

WESTERN AUSTRALIA

**GRAIN MARKETING ACT 1975**

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WESTERN AUSTRALIA

## GRAIN MARKETING ACT 1975

**AN ACT to establish The Grain Pool of W.A. to provide for the marketing of certain grains, and for related purposes.**

### PART I—PRELIMINARY

#### **Short title and commencement**

1. (1) This Act may be cited as the *Grain Marketing Act 1975*<sup>1</sup>.
- (2) This Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.

#### **Repeals**

2. The Acts, Parts of Acts, and references to Acts set out in the First Schedule are repealed.

#### **Arrangement**

3. [Section 3 omitted under the *Reprints Act 1984* s. 7(4)(d).]

**Exemptions**

4. The Governor may by proclamation exempt any part of the State from the operation of this Act in respect of any or all of the prescribed grains and may revoke or vary such a proclamation by a further proclamation.

**Interpretation**

5. (1) In this Act unless the contrary intention appears—

“advertisement” means an advertisement in at least 3 newspapers circulating generally in the State;

“appointed date” in relation to a prescribed grain, other than barley, means the date fixed by Order under section 21 for the commencement of marketing of that grain by the Grain Pool;

“approved grain” means a grain which is the subject of a current approval by the Minister under section 26;

“authorized grain” means a grain that is an authorized grain by virtue of a current declaration by the Minister under section 34A;

“barley” includes a sample of cereal containing not less than 60 per centum of barley grain or seed;

“Board” means the Board of Directors;

“certificate” means a certificate issued by the Board in respect of a grain received by the Grain Pool for a pool;

“Chairman” means Chairman of the Board;

“compulsory pool” means a pool for the marketing of a prescribed grain;

“closing date” means the date on or before which grain for a pool may be delivered to the Grain Pool or a licensed receiver;

“Director” means a Director of the Grain Pool;

“electoral zone” means one of the zones set out in the Second Schedule;

“grain” means the seed of any crop or pasture species;

“Grain Pool” means The Grain Pool of W.A. established under this Act;

“licensed receiver” means a person who has under section 34 a licence to receive and handle grain on behalf of the Grain Pool;

“lupin” means all cultivars of *Lupinus angustifolius* L. (narrow-leaved lupin);

“Order” means an Order in Council published in the *Government Gazette*;

“pool” means a pool established under this Act for the marketing of a grain;

“prescribed grain” means barley, linseed, rapeseed, and lupin and any other grain that is a prescribed grain by virtue of a current

declaration under section 20 (2) and an Order made under section 21 (1):

“prescribed producer” in relation to an electoral zone means a person who is one of a class of persons prescribed by the regulations as producers in the electoral zone;

“producer” means a person—

- (a) who delivers grain to a compulsory or a voluntary pool established by the Grain Pool; or
- (b) discharges obligations pursuant to a contract entered into by the Grain Pool under section 34B (1),

or a person on whose behalf grain is so delivered or obligations are so discharged, and where grain is so delivered or obligations are so discharged on behalf of any share-farming or partnership agreement, includes each party to such an agreement;

“Producers’ Council” means the Producers’ Council of The Grain Pool of W.A. constituted in accordance with section 43 and the rules referred to in section 44;

“season” means the period between 1 April in any one year and 31 March in the next following year;

“Schedule” means a Schedule to this Act;

“section” means a section of this Act;

“sell” includes barter or exchange; and “sale” has a corresponding meaning;

“subsection” means a subsection of the section wherein the term is used; and

“voluntary pool” means a pool for the marketing of an approved grain.

(2) This Act shall be construed subject to the *Bulk Handling Act 1967* and the duties, powers, and functions imposed or conferred on Co-operative Bulk Handling Limited by or under that Act.

[Section 5 amended by No. 89 of 1981 s. 2; No. 92 of 1982 s. 2.]

## PART II—THE GRAIN POOL OF W.A.

### Establishment

**6.** (1) For the purposes of this Act, there is hereby established The Grain Pool of W.A.

(2) The Grain Pool—

- (a) is a body corporate with perpetual succession and shall have a common seal;
- (b) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued; and

- (c) is capable of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

(3) All courts and persons acting judicially shall take judicial notice of the common seal of the Grain Pool affixed to any document and shall presume that it was duly affixed thereto.

#### **Grain Pool not to represent the Crown**

7. The Grain Pool is not an agent or servant of the Crown.

#### **Administration of this Act**

8. The Grain Pool shall carry out the administration of this Act.

#### **Board of Directors**

9. (1) The governing authority of the Grain Pool is the Board of Directors.

(2) The Board shall consist of 9 Directors of the Grain Pool appointed by the Governor namely—

- (a) one person from each of the 7 zones set out in the Second Schedule, who is, in each case, a prescribed producer in the electoral zone for which he is appointed and is elected for appointment by prescribed producers in that electoral zone; and
- (b) 2 persons who are nominated by the Minister from a panel of names submitted by producer organizations and who, in the opinion of the Minister, have special expertise in finance or marketing, or both.

(3) Prior to the first occasion on which appointments are to be made of Directors referred to in paragraph (b) of subsection (2), and on each occasion thereafter when the office of such a Director becomes vacant, the Minister shall, in writing, request producer organizations to submit to him, in writing, a panel of names of persons who are considered by those organizations to have the qualification required by that paragraph and are willing to be appointed as Directors.

(4) Where producer organizations have been requested, pursuant to subsection (3), to submit a panel of names to the Minister and no such panel has been duly submitted within 28 days of the request having been made, or, if such a panel has been duly submitted within that time, no person named in the panel has, in the opinion of the Minister, the qualification required by subsection (2) (b), the Minister may nominate for appointment as Director other persons or another person, as the case requires who have, or has, in the opinion of the Minister, such a qualification.

(5) The Directors shall appoint one of the Directors referred to in subsection (2) (a) to be Chairman of Directors.

- (6) Each Director shall be appointed for a term of 4 years.

(7) Subject to this Act, where the term of office of any Director expires by effluxion of time, the Director is eligible for re-election and re-appointment or for re-nomination and re-appointment, as the case requires.

(8) Each Director may be, at any time, removed from office by the Governor for disability, insolvency, neglect of duty, or misconduct or if having been appointed under subsection (2) (a) he ceases to be a prescribed producer in the zone for which he was elected and appointed.

(9) Each Director may, at any time, resign his office by writing addressed to the Minister.

(10) If any Director dies, resigns, or is removed from office, the vacancy in the office of Director so vacated shall be filled in the manner in which the appointment to the vacant office was originally made and the person appointed to that office shall be appointed for the residue of the term for which his predecessor was appointed.

(11) The Minister may grant leave of absence to a Director upon such terms and conditions as he determines.

(12) A person may be appointed to be a deputy of a Director and—

(a) in the case of a Director referred to in subsection (2) (a) his deputy shall be a person who is a prescribed producer in the electoral zone for which the Director was appointed and who is appointed as his deputy by the Board; and

(b) in the case of a Director referred to in subsection (2) (b), his deputy shall be a person who is nominated by the Minister and appointed by the Governor and who, in the opinion of the Minister, has special expertise in finance or marketing, or both.

(13) The powers of the Board are not affected by any vacancy in the membership thereof, and if a quorum is present all acts and proceedings of the Board are valid and effectual notwithstanding the vacancy.

(14) All acts and proceedings of the Board are, notwithstanding any defect in the appointment of any Director or deputy, or that any Director or deputy was disqualified or not entitled to act, as valid as if the Director or deputy has been duly appointed and was qualified to act and had acted as a Director or deputy and as if the Board had been duly and fully constituted.

### **Conduct of meetings**

**10.** Subject to this Act the meetings of the Board shall be conducted in such manner as the Board determines.

**Time of meetings**

**11.** (1) The first meeting of the Board after the coming into operation of this Act<sup>1</sup> shall be convened by the Minister and thereafter, subject to subsection (2), meetings shall be held at the times and places determined by the Board but the Chairman, or any 2 Directors, may, on reasonable notice to all Directors, call a meeting at any time.

(2) The Chairman shall ensure that a meeting of the Board is conducted in each month.

