

Western Australia

## **Grain Marketing Act 2002**

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## Grain Marketing Act 2002

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### CONTENTS

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<b>Part 1 — Preliminary</b>		
1.	Short title	2
2.	Commencement	2
3.	Meaning of terms used in this Act	2
4.	Meaning of export in bulk	3
<b>Part 2 — Grain Licensing Authority</b>		
<b>Division 1 — Administrative provisions</b>		
5.	Authority established	4
6.	Membership	4
7.	Term of office	4
8.	Casual vacancy	5
9.	Remuneration and allowances	5
10.	Quorum	5
11.	Presiding at meetings	5
12.	Procedure at meetings	6
13.	Minutes	6
14.	Staff and other resources of Authority	6
15.	Application of <i>Financial Administration and Audit Act 1985</i>	6
16.	Ministerial guidelines	7
17.	Minister may give directions	7
18.	Minister to have access to information	8
<b>Division 2 — Functions</b>		
19.	Licensing	9
20.	Reports to the Minister	9
21.	Powers, generally	10

22.	Power of entry	10
<b>Part 3 — Export controls</b>		
<b>Division 1 — Controlled activities</b>		
23.	Offence of buying prescribed grain for export in bulk	12
24.	Offence of exporting prescribed grain in bulk	12
<b>Division 2 — Main export licence</b>		
25.	Main export licence	13
26.	When main export licence has effect	13
27.	First main export licence	13
28.	Obligation to buy grain	13
<b>Division 3 — Special export licence</b>		
29.	Special export licence	14
30.	Details to be specified in application	14
31.	Prerequisites for grant of special export licence	14
32.	Term of special export licence	15
33.	Special export licence conditions	16
34.	Matters to be specified in special export licence	16
<b>Division 4 — General licensing provisions</b>		
35.	Application for licence	16
36.	Licence not transferable	17
37.	Cancellation of licence	17
38.	Licence fees	17
39.	Notice of decisions	18
40.	Appeals	18
<b>Part 4 — Miscellaneous</b>		
41.	Exemption for restrictive trade practices	20
42.	Publication of information about special export licences	20
43.	Evidence	20
44.	Regulations	22
45.	Repeal	22
46.	Transitional and saving provisions	22
47.	Consequential amendments	22
48.	Review of Act	22
49.	Expiry of Act	23
<b>Schedule 1 — Transitional and savings provisions</b>		

1.	Meanings of terms used in this Schedule	25
2.	Interpretation Act to apply	25
3.	GPWA continued for certain purposes	26
4.	Devolution of assets, liabilities etc.	26
5.	Shares in Grain Pool Pty Ltd	27
6.	Agreements and instruments	27
7.	References to GPWA in written law	28
8.	Staff	28
9.	Final report	28
10.	Immunity continues	29
11.	Exemption from State tax	29
12.	Registration of documents	29
13.	Saving	29

**Schedule 2 — Consequential  
amendments to other Acts**

1.	<i>Bulk Handling Act 1967</i>	31
2.	<i>Bulk Handling Repeal Act 2000</i>	31
3.	<i>Constitution Acts Amendment Act 1899</i>	31
4.	<i>Financial Administration and Audit Act 1985</i>	31
5.	<i>Statutory Corporations (Liability of Directors) Act 1996</i>	31

**Notes**

	Compilation table	32
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Western Australia

## **Grain Marketing Act 2002**

**An Act relating to the marketing of certain grain, to repeal the *Grain Marketing Act 1975*, to make minor amendments to certain other Acts as a consequence, and for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Grain Marketing Act 2002*.

### **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) The day fixed cannot be before the Minister is satisfied that The Grain Pool of W.A. established under the *Grain Marketing Act 1975* is the sole shareholder of Grain Pool Pty Ltd.

