

WHEAT MARKETING ACT, 1979.

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WHEAT MARKETING.

No. 113 of 1979.

AN ACT relating to the marketing of wheat, and
for other purposes.

[Assented to 21st December, 1979.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Wheat Marketing Act, 1979*. Short title.

2. (1) Subject to subsection (2) this Act shall come into operation, or shall be deemed to have come into operation, as the case requires, on the date of the coming into operation of the Wheat Marketing Act 1979 of the Parliament of the Commonwealth. Commence-
ment.

(2) Paragraph (b) of subsection (3) of section 11 shall come into operation on the first day of October, 1980.

Repeal,
amendments
and
saving.

3. (1) The Wheat Industry Stabilization Act, 1974-1978 is hereby repealed.

(2) Notwithstanding the repeal effected by subsection (1) but subject to subsection (3), any provisions of the repealed Act that would, but for that repeal, have continued to apply to, or in relation to, wheat delivered to the Board before the first day of October, 1979 continue so to apply.

(3) A reference in any of the provisions referred to in subsection (2) to the Australian Wheat Board shall, in relation to things done or to be done after the coming into operation of this section, be read as a reference to the Board as continued in existence by the Commonwealth Act and conducting its proceedings in accordance with the Commonwealth Act.

(4) The Wheat Delivery Quotas Act, 1969-1974 is amended as set out in the First Schedule to this Act and that Act as so amended may be cited as the Wheat Delivery Quotas Act, 1969-1979.

Interpreta-
tion.

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

“Australian standard white wheat” means wheat other than—

- (a) wheat that, having regard to its general characteristics, is classified by or on behalf of the Board, for the purposes of this interpretation, as being included in a particular category of wheat; or
- (b) wheat that is classified by or on behalf of the Board, for the purposes of this interpretation, as having a quality defect;

“authorized person” means a person appointed under section 25 for the purposes of the provision in which the expression occurs;

“authorized receiver” means a body corporate authorized to receive wheat on behalf of the Board under section 8 or under a corresponding provision of the Commonwealth Act or of a State Act;

“Board” means the Australian Wheat Board continued in existence by the Commonwealth Act;

“Chairman” means the Chairman of the Board;

“Commonwealth Act” means the Wheat Marketing Act 1979 of the Parliament of the Commonwealth, and includes that Act as amended at any time;

“Commonwealth Minister” means the Minister of State of the Commonwealth administering the Commonwealth Act or another Minister of State of the Commonwealth acting for and on behalf of that Minister;

“guaranteed minimum price” has the same meaning as in the Commonwealth Act;

“net pool return” and “net pool return rate” have the same respective meanings as in the Commonwealth Act;

“quota season” means a season declared by proclamation under section 5 of the Commonwealth Act to be a quota season;

“repealed Act” means the Act repealed by subsection (1) of section 3;

“season” means the period of twelve months that commenced on the first day of October, 1979 and each of the next six succeeding periods of twelve months;

“section” means section of this Act;

“State Act” means an Act of the Parliament of another State relating to the marketing of wheat;

“subsection” means subsection of the section in which the term is used;

“Territory” means a Territory of the Commonwealth;

“the Company” means Co-operative Bulk Handling Limited incorporated and deemed to be registered under the Companies (Co-operative) Act, 1943;

“wheat” does not include wheat harvested after the thirtieth day of September, 1986;

“Wheat Levy Acts” means the Wheat Levy Act (No. 1) 1979 of the Parliament of the Commonwealth and the Wheat Levy Act (No. 2) 1979 of the Parliament of the Commonwealth, and includes those Acts as amended at any time;

“wheat products” has the same meaning as in the Commonwealth Act;

“Wheat Tax Acts” means the Wheat Tax Act 1957 of the Parliament of the Commonwealth and the Wheat Tax Act 1979 of the Parliament of the Commonwealth, and includes those Acts as amended at any time.

(2) A reference in this Act to wheat of a season shall be read as a reference to—

- (a) wheat harvested during that season; or
- (b) wheat harvested before the first day of October, 1979 and acquired by the Board under this Act during that season.

(3) A reference in a provision of this Act to wheat shall be read as including a reference to the corn sacks (if any) that the wheat is in at the relevant time.

(4) A reference in this Act to wheat acquired by the Board under an Act (whether this Act or the Commonwealth Act or a State Act) shall be read as a reference to wheat that, on or after the first day of October, 1979, has become the property of the Board by force of that Act or an Act repealed by that Act.

5. (1) This Act shall be read and construed subject to the Constitution of the Commonwealth and so as not to exceed the legislative power of the State, to the intent that, where any provision of this Act, or the application of any provision of this Act to any person or circumstances, is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected.

Act to apply
subject to
Constitution.

(2) If, by reason of the Constitution of the Commonwealth, a provision of this Act or a notice under a provision of this Act cannot validly apply in relation to any particular wheat or class of wheat, that provision or notice shall be construed as intended to operate in relation to all wheat to which it purports to apply, being wheat in relation to which it can validly apply.

(3) This section is in addition to, and not in substitution for, any other provision relating to the construction of Acts and statutory instruments subject to the Constitution of the Commonwealth.

6. (1) The Western Australian Wheat Board (in this section referred to as "the State Board") as constituted immediately before the coming into operation of this section is by and subject to the provisions of this Act continued in existence for the purposes of this Act.

The Western
Australian
Wheat Board.

Constitution
of State
Board.

(2) The State Board shall consist of—

- (a) six persons appointed by the Governor: and
- (b) the person who is the occupant for the time being of the office of Manager of the Company.

Appointed
members of
the State
Board.

(3) Of the six persons appointed under paragraph (a) of subsection (2) (in this section referred to as “appointed members”)—

- (a) four persons elected by the Farmers’ Union of Western Australia (Inc.) shall be appointed to represent the interests of wheat growers;
- (b) one person whose name is selected by the Minister from a panel of three names submitted to him by the W.A. Flour Millowners’ Association shall be appointed to represent the interests of flour millers; and
- (c) one person nominated by The Western Australian Government Railways Commission shall be appointed to represent the interests of that Commission.