**Proceedings of the Board**

**12.** (1) At a meeting of the Board, 5 Directors entitled to vote constitute a quorum.

(2) The Chairman shall preside at every meeting of the Board at which he is present but if the Chairman is not present at a meeting the other Directors present shall select one of their number to act as Chairman.

(3) Questions arising at a meeting of the Board shall be decided, in open voting, by a majority of the votes of Directors present thereat.

(4) The deputy of a Director has, at any meeting of the Board at which he but not the Director is present, all the powers and functions of a Director.

(5) The Chairman has a deliberative vote only and, if the votes of Directors present at a meeting and voting on a question are equally divided, the question shall be decided in the negative.

(6) The Board shall keep a record of its proceedings.

**Delegation**

**13.** (1) The Board may delegate to any Director, officer or employee of the Board or other person, any of its powers and functions, except this power of delegation.

(2) The Board may at any time revoke a delegation given under subsection (1), and a delegation so given does not prevent the exercise or discharge by the Board of any of its powers or functions.

**Remuneration and expenses of Directors and their deputies**

**14.** Directors and their deputies shall receive such remuneration and expenses as are recommended by the Board and approved by the Governor.

**Protection of Directors**

15. A Director or a deputy of a Director is not personally liable for any act done in good faith by the Board or by him acting as a Director or deputy.

**Officers and employees of the Grain Pool**

16. (1) The Board may appoint such officers and employees of the Grain Pool as are necessary for the purposes of this Act.

(2) On the date of coming into operation of this Act<sup>1</sup>, all officers and employees who were employed immediately prior to that date by The Grain Pool of W.A. established under the *Grain Pool Act 1932*, and who are willing and able to be employed by The Grain Pool of W.A. established under this Act, shall be deemed to be appointed officers and employees of The Grain Pool of W.A. under this Act on the same terms and conditions, including the salary payable, as they were employed by The Grain Pool of W.A. under the *Grain Pool Act 1932* immediately prior to that date.

(3) Where an officer or employee is deemed to be appointed in pursuance of subsection (2) he retains his existing and accruing rights and for the purpose of determining those rights, his service as an officer or employee of The Grain Pool of W.A. under the *Grain Pool Act 1932* shall be taken into account as if it were service with The Grain Pool of W.A. under this Act.

**Terms and conditions of employment**

17. Subject to any relevant award or industrial agreement under the *Industrial Relations Act 1979*<sup>2</sup>, and subject to section 16, the terms and conditions of officers and employees of the Grain Pool, including the salary payable, are such terms and conditions as the Board determines.

**Transfer of property, rights, obligations and liabilities**

18. On the date of coming into operation of this Act<sup>1</sup>—

- (a) all right, title, and interest to and in any property, including any reserve fund, that was immediately prior thereto vested in or held by—
  - (i) The Grain Pool of W.A., established under the *Grain Pool Act 1932*;
  - (ii) the Western Australian Barley Marketing Board, constituted under the *Marketing of Barley Act 1946*<sup>3</sup>; and
  - (iii) the Western Australian Seed Board, established under the *Seed Marketing Act 1969*<sup>4</sup>,

(in this section called "the former bodies") is, by force of this section and without further assurance, transferred to, and vested, for the purposes of this Act, in The Grain Pool of W.A. established under this Act;

- (b) all rights, obligations, and liabilities of the former bodies or any of them existing immediately prior thereto are, by force of this section vested in or imposed on, The Grain Pool of W.A. established under this Act;
- (c) in any agreement, whether in writing or not, and in every deed, contract, or other instrument to which any of the former bodies was a party or by which it was affected, a reference to any such of the former bodies shall take effect as a reference to The Grain Pool of W.A. established under this Act; and
- (d) any proceedings pending immediately prior thereto to which any of the former bodies was a party shall be continued as if The Grain Pool of W.A. established under this Act were a party thereto in lieu of any such former body.

### **General powers of the Grain Pool**

**19.** The Grain Pool shall have, for the purposes of this Act, the following general powers—

- (a) to buy and sell any property;
- (b) to enter into any contract;
- [(c) and (d) deleted]
- (e) subject to section 39 of the *Bulk Handling Act 1967* and after consultation with the Company within the meaning of that Act, to establish or maintain premises, machinery, plant, or other equipment for receiving, handling, classifying, storing, protecting, purifying, treating, processing, packing, or selling grain;
- (f) to act as shipping agent;
- (g) to undertake and carry on business transactions, and to do all other things, which are necessary or convenient to be done by the Grain Pool for giving effect to this Act;
- (h) to act as trustee of reserve funds vested in the Grain Pool by the operation of section 18, to amalgamate for the purpose of deposit and investment all or any of such reserve funds if the Board considers it necessary or convenient so to do and from time to time, to invest any moneys forming part of any such reserve funds or the accumulations thereof in any investments or securities which the Board considers appropriate or in the purchase of real estate with power as to real estate to sell, transfer, improve, manage, develop, exchange, let, mortgage, or otherwise dispose of, deal with, or turn to account, the same;

- (i) to act as trustee of the Grain Research Fund established under section 28 and to keep separate accounts in respect of that Fund with the same powers of investment in respect of the moneys forming part of that Fund or the accumulations thereof as are conferred on the Grain Pool by paragraph (h) in relation to the reserve funds or the accumulations thereof mentioned in that paragraph;
- (j) to accept voluntary contributions to the reserve funds vested in the Grain Pool by the operation of section 18, and to the Grain Research Fund established under section 28, from producers and any other persons, whether such contributions are made in cash or by delivery of grain or by deductions authorized by producers from compensation payable for grain delivered to the Grain Pool or otherwise howsoever;
- (k) to apply all reserve funds vested in the Grain Pool by the operation of section 18 in accordance with the trusts on which they were held immediately prior to the date of coming into operation of this Act; and
- (l) to apply the Grain Research Fund established under section 28 and the accumulations thereof, and the investments representing the same in such manner as is recommended and approved pursuant to section 28 (9).

[Section 19 amended by No. 63 of 1984 s. 3.]

#### **Financial powers**

**19A.** (1) For the purposes of this Act, the Grain Pool may—

- (a) borrow money;
- (b) obtain credit; and
- (c) arrange for financial accommodation to be extended to the Grain Pool in ways additional to or other than borrowing moneys or obtaining credit.

(2) For the purposes of this Act, the Grain Pool may—

- (a) draw, make, accept, endorse, discount, execute, issue and deliver promissory notes, bills of exchange, unsecured notes, bonds, mortgages, securities or any similar instruments or documents; and
- (b) execute all such other instruments, whether by way of security or otherwise, affecting all or part of the property of the Grain Pool or property to be acquired by the Grain Pool, as may be required for those purposes.

(3) Any moneys borrowed by, credit obtained by, or financial accommodation extended to, the Grain Pool under this section may be raised or entered into, either in the State or elsewhere.

[Section 19A inserted by No. 63 of 1984 s. 4.]

## PART III—MARKETING OF GRAIN

## Division 1—Marketing Pools

[Heading inserted by No. 89 of 1981 s. 3.]

**Prescribed grains**

20. (1) Barley, linseed, rapeseed, and lupin are prescribed grains.

(2) On the recommendation of the Minister, the Governor may, by Order, declare that a grain specified in the Order shall, on and after a date to be fixed by the Governor pursuant to section 21 (1), be a prescribed grain, and that grain shall be a prescribed grain on and after that date unless and until it ceases to be a prescribed grain pursuant to subsection (3).

(3) On the recommendation of the Minister, the Governor may, by Order declare that a prescribed grain, other than barley, specified in the Order shall cease to be a prescribed grain on and after a date so specified and that grain shall not be a prescribed grain on and after that date unless and until it again becomes a prescribed grain pursuant to subsection (2) and section 21 (1).

**Appointed date for commencement of the marketing of grain that becomes a prescribed grain**

21. (1) The Governor shall, by Order fix a date for the commencement of the marketing by the Grain Pool of a grain specified in an Order pursuant to section 20 (2).

(2) The appointed date shall be not less than one month after the Order fixing it has been published in the *Government Gazette*.

(3) Within the period of 14 days after the Order fixing the appointed date has been published in the *Government Gazette* the Board shall, by advertisement, give notice of the appointed date and of the marketing arrangements for that grain on and after that date.