### **3. Meaning of terms used in this Act**

In this Act, unless the contrary intention appears —

“**Authority**” means the Grain Licensing Authority referred to in section 5;

“**Chairman**” means the person appointed under section 6(a) as the Chairman of the Authority;

“**Department**” means the department of the Public Service principally assisting the Minister in the administration of this Act;

“**export**” means export from Australia;

“**export in bulk**” has the meaning given by section 4;

“**grain**” means the seed of a crop species, except that it does not include —

- (a) any seed that has been treated, processed, or otherwise dealt with in a way that the regulations state excludes the seed from this definition; or
- (b) anything that, although made wholly or partly from seed, is not itself seed;

“**Grain Pool Pty Ltd**” means Grain Pool Pty Ltd (ACN 089 394 883);



**“licence”** means a main export licence or a special export licence;

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

**“main export licence”** means a licence referred to in section 25;

**“main export licence holder”** means the holder of the main export licence that is currently in effect;

**“prescribed grain”** means —

- (a) unless the regulations specify that it is not a prescribed grain, the grain of barley or the seed of lupin or rapeseed; or
- (b) any other grain that the regulations specify to be a prescribed grain;

**“special export licence”** means a licence referred to in section 29.

#### **4. Meaning of export in bulk**

When this Act refers to the export in bulk of prescribed grain, it means the export of that prescribed grain other than in a bag or other container that cannot hold more than 50 tonnes of the grain that it is being used to contain.

## **Part 2 — Grain Licensing Authority**

### **Division 1 — Administrative provisions**

#### **5. Authority established**

The Minister is to appoint 5 persons to be the members of a body called the Grain Licensing Authority.

#### **6. Membership**

The members of the Authority are to be —

- (a) one person appointed as its Chairman;
- (b) 2 other persons appointed from amongst —
  - (i) persons who produce grain in Western Australia; or
  - (ii) members or shareholders of bodies that produce grain in Western Australia;
- (c) one other person appointed from amongst persons who are employed in the Department; and
- (d) one other person appointed from amongst persons who are employed in the department of the Public Service principally assisting the Treasurer in the administration of the *Financial Administration and Audit Act 1985* and who have experience in financial markets, international trade, marketing, law or other such relevant fields.

#### **7. Term of office**

- (1) The term for which a person is appointed to be a member of the Authority is to be fixed in the instrument of appointment and is to be not longer than 3 years.
- (2) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.

**8. Casual vacancy**

- (1) A member of the Authority may at any time resign from office by notice in writing delivered to the Minister.
- (2) The Minister may remove a person who is a member of the Authority from office on the grounds of —
  - (a) the person ceasing to be a person who would be eligible to be appointed to the office if it were to become vacant;
  - (b) mental or physical incapacity to carry out the person's duties in a satisfactory manner;
  - (c) the person being an insolvent under administration within the meaning of that term in the *Corporations Act 2001* of the Commonwealth;
  - (d) neglect of duty; or
  - (e) misconduct.
- (3) If, before the term of office for which a person was appointed as a member of the Authority expires, the person dies, resigns, or is removed from office, the office becomes vacant.

**9. Remuneration and allowances**

Members of the Authority are entitled to any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Minister for Public Sector Management.

**10. Quorum**

A quorum for a meeting of the Authority is any 4 members.

**11. Presiding at meetings**

- (1) The Chairman, if present, is to preside at a meeting of the Authority.

- (2) If the Chairman is not presiding under subsection (1), the members present at the meeting are to appoint one of their number to preside.

**12. Procedure at meetings**

Except as otherwise stated in this Act, the Authority is to determine its own meeting procedures.

**13. Minutes**

The Authority is to cause accurate minutes to be kept of the proceedings at its meetings.

**14. Staff and other resources of Authority**

- (1) There is to be an executive officer of the Authority.
- (2) The executive officer and any other staff whose assistance the executive officer needs are to be made available by the chief executive officer of the Department.
- (3) The Authority may make use of the services and facilities of the Department on terms agreed to by the Authority and the chief executive officer of the Department.

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

- (1) Any acts or things done by or for the Authority under this Act are to be regarded —
- (a) as services under the control of the Department for the purposes of the *Financial Administration and Audit Act 1985* section 52; and
  - (b) as part of the operations of the Department for the purposes of Part II Division 14 of that Act.
- (2) For the purposes of the *Financial Administration and Audit Act 1985* section 23A, any fee paid under section 35 or 38 or recovered under section 38(4) is to be treated as having been lawfully received by the Department.