Power of
appointment
on failure of
nomination
or election.

(4) If for any reason a person is not elected, selected or nominated, as the case requires, for appointment as a member of the State Board to represent the respective interests mentioned in subsection (3), or having been so elected, selected or nominated does not take office, the Governor may appoint to the office a person to represent the appropriate interest concerned.

Tenure of
office.

(5) (a) A person holding office as a member of the State Board immediately before the coming into operation of this section continues to be entitled to hold the office under and subject to the provisions of this Act.

(b) Without prejudice to the operation of a provision of this Act under which a person ceases earlier to hold office as an appointed member of the State Board, all persons holding office as such cease to hold office as members of the State Board on the twenty-fifth day of October, 1980, and at the expiration of each successive period of three years thereafter or upon the cessation of the existence of the State Board during any of those successive periods.

(6) Subject to the provisions of this Act, the office of appointed member of the State Board becomes vacant by reason of the occupant—

Circumstances in which office becomes vacant.

- (a) becoming of unsound mind, or being declared, under the provisions of any law for the time being relating to mental infirmity, incapable of managing his affairs;
- (b) becoming bankrupt, or availing himself as a debtor of any law for the relief of bankrupt debtors;
- (c) resigning or dying;
- (d) ceasing, in the opinion of the Minister, to represent the interests which he is appointed to represent; or
- (e) being removed from office on the ground of misbehaviour or incapacity.

(7) When any of the offices of appointed member of the State Board becomes vacant, otherwise than by expiration of the term for which the occupant was appointed, the Governor may appoint to the vacant office, a person to represent the appropriate interests concerned for the remainder of that term.

Appointment to fill vacancy.

(8) When any office of member elected to represent the interests of wheat growers is about to become vacant by effluxion of the term for which the occupant was appointed, the Farmers' Union of Western Australia (Inc.) shall elect a person for appointment to the vacancy, and the fact that a

Vacancy in office of wheat growers' representative.

person is an occupant of the office at the time of nomination for the election does not prejudice his right to nominate.

Deputies.

(9) The Governor may appoint a person nominated by a member of the State Board and approved by the Minister or, if a person is not so nominated, a person nominated by the Minister, to act in the place of the member as his deputy during his absence.

Validity of functions.

(10) No appointment of, and no act, matter or thing done by any person as a deputy for any member of the State Board or of or by any person to fill any vacancy in any of the offices of member of the State Board shall be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

Part time duties and remuneration.

(11) In respect of the office of member of the State Board no occupant is required to devote the whole of his time and attention to the duties of the office but is required to devote such time only as is necessary efficiently to discharge those duties, and whether as member of the State Board or a deputy or a person appointed to fill a vacancy, is entitled to such remuneration, allowances and leave of absence as shall be determined by the Governor.

Minister to appoint chairman and his deputy.

(12) The Minister shall appoint from the members of the State Board, the chairman of the State Board and a deputy chairman to act in the place of the chairman during his absence.

Quorum.

(13) Four members of the State Board form a quorum and have all the powers and duties conferred upon the State Board by the provisions of this Act.

Majority resolutions.

(14) At any meeting of the State Board the resolution of a majority is the resolution of the State Board, but each member of the State Board is entitled to one vote only on any question to be resolved.

(15) The convention of meetings and conduct of proceedings of the State Board shall, subject to subsection (14), be as prescribed and until prescribed shall, subject to that subsection, be regulated by the State Board.

Convention of meetings and conduct of proceedings.

(16) The State Board shall keep a record of its meetings and proceedings.

Records to be kept.

(17) A person is not rendered ineligible for appointment as a member because he has previously held office as a member of the State Board unless he has been removed under subsection (6) for misbehaviour.

Members eligible for re-appointment.

(18) From time to time as occasion requires the State Board shall nominate two of its members who are wheat growers for appointment to represent wheat growers of the State on the Australian Wheat Board.

Nomination of members for office on Australian Wheat Board.

PART II.—MARKETING OF WHEAT.

7. (1) The Board may—

Powers of Board.

- (a) purchase wheat and wheat products;
- (b) accept the delivery of wheat to it;
- (c) sell or dispose of, or make arrangements for the sale or disposal of, wheat and wheat products;
- (d) require, in circumstances where the Board considers it appropriate, a purchaser of wheat from the Board to give to the Board a guarantee or other security for the payment of the purchase price of the wheat;
- (e) grist or arrange for the gristing of wheat, and sell or otherwise dispose of the products of the gristing;
- (f) manage and control all matters connected with, or arising out of, the handling, storage, protection, treatment, transfer, shipment or sale of wheat or other things

purchased or otherwise acquired by the Board or sold or otherwise disposed of by the Board; and

- (g) do all things that the Board is required or permitted by this Act to do or that are incidental to the exercise of the foregoing powers or are necessary or convenient to be done by the Board for giving effect to this Act.

(2) For the purposes of this Act, the Board is not bound to preserve the identity of wheat of a season and may keep its accounts and records in respect of sales of wheat and wheat products, and the export of wheat and wheat products, in such manner as will, in its judgment, attribute sales and exports to wheat of different seasons in an equitable manner, and sales and exports so attributed to wheat of a season shall be deemed to relate to wheat of that season.

(3) The Board may have regard to any advice furnished to it by a consultative group established under section 57 of the Commonwealth Act relating to the performance of the functions of the Board under this Act.

Authorized
receivers.

8. (1) The Company is authorized to receive wheat on behalf of the Board.

(2) An authorized receiver may carry on operations as such a receiver by means of, and on the premises of, an agent of the authorized receiver, being such an agent approved by the Board.

Directions
by Common-
wealth
Minister.

9. The Commonwealth Minister may give directions to the Board concerning the performance of its functions and the exercise of its powers, and the Board shall comply with those directions.

Delivery
of wheat.

