



Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008

No. 66, 2008

**An Act to deal with consequential matters arising
from the repeal of the *Wheat Marketing Act 1989*
and the enactment of the *Wheat Export Marketing
Act 2008*, and for other purposes**

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An Act to deal with consequential matters arising from the repeal of the *Wheat Marketing Act 1989* and the enactment of the *Wheat Export Marketing Act 2008*, and for other purposes

[Assented to 30 June 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 30 June 2008 |
| 2. Schedules 1 and 2 | At the same time as section 4 of the <i>Wheat Export Marketing Act 2008</i> commences. | |
| 3. Schedule 3, item 1 | At the same time as section 1 of the <i>Wheat Export Marketing Act 2008</i> commences. | |
| 4. Schedule 3, items 2 to 6 | At the same time as section 4 of the <i>Wheat Export Marketing Act 2008</i> commences. | |
| 5. Schedule 3, items 7 and 8 | At the same time as section 1 of the <i>Wheat Export Marketing Act 2008</i> commences. | |
| 6. Schedule 3, items 9 to 11 | At the same time as section 4 of the <i>Wheat Export Marketing Act 2008</i> commences. | |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

- (1) Each Act, and each set of regulations, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

Schedule 1—Repeal

Wheat Marketing Act 1989

1 The whole of the Act

Repeal the Act.

Schedule 2—Consequential amendments

Criminal Code Act 1995

1 Subparagraph 136.1(1)(c)(iii) of the *Criminal Code*

Omit “and”, substitute “or”.

2 At the end of paragraph 136.1(1)(c) of the *Criminal Code*

Add:

- (iv) an application for accreditation under the wheat export accreditation scheme; and

3 Subparagraph 136.1(4)(c)(iii) of the *Criminal Code*

Omit “and”, substitute “or”.

4 At the end of paragraph 136.1(4)(c) of the *Criminal Code*

Add:

- (iv) an application for accreditation under the wheat export accreditation scheme; and

5 Subsection 136.1(9) of the *Criminal Code*

Insert:

wheat export accreditation scheme has the same meaning as in the *Wheat Export Marketing Act 2008*.

Note: The heading to subsection 136.1(9) is replaced by the heading “*Definitions*”.

Customs (Prohibited Exports) Regulations 1958

6 Subregulation 5(4) (including the note)

Repeal the subregulation.

7 After regulation 9

Insert:

9AAA Exportation of bulk wheat

- (1) The exportation from Australia of wheat is prohibited unless the wheat is exported by an accredited wheat exporter.
- (2) Subregulation (1) does not apply to the export of wheat in:
 - (a) a bag; or
 - (b) a container;that is capable of holding not more than 50 tonnes of wheat.
- (3) Subregulation (1) does not apply to the export of wheat by AWB (International) Ltd before 1 October 2008.
- (4) Subregulation (1) does not apply to the export of wheat before 1 October 2008 if:
 - (a) before the transition time, the EWC had given consent under subsection 57(1) of the *Wheat Marketing Act 1989* to the export of the wheat; and
 - (b) the export of the wheat is in accordance with the terms of that consent.
- (5) In this regulation:

accredited wheat exporter has the same meaning as in the *Wheat Export Marketing Act 2008*.

AWB (International) Ltd means AWB (International) Limited (ACN 081 890 413).

EWC means the Export Wheat Commission.

transition time means the commencement of section 4 of the *Wheat Export Marketing Act 2008*.

8 Schedule 3 (table item 31)

Repeal the item.

Financial Management and Accountability Regulations 1997

9 Part 1 of Schedule 1 (table item 122C)

Repeal the item.

10 Part 1 of Schedule 1 (after table item 145)

Schedule 3—Transitional provisions

1 Definitions

In this Schedule:

AWB (International) Ltd means AWB (International) Limited (ACN 081 890 413).

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

EWC means the Export Wheat Commission.

related body corporate has the same meaning as in the *Corporations Act 2001*.

transition time means the commencement of section 4 of the *Wheat Export Marketing Act 2008*.

WEA means Wheat Exports Australia.

2 Transfer of appropriated money

- (1) For the purposes of the operation of an Appropriation Act after the transition time, references to the EWC are to be read as references to WEA.
- (2) In this item:
Appropriation Act means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

3 Termination of EWC appointments

- (1) This item applies to a person who, immediately before the transition time, held office as a member of the EWC.
- (2) The person ceases to hold that office at the transition time.
- (3) Neither this Act nor the *Wheat Export Marketing Act 2008* prevents the person from being appointed as a member of WEA.

4 Wheat Exports Australia Special Account

- (1) The Export Wheat Commission Special Account is abolished.
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- (2) There is to be credited to the Wheat Exports Australia Special Account an amount equal to the balance of the Export Wheat Commission Special Account as at immediately before the transition time.

5 Final report of the EWC's operations

- (1) WEA must, as soon as practicable after the end of the 9-month period that began on 1 October 2007, prepare and give to the Minister a report of the EWC's operations during that 9-month period.
- (2) The Minister must cause a copy of the subitem (1) report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.
- (3) Section 34C of the *Acts Interpretation Act 1901* applies to the subitem (1) report as if the report were a regular report.

6 Confidentiality of information given to the EWC

Despite the repeal of section 5E of the *Wheat Marketing Act 1989* by this Act, that section continues to apply, in relation to:

- (a) information given to the EWC under section 5D of that Act before the commencement of this item; and
- (b) information contained in a document given to the EWC under section 5D of that Act before the commencement of this item;

as if that repeal had not happened.

