



# Wheat Marketing Amendment Act 1982

No. 150 of 1982

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## An Act to amend the *Wheat Marketing Act 1979*

[Assented to 31 December 1982]

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

### Short title, &c.

1. (1) This Act may be cited as the *Wheat Marketing Amendment Act 1982*.

(2) The *Wheat Marketing Act 1979*<sup>1</sup> is in this Act referred to as the Principal Act.

### Commencement

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

### Interpretation

3. Section 4 of the Principal Act is amended—

(a) by inserting after the definition of “Fund” in sub-section (1) the following definitions:

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- “‘futures contract’ means a wheat futures contract (including such a contract relating to overseas wheat), a currency futures contract or a financial futures contract;
- ‘futures market’ means a market, exchange or other place at which futures contracts are regularly made or traded;”;
- (b) by inserting after the definition of “net pool return rate” in sub-section (1) the following definition:
- “‘overseas wheat’ means wheat harvested outside Australia;”;
- (c) by omitting paragraph (a) of the definition of “State corporation” in sub-section (1) and substituting the following paragraph:
- “(a) the Grain Handling Authority of New South Wales constituted under the *Grain Handling Act*, 1954 of New South Wales;”;
- (d) by omitting from sub-section (1) the definition of “wheat” and substituting the following definition:
- “‘wheat’ does not include—
- (a) wheat harvested after 30 September 1986; or
- (b) overseas wheat;”.

**Net pool return**

4. Section 9 of the Principal Act is amended—
- (a) by omitting from sub-section (2) “, and will not be covered by charges referred to in sub-section 21 (2) or in the corresponding provision of a State Act”;
- (b) by omitting “and” from the end of paragraph (3) (d); and
- (c) by adding at the end of sub-section (3) the following paragraphs:
- “(f) moneys paid into a reserve account pursuant to section 12A shall not be taken to be costs incurred by the Board;
- (g) no account shall be taken of allowances (including allowances for the quality of wheat) referred to in sub-section 21 (2) or in the corresponding provision of a State Act; and
- (h) if the Board has entered into or dealt with a futures contract in relation to that season otherwise than in accordance with guidelines having effect under sub-section 12 (1C)—no account shall be taken of the result of that contract or of that dealing.”.

**Powers of Board**

5. Section 12 of the Principal Act is amended—
- (a) by inserting after sub-section (1) the following sub-sections:
- “(1A) Subject to sub-section (1D), the Board may, for the purposes referred to in sub-section (1), in relation to—
- (a) a sale or proposed sale of wheat by the Board; or

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- (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 futures contracts for hedging purposes at a futures market at a place in Australia.

“(1B) Subject to sub-section (1D), 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 futures contracts for hedging purposes at a futures market at a place other than a place in Australia.

“(1C) The Minister may, by determination in writing—

- (a) set guidelines for the purpose of the exercise by the Board of its powers under sub-sections (1A) and (1B); 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.

“(1D) The Board shall not enter into or deal with futures contracts otherwise than in accordance with the guidelines having effect from time to time under sub-section (1C).

“(1E) A 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 wheat futures contract—the contract is entered into or dealt with for the purpose of minimising the risks of 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 futures contract or a financial futures contract—the contract is entered into or dealt with for the purpose referred to in paragraph (a) or for the purpose of minimising the risks of 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).

“(1F) 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 that Bureau has agreed to provide wheat.”;

- (b) by inserting in sub-section (2) “(not being a futures contract)” after “contract”; and

- (c) by inserting in sub-section (2) “(including overseas wheat)” after “wheat” (first occurring).

6. After section 12 of the Principal Act the following sections are inserted:

**Reserves**

“12A. (1) The Board may establish and maintain reserve accounts for the purpose of facilitating the future performance of its functions or the future exercise of its powers under this Act or a State Act.

“(2) Without limiting the generality of sub-section (1), the Board may deduct amounts from the proceeds of—

- (a) the disposal of wheat acquired by the Board under an Act (whether this Act or a State Act) on or after 1 October 1982; or
  - (b) the disposal, on or after 1 October 1982, of wheat products,
- and pay the amounts so deducted into an account established pursuant to sub-section (1).

“(3) Any amount of interest that accrues to an account established pursuant to sub-section (1) shall be deemed to be part of that account.

“(4) Where 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**

“12B. (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 was acquired by the Board under an Act (whether 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 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, for the purposes of this Act, 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, for the purposes of this Act, be taken to be reduced by an amount equal to that total price;
- (c) for the purposes of the application of sub-section 10 (1) in 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 the application of sub-section 10 (1) in 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.

**Importation and sale by the Board of overseas wheat**

“12C. (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 shall, at a particular time, sell overseas wheat that has been imported into Australia by the Board for human consumption in Australia, for a stock-feed use in Australia or for an industrial use in Australia is 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 26 (other than sub-section 26 (8) ) if that overseas wheat were wheat harvested in Australia.”