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

(2) Subject to this section, the Board may—

- (a) by notice in writing served personally on the person to whom it is addressed or served on that person by post at his usual or last known place of abode or business; or
- (b) by notice published in the *Gazette* and addressed to persons generally or to persons included in a class of persons,

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

- (c) to deliver to the Board, in accordance with any directions in the notice, wheat that is in the possession of that person; or
- (d) to deliver to the Board, in accordance with any directions in the notice, wheat that, during such period as is specified in the notice, comes into the possession of that person.

(3) Upon delivery of wheat to the Board under this section, that wheat becomes the absolute property of the Board, freed from all mortgages, charges, liens, pledges, interests and trusts.

(4) A notice under subsection (2) shall not require the delivery to the Board of—

- (a) wheat retained by the grower for use on the farm where it is grown;
- (b) wheat retained for use on a farm to which it has been moved under a permit under section 13; or
- (c) wheat that has been sold by the Board.

(5) A person shall not—

- (a) without reasonable excuse, refuse or fail to deliver wheat to the Board as required by a notice under subsection (2); or

- (b) deliver to the Board wheat that has previously been sold by the Board.

Penalty: An amount calculated in respect of the quantity of the wheat in respect of which the offence is committed at the rate of one hundred dollars per tonne.

(6) For the purposes of this section and of notices under this section, where a person has possession of wheat immediately upon its harvesting, that wheat shall be deemed to have come into the possession of that person at the time of its harvesting.

Delivery to
authorized
receiver.

11. (1) Delivery of wheat to the Board may be made by delivering the wheat to an authorized receiver and not otherwise, and the delivery is not effective unless and until the delivery is accepted by the authorized receiver.

(2) An authorized receiver shall, in relation to the acceptance, or refusal of acceptance, on behalf of the Board, of the delivery of wheat in a quota season, comply with any directions of the Board that have regard to quotas that are applicable under laws of all or any of the States providing for the fixing of wheat quotas, including a law of a State providing for the fixing of quotas in respect of wheat grown in a Territory.

(3) A person who delivers wheat to an authorized receiver shall, at the same time—

- (a) furnish to the authorized receiver in writing the names and addresses of all persons known by him to have or to claim an interest in the wheat or in the payment to be made for the wheat, and all particulars known to him of those interests; and
- (b) inform the authorized receiver, in a manner approved by the authorized receiver, of the variety of the wheat so delivered.

12. (1) A person who has in his possession—

- (a) seed wheat; or
- (b) inferior wheat that would not be acceptable if it were delivered to the Board,

Act not to apply to certain wheat.

may, by notice served by post on the Board, notify the Board accordingly.

(2) Where, on receipt by the Board of a notice by a person under subsection (1), an authorized person is satisfied that the wheat to which the notification relates is wheat of a kind referred to in that subsection, the authorized person may, on behalf of the Board, issue to the first-mentioned person a declaration that this Act does not apply to that wheat and that declaration shall have effect according to its tenor.

(3) A declaration under subsection (2) shall be in writing and shall specify—

- (a) the name and address of the person to whom the declaration is issued;
- (b) the quantity, and the grade, of the wheat to which the declaration applies;
- (c) the address of the place where the wheat is when the declaration is issued;
- (d) the date of the issue of the declaration; and
- (e) such other particulars as the Board specifies from time to time.

13. (1) A person who has wheat in his possession on a farm may, by notice served by post on the Board, notify the Board that he wishes to deliver the wheat to a miller for gristing with the object of having the produce of the gristing returned to the farm for use on the farm.

Permits for movement of wheat or of wheat products.

(2) On receipt by the Board of a notice by a person under subsection (1), an authorized person may, on behalf of the Board, issue to the person a

permit for the movement of the wheat from the farm to the mill and the movement of the produce of the gristing from the mill to the farm.

(3) A person who has wheat or wheat products in his possession on the farm on which that wheat, or the wheat from which those wheat products were produced, as the case may be, was grown may, by notice served by post on the Board, notify the Board that he wishes to move that wheat or those wheat products from that farm to an associated farm.

(4) Where, on receipt by the Board of a notice by a person under subsection (3), an authorized person is satisfied that—

- (a) the farms to which the notification relates are associated farms; and
- (b) the proposed movement of the wheat or wheat products to which the notice relates would not detrimentally affect the orderly marketing of wheat by the Board in accordance with this Act,

the authorized person may, on behalf of the Board, issue to the first-mentioned person a permit for the movement of the wheat or wheat products from one farm to the other.

(5) A permit under this section shall be in writing and shall specify—

- (a) the name and address of the person to whom the permit is issued;
- (b) the quantity of the wheat or wheat products to which the permit applies;
- (c) the date of the issue of the permit;
- (d) in the case of a permit issued under subsection (2)—
 - (i) the address of the farm where the wheat is at the time of the issue of the permit; and
 - (ii) the address of the miller who is to grist the wheat;

- (e) in the case of a permit issued under subsection (4)—
 - (i) the address of the farm where the wheat or wheat products is or are at the time of the issue of the permit; and
 - (ii) the address of the farm to which the wheat or wheat products is or are to be moved; and
 - (f) such other particulars as the Board specifies from time to time.
- (6) For the purposes of this section two farms shall be deemed to be associated farms if—
- (a) they are owned, operated or controlled by the same person or the same partnership;
 - (b) each of them is owned, operated or controlled by a partnership and the two partnerships have at least one common partner;
 - (c) one of them is owned, operated or controlled by a person and the other is owned, operated or controlled by a partnership of which that person is a member; or
 - (d) they are, in some other manner, so associated with the same person that the Board is of the opinion that they should be treated as associated farms for the purposes of this section.

14. (1) Where a person (in this section referred to as "the offeror") offers to purchase for use or consumption in Australia wheat that is in the possession of another person (in this section referred to as "the grower"), the grower may, by notice served by post on the Board, notify the Board accordingly.

Notification
of offer to
purchase
wheat.

(2) A notice under subsection (1) shall be in accordance with a form approved by the Board and shall specify—

- (a) the name and address of the grower;

- (b) the name and address of the offeror;
- (c) the quantity, the grade and the variety of the wheat to which the offer made by the offeror relates;
- (d) the terms and conditions (including the price) of the offer made by the offeror; and
- (e) such other information as is required by the notice.

