



## Wheat Marketing Amendment Bill 2007

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## Wheat Marketing Amendment Bill 2007

**Date introduced:** 14 June 2007

**House:** House of Representatives

**Portfolio:** Agriculture, Fisheries and Forestry

**Commencement:** Sections 1 to 3 of the Act commence on Royal Assent. Commencement dates for the Schedules vary, so these are detailed in the relevant part of main provisions section.

### Purpose

To amend the *Wheat Marketing Act 1989* to change Australia's wheat marketing arrangements by:

1. providing the Wheat Export Authority (WEA) with broader information gathering powers
2. providing the Minister for Agriculture, Fisheries and Forestry (the Minister) with the power to direct the WEA to undertake certain investigations
3. extending the temporary transfer of the power of veto over bulk wheat from AWB(I) to the Minister from the current expiry date of 30 June 2007 to 30 June 2008
4. empowering the Minister to designate a company other than AWB(I) as the holder of the single desk export privilege
5. deregulating exports of wheat in bags and containers (non-bulk wheat) provided exporters comply with a quality assurance scheme, and
6. replacing the WEA with the Export Wheat Commission and changing the relevant governance arrangements in accordance with the Uhrig reforms for the governance of Commonwealth agencies.

### Terminology

In this Digest:

- 'AWB' refers to the former statutory Australian Wheat Board
- 'AWB Ltd' refers to the publicly listed company, and
- 'AWB(I)' refers to AWB International which is a subsidiary of AWB Ltd and the entity which, prior to passage of the *Wheat Marketing Amendment Act 2006*, held the

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mandate for the single desk wheat export operation including the power to veto other exports of bulk wheat.

## Background

The *Wheat Marketing Amendment Act 2006*, which was passed in December 2006, gave effect to temporary changes to the *Wheat Marketing Act 1989* (the Act). The changes transferred the right to veto bulk wheat export applications from AWB(I) to the Minister for Agriculture, Fisheries and Forestry until 30 June 2007. Further background to the temporary arrangements including a short history of Australian wheat marketing is provided in the [Bills Digest](#) prepared for the *Wheat Marketing Amendment Act 2006*.<sup>1</sup>

The *Wheat Marketing Amendment Act 2006* was enacted as a result of the [Volker report](#) into the UN Oil-for-food program and the subsequent [Cole inquiry](#) instituted by the Commonwealth Government. The matters addressed by these inquiries and the subsequent wheat industry consultation have been the catalysts for the changes to Australia's wheat marketing arrangements as proposed by the Bill.

Further specific background is provided in the following sections in relation to:

- industry consultation
- the new export monopoly arrangements
- the Wheat Export Authority, and
- deregulation of bagged and container (non-bulk) exports.

## Industry Consultation

When the temporary measures were introduced by the *Wheat Marketing Amendment Act 2006* the Government stated this would:

...allow the government to undertake thorough consultation with a range of stakeholders, particularly with growers, in relation to wheat marketing arrangements for the long term.<sup>2</sup>

On 12 January 2007, the Government announced the appointment of the Wheat Export Marketing Consultation Committee (WEMCC), its purpose being to provide:

extensive consultation with the Australian grains industry, particularly growers, about future wheat export marketing arrangements on behalf of the Australian Government and to report its findings back to the government.<sup>3</sup>

The WEMCC was chaired by prominent businessman John Ralph AC and also included Roger Corbett AM (former CEO of Woolworths), Peter Corish (former President of the

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National Farmers Federation) and Mike Carroll (former General Manager of National Australia Bank's Agribusiness Division).

Under its Terms of Reference the WEMCC was required to:

- consult with wheat growers on their export marketing needs, and
- provide the government with a report on the results of the consultations.<sup>4</sup>

The Terms of Reference also advised that the WEMCC was:

- not being requested to engage in further research or provide information to the government outside its Terms of Reference
- to undertake its functions in an open and transparent fashion and to take all reasonable steps to maximise the outcomes of stakeholder consultation
- to conduct public meetings in major wheat growing regions and provide stakeholders unable to participate in public meetings the opportunity to make written submissions, and
- to report to government on the results of the consultation by 30 March 2007.

