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**Wheat Marketing Amendment Act 1985**

**No. 91 of 1985**

**An Act relating to the marketing of wheat**

[*Assented to 26 August 1985*]

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 1985.*

**(2)** The *Wheat Marketing Act 1984*1is in this Act referred to as the Principal Act.

**Commencement**

**2.** **(1)** Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.

**(2)** Section 21 shall come into operation on 1 October 1985.

**Interpretation**

**3.** Section 3 of the Principal Act is amended—

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

“‘Committee’ means the Australian Wheat Board Selection Committee established by section 33a;”;

(b) by inserting “, and includes the Chairperson” after “Board” in the definition of “member” in sub-section (1);

(c) by inserting after the definition of “member” in sub-section (1) the following definition:

“ ‘member of the Committee’ includes the Presiding Member;”; and

(d) by inserting after the definition of “preliminary guaranteed minimum price” in sub-section (1) the following definition:

“ ‘Presiding Member’ means the Presiding Member of the Committee;”.

**Delivery of wheat in a Territory**

**4.** Section 18 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) Subject to this Act, a person who is in possession of wheat in a Territory may deliver that wheat to the Board.

“(1a)Subject to this section, the Board may—

(a) by notice in writing served on a person; or

(b) by notice in writing published in the *Gazette* and addressed to persons generally or persons included in a class of persons,

require the person, or each person, as the case may be, to whom the notice is addressed—

(c) to deliver to the Board, in accordance with any directions in the notice, wheat (other than exempt wheat) that is in the possession of that person in a Territory; or

(d) to deliver to the Board, in accordance with any directions in the notice, wheat (other than exempt wheat) that, during such period as is specified in the notice, comes into the possession of that person in a Territory.”; and

(b) by omitting paragraph (3) (a) and substituting the following paragraph:

“(a) without reasonable excuse, refuses or fails to deliver wheat to the Board as required by a notice under sub-section (1a); or”.

**Delivery to authorized receiver**

**5.** Section 19 of the Principal Act is amended—

(a) by inserting in sub-section (4) “or (4a)” after “sub-section (3)”; and

(b) by inserting after sub-section (4) the following sub-section:

“(4a) A person who, after the end of a season, delivers to an authorized receiver wheat harvested in that season shall, at the time of the delivery of the wheat, give to the authorized receiver a declaration in writing signed by that person stating the season during which the wheat was harvested.

Penalty: $1,000.”.

**Permits for purchase of wheat for stockfeed use**

**6.** Section 22 of the Principal Act is amended—

(a) by omitting from sub-section (1) “prescribed” (first occurring);

(b) by omitting from sub-section (7) “Permits” and substituting “Permit”; and

(c) by omitting sub-section (8).

**Contracts for sale of wheat entered into on behalf of Board**

**7.** Section 23 of the Principal Act is amended by adding at the end the following sub-sections:

“(8) A person who, after the end of a season, serves a notice on the Board under sub-section (1) with respect to wheat harvested in that season shall, at the time of service of the notice, serve on the Board a declaration in writing signed by the person stating the season during which the wheat was harvested.

“(9) A person who contravenes sub-section (8) is guilty of an offence punishable, on conviction, by a fine not exceeding $1,000.”.

**Unauthorized dealings with wheat**

**8.** Section 24 of the Principal Act is amended—

(a) by omitting from sub-section (1) “authority” and substituting “authorization”; and

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

“(4) A reference in sub-section (1) to a permit under section 22 includes, in relation to wheat harvested outside a Territory, a reference to a permit under the corresponding provision of a State Act.”.

**Home consumption price of wheat**

**9.** Section 32 of the Principal Act is amended by omitting from paragraph (2) (b) “one or more” and substituting “2 or more”.

**10.** Before Division 1 of Part IV of the Principal Act the following Division is inserted:

***“Division 1a*—*Australian Wheat Board Selection Committee***

**Establishment of Committee**

“33a. A Committee by the name of the Australian Wheat Board Selection Committee is established.

