

# WHEAT MARKETING ACT 1989

(No. 26 of 1989)

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## ARRANGEMENT

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# WHEAT MARKETING ACT

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No. 26 of 1989

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**AN ACT relating to the marketing of wheat and wheat products and other grain and grain products and the receipt, handling, transportation and delivery of grain, to repeal the *Wheat Marketing Act 1984* and for related purposes.**

*[Assented to 8 December 1989]*

The Parliament of Western Australia enacts as follows:

## **Short title**

1. This Act may be cited as the *Wheat Marketing Act 1989*.

## **Commencement**

2. This Act shall be deemed to have come into operation on 1 July 1989.

## Interpretation

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

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

“Commonwealth Act” means the *Wheat Marketing Act 1989* of the Commonwealth;

“Commonwealth Minister” means the Minister of the Commonwealth administering the Commonwealth Act.

(2) Unless the contrary intention appears, words and expressions defined in the Commonwealth Act have the same meaning in this Act as in the Commonwealth Act.

## Functions and powers conferred subject to State laws

4. Subject to sections 7 and 12, the functions and powers conferred on the Board by this Act are conferred subject to, and shall be performed and exercised by the Board in accordance with, the laws of the State.

## Functions of the Board

5. (1) For the purposes of section 6 (4) of the Commonwealth Act, the following functions are conferred on the Board with respect to trade and commerce within the State—

- (a) to trade in wheat and wheat products;
- (b) to make arrangements for the growing of wheat for the purpose of trading in wheat;
- (c) to promote, fund or undertake research into matters related to the marketing of wheat or wheat products;
- (d) to trade in grain and grain products, other than wheat and wheat products;
- (e) to make arrangements for the growing of grain, other than wheat, for the purpose of trading in such grain; and
- (f) such other functions as are given to the Board by a written law.

(2) The functions conferred on the Board by subsection (1) (d) and (e) may only be performed to the extent that they will promote an object of the Board under the Commonwealth Act.

(3) Without limiting the generality of section 4 and subject to section 12, nothing in subsection (1) (d) or (e) authorizes the Board to trade in, or make arrangements for the growing of, grain that is a prescribed grain under the *Grain Marketing Act 1975* otherwise than in accordance with that Act.

### **Powers of the Board**

6. (1) The Board has power to do all things that are necessary or convenient to be done in connection with the performance of its functions under this Act.

(2) Without limiting the generality of subsection (1), the Board has power to do anything in connection with the performance of its functions under this Act that it may do in accordance with section 7 (2) and (3) of the Commonwealth Act.

(3) For the purposes of subsection (2), a reference in section 7 (2) (p) of the Commonwealth Act to the Minister shall be read as a reference to the Minister of the Crown to whom the administration of this Act is for the time being committed by the Governor.

(4) The Board may have regard to any advice given to it by a consultative group established under section 9 of the Commonwealth Act on any matter relating to the performance of the Board's functions under this Act.

(5) Without limiting the generality of section 4 and subject to section 12, the Board is not authorized to transport or to make arrangements for the transport of grain otherwise than in accordance with the *Transport Co-ordination Act 1966*.

### **Application of *Bulk Handling Act 1967***

7. (1) In this section—

“Company” has the same meaning as in the *Bulk Handling Act 1967*;

“grain” means wheat or barley—

- (a) which is for use within the State; and
- (b) in respect of which the Company renders a service.

(2) Where the Minister has by a notice authorized the Board or any other person to receive, handle, transport or deliver grain, the Board or that person may do so notwithstanding anything to the contrary in the *Bulk Handling Act 1967*.

(3) A notice under subsection (2)—

- (a) is “subsidiary legislation” for the purposes of the *Interpretation Act 1984*; and
- (b) may be made in respect of wheat or barley or wheat and barley.

### **Directions**

8. (1) The Minister, or the Commonwealth Minister with the written consent of the Minister, may give a written direction to the Board concerning the performance of its functions and the exercise of its powers under this Act, and the Board shall obey the direction.

(2) The Minister shall cause a copy of any direction given to the Board under subsection (1) to be laid before each House of Parliament within 15 sitting days of that House after the date on which the direction was given.