[Section 21 amended by No. 92 of 1982 s. 3.]

**Grain Pool sole marketing authority for prescribed grain**

22. (1) The Grain Pool is the sole marketing authority of prescribed grain.

- (2) Subject to subsection (3), a person shall not—
- (a) sell or deliver a prescribed grain to any person other than the Grain Pool; or
  - (b) take delivery of or receive a prescribed grain from any person other than the Grain Pool.

Penalty: \$2 000 or for a second or subsequent offence, \$5 000.

- (3) Subsection (2) does not apply to a prescribed grain—
- (a) that has been previously purchased from the Grain Pool; or
  - (b) that is sold, delivered, taken delivery of or received in accordance with a permit issued under section 22A.

(4) Nothing in this section affects the operation of section 39 of the *Bulk Handling Act 1967*.

[Section 22 amended by No. 112 of 1987 s. 4.]

### **Permits to purchase prescribed grain**

**22A.** (1) Subject to this section, the Grain Pool may issue to a person (in this section referred to as a purchaser) a permit authorizing the purchaser to make purchases of prescribed grain in accordance with the terms and conditions of the permit.

- (2) An applicant for a permit under this section must—
- (a) apply to the Grain Pool in accordance with the form approved for the purpose by the Grain Pool;
  - (b) pay the appropriate fee as determined by the Grain Pool with the approval of the Minister; and
  - (c) enter a binding agreement to pay or cause to be paid to the Grain Pool for the Grain Research Fund established under section 28 an amount equivalent to the amount of levies that would have been imposed on the producer of the prescribed grain and paid to the Grain Research Fund if the prescribed grain purchased under the permit had been delivered to the Grain Pool for a compulsory pool.
- (3) A permit issued under this section shall specify—
- (a) the date of issue of the permit;
  - (b) the name and address of the person to whom it is issued;
  - (c) the season during which purchases of a prescribed grain are authorized by the permit to be made;
  - (d) the quantity of prescribed grain authorized by the permit to be purchased;
  - (e) the use or uses to which the prescribed grain may be put by the purchaser; and, if the grain may be processed and exported, the processed product shall be specified; and
  - (f) any other conditions that may be prescribed by regulations.

(4) A purchaser who purchases a prescribed grain under a permit issued under this section may, not later than the end of the month following that of the purchase, be required to deliver to the Grain Pool a notice in the form approved by the Grain Pool specifying in respect of the first-mentioned month—

- (a) the name and address of each person from whom a prescribed grain was purchased;
- (b) the date of purchase;
- (c) the quantity of prescribed grain constituting each purchase;
- (d) the use to which the prescribed grain was put; and
- (e) any other matter prescribed for the purposes of this subsection.

(5) A person who—

- (a) does not deliver any notice to the Grain Pool as and when required to do so by subsection (4); or
- (b) delivers a notice under subsection (4) to the Grain Pool that he knows to be false or misleading in a material particular,

commits an offence.

Penalty: \$1 000.

[Section 22A inserted by No. 112 of 1987 s. 5.]

#### **Use by purchaser contrary to permit**

**22B.** A person to whom a permit is issued under section 22A shall not—

- (a) use, or cause or permit to be used, any of the prescribed grain purchased by that person under that permit for a purpose contrary to the purpose specified in the permit; or
- (b) contravene, or cause or permit to be contravened, any condition attached to the permit issued to that person.

Penalty: \$2 000 or for a second or subsequent offence, \$5 000.

[Section 22B inserted by No. 112 of 1987 s. 5.]

#### **Review of sections 22A and 22B**

**22C.** (1) The Minister shall carry out a review of the operation and effectiveness of Part III commencing not later than one year after the coming into operation of the *Acts Amendment (Grain Marketing) Act 1987*<sup>1</sup>, or 28 February 1989, whichever is the earlier, and in the course of that review the Minister shall consider—

- (a) the effectiveness of the operations of the Grain Pool under section 22A;
- (b) the need for the continuation of the functions of the Grain Pool under section 22A; and

- (c) such other matters as appear to him to be relevant to the operation and effectiveness of sections 22A and 22B.

(2) The Minister shall prepare a report based on his review made under subsection (1) and shall, if practicable, cause the report to be laid before each House of Parliament during the month of March 1989, but in any event, shall cause the report to be laid before each House of Parliament no later than 30 June 1989.

[Section 22C inserted by No. 112 of 1987 s. 5.]

### **Certain contracts void and severable**

23. (1) Where a contract related wholly or partially to the sale or delivery of a quantity of a grain, other than barley, which is a prescribed grain and is not completed by the delivery of all that quantity before the appointed date, the contract is, to the extent of the amount of that grain not so delivered, void from the date it was made and is to that extent severable, and any other contract or any transaction in respect of that grain is void and severable to the same extent.

(2) If any money has been paid in respect of a prescribed grain that is the subject of a contract or transaction that is void under subsection (1), the money shall be repaid in proportion to the extent to which the contract or transaction is so void.

(3) Where a contract or transaction, other than a contract entered into under section 34B (1), is void under subsection (1), each party to the contract or transaction shall, within the period of 14 days after the appointed date, submit to the Board in writing complete details of the contract or transaction.

[Section 23 amended by 89 of 1981 s. 4.]

### **Pool or pools for marketing prescribed grain**

24. (1) The Grain Pool shall, on such terms and conditions as it thinks fit, establish and maintain a pool or separate pools for the marketing of a prescribed grain produced in a season.

(2) Within the period of 14 days after a compulsory pool is established the Board shall, by advertisement, give notice of the compulsory pool and its terms and conditions.

(3) For each compulsory pool the Board shall fix a date on or before which grain for the compulsory pool may be delivered to the Grain Pool or a licensed receiver and may vary that date.

(4) Within the period of 14 days after the closing date is fixed or varied the Board shall, by advertisement, give notice of that date or that date as varied.

#### **Receival of a prescribed grain by the Grain Pool**

25. Subject to the terms and conditions of a compulsory pool, the Grain Pool shall receive for the compulsory pool all of a prescribed grain—

- (a) that is produced in the season to which the compulsory pool relates;
- (b) that is delivered to the Grain Pool or a licensed receiver on or before the closing date of the compulsory pool by or on behalf of the producer; and
- (c) that complies with any standards that apply to the compulsory pool.

#### **Voluntary pools**

26. (1) The Minister may, by notice published in the *Government Gazette* approve of any grain, other than a prescribed grain, being the subject of voluntary pools and may by like notice withdraw that approval.

(2) The Grain Pool may, on such terms and conditions as the Minister approves, establish and maintain each year a pool or separate pools for the marketing of an approved grain produced in a season and delivered to the Grain Pool by producers of the approved grain subject to the terms and conditions of the voluntary pool.

(3) Within the period of 14 days after a voluntary pool is established the Board shall, by advertisement, give notice of the voluntary pool and its terms and conditions.

(4) For each voluntary pool the Board shall fix a date on or before which grain for the voluntary pool may be delivered to the Grain Pool or a licensed receiver and may vary that date.

(5) Within the period of 14 days after the closing date is fixed or varied the Board shall, by advertisement, give notice of that date or that date as varied.

#### **Producers**

27. For the purposes of sections 25 and 26, where the Board has reasonable grounds to believe that a person is the producer of the grain delivered to the Grain Pool, he is deemed to be the producer.

**Levies**

**28.** (1) The Governor, on the recommendation of the Minister after the Minister has consulted producer organizations, may by Order give authority to the Grain Pool to impose levies on a prescribed grain or an approved grain specified in the Order to the extent so specified and may by Order vary or revoke an authority given pursuant to this subsection.

(2) Where the Governor gives an authority pursuant to subsection (1), the Grain Pool shall impose the levies on producers who deliver to the Grain Pool grain that is the subject of the authority.

(2a) Where pursuant to subsection (1) the Governor varies or revokes an authority previously given by him pursuant to that subsection, the Grain Pool shall vary or revoke the levies imposed pursuant to subsection (2) by the Grain Pool on producers in accordance with the Governor's variation or revocation.

(3) The amount of the levies so imposed in respect of a grain shall be paid into a reserve fund to be applied for grain research to be known as the Grain Research Fund.