(3) Where, on the receipt by the Board of a notice under subsection (1), an authorized person is satisfied—

- (a) that the terms and conditions of the offer made by the offeror are satisfactory and, in particular, that the price set out in the offer is not less than the price that would be the appropriate price for the wheat in accordance with section 22 if the wheat were to be sold by a contract of sale to which that section applied; and
- (b) where a condition of the offer provides for the delivery of the wheat by the grower—that the price includes any charge to be paid by the offeror for that delivery,

the authorized person may authorize the grower, in writing, to accept the offer on behalf of the Board.

(4) On receipt by the grower of an authority under subsection (3), the grower shall set aside wheat for sale in accordance with that authority and, thereupon, the wheat so set aside becomes the absolute property of the Board, freed from all mortgages, charges, liens, pledges, interests and trusts.

(5) A contract for the sale of wheat entered into by the grower, on behalf of the Board, under an authorization given under subsection (3) shall provide that the amount of the price for the wheat shall be paid directly to the Board.

(6) Where the price received by the Board under a contract of sale of wheat entered into under this section exceeds the price that would be the appropriate price for the wheat in accordance with section 22 if the wheat had been sold by a contract of sale to which that section applied, the Board shall pay to the grower an amount equal to that excess.

(7) A contract for the sale of wheat under this section shall not be entered into in a year other than a year in relation to which section 22 operates.

15. (1) Except as provided by section 10 or in accordance with a permit under section 13 or an authority under section 14 or with the consent in writing of the Board—

Unauthorized
dealings
with wheat.

- (a) a person shall not sell or deliver to a person or transfer to a person the possession of, or take into his possession, or grist or otherwise process, or mix with any other grain or substance, any wheat, other than wheat that has been sold by the Board;
- (b) a person shall not move wheat, or cause or permit wheat to be moved, from the farm where the wheat was grown or from the farm or other place to which the wheat has been moved in accordance with a permit under section 13;
- (c) where wheat has been sold by the Board under a contract of sale that specifies a purpose for which the wheat is to be used—the purchaser under the contract of sale shall not use the wheat for any other purpose; or
- (d) where wheat products have been produced at a place from wheat that has been grown at that place or has been moved to that place in accordance with a permit under section 13—a person shall not move those wheat products from that place.

Penalty: An amount calculated, in respect of the quantity of the wheat, or of the wheat equivalent of the wheat products, in respect of which the offence is committed, at the rate of one hundred dollars per tonne.

(2) For the purposes of this section—

- (a) the wheat equivalent of any wheat products is the quantity of wheat used in, or used in the production of the materials used in, the wheat products; and
- (b) a certificate of the Board specifying the wheat equivalent of a particular quantity of a particular kind of wheat products or the wheat equivalent of particular wheat products is *prima facie* evidence of the facts stated in the certificate.

(3) Paragraph (a) of subsection (1) does not prohibit the use of wheat on a farm on which the wheat was grown or at a place to which the wheat has been moved in accordance with a permit under section 13.

Advance
payment
for wheat
of a season
other than
final two
seasons.

16. (1) Where wheat of a season is acquired by the Board under this Act, the Board shall make an advance payment for that wheat of an amount calculated in accordance with subsection (2).

(2) An advance payment in respect of wheat under subsection (1) is an amount calculated at the guaranteed minimum price for wheat of the season concerned increased or decreased, as the case may be, by such allowances as the Board considers proper for—

- (a) the quality of the wheat;
- (b) where the wheat is wheat of a prescribed class—the characteristics of the variety or varieties of wheat included in that class and—
 - (i) where the wheat was delivered to the Board under section 10—the place at which the wheat was so delivered; or

- (ii) in any other case—the place at which, if the wheat had been delivered to the Board under section 10, it would, in the opinion of the Board, have been so delivered;
- (c) where the wheat was delivered to the Board under section 10—
- (i) charges by the Board in respect of costs of the transport of the wheat to a terminal port from the place at which the wheat was so delivered;
 - (ii) charges by the Board in respect of so much of the cost to the Board of remuneration payable under the Commonwealth Act to the authorized receiver to whom the wheat was so delivered as is applicable to the wheat; and
 - (iii) the corn sacks (if any) in which the wheat was so delivered and any additional costs incurred by the Board in the handling and storage of the wheat;
- (d) where the wheat was not delivered to the Board under section 10—
- (i) charges that the Board would have made if the wheat had been delivered to the Board under section 10 in respect of the cost of the transport of the wheat from the place at which, in the opinion of the Board, the wheat would have been so delivered to the appropriate terminal port in relation to that place;
 - (ii) charges by the Board in respect of so much of the cost to the Board of that proportion of the remuneration payable under the Commonwealth Act to the authorized receiver at the place referred to in subparagraph (i) of this paragraph that is specified

in a notice from the authorized receiver to the Board under section 28 as would be applicable to the wheat if the wheat had been delivered to the authorized receiver at that place; and

- (iii) the corn sacks (if any) that the wheat was in when acquired by the Board;
- (e) where the wheat was delivered to the Board after the day (if any) that is the final delivery day for the season (being a day declared under subsection (1) of section 25 of the Commonwealth Act)—charges by the Board in respect of administrative costs incurred by the Board in respect of the wheat that are additional to the administrative costs that would have been incurred if the wheat had been delivered before that day; and
- (f) other necessary adjustments.

(3) In paragraph (b) of subsection (2), “prescribed class”, in relation to wheat, means a class of wheat determined by the Minister, being a class so determined by reference to a variety or varieties of wheat, whether or not it is also so determined by reference to another criterion or other criteria.

(4) The Board may, with the approval of the Commonwealth Minister, make advances on account of advance payments referred to in subsection (1).

(5) The rate at which an advance under subsection (4), being an advance in respect of wheat of any season after the season that commenced on the first day of October, 1979, is calculated shall not be greater than eighty-five per centum of the guaranteed minimum price for wheat of the immediately preceding season.