*[Section 15 amended by No. 5 of 2005 s. 40(2).]*

**16. Ministerial guidelines**

- (1) The Minister may, for the assistance of the Authority and the information of persons involved in the grain industry and other members of the community, issue guidelines dealing with matters that the Minister requires to be considered in performing a function of the Authority under this Act.
- (2) In performing any function under this Act, the Authority is to take into account anything relevant that is in the guidelines.
- (3) Nothing in subsection (2) —
  - (a) derogates from the Authority's duty to exercise its discretion in a particular case;
  - (b) precludes the Authority from taking into account matters not set out in the guidelines; or
  - (c) requires the Authority to take into account a guideline if the guideline is inconsistent with a provision of this Act.
- (4) The Minister may amend the guidelines or revoke them with or without issuing new guidelines.
- (5) The guidelines and any amendment or revocation of them must be published in a manner prescribed by the regulations.
- (6) Before issuing, amending, revoking, or replacing the guidelines, the Minister is to consult with any industry bodies and other persons as the Minister thinks fit.
- (7) Guidelines issued under this section are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

**17. Minister may give directions**

- (1) The Minister may give written directions to the Authority with respect to the performance of its functions, either generally or in relation to a particular matter, and the Authority is to give effect to any such direction.

- (2) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament, or dealt with under subsection (3), within 14 days after the direction is given.
- (3) If —
- (a) at the commencement of the period referred to in subsection (2) a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that that House will not sit during that period,
- the Minister is to transmit a copy of the direction to the Clerk of that House.
- (4) A copy of a direction transmitted to the Clerk of a House is to be regarded —
- (a) as having been laid before that House; and
  - (b) as being a document published by order or under the authority of that House.
- (5) The laying of a copy of a direction that is regarded as having occurred under subsection (4)(a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.
- (6) The text of a direction under subsection (1) is to be included in the annual report submitted by the accountable officer of the Department under the *Financial Administration and Audit Act 1985* section 66.
- [Section 17 amended by No. 5 of 2005 s. 40(3).]*

**18. Minister to have access to information**

- (1) The Minister is entitled —
- (a) to have information in the possession of the Authority; 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 Authority to furnish information to the Minister;
  - (b) request the Authority to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the staff available to the Authority to obtain the information and furnish it to the Minister.
- (3) The Authority has to comply with a request under subsection (2) and make staff and facilities 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 mechanically, photographically, electronically or otherwise;
- “**information**” means information specified, or of a description specified, by the Minister that relates to the functions of the Authority.

## **Division 2 — Functions**

### **19. Licensing**

It is a function of the Authority to administer the licensing scheme in Part 3.

### **20. Reports to the Minister**

The Authority is to report to the Minister annually, and whenever directed by the Minister to do so, on —

- (a) the operation and effectiveness of the licensing scheme in Part 3; and
- (b) any other matters relating to the operation of this Act that the Minister specifies.

**21. Powers, generally**

The Authority has all the powers it needs to perform its functions.

**22. Power of entry**

- (1) A power of entry given by this section is for ascertaining whether there has been a contravention of this Act or for obtaining evidence of a contravention and it includes the power to search and inspect any place, document, or other thing.
- (2) Except if the entry is authorised by the warrant of a justice, entry on to any land, premises or thing is not lawful unless —
  - (a) the consent of the owner or occupier has been obtained; or
  - (b) notice of the entry has been given under subsection (3).
- (3) Notice of an intended entry may be given to the owner or occupier of the land, premises or thing that is to be entered specifying the purpose for which the entry is required.
- (4) The notice has no effect unless it is given at least 24 hours before any entry under it but a notice that has been properly given applies for as long as entry is required for the purpose specified and successive entries for that purpose are to be regarded as entries to which that notice relates.
- (5) If notice has been given under subsection (3), a person authorised by the Authority to do so may lawfully enter the land, premises or thing without the consent of the owner or occupier unless the owner or occupier or a person authorised by the owner or occupier objects to the entry.
- (6) A justice may by warrant authorise the Authority, by its authorised persons, to enter any land, premises, or thing if the justice is satisfied that the entry is reasonably required but —
  - (a) entry has been refused or is opposed or prevented;
  - (b) entry cannot be obtained;



- (c) notice cannot be given under subsection (3) without unreasonable difficulty or without unreasonably delaying entry; or
  - (d) there is a reasonable likelihood that the purpose for which entry is required would be frustrated if notice of the entry were given.
- (7) A warrant granted under subsection (6) —
- (a) is to be in the prescribed form;
  - (b) is to specify the purpose for which the land, premises or thing may be entered; and
  - (c) continues to have effect until the purpose for which it was granted has been satisfied.
- (8) A person executing a warrant may use any force reasonably necessary.
- (9) Entry under this section may be made with any assistants or equipment considered necessary for the purpose for which entry is required.
- (10) A person who enters or who has entered any land, premises or thing under this section is to give particulars of the purpose of, and the authority for, that entry on being requested to do so.
- (11) A person who hinders the exercise of a power given by this section commits an offence, but a refusal to give consent or an objection contemplated by subsection (5) does not amount to hindering.
- Penalty: \$10 000.