In addition the Government specifically stated the WEMCC would:

... listen and report to government on the views expressed by growers, grower preferences for export marketing arrangements and the core principles underlying the views of growers.<sup>5</sup>

The Government also released a [discussion paper](#) on 12 January to provide some guidance for those people wishing to participate in the consultation. It listed the following as among the issues and principles on which industry views were sought:

- general wheat marketing arrangements
- pooling arrangements
- ability to choose who to sell to
- who can buy or sell Australian wheat for export
- transparency of marketing arrangements and market information
- 'buyer of last resort'
- services functions provided by export marketers
- security of payment
- industry good functions such as standard setting; quality control and assurance; generic promotion.
- exports in bags and containers, and

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- transition to any alternative arrangements.

The discussion paper also briefly outlined the three broad options for wheat marketing arrangements: single desk; some form of multiple licensing system and deregulation.

The WEMCC held 26 public meetings in five States between 31 January and 1 March. It also met with eight other key industry bodies including grower organisations, grain exporters and AWB Ltd.<sup>6</sup> Almost 1200 written submissions were received.<sup>7</sup>

Although the final report of the WEMCC has not been made public, the Government has said that:

Overwhelmingly, growers stated their support for the single desk. Almost as overwhelming was the call for the single desk to be operated by an entity entirely separate from AWB Ltd.<sup>8</sup>

### New export monopoly arrangements

The proposed legislation provides for a continuation until 30 June 2008 of the temporary measures instituted in late 2006 which gave the Minister for Agriculture, Fisheries and Forestry veto power over non-AWB(I) bulk exports. The extension of the temporary measures is intended to:

- prevent the veto power returning to AWB(I) while it manages the 2007-08 harvest, and
- allow wheat growers time to establish a new entity to exercise the monopoly on bulk wheat exports from 1 March 2008.

The one component of Australia's wheat marketing system which has endured the longest is the marketing monopoly, although it should be noted that this has been somewhat diminished over the last two decades. The first instance was in 1984 with the introduction of the permit system for feed wheat. This was followed by total deregulation of the domestic market in 1989 via the *Wheat Marketing Act 1989*. Since July 1999 the export monopoly has been confined to bulk shipments.<sup>9</sup>

Prior to July 1999 the monopoly power was conferred directly on the statutory body the Australian Wheat Board. Since then it has been conferred legislatively on AWB(I), which is entirely a commercial entity, and exercised by way of AWB(I) having the legislative power to veto applications by other firms for permission to export bulk wheat while not being required to gain approval for its own exports.<sup>10</sup>

The Government had long indicated that wheat marketing arrangements would be changed as a result of the Cole Inquiry.<sup>11</sup> And given the controversial and often hostile nature of the debate which spawned the *Wheat Marketing Act 1989* and later amendments which replaced the statutory AWB with the current corporate structure, seasoned wheat industry

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observers would not be surprised that the Cole inquiry, the foreshadowed change and the subsequent consultation process have triggered an extremely vigorous - to the point of acrimonious debate.

Even prior to the Volker and Cole inquiries the issue of wheat marketing policy was very much a live one with significant and heated debate stimulated firstly by the National Competition Policy review of wheat marketing legislation in 2000 and more recently by the 2004 Wheat Marketing Review which examined AWB(I)'s performance as commercial manager of the monopoly on bulk exports.<sup>12</sup> And, although Commissioner Cole observed it was not his function 'to comment on the grant of monopoly power to part of the AWB group' he did observe:

A government grant, by legislation, of monopoly power confers on the recipient a great privilege. It carries with it a commensurate obligation. That obligation is to conduct itself in accordance with the highest ethical stands. The reason such an obligation is imposed is, by law, persons are denied choice with whom they may deal.<sup>13</sup>

