



1996B00368

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Statutory Rules 1994 No. L<sup>1</sup>

254/

## Wheat Industry Fund Regulations<sup>2</sup> (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and after being informed by the Minister for Primary Industries and Energy that the Minister has considered a report by the Grains Council of Australia made after consultation with the Australian Wheat Board, make the following Regulations under the *Wheat Marketing Act 1989*.

Dated L 1994.

6 July/

L BILL HAYDEN/  
Governor-General

By His Excellency's Command,

L  
Minister for Primary Industries and Energy

BOB COLLINS/

## 1. Amendment

1.1 The Wheat Industry Fund Regulations are amended as set out in these Regulations.

[NOTE: These Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

## 2. Regulation 2 (Interpretation)

2.1 Subregulation 2 (1) (definition of “application”):

Omit the definition.

2.2 Subregulation 2 (1) (definition of “Wheat Industry Fund number”):

Omit the definition.

2.3 Subregulation 2 (1) (definition of “levy”):

Omit the definition, substitute:

“levy’ has the meaning given by paragraph 84 (a) of the Act;”.

2.4 Subregulation 2 (1) (definition of “WIF financial year”):

Omit the definition, substitute:

“WIF financial year’ means a financial year of the Fund;”.

2.5 Subregulation 2 (1):

Insert:

“unit’ means a unit of equity in the Fund in accordance with regulation 8.”.

2.6 Subregulation 2 (2):

Omit the subregulation, substitute:

“(2) For the purpose of these Regulations, the ‘WIF financial year of issue’ of units is, as the case may be:

- (a) the WIF financial year in which the units are taken to have been issued under subregulation 8 (3) or 8A (5); or
- (b) if the units have been purchased under regulation 10B—the WIF financial year in which the units were last purchased under that regulation; or

- (c) if the units have been transferred in a transaction in which the Board was broker—the WIF financial year in which the units were last so transferred, to the extent that, at the time of the transfer:
  - (i) equity for sale under regulation 10B is unavailable to the transferee; and
  - (ii) the transaction meets the purpose of satisfying the transferee’s request to acquire equity under regulation 10B.”.

**3. Regulation 3 (Payments into the Fund)**

**3.1 Subregulation 3 (1):**

Add at the end:

- “; and (d) any brokerage fee received by the Board in respect of a transaction under these Regulations; and
- (e) money paid to the Board for equity purchased under subregulation 10B (1).”.

**4. Regulation 5 (Annual Business Plan)**

**4.1 Subregulation 5 (1):**

Omit “year starting on 1 October”, substitute “WIF financial year”.

**4.2 Paragraph 5 (2) (d):**

Omit the paragraph, substitute:

- “(d) the means of determining the number of new units to be issued at the end of the WIF financial year; and
- (e) the matters to be taken into account in determining the value to be attributed to each unit at the end of the WIF financial year; and
- (f) circumstances and conditions under which payments may be made to holders of equity:
  - (i) under regulation 10; and
  - (ii) under regulation 10A; and
- (g) circumstances and conditions under which equity may be offered for sale under regulation 10B.”.

**4.3 Subregulation 5 (3):**

Omit the subregulation, substitute:

- “(3) The plan has no effect:
  - (a) unless it is approved by the Grains Council; and
  - (b) in respect of paragraph (2) (d), (e), (f) or (g)—to the extent that it operates preferably in respect of any person.

**5. Regulation 6 (Management of Fund)**

5.1 Omit subregulation 6 (1), substitute:

“(1) For the purposes of management of the Fund, a WIF financial year is a year that begins on 1 October.”

**6. Regulation 8 (Equity in fund)**

6.1 Omit the regulation, substitute:

**Division of Fund into units**

“8. (1) The Fund is divided, for the purposes of its administration, into units of equity of equal value.

“(2) The number of units taken to have been issued before the commencement of this provision is:

- (a) in the WIF financial year that ended in 1990—40,450,937; and
- (b) in the WIF financial year that ended in 1991—20,820,238; and”
- (c) in the WIF financial year that ended in 1992—21,186,732; and”
- (d) in the WIF financial year that ended in 1993—26,001,756.

“(3) Units are taken to have been issued to a person in accordance with regulation 8A in a WIF financial year referred to in subregulation 8 (2) as if the WIF financial year were the WIF financial year referred to in subregulation 8A (1).

