



Wheat Industry Fund Levy Collection Act 1989

No. 35 of 1989

An Act relating to the collection of levy imposed by the *Wheat Industry Fund Levy Act 1989*

[Assented to 30 May 1989]

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

Short title

1. This Act may be cited as the *Wheat Industry Fund Levy Collection Act 1989*.

Commencement

2. This Act commences on 1 July 1989.

Interpretation

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

“appoint” includes re-appoint;

“authorised person” means a person appointed under section 17;

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“examinable documents” means:

- (a) any documents relating to financial dealings between persons who deliver wheat and persons to whom wheat is delivered; and
- (b) any documents relating to the production, storage, carriage, delivery, processing, purchase, sale or export of wheat;

“fund” means:

- (a) the Wheat Industry Fund established by the *Wheat Marketing Act 1989*; or
- (b) the Wheat Research Trust Fund established by section 6 of the *Rural Industries Research Act 1985*;

“grower”, in relation to any wheat, means:

- (a) except where paragraph (b) applies—the person who owns the wheat immediately after it is harvested; or
- (b) where, under a marketing law, the wheat vests in a person or body or in the Crown in right of a State or Territory on or before the harvesting of the wheat—the person who would have owned the wheat immediately after it was harvested but for that law;

“levy” means levy imposed by the *Wheat Industry Fund Levy Act 1989*;

“levy year” means the financial year commencing on 1 July 1989 or any succeeding financial year;

“magistrate” includes a Justice of the Peace;

“marketing law” means a law of a State relating to the marketing of wheat or of primary products including wheat;

“processing”, in relation to wheat, means gristing, crushing, grinding, milling or other processing, including mixing with any other grain or substance;

“Secretary” means the Secretary to the Department;

“value” means sale value as ascertained in accordance with the regulations.

(2) Where a grower of wheat permits the wheat to be delivered to another person or to be taken by another person out of the grower’s possession or control, the grower shall be taken to have delivered the wheat to the other person.

(3) Where a grower of wheat causes the wheat to be carried by a person or persons to another person who does not receive the wheat for the purpose of carrying it to a further destination, the wheat shall be taken to have been delivered to the last-mentioned person.

(4) If the ownership of wheat passes from the grower to a person or to a number of persons in succession without any delivery of the wheat, a reference in this Act to the grower is a reference to that person or the last of those persons, as the case may be.

Application to the Crown

4. This Act binds the Crown in right of each of the States, of the Australian Capital Territory and of the Northern Territory.

Payment of levy

5. (1) Subject to subsections (2) and (3) and to the regulations, levy imposed on wheat because the wheat has been delivered by the grower to another person or processed by or for the grower is due for payment at the end of 28 days, or such longer period as is prescribed, immediately following the end of the quarter in which the wheat was delivered or processed.

(2) Subject to the regulations, if:

(a) because of subsection 8 (1) of the *Wheat Industry Fund Levy Act 1989*, levy is not imposed by that Act on wheat; and

(b) subsection 8 (1) ceases to apply to the wheat;

levy that becomes payable on the wheat under that Act when subsection 8 (1) ceases to apply is due for payment at the end of 28 days, or such longer period as is prescribed, after the end of the quarter in which the subsection ceases to apply.

(3) In this section:

“quarter” means:

(a) the period of 3 months commencing on 1 July 1989; and

(b) each subsequent period of 3 months.

Liability of purchaser or receiver

6. (1) In order to ensure that levy is paid, a purchaser or receiver of wheat is liable to pay to the Commonwealth, on behalf of the grower of the wheat, an amount equal to any levy on the wheat that is due and remains unpaid.

(2) In spite of anything to the contrary in any law of a State or Territory or in any agreement (whether entered into before or after the commencement of this Act), a purchaser of wheat who is liable under subsection (1) to pay an amount to the Commonwealth in respect of levy due on that wheat may deduct from any money payable by the purchaser for the purchase of that wheat an amount equal to, or that may reasonably be expected to be equal to, the first-mentioned amount.

(3) Where a purchaser deducts an amount under subsection (2), the grower is discharged from liability to pay the levy to the extent of the deduction, but the liability of the purchaser under subsection (1) is not affected.