The Government has stipulated that the new entity which will operate the export monopoly on bulk wheat exports 'will have to have complete legal separation from AWB Ltd'. It has further indicated 'this entity may be either a completely new, grower owned and operated body, or completely demerged AWB (International) Ltd (AWBI)'.<sup>14</sup>

As has been acknowledged by the Minister<sup>15</sup> creation of the new entity poses a significant challenge. This is especially so given that the Grains Council of Australia (GCA) will not be the lead industry organisation. This role has been taken up by an alliance of the grain sections from Victorian Farmers Federation, New South Wales Farmers Association, AgForce (Qld) and WAFarmers. This group was formed in early May 2007. It was initially referred to as the GCA de-merger facilitation working group but is now formally known as the Wheat Export Marketing Alliance.

The fluid state of wheat industry relationships and organisations is highlighted by the fact that establishment of another lobby organisation, the National Grains Alliance (NGA), was announced on 20 April 2007. NGA members are WAFarmers, the New South Wales Farmers Association Inc, and the Wheat Growers Association (WGA).<sup>16</sup>

## The Wheat Export Authority

### Powers and functions

One of the five recommendations made by the Cole Inquiry related to wheat marketing. It outlined the relevant issue and associated recommendation thus:<sup>17</sup>

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## Issue

The *Wheat Marketing Act 1989* imposes on the Wheat Export Authority two functions:

- to control the export of wheat from Australia
- to monitor AWB (International)'s performance in relation to the export of wheat and examine and report on the benefits to growers that result from that performance.

Insofar as those functions include the obligation to monitor performance of proper standards of commercial conduct by AWBI, and through it AWB, the WEA was not successful in so doing in relation to sales to Iraq. A strong and vigorous regulatory or monitoring organisation is required whilst AWBI or AWB is responsible for the export of Australian wheat.

## Recommendation 5

I recommend that there be a review of the powers, functions and responsibilities of the body charged with controlling and monitoring any Australian monopoly wheat exporter. A strong and vigorous monitor is required to ensure that proper standards of commercial conduct are adhered to.

Among the issues which emerged during the Cole inquiry that specifically pertain to Australia's wheat marketing arrangements and the Act was the adequacy of the WEA's regulatory functions and powers, and the extent to which these were exercised in relation to wheat exports to Iraq. In particular the WEA's information gathering and control powers were examined by Commissioner Cole. These matters have also been addressed in Senate committees.

One of the key elements of the Bill is the proposed broadening of the scope of the WEA's existing information powers to allow it to request information from parties other than AWB(I), where it believes the request relates to the performance of its functions. This is a response to Commissioner Cole's comments who stated *inter alia*:

The Wheat Export Authority has compulsory information-gathering powers by which it can require AWB (International), and thru it AWB Limited, to provide it with information or documents relating to the operation of the pools, including the costs of operating them and the returns to growers that result from them. The WEA's power to require AWBI or AWB to provide information to it was not introduced until June 2003 by the passage of the *Wheat Marketing Amendment Act 2003*. Prior to that time, the advice received by the WEA was that it had no such compulsive powers and had to rely on the agreement of AWBI or AWB to provide such information. The WEA also has the power to request, rather than compel, information relevant to its monitoring function. Pursuant to s. 5C of the *Wheat Marketing Act*, the WEA prepares an annual report to the Minister for Agriculture, Fisheries and Forestry (which report is confidential) and an annual report to wheat growers. Each of these reports deals with AWBI's performance in relation to the export of wheat and benefits to growers resulting therefrom.

