

**Submission to**

**Senate Rural and Regional Affairs and Transport Committee**

**Inquiry into the  
Wheat Export Marketing Bill 2008 and  
Wheat Export Marketing (Repeal and  
Consequential Amendments) Bill 2008**

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**Volume 1 of 2**



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## VOLUME 2 OF 2

Wheat Export Marketing Bill 2008 with marked-up comments	
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## Wheat Export Marketing Bill 2008 (Exposure Draft)

Attached is a copy of the Exposure Draft Bill with queries and comments highlighted throughout the document.

In broad terms the Bill does not address issues that are fundamental to ensuring Australia has an economically sustainable wheat growing industry.

If passed into law in its current form the Bill will lead to -

- ☒ the value of the wheat industry falling dramatically with growers losing premiums for quality attributes such as protein, low moisture and low screenings
- ☒ Australia falling back into being a producer of only lower quality “fair average quality” wheats
- ☒ there being no transparency or accountability in the market
- ☒ market volatility far greater than ever seen before
- ☒ wheat growers having limited capacity to manage the significantly increased economic risks associated with the government’s policy
- ☒ the reputation of the Australian wheat industry being put at risk by removing quality assurance over exports in containers and/or bags
- ☒ the loss of the buyer of last resort facility
- ☒ serious harvest cash flow difficulties
- ☒ individual growers having to fund stockpiled wheat from one year to the next
- ☒ the Australian industry becoming controlled and manipulated by foreign interests.

Serious shortcomings of the Bill include among other things:

- A failure to reflect the government’s stated position that “**Growers will be able to directly participate in bulk exports through Grower Cooperatives and/or Alliances**” (ALP Election 2007 Policy Document)
- The inability of individuals to obtain export accreditation, effectively precluding growers from exporting their own wheat or forming partnerships to export bulk wheat
- Failure to protect the 2007/08 National Pool which the government had said would not be left exposed
- Failure to ensure critical market information is available to wheat growers at all times

Sections of the Bill that require review and editing include -

- Section 4 Definitions and in particular -  
accredited wheat exporter;  
marketing year; and  
port terminal facility
- Section 7 Wheat export accreditation scheme
- Section 8 Administrative decisions under the wheat export accreditation scheme
- Section 11 Eligibility for accreditation (plus consequential amendments)
- Section 13 Condition – annual export report
- Section 14 Condition – annual compliance report
- Section 17 Cancellation of accreditation
- Section 18 Surrender of accreditation
- Section 19 Register of accreditation
- Section 21 WEA may obtain information and documents from accredited wheat exporters
- Part 3 Division 2 – WEA's other information-gathering powers
- Section 30 Report on investigation
- Section 53 Delegation by WEA
- Section 60 Corporate plan
- Section 62 Report to growers

## Readiness for change

As recently as the week commencing 17 March the government held a number of hastily convened meetings in Canberra to outline its legislation. The Export Wheat Commission also made presentations to interested parties on development of the proposed wheat export accreditation scheme.

The WGA/WEMA position has been that the government's proposed wheat marketing arrangements –

1. are not supported by a transparent and measurable industry business plan
2. have not been subjected to economic or social outcome based modelling
3. have not addressed likely key grower impact areas such as changes in income taxation liability and seasonal cash flow

The attached marked-up copy of the Exposure Draft Wheat Export Marketing Bill 2008 identifies areas that need amending. Sections of the Bill needing clarification have also been highlighted. There is also a need to review the underlying logic of sections of the Bill that appear to have been simply transferred from, or modelled on, the current Wheat Marketing Act.

The government's proposed wheat marketing arrangements will impose significant change on the industry. The current Wheat Marketing Act supports an export marketing regime aimed at maximising grower farm gate returns, utilising a clear set of business rules. The Wheat Export Marketing Bill is proposing a very different market structure. Sections of the Wheat Marketing Act that were appropriate for that managed market regime will not necessarily be appropriate under the government's proposed free market.

The WGA is of the view drafting of the Wheat Export Marketing Bill 2008 has been prepared in too much haste. The version released through the Exposure Draft process needs extensive amendment before it is ready to be put into Parliament for consideration and debate.

Whilst accepting the opportunity to comment on the Exposure Draft Bill the Wheat Growers Association remains opposed to the repeal of the Wheat Marketing Act until such time as the government can demonstrate its alternative legislation is consistent with the needs of Australia's wheat growers.

WGA comments on the proposed legislation have been raised in the context of demonstrating the shortcomings in preparation for the significant changes being pushed onto the wheat industry by the government.

Export Wheat Commission staff have outlined a number of issues that are of concern in respect to the proposed changes. Commission staff are experiencing difficulties in interpreting the Exposure Draft Bill and have