



Western Australia

## **Grain Marketing Act 1975**

This Act was repealed by the *Grain Marketing Act 2002* s. 45 (No. 30 of 2002) as at 31 Oct 2002 (see s. 2 and *Gazette* 30 Oct 2001 p. 5351).



## 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**

### **1. Short title and commencement**

- (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>.

### **2. Repeals**

*[Omitted under the Reprints Act 1984 s.7(4)(f).]*

*[3. Repealed by No. 10 of 1998 s.76.]*

### **4. Exemptions**

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.

### **5. Interpretation**

- (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;
  - “**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;

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

**“Deputy Chairman”** means Deputy Chairman of the Board;

**“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;

**“Grain Research Fund”** means the Grain Research Fund referred to in section 28;

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

**“limited company”** means a company limited by shares that is incorporated within or outside the Commonwealth;

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

**“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 prescribed grain pool 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;

**“reserve fund”** means the reserve fund vested in the Grain Pool under section 18;

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

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

**“special approved grain”** means a grain declared to be a special approved grain under section 29(2);

**“value adding processes”** means processes that change the physical characteristics and increase the value of prescribed grain or prescribed grain products, and includes —

- (a) the processing of prescribed grain or the plants from which prescribed grain is obtained; and
- (b) the manufacture of products from prescribed grain or the plants from which prescribed grain is obtained,

and the promotion of those processes; and

**“voluntary pool”** means a pool for the marketing of a grain other than a prescribed 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; No. 61 of 1995 s.6; No. 37 of 1997 s.4.]*

## **Part II — The Grain Pool of W.A.**

### **6. Establishment**

- (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.

### **7. Grain Pool not agent or servant of Crown**

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

### **8. Administration of this Act**

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

### **9. Board of Directors**

- (1) The governing authority of the Grain Pool is the Board of Directors.
- (2) The Board shall consist of 10 directors of the Grain Pool, 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, in accordance

with prescribed procedures, he is elected by prescribed producers in that electoral zone; and

- (b) 3 persons appointed by the Minister each of whom has, in the opinion of the Minister, special expertise of a kind that is relevant to the functions performed by the Grain Pool.

*[(3) and (4) repealed]*

- (5) The Directors shall appoint one of the Directors referred to in subsection (2)(a) to be Chairman and one of those Directors to be Deputy Chairman.
- (5a) During any vacancy in the office of Chairman, or while the Chairman is unable to act by reason of sickness, absence or other cause, the Deputy Chairman shall perform the functions of the Chairman.
- (6) Each Director shall hold office 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 or reappointment, as the case requires.
- (8) Each Director may be, at any time, removed from office by the Minister for disability, insolvency, neglect of duty, or misconduct or if, having been elected under subsection (2)(a), he ceases to be a prescribed producer in the electoral zone for which he was elected.
- (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 accordance with subsection (2)(a) or (b), as the case requires, and the person elected or appointed to that office shall be elected or appointed for the residue of the term for which his predecessor was elected or appointed.

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- (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 elected 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 appointed by the Minister and who, in the opinion of the Minister, has special expertise of the same kind as the Director has.
- (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 election or 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 elected or 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.

*[Section 9 amended by No. 37 of 1997 s.5<sup>2</sup>.]*

**10. Conduct of meetings**

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

**11. Time of meetings**

- (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 at least 10 meetings of the Board are conducted in each calendar year.

*[Section 11 amended by No. 37 of 1997 s.6.]*

## **12. Proceedings of the Board**

- (1) At a meeting of the Board, 6 Directors entitled to vote constitute a quorum.
- (2) The Chairman shall preside at every meeting of the Board at which he is present and, if the Chairman is not present, the Deputy Chairman shall preside, but if neither the Chairman nor Deputy Chairman is 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.

*[Section 12 amended by No. 37 of 1997 s.7.]*

## **12A. Meetings of producers**

- (1) Within 6 months after the end of each financial year for which an annual report is submitted to the Minister, the Chairman shall convene a meeting for the purposes of subsection (2) which producers are entitled to attend.

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- (2) At a meeting of producers —
- (a) the Chairman shall —
- (i) report on the operations of the Grain Pool during the financial year to which the annual report relates; and
- (ii) make himself or herself available to answer questions arising out of those operations and the annual report;
- and
- (b) the Chairman shall consult with the producers at the meeting in relation to the remuneration and expenses of Directors and their deputies.
- (3) Subject to this section, a meeting of producers shall be conducted in such manner as the Chairman determines after consulting with the producers at the meeting.
- (4) The Chairman shall ensure that copies of the annual report are made available at a meeting of producers.
- (5) The Board shall, by advertisement in a newspaper circulating throughout the State and in any other manner approved by the Board, provide notice of the time, date and place of a meeting of producers.
- (6) In this section —
- “annual report”** means the annual report submitted to the Minister by the accountable authority of the Grain Pool under section 66 of the *Financial Administration and Audit Act 1985* together with a copy of the opinion of the Auditor General relating to that report, as referred to in section 69 of that Act;
- “meeting of producers”** means a meeting convened under subsection (1).