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The WEA has no statutory function to inquire into the operations of AWB save insofar as the operations affect returns to growers. It does not have the power to investigate or control AWB or AWBI generally.<sup>18</sup>

In relation to WEA Commissioner Cole concluded:

Throughout the Oil-for-Food Programme, the WEA did not have knowledge of the true arrangements between AWB (on behalf of AWBI) and the Iraqi Grains Board.<sup>19</sup>

Nevertheless Commissioner Cole also concluded:

Irrespective of its power, the WEA did not probe AWBI or AWB about its contracts with Iraq. Such requests as were made were of a general nature and were unlikely to elucidate or reveal any inappropriate conduct on the part of AWBI or AWB. The WEA accepted what it was told by AWBI and AWB. It accepted AWBI's statements about net back calculations of the FOB price and did not check them. This meant that it was not performing its function of monitoring AWBI's performance in relation to the export of wheat and examining and reporting on the benefits to growers that result from that performance - at least in relation to sales to Iraq.<sup>20</sup>

## Governance

Another significant element of the Bill is the proposed changes to the WEA's structural and governance arrangements in line with the principles espoused by the Uhrig Review. Background information about the Uhrig Review has been provided in several recent Bills Digests. See for example [Australian Centre for International Agricultural Research Amendment Bill 2007](#).

In the case of the WEA:

Examination of the Wheat Export Authority's role and functions against the principles recommended by the Uhrig Review revealed that the Wheat Export Authority should be changed from an agency with an independent Board operating under the Commonwealth Authorities and Corporations Act 1997 to a statutory commission operating under the Financial Management and Accountability Act 1997, with staff employed under the Public Service Act 1999 and with a skills based Commission. The new commission is to be known as the Export Wheat Commission.<sup>21</sup>

The Government considers that converting the WEA into a Commission will provide a measure of independence from the Government.<sup>22</sup> With up to six Commissioners all appointed on the basis of relevant skills, the Commission structure will be considerably different to that of the WEA Board which currently comprises:

- a Chairperson
- one nominee of the Grains Council of Australia (GCA) who is a resident of either New South Wales, Victoria, Queensland or Tasmania

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- one nominee of the GCA who is a resident of either South Australia or Western Australia
- an Australian Government Member, and
- one independent Member.

The Export Wheat Commission is scheduled to come into existence on 1 October 2007.

### Deregulation of bagged and container (non-bulk) wheat exports

The Government is proposing to fully deregulate exports of bagged and container wheat by removing the requirement for prior consent from the WEA for such trade to occur.<sup>23</sup> While the Minister says this move is in response to a request by industry the GCA initially had strong concerns about the matter and claimed the move would remove ‘prudential assurances and decreases the security of payment to growers’.<sup>24</sup>

In response to concerns about ‘the potential for rogue traders to undermine the good reputation of Australian wheat’ the Government has included provision for a quality assurance (QA) scheme. The purpose of the QA scheme is:<sup>25</sup>

... not to dictate the quality of wheat that can be exported, but rather to make sure that exporters are meeting the specification of their contracts with customers.

### Basis of policy commitment

Following months of media reporting on commentary/proposals by a range of stakeholders in the wheat industry, especially those of various grower organisations, the Government formally announced the main elements of the new wheat marketing arrangements on 22 May 2007.<sup>26</sup>

### Position of significant interest groups/press commentary

The GCA, the peak industry organisation of grain farmers, has welcomed the proposed amendments saying they ‘should prevent any repetition of the Iraqi Oil for Food scandal’.<sup>27</sup> Specifically the GCA has welcomed the changes involving the WEA and the deregulation of bagged and container exports.

The GCA also supported the Australian Labor Party’s move to refer the legislation to the Senate’s Rural and Regional Affairs and Transport Standing Committee.<sup>28</sup>

Nevertheless wheat growers are far from unanimous in their views about wheat export arrangements. For example, in April, the Pastoralists and Graziers Association of Western Australia (PGA), which has been one of the significant voices of ‘dissent’ indicated it was

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'banking on a decision ... to allow more licensed exporters into Australia's wheat export business.'<sup>29</sup>

PGA is not a lone voice. On 2 February 2007, the South Australian Farmers Federation (SAFF) announced it no longer supported the existing wheat marketing arrangements and stated its preference was for a phased in period of accreditation of multiple wheat exporters, leading to full deregulation.<sup>30</sup>

