to pay in respect of those securities, as the case may be, and the payment by the Board of interest (if any) on those amounts are, by force of this sub-section, guaranteed by the Commonwealth.

(6) The Treasurer may, on behalf of the Commonwealth, guarantee the repayment of amounts borrowed under sub-section (3) and the payment of interest on amounts so borrowed.

(7) Where the Board borrows or raises moneys for the purpose of exercising its powers under sub-section 26 (10) or under the corresponding provision of a State Act, then—

- (a) where the borrowing or raising of those moneys is effected by dealing with securities—sub-section (5) does not apply in relation to those securities; or

- (b) where the borrowing of those moneys is effected in any other manner—the Minister shall not guarantee the repayment of those moneys or the payment of the expenses of borrowing.

5 (8) In this section, “expenses of borrowing”, in relation to a borrowing made by the Board, means the expenses of that borrowing incurred by the Board, and includes interest payable on the moneys borrowed.

Credit sales in accordance with direction

47. If—

- 10 (a) the Minister directs the Board under section 11 to make a sale of wheat on terms involving a longer period of credit in respect of payment of an amount, being the whole or a part of the purchase moneys, than the period of credit that the Minister is satisfied, after consultation with the Board, is the period that the Board would have been prepared to allow on a strictly commercial basis;

- 15 (b) the Board incurs loss by reason of failure of the purchaser to pay that amount, or interest in respect of that amount, within the extended period of credit applicable to that amount; and

- (c) the Minister is satisfied that the Board has taken all reasonable steps to recover from the purchaser the amount of the loss,

20 the Minister for Finance shall, out of moneys appropriated by the Parliament for the purpose, pay the amount of the loss to the Board and the amount so paid to the Board shall, for the purposes of this Act, be deemed to be part of the proceeds of the sale of the wheat by the Board.

Discounting of letters of credit

25 48. (1) The Board may discount a letter of credit held by the Board but shall not do so without the approval of the Minister.

(2) A reference in sub-section (1) to the discounting by the Board of a letter of credit shall be read as a reference to—

- 30 (a) selling a letter of credit, or other document evidencing or acknowledging indebtedness to the Board, in advance of the date of maturity of the letter of credit or other document; or

- 35 (b) assigning or otherwise disposing of the rights of the Board to any payment under a letter of credit, or other document evidencing or acknowledging indebtedness to the Board, before the date on which the payment becomes due.

Payments to Board in respect of underwritten payments

40 49. (1) Where the guaranteed minimum price for Australian standard white wheat of a season exceeds the net pool return rate for wheat of that season, there is payable to the Board an amount equal to the amount obtained by multiplying the amount of that excess by the number of tonnes of Australian standard white wheat of that season acquired by the Board (whether under this Act or a State Act).

(2) Where the amount calculated by the Board in accordance with sub-section 27 (4) in relation to wheat of a prescribed category of a season is a negative amount, there is payable to the Board an amount equal to the amount obtained by multiplying that amount by the number of tonnes of wheat of that category of that season acquired by the Board (whether under this Act or a State Act). 5

(3) In this section, "season" does not include the season commencing on 1 July 1989 or the next succeeding season.

Payments to Board of certain proceeds of tax on permits

50. There are payable from time to time to the Board amounts equal to the aggregate of the amounts referred to in paragraphs 6 (b) and (c) of the *Wheat Tax (Permit) Act 1984* received under that Act in respect of permits issued by the Board under section 22 of this Act or the corresponding provision of a State Act. 10

Advances 15

51. (1) The Minister for Finance may, at such times as the Minister for Finance thinks fit, make advances to the Board of such amounts as the Minister thinks fit on account of an amount that is expected to become payable to the Board under section 49 or 50.

(2) If the total amount of advances paid to the Board under sub-section (1) on account of an amount that is expected to become payable to the Board under section 49 or 50 exceeds the total of the amounts payable to the Board under that section, the Board shall, on demand by the Minister for Finance, repay to the Commonwealth the amount of the excess. 20

Appropriation 25

52. Payments to the Board under section 49 or 50 and advances to the Board under section 51 shall be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

Application of moneys of Board

53. Subject to section 63E of the *Audit Act 1901* as modified by sub-section 55 (2) of this Act, moneys of the Board may be applied only— 30

- (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Board in or in connection with the performance of its functions, or the exercise of its powers, under this Act or a State Act; 35
- (b) in payment of any remuneration or allowances, or reimbursement of expenses, payable under this Act; and
- (c) in making any other payments that the Board is authorized or required to make under this Act or any other Act or a State Act.