(4) There shall be a committee to be known as the Grain Research Committee to advise the Minister on the application of the Grain Research Fund.

(5) The Grain Research Committee—

(a) shall consist of 5 persons appointed by the Minister on such terms and conditions as he thinks fit—

(i) 2 of whom shall be producers appointed from a panel of names submitted by producer organizations;

(ii) one of whom shall be a Director referred to in section 9 (2) (a);

(iii) one of whom shall be a representative of the Department of Agriculture of the State; and

(iv) one of whom shall be a representative of the University of Western Australia; and

(b) may function notwithstanding any vacancy on it.

(6) Prior to the first occasion on which appointments are to be made of members of the Grain Research Committee referred to in subsection (5) (a) (i), and on each occasion thereafter when the office of such a member becomes vacant, the Minister shall, in writing, request producer organizations to submit to him, in writing, a panel of names of producers who are willing to be appointed members of the Grain Research Committee.

(7) Where producer organizations have been requested, pursuant to subsection (6) to submit a panel of names to the Minister and no such panel has been duly submitted within 28 days of the request having been

made, the Minister may appoint as a member of the Grain Research Committee such producers or producer, as the case requires, as the Minister thinks fit.

(8) Any person appointed to the Grain Research Committee may be removed by the Minister at any time.

(9) The Grain Pool shall pay from the Grain Research Fund for the purposes thereof such sums as are recommended by the Grain Research Committee and approved by the Minister.

(10) To the extent of the amount of moneys paid into the Grain Research Fund on or after 1 September 1980 in respect of levies imposed under this section on producers of barley, the Grain Pool may pay from the Grain Research Fund—

- (a) to the Commonwealth, such amounts as are due from the Grain Pool as a purchaser of barley within the meaning of the *Barley Research Act 1980* of the Commonwealth in respect of the levy imposed on barley by the *Barley Research Levy Act 1980* of the Commonwealth; and
- (b) to producers by way of reimbursement, such amounts as producers may have paid to the Commonwealth in respect of levy imposed on barley by the *Barley Research Levy Act 1980* of the Commonwealth if levies under this Act have also been imposed and paid on the same barley.

[Section 28 amended by No. 4 of 1981 s. 2.]

#### **Grain vests in the Grain Pool**

29. (1) Where the Grain Pool receives grain for a pool, the grain is vested in the Grain Pool freed and discharged from all trusts and encumbrances, and all previous rights and interests of any person in respect of the grain are converted into a claim for compensation under this Act by a person to whom a certificate is issued or his assignee.

(2) On the recommendation of the Minister, the Governor may, by Order, declare that an approved grain specified in the Order shall on and after a date so specified be a special approved grain, and that approved grain shall be a special approved grain on and after that date unless and until it ceases to be a special approved grain pursuant to subsection (3).

(3) On the recommendation of the Minister the Governor may, by Order, declare that a special approved grain shall cease to be a special approved grain on and after a date so specified and that approved grain shall not be a special approved grain on and after that date unless and until it again becomes a special approved grain pursuant to subsection (2).

(4) Notwithstanding section 9 of the *Bulk Handling Act 1967*, where any portion of a special approved grain is delivered to, and received by, the Company within the meaning of that Act—

- (a) the Company is deemed to have received it, as a licensed receiver within the meaning of this Act, on behalf of the Grain Pool; and
- (b) the Grain Pool is, for the purposes of subsection (1), deemed to have received it—
  - (i) for the current voluntary pool for the marketing of such grain of a like grade and classification to that of the portion so delivered and received; or
  - (ii) if there is no such current voluntary pool, for the next succeeding voluntary pool for the marketing of such grain of a like grade and classification to that of the portion so delivered and received.

### **Classification and certificate**

**30.** (1) As soon as practicable after the Grain Pool receives grain for a pool the Board—

- (a) shall classify or cause to be classified each lot of the grain;
- (b) shall determine or cause to be determined the dockages on each lot of the grain;
- (c) shall issue a certificate in the prescribed form to the person by whom or on whose behalf that lot was delivered or, if he authorizes the Board in writing, before or at the time of delivery, to issue the certificate to another person, issue it to that other person; and
- (d) shall, in the certificate, certify in respect of that lot—
  - (i) its quantity and its classification or classifications and the dockages thereon; and
  - (ii) that compensation for it is payable to the person to whom the certificate is issued or his assignee.

(2) Where there is more than one producer of a particular lot of grain, the Board may grant separate certificates in accordance with the respective interests of the producers.

### **Sale of grain by the Grain Pool**

**31.** (1) The Grain Pool may sell grain vested in it under section 29 (1) to such persons, at such prices, and on such terms as the Board thinks fit.

(2) Without limiting the generality of subsection (1) the Grain Pool may, for the purposes of that subsection—

- (a) employ agents;
- (b) supply grain for consumption in the State or those parts of the State where there is a shortage of grain;

- (c) export grain, or sell grain for export, to other countries or States; and
- (d) subject to the approval of the Governor, to achieve co-ordination and regulation of the control of the marketing of a grain within and outside the Commonwealth, become a shareholder in any incorporated company or enter into any agreement relating to the marketing of that grain with a Commonwealth authority, a grain marketing board or corporation of another State, any person, or any association of persons.

(3) The accounts of the Grain Pool shall show separately the receipts and payments in respect of the different classifications, if any, of grain in a pool.

(4) Subject to section 34C (3), out of the proceeds of the sale of grain vested in the Grain Pool under section 29 (1) the Grain Pool—

- (a) shall pay the costs and expenses of administering this Act;
- (b) shall pay all amounts payable in respect of claims for compensation under this Act; and
- (c) shall make all other payments authorized by this Act.

[Section 31 amended by No. 89 of 1981 s. 5.]

### **Compensation**

**32.** (1) A claim for compensation shall be in the prescribed form.

(2) The Board shall recommend to the Minister the amount of compensation to be paid on claims in respect of the grain in a pool and shall base their recommendation on the rate or rates per tonne computed by reference to the nett proceeds from the sale of the grain, the quantities of the grain, the classifications of the grain, and the dockages thereon but shall not so recommend until, in the opinion of the Minister, the Grain Pool has sold a sufficient quantity of the grain to make a just recommendation.

(3) After receiving the recommendation of the Board, the Minister shall determine the amount of compensation to be paid subject to the levies imposed pursuant to section 28.

(4) Pending the determination of a claim, the Grain Pool may, with the consent of the Minister, make, at such time or times and on such terms and conditions as the Board thinks fit, advance payment or payments on account of the claim.

**Settlement of claims before determination**

**32A.** (1) Where under section 32 (4) the Grain Pool has made one or more advance payments on account of claims for compensation in respect of the grain in a pool, the Grain Pool may, before determination of the claims under section 32 (3), make an offer of payment in full settlement of each claim.

(2) Where under subsection (1) the Grain Pool has made an offer of payment but the offer has not been accepted by every person to whom the offer was made, the Grain Pool may, before determination of the claims under section 32 (3), make a further offer or offers of payment in full settlement of any claims for compensation that remain outstanding.

(3) An offer of payment under subsection (1) or (2) may be made upon and subject to such terms and conditions as may be specified by the Grain Pool, but every such offer of payment shall be made on the same terms and conditions to all persons who have like claims for compensation.

(4) Subject to any levies that may have been imposed under section 28, payment by the Grain Pool, upon the valid acceptance of an offer under this section, has effect to extinguish the claim for compensation to which the payment relates.

[Section 32A inserted by No. 92 of 1982 s. 4.]

**Prior Payment Reserve Fund**

**32B.** (1) Where the payment of compensation in respect of the grain in a pool has included payment under section 32A and a surplus results in respect of that pool, the amount of the surplus shall be paid into a fund to be known as the Prior Payment Reserve Fund.

(2) The Prior Payment Reserve Fund shall be applied by the Grain Pool as a first priority to meet any prior deficit which may have arisen in the case of a pool in respect of which any payment of compensation under section 32A has been made.