**Functions of Committee**

“33b. The functions of the Committee are—

(a) at the request of the Minister, to select persons to be nominated for appointment as members of the Board referred to in paragraphs 34 (1) (c) and (d);

(b) to decide whether provision should be made for the appointment of alternates of members of the Board referred to in paragraph 34 (1) (c);

(c) if the Committee decides that provision should be made for appointments of that kind—at the request of the Minister, to select persons to be nominated for appointment as alternates of members of the Board referred to in paragraph 34 (1) (c); and

(d) to nominate persons so selected to the Minister for appointment as members, or alternate members, of the Board.

**Powers of Committee**

“33c. The Committee has power to do all things that are necessary to be done for, or in connection with, the performance of its functions.

**Minister may determine selection criteria**

“33d. (1) The Minister may, by instrument in writing, determine selection criteria to be applied by the Committee in the performance of its functions.

“(2) Where the Minister determines selection criteria or varies selection criteria, the Minister shall give a copy of the selection criteria or of the variation to the Presiding Member.

**Minister may request nominations**

“33e. The Minister may, by notice in writing given to the Presiding Member, request the Committee to give to the Minister, within the period specified in the notice (not being a period less than 3 weeks)—

(a) written nominations of persons who are suitable for appointment as members of the Board referred to in paragraphs 34 (1) (c) and (d);

(b) if the Committee decides that provision should be made for the appointment of alternates of members of the Board referred to in paragraph 34 (1) (c)—written nominations of persons who are suitable for appointment as alternates of members of the Board referred to in paragraph 34 (1) (c); or

(c) where a casual vacancy occurs in the office of a member of the Board referred to in paragraph (a) or in the office of the alternate of a member of the Board—a written nomination of a person who is suitable for appointment to that office.

**Selection of persons by Committee**

“33f. (1) The Committee shall not nominate a person for appointment as a member of the Board referred to in paragraph 34 (1) (c) in relation to a State, or for appointment as the alternate of such a member, unless the person is a wheat grower in that State.

“(2) The Committee shall not nominate a person for appointment as a member of the Board referred to in paragraph 34 (1) (d) unless the person has had extensive experience at a high level in finance, marketing or grain movement logistics.

“(3) In nominating a person for appointment as a member of the Board referred to in paragraph 34 (1) (d), the Committee shall have regard to the requirement that at least one of the members referred to in that paragraph is to be a wheat grower.

“(4) Where selection criteria are applicable in relation to the selection of a person for appointment as a member of the Board or as the alternate of a member of the Board, the Committee shall not nominate a person for appointment as such a member or alternate unless the Committee is satisfied that the person meets those selection criteria.

“(5) The Committee shall not nominate a person for appointment as a member of the Board or as the alternate of a member of the Board if the person—

(a) is a member of the Committee; or

(b) has been a member of the Committee within 2 years of the day on which the nomination is given to the Minister.

**Nomination**

“33g. (1) Where the Minister gives a request to the Presiding Member under section 33e—

(a) the Committee shall, before the end of the period specified in the notice, select a person or persons to be nominated for appointment to the office or offices concerned; and

(b) the Presiding Member shall, on behalf of the Committee, before the end of that period, give to the Minister the written nomination or nominations concerned.

“(2) The Committee shall give to the Minister only one nomination in respect of each appointment to be made by the Minister.

“(3) Where the Committee proposes to nominate a person for appointment as a member of the Board or as the alternate of a member of the Board, the Presiding Member shall cause to be prepared and attached to the nomination a statement setting out—

(a) details of the person’s qualifications and experience; and

(b) where selection criteria are applicable in relation to the selection of the person—the Committee’s certification that the Committee is satisfied that the person meets those selection criteria; and

(c) such other information relating to the person as the Committee thinks will assist the Minister in considering whether to appoint the person.