## **Part 3 — Export controls**

### **Division 1 — Controlled activities**

#### **23. Offence of buying prescribed grain for export in bulk**

- (1) Except as allowed by subsection (2), a person who buys any prescribed grain from another person for export in bulk commits an offence.

Penalty:

- (a) for a first offence, \$60 000;
- (b) for a subsequent offence, \$120 000.

- (2) A person may buy prescribed grain from another person for export in bulk if —

- (a) the buyer is the main export licence holder;
- (b) the grain is bought in accordance with a special export licence; or
- (c) the grain is bought from the main export licence holder or has previously been sold by a person who was, at the time of the transaction, the main export licence holder.

#### **24. Offence of exporting prescribed grain in bulk**

- (1) Except as allowed by subsection (2), a person who exports in bulk any prescribed grain commits an offence.

Penalty:

- (a) for a first offence, \$60 000;
- (b) for a subsequent offence, \$120 000.

- (2) A person may export in bulk any prescribed grain if —

- (a) the person is the main export licence holder;
- (b) the grain is exported in accordance with a special export licence; or

- (c) the grain was bought from, or has previously been sold by, a person who, at the time of the transaction, was the main export licence holder.

## **Division 2 — Main export licence**

### **25. Main export licence**

The Authority may, with the Minister's approval, grant a licence that, while the licence has effect, authorises its holder —

- (a) to buy any prescribed grain for export in bulk; and
- (b) to export in bulk any prescribed grain.

### **26. When main export licence has effect**

- (1) A main export licence has effect from the time specified in the licence unless the licence is cancelled.
- (2) A main export licence cannot be granted to come into effect at a time when another main export licence is in effect.

### **27. First main export licence**

The Authority is to be taken to have, with the Minister's approval, granted the first main export licence to Grain Pool Pty Ltd with effect from when this Part comes into operation.

### **28. Obligation to buy grain**

- (1) It is a condition of the main export licence that the main export licence holder buy all prescribed grain that a person offers to sell to it unless subsection (3) allows it to decline the offer.
- (2) The terms on which the main export licence holder is obliged to buy the grain are those on which it buys similar grain in similar circumstances from other persons.
- (3) An offer may be declined if the main export licence holder has reasonable grounds for believing that the grain offered —
  - (a) was harvested before the most recent 1 October; or

- (b) does not comply with any standard set by the main export licence holder that applies to that grain.

### **Division 3 — Special export licence**

#### **29. Special export licence**

- (1) The Authority may grant a licence that, while the licence has effect, authorises its holder —
  - (a) to buy any prescribed grain specified in the licence for the purpose of its export in bulk in accordance with this Act; and
  - (b) to export in bulk any prescribed grain specified in the licence to any market specified in the licence.
- (2) In subsection (1) —  
“**market**” means a country or part of a country.

#### **30. Details to be specified in application**

An application for a special export licence is to specify —

- (a) the prescribed grain for which the licence is sought;
- (b) the market for which the licence is sought;
- (c) the term for which the licence is sought;
- (d) the season of production of the prescribed grain for which the licence is sought; and
- (e) the quantity of prescribed grain for which the licence is sought.

#### **31. Prerequisites for grant of special export licence**

- (1) The Authority cannot grant a special export licence the term of which begins during the year commencing on the day on which this Act comes into operation unless the Minister authorises the grant of the licence.

- (2) Before deciding whether to grant any other special export licence, the Authority is to —
  - (a) ascertain whether the main export licence holder exports prescribed grain to the market for which the special export licence is sought; and
  - (b) if so, decide whether the price at which the main export licence holder exports that grain incorporates a premium resulting from the exercise by it of its market power as the main export licence holder.
- (3) If the Authority decides under subsection (2)(b) that the main export licence holder's price incorporates a premium of that kind —
  - (a) the Authority is required to consult the main export licence holder before granting the special export licence; and
  - (b) the Authority cannot grant the special export licence if it considers that to do so would be likely to affect the premium to an extent that the Authority considers to be significant.
- (4) Before deciding whether to grant any special export licence, the Authority is to consider the effect, if any, that granting the licence would be likely to have on the State's reputation as a grain exporter and on the State's grain industry generally.