(3) Subject to subsection (2), the Prior Payment Reserve Fund may be applied by the Grain Pool for the following purposes—

- (a) after consultation with the Minister, in such manner as to directly benefit the grain industry;
- (b) to the extent of the amount of a surplus derived from a particular pool, to make a rateable distribution of all or part of that amount to those persons who accepted an offer of payment under section 32A with respect to their claims for compensation from that pool,

but, before authorizing any payment under this subsection from the Prior Payment Reserve Fund, the Grain Pool shall have regard to the need to maintain proper reserves.

[Section 32B inserted by No. 92 of 1982 s.4.]

**Classification and dockages**

**33.** For the purposes of this Act, classifications and dockages in respect of a grain delivered to the Grain Pool shall be determined in accordance with the procedures provided in relation to grades and dockages by or under the *Bulk Handling Act 1967*, but where no procedure is so provided shall be determined by the Board subject to like procedures for persons who are dissatisfied with the determination to those provided by and under section 43 (5), (5a) and (6) of that Act in respect of grain to which that section applies.

[Section 33 amended by No. 4 of 1981 s. 3.]

**Licensed receivers on behalf of the Grain Pool**

**34.** (1) For the purposes of this Act, where a person makes application in writing giving such information as the Board requires, the Grain Pool may, on such conditions as the Board thinks fit, grant to that person a licence to receive and handle a grain on behalf of the Grain Pool.

(2) The Company within the meaning of the *Bulk Handling Act 1967* has by virtue of this subsection a licence to receive and handle a grain on behalf of the Grain Pool.

(3) A licensed receiver shall not dispose of grain received on behalf of the Grain Pool except as directed by the Board.

Penalty: \$1 000.

(4) A licensed receiver may, in addition to receiving and handling a grain, exercise, in respect of the grain, such other functions on behalf of the Grain Pool as the Board directs.

(5) The Grain Pool shall, out of the moneys held by the Grain Pool for the purposes of this Act, pay to a licensed receiver, for the services performed and the facilities provided by him on behalf of the Grain Pool, such remuneration and expenses as the Board recommends and the Minister approves.

[Section 34 amended by No. 112 of 1987 s. 6.]

## Division 2—Trading

[Heading 2 inserted by No. 89 of 1981 s. 6.]

**Authorized grains**

**34A.** (1) The Minister may, by notice published in the *Government Gazette*, declare that a grain, other than a prescribed grain or an approved grain, shall, on and after a date specified in the notice, be an authorized grain, and that grain shall be an authorized grain on and after that date unless and until it ceases to be an authorized grain pursuant to subsection (2) or (3).

(2) The Minister may, by notice published in the *Government Gazette*, declare that an authorized grain shall cease to be an authorized grain on and after a date specified in the notice and that grain shall not be an authorized grain on and after that date unless and until it again becomes an authorized grain pursuant to subsection (1).

(3) Where a grain that is an authorized grain becomes a prescribed grain or an approved grain, the Order under section 20 (2) or the notice under section 26 (1), as the case may be, shall specify that, on and after the date on which that grain becomes a prescribed grain or an approved grain, as the case may be, that grain shall cease to be an authorized grain, and that grain shall not be an authorized grain on and after that date unless and until it again becomes an authorized grain pursuant to subsection (1).

[Section 34A inserted by No. 89 of 1981 s. 6.]

**Purchase of authorized grain by the Grain Pool**

**34B.** (1) The Grain Pool may, where a grain is an authorized grain, enter into a contract with any person for the purpose of acquiring any such grain, and a contract entered into under this subsection may make such provision as to price and contain such terms and conditions as may be agreed between the parties.

(2) Subject to section 23, a contract entered into under subsection (1) is valid and enforceable notwithstanding that the grain to which it relates has ceased to be authorized grain.

[Section 34B inserted by No. 89 of 1981 s. 6.]

**Sale of grain by the Grain Pool**

**34C.** (1) Subsections (1) and (2) of section 31 apply in relation to grain acquired by the Grain Pool under section 34B as if it were grain vested in the Grain Pool under section 29 (1).

(2) The accounts of the Grain Pool shall show—

- (a) the receipts and payments in respect of its trading activities under this Division separately from the receipts and payments in respect of grain received for a pool; and
- (b) the receipts and payments in respect of each grain in which it trades under this Division separately from the receipts and payments in respect of any other grain in which it so trades.

(3) Out of the proceeds of the sale of grain acquired by the Grain Pool under section 34B (1) the Grain Pool—

- (a) shall pay such part of the costs and expenses of administering this Act as is attributable to the trading activities of the Grain Pool under this Division;
- (b) shall pay the contract price in relation to grain acquired under section 34B (1), and any other amounts payable by the Grain Pool pursuant to a contract entered into under that subsection; and
- (c) shall make any other payments authorized by this Act that relate to grain acquired under section 34B (1).

[Section 34C inserted by No. 89 of 1981 s. 6.]

#### **Application of surplus**

**34D.** The whole or any part of surplus money in the hands of the Grain Pool derived from trading under this Division in a particular grain during the immediately preceding financial year may—

- (a) where the Grain Pool, after consultation with the Minister, so determines, be applied by the Grain Pool in such manner as to directly benefit the grain industry; or
- (b) where the Grain Pool so determines, be rateably distributed amongst persons with whom the Grain Pool entered into contracts under section 34B (1) during the year in which the surplus arose for the purpose of acquiring the grain traded,

but in so determining the Grain Pool shall have regard to the need to meet prior deficits that have arisen from trading under this Division in that or any other grain, and to maintain proper reserves.

[Section 34D inserted by No. 89 of 1981 s. 6.]

## PART IV—MISCELLANEOUS

**Accounts****35.** [(1) repealed]

(1a) The accounts kept by the Grain Pool in respect of a pool shall show, separately from other receipts and payments, the receipts and payments which relate to the claims for compensation settled under section 32A and shall indicate the amount of the deficit or surplus resulting from the settlement of claims in that manner and, in the case of a surplus, the payment of that surplus into the Prior Payment Reserve Fund established by section 32B.

[(2)-(4) repealed.]

[Section 35 amended by No. 92 of 1982 s. 5; No. 98 of 1985 s. 3 (as amended by No. 4 of 1986).]

**Guarantee of money borrowed**

**36.** (1) Subject to subsection (3), the Treasurer of the State is authorized to guarantee on behalf of the State, on such terms and conditions as he thinks fit, repayment of any money borrowed by the Grain Pool under this Act and the payment of interest thereon and performance of any obligation or contingent obligation of the Grain Pool however or wherever arising entered into or to be entered into by the Grain Pool under section 19A.

(2) The Treasurer shall cause any money required for fulfilling any guarantee given by him pursuant to subsection (1) to be paid out of the Consolidated Revenue Fund which fund is hereby to the necessary extent appropriated accordingly, and the Treasurer shall cause any sums received or recovered by him from the Grain Pool or otherwise in respect of a sum so paid by the Treasurer to be paid into the Consolidated Revenue Fund.

(3) This section does not apply in respect of money borrowed or an obligation or contingent obligation entered into or to be entered into by the Grain Pool for the purposes of trading under Division 2 of Part III or for the purposes of making payments under section 32A.

[Section 36 amended by No. 89 of 1981 s. 7; No. 92 of 1982 s. 6; No. 63 of 1984 s. 5; No. 98 of 1985 s. 3 (as amended by No. 4 of 1986).]

**Application of *Financial Administration and Audit Act 1985***

**37.** (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of

statutory authorities apply to and in respect of the Grain Pool and its operations.

(2) Notwithstanding the provisions of the *Financial Administration and Audit Act 1985*, the financial year of the Grain Pool shall end on 31 October.

[Section 37 inserted by No. 98 of 1985 s. 3 (as amended by No. 4 of 1986s. 3 (c)).]

### Appeals

**37A.** (1) A person whose application under section 22A for a permit to purchase a prescribed grain is refused may, within one month of being notified of the refusal, appeal to the Minister against that refusal by delivering to the Minister a memorandum of appeal containing a statement of the grounds of appeal and any representations that the person may wish to make in support of the appeal.

(2) A person to whom a permit is issued under section 22A who is aggrieved by a term of or a condition attached to the permit may, within one month of the issue of the permit, appeal to the Minister against any such term or condition by delivering to the Minister a memorandum of appeal containing a statement of the grounds of appeal and any representations that the person may wish to make in support of the appeal.