*[Section 12A inserted by No. 37 of 1997 s.8.]*



**13. Delegation**

- (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 performance by the Board of any of its powers or functions.
- (3) The Grain Pool may delegate to a subsidiary of the Grain Pool any of its powers and functions, except this power of delegation.
- (4) A subsidiary of the Grain Pool to which a power or function is delegated under subsection (3) is subject to the direction and control of the Grain Pool in the exercise or performance of that power or function.
- (5) The Grain Pool may at any time revoke a delegation given under subsection (3), and a delegation so given does not prevent the exercise or performance by the Grain Pool of any of its powers or functions.
- (6) In this section —  
**“subsidiary”** means a limited company that is a subsidiary within the meaning of the *Corporations Act 2001* of the Commonwealth, or would be such a subsidiary if the limited company were a body corporate to which that Act applies.

*[Section 13 amended by No. 37 of 1997 s.9; No. 10 of 2001 s.94.]*

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

Directors and their deputies shall receive such remuneration and expenses as are recommended by the Board, after the Chairman has consulted with producers under section 12A(2), and are approved by the Minister.

*[Section 14 amended by No. 37 of 1997 s.10.]*

**15. Protection of Directors**

- (1) 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.
- (2) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

*[Section 15 amended by No. 41 of 1996 s.3.]*

**16. Officers and employees of the Grain Pool**

- (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.

**17. Terms and conditions of employment**

- (1) Subject to any relevant award or industrial agreement under the *Industrial Relations Act 1979* and to relevant written laws, 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.

(2) In subsection (1) —

“**relevant written laws**” means —

- (a) Part VID of the *Industrial Relations Act 1979*;
- (b) the *Minimum Conditions of Employment Act 1993*; and
- (c) the *Workplace Agreements Act 1993*.

[Section 17 amended by No. 37 of 1997 s.11; No. 20 of 2002 s. 19.]

## 18. **Transfer of property, rights, obligations and liabilities**

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*; and
  - (iii) the Western Australian Seed Board, established under the *Seed Marketing Act 1969*,(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 and is to be known as the reserve fund;
- (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;

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- (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.

*[Section 18 amended by No. 61 of 1995 s.7.]*

**18A.    Objects of the Grain Pool**

The objects of the Grain Pool are —

- (a) to maximize the net returns to producers by securing, developing and maintaining markets for grain and grain products and by minimizing costs as far as is practicable; and
- (b) to provide producers with a choice of marketing options by participating, in a commercial manner, in markets within and outside the Commonwealth for grain and grain products.

*[Section 18A inserted by No. 37 of 1997 s.12.]*

**18B.    Functions of the Grain Pool**

The functions of the Grain Pool are —

- (a) to control the marketing of prescribed grain that is to be exported, or sold for export, from the Commonwealth;
- (b) to promote and market, in markets within and outside the Commonwealth, grain delivered to the Grain Pool;
- (c) to consult, cooperate and enter into agreements with —

- (i) licensed receivers in relation to the receiving and handling of grain; and
- (ii) carriers in relation to the delivery of grain, on behalf of the Grain Pool;
- (d) to determine standards for the condition and quality of grain delivered to the Grain Pool; and
- (e) to facilitate or participate in —
  - (i) the commercial development and use of grain varieties;
  - (ii) value adding processes; and
  - (iii) any other commercial activities relating to the marketing of grain and grain products,and to obtain any licence or other authority that may be necessary to do so.

*[Section 18B inserted by No. 37 of 1997 s.12.]*

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

- (1) The Grain Pool may do all things necessary or convenient to be done for or in connection with the performance of its functions or otherwise for giving effect to this Act.
- (2) Without limiting the generality of subsection (1) or any power conferred by any other provision of this Act, the Grain Pool has the power —
  - (a) to buy and sell any property;
  - (b) to enter into any contract, including a futures contract relating to financial futures or grain futures, if the Board considers the futures contract to be for the purpose of managing, limiting or reducing perceived risks or anticipated costs associated with the performance by the Grain Pool of its functions;

- (c) on the recommendation of the Minister and with the written approval of the Treasurer, to arrange for or participate in the formation of a limited company;
- (d) on the recommendation of the Minister and with the written approval of the Treasurer, to become a shareholder in a limited company for the purpose of performing any of its functions under this Act;
- (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;
- (h) to act as trustee of the reserve fund, to amalgamate for the purpose of deposit and investment all or any of the reserve fund if the Board considers it necessary or convenient so to do and from time to time, to invest any moneys forming part of the reserve fund 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 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 fund or the accumulations thereof mentioned in that paragraph;
- (j) to accept voluntary contributions to the reserve fund, and to the Grain Research Fund, 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) subject to section 34E, to apply all of the reserve fund 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 and the accumulations thereof, and the investments representing the same in such manner as is recommended and approved pursuant to sections 19B and 28(9).