“(4) The Committee may nominate a person for appointment even though the Minister has previously rejected a nomination of that person or the Committee has previously decided not to nominate the person for appointment.

**Minister may reject nominations**

“33h. Where the Minister is not satisfied that a person nominated by the Committee for appointment as a member of the Board or as the alternate of such a member is suitable for appointment as such a member or as the alternate of such a member, as the case may be, the Minister may, by notice in writing given to the Presiding Member, reject the nomination and may include in that

notice a further request under section 33e for a nomination of a person for appointment to the office concerned.

**Membership of Committee**

“33i. (1) The Committee shall consist of the following members:

(a) a Presiding Member;

(b) the Chairperson of the Board;

(c) the President of the National Farmers’ Federation or a person nominated by the President of the National Farmers’ Federation, and one other person nominated by the President of the National Farmers’ Federation;

(d) 5 wheat growers nominated by the Australian Wheatgrowers’ Federation.

“(2) The members of the Committee (other than the Chairperson of the Board) shall be appointed by the Minister and, subject to this Act, hold office for 2 years, but are eligible for re-appointment.

“(3) A person who is a member of the Board or the alternate of a member of the Board is not eligible to be appointed under sub-section (2) as a member of the Committee referred to in paragraph (1) (a), (c) or (d).

“(4) The appointment of a member of the Committee is not invalidated, and shall not be called in question, because of a defect or irregularity in or in connection with the member’s nomination or appointment.

“(5) The exercise of a power or the performance of a function by the Committee is not invalidated because of there being a vacancy or vacancies in the membership of the Committee.

**Acting Presiding Member**

“33j. (1) The Committee may, by resolution, appoint a person to act as Presiding Member—

(a) during a vacancy in the office of Presiding Member (whether or not an appointment has previously been made to the office); or

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

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

“(2) An appointment of a person 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 Presiding Member.

“(4) The Committee may, by resolution, terminate an appointment under sub-section (1) at any time.

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

“(6) The appointment of a person to act as Presiding Member ceases to have effect if the person resigns that appointment by writing signed by the person and delivered to the Minister.

“(7) While a person is acting as Presiding Member, the person has and may exercise all the powers, and shall perform all the functions, of the Presiding Member under this Act.

“(8) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for the appointment 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 person to act had not arisen or had ceased.

**Casual vacancy**

“33k. Where a member of the Committee (other than the Chairperson of the Board) ceases to hold office before the expiration of the term of office of the member of the Committee—

(a) in the case of the Presiding Member—the Minister may appoint a person to be the Presiding Member until the expiration of that term; or

(b) in the case of any other member of the Committee—the Minister may appoint a person nominated by the National Farmers’ Federation or the Australian Wheatgrowers’ Federation, as the case requires, to that office until the expiration of that term.

**Remuneration and allowances**

“33l. (1) A member of the Committee 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*,other than sub-sections 7 (9) and (13) of that Act.

**Leave of absence**

“33m. (1) The Minister may grant leave of absence to the Presiding Member from a meeting of the Committee.

“(2) The Presiding Member may grant leave of absence to another member of the Committee from a meeting of the Committee.

**Resignation**

“33n. A member of the Committee may resign from the office of member by writing signed by the member and delivered to the Minister.

**Determination of appointments of members of Committee**

“33p. (1) The Minister may terminate the appointment of a member of the Committee by reason of misbehaviour or physical or mental incapacity.

“(2) If a member of the Committee—

(a) 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 of her remuneration for their benefit;

(b) fails, without reasonable excuse, to comply with his or her obligations under section 33q; or

(c) is absent, without leave of absence under section 33m, from 3 consecutive meetings of the Committee,

the Minister shall terminate the appointment of the member of the Committee.

**Disclosure of interests by members of Committee**

“33q. (1) A member of the Committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee 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 Committee.