**Determination of value and allocation of units**

“8A. (1) Each year, as soon as is practicable after the end of a WIF financial year, the Board must determine, in accordance with guidelines in the Annual Business Plan:

- (a) the value of each unit in the Fund at the end of that WIF financial year; and
- (b) the number of units to be issued in respect of levy that has been credited to the Fund under section 81 of the Act during that WIF financial year.

“(2) The number determined under paragraph (1) (b) must:

- (a) be calculated by taking account of:
  - (i) the amounts of levy credited to the Fund under section 81 of the Act in the WIF financial year; and
  - (ii) the proportion of the WIF financial year that has elapsed when each amount of levy is credited; and
  - (iii) the proportion of the earnings or losses of the Fund in the WIF financial year (including any change in the value of assets) that, on a pro rata basis, is attributable to each amount of levy credited; and
- (b) not be a number that results in the units having a value that differs from the value of existing units.

“(3) When the Board has made its determination under paragraph (1) (b), it must calculate the proportional share of the units to be issued to each equity holder, taking account of:

- (a) the amount of levy credited in respect of the person in the WIF financial year; and
- (b) the proportion of the WIF financial year that had elapsed when levy paid by the person was credited to the Fund; and
- (c) the amount, if any, of equity that was created in the WIF financial year that was transferred from the person to another person; and

- (d) the amount, if any, of equity that was created in the WIF financial year that was transferred to the person, and the proportion of the WIF financial year that had elapsed when the levy component of that equity was credited to the Fund.

“(4) The Board must issue to a person to whom subregulation (3) applies the person’s share of the units.

“(5) Units issued to a person under this regulation are taken, for the purposes of these Regulations, to have been issued in the WIF financial year in which the equity represented by the units was created.

### **Certain equity to vest in Board**

“8B. (1) If, after the Board:

- (a) makes its determination under paragraph 8A (1) (b); and
- (b) makes all reasonable efforts to identify and locate the persons to whom the units must be issued;

the proper holder in respect of a unit remains unknown, the unit is taken to vest in the Board.

“(2) A unit that has vested in the Board under subregulation (1) may be claimed by the proper holder within 2 years after the date on which the unit would have issued to the person if his or her identity and location had been known to the Board, and, if the Board is satisfied that the claim is valid, it must issue the unit to the person.”.

## **7. Regulation 9 (Issue of statements by Board)**

7.1 Omit the regulation, substitute:

### **Statement of equity held by equity holder**

“9. As soon as is practicable after the Board has made its determinations and calculations under regulation 8A in respect of a WIF financial year, it must issue a statement to each equity holder, setting out:

- (a) the person’s name; and

- (b) the WIF financial year of issue of units held by the person at the beginning of the latest WIF financial year to have ended, and the quantity of units from each of those years of issue that are known to be held by the person; and
- (c) the amount of levy paid by the person that was credited to the Fund during the latest WIF financial year to have ended; and
- (d) the total number of units issued to the person during the latest WIF financial year to have ended; and
- (e) if the person is known to have disposed of equity as transferor during the latest WIF financial year to have ended:
  - (i) the quantity of the units transferred; and
  - (ii) if the transfer includes equity in respect of which units have not yet been issued, the amount of that equity; and
- (f) if the person is known to have acquired equity as transferee during the latest WIF financial year to have ended:
  - (i) the WIF financial year or years of issue of the equity; and
  - (ii) the quantity of the units from each of those years of issue; and
  - (iii) if the acquired equity includes equity that was created in the latest WIF financial year to have ended, the amount of that equity; and
- (g) the value of each unit at the end of the latest WIF financial year to have ended; and
- (h) the WIF financial year of issue of units held by the person at the end of the latest WIF financial year to have ended, and the quantity of units from each of those years of issue that are known to be held by the person.”.

**8. Regulation 10 (Payments to equity holders—earliest equity)****8.1 Subregulations 10 (1), (2), (2A) and (3):**

Omit the subregulations, substitute:

“(1) From time to time, and after consultation with the Grains Council, the Board may determine that an amount is available to be paid out of the Fund to each holder of a class of equity in reduction of the holder’s equity.

“(2) The class of equity must comprise all units issued in a WIF financial year, or years, of issue specified in the determination.

“(3) The class must not omit a unit that was issued earlier than units that are included in the class, unless the earlier unit:

- (a) has been surrendered or otherwise annulled under these Regulations; or
- (b) because of paragraph 2 (2) (b) or (c)—is taken to have been issued in a later WIF financial year than the financial year of issue of the equity that is included in the class.