The Australian Grain Exporters Association (AGEA), which represents the major private grain exporters in Australia, has not issued a press release specific to this Bill or the earlier announced policy. However in November 2006 AGEA released a report calling for an immediate end to the export wheat monopoly veto and a rapid transition to open competition in the export market for Australian wheat. The main points argued in that report were:

- net returns can be increased by at least \$10 per tonne by removing AWB's monopoly, mainly through supply chain and administrative savings
- growers' interests would be protected better than at present and the competitiveness of the Australian wheat industry would be enhanced
- competition amongst buyers would allow growers to select the price and marketing options that best suit their individual circumstances, and
- the transition to a competitive wheat market could be made rapidly and with little or no cost or disruption to the marketing of Australian wheat.<sup>31</sup>

Any consequences of failure to pass

Failure to pass the legislation, or at least the single provision in **Schedule 2**, would see a return to the arrangements operating prior to last year's temporary transfer of the veto from AWB(I) to the portfolio Minister.

## Financial implications

The Explanatory Memorandum states that the Bill will have no financial impact.

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## Main provisions

Schedule 1—Information-gathering and investigative powers etc.

**Schedule 1** commences on Royal Assent.

One of the functions of the existing Wheat Export Authority (WEA) is to ‘monitor nominated company B’s performance in relation to the export of wheat and examine and report on the benefits to growers that result from that performance.’ Nominated company B is currently (AWB(I)), the organisation responsible for operating the national wheat pool, which is the system of collective marketing of most of Australia’s wheat including all bulk wheat exports. As previously mentioned, AWB(I) is a wholly owned subsidiary of AWB Ltd, the latter being a public company listed on the Australian Stock Exchange.

Existing section 5D of the *Wheat Marketing Act 1989* (the Act) empowers the WEA to *require* nominated company B to provide it with information for the purpose of reporting on the operation of the wheat pool operated by nominated company B. The scope of this information is potentially very wide-ranging.

**Item 2** inserts **proposed sections 5DA-DC** to expand the WEA’s information-gathering and investigative powers.

Notably, **proposed section 5DA** enables the WEA to request any person to provide them with information relevant to WEA’s functions. However, the WEA cannot legally require the person to supply the information in question – the person could simply refuse the request.

**Proposed section 5DC** enables the portfolio Minister to require the WEA to investigate into certain matters where the Minister considers that such an investigation is ‘in the public interest’. The matters that may be investigated are wide in scope, and include events occurring before the commencement of **Schedule 1** of the Bill. If the report about the investigation, or part of it, relates to an alleged contravention of Commonwealth, State or Territory law, the WEA may give the report, or part of it, to various listed law enforcement or regulatory agencies.<sup>32</sup> The report is to be given to the Minister on completion, and the Minister may also publish it, or part of it, on the internet as long as this does not disclose information that could reasonably be expected to cause financial loss or detriment to a person or reduce wheat pool returns. In addition, where the report ‘relates to a person’s affairs to a material extent’, the WEA may provide them with the report or part of it. There appear to be no restrictions in the Bill about whether such a person can in turn publicly release such part of the report as they received from the WEA.

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Schedule 2—Veto power etc.

**Schedule 2** commences on Royal Assent.

**Item 1** extends the ‘temporary period’ in which the Minister may direct the WEA to approve or reject bulk wheat export applications. This power was inserted by the *Wheat Marketing Amendment Act 2006* and was due to expire on 30 June 2007. **Item 1** extends this to 30 June 2008.

Schedule 3—Replacement of nominated company B etc

**Schedule 3** commences on 1 March 2008.

**Item 1** inserts a definition of the ‘designated company’ into existing section 3 to effectively replace the concept of ‘nominated company B’ as the operator of the national wheat pool.