(4) Where an amount in respect of levy payable on any wheat is paid on behalf of the grower by the purchaser or is recovered by the Commonwealth from the purchaser:

(a) the grower is, to the extent of that amount, discharged from liability to pay levy in respect of that wheat; and

- (b) the purchaser may recover from the grower, by set-off or otherwise, any difference between the amount paid or recovered and the amount of money (if any) deducted by the purchaser under subsection (2).

(5) Where an amount in respect of levy payable on any wheat is paid on behalf of the grower by a receiver of the wheat or is recovered by the Commonwealth from such a receiver:

- (a) the grower is to the extent of that amount discharged from liability to pay levy in respect of that wheat; and
- (b) subject to any agreement between the receiver and the grower, the receiver may recover from the grower an amount equal to the amount paid or recovered.

Penalty for non-payment

7. (1) If levy remains unpaid after the day on which it becomes due for payment, there is payable to the Commonwealth by way of penalty, in respect of each day after that day on which the levy or any part of the levy remains unpaid, an amount calculated at the rate of 20% per annum on the levy or on so much of the levy as remains unpaid.

(2) Penalty under subsection (1) is payable:

- (a) where the penalty relates to levy in respect of which a purchaser or receiver of wheat is liable to pay an amount to the Commonwealth under subsection 6 (1)—by that purchaser or receiver; or
- (b) in any other case—by the grower.

(3) A penalty under subsection (1) is payable in addition to the levy to which the penalty relates.

Remission of amounts

8. (1) Subject to subsection (2), the Minister or an authorised person may remit the whole or a part of an amount payable under section 7.

(2) An amount remitted by an authorised person under subsection (1) may not exceed \$1,500.

Recovery of levy etc.

9. The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) levy that is due and payable;
- (b) an amount payable under subsection 6 (1);
- (c) an amount payable under section 7.

Refund of levy etc.

10. (1) Where there has been an overpayment in respect of an amount referred to in section 9, the amount overpaid shall be refunded by the Commonwealth.

(2) Where an amount that is to be refunded by the Commonwealth in accordance with subsection (1) has been taken into account in calculating an amount to be paid into a fund, the amount of the refund shall be paid from the fund.

Power to call for information

11. An authorised person may, by written notice given or sent by post to a person, require the person to give to the authorised person, within a reasonable time specified in the notice, any return or information in relation to matters relevant to the operation of this Act specified in the notice.

Powers of authorised persons in relation to premises

12. (1) An authorised person may, with the consent of the occupier or person in charge of the premises or in accordance with a warrant issued under section 14, enter premises for the purpose of ascertaining whether a person has contravened or is contravening a provision of this Act or the regulations.

(2) Where an authorised person enters any premises under subsection (1), the person may:

- (a) search for, examine and take stock of wheat and any goods produced from wheat; and
- (b) search for, inspect, take extracts from, and make copies of, any examinable documents.

(3) A person shall not, without reasonable excuse, obstruct or hinder an authorised person in the exercise of a power conferred under subsection (1) or (2).

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

(4) In this section:

“premises” includes:

- (a) a structure, building, aircraft, vehicle or vessel;
- (b) a place (whether enclosed or built upon or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

Seizure

13. (1) An authorised officer may seize anything that he or she believes on reasonable grounds will afford evidence of a contravention of a provision of this Act or the regulations.

(2) The authorised person may retain the thing seized:

- (a) for 60 days after the seizure; or
- (b) if proceedings in which the thing may afford evidence are commenced within that period, until the proceedings (including any appeal) are completed or terminated.

(3) The Minister may authorise anything seized under subsection (1) to be released to the owner, or to the person from whose possession or custody it was seized, either unconditionally or on such conditions as are specified in the authority.

(4) Subsection (3) does not apply to anything while it is being held by a court as evidence in proceedings.

Warrant to enter premises

14. (1) If a magistrate, on application by an authorised person, is satisfied by information on oath or affirmation:

(a) that there is reasonable ground for believing that:

- (i) wheat is produced, stored or processed on particular premises;
 - (ii) goods produced from wheat are stored on particular premises;
- or

(iii) there are examinable documents on those premises; and

(b) that the issue of a warrant is reasonably required by the applicant for the purpose of ascertaining whether a person has contravened or is contravening a provision of this Act or the regulations;

the magistrate may issue a warrant authorising the authorised person to enter the premises:

- (c) with such assistance, and with such force, as is necessary and reasonable; and
- (d) during such hours as the warrant specifies or, if the warrant so specifies, at any time.