(6) An advance payment under subsection (1) in respect of wheat shall be reduced by an amount equal to the aggregate of—

(a) the amount of any advance under subsection (4); and

(b) the amount of any advance payment made by the Board under the repealed Act,

in respect of that wheat.

(7) The obligation of the Board under this section in respect of any wheat is subject to the operation of the Wheat Tax Acts and the Wheat Levy Acts.

(8) In this section, “season” does not include the season commencing on the first day of October, 1984 or the next succeeding season.

17. (1) Where the net pool return rate for wheat of a season exceeds the guaranteed minimum price for wheat of that season, the Board shall make a final payment of an amount determined in accordance with subsection (2) for any wheat of that season acquired by the Board under this Act.

Final
payment
for wheat
of a season
other than
final two
seasons.

(2) The Board shall determine an amount payable under subsection (1) in respect of any wheat by—

(a) calculating the amount that the advance payment in respect of the wheat under section 16 would have been if the reference in that section to the guaranteed minimum price for wheat were a reference to the net pool return rate for the wheat;

(b) deducting from that amount the amount of the advance payment in respect of the wheat; and

(c) where the wheat was grown in this State and acquired by the Board in this State, adding the freight allowance to the amount ascertained under paragraph (b) of this subsection.

(3) A reference in subsection (2) to the advance payment in respect of any wheat shall be read as a reference to the advance payment in respect of that wheat before any reduction has been made under subsection (6) of section 16.

(4) Where the net pool return rate for wheat of a season does not exceed the guaranteed minimum price for wheat of that season, the advance payment under section 16 (including any advance under subsection (4) of that section), and any advance payment made by the Board under the repealed Act, in respect of any wheat of that season shall be regarded as the final payment for that wheat except in the case of wheat grown in this State and acquired by the Board in this State in which case the final payment shall be the freight allowance.

(5) The Board may, with the approval of the Commonwealth Minister, make advances on account of final payments referred to in this section.

(6) For the purposes of this section—

- (a) “the freight allowance” in relation to wheat of a season means an amount per tonne at a rate calculated by dividing the amount deducted under paragraph (b) of subsection (1) of section 9 of the Commonwealth Act in ascertaining the net pool return rate for wheat of that season by a number equal to the number of tonnes of wheat of that season grown in this State and acquired by the Board in this State;
- (b) “season” does not include the season commencing on the first day of October, 1984 or the next succeeding season;
- (c) wheat shall be deemed to have been acquired by the Board in this State if—
 - (i) it is delivered to the Board in this State; or
 - (ii) it is sold by the Board under section 14.

18. (1) In this section, "season to which this section applies" means the season commencing on the first day of October, 1984 and the next succeeding season.

Payment
for wheat
of final two
seasons.

(2) Where wheat of a season to which this section applies is acquired by the Board under this Act, the Board shall pay for that wheat an amount determined in accordance with subsection (3).

(3) The Board shall determine an amount payable under subsection (2) in respect of any wheat by calculating an amount equal to the amount that the advance payment in respect of the wheat under section 16 would have been if—

- (a) that section were applicable to wheat of a season to which this section applies; and
- (b) the reference in that section to the guaranteed minimum price for wheat were a reference to the net pool return rate for the wheat.

(4) The Board may, with the approval of the Commonwealth Minister, make advances on account of payments referred to in subsection (2).

(5) The obligation of the Board under this section in respect of any wheat is subject to the operation of the Wheat Tax Acts and the Wheat Levy Acts.

19. (1) Subject to subsections (4) and (5) and to any other law to which the Board is subject, an amount payable under section 16, 17 or 18 in respect of any wheat is payable to the person who would have been entitled to receive the price of the wheat if the wheat had been lawfully sold to the Board at the time of the acquisition of the wheat by the Board.

Payment
by Board.

(2) The same rights (if any) exist against the person receiving an amount paid by the Board under section 16, 17 or 18 in respect of wheat as would exist if the moneys so paid were the proceeds of a sale or purported sale of the wheat by him, and any

such rights may be enforced by action in any court that would have had jurisdiction if the moneys were the proceeds of such a sale or purported sale.

(3) Payment in good faith by the Board of any moneys payable under this Act to the person appearing to the Board to be entitled to receive them discharges the Board from any further liability in respect of those moneys.

(4) Subject to subsection (5), an assignment of moneys payable by the Board in respect of wheat delivered to the Board (not including a registered crop lien) is void as against the Board.

(5) Where a person has assigned moneys payable to him by the Board in respect of wheat delivered or to be delivered to the Board in payment of, or as security for payment of, an amount payable by that person for corn sacks supplied to him, the Board may pay those moneys to the assignee.

Declaration
to be
furnished
as to old
season's
wheat.

20. (1) In this section—

“final delivery day”, in relation to a season, means the day declared by the Commonwealth Minister under subsection (1) of section 25 of the Commonwealth Act, or under the corresponding provision of an Act repealed by the Commonwealth Act, to be the final delivery day for that season;

“season” includes any period that is a season for the purposes of the repealed Act.

(2) A person who, after the final delivery day for a season—

(a) delivers to an authorized receiver wheat harvested in that season; or

(b) serves a notice on the Board under subsection (1) of section 14 with respect to wheat harvested in that season,

shall, at the time of the delivery of the wheat or of the service of the notice, as the case may be, deliver to the authorized receiver or serve by post on the

Board, as the case may be, a declaration in writing signed by him correctly stating the season during which the wheat was harvested.

21. (1) There shall be constituted a committee to be called the State Wheat Advisory Committee (in this section referred to as "the Committee").

State Wheat
Advisory
Committee.

(2) Subject to subsection (3)—

- (a) the Committee shall consist of such number of members as is prescribed; and
- (b) the members of the Committee shall be appointed by the Governor in accordance with the regulations and shall hold office under and subject to the regulations.

(3) The members of the Committee shall include—

- (a) at least one person appointed to represent wheat growers;
- (b) at least one person appointed to represent flour millers;
- (c) at least one person who is an officer of the Department of the Public Service of the State known as the Department of Agriculture;
- (d) at least one person appointed to represent the Company; and
- (e) at least one person appointed to represent The University of Western Australia.