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

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

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

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

(a) be present during any deliberation of the Committee for the purpose of making the determination; or

(b) take part in the making by the Committee of the determination.

“(4) A member of the Committee who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee in accordance with section 33s shall, as soon as practicable after the

relevant facts have come to the knowledge of the member, disclose the nature of that interest to the Minister.

“(5) A member of the Committee who is required to make a disclosure under sub-section (4) in respect of a matter shall not, unless the Minister otherwise determines, sign a document with respect to that matter in accordance with section 33s.

**Meetings of Committee**

“33r. (1) Meetings of the Committee shall be held at such times and places as the Committee from time to time determines.

“(2) A meeting of the Committee may be called by the Presiding Member.

“(3) At a meeting of the Committee, 7 members of the Committee constitute a quorum if, of the members present at the meeting—

(a) at least 4 are members referred to in paragraph 33i (1) (d); and

(b) at least one is a member referred to in paragraph 33i (1) (c).

“(4) The Presiding Member shall preside at all meetings of the Committee at which the Presiding Member is present.

“(5) If the Presiding Member is not present at a meeting of the Committee, the members of the Committee who are present shall elect one of their number to preside at the meeting.

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

“(7) The member of the Committee presiding at a meeting of the Committee has a deliberative vote.

“(8) The Committee shall keep minutes of its proceedings.

**Resolutions without meetings**

“33s. Where—

(a) a copy of a document setting out a proposed resolution of the Committee comes into the possession of at least 7 members of the Committee, being members who, if they were present at a meeting of the Committee, would constitute a quorum; and

(b) a majority of those members sign a copy of the document,

a resolution of the Committee in the terms set out in the document shall be deemed to have been passed at a meeting of the Committee on the day on which the copies of the document were signed or, if the members of the Committee who signed the copies of the document did not sign on the same day, on the latest day on which a copy of the document was signed by such a member.

**Consultants, &c.**

“33t. (1) The Presiding Member may, on behalf of the Committee, engage persons having suitable qualifications and experience as consultants to assist the Committee in the performance of its functions.

“(2) The Presiding Member may, on behalf of the Committee, engage persons to perform clerical or administrative services in connection with the performance of the Committee’s functions.

“(3) The terms and conditions of engagement of persons engaged under sub-section (1) or (2) shall be such as are determined by the Committee.”.

**Membership of Board**

**11.** Section 34 of the Principal Act is amended—

(a) by omitting paragraphs (1) (c), (d), (e), (f), (g) and (h) and substituting the following paragraphs:

“(c) 5 wheat growers, one from each of New South Wales, Victoria, Queensland, Western Australia and South Australia; and

(d) 4 other members, each of whom has had extensive experience at a high level in finance, marketing or grain movement logistics and at least one of whom is a wheat grower.”;

(b) by omitting sub-sections (2), (3), (4) and (5) and substituting the following sub-sections:

“(2) The members shall be appointed by the Minister.

“(3) The Minister shall not appoint a person as a member referred to in paragraph (1) (c) or (d), being a person appointed for a term commencing on or after 1 October 1985, unless the person was nominated for appointment as such a member by the Committee.”; and

(c) by omitting from sub-section (7) “by reason of a deficiency or irregularity in, or in connection with, that appointment” and substituting “because of a defect or irregularity in or in connection with the member’s nomination or appointment”.

**Term of office of existing members**

**12.** Section 35 of the Principal Act is amended—

(a) by inserting in sub-section (1) “holding office on the day on which the *Wheat Marketing Amendment Act 1985* receives the Royal Assent continue to” after “the members”;

(b) by adding at the end of sub-section (1) “, but are eligible for re-appointment”;

(c) by inserting in sub-section (2) “referred to in sub-section (1)” after “member” (first occurring);

(d) by omitting from paragraph (2) (a) “representing wheat growers in a State” and substituting “who is a wheat grower from a State”;

(e) by inserting in paragraphs (2) (a) and (b) “until the end of the term of office of that member” after “office”; and

(f) by omitting from paragraph (2) (b) “, subject to section 34,”.