“(3A) The determination must fix:

- (a) the number of units in respect of which payment may be made, as a percentage of the total number of the determined class of units held at the end of the latest WIF financial year prior to the determination; and
- (b) the amount that may be paid in respect of each unit; and
- (c) a date after which payment to each holder in the class may be made.”.

**8.2 Subregulation 10 (5):**

After “holder”, insert “in the class”.

**8.3 Subregulation 10 (6):**

Omit the subregulation, substitute:

“(6) Not later than 30 days after the date fixed under paragraph (3A) (c), the Board must:

- (a) pay to each holder in the class (except a holder who gives notice under paragraph (5) (c)) the amount to which the holder is entitled under the determination; and



- (b) record that the holder's equity in respect of the WIF financial year, or years, affected is reduced by the number of units for which the payment is made."

## 9. New regulations 10A, 10B and 10C

### 9.1 After regulation 10, insert:

#### Optional payments to equity holders—all holders

"10A. (1) The Board may determine:

- (a) in accordance with this regulation and guidelines (if any) in the Annual Business Plan; and
- (b) with the approval of the Grains Council;

that an amount of the Fund is available to be paid to each equity holder in reduction of the holder's equity in the Fund.

"(2) A determination must fix:

- (a) the number of units in respect of which payment may be made, as a percentage of the total number of units held at the end of the latest WIF financial year prior to the determination; and
- (b) the amount that may be paid in respect of each unit by which equity is reduced under subregulation (4); and
- (c) the amount that may be paid in respect of each unit by which equity is reduced under subregulation (5); and
- (d) for payments under subregulations (4) and (5) respectively—a date after which the payments may be made.

"(3) When a determination is made, the Board must send to each equity holder a written invitation to reduce the holder's equity by an amount (specified in units) calculated in accordance with the formula:

$$\text{Amount} = N \times P$$

where:

'N' is the number of units registered in the name of the holder at the end of the latest WIF financial year prior to the determination;

'P' is the percentage determined under paragraph (2) (a).

“(4) If, within 30 days after an invitation has been sent to an equity holder, the Board receives from the holder a written acceptance of the invitation (in whole or in part):

- (a) the equity of the holder is taken to be reduced to the extent of the holder’s acceptance; and
- (b) the Board must pay to the holder, for each unit by which the holder’s equity is reduced, the amount fixed under paragraph (2) (b).

“(5) The amount of the difference between the total amount determined to be available to be paid and the aggregate amount paid to equity holders under subregulation (4) may be used by the Board for a further payment to each equity holder who, within 30 days after being sent an invitation under subregulation (3) has given the Board written notice that holder wishes to reduce his or her equity holding by a number of units greater than that offered in the Board’s invitation.

“(6) Subject to subregulation (7), the equity of a holder who gives notice under subregulation (5) is taken to be further reduced to the extent to which the holder’s request is satisfied by the Board and the Board must pay to the holder, for each unit by which the holder’s equity is so reduced, the amount fixed under paragraph (2) (c).

“(7) If the amount determined under subregulation (5) to be available to be paid is insufficient to satisfy in full all the requests for additional reduction of equity, the Board must ensure:

- (a) that the reduction in the equity of those applicants is satisfied to the extent possible within the amount available to be paid; and
- (b) that the unsatisfied portion of each request is proportional to the unsatisfied portion of each other request.

“(8) A unit by which equity is taken to be reduced under this regulation is the oldest unit issued (or taken to have been issued, under paragraph 2 (2) (b) or (c)) that is registered in the name of the equity holder.

**Relinquished equity—re-allocation or annulment**

“10B. (1) Equity in the Fund that has been surrendered under regulation 10A or paid out under regulation 16 or that is taken to vest in the Board under regulation 8B may be:

- (a) offered for sale by the Board; or
- (b) annulled by the Board.

“(2) The Board must not act under subregulation (1):

- (a) except in consultation with the Grains Council; and
- (b) unless:
  - (i) there are guidelines for the action in the Annual Business Plan; and
  - (ii) the Board’s action is in compliance with the guidelines; and
- (c) in respect of equity taken to vest in the Board under regulation 8B—until a period of 2 years has elapsed since the equity vested in the Board.

**WIF number**

“10C. (1) When a person acquires equity in the Fund, by whatever means, the Board must allocate to the person a number, to be known as the person’s WIF number.

“(2) Subregulation (1) does not apply to a person to whom a WIF number has already been allocated unless the person has wholly relinquished his or her previous equity holding and, in consequence, lost the number.”.