*[Section 19 amended by No. 63 of 1984 s.3; No. 61 of 1995 s.8; No. 37 of 1997 s.13; No. 10 of 2001 s.95; No. 21 of 2003 s. 14.]*

#### **19A. Financial powers**

- (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.

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- (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.]*

**19B. Moneys transferred from Soil Fertility Research Fund to the Grain Research Fund**

A separate balance is to be held in respect of the moneys transferred to the Grain Research Fund from the Soil Fertility Research Fund under the *Agricultural Legislation Amendment and Repeal Act 1995* and that part of the fund is to be applied only—

- (a) in payment of any liabilities of the Soil Fertility Research Fund, in accordance with section 3(2) of the *Agricultural Legislation Amendment and Repeal Act 1995*, which arose before the commencement<sup>1</sup> of that Act;
- (b) in payment of the costs of administering that part of the fund; and
- (c) as is prescribed.

*[Section 19B inserted by No. 61 of 1995 s.9<sup>3</sup>.]*

**19C. Grain Pool to act according to corporate plan and annual operational plan**

The Grain Pool shall, as far as practicable, ensure that it acts in a manner that gives effect to any corporate plan and annual operational plan in force under Part IIA.

*[Section 19C inserted by No. 37 of 1997 s.14.]*

**19D. Minister may give instructions in exceptional circumstances**

- (1) Subject to subsection (2), the Minister may give instructions in writing to the Grain Pool with respect to the performance of its functions and the exercise of its powers, either generally or in



relation to a particular matter, and the Grain Pool shall give effect to any such instruction.

- (2) The Minister shall only give an instruction to the Grain Pool if —
- (a) the Minister is satisfied that, because of exceptional circumstances, the instruction is necessary;
  - (b) the Minister has informed the Grain Pool in writing that the Minister is considering giving the instruction; and
  - (c) the Minister has given the Chairman an adequate opportunity to discuss with the Minister the need for the instruction.
- (3) The text of an instruction given under subsection (1) shall be —
- (a) laid before each House of Parliament within 14 sitting days of that House after the instruction is given; and
  - (b) included in the annual report submitted by the accountable authority of the Grain Pool under section 66 of the *Financial Administration and Audit Act 1985*.
- (4) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.  
[Section 19D inserted by No. 37 of 1997 s.14.]

**19E. Minister to have access to information**

- (1) The Minister is entitled —
- (a) to have information in the possession of the Grain Pool; and
  - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1), the Minister may —
- (a) request the Grain Pool to provide information to the Minister;

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- (b) request the Grain Pool to give the Minister access to information;
  - (c) for the purposes of paragraph (b), make use of a member of staff of the Grain Pool to obtain the information and provide it to the Minister.
- (3) The Grain Pool shall comply with a request under subsection (2) and make its facilities and members of staff available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- “**document**” includes any tape, disk or other device or medium on which information is recorded or stored;
- “**information**” includes information specified, or of a description specified, by the Minister that relates to the functions of the Grain Pool.

*[Section 19E inserted by No. 37 of 1997 s.14.]*

## **Part IIA — Corporate plans and annual operational plans**

*[Heading inserted by No. 37 of 1997 s.15.]*

### **Division 1 — Corporate plans**

*[Heading inserted by No. 37 of 1997 s.15.]*

#### **19F. Development of corporate plans**

- (1) The Grain Pool shall, before 1 October in each calendar year after 1997, submit to the Minister a corporate plan.
- (2) A corporate plan shall relate to a period commencing on the following 1 November and extending for 3, 4 or 5 years, as the Grain Pool chooses.
- (3) Subject to sections 18A and 18B, a corporate plan shall —
  - (a) define what the Grain Pool considers should be its principal objectives during the period to which the plan relates; and
  - (b) give a broad outline of the strategies that the Grain Pool considers should be pursued during that period for achieving those objectives.
- (4) A corporate plan comes into force at the commencement of the period to which the plan relates.
- (5) The Minister shall cause a copy of a corporate plan to be laid before each House of Parliament within 14 sitting days of that House after the plan is submitted to the Minister under subsection (1).