(4) A member of the Committee referred to in paragraph (c) of subsection (3) shall be appointed by the Minister as chairman of the Committee.

(5) To the extent that it is not prescribed the Committee shall determine its own procedure.

(6) The Minister shall, when making any determination pursuant to subsection (3) of section 16, consider any recommendations made to him in that regard by the Committee.

(7) The Board shall, when considering the allowances to be made under paragraph (b) of subsection (2) of section 16, consider any recommendations made to it in that regard by the Committee.

PART III.—SALE OF WHEAT BY THE BOARD FOR USE
OR CONSUMPTION IN AUSTRALIA.

Home
consumption
price of
wheat.

22. (1) The price at which, in the year commencing on the first day of December, 1979 or any of the next four succeeding years, the Board shall, by a contract made in the State (other than a contract entered into under section 14), sell wheat for use or consumption in Australia is the appropriate price that is applicable in accordance with this section.

(2) Subject to subsection (3), the price for Australian standard white wheat in bulk sold free on rails at a port of export for human consumption in Australia is—

- (a) in respect of the year commencing on the first day of December, 1979—\$127.78 per tonne; or
- (b) in respect of any of the four years succeeding that year—the price per tonne ascertained in respect of that year in accordance with the Second Schedule to this Act.

(3) There shall be added to a price specified in, or ascertained under, subsection (2) in respect of a year such amount as the Minister, after consultation with the Board, considers to be necessary to be included in the price of all wheat sold by the Board in that year for human consumption in Australia for the purpose of enabling the Board to meet the costs of shipment of wheat by the Board to a port in Tasmania.

(4) Subject to subsection (5)—

- (a) the price for Australian standard white wheat in bulk sold free on rails at a port of export for a use (in this paragraph

referred to as "the relevant use") in Australia that is a stock-feed use is such price as is determined from time to time by the Board in respect of the relevant use; and

- (b) the price for Australian standard white wheat in bulk sold free on rails at a port of export for a use (in this paragraph referred to as "the relevant use") in Australia that is an industrial use is such price as is determined from time to time by the Board in respect of the relevant use.

(5) A price determined for a relevant use under subsection (4)—

- (a) shall not vary as between wheat at one port of export and wheat at another port of export; and
- (b) shall be the same as any corresponding price determined by the Board under a provision of the Commonwealth Act, or of a State Act, that corresponds to subsection (4).

(6) The price in respect of wheat that is not Australian standard white wheat in bulk sold free on rail at a port of export is such price as the Board determines by adding to, or deducting from, the price that would be applicable to the wheat if it were Australian standard white wheat in bulk sold free on rail at a port of export an amount by way of allowances in respect of the quality of the wheat, the conditions of sale and the place of delivery, or in respect of one or more of those matters, as the case requires.

(7) The Board may discount a price for wheat sold by the Board other than for human consumption on the basis of the quantity of wheat so sold.

23. (1) Subject to this section, the Board shall keep a separate account of the moneys received by the Board by reason of the inclusion in the price for

Special
account for
freight to
Tasmania.

a sale of wheat to which section 22 applies of an amount referred to in subsection (3) of section 22 and of payments made out of those moneys, and shall not apply those moneys except in accordance with this section.

(2) The Board may combine the account required to be kept under subsection (1) with any similar account or accounts to be kept by it under the Commonwealth Act or under a State Act.

(3) The Board shall use the moneys referred to in subsection (1) in meeting the costs of shipment of wheat by the Board to a port in Tasmania, and shall not use for that purpose any other moneys derived by it from the sale of wheat acquired by it in pursuance of this Act.

(4) Any moneys referred to in subsection (1) that remain unexpended after the Board has made the final payment required to be made under subsection (3) shall be applied by the Board for the benefit of the wheat industry in such manner as the Commonwealth Minister, after consultation with the appropriate Minister of each State, directs.

(5) Any moneys referred to in subsection (1) of section 22 of the repealed Act as continued in force by subsection (2) of section 3 of this Act, that remain unexpended after the Board has made the final payment required to be made under subsection (3) of section 22 of the repealed Act shall be deemed to be moneys referred to in subsection (1) of this section.

(6) In relation to sales of wheat by the Board for shipment to a port in Tasmania in respect of which the Board bears the cost of shipment, the Board shall take such measures as are practicable to obtain recoupment of the cost of the shipment in respect of such of that wheat as is used in the production in Tasmania of wheat products that are sent to other States for consumption in Australia, and may include in any contracts made by the Board provisions for that purpose.

(7) Any moneys received by the Board in accordance with subsection (6) by way of recoupment of costs of shipment shall be deemed to be moneys referred to in subsection (1).

(8) A reference in this section to a port in Tasmania shall be read as a reference to the port, or the first port, in Tasmania at which the wheat concerned is landed.

24. (1) In relation to a quota season, or a season that is not a quota season but immediately follows a quota season, the provisions of sections 16 and 17 or section 18, whichever provisions apply to that season, have effect as if references in those provisions to wheat of a season were references to wheat included in the pool for that season in accordance with this section. Quota
seasons.

(2) For the purposes of this section, “quota wheat”, in relation to a quota season (in this subsection referred to as “the relevant season”) means wheat of the relevant season acquired by the Board in the relevant season, or wheat of an earlier quota season acquired by the Board in the earlier quota season but not included in the pool for that season, or acquired by the Board in the relevant season, being in either case—

- (a) wheat that appears from the records of the Board to be part of a quota allocated, in respect of the relevant season, to the State in which it was acquired by the Board under arrangements between the Commonwealth Government and the Governments of the States relating to wheat quotas; and
- (b) if, under the law of the State in which the wheat was acquired by the Board relating to wheat quotas, quotas have been allocated to individual persons in respect of the relevant season, wheat that appears from the records of the Board to be the whole or a part of a quota applicable in respect of the relevant season to a person under that law.