**Advance payment for wheat of season other than last 2 seasons**

7. Section 21 of the Principal Act is amended by inserting after sub-section (1) the following sub-sections:

“(1A) The amount of an advance payment in respect of wheat of a season under sub-section (1)—

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

“(1B) The Board shall not enter into an agreement of the kind referred to in paragraph (1A) (b) with a person in relation to a payment under this section in respect of wheat of a season on conditions that are inequitable as regards other persons who have received, or will receive, payments under this section in respect of wheat of that season.”.

**Final payment for wheat of season other than last 2 seasons**

8. Section 22 of the Principal Act is amended—

(a) by omitting sub-section (2) and substituting the following sub-sections:

“(2) Subject to sub-section (2A), the Board shall determine an amount payable under sub-section (1) in respect of any wheat by—

(a) calculating the amount that the advance payment in respect of the wheat under section 21 would have been if—

(i) the reference in section 21 to the guaranteed minimum price for wheat were a reference to the net pool return rate for the wheat;

(ii) the net pool return for the season in respect of which the advance payment was made 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 pursuant to section 12A; and

(iii) the net pool return for the season in respect of which the advance payment was made were adjusted to take into account the result of any contract or dealing of the kind referred to in paragraph 9 (3) (h) 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 advance payment in respect of the wheat.

“(2A) An amount payable under sub-section (1) in respect 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 26 (8) shall be

calculated in accordance with the formula  $A - \frac{AB}{C}$ , where—

A is the amount that, but for this sub-section, would be the amount required to be paid by the Board to that person under sub-section (1) 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 that person under this Act.

“(2B) For the purpose of calculating the amount referred to in paragraph (2) (a) in respect of any wheat of the season that commenced on 1 October 1982 or in respect of any wheat of the next

succeeding season, the amount of the advance payment under section 21 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-section 21 (2) as the amount of that advance payment was increased or decreased.”;

(b) by omitting from sub-section (5) “, with the approval of the Minister,”; and

(c) by adding at the end thereof the following sub-section:

“(7) 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).”.

9. After section 22 of the Principal Act the following section is inserted:

**Adjustments for allowances made under section 21**

“22A. (1) In this section—

‘adjusted advance payment’, in relation to a person who has received an advance payment under section 21 in respect of a season, means the amount that, in the opinion of the Board, would have been the amount of the advance payment made to that person under section 21 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-section 21 (2) in relation to that person could be finally ascertained;

‘season’ means the season that commenced on 1 October 1982 or the next succeeding season.

“(2) 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 26 (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 that person under this Act compared to the quality of the wheat so purchased by that 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.

“(3) Where the adjusted advance payment in relation to a person in respect of a season is greater than the advance payment made to that person under section 21 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 advance payment.

“(4) Where the amount of the advance payment made to a person under section 21 in respect of a season is greater than the adjusted advance payment in relation to that person in respect of that season, that person is liable to pay to the Board an amount equal to the difference between the amount of that advance payment and that adjusted advance payment.

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“(5) The Board may deduct from an amount payable to a person under section 22 in respect of a season the whole or a part of an amount payable by that person to the Board under sub-section (4) of this section in respect of that season.

“(6) An amount payable by a person to the Board under sub-section (4) is a debt due by that person to the Board and may be recovered as a debt due to the Board by action against that person in a court of competent jurisdiction.

“(7) The Board may make advances on account of payments referred to in sub-section (3).”.

**Payment for wheat of last 2 seasons**

**10.** Section 23 of the Principal Act is amended—

(a) by inserting in sub-section (3) “of a season” after “any wheat”;

(b) by omitting “and” from the end of paragraph (3) (a);

(c) by adding at the end of sub-section (3) the following paragraphs:

“(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 pursuant to section 12A; 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 paragraph 9 (3) (h) that was entered into or that took place in relation to that season.”;

(d) by omitting from sub-section (4) “, with the approval of the Minister,”; and

(e) by adding at the end thereof the following sub-section:

“(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).”.

**Home consumption price of wheat**

**11.** Section 26 of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(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 stock-feed 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 stock-feed use, being a price that is not less than the price per tonne paid to the person by the Board under sub-section



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21 (1) for wheat of that season increased or decreased by such allowances as the Board considers proper for—

- (a) the costs incurred by the Board in the handling and storage of that wheat before it is sold to the person;
- (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.

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

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

“(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 that person.

“(12) In this section—

‘associated farm’ has the same meaning as in section 18;

‘final purchasing day’, in relation to a season, means—

- (a) the day declared by the Minister under sub-section 25 (1) to be the final delivery day for that season; or
- (b) such other day (whether or not during that season) as the Minister, by notice in the *Gazette*, determines;

‘season’ does not include the season commencing on 1 October 1984 or the next succeeding season.”.