Liability to taxation

54. (1) Subject to sub-section (4), the Board is subject to taxation (other than income tax) under the laws of the Commonwealth.

(2) Subject to sub-section (3), the Board is not subject to taxation under a law of a State or Territory.

(3) The regulations may provide that sub-section (2) does not apply in relation to taxation under a specified law of a State or Territory.

(4) Where the Minister so determines by notice published in the *Gazette*, stamp duty, or any similar tax, is not payable by the Board under a law of the Commonwealth, or by a person other than the Board under a law of the Commonwealth or of a State or Territory, in respect of—

- (a) a security dealt with by the Board;
- (b) the issue, redemption, transfer, sale, purchase, acquisition or discounting of such a security by the Board or any other person, not including a transaction entered into without consideration or for an inadequate consideration; or
- (c) any document executed by or on behalf of the Board, or any transaction, in relation to the borrowing or other raising of moneys by the Board.

Application to Board of Division 2 of Part XI of Audit Act

55. (1) It is hereby declared that the Board is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

(2) Division 2 of Part XI of the *Audit Act 1901* applies to the Board subject to the following modifications:

- (a) the reference in sub-section 63D (1) of that Act to an approved bank or approved banks shall be read as including a reference to the Reserve Bank of Australia;
- (b) sub-section 63E (1) of that Act is omitted and the following sub-section is substituted:

“(1) Moneys of the authority held in relation to a season as defined in sub-section 3 (1) of the *Wheat Marketing Act 1984* not immediately required for the purposes of the authority with respect to that season, or moneys of the authority held otherwise than in relation to a season, may be invested—

- (a) on deposit with an approved bank;
- (b) in Commonwealth securities; or
- (c) in any other manner approved by the Treasurer.”; and
- (c) section 63H of that Act is omitted.

Remuneration of authorized receivers

56. (1) The Board and each authorized receiver shall, not later than 1 October 1985, enter into an agreement with respect to the remuneration of the

receiver by the Board for services provided by the receiver, for any facilities made available by the receiver for the storage, protection, treatment, handling or transfer of wheat (including overseas wheat) and for any expenses properly incurred by the receiver.

(2) An agreement entered into under sub-section (1) has effect during the period commencing on such day as is specified in the agreement (being a date not later than 1 October 1985) and expiring on 30 June 1989. 5

(3) Amounts payable to an authorized receiver as remuneration by virtue of an agreement under sub-section (1) or an agreement to which sub-section 67 (5) applies shall include the amounts determined by the Board under sub-section (4). 10

(4) There is payable by the Board to the authorized receiver in each State an amount determined by the Board in respect of each season by—

(a) taking the aggregate of—

(i) the amounts referred to in paragraph 6 (b) of the *Wheat Tax (Permit) Act 1984* that would have been received under that Act in respect of permits issued in that State by the Board with respect to that season under a provision of the State Act corresponding to section 22 of this Act if the total quantity of wheat authorized by those permits to be purchased during that season had been the same as the total quantity of wheat that was purchased in that State under those permits during that season; and 15 20

(ii) where wheat was purchased in that State during that season under permits issued by the Board otherwise than under the provision of the State Act referred to in sub-paragraph (i)—such amount as the Board considers appropriate having regard to the quantity of wheat so purchased and such other matters as the Board considers relevant; and 25

(b) deducting from the aggregate referred to in paragraph (a) such amount as the Board considers appropriate for the administrative costs incurred by the Board in making payments to that authorized receiver under this sub-section. 30

(5) The aggregate of the amounts paid by the Board to authorized receivers under sub-section (4) in respect of a season shall not exceed the amount obtained by— 35

(a) taking the amounts referred to in paragraph 6 (b) of the *Wheat Tax (Permit) Act 1984* that would have been received under that Act in respect of all permits issued by the Board under section 22 of this Act or the corresponding provision of a State Act with respect to that season if the total quantity of wheat authorized by those permits to be purchased during that season had been the same as the total quantity of wheat that was purchased under those permits during that season; and 40

(b) deducting from those amounts the amounts determined by the Board under paragraph (4) (b). 45

Payments by Board for transport costs

57. (1) There is payable by the Board to the authorized receiver in each State, or to the authority of the State responsible for railways, as is specified from time to time by the appropriate Minister of the State, an amount in respect of the costs of transport of wheat delivered to the Board (whether under this Act or a State Act) in that State from the place at which the wheat was so delivered to another place or other places in Australia.