(3) A person who—

- (a) purchases lupins from the Grain Pool for the purpose of exporting the kernels from the Commonwealth and is aggrieved by the price charged by the Grain Pool for those lupins; or
- (b) endeavours to purchase lupins from the Grain Pool for the purpose of exporting the kernels from the Commonwealth and is aggrieved by the refusal of the Grain Pool to sell lupins to that person for that purpose,

may appeal to the Minister against that price or the refusal, as the case may be, by delivering to the Minister a memorandum of appeal containing a statement of the grounds of appeal and any representations that the person may wish to make in support of the appeal.

(4) The Minister shall cause a copy of a memorandum of appeal and representations received under this section to be delivered to the Grain Pool and the Grain Pool may within 7 days make representations to the Minister concerning the appeal.

(5) The Minister's decision on an appeal under this section is final and the Grain Pool shall give effect to any directions that the Minister shall give with respect to an appeal.

(6) The Minister's decision on an appeal, together with the reasons therefor, shall be communicated in writing to the parties to that appeal within 7 days of its being finally determined.

[Section 37A inserted by No. 112 of 1987 s. 7.]

### **Power to enter and search**

**38.** (1) Where there are reasonable grounds to believe that a provision of this Act has been or may have been contravened in respect of any grain, a person authorized by the Board may at any time enter and search any place, premises or vessel where that grain is or is suspected to be and may inspect any stocks of that grain and accounts, books and documents relating to that grain.

(2) Before entering any premises pursuant to subsection (1) the person authorized by the Board shall obtain a warrant to do so by a magistrate or Justice of the Peace.

(3) A person shall not hinder any other person acting pursuant to subsections (1) and (2).

Penalty: \$1 000.

[Section 38 amended by No. 112 of 1987 s. 8.]

### **Protection of grain**

**39.** Where a person has possession, custody, or control of grain vested in the Grain Pool under section 29 (1) or acquired by the Grain Pool under section 34B (1), he shall do all things necessary to prevent loss, damage, or deterioration of that grain.

Penalty: \$1 000.

[Section 39 amended by No. 89 of 1981 s. 8; No. 112 of 1987 s. 9.]

[**40.** Section 40 repealed by No. 112 of 1987 s. 10.]

### **How legal proceedings taken**

**41.** Proceedings for an offence under this Act and civil proceedings on behalf of the Grain Pool may be taken in the name of the Grain Pool by any officer of the Grain Pool authorized by the Board for that purpose.

### Regulations

42. The Governor may make regulations which appear to him to be necessary or convenient for effectually carrying out the objects and purposes of this Act and may prescribe as the maximum penalty for a breach of the regulations a penalty not exceeding \$250.

## PART V—PRODUCERS' COUNCIL

### Constitution

43. (1) On and after the coming into operation of this Act<sup>1</sup>, the Growers' Council within the meaning of the *Grain Pool Act 1932* immediately prior to the date of the coming into operation of this Act<sup>1</sup> is preserved and continues in existence under and subject to this Act by the name "Producers' Council of the The Grain Pool of W.A." and shall be an advisory body to the Board.

(2) Each person who was, immediately prior to the coming into operation of this Act<sup>1</sup>, a councillor of the Growers' Council referred to in subsection (1) shall be a councillor of the Producers' Council under and subject to this Act and shall hold office as such for the period he would have remained a councillor of that Growers' Council if this Act had not come into operation and there shall be an *ex officio* councillor of the Producers' Council who shall be the Chairman of the Board of Directors of the Grain Pool or, in his absence, such director of the Grain Pool who is appointed by the Board for that purpose.

(3) As soon as practicable after the coming into operation of this Act<sup>1</sup>, the Board shall cause to be published in the *Government Gazette* a list of elected councillors of the Producers' Council and the periods for which they shall respectively hold office by virtue of subsection (2).

(4) After the publication of the list of elected councillors of the Producers' Council pursuant to subsection (3), the Commissioner for Corporate Affairs may destroy the records held by him pursuant to section 21 of the *Grain Pool Act 1932*.

(5) Within a reasonable time before the end of the period of 5 years after the date of coming into operation of this Act<sup>1</sup> the Board after consultation with the Producers' Council shall report to the Minister on the advisability or otherwise, having regard to the proper administration of this Act, of the Producers' Council continuing in existence beyond that period.

### Rules

44. (1) The rules in the Third Schedule shall have effect on and after the coming into operation of this Act<sup>1</sup>.

(2) The Board may, subject to the approval of the Producers' Council from time to time by resolution vary, amend, or add to such rules and may make other rules not contrary to or inconsistent with the provisions

of this Act for the purpose of regulating the role of the Producers' Council as an advisory body to the Board.

(3) When such resolution has been passed by the Board and approved by the Producers' Council the Board shall cause it to be published in the *Government Gazette* accompanied by a certificate under the hand of the chairman of the meeting of the Board at which the resolution was passed to the effect that the resolution has been duly passed in accordance with this Act and also accompanied by a certificate under the hand of the chairman of the Producers' Council to the effect that the resolution has been approved by the Producers' Council, and thereupon the variation, amendment, or addition to the rules or the new rule as contained in the resolution shall take effect and be as valid and effectual as if it had been contained in the Third Schedule.

(4) Section 36 of the *Interpretation Act 1918*<sup>5</sup> does not apply to rules made under this section.

#### PART VI—TRANSITIONAL

##### Interim Board of Directors

45. Notwithstanding the provisions of section 9, the constitution of the Board and the appointment, elections, and terms of office of Directors shall be in accordance with the provisions of the Fourth Schedule for such interim period as is necessary by virtue thereof.

#### SCHEDULES

S. 2

##### FIRST SCHEDULE

Number of Act	Short title of Act
17 of 1946	<i>Marketing of Barley Act 1946</i>
1 of 1949	<i>Marketing of Barley Act Amendment (Continuance) Act 1949</i>
31 of 1952	<i>Marketing of Barley Act Amendment (Continuance) Act 1952</i>
25 of 1955	<i>Marketing of Barley Act Amendment Act 1955</i>
46 of 1975	<i>Marketing of Barley Act Amendment Act 1975</i>
115 of 1969	<i>Marketing of Linseed Act 1969</i>
65 of 1971	<i>Marketing of Linseed Act Amendment Act 1971</i>
25 of 1973	<i>Seed Marketing Act Amendment Act 1973</i>
54 of 1932	<i>Wheat Pool Act 1932</i>
61 of 1948	<i>Wheat Pool Act Amendment Act (No. 2) 1948</i>
81 of 1948	<i>Wheat Pool Act Amendment Act 1948</i>
32 of 1949	<i>Wheat Pool Act Amendment Act 1949</i>
61 of 1956	<i>Wheat Pool Act Amendment Act 1956</i>
67 of 1961	<i>Wheat Pool Act Amendment Act 1961</i>
18 of 1962	<i>Grain Pool Act Amendment Act 1962</i>
8 of 1966	<i>Grain Pool Act Amendment Act 1966</i>

Reference in First Schedule of Act Number 113 of 1965 (*Decimal Currency Act 1965*) to *Marketing of Barley Act 1946*.

Parts II, III and IV of Act Number 69 of 1973 (*Metric Conversion (Grain and Seeds Marketing) Act 1973*)

**SECOND SCHEDULE**  
Zones for Election of Directors.

S. 9

## 1. In this Schedule—

“certified” means certified in a statutory declaration made by the person who was, on the date on which this Act received the Royal Assent, the chairman of the Trustees as defined in section 2 of the *Grain Pool Act 1932*, or, if the office of such chairman was vacant on that date, certified in a statutory declaration made by the person who was last appointed before that date as deputy chairman of such Trustees; and

“districts” identified by numbers means such districts as are certified to have been, on the date on which this Act received the Royal Assent, Growers’ Council Districts with corresponding numbers under the *Grain Pool Act 1932*.

## 2. The zones for Election of Directors are as follows—

Zone 1 comprises districts 1, 2, and 3.

Zone 2 comprises districts 4, 5, and 6.

Zone 3 comprises districts 7, 8, and 9.

Zone 4 comprises districts 10, 11, and 12.

Zone 5 comprises districts 13, 14, and 15.