**10. Regulation 11 (Certificates of equity)**

10.1 Omit the regulation.

**11. Regulation 12 (Transfer of equity)**

11.1 Omit the regulation, substitute:

**Transfer of equity**

“(1) An equity holder may transfer the equity.

“(2) A transfer of equity is not effective for any purpose of these Regulations until the transferee or transferor gives to the Board, in a form approved by the Board:

- (a) written notice of:
  - (i) the name and address of the transferor; and
  - (ii) the name and address of the transferee; and
  - (iii) the date of the transfer; and
  - (iv) the quantity of units transferred; and
  - (v) the year of issue of units transferred; and
  - (vi) the amount, if any, of equity transferred for which units had not been issued at the time of transfer;
- (b) a written transfer signed by the transferor and the transferee.

“(3) The Board must promptly register a transfer when subregulation (2) is complied with.

[NOTE: Copies of a form approved by the Board may be obtained from the Board]”.

**12. Regulation 13 (Register of equity holders)****12.1 Subregulation 13 (2):**

Omit the subregulation, substitute:

- “(2) The Register must state, in respect of each equity holder:
- (a) the name and address of the holder; and
  - (b) the WIF number of the holder; and
  - (c) the amount, in units, of the holder’s equity in the Fund at the beginning of the latest WIF financial year; and
  - (d) the WIF financial year of issue of those units; and
  - (e) the total amount of levy (if any) paid by the holder that has been credited to the Fund under section 81 of the Act, in the latest WIF financial year; and
  - (f) the amount, in units, of equity issued to the holder in the latest WIF financial year under subregulation 8A (4); and

- (g) the number of units that the Board is aware have been transferred to or from the holder in the latest WIF financial year; and
- (h) the number of units by which the holder's equity has been reduced in the latest WIF financial year under regulation 10 or 10A; and
- (i) if a payment under regulation 16 has been made in respect of the holder in the latest WIF financial year—the amount of the payment; and
- (j) taking account of paragraphs (c), (f), (g), (h) and (i)—the amount, in units, of the holder's equity in the Fund at the end of the latest WIF financial year; and
- (k) any other information relating to a matter referred to in paragraph (g), (h) or (i) that is necessary to enable the Board to comply with regulation 9.

“(3) In addition to the matters set out in subregulation (2), the Register must state, in respect of each equity holder:

- (a) if details of a transfer of equity by the holder are notified in writing to the Board—the name and address of the transferee and the date of the transfer; and
- (b) if details of a transfer of equity to the holder are notified in writing to the Board—the name and address of the transferor and the date of the transfer.

**13. Regulation 14 (Bankruptcy, death, retirement, etc. of equity holder)**

13.1 After subregulation 14 (2), insert:

“(2A) An equity holder may apply to the Board for payment of the equity if the holder:

- (a) has not been a grower of wheat for a period of at least 3 years preceding the application and continues not to be a grower; and
- (b) has not been liable, under the *Wheat Industry Fund Levy Act 1989*, for the payment of levy in that period, except in respect of wheat grown before the beginning of that period.

“(2B) An equity holder may apply to the Board for payment of the equity if the holder:

- (a) being a person who has received farm household support that has been converted into a grant under section 52 of the *Farm Household Support Act 1992*—has left, and not returned to, wheat-growing; or
- (b) being a person who has received a re-establishment grant under a rural adjustment scheme within the meaning of the *Rural Adjustment Act 1992*—has left, and not returned to, wheat-growing.”.

13.2 Paragraph 14 (3) (c):

Omit “Wheat Industry Fund”, substitute “WIF”.

13.3 Paragraphs 14 (3) (d), (e) and (f):

Omit the paragraphs, substitute:

“(d) include:

- (i) for an equity holder referred to in subregulation (1) or (2)—a certified copy of the sequestration order or the death certificate, as the case requires; or
  - (ii) for an equity holder referred to in subregulation (2A) or (2B)—evidence, to the satisfaction of the Board, of the circumstances relied on; and
- (e) include, for an equity holder referred to in subregulation (1) or (2), documentary evidence of the appointment of the applicant as trustee, or as executor or administrator, as the case requires; and
- (f) indicate, in relation to payment, whether option A or option B is chosen.”.

13.4 Add at the end:

“(4) Subregulations (2A) and (2B) do not apply to an equity holder in his or her capacity as:

- (a) a partner in a partnership that is liable to pay levy, unless each other partner:
  - (i) is a person of the kind described in subregulation (2A) or (2B), as the case requires; and
  - (ii) is making application under that subregulation; or

- (b) a member of a corporation or other entity within the meaning of the Corporations Law that is, or has been, liable to pay levy.