**32. Term of special export licence**

- (1) The Authority may grant a special export licence for any term of at least one year that the Authority thinks appropriate.
- (2) The Authority may, by notice in writing to the holder of a special export licence, extend the term of the licence.
- (3) A special export licence has effect during the term of the licence unless the licence is cancelled.

**33. Special export licence conditions**

- (1) The Authority may grant a special export licence subject to any conditions that the Authority thinks appropriate.
- (2) Without limiting the conditions that can be imposed under subsection (1), those conditions include conditions as to —
  - (a) the quality of the grain that may be bought or exported under the licence;
  - (b) the season of production of the grain that may be bought or exported under the licence; and
  - (c) how grain bought or exported under the licence may be described.
- (3) The Authority may, by notice in writing to the holder of a special export licence, vary or revoke any condition of the licence or impose any new condition.
- (4) A power given by subsection (3) may be exercised by the Authority, at any time, at the request of the licence holder or of its own motion.

**34. Matters to be specified in special export licence**

A special export licence is to specify, in addition to the grain and the market that are required by section 29 to be specified —

- (a) the term of the licence;
- (b) the quantity of prescribed grain to which it applies; and
- (c) any conditions to which the licence is subject.

**Division 4 — General licensing provisions**

**35. Application for licence**

- (1) An application for a licence is to be made to the Authority in a form approved by the Authority and is to be accompanied by the application fee prescribed in the regulations.

- (2) The Authority may require an applicant for a licence to provide any additional information that the Authority considers necessary for the proper consideration of the application.
- (3) The applicant is to provide the Authority with any additional information required in subsection (2) within 30 days of receipt of the request for additional information.
- (4) Subject to subsection (5) the Authority will reach a decision on applications received as soon as is practical but no later than 30 days after receipt of the application and prescribed fee under subsection (1) or the receipt of the required additional information under subsection (2), whichever the case may be.
- (5) The Minister may, if requested by the Authority, extend the period within which the Authority makes a decision on an application.

**36. Licence not transferable**

A licence is not transferable.

**37. Cancellation of licence**

- (1) The Authority may cancel a licence by giving the holder of the licence notice in writing that the licence is cancelled.
- (2) The notice of cancellation is to specify the time when the cancellation takes effect and the reasons for cancellation.
- (3) The main export licence cannot be cancelled except as directed by the Minister.
- (4) Unless the decision to cancel the licence is reversed under section 40 or its effect is postponed by that section, the cancellation has effect from the time specified in the notice.

**38. Licence fees**

- (1) If the Authority decides to grant a licence, before it does so the person to whom it is to be granted is required to pay to the

Authority the fee prescribed by the regulations for the grant of the licence.

- (2) Subsection (1) does not apply to the first main export licence referred to in section 27.
- (3) The holder of a licence must pay to the Authority any other relevant licence fee prescribed by the regulations.
- (4) An employee of the Department authorised in writing by the executive officer of the Authority may recover any outstanding licence fee in a court of competent jurisdiction as a debt due from the holder of the licence to the State.

**39. Notice of decisions**

If the Authority refuses to grant a licence, the Authority is to give written notice of the decision and the reasons for it to the applicant for the licence within 14 days after the decision is made.

**40. Appeals**

- (1) In this section —
  - “licence”** means a special export licence;
  - “licensing decision”** means a decision of the Authority to refuse to grant a licence, to cancel a licence, or to vary a condition of, or impose a new condition in respect of, a licence.
- (2) A person who is aggrieved by a licensing decision may, within 30 days after receiving notice of the decision, appeal to the Minister against the decision by giving the Minister a notice of appeal in accordance with subsection (3).
- (3) The notice of appeal is to be in writing and set out the grounds of appeal and any representations that the appellant wishes to make in support of the appeal.



- (4) If the appeal is against the cancellation of a licence, the time when the cancellation has effect is postponed until the appeal is dealt with or withdrawn, and the time specified in the notice of cancellation may be varied when dealing with the appeal.
- (5) The Minister may determine the appeal by confirming, varying, or reversing the decision of the Authority.
- (6) The Minister's determination is final and the Authority is to give effect to that determination.
- (7) The Minister shall, as far as is practical, make his determination on the appeal within 30 days of having received a notice of appeal in accordance with subsection (3).
- (8) The Minister is to cause notice of his or her determination, together with reasons for it, to be given to the appellant within 7 days after it is made.