AWB(I) will continue be the designated company until the portfolio Minister declares that a specified company - which according to Government policy, will be a grower owned organisation - is to be the designated company: **proposed subsection 3AA(12)**. The Minister has the power to revoke a company’s standing as the designated company and accordingly substitute a different company: **proposed subsections 3AA(6) and (10)**. The relevant company must be registered under the *Corporations Act 2001*. **proposed subsection 3AA(3)**

The remainder of the provisions in **Schedule 3** are mainly consequential and administrative amendments.

Schedule 4—Non-bulk export of wheat etc

**Schedule 4** commences on a single day to be fixed by Proclamation, or six months from Royal Assent, whichever is the earlier.

Existing section 57 of the Act provides that export of wheat must be approved by the WEA. However, only exports of *bulk-wheat* had *also* to be approved by ‘nominated company B’ (since the enactment of the *Wheat Marketing Amendment Act 2006*, this veto function has been performed by the portfolio Minister rather than nominated company B). Thus non-bulk export wheat is not subject to the single desk policy.

**Item 14** inserts **proposed new Part 6 – Non-bulk export of wheat**. It establishes a statutory quality assurance (QA) scheme relating to the export of non-bulk wheat. The scheme is to be developed by the WEA, in consultation with the Minister, via legislative

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instrument (**proposed subsection 67(1)**) and as such is presumably disallowable by Parliament.

**Proposed subsection 67(3)** provides that the QA scheme may require exporters of wheat to obtain certificates regarding quality from accredited laboratories. If a person exports non-bulk wheat in violation of any requirement imposed by the scheme, they commit an offence. The maximum penalty is 600 penalty units (\$66 000), or for a corporation, 3000 penalty units (\$330 000). The Explanatory Memorandum comments:<sup>33</sup>

Unlike the penalty under subsection 57(1) of the Act, the penalty under the new subsection 66(1) will not be an indictable offence. It was decided to make this penalty a summary offence as a non-compliance breach against the QA scheme is not a direct attempt to undermine the single desk policy. A summary offence will also make it easier for the Wheat Export Authority to pursue a prosecution for non-compliance with the QA scheme.

**Proposed subsection 66(2)** provides that regulations may specify circumstances in which the scheme is not to apply to non-bulk wheat exports. The Explanatory Memorandum states that this:<sup>34</sup>

...provides flexibility in construction of the QA scheme to cover situations where compliance with the QA scheme may be cost prohibitive and unnecessary. For example, the export of small quantities of wheat for scientific or research purposes.

## Schedule 5—Governance review implementation

**Schedule 5** commences on 1 October 2007.

Schedule 5 effectively abolishes the WEA and replaces it with the Export Wheat Commission (the Commission). The Commission's functions are largely the same as the functions of the WEA, but its governance arrangements are different. Currently the WEA has an independent board and operates under the *Commonwealth Authorities and Corporations Act 1997* (CAC Act). The board will be abolished and replaced with a statutory commission operating under the *Financial Management and Accountability Act 1997*, with staff employed under the *Public Service Act 1999*.

Under existing section 6, the current WEA is made up of five persons. Notably, two are nominated by the Grains Council, and one represents the Commonwealth Government. **Item 32** repeals existing subsections 6(1)-(4) and substitutes **proposed subsections 6(1)-(4A)**. These set out the membership of the Commission which will consist of a Chairperson and between three and five other members. They will be appointed by the portfolio Minister for a period up to three years. Before appointing a Commission member, the Minister must be satisfied that they have 'substantial experience or knowledge *and* significant standing' in at least one of a very broad range of fields specified in **subsection 6(3)**. However, the Minister must ensure that either one or two

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members are appointed on the basis of a substantial knowledge or experience and significant standing in the field of grain production.

The Act currently contains no explicit obligations on WEA board members to disclose conflicts of interests, however, they do have disclosure obligations under the CAC Act. **Item 37** inserts, amongst other provisions, **proposed sections 9A and 9B**.