*[Section 19F inserted by No. 37 of 1997 s.15.]*

#### **19G. Variation of corporate plans**

- (1) The Grain Pool shall review a corporate plan annually and may vary it at any time.

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- (2) The Grain Pool shall give a copy of any variation to a corporate plan to the Minister within 28 days after the day on which the variation is made.
- (3) A variation comes into force on the day on which the Grain Pool makes the variation.

*[Section 19G inserted by No. 37 of 1997 s.15.]*

**Division 2 — Annual operational plans**

*[Heading inserted by No. 37 of 1997 s.15.]*

**19H. Development of annual operational plans**

- (1) The Grain Pool shall each year after 1997 submit to the Minister an annual operational plan.
- (2) An annual operational plan shall set out, in relation to the period to which the plan relates, particulars of the action that the Grain Pool intends to take in order to achieve the objectives defined in the corporate plan applicable to that period.
- (3) An annual operational plan shall be consistent with the relevant corporate plan.
- (4) An annual operational plan comes into force at the commencement of the period to which the plan relates.

*[Section 19H inserted by No. 37 of 1997 s.15.]*

**19I. Variation of annual operational plans**

- (1) The Grain Pool may vary an annual operational plan at any time.
- (2) The Grain Pool shall give a copy of any variation to an annual operational plan to the Minister within 28 days after the day on which the variation is made.

- (3) A variation comes into force on the day on which the Grain Pool makes the variation.

*[Section 19I inserted by No. 37 of 1997 s.15.]*

## **Part III — Marketing of grain**

### **Division 1 — Prescribed and other grains**

*[Heading inserted by No. 89 of 1981 s.3; amended by No. 61 of 1995 s.10; No. 37 of 1997 s.16.]*

#### **20. Prescribed grains**

- (1) Barley, 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).

*[Section 20<sup>4</sup> amended by No. 37 of 1997 s.17.]*

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

- (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<sup>4</sup> amended by No. 92 of 1982 s.3.]*

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

- (1) The Grain Pool is the sole marketing authority of prescribed grain that is to be exported, or sold for export, from the Commonwealth.
- (2) A person other than the Grain Pool, or a person authorized in writing by the Grain Pool, shall not export a prescribed grain, or sell a prescribed grain for export, from the Commonwealth.

Penalty:

- (a) for a natural person, \$5 000 or for a second or subsequent offence, \$10 000; or
- (b) for a body corporate, \$25 000 or for a second or subsequent offence, \$50 000.

- (2a) Subject to subsection (3), a person shall not purchase, take delivery of or receive from any person other than the Grain Pool a prescribed grain that is to be exported, or sold for export, from the Commonwealth.

Penalty:

- (a) for a natural person, \$5 000 or for a second or subsequent offence, \$10 000; or
- (b) for a body corporate, \$25 000 or for a second or subsequent offence, \$50 000.

- (3) Subsection (2a) does not apply to a prescribed grain that is purchased, taken delivery of or received in accordance with a permit issued under section 22A.

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- (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; No. 20 of 1989 s.3 No. 37 of 1997 s.18.]*

**22A. Permits to purchase prescribed grain**

- (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 purchase from a person other than the Grain Pool, in accordance with the terms and conditions of the permit, a prescribed grain that is to be exported, or sold for export, from the Commonwealth.
- (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 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 prescribed grain 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
  - (f) any other conditions that may be approved by the Minister by notice published in the *Government Gazette*.
- (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 or uses 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: \$2 000.

- (6) In this section —
- “purchase”** includes take delivery of and receive.

*[Section 22A inserted by No. 112 of 1987 s.5; amended by No. 20 of 1989 s.3; No. 61 of 1995 s.11; No. 37 of 1997 s.19.]*

**22B. Use by purchaser contrary to permit**

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, taken delivery of or received 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:

- (a) for a natural person, \$5 000 or for a second or subsequent offence, \$10 000; or
- (b) for a body corporate, \$25 000 or for a second or subsequent offence, \$50 000.

*[Section 22B inserted by No. 112 of 1987 s.5; amended by No. 20 of 1989 s.3; No. 37 of 1997 s.20.]*

*[22C. Repealed by No. 37 of 1997 s.21.]*

**23. Certain contracts void and severable**

- (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.]*

**24. Pool or pools for marketing prescribed grain**

- (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 prescribed grain pool is established the Board shall, by advertisement, give notice of the prescribed grain pool and its terms and conditions.
- (3) For each prescribed grain pool the Board shall fix a date on or before which grain for the prescribed grain 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.