(3) The pool for a quota season (in this subsection referred to as "the relevant season") consists of the following wheat acquired by the Board—

- (a) wheat that is quota wheat in relation to the relevant season;
- (b) any other wheat of the relevant season or of an earlier quota season acquired by the Board in the relevant season that is declared by the Board to have been sold by the Board, by way of export sale or sale for export, at a premium on the price of Australian standard white wheat, and paid for in full, during the relevant season; and
- (c) any other wheat, being wheat of an earlier quota season, that—
 - (i) was acquired by the Board before the relevant season;
 - (ii) was not included in the pool for a season before the relevant season; and
 - (iii) is declared by the Board to have been sold by the Board, and paid for in full, before or during the relevant season.

(4) The pool for a season that is not a quota season but immediately follows a quota season consists of the following wheat acquired by the Board—

- (a) wheat of that season; and
- (b) wheat of an earlier season, being a quota season, that was not included in the pool for an earlier season.

(5) The Board may, in such manner as it considers equitable, for the purposes of a declaration under paragraph (b) or (c) of subsection (3) attribute sales of wheat of a particular kind to all or any of the wheat of that particular kind acquired from particular persons.

(6) For the purposes of this section—

- (a) the Australian Capital Territory shall be deemed to be part of New South Wales and the Northern Territory shall be deemed to be part of such State as is prescribed by regulations under the Commonwealth Act; and
- (b) wheat shall be deemed to have been acquired by the Board in a State if—
 - (i) it has been delivered to the Board in that State; or
 - (ii) in the case of wheat sold by the Board under section 14 or under the corresponding provision of the Commonwealth Act or of a State Act—the wheat was in the State at the time of the sale.

(7) In this section, a reference to wheat acquired by the Board shall be read as a reference to wheat so acquired under this Act, the Commonwealth Act or a State Act.

PART IV.—MISCELLANEOUS.

25. Subject to section 29 the Board or the Chairman may appoint a person, or persons included in a class of persons, to be an authorized person or authorized persons, as the case may be, for the purposes of a specified provision of this Act.

Appointment
of
authorized
persons.

26. (1) For the purposes of this Act, the Board may, by notice in writing served on the person to whom it is addressed either—

Board may
require
returns.

- (a) personally; or
- (b) by post at his last known place of abode or business,

require a person to furnish in writing to the Board, within the time specified in the notice, such information relating to wheat of any season, wheat products or corn sacks, as is specified in the notice.

(2) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

(3) A person is not excused from furnishing information that he is required to furnish under this section on the ground that the information might tend to incriminate him or make him liable to a penalty, but any information so furnished is not admissible in evidence against him in proceedings other than proceedings for an offence against subsection (4).

(4) A person shall not furnish to the Board information that is false or misleading in a material particular.

Penalty: \$500.

Proper care
to be taken
of wheat
owned by
Board.

27. A person having wheat the property of the Board in his possession or under his care shall exercise proper care and take all proper and reasonable precautions and do all things necessary to preserve and safeguard that wheat and to keep it free from damage or deterioration.

Penalty: An amount calculated in respect of the quantity of the wheat in respect of which the offence is committed at the rate of fifty dollars per tonne.

Notice by
authorized
receiver.

28. (1) As soon as practicable after the coming into operation of this section the Company shall, by notice in writing to the Board, specify the proportion of the remuneration under the Commonwealth Act payable to it as an authorized receiver that is to be taken into account for the purposes of subparagraph (ii) of paragraph (d) of subsection (2) of section 16.

(2) The Company may, from time to time, by notice in writing to the Board, vary a proportion specified in a notice under subsection (1).

(3) Before giving a notice under subsection (1) or (2), the Company shall consult with the Farmers' Union of Western Australia (Inc.).

29. (1) Subject to subsection (5), in the execution of this Act an authorized person may at any time—

Access to
premises etc.

- (a) enter any premises where he has reason to believe that wheat is or corn sacks are stored or any accounts, books, documents or papers relating to wheat, or to wheat products or to corn sacks are kept;
 - (b) stop or detain any vehicle, vessel or conveyance on or in which he has reason to believe wheat or corn sacks are being carried;
 - (c) search for and inspect wheat or corn sacks;
 - (d) require the production of, and if they are not produced, search for accounts, books, documents or papers relating to wheat, or to wheat products or to corn sacks;
 - (e) inspect, take extracts from and make copies of accounts, books, documents or papers relating to wheat, or to wheat products or to corn sacks;
 - (f) take possession of and remove any wheat that he reasonably suspects is the property of the Board or is wheat the delivery of which has lawfully been required by the Board under this Act, and any corn sacks that any such wheat is in or that are the property of the Board;
 - (g) make any inquiry that he considers necessary as to wheat, or to wheat products or to corn sacks.
- (2) A person shall not—
- (a) obstruct or hinder any authorized person in the execution of his powers under subsection (1);
 - (b) fail or refuse to produce any accounts, books, documents or papers in his possession when required to do so under paragraph (d) of subsection (1); or

- (c) furnish any information that is false or misleading in a material particular in answer to an inquiry made under paragraph (g) of subsection (1).

Penalty: \$500.

(3) On the taking possession, under paragraph (f) of subsection (1), of wheat that, immediately before such taking, was not the property of the Board, the wheat becomes the absolute property of the Board, freed from all mortgages, charges, liens, pledges, interests and trusts.

(4) Except as provided by subsection (5), no person other than a member of the police force of the Commonwealth or of the State or a person appointed, or deemed to be appointed under section 39 of the Commonwealth Act as an inspector of the Board, shall be appointed as an authorized person for the purposes of subsection (1).

(5) Any person may be appointed as an authorized person for the purposes of subsection (1) in respect of premises, or a vehicle, vessel or conveyance, specified in the instrument of his appointment and a person so appointed may exercise the powers conferred by subsection (1) in respect of and in relation to those premises or that vehicle, vessel or conveyance, as the case may be, and not otherwise.

Use of
funds by
Board.