## **Part 4 — Miscellaneous**

### **41. Exemption for restrictive trade practices**

For the purposes of the Commonwealth *Trade Practices Act 1974* and the Competition Code, this section authorises —

- (a) the export by the main export licence holder of any prescribed grain in accordance with the main export licence; and
- (b) anything else done by the main export licence holder —
  - (i) in accordance with the main export licence; or
  - (ii) in connection with anything done in accordance with the main export licence.

### **42. Publication of information about special export licences**

- (1) The Authority is required to make publicly available information, as prescribed by subsection (2) or the regulations, about applications that have been made for special export licences and special export licences that it has granted.
- (2) The information is to include details of —
  - (a) the number of applications that have been made that relate to each prescribed grain produced in each season of production;
  - (b) the total amount of each prescribed grain produced in each season of production for which a special export licence was sought; and
  - (c) the total amount of each prescribed grain produced in each season of production for which a special export licence was granted.

### **43. Evidence**

- (1) In proceedings for an offence against this Act, unless the court orders otherwise or this subsection does not apply because of subsection (2), a certificate purporting to be signed by the

Chairman containing a statement described in subsection (3) is, without proof of the signature of the person appearing to have signed the certificate or of the appointment of the person as the Chairman, evidence of any fact stated in the certificate.

- (2) Subsection (1) does not apply to the use of a certificate as evidence of a particular fact unless —
- (a) at least 28 days before the day on which the certificate is sought to be used as evidence, the accused has been served with notice of intention to give evidence of that fact by a certificate under this section; and
  - (b) the accused has not, at least 14 days before the day on which the certificate is sought to be used as evidence, given notice in writing requiring that the Chairman attend as a witness.
- (3) The certificate may contain a statement —
- (a) that a person is or was, or is not or was not, the main export licence holder;
  - (b) that a person is or was, or is not or was not, authorised by a licence under this Act to do anything specified in the certificate;
  - (c) that a licence specified in the certificate is or was, or is not or was not, in effect;
  - (d) that a special export licence specified in the certificate is or was, or is not or was not, subject to any condition specified in the certificate;
  - (e) that anything referred to in any of paragraphs (a) to (d) that is specified in the certificate applied on or during the day or days or period specified in the certificate;
  - (f) that a licence specified in the certificate was cancelled on a day specified in the certificate.

*[Section 43 amended by No. 84 of 2004 s. 82.]*

**s. 44**

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**44. Regulations**

- (1) 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.
- (2) Without limiting subsection (1), regulations may be made prescribing the procedures governing meetings of the Authority.
- (3) If an effect of a regulation would be that —
  - (a) something becomes a prescribed grain that would not have been a prescribed grain had the regulation not come into effect; or
  - (b) something that is a prescribed grain would cease to be a prescribed grain when the regulation comes into effect,

the regulations have to ensure that the effect described in paragraph (a) or (b) does not occur until a period of at least 6 months commencing on the day on which the regulation was published in the *Gazette* has passed.

**45. Repeal**

The *Grain Marketing Act 1975* is repealed.

**46. Transitional and saving provisions**

The transitional and saving provisions in Schedule 1 have effect.

**47. Consequential amendments**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

**48. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act and in the course of that review the Minister is to consider and have regard to —
  - (a) the effectiveness of the operations of the Authority;

- (b) the need for the continuation of the functions of the Authority; and
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The review is to be carried out as soon as is practicable after —
- (a) the expiration of 5 years from the commencement of this Act; or
  - (b) in the Minister's opinion, a material change occurs in the ownership or control of —
    - (i) Grain Pool Pty Ltd; or
    - (ii) Co-operative Bulk Handling Limited, a company incorporated under the *Companies Act 1893*, and deemed to be registered under the *Companies (Co-operative) Act 1943*,
- whichever occurs first.
- (3) The Minister is to 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.

**49. Expiry of Act**

- (1) If the Minister makes an order under subsection (2), this Act, other than subsections (4), (5), and (6), expires on the day specified as the expiry day in that order.
- (2) The Minister may, by an order published in the *Gazette*, specify as the expiry day a day that is —
  - (a) not before the order is published in the *Gazette* and not before the Commonwealth has passed legislation to make a relevant Commonwealth legislative change; and
  - (b) as soon as practicable after the 30 April next following the day on which a relevant Commonwealth legislative change comes into effect.