### **Delegation**

9. (1) The Board may delegate any of its powers and functions under this Act, except this power of delegation, to—

- (a) a person holding an appointment under the Commonwealth Act, other than a member of the Selection Committee under that Act or a member of a consultative group established under section 9 of that Act; or
- (b) an employee of the Board.

(2) A delegation under subsection (1) shall be in writing.

### **Application of certain provisions of the Commonwealth Act**

10. The following provisions of the Commonwealth Act apply as if they were included in this Act—

- (a) Divisions 2 and 3 of Part 4; and
- (b) section 74, except for subsections (1) (c) and (e) and (4) (c) and (e).

### Notice of crop liens to be given

11. An assignment of moneys payable by the Board in respect of grain delivered to the Board is voidable at the instance of the Board unless and until it is registered as a crop lien and notice in writing of the registration of the lien has been furnished to the Board by the holder of the lien.

### Operation of prescribed enactments

12. (1) Where the Board, in the performance of its functions under this Act, enters into a contract, or makes an agreement or arrangement, with a person (in this subsection called "the other party")—

- (a) the contract, agreement or arrangement is not rendered unlawful or unenforceable by any prescribed enactment;
- (b) the other party does not incur any liability, penalty or forfeiture under any prescribed enactment by virtue only of having entered into the contract, agreement or arrangement;
- (c) nothing in any prescribed enactment operates to prevent the Board or the other party discharging obligations under the contract according to its terms;
- (d) in the case of a contract for the sale of grain to the Board or for the growing of grain and the sale of the grain to the Board, nothing in any prescribed enactment operates to prevent the property in the grain passing to the Board according to the terms of the contract and this Act;
- (e) a person who, under a contract (including a contract of service), agreement or arrangement with the other party, does anything on behalf of the other party in the discharge of an obligation under the first-mentioned contract, agreement or arrangement does not incur any liability, penalty or forfeiture under any prescribed enactment by virtue only of having done that thing;
- (f) the contract, agreement or arrangement between that person and the other party is not rendered unlawful or unenforceable by any prescribed enactment; and
- (g) nothing in any prescribed enactment operates to prevent the person or the other party discharging obligations under the contract, agreement or arrangement according to its terms.

(2) Subsection (1) (d) does not affect the rights of the holder of a security over grain for moneys owing.

(3) Subject to subsection (5), a reference in this section to a prescribed enactment is a reference to an enactment prescribed by the regulations to be a prescribed enactment for the purposes of this section.

(4) The regulations may provide that an enactment is a prescribed enactment only to the extent, or only in the circumstances, specified in the regulations.

(5) The regulations shall not prescribe an enactment except in relation to the storage, handling, transport or marketing of grain.

### **Regulations**

13. The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

### **Repeal**

14. The *Wheat Marketing Act 1984* is repealed.

### **Transitional**

15. (1) The *Wheat Marketing Act 1984* (in this section referred to as the “repealed Act”) continues in force—

(a) for the purposes only of—

- (i) the disposal of wheat delivered to the Board before 1 July 1989 or wheat in respect of which a permit was issued or authorization or consent given under the repealed Act;
- (ii) the determination and enforcement of rights and liabilities in connection with the disposal of wheat referred to in subparagraph (i); and
- (iii) the making of payments for wheat referred to in subparagraph (i);

and

(b) in connection with payments made before 1 July 1989 in relation to wheat referred to in paragraph (a).

(2) For the purpose of subsection (1), a reference in the repealed Act to the Australian Wheat Board shall, in relation to anything done or to be done after the commencement of this section, be read as a reference to the Board.

(3) Section 26 of the repealed Act as continued in force under subsection (1), has effect as if it included the following subsection—

“ (5) In this section—

“wheat” means wheat delivered to the Board before 1 July 1989;

“wheat products” means products made from wheat delivered to the Board before 1 July 1989. ”.

(4) If, on or after 1 July 1989 there is money standing to the credit of the account kept under section 24 of the repealed Act, the money shall be applied for the benefit of the wheat industry in such manner as the Commonwealth Minister, after consultation with the Grains Council, directs.

## **Review of Act**

**16.** (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister shall consider and have regard to—

- (a) the effectiveness of the operations of the Board under this Act;
- (b) the need for the continuation of the functions of the Board under this Act; and
- (c) such other matters as 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 under subsection (1) and shall, as soon as is practicable after the preparation thereof, cause the report to be laid before each House of Parliament.