*[Section 24 amended by No. 37 of 1997 s.22.]*

**25. Receival of prescribed grain by the Grain Pool**

Subject to the terms and conditions of a prescribed grain pool, the Grain Pool shall receive for the prescribed grain pool any prescribed grain —

- (a) that is produced in the season to which the prescribed grain pool relates;
- (b) that is delivered for the prescribed grain pool to the Grain Pool or a licensed receiver on or before the

closing date of the prescribed grain pool by or on behalf of the producer; and

- (c) that complies with any standards that apply to the prescribed grain pool.

*[Section 25 inserted by No. 37 of 1997 s.23.]*

**26. Voluntary pools**

- (1) The Grain Pool may establish and maintain each year a voluntary pool, or separate voluntary pools, for the marketing of any grain, other than prescribed grain, produced in a season and delivered to the Grain Pool by producers of the grain, subject to the terms and conditions of the voluntary pool or pools.

*[(2) repealed]*

- (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.

*[Section 26 amended by No. 37 of 1997 s.24.]*

**27. Producers**

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.

**28. Levies**

- (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 any 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 applied for grain research and shall be paid into a reserve fund 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);

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- (iii) one of whom shall be a representative of the department of the Public Service principally assisting the Minister in the administration of this Act; 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.

*[Section 28 amended by No. 4 of 1981 s.2; No. 61 of 1995 s.13; No. 37 of 1997 s.25.]*

**29. Grain vests in the Grain Pool**

- (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 an entitlement to 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 a grain (other than a prescribed grain) specified in the Order shall on and after a date so specified be a special approved grain, and that 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 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.

*[Section 29 amended by No. 37 of 1997 s.26.]*

**30. Classification and certificate**

- (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 premiums or 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 premiums or 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.

*[Section 30 amended by No. 37 of 1997 s.27.]*

**31. Sale of grain by the Grain Pool**

- (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 or Territories; and
  - (d) exercise a power conferred on the Grain Pool under section 19(2)(c) or (d) or enter into any agreement relating to the marketing of grain with a Commonwealth authority, a grain marketing board or corporation of another State or a Territory, 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 entitlements to compensation under section 32; and
  - (c) shall make all other payments authorized by this Act.

*[Section 31 amended by No. 89 of 1981 s.5; No. 37 of 1997 s.28.]*

### **32. Compensation**

- (1) A producer who delivers grain to the Grain Pool for a pool, or on whose behalf grain is so delivered, has an entitlement to compensation determined in accordance with this section.
- (2) The Board shall determine entitlements to compensation to be paid in respect of the grain in a pool and shall base the determination on the rate or rates per tonne of grain computed by reference to —

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- (a) the net proceeds from the sale of the grain;
- (b) the quantities of the grain;
- (c) the classifications of the grain; and
- (d) the premiums or dockages on the grain,

but the Board shall not make a determination until, in the opinion of the Board, the Grain Pool has sold a sufficient quantity of the grain to enable the Board to make a just determination.

- (3) An entitlement to compensation determined under subsection (2) is subject to being reduced by the amount of any levies that may have been imposed under section 28.
- (4) Pending the determination of an entitlement to compensation, the Grain Pool may make, at such time or times and on such terms and conditions as the Board thinks fit, advance payment on account of the entitlement.

*[Section 32 inserted by No. 37 of 1997 s.29.]*

**32A. Settlement of claims before determination**

- (1) Where under section 32(4) the Grain Pool has made one or more advance payments on account of entitlements to compensation in respect of the grain in a pool, the Grain Pool may, before determination of the entitlements under section 32(2), make an offer of payment in full settlement of each entitlement.
- (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 entitlements under section 32(2), make a further offer or offers of payment in full settlement of any entitlements to 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 entitlements to compensation.

- (4) Payment by the Grain Pool, upon the valid acceptance of an offer under this section —
- (a) is subject to being reduced by the amount of any levies that may have been imposed under section 28; and
  - (b) has effect to extinguish the entitlement to compensation to which the payment relates.

*[Section 32A inserted by No. 92 of 1982 s.4; amended by No. 37 of 1997 s.30.]*

**32B. Prior Payment Reserve Fund**

- (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 entitlements to 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; amended by No. 37 of 1997 s.31.]*

**33. Classification and dockages**

For the purposes of this Division, classifications, premiums 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; No. 37 of 1997 s.32.]*

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

- (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:

- (a) for a natural person, \$5 000 or for a second or subsequent offence, \$10 000; or
- (b) for a body corporate, \$25 000 or for a second or subsequent offence, \$50 000.
- (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 approves.