(3) In subsection (2) —

**“relevant Commonwealth legislative change”** means a change to Commonwealth legislation as a result of which there cease to be restrictions under Commonwealth legislation on the export of wheat, whether under the Commonwealth *Wheat Marketing Act 1989* or another Commonwealth Act imposing similar restrictions.

(4) The Governor may make regulations amending any written law or making any other provision as is necessary or convenient for dealing with a matter that needs to be dealt with in connection with the expiry of other provisions of this Act.

(5) Regulations made under this section may be expressed to have effect before the day on which they are published in the *Gazette*.

(6) To the extent that a regulation made under this section is expressed to have effect before the day of its publication in the *Gazette*, it does not —

- (a) affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of its publication; or
- (b) impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of its publication.

## Schedule 1 — Transitional and savings provisions

[s. 46]

### 1. Meanings of terms used in this Schedule

In this Schedule, unless the contrary intention appears —

“**assets**” means property of any kind whether tangible or intangible, real or personal, and without limiting that meaning includes —

- (a) any chose in action;
- (b) goodwill; and
- (c) any right, interest, or claim of any kind,

whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

“**commencement day**” means the day on which this Act comes into operation;

“**GPWA**” means The Grain Pool of W.A. established under the repealed Act;

“**liability**” means any liability, duty or obligation —

- (a) whether actual, contingent or prospective, liquidated or unliquidated; or
- (b) whether owned alone or jointly, or jointly and severally with any other person;

“**repealed Act**” means the Act repealed by section 45;

“**right**” means any right, power, privilege or immunity whether actual, contingent or prospective.

### 2. Interpretation Act to apply

This Schedule does not limit the operation of the *Interpretation Act 1984*.

**Schedule 1 Transitional and savings provisions**

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**3. GPWA continued for certain purposes**

- (1) Despite the repeal effected by section 45, GPWA continues in existence for the purposes of —
  - (a) reporting under the *Financial Administration and Audit Act 1985* section 66 for any financial year for which a report has yet to be submitted;
  - (b) performing any function under clause 5; and
  - (c) winding up its affairs relating to taxation.
- (2) Despite the provisions of the repealed Act relating to GPWA —
  - (a) the former Directors of the governing body of GPWA immediately before the commencement day cease to hold office on that day; and
  - (b) GPWA as continued by this clause is to be governed by the person who is, or is appointed by, the chairman of the managing body of Grain Pool Pty Ltd instead of the former governing body, and that person is to be the accountable authority, within the meaning in the *Financial Administration and Audit Act 1985*, of GPWA as continued.
- (3) GPWA as continued under this clause has the powers that are necessary or convenient for the purposes for which it continues in existence.
- (4) Grain Pool Pty Ltd is to provide the clerical or other assistance that GPWA reasonably requires for performing the functions described in this clause.

**4. Devolution of assets, liabilities etc.**

- (1) On the commencement day, by force of this clause —
  - (a) the assets of GPWA immediately before the commencement day, other than any share held by GPWA in Grain Pool Pty Ltd, become assets of Grain Pool Pty Ltd;
  - (b) the liabilities of GPWA immediately before the commencement day become the liabilities of Grain Pool Pty Ltd; and
  - (c) any trust upon which GPWA held assets immediately before the commencement day and any other restriction as to the



purposes to which assets held by GPWA immediately before the commencement day could be applied is extinguished.

- (2) Any proceedings or remedy that immediately before the commencement day might have been brought or continued by or available against or to GPWA, may, on or after that day, be brought or continued and are available, by or against or to Grain Pool Pty Ltd.
- (3) Any act, matter or thing done or omitted to be done before the commencement by, to, or in respect of, GPWA (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to, or in respect of, Grain Pool Pty Ltd.
- (4) Anything lawfully commenced by GPWA may, so far as it is not contrary to this Act, be carried on and completed by Grain Pool Pty Ltd.
- (5) Grain Pool Pty Ltd is to take delivery of all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of GPWA.

**5. Shares in Grain Pool Pty Ltd**

- (1) On the commencement day, shares in Grain Pool Pty Ltd are to be issued to GPWA in consideration of the effect of clause 4.
- (2) GPWA is required to transfer to CBH all shares that it holds in Grain Pool Pty Ltd and that transfer is required to be made on the day after the day on which shares are issued to GPWA under subclause (1).
- (3) In this clause —  
“CBH” means Co-operative Bulk Handling Limited, a company incorporated under the *Companies Act 1893*, and deemed to be registered under the *Companies (Co-operative) Act 1943*.