(2) Amounts payable under sub-section (1) shall be paid at such times as are agreed upon between the Board and the authorized receiver or authority concerned.

PART VI—MISCELLANEOUS

Operation of State laws

58. (1) It is hereby declared to be the intention of the Parliament that the operation of a provision of a law of a State that confers a power, right or function, or imposes a liability or duty, that is also conferred or imposed by this Act is not prevented or limited by reason of the provisions of this Act.

(2) It is also declared to be the intention of the Parliament that, except as otherwise directed by the Minister, the Board shall have and be subject to powers, rights, functions, liabilities and duties conferred or imposed on it by a State Act that are additional to those conferred or imposed by this Act.

(3) The Board is subject to a law of a State fixing, or providing for the fixing, of prices for the sale of wheat, except in relation to sales of wheat for export.

Appointment of authorized persons

59. The Board or the Chairperson may appoint a person, or persons included in a class of persons, to be an authorized person or authorized persons, as the case may be, for the purposes of a specified provision of this Act.

Information to be furnished

60. (1) For the purposes of this Act, the Board may, by notice in writing served on a person, require the person—

- (a) to furnish in writing to the Board, in accordance with the notice, such information relating to wheat or wheat products as is specified in the notice; or
- (b) to produce to the Board, in accordance with the notice, such documents relating to wheat or wheat products as are specified in the notice.

(2) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Penalty: \$1,000.

(3) A person shall not furnish to the Board information that is false or misleading in a material particular.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(4) A person is not excused from furnishing information, or producing a document, when required to do so under this section, on the ground that the information or production of the document might tend to incriminate the person or make the person liable to a penalty, but any information so furnished, or the production by the person of any such document, is not admissible against the person in proceedings other than proceedings for an offence against sub-section (2) or (3). 5 10

Proper care to be taken of wheat owned by Board

61. A person having care or possession of wheat in a Territory that is the property of the Board shall exercise proper care and take all proper and reasonable precautions and do all things necessary to preserve and safeguard that wheat and keep it free from damage or deterioration. 15

Penalty: \$500.

Access to premises

62. (1) An authorized person may, with the consent of the occupier of any premises in a Territory, enter the premises for the purpose of exercising the functions of an authorized person under this section. 20

(2) Where an authorized person has reason to believe that—

(a) there is on any premises in a Territory—

(i) wheat that is the property of the Board and is not in the possession of the Board;

(ii) wheat that is required by this Act to be delivered to the Board; 25
or

(iii) wheat in respect of which an offence against this Act has been committed; or

(b) there are on any premises in a Territory books, documents or other papers relating to wheat or wheat products, 30

the authorized person may make application to a Justice of the Peace for a warrant authorizing the authorized person to enter the premises for the purpose of exercising the functions of an authorized person under this section.

(3) If, on an application under sub-section (2), the Justice of the Peace is satisfied by information on oath or affirmation— 35

(a) that there are reasonable grounds for believing that there is on the premises any wheat, or that there are on the premises any books, documents or papers, referred to in sub-section (2); and

(b) that the issue of the warrant is reasonably required for purposes of, or related to the operation of, this Act, 40

the Justice of the Peace may issue a warrant authorizing the authorized person, with such assistance as the authorized person thinks necessary, to enter the

premises during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an authorized person under this section.

5 (4) A warrant under sub-section (3) shall specify a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

(5) An authorized person who enters any premises pursuant to sub-section (1) or pursuant to a warrant issued under sub-section (3) may exercise the functions of an authorized person under this section.

10 (6) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting pursuant to a warrant issued under sub-section (3) or pursuant to sub-section (5).

Penalty: \$1,000 or imprisonment for 6 months, or both.

(7) The functions of an authorized person under this section are—

- 15 (a) to search for and inspect wheat;
- (b) to take possession of and remove wheat referred to in paragraph (2) (a); and
- (c) to search for, inspect, take extracts from and make copies of books, documents or papers referred to in paragraph (2) (b).

20 (8) On the taking possession, under sub-section (7), of wheat that, immediately before such taking, was not the property of the Board, the wheat becomes the absolute property of the Board, freed from all mortgages, charges, liens, pledges, interests and trusts.