*[Section 34 amended by No. 112 of 1987 s.6; No. 20 of 1989 s.3; No. 37 of 1997 s.33.]*

### **Division 2 — Trading**

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

#### **34A. Authorized grains**

- (1) The Minister may, by notice published in the *Government Gazette*, declare that a grain, other than a prescribed grain or a special 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 a special approved grain, the Order under section 20(2) or 29(2) as the case may be, shall specify that, on and after the date on which that grain becomes a prescribed grain or a special 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; amended by No. 37 of 1997 s.34.]*

**34B. Purchase of authorized grain by the Grain Pool**

- (1) The Grain Pool may in accordance with this Division, enter into a contract in respect of —
- (a) authorized grain; or
  - (b) prescribed grain,

or both, 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.

- (1a) The Grain Pool may not, in any one year, contract under subsection (1) to acquire prescribed grain in excess of the maximum amount —
- (a) specified in the annual operational plan for the time being in force under section 19H; or
  - (b) if no amount is so specified, decided by the Minister in writing, after consultation with the Grain Pool,

in relation to that grain.

- (2) Subject to section 23, a contract entered into under subsection (1) is valid and enforceable notwithstanding —
- (a) that the contract was entered into in respect of authorized grain and that grain has ceased to be authorized grain; or
  - (b) that the contract was entered into in respect of prescribed grain in excess of the maximum amount that the Grain Pool is to acquire under subsection (1a).

*[Section 34B inserted by No. 89 of 1981 s.6; amended by No. 61 of 1995 s.14; No. 37 of 1997 s.35.]*

**34C. Sale of grain by the Grain Pool**

- (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.]*

**34D. Application of surplus**

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<sup>5</sup>.]*

**34E. Reserve fund may be applied to meet trading deficit**

Where the Grain Pool does not have sufficient surplus money derived from trading under this Division, it may apply such amounts of the reserve fund as it considers necessary to fulfil its obligations under this Division.

*[Section 34E inserted by No. 61 of 1995 s.15.]*

**34F. Approval of Minister**

The Grain Pool must have the written approval of the Minister before applying any amount from the reserve fund under section 34E.



*[Section 34F inserted by No. 61 of 1995 s.16.]*

## **Part IV — Miscellaneous**

### **35.       Accounts**

*[(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 entitlements to compensation settled under section 32A and shall indicate the amount of the deficit or surplus resulting from the settlement of entitlements in that manner and, in the case of a surplus, the payment of that surplus into the Prior Payment Reserved 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 s.3(c)); No. 37 of 1997 s.36.]*

### **36.       Guarantee of money borrowed**

- (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 charged to the Consolidated 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 charged by the Treasurer to be credited to the Consolidated 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 s.3(c)); No. 6 of 1993 s.11; No. 49 of 1996 s.64.]*

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

- (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 1986 s.3(c)).]*

**37A. Appeals**

- (1) A person whose application under section 22A for a permit to purchase, take delivery of or receive from a person other than the Grain Pool a prescribed grain that is to be exported, or sold for export, from the Commonwealth, 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 therefore, 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; amended by No. 37 of 1997 s.37.]*

**38. Power to enter and search**

- (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, who may issue the warrant if satisfied in relation to the reasonable grounds referred to in that subsection.
- (3) A person shall not hinder any other person acting pursuant to subsections (1) and (2).

Penalty: \$2 000.

*[Section 38 amended by No. 112 of 1987 s.8; No. 20 of 1989 s.3; No. 37 of 1997 s.38.]*

**39. Protection of grain**

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: \$2 000.

*[Section 39 amended by No. 89 of 1981 s.8; No. 112 of 1987 s.9; No. 20 of 1989 s.3.]*

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

**41. How legal proceedings taken**

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.

**41A. Review of Act**

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act and, in the course of that review, the Minister shall consider and have regard to —
  - (a) the effectiveness of the operations of the Grain Pool;
  - (b) the need for the continuation of the functions of the Grain Pool; and
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.
- (3) The review shall be completed, and the report laid before each House of Parliament, within 5 years after the coming into operation of the *Grain Marketing Amendment Act 1997*<sup>1</sup>.
- (4) If, because either House of Parliament is not sitting, the report cannot be laid before that House as required by subsection (3), the Minister may comply with the requirement to lay the report before that House by —
  - (a) giving a copy of the report to the Clerk of that House within the period referred to in that subsection; and
  - (b) immediately causing the report to be printed and made available to the public.
- (5) A copy of a report given to the Clerk of a House under subsection (4) shall be laid before that House on its next sitting day.

*[Section 41A inserted by No. 37 of 1997 s.39; amended by No. 24 of 2000 s.15.]*

**42. Regulations**

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 \$2 000.