**6. Agreements and instruments**

Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which GPWA is a party; or

**Schedule 1 Transitional and savings provisions**

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- (b) which contains a reference to GPWA,  
has effect after the commencement day as if —
- (c) Grain Pool Pty Ltd were substituted for GPWA as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to GPWA were (unless the context otherwise requires) amended to be or include a reference to Grain Pool Pty Ltd.

**7. References to GPWA in written law**

A reference to GPWA in an enactment in force immediately before the commencement day may, where the context so requires, be read as if it had been amended to be a reference to Grain Pool Pty Ltd.

**8. Staff**

- (1) A person who was an employee of GPWA immediately before the commencement day becomes, on the commencement day, an employee of Grain Pool Pty Ltd.
- (2) Except as otherwise agreed by a person referred to in subclause (1), the remuneration, existing or accrued rights, rights under a superannuation scheme or terms, conditions or continuity of service of the person are not affected, prejudiced or interrupted by the operation of that subclause.
- (3) A person who, under subclause (1), becomes an employee of Grain Pool Pty Ltd is not entitled to any payment or other benefit because of the termination of the person's employment by GPWA.

**9. Final report**

- (1) If the commencement day is not immediately after the end of a financial year of GPWA, the *Financial Administration and Audit Act 1985* section 70A applies in relation to GPWA, and for the purposes of performing reporting functions under that section, the person referred to in clause 3(2)(b) is to be taken to have been appointed by the Treasurer as the reporting officer.
- (2) Grain Pool Pty Ltd is to provide the clerical or other assistance that the reporting officer reasonably requires for performing the functions referred to in subclause (1).

**10. Immunity continues**

Despite the repeal effected by section 45, where GPWA had the benefit of any immunity in respect of an act, matter or thing done or omitted before commencement day, that immunity continues in that respect for the benefit of Grain Pool Pty Ltd.

**11. Exemption from State tax**

(1) State tax is not payable in relation to —

- (a) anything that occurs by operation of this Schedule; or
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Schedule, or to give effect to this Schedule, or for a purpose connected with or arising out of, giving effect to this Schedule.

(2) In this clause —

“**State tax**” includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge, under a law of the State.

**12. Registration of documents**

The Registrar of Titles is to take notice of the provisions of this Schedule and is empowered to record and register in the appropriate manner the necessary documents, and otherwise to give effect to this Schedule.

**13. Saving**

The operation of any provision of this Schedule is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities of the disclosure of information;
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument,

**Schedule 1 Transitional and savings provisions**

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- because of a change in the beneficial or legal ownership of any asset, right or liability;
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
  - (e) as releasing or allowing the release of any surety.

**Schedule 2 — Consequential amendments to other Acts**

[s. 47]

**1. Bulk Handling Act 1967**

- (1) Section 5 is amended, in the definition of “marketing authority”, by deleting “The Grain Pool of W.A.”.
- (2) If section 8 has not been repealed before this subclause commences, section 8(2) is amended by deleting “a Trustee of the Grain Pool of Western Australia or a member of any other” and inserting instead —  
“ a member of a ”.

**2. Bulk Handling Repeal Act 2000**

If section 14 has not come into operation before this subclause commences, that section is repealed.

**3. Constitution Acts Amendment Act 1899**

Schedule V Part 3 is amended as follows:

- (a) by deleting the item relating to the Board of Directors of the Grain Pool of W.A.;
- (b) by inserting after the item relating to the Government Employees Superannuation Board the following item —

“

The Grain Licensing Authority appointed under the  
*Grain Marketing Act 2002*.

”.

**4. Financial Administration and Audit Act 1985**

Schedule 1 is amended by deleting “The Grain Pool of W.A.”.

**5. Statutory Corporations (Liability of Directors) Act 1996**

Schedule 1 is amended by deleting the item relating to the Grain Pool of W.A..

**Notes**

<sup>1</sup> This is a compilation of the *Grain Marketing Act 2002* and includes the amendments made by the other written laws referred to in the following table.

**Compilation table**

<b>Short title</b>	<b>Number and Year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Grain Marketing Act 2002</i>	30 of 2002	25 Oct 2002	31 Oct 2002 (see s. 2 and <i>Gazette</i> 30 Oct 2002 p. 5351)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Financial Administration Legislation Amendment Act 2005</i> s. 40	5 of 2005	27 Jun 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6243)