Zone 6 comprises districts 16, 17, and 18.

Zone 7 comprises districts 19, 20, and 21.

3. The zones set forth in clause 2 shall remain in force for at least a period of 5 years after the date of the coming into operation of this Act<sup>1</sup> but if at any time after the expiration of such period the Board specifies by an instrument in writing delivered to the Minister alterations to the zones that the Board considers necessary and desirable for the proper administration of this Act, such alterations may be made by regulation and thereupon the zones as so altered are the zones for the election of Directors.

**THIRD SCHEDULE**

S. 44

Rules for Constitution of Producers’ Council

**Interpretation**

## 1. (1) In these Rules—

“Australian Wheat Board” means the Australian Wheat Board or the other Board for the time being in existence for the purpose of acquiring wheat under the wheat stabilization Acts in force on the date of the coming into operation of this Act<sup>1</sup>, or any Act or Acts passed in lieu of or in substitution for such wheat stabilization Acts or by way of extension of the period of operation thereof;

“certified” means certified in a statutory declaration made by the person who was, on the date on which this Act received the Royal Assent, the chairman of Trustees as defined in section 2 of the *Grain Pool Act 1932*, or, if the office of such chairman was vacant on that date, certified in a statutory declaration made by the person who was last appointed before that date as deputy chairman of such Trustees;

“grain” means wheat, oats, linseed and such cereal grain and other seed as is for the time being capable of being pooled with the Grain Pool;

“marketable grain” means the whole of the grain after deducting what in the opinion of the Board of Directors of the Grain Pool is a reasonable quantity of grain for seeding purposes and domestic and farm use;

“producer” in rules 5 and 7 includes a grower within the meaning of Rules for the Constitution of Growers’ Council as provided under the *Grain Pool Act 1932* immediately prior to the date of the coming into operation of this Act<sup>1</sup>; and

“rule” means one of these rules.

(2) For the purposes of these rules, grain is pooled with the Grain Pool in the case of wheat when the producer has appointed the Grain Pool as his or its Documentary Agents under the Australian Wheat Board or any Western Australian Wheat Board or other marketing authority under any Western Australian Act or has himself or through any agent or mortgagee delivered the wheat to any Wheat Pool conducted by the Grain Pool and in the case of oats or other grain when the producer has himself or through any agent or mortgagee delivered the oats or other grain to any pool conducted by the Grain Pool.

#### **Grain Areas to be divided into 21 Districts**

2. (1) The grain growing areas of Western Australia are divided into 21 districts as defined by the Board of Directors of the Grain Pool with the approval of the Producers’ Council but the boundaries may be changed from time to time as the Board and the Producers’ Council may think fit.

(2) On the coming into operation of this Act<sup>1</sup> the 21 districts referred to in subrule (1) are such districts as are certified to have been, on the date on which this Act received the Royal Assent, Growers’ Council Districts under the *Grain Pool Act 1932*.

#### **Election of councillors**

3. One councillor shall be elected for each district by producers qualified in such district, in manner hereinafter appearing, and the councillors so elected and the *ex officio* councillor referred to in section 43 (2) shall constitute the Producers’ Council.

#### **Qualification of producers**

4. A person qualifies as a producer for the purposes of these rules if—

- (a) he is a producer in any district who, or is a member of any partnership which, has pooled with the Grain Pool any part of his or its marketable grain of the previous season as was capable of being pooled with the Grain Pool;
- (b) he is a person who, whilst not an actual producer of grain (capable of being pooled with the Grain Pool) shall satisfy the Board of Directors of the Grain Pool that he is financing any of his family or relations in the working and development of a grain farm in any district; such person or persons so financed being himself, herself, or themselves qualified as a producer or producers, but it shall be a condition precedent to the qualification of such person that the approval of the actual producer or producers in writing to such membership shall be lodged with the Board of Directors of the Grain Pool prior to such person exercising any right as a producer, and the actual producer or producers shall not, until such approval has been in writing withdrawn, be entitled to exercise any rights under these rules; or
- (c) in respect of the first season after the date of coming into operation of this Act<sup>1</sup>, he is a producer in any district who, or is a member of any partnership which, has delivered grain in the previous season to any Statutory Marketing Authority under the Acts repealed by this Act.

**Qualification of councillors**

5. Qualification for an elected councillor shall be that he or any limited company of which he is a director or attorney has been a producer during at least 3 of the 5 seasons immediately preceding the year of his election.

**Vacancy in office of councillor**

6. (1) The seat of any elected councillor shall be declared vacant in any of the following cases—

- (a) if he or any partnership or company he represents shall not during any one season whilst he is a councillor be a producer;
- (b) if he shall become bankrupt or be declared of unsound mind;
- (c) if he shall die or resign or be appointed a Director;
- (d) if he or any such partnership or company as aforesaid shall cease to produce marketable grain in the State of Western Australia;
- (e) if he shall be absent without leave of the Producers' Council from 2 consecutive meetings;
- (f) if being an approved producer under rule 4 (b) he shall cease to retain any substantial financial interest in his relative's farm; or
- (g) if he attains the age of 72 years but so that his seat becomes vacant on the next thirtieth day of November thereafter.

(2) The Board of Directors of the Grain Pool shall alone be entitled to decide on the facts submitted to them by the approved producer or the actual producer or producers as to whether in the case mentioned in subrule (1) (f) such councillor retains a substantial financial interest or not, and their decision shall not be liable to be questioned.

**Nomination of candidate for election to the Producers' Council**

7. (1) A candidate for election to the Producers' Council must be nominated by 5 persons each of whom has been a producer for 2 of the preceding 4 seasons, and has grain producing interests in the district for which the candidate is nominated, and such nomination shall be lodged with the Grain Pool not later than 30 September in each year.

(2) Nomination papers shall be in such form as may be prescribed by the Board of Directors of the Grain Pool.

**Provision where only one candidate**

8. If only one qualified candidate is nominated for any district the Board of Directors of the Grain Pool shall declare him elected.

**Method of voting for Council**

9. (1) The Board of Directors of the Grain Pool shall during the month of October in each year post to the persons understood to be producers, or potential producers in the various districts where in each case more than one candidate is nominated a voting form containing the names of the persons so nominated as councillors for the district in which such producer is entitled to vote, and such voting form shall contain instructions as to the

mode of voting, and shall contain also a declaration to be signed by (or in the case of a limited company or partnership on behalf of) the producer verifying his or its qualifications as a producer.

(2) Such voting forms, duly signed by the producer (or in the case of a limited company or partnership by the person voting on its behalf), and with such declaration as aforesaid, shall be enclosed in an envelope addressed to the Grain Pool, and on the face of such envelope shall appear the words "Voting Form"; and such envelope shall be delivered to the Grain Pool or posted so as to reach the Grain Pool not later than 15 November in each year, and, when received, shall be placed in a box or receptacle, unopened, until such day, not being later than thirtieth day of November, as the Board of Directors of the Grain Pool shall appoint for the opening of such envelopes.

(3) The Grain Pool shall notify its auditor of the date, time, and place fixed for the counting of such voting forms, and at the time so appointed, and in the presence of the auditor or his representative, such envelopes shall be opened, and the voting for each district ascertained.

(4) Where only 2 persons are nominated the person who on such counting shall receive the greater number of votes shall be declared to be elected and, in the case of an equality of votes, the councillor to be appointed shall be decided by lot in accordance with such conditions as the Producers' Council may prescribe.

(5) Where more than 2 persons are nominated the voting and counting shall be carried out on such preferential basis as the Board of Directors of the Grain Pool may determine.

#### **Only one vote for each producer**

10. (1) No producer shall have more than one vote nor vote in respect of more than one district provided that an individual who is entitled to a vote in his own right and also seeks to vote on behalf of a company or a partnership can vote in each such capacity.

(2) The vote of a limited company shall be exercised by one of its Directors or Attorneys.

(3) The vote of a partnership shall be exercised by any of its members.

(4) Before becoming entitled to vote at any election for councillors every producer who is a producer of grain in more than one district and every limited company or partnership as aforesaid shall deposit with the Grain Pool a notification in writing duly signed by him or on its behalf signifying the district in respect of which he or it desires to exercise his or its right to vote and in the case of a limited company or partnership the name of the person who has been authorized by it to exercise such vote.