*[Section 42 amended by No. 20 of 1989 s.3.]*

*[Part V (sections 43 and 44) repealed by No. 37 of 1997 s.40.]*

*[Part VI (section 45) repealed by No. 37 of 1997 s.41.]*

*[First Schedule omitted under the Reprints Act 1984, s.7(4)(f).]*

## **Second Schedule**

[Section 9]

### **Zones for Election of Directors**

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 repealed by No. 37 of 1997 s.42.]*

*[Fourth Schedule repealed by No. 37 of 1997 s.43.]*



**Notes**

<sup>1</sup> This is a compilation of the *Grain Marketing Act 1975* and includes all amendments effected by the other Acts referred to in Part I of the following Table and the amendment resolutions referred to in Part II of the following Table. For amendments that had not come into operation on the date on which this compilation was prepared see endnote <sup>1a</sup>.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Grain Marketing Act 1975</i>	85 of 1975	18 Nov 1975	21 Nov 1975 (see section 1(1) and <i>Gazette</i> 21 Nov 1975 p.4241)
<i>Grain Marketing Amendment Act 1981</i>	4 of 1981	18 May 1981	Section 3(1) operative 4 Dec 1981 (see section 2 and <i>Gazette</i> 4 Dec 1981 p.4972); balance: 18 May 1981
<i>Grain Marketing Amendment Act (No. 2) 1981</i> <sup>5</sup>	89 of 1981	26 Nov 1981	26 Nov 1981
<i>Grain Marketing Amendment Act 1982</i> <sup>4</sup>	92 of 1982	18 Nov 1982	18 Nov 1982
<i>Grain Marketing Amendment Act 1984</i>	63 of 1984	24 Oct 1984	24 Oct 1984 (see section 2)
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985 (As amended by No. 4 of 1986 section 3(c))	4 Dec 1985	1 Jul 1986 (see section 2 and <i>Gazette</i> 30 Jun 1986 p.2255)
<i>Acts Amendment (Grain Marketing) Act 1987, Part II</i>	112 of 1987	19 Dec 1987	22 Jan 1988 (see section 2 and <i>Gazette</i> 22 Jan 1988 p.109)

## Grain Marketing Act 1975

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Short title	Number and year	Assent	Commencement
<i>Agricultural Legislation (Penalties) Amendment Act 1989</i> , section 3	20 of 1989	1 Dec 1989	15 Dec 1989 (see section 2 and <i>Gazette</i> 15 Dec 1989 p.4513)
<i>Financial Administration Legislation Amendment Act 1993</i> , section 11	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993 (see section 2(1))
<i>Agricultural Legislation Amendment and Repeal Act 1995</i> , Part 3 <sup>3</sup>	61 of 1995	20 Dec 1995	Section 16: 7 Oct 1998 (see section 2 and <i>Gazette</i> 6 Oct 1998 p.5549); balance: 10 Jan 1996 (see section 2 and <i>Gazette</i> 9 Jan 1996 p.51)
<i>Statutory Corporations (Liability of Directors) Act 1996</i> , section 3	41 of 1996	10 Oct 1996	1 Dec 1996 (see section 2 and <i>Gazette</i> 12 Nov 1996 p.6301)
<i>Financial Legislation Amendment Act 1996</i> , section 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see section 2(1))
<i>Grain Marketing Amendment Act 1997</i> <sup>2</sup>	37 of 1997	19 Nov 1997	6 Dec 1997 (see section 2 and <i>Gazette</i> 5 Dec 1997 p.7119)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> , section 76	10 of 1998	30 Apr 1998	30 Apr 1998 (see section 2(1))
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> , section 15	24 of 2000	4 Jul 2000	4 Jul 2000 (see section 2)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 29	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Labour Relations Reform Act 2002</i> s. 19	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2 and <i>Gazette</i> 6 Sep 2002 p. 4487)

Short title	Number and year	Assent	Commencement
<i>Corporations (Consequential Amendments) Act (No. 3) 2003 Pt. 6</i> <sup>7</sup>	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and Cwlth Gazette 24 Oct 2001 (No. GN42))

**This Act was repealed by the *Grain Marketing Act 2002 s. 45 (No. 30 of 2002)* as at 31 Oct 2002 (see s. 2 and Gazette 30 Oct 2001 p. 5351)**

### Part II — Resolutions

Resolutions	Gazettal	Commencement	Miscellaneous
Amendment Resolution	27 February 1981 p.844	27 February 1981	
Amendment Resolution	22 May 1987 p.2195	22 May 1987	

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnote referred to after the short title.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Bulk Handling Repeal Act 2000 s.14</i> <sup>6</sup>	33 of 2000	6 Jul 2000	Commencement subject to scheme of arrangement. (see s. 2, 3 & 5)

<sup>1b</sup> The amendment by section 8 of the *Equal Opportunity Amendment Act (No. 3) 1997*, (No. 42 of 1997) did not have effect because the Schedule it would have amended was repealed by the *Grain Marketing Amendment Act 1997* (No. 37 of 1997) section 42.