**Proposed section 9A** provides that a member must give written notice to the Minister and other Commission members of any direct or indirect pecuniary or other interest which 'could conflict with the proper performance of the functions of his or her office'. Notice is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest, and must be given as soon as practicable after the member becomes aware of the potential for conflict of interest. It does not matter if the interest was acquired before or after the Board member's appointment. Where there is potential conflict of interest, a member must not play a role in the deliberations or decisions about the relevant matter unless all of the Commission's members have consented to this. The Minister must be advised, as soon as practicable, whether the members have consented or not. The Minister must terminate a member's appointment if they fail to meet their disclosure obligations without reasonable excuse.

**Item 43** inserts provisions relating to staff. **Proposed section 14** requires that Commission staff will be employed under the *Public Service Act 1999*. However, the Commission 'may also be assisted' in its functions by staff from other Commonwealth agencies or authorities: **proposed section 15**.

**Item 46** requires the Commission to produce a Corporate Plan and an Annual Report. The Corporate Plan, which must be produced at least once a year, covers a planning period of three years. The Chairperson of the Commission must keep the Minister informed about changes to the Corporate Plan and any matters that 'might significantly affect' the objectives set out in the Corporate Plan. The Annual Report must be tabled in Parliament within 15 sitting days of the Minister receiving it: **proposed subsection 18(2)**. However, it appears there is no such requirement for the Corporate Plan.

## Schedule 6—Transitional provisions

**Schedule 6** commences on 1 October 2007.

Schedule 6 contains a fairly standard set of transitional provisions dealing with, amongst other matters, the transformation of the WEA into the Commission and relating financial matters.

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## Concluding comments

From an economic and public policy perspective the Bill would result in little change to Australian wheat marketing as it retains a marketing monopoly on about 65 per cent of the national wheat crop. The main effect of the proposals is to change the entity which exercises that monopoly.

One of the demands of the ‘pro’ single desk camp has been that any new such entity be owned and controlled by growers.<sup>35</sup> What appears to have been quietly overlooked is that both AWB Ltd and AWB(I) are also grower controlled companies and hence the Oil-for-Food scandal happened within this framework of grower control, albeit that AWB Ltd is also listed on the Australian Stock Exchange.<sup>36</sup> It is not evident how retention of grower control will, of itself, make a difference to either governance arrangements or commercial outcomes for wheat industry participants.

A further question that arises in connection with the intended changes and the foreshadowed demerger of AWB Ltd and AWB(I) is whether it is appropriate to continue the dual share class structure of AWB Ltd.

In relation to the proposed quality assurance system for bagged and container (non-bulk) exports, no explanation has been given as to the deficiencies in the existing body of commercial/contract law which warrant special treatment of rogue traders. Exports of other agricultural and food products such as meat, rice, sugar etc do not involve a targeted approach to ensure exporters comply with the provisions of their contracts as a means of preserving Australia’s good reputation as a supplier.

## Endnotes

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1. Peter Hicks and Thomas John [Bills Digest](#) no. 111, 2006–07.
  2. P. McGauran, Minister for Agriculture, Fisheries and Forestry, ‘Wheat Market Amendment Bill 2006, Second Reading Speech, House of Representatives, *Debates*, 7 December 2006, p. 62.
  3. P. McGauran, Minister for Agriculture, Fisheries and Forestry, [Consultation on Wheat Export Marketing Arrangements](#) *Media Release* 12 January 2007.
  4. The terms of reference are at <http://www.daffa.gov.au/wheat/tor> (accessed 8 June 2007).
  5. P. McGauran, Minister for Agriculture, Fisheries and Forestry, [Consultation on Wheat Export Marketing Arrangements](#) *Media Release* 12 January 2007.
  6. Details of the locations of the meetings and meeting summaries are available at <http://www.daffa.gov.au/wheat/meetings2>.