**Special account for freight to Tasmania**

**12.** Section 27 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “or a sale of overseas wheat for human consumption in Australia” after “section 26 applies”;
- (b) by inserting in sub-section (3) “(including overseas wheat)” after “wheat” (first occurring);
- (c) by adding at the end of sub-section (3) “or from the sale in Australia of overseas wheat”;
- (d) by inserting in sub-section (6) “(including overseas wheat)” after “wheat” (first occurring);

- (e) by inserting in sub-section (6) “(including wheat products made in whole or in part from overseas wheat)” after “wheat products”; and
- (f) by inserting in sub-section (8) “(including overseas wheat)” after “wheat”.

### **Termination of appointments**

13. Section 34 of the Principal Act is amended by inserting in sub-paragraph (2) (a) (ii) “, without reasonable excuse,” after “fails”.

### **Disclosure of interests by members**

14. Section 35 of the Principal Act is amended by omitting from sub-section (1) “, otherwise than as a member of, and in common with the other members of, an incorporated company which consists of more than 25 persons and of which he is not a director,”.

### **Amounts payable to Board in respect of commercial borrowings**

15. Section 46 of the Principal Act is amended by inserting after sub-section (3) the following sub-sections:

“(3A) Where—

- (a) a commercial borrowing by the Board is for the purpose of—
  - (i) making advance payments under section 21 in respect of a season; or
  - (ii) repaying a loan made for the purpose of making advance payments under section 21 in respect of a season; and
- (b) the Board has made an agreement of the kind referred to in paragraph 21 (1A) (b) with a person to whom a payment under section 21 in respect of that season is to be made,

sub-sections (1) and (2) apply to the commercial borrowing as if the total amount of the interest paid or payable by the Board in respect of that borrowing and the total expenses of borrowing paid or payable by the Board in respect of that borrowing were the total amount of interest and the total expenses of borrowing that the Minister determines would have been paid or payable by the Board in respect of that borrowing if the agreement referred to in paragraph (b) had not been entered into.

“(3B) Where—

- (a) a commercial borrowing by the Board is for the purpose of—
    - (i) making advance payments under section 21 in respect of a season; or
    - (ii) repaying a loan made for the purpose of making advance payments under section 21 in respect of a season; and
  - (b) the Board has, in calculating the amount of any of the advance payments under section 21 in respect of that season, increased the amount of that payment by an allowance for the quality of any wheat,
- sub-sections (1) and (2) apply to the commercial borrowing as if the total amount of the interest paid or payable by the Board in respect of that

borrowing and the total expenses of borrowing paid or payable by the Board in respect of that borrowing were the total amount of interest and the total expenses of borrowing that the Minister determines would have been paid or payable by the Board in respect of that borrowing if that allowance had not been made by the Board.

“(3C) Where—

- (a) a commercial borrowing by the Board is for the purpose of—
  - (i) making payments under section 22A in respect of a season; or
  - (ii) repaying a loan made for the purpose of making payments under section 22A in respect of a season; and
- (b) any of those payments includes an amount calculated by reference to the quality of any wheat,

sub-sections (1) and (2) apply to the commercial borrowing as if the total amount of the interest paid or payable by the Board in respect of that borrowing and the total expenses of borrowing paid or payable by the Board in respect of that borrowing were the total amount of interest and the total expenses of borrowing that the Minister determines would have been paid or payable by the Board in respect of that borrowing if that payment had not included an amount calculated by reference to the quality of that wheat.”.

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

**16.** Section 54 of the Principal Act is amended—

- (a) by omitting from sub-section (2) the sub-section (1) that is substituted for sub-section 63H (1) of the *Audit Act 1901* and substituting the following sub-sections:

“(1) The authority shall, by 31 March in each year, prepare and submit to the appropriate Minister a report of its operations during the year that ended on the preceding 30 September, together with financial statements in such form as the Minister administering this Act approves.

“(1AA) The financial statements referred to in sub-section (1) in relation to a year shall include details of each reserve account established pursuant to section 12A of the *Wheat Marketing Act 1979* that was current in that year.”; and

- (b) by adding at the end of sub-section (2) the following paragraph:

“(d) for the purposes of the operation of section 63H of that Act, as modified by paragraph (b) of this sub-section, the period of 10 months that ended on 30 September 1982 shall be deemed to be a year.”.

#### **Remuneration and allowances of authorized receivers**

**17.** Section 55 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “There is payable by the Board to an authorized receiver” and substituting “Subject to any agreement in

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force from time to time between the Board and an authorized receiver, there is payable by the Board to the authorized receiver”;

- (b) by omitting from sub-section (1) “as are agreed, from time to time, between the Board and the authorized receiver” and substituting “as the authorized receiver determines from time to time”;
- (c) by omitting from sub-section (3) “made under sub-section (1)” and substituting “referred to in sub-section (1)”;
- (d) by omitting from sub-section (4) “made under this section” and substituting “made for the purposes of this section”.

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**NOTE**

1. No. 166, 1979, as amended. For previous amendments, see No. 48, 1982.