<sup>2</sup> Section 5(2) of the *Grain Marketing Amendment Act 1997* (No. 37 of 1997) reads as follows —

“

- (2) Despite subsection (1), a person appointed and holding office as a Director of The Grain Pool of W.A. under section 9(2) of the principal Act immediately before the commencement of

subsection (1) continues, subject to the principal Act, to hold office as a Director for the remainder of the period for which he or she would, but for subsection (1), have continued to hold that office.

”.

<sup>3</sup> Section 3 of the *Grain Marketing Amendment Act 1982* (No. 61 of 1995) reads as follows —

“

**3. Fund moneys to be transferred**

- (1) Moneys standing to the credit of the Soil Fertility Research Fund immediately before the commencement of this Act are to be transferred to the Grain Research Fund.
- (2) The Grain Research Fund is charged with any liabilities of the Soil Fertility Research Fund which arose before the commencement of this Act.
- (3) In this section —  
“**Grain Research Fund**” has the same meaning as it has for the purposes of the *Grain Marketing Act 1975*;  
“**Soil Fertility Research Fund**” has the same meaning as it has for the purposes of the *Soil Fertility Research Act 1954*.

”.

<sup>4</sup> Section 7 of the *Grain Marketing Amendment Act 1982* (No. 92 of 1982) reads as follows —

“

**7. Validation**

- (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.

”.

<sup>5</sup> Section 9 of the *Grain Marketing Amendment Act (No. 2) 1981* (No. 89 of 1981) reads as follows —

“

**9. Validation**

- (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.

”.

<sup>6</sup> On the date as at which this compilation was prepared, the *Bulk Handling Repeal Act 2000* s. 14 had not come into operation. It reads:

“

**14. Grain Marketing Act 1975 amended and transitional**

- (1) The amendments in this section are to the *Grain Marketing Act 1975*.
- (2) Section 5(1) is amended by deleting the definition of “special approved grain”.
- (3) Section 5(2) is repealed.
- (4) Section 19(2)(e) is amended by deleting “subject to section 39 of the *Bulk Handling Act 1967* and after consultation with the Company within the meaning of that Act.”.
- (5) Section 22(4) is repealed.
- (6) Section 29(2), (3) and (4) are repealed.

- (7) Section 33 is repealed and the following section is inserted instead —

“

**33. Classification, premiums and dockages**

For the purposes of this Division, classifications, premiums and dockages in respect of a grain delivered to the Grain Pool shall be determined by the Board.

”

- (8) Section 34(2) is repealed.
- (9) Section 34A(1) is amended by deleting “or a special approved grain”.
- (10) Section 34A(3) is amended as follows:
- (a) by deleting “or a special approved grain” in the first place where it occurs;
  - (b) by deleting “or 29(2) as the case may be,”;
  - (c) by deleting “or a special approved grain, as the case may be”.
- (11) Despite subsection (8), the licence held by CBH under section 34(2) of the *Grain Marketing Act 1975* remains in force in relation to current grain.

”

<sup>7</sup> The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 read as follows:

“

**2. Commencement**

- (1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.
- (2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

**3. Interpretation**

In this Part —

“**Financial Services Reform Act**” means the *Financial Services Reform Act 2001* of the Commonwealth;

“**FSR commencement time**” means the time when Schedule 1 to the Financial Services Reform Act comes into operation;  
“**statutory rule**” means a regulation, rule or by-law.

**4. Validation**

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.
- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.
- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —
  - (a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and
  - (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,

is taken not to be valid, and to never have been valid.

”.

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
advertisement .....	5(1)
annual report .....	12A(6)
appointed date .....	5(1)
authorized grain .....	5(1)
barley .....	5(1)
Board .....	5(1)
certificate .....	5(1)
Chairman.....	5(1)
closing date .....	5(1)
Deputy Chairman.....	5(1)
Director .....	5(1)
document.....	19E(4)
electoral zone .....	5(1)
grain .....	5(1)
Grain Pool.....	5(1)
Grain Research Fund .....	5(1)
information .....	19E(4)
licensed receiver .....	5(1)
limited company .....	5(1)
lupin .....	5(1)
meeting of producers .....	12A(6)
Order.....	5(1)
pool .....	5(1)
prescribed grain.....	5(1)
prescribed grain pool .....	5(1)
prescribed producer.....	5(1)
producer .....	5(1)
purchase .....	22A(6)
relevant written laws .....	17(2)
reserve fund .....	5(1)
sale .....	5(1)
season.....	5(1)
sell.....	5(1)
special approved grain .....	5(1)
subsidiary.....	13(6)
the former bodies .....	18
value adding processes.....	5(1)
voluntary pool.....	5(1)