25 (9) In this section, “occupier”, in relation to premises, includes the person in charge of the premises.

Annual report

30 63. (1) The Board shall, as soon as practicable after 30 September 1985 and each subsequent 30 September, prepare and submit to the Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Minister for Finance approves.

(2) Before submitting financial statements to the Minister under sub-section (1), the Board shall submit them to the Auditor-General, who shall report to the Minister—

- 35 (a) whether, in the opinion of the Auditor-General, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and, in the opinion of the Auditor-General, show fairly the financial transactions and the state of the affairs of the Board;
- 40 (c) whether, in the opinion of the Auditor-General, the receipt, expenditure and investment of moneys, and the acquisition and

disposal of assets, by the Board during the year have been in accordance with this Act; and

- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Board shall include in each report under sub-section (1) all directions given to the Board under section 11 by the Minister during the year to which the report relates. 5

(4) Financial statements referred to in sub-section (1) in relation to a year shall include details of each reserve account established under section 7 that was current in that year. 10

(5) The Minister shall cause copies of the report and financial statements together with the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

(6) For the purposes of sub-section (1) in relation to the year ending on 30 September 1985, the operations of the Board during that year shall be deemed to include the operations of the Board during that year under the *Wheat Marketing Act 1979*. 15

Regulations

64. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters— 20

- (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.

(2) Without limiting the generality of the power to make regulations conferred by sub-section (1), the regulations may make provision for and in relation to— 25

- (a) the conduct of the proceedings of the Board;
- (b) the qualifications of candidates and of voters at elections for the purposes of this Act, the system of voting and all other matters connected with those elections; and 30
- (c) penalties not exceeding a fine of \$500 for offences against the regulations.

(3) The Wheat Industry Stabilization (Election of Board) Regulations in force immediately before the commencement of this Act for the purposes of the *Wheat Marketing Act 1979* continue in force for the purposes of this Act, but may be amended or repealed by regulations made under this Act, and all things done for a purpose of that Act under those Regulations before the commencement of this Act shall be deemed to have been done for the corresponding purpose of this Act after the commencement of this Act. 35 40

PART VII—REPEAL AND TRANSITIONAL**Repeal**

65. (1) The following Acts are repealed:

Wheat Industry Stabilization (Reimbursement of Borrowing Costs) Act 1979

Wheat Levy Act (No. 1) 1979

Wheat Levy Act (No. 2) 1979

Wheat Marketing Act 1979

Wheat Marketing Amendment Act 1982

Wheat Marketing Amendment Act 1983

Wheat Marketing Amendment Act 1984

Wheat Products Export Adjustment Act 1974.

(2) Notwithstanding the repeals effected by sub-section (1), any provisions of an Act (other than section 26 of the *Wheat Marketing Act 1979*) that would, but for that repeal, apply to, or in relation to—

(a) the Wheat Finance Fund referred to in section 40 of the *Wheat Marketing Act 1979*; or

(b) wheat that was harvested before 1 July 1984,
continue to apply as if those provisions had not been repealed.

(3) A reference in any of the provisions referred to in sub-section (2) to the Australian Wheat Board shall, in relation to things done or to be done after the commencement of this Act, be read as a reference to the Board as continued in existence by this Act.

Transitional—members of Board

66. (1) A person who, immediately before the commencement of this Act, held office under the *Wheat Marketing Act 1979* as the Chairman of the Australian Wheat Board continues, subject to this Act (other than sub-sections 35 (1) and (3)), to hold office as the Chairperson for the remainder of the term of appointment of the person, and so holds office as if the person had been appointed under this Act.

(2) A person who, immediately before the commencement of this Act, held office under the *Wheat Marketing Act 1979* as a member of the Australian Wheat Board representing wheat growers of the description contained in paragraph 29 (1) (e), (f), (g), (h) or (i) of that Act continues, subject to this Act (other than sub-section 35 (1)), to hold office as a member of the Board representing wheat growers of the corresponding description contained in sub-section 34 (1) of this Act (notwithstanding that that sub-section limits the number of members of that description to one) until 30 June 1985, and so holds office as if the person had been appointed under this Act.

(3) A person who, immediately before the commencement of this Act, held office as a member of the Australian Wheat Board otherwise than as the Chairman or as a member referred to in sub-section (2) shall, on that