(2) A warrant shall specify the period, not exceeding one month, during which it is to remain in effect.

Offences in relation to returns etc.

15. (1) A person shall not, without reasonable excuse, refuse or fail to give a return or information that the person is required to give by or under this Act or the regulations.

(2) A person is not excused from giving a return or information on the ground that the return or information might tend to incriminate the person, but any return or information given, and any information or thing (including a document) obtained as a direct or indirect result of the giving of the return or information, is not admissible in evidence against the person in:

- (a) criminal proceedings, other than proceedings for an offence against subsection (1) or (3); or
- (b) proceedings for recovery of a penalty payable under section 7.

(3) A person shall not knowingly or recklessly present a document, make a statement or submit a return, that is false or misleading in a material particular, to a person performing duties in relation to this Act.

Penalty:

- (a) in the case of a natural person—\$3,000 or imprisonment for 6 months, or both; and
- (b) in the case of a body corporate—\$15,000.

Conduct of directors, servants and agents

16. (1) Where it is necessary to establish, for the purposes of this Act, that a body corporate had a particular state of mind in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) Where it is necessary to establish, for the purposes of this Act, that a person other than a body corporate had a particular state of mind in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(5) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(6) Where:

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for the offence.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Appointment of authorised persons

17. The Secretary may, in writing:

- (a) appoint a member of the Australian Public Service to be an authorised person; or
- (b) appoint a class of members of the Australian Public Service to be authorised persons;

for the purposes of a specified provision of this Act.

Identity cards

18. (1) The Secretary may cause an identity card to be issued to an authorised person.

(2) An identity card shall:

- (a) contain a recent photograph of the authorised person to whom it is issued; and
- (b) be in a form approved in writing by the Secretary.

(3) Where an authorised person proposes to enter premises otherwise than under a warrant issued under section 14, the authorised person shall produce his or her identity card to the person in charge of the premises for the person's inspection and, if the authorised person fails to do so, the authorised person is not entitled to enter the premises under subsection 12 (1).

(4) Where a person to whom an identity card has been issued ceases to be an authorised person, the person shall forthwith return the identity card to a person occupying an office in the Department designated in writing by the Secretary for the purpose of this subsection.

Penalty: \$100.

Review of decisions

19. (1) Application may be made to the Administrative Appeals Tribunal for a review of a decision to refuse to remit under subsection 8 (1) the whole or part of an amount.

(2) Where the Minister or an authorised person makes a decision under subsection 8 (1) and gives to the person whose interests are affected by the decision notice in writing of the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review of the decision.

(3) Failure to comply with the requirements of subsection (2) does not affect the validity of a decision.

Delegation by Secretary

20. (1) The Secretary may, in writing, delegate to the person occupying an office in the Department all or any of the Secretary's powers under this Act.

(2) A delegate is, in the exercise of a delegated power, subject to the directions of the Secretary.

Regulations

21. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (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) The matters that may be prescribed under subsection (1) include, but are not limited to:

- (a) providing for the payment of amounts on account of levy due by a person;
- (b) providing for the time or times, and the manner, of payment of levy, of amounts on account of levy and of other amounts payable to the Commonwealth under this Act;
- (c) requiring growers, receivers or purchasers of wheat and any other persons prescribed, to make and keep accounts and other records in respect of wheat;
- (d) requiring growers, receivers or purchasers of wheat, and any other persons prescribed, to give returns or information for the purposes of this Act; and
- (e) prescribing penalties, not exceeding, in the case of a natural person, a fine of \$1,000 and, in the case of a body corporate, a fine of \$5,000, for offences against the regulations.

(3) Before making a regulation for the purpose of the definition of "value" in subsection 3 (1), the Governor-General shall take into consideration any relevant recommendation made to the Minister by the Grains Council of Australia.

*[Minister's second reading speech made in—
House of Representatives on 13 April 1989
Senate on 9 May 1989]*