7 EWC may formulate the wheat export accreditation scheme before the transition time

- (1) This item applies to the power conferred on WEA by section 8 of the *Wheat Export Marketing Act 2008*.
- (2) The EWC may exercise the power before the transition time as if:
- (a) sections 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 21, 22 and 24 of the *Wheat Export Marketing Act 2008* had come into operation; and
 - (b) the reference in section 8 of the *Wheat Export Marketing Act 2008* to WEA were a reference to the EWC.
- (3) An instrument made by the EWC in accordance with subitem (2) has effect, after the transition time, as if it had been made by WEA.

- (4) Section 5B of the *Wheat Marketing Act 1989* does not apply to the power conferred by subitem (2).

8 EWC may approve forms under the wheat export accreditation scheme before the transition time

- (1) This item applies if:
- (a) the EWC has formulated the wheat export accreditation scheme before the transition time; and
 - (b) the scheme confers on WEA the power to approve a form.
- (2) The EWC may exercise the power before the transition time as if:
- (a) the scheme had come into operation; and
 - (b) each reference in the scheme to WEA were a reference to the EWC.
- (3) A form approved by the EWC in accordance with subitem (2) is, after the transition time, taken to have been approved by WEA.
- (4) Section 5B of the *Wheat Marketing Act 1989* does not apply to the power conferred by subitem (2).

9 Export of wheat before 1 October 2008—exceptions to prohibition

- (1) The prohibition in subsection 7(1) of the *Wheat Export Marketing Act 2008* does not apply to the export of wheat by AWB (International) Ltd before 1 October 2008.
- (2) The prohibition in subsection 7(1) of the *Wheat Export Marketing Act 2008* does not apply to the export of wheat before 1 October 2008 if:
- (a) before the transition time, the EWC had given consent under subsection 57(1) of the *Wheat Marketing Act 1989* to the export of the wheat; and
 - (b) the export of the wheat is in accordance with the terms of that consent.
- (3) A person who wishes to rely on subitem (1) or (2) bears an evidential burden in relation to that matter.

Note: For *evidential burden*, see item 1 of this Schedule.

10 Final reports about AWB (International) Ltd's performance

Report to Minister

- (1) WEA must prepare and give to the Minister a report in relation to:
 - (a) AWB (International) Ltd's performance in relation to the export of wheat during the period:
 - (i) beginning on 1 July 2007; and
 - (ii) ending at the finalisation time for the 2007-2008 pool; and
 - (b) the benefits to growers that resulted from that performance.
- (2) WEA must give the subitem (1) report to the Minister within:
 - (a) 6 months after the finalisation time for the 2007-2008 pool; or
 - (b) if the Minister allows a longer period—that longer period.

Report for growers

- (3) WEA must prepare and publish a report for growers in relation to:
 - (a) AWB (International) Ltd's performance in relation to the export of wheat during the period:
 - (i) beginning on 1 July 2007; and
 - (ii) ending at the finalisation time for the 2007-2008 pool; and
 - (b) the benefits to growers that resulted from that performance.
- (4) WEA must publish the subitem (3) report within:
 - (a) 6 months after the finalisation time for the 2007-2008 pool; or
 - (b) if the Minister allows a longer period—that longer period.

Power to obtain information

- (5) Despite the repeal of section 5D of the *Wheat Marketing Act 1989* by this Act, that section continues to apply, until the latest of the following times:
 - (a) 6 months after the finalisation time for the 2007-2008 pool;
 - (b) if the Minister allows a longer period under paragraph (2)(b) of this item—the end of that longer period;
 - (c) if the Minister allows a longer period under paragraph (4)(b) of this item—the end of that longer period;

as if:

- (d) that repeal had not happened; and
- (e) each reference to the EWC in that section were a reference to WEA.

Protected confidential information

- (6) For the purposes of the *Wheat Export Marketing Act 2008*, information is ***protected confidential information*** if:
 - (a) either:
 - (i) it is information given to WEA under section 5D of the *Wheat Marketing Act 1989* (as that section continues to apply under subitem (5)), and the company that gave the information claims it is commercial-in-confidence information; or
 - (ii) it is information contained in a document given to WEA under section 5D of the *Wheat Marketing Act 1989* (as that section continues to apply under subitem (5)), and the company that gave the document claims that the information is commercial-in-confidence information; and
 - (b) the disclosure of the information could reasonably be expected:
 - (i) to cause financial loss or detriment to the company; or
 - (ii) to cause financial loss or detriment to a related body corporate of the company; or
 - (iii) to directly benefit a competitor of the company; or
 - (iv) to directly benefit a competitor of a related body corporate of the company.

Finalisation time for the 2007-2008 pool

- (7) For the purposes of this item, if:
 - (a) AWB (International) Ltd purchased wheat for inclusion in a pool mentioned in section 84 of the *Wheat Marketing Act 1989*; and
 - (b) the wheat was harvested during the financial year beginning on 1 July 2007;then:
 - (c) the pool is the ***2007-2008 pool***; and

- (d) the *finalisation time* for the 2007-2008 pool is the time when AWB (International) Ltd makes its final distribution to participants in the pool.

11 Pending EWC investigations

Despite the repeal of section 5DC of the *Wheat Marketing Act 1989* by this Act, that section continues to apply, in relation to:

- (a) an investigation begun before the transition time; and
- (b) a report about such an investigation;

as if:

- (c) that repeal had not happened; and
 - (d) each reference to the EWC in that section were a reference to WEA.
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*[Minister's second reading speech made in—
House of Representatives on 29 May 2008
Senate on 16 June 2008]*

(87/08)