**13.** After section 35 of the Principal Act the following section is inserted:

**Term of office of members appointed on or after 1 October 1985**

“35a. (1) Subject to this Act, the members appointed for a term commencing on or after 1 October 1985 hold office for a period of 3 years, but are eligible for re-appointment.

“(2) The member referred to in paragraph 34 (1) (b) holds office during the pleasure of the Minister.

“(3) Where a member (other than the member referred to in paragraph 34 (1) (b)) ceases to hold office before the end of the term of office of the member, the Minister may appoint a person to that office until the end of that term.

“(4) The Minister shall not make an appointment under sub-section (3) to an office of member referred to in paragraph 34 (1) (c) or (d) otherwise than in accordance with a nomination made by the Committee.”.

**14.** After section 36 of the Principal Act the following section is inserted:

**Alternate members**

“36a. (1) If the Committee decides that provision should be made for the appointment of alternates of members referred to in paragraph 34 (1) (c), the Minister shall appoint a person other than a member to be the alternate of a member referred to in paragraph 34 (1) (c).

“(2) The Minister shall not appoint a person as the alternate of such a member unless the person was nominated for appointment as the alternate of that member by the Committee.

“(3) Subject to this Act, the alternate of such a member holds office for a period of 3 years, but is eligible for re-appointment.

“(4) The alternate of such a member may resign the office of alternate member by writing signed by the alternate member and delivered to the Minister.

“(5) Where the alternate of such a member ceases to hold office before the end of the term of office of the alternate member, the Minister shall appoint a person to that office until the end of that term.

“(6) The Minister shall not make an appointment under sub-section (5) otherwise than in accordance with a nomination made by the Committee.

“(7) If the office of a member referred to in paragraph 34 (1) (c) becomes vacant or a member referred to in paragraph 34 (1) (c) is absent from duty or from Australia or is, for any other reason, unable to perform the functions of that office of member, the alternate of that member may perform all the functions of that member during the vacancy or the period of absence or

inability and, when performing those functions, shall be deemed to be a member.

“(8) The appointment of a person as the alternate of such a member is not invalidated and shall not be called in question because of a defect or irregularity in or in connection with the person’s nomination or appointment.”.

**Remuneration and allowances of members of Board**

**15.** Section 37 of the Principal Act is amended by inserting in sub-section (4) “includes the alternate of a member, but” after “ ‘member’ ”.

**Termination of appointments of members of Board**

**16.** Section 40 of the Principal Act is amended by adding at the end the following sub-section:

“(3) A reference in this section (other than in paragraph (2) (c)) to a member includes a reference to the alternate of a member.”.

**Indemnity**

**17.** Section 44 of the Principal Act is amended by adding at the end the following sub-section:

“(2) A reference in sub-section (1) to a member includes a reference to the alternate of a member.”.

**Application of moneys of Board**

**18.** Section 53 of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

“(aa) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Presiding Member or the Committee in or in connection with the performance of the Committee’s functions;”.

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

**19.** Section 55 of the Principal Act is amended by adding at the end the following sub-section:

“(3) For the purposes of the application to the Board of Division 2 of Part XI of the *Audit Act 1901,* a reference in that Division to the appropriate Minister shall be read as a reference to the Minister of State administering this Act.”.

**Remuneration of authorized receivers**

**20.** Section 56 of the Principal Act is amended by omitting paragraph (4) (a) and substituting the following paragraph:

“(a) taking the aggregate of 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 the 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”.

**Repeal of section 66**

**21.** Section 66 of the Principal Act is repealed.

**NOTE**

1. No. 141, 1984.

[*Minister’s second reading speech made in—*

*Senate on 23 April 1985*

*House of Representatives on 20 May 1985*]