“(5) For the purposes of subparagraph (3) (d) (ii), a statutory declaration by the applicant is satisfactory evidence that the applicant has left, and not returned to, wheat-growing.”.

#### **14. Regulation 15 (Time limit for applications)**

14.1 Omit the regulation, substitute:

##### **Time limit for application for payment**

“15. (1) An application for payment of equity under subregulation 14 (1) may be made only while the equity holder remains bankrupt.

“(2) An application for payment of equity under subregulation 14 (2) may be made:

- (a) if the equity holder died before 22 September 1993—only within 3 years after that date; or
- (b) in any other case—only within 3 years after death occurs.

“(3) An application for payment of equity under subregulation 14 (2A) or 14 (2B) may be made only within 3 years after the first day on which the holder is eligible to make an application under the subregulation.

##### **Transferred equity ineligible for payment**

“15A. (1) If, in the opinion of the Board, a transfer of equity to an equity holder described in regulation 14 has possibly been made with the intention of obtaining benefit for the transferor from payment for the equity under regulation 16, an application under regulation 14 is taken not to include the transferred equity.

“(2) If an applicant under regulation 14 who disagrees with the Board’s decision under subregulation (1) in relation to the application requests, in writing, that the Board reconsider its decision, the Board must:

- (a) reconsider its decision; and
- (b) give written notice of its reconsidered decision to the applicant within 28 days after receiving the request.

“(3) Application under the *Administrative Appeals Tribunal Act 1975* may be made to the Administrative Appeals Tribunal for a review of a decision of the Board under subregulation (2).”.

## **15. Regulation 16 (Payment of the amount of equity)**

### **15.1 Omit the regulation, substitute:**

#### **Payment of equity—bankruptcy, etc.**

“16. (1) Subject to regulation 15A, the Board must pay an applicant under regulation 14 the amount of the equity holder’s equity, minus any administrative costs reasonably incurred by the Board in dealing with the application, if the Board is satisfied:

- (a) for an application under subregulation 14 (1) or (2)—that:
  - (i) the applicant is the trustee, executor or administrator of the estate of the equity holder, as the case requires; and
  - (ii) the application has been made within the time allowed under subregulation 15 (1) or (2), as appropriate; and
- (b) for an application under subregulation 14 (2A) or (2B)—that:
  - (i) the circumstances entitling the applicant to make the application are factual; and
  - (ii) the application has been made within the time allowed under subregulation 15 (3).

“(2) Despite subregulation (1), the Board is not required to pay an amount under that subsection if, as a result of the payment, the Board would be unable to comply with the Annual Business Plan for the WIF financial year in which the payment would be made.



“(3) If an applicant under regulation 14 who disagrees with a decision of the Board under paragraph (1) (a) or (b) in relation to the application requests, in writing, that the Board reconsider its decision, the Board must:

- (a) reconsider its decision; and
- (b) give written notice of its reconsidered decision to the applicant within 28 days after receiving the request.

“(4) Application under the *Administrative Appeals Tribunal Act 1975* may be made to the Administrative Appeals Tribunal for a review of a decision of the Board under subregulation (3).”.

## **16. Regulation 17 (Calculation of amount payable—options A and B)**

### **16.1 Subregulation 17 (1):**

After “applicant”, insert “under regulation 14”.

### **16.2 Paragraph 17 (1) (c):**

After “regulation 10”, insert “or 10A”.

### **16.3 Subregulation 17 (2):**

Omit “determined in relation to the equity holder under regulation 8”, substitute “recorded in the Register under paragraph 13 (2) (j)”.

## **17. Regulation 19 (When must equity payment under regulation 16 be made?)**

### **17.1 Omit subregulations 19 (1) and (2), substitute:**

“(1) If the Board decides to make a payment under regulation 16, the payment must be made:

- (a) to an applicant choosing Option A—within 30 days after the Board receives the application; or
- (b) to an applicant choosing Option B—as soon as is practicable after there is recorded in the Register the amount of the holder’s equity in the Fund at the end of the WIF financial year in which the application for payment was received by the Board.”.

## NOTES

1. Notified in the *Commonwealth of Australia Gazette* on L 1994.
2. Statutory Rules 1990 No. 28 as amended by 1990 No. 417; 1991 Nos. 198 and 315; 1994 No. 245.

13 July

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