30. Subject to the Board's paying, or making provision for the payment of, amounts required to be paid by it under this Act, nothing in this Act prevents the Board from applying moneys received by it by reason of the exercise of its functions under this Act for the purposes of the Commonwealth Act or of a State Act.

Notices
by Board.

31. A notice, authority, communication or instrument given or made by the Board shall be sufficiently authenticated if signed by the Chairman on behalf of the Board, and a notice, authority, communication or instrument so signed shall, in the absence of proof to the contrary, be deemed to have been given or made with the authority of the Board.

32. A member of the Board is not personally ^{Indemnity.} liable for an act of the Board or of the member acting as such.

33. A person who contravenes or fails to comply ^{Offences.} with a provision of this Act for which no other penalty is provided is guilty of an offence punishable by a fine not exceeding two hundred dollars.

34. The Governor may make regulations, not ^{Regulations.} inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, making provision for penalties not exceeding a fine of two hundred dollars, for offences against the regulations.

SCHEDULES.

FIRST SCHEDULE.

S. 3(4)

AMENDMENTS TO WHEAT DELIVERY QUOTAS ACT, 1969-1974.

Provision Amended.

Amendment.

Section 4(1)

Delete the interpretation "the State Act".

Substitute—

"the State Act" means the
Wheat Marketing Act,
1979; .

Delete the words "licensed receivers of the Board in this State" in lines five and six of the interpretation "the State quota" and substitute the words "the Company".

Section 16(2)(a)

Delete the words "any licensed receiver of the Board" and substitute the words "the Company".

Section 18(1)

Delete "or to any other licensed receiver of the Board" in lines three and four.

- Section 18(2) Delete "or any other licensed receiver of the Board in this State" in lines four and five.
- Section 28(1)(a) Delete "or to any other licensed receiver of the Board in this State" in lines two, three and four.
- Section 28(1)(b) Delete "or to any other licensed receiver of the Board in this State" in lines four and five.

S. 22 (2)

SECOND SCHEDULE.

FORMULA FOR ASCERTAINING THE PRICE PER
TONNE OF WHEAT IN RESPECT OF A YEAR.

1. The formula—

$$(1 + 0.6A) (0.5B + 0.5C) + 0.6C(1.2 - D)$$

where—

- A = a number less by one than the number obtained by dividing the index number of the Index of Prices Paid by Farmers for the quarter ended on the 30th day of June immediately before the beginning of the subject year published by the Bureau of Agricultural Economics by the index number of that Index for the quarter ended on the 30th day of June immediately preceding the first-mentioned 30th day of June.
- B = the amount of the price per tonne specified in, or ascertained under, subsection (2) of section 22 in respect of the year immediately preceding the subject year.
- C = an estimate of the amount of the average export price per tonne for Australian standard white wheat of the season that commenced on the 1st day of October immediately preceding the commencement of the subject year that has been, or will be, disposed of by the Board by way of export sale or sale for export, being an estimate made by the Commonwealth Minister having regard to any advice or information furnished to him by the Board or the Bureau of Agricultural Economics.
- D = the number obtained by dividing the number of cents in the aggregate of the home consumption prices for wheat in respect of the 8 years preceding the subject year by the number of cents in the aggregate of the average export prices for wheat of the 8 seasons that commenced on the 1st day of October immediately preceding each of those 8 years.

2. For the purpose of ascertaining the value of "D" in the formula set out in paragraph 1—

- (a) the reference to home consumption prices for wheat shall be read as a reference to—
 - (i) in so far as the reference relates to the year commencing on the 1st day of December, 1979 or a subsequent year—the amount of the price per tonne specified in, or ascertained under, subsection (2) of section 22 in respect of that year;
 - (ii) in so far as the reference relates to the year that commenced on the 1st day of December, 1978—\$138.05;
 - (iii) in so far as the reference relates to the year that commenced on the 1st day of December, 1977—\$122.34;
 - (iv) in so far as the reference relates to the year that commenced on the 1st day of December, 1976—\$101.95;
 - (v) in so far as the reference relates to the year that commenced on the 1st day of December, 1975—\$84.96;
 - (vi) in so far as the reference relates to the year that commenced on the 1st day of December, 1974—\$70.80;
 - (vii) in so far as the reference relates to the year that commenced on the 1st day of December, 1973—\$59.00; and
 - (viii) in so far as the reference relates to the year that commenced on the 1st day of December, 1972—\$55.48; and
- (b) the reference to average export prices for wheat shall be read as a reference to—
 - (i) in so far as the reference relates to a season in respect of which all relevant information is in the possession of the Board—the amount per tonne of the average export price, f.o.b., for Australian standard white wheat of that season that has been disposed of by the Board by way of export sale or sale for export; and

- (ii) in so far as the reference relates to any other season—an estimate of the amount per tonne of the average export price, f.o.b., for Australian standard white wheat of that season that has been, or will be, disposed of by the Board by way of export sale or sale for export, being an estimate made by the Commonwealth Minister having regard to any advice or information furnished to him by the Board or the Bureau of Agricultural Economics.

3. Where the difference (in this paragraph referred to as “the relevant difference”) between the amount (in this paragraph referred to as “the ascertained amount”) of the price per tonne of wheat ascertained in accordance with the formula in this Schedule in respect of a year and the amount (in this paragraph referred to as “the other amount”) of the price per tonne of wheat specified in, or ascertained under, subsection (2) of section 22 in respect of the year immediately preceding the first-mentioned year exceeds an amount (in this paragraph referred to as “the maximum difference”) equal to 20% of the other amount, then—

- (a) where the ascertained amount exceeds the other amount—the ascertained amount shall be reduced by the amount by which the relevant difference exceeds the maximum difference; or
- (b) in any other case—the ascertained amount shall be increased by the amount by which the relevant difference exceeds the maximum difference.

4. A reference in this Schedule to a price specified in, or ascertained under, subsection (2) of section 22 shall be read as not including a reference to any addition to that price under subsection (3) of that section.

5. In this Schedule—

“season” means a period of 12 months commencing on the 1st day of October;

“year” means a period of 12 months commencing on the 1st day of December.