#### **Retirement of councillors**

11. (1) On every thirtieth day of November after the date of the coming into operation of this Act<sup>1</sup> one-third of the elected councillors for the time being or the number nearest one-third, shall retire from office, and if then qualified shall be eligible for re-election.

(2) The elected councillors to retire in every year after the date of the coming into operation of this Act<sup>1</sup> shall be those who have been longest in office since their last election, but as between councillors who were elected at the same time, those to retire shall (unless otherwise agreed among themselves) be determined by lot.

**Meetings of Producers' Council**

12. (1) The Producers' Council shall meet as and when necessary at such times and at such place or places, not less than twice in each year, and such meetings shall be convened on such notice and in such manner as the Board of Directors of the Grain Pool and the Producers' Council shall from time to time decide but one of such meetings shall be held in the month of August in each year.

(2) The *ex officio* councillor shall be Chairman of each meeting unless the Producers' Council wishes to elect one of its own members as Chairman.

(3) Ten councillors present shall constitute a quorum at any meeting, and all votes shall be given and taken either by a show of hands or ballot, as the meeting may decide, the chairman has a deliberative vote only and, if the councillors present at a meeting and voting on a question are equally divided, the question shall be decided in the negative.

**Casual vacancy**

13. (1) Any casual vacancy occurring in the office of an elected councillor shall at the discretion of the Producers' Council be filled:

(a) at any meeting of the Producers' Council by a majority vote of those present thereat, provided that the person to be so appointed shall be properly qualified as required by rule 5; or

(b) by an election to be conducted during the next annual elections of the Producers' Council and in the manner prescribed by these Rules.

(2) A person appointed by the Producers' Council or elected to fill a vacancy as provided in subrule (1) shall hold office until the date on which the person in whose place he is appointed or elected would have retired under rule 11 had such person not earlier vacated office under rule 6 and shall be one of the councillors to retire on such date under rule 11.

(3) The Producers' Council shall be deemed to be properly constituted and shall have full power to exercise any of its powers and functions notwithstanding any such vacancy as aforesaid.

[Third Schedule amended in Gazettes 27 February 1981 p. 844; 22 May 1987 p. 2195.]

**FOURTH SCHEDULE**

S. 45

1. Of the first 2 persons nominated by the Minister to be Directors—
  - (a) one shall be appointed as a Director for a period up to and including 31 July 1977; and
  - (b) one shall be appointed as a Director for a period up to and including 31 July 1979.

2. The persons whose names, addresses, and occupations appear in the first column at the end of this clause shall be Directors, and shall be deemed to have been elected for the zones respectively assigned to them in the second column at the end of this clause, and shall hold office as Directors up to and including the dates respectively set out for them in the third column at the end of this clause, notwithstanding that no person is hereby deemed to have been elected for zones 1 and 5, that 3 persons are hereby deemed to have been elected for zone 7, and that 2 persons are hereby deemed to have been elected for zone 6.

Name, Address and Occupation	Zone	Date up to and including which office is held
John Barns Ackland Box 91 WONGAN HILLS 6603 Farmer	2	31 July 1978
Marcus Truby Beeck Box 110 KATANNING 6317 Farmer	6	31 July 1977
Verdun Leonard Garnett Box 61 GNOWANGERUP 6335 Farmer	7	31 July 1977
Robert Ernest Buegge Box 43 BRUCE ROCK 6418 Farmer	3	31 July 1978
Ray Neil St Jack 23 Fraser Street YORK 6302 Farmer	4	31 July 1978
Kevin John Milne "Yardup" BORDEN 6338 Farmer	7	31 July 1977
Edward Bernard Norris "Carinya" Box 85 ESPERANCE 6450 Farmer	7	31 July 1977
Jerry Gordon Enright "Middlecreek" MT BARKER 6324 Farmer	6	31 July 1977

3. In the respective years set out in the first column at the end of this clause, within a reasonable time before 1 August in those years, elections shall be held in accordance with the regulations to elect one prescribed producer for appointment as Director for each of the zones respectively set out in the second column at the end of this clause, and the prescribed producers elected respectively for those zones shall be appointed Directors for a period of 4 years commencing on 1 August in the year in which they were elected.

1976	Zones 1 and 5
1977	Zones 6 and 7
1978	Zones 2, 3 and 4
1980	Zones 1 and 5
1981	Zones 6 and 7
1982	Zones 2, 3 and 4.

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### NOTES

<sup>1</sup> This reprint is a compilation as at 13 March 1989 of the *Grain Marketing Act 1975* and includes all amendments effected by the other Acts referred to in Part 1 of the following Table and the amendment resolutions referred to in Part II of the following Table.

### Table of Acts and Resolutions

#### PART I—ACTS

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Grain Marketing Act 1975</i>	85 of 1975	18 November 1975	21 November 1975 (see <i>Gazette</i> 21 November 1975 p. 4241)	
<i>Grain Marketing Amendment Act 1981</i>	4 of 1981	18 May 1981	Section 3 (1) operative 4 December 1981 (see <i>Gazette</i> 4 December 1981 p. 4972); balance 18 May 1981	
<i>Grain Marketing Amendment Act (No. 2) 1981</i>	89 of 1981	26 November 1981	26 November 1981	Section 9 <sup>6</sup> validation
<i>Grain Marketing Amendment Act 1982</i>	92 of 1982	18 November 1982	18 November 1982	Section 7 <sup>7</sup> validation,
<i>Grain Marketing Amendment Act 1984</i>	63 of 1984	24 October 1984	24 October 1984	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, (as amended by No. 4 of 1986), section 3</i>	98 of 1985	4 December 1985	1 Jul 1986 (see s.2 and <i>Gazette</i> 30 June 1986 p. 2255)	
<i>Acts Amendment (Grain Marketing) Act 1987</i>	112 of 1987	19 December 1987	22 January 1988 (see <i>Gazette</i> 22 January 1988 p. 109)	

## PART II—RESOLUTIONS

Resolutions	Gazettal	Commencement
<i>Amendment Resolution</i>	27 February 1981 p.844	27 February 1981
<i>Amendment Resolution</i>	22 May 1987 p. 2195	22 May 1987

2. Previously the *Industrial Arbitration Act 1912*.
3. Repealed by Act No. 85 of 1975.
4. Formerly the *Marketing of Linseed Act 1969* (No. 115 of 1969) repealed by Act No. 85 of 1975.
5. Now see the *Interpretation Act 1984*.
6. Section 9 of Act No. 89 of 1981 reads as follows:  
Validation  
“ 9. (1) Trading in oats acquired by The Grain Pool of W.A. by contract after 31 October 1980 but before coming into operation of this Act is hereby declared to have been lawful and the purported exercise of any power under the principal Act in relation to such trading is hereby validated and declared to have been lawful.  
(2) The surplus money resulting from the trading activities validated by subsection (1) of this section shall be dealt with in accordance with section 34D of the principal Act as if the contracts pursuant to which the oats were acquired had been entered into under Division 2 of Part III of the principal Act. ”
7. Section 7 of Act No. 92 of 1982 reads as follows:  
Validation  
“ 7. (1) Notwithstanding the provisions of sections 20 and 21 of the principal Act, the Illyarrie cultivar of *lupinus angustifolius* shall be deemed for all purposes to have been a prescribed grain for the purposes of the principal Act on and after 1 August 1980 and the purported exercise of any power or the purported performance of any duty under the principal Act on or after that date by the Grain Pool in respect of the Illyarrie cultivar of *lupinus angustifolius* is hereby validated and declared to have been lawful to the same extent as if that cultivar had been a prescribed grain at the relevant time.  
(2) Notwithstanding the provisions of sections 20 and 21 of the principal Act, the Marri cultivar of *lupinus angustifolius* shall be deemed for all purposes to have been a prescribed grain for the purposes of the principal Act on and after 16 May 1979 and the purported exercise of any power or the purported performance of any duty under the principal Act on or after that date by the Grain Pool in respect of the Marri cultivar of *lupinus angustifolius* is hereby validated and declared to have been lawful to the same extent as if that cultivar had been a prescribed grain at the relevant time. ”