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7. Second Reading Speech, House of Representatives *Debates*, 14 June 2007, p. 2. According to the WEMCC website <http://www.daffa.gov.au/wheat/submissions> written submissions would, at the discretion of the committee, be published on the website but none were available as at 14 June 2007.
8. Second Reading Speech, House of Representatives *Debates*, 14 June 2007, p. 2.
9. During the five years 2001-02 to 2005-06, 35 per cent of Australia's wheat production was marketed outside the auspices of the 'single desk'.
10. Whilst it is now customary in wheat industry and government circles to use the term 'single desk' in everyday conversation (in preference to 'export monopoly') this is a relatively recent phenomenon. "Single Desk' has become something of a 'brand name' in recent years. It pervades AWB's whole public relations strategy where it has even been given proper noun status as it is invariably written as 'Single Desk'! The term appears to have been adopted as a 'softer' alternative to 'marketing monopoly' (or 'export monopoly' as it has been since 1989).
11. For example on 1 March 2006, the Prime Minister advised Parliament in response to a question without notice: 'The situation is that pending the outcome of the Cole inquiry—which obviously will bear on the future of AWB Ltd and not automatically in any way on the future of the single desk policy—the single desk policy must be looked at separately from the future of AWB.' And then on *The World Today* (ABC radio) on 29 November 2006 he stated: 'In the light of the Cole inquiry, the status quo cannot remain'. Transcript available at <http://www.abc.net.au/worldtoday/content/2006/s1800224.htm>. Accessed 18 June 2007.
12. For additional information about the NCP review and the 2004 Wheat Marketing Review see Peter Hicks and Thomas John [Bills Digest](#) no. 111, 2006–07.
13. Hon. T. R. H. Cole, AO, RFD, QC *Report of the inquiry into certain Australian companies in relation to the UN oil-for-food programme* Sydney, November 2006 vol.1 p xii.
14. Second Reading Speech, House of Representatives *Debates*, 14 June 2007 p. 2.
15. *ibid.*, p. 3.
16. WGA is a relatively new player in the Australian wheat industry. Formed in 2002 it is incorporated in Western Australia with membership open to all wheat growers across Australia.
17. *op. cit.*, p. lxxxv.
18. *op. cit.*, vol. 4, p. 1.
19. *ibid.*, p. 15.
20. *ibid.*, p. 16.
21. Explanatory Memorandum, p. 15.
22. Second Reading Speech, House of Representatives *Debates*, 14 June 2007, p. 6.
23. *ibid.*, p. 8.
24. Grains Council of Australia, [Government Listens to GCA on New Wheat Marketing Policy](#) *News Release* 23 May 2007.

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25. Second Reading Speech, House of Representatives, *Debates*, 14 June 2007 p. 8.
26. P. McGauran, Minister for Agriculture, Fisheries and Forestry, [Interests of Wheat Growers Prevail](#) Media Release 22 May 2007.
27. Grains Council of Australia, [GCA Welcomes Amendments to the Wheat Marketing Act](#) News Release 14 June 2007.
28. *ibid.* Earlier GCA statements and announced policy notwithstanding it is noted that this GCA News Release did not re-state support for the move to create a new entity to operate the export monopoly.
29. The Pastoralists & Graziers Association of WA (Inc) [Cabinet Decision On Wheat Exports](#) Media Release 10 April 2007.
30. South Australian Farmers Federation Grains Council *Submission to the Wheat Export Marketing Consultation Committee* February 2007.
31. ACIL Tasman *Marketing Australian Wheat: Competition and choice in the Australian export wheat market – increasing growers’ net returns* Report prepared for the Australian Grain Exporters Association, November 2006.
32. It may also be given to a prescribed agency, which will presumably be any agency listed in subsequent regulations.
33. Explanatory Memorandum, p. 12.
34. *ibid.*, p. 13.
35. As espoused for example by the Grains Council of Australia in its ‘Wheat Export Policies and Principles’ available at [http://www.grainscouncil.com/Policy/wheat\\_export\\_pinciples.htm](http://www.grainscouncil.com/Policy/wheat_export_pinciples.htm). Accessed 16/6/07.
36. The majority of the AWB Ltd Directors are elected by the holders of A-class shares. Only wheat growers may hold A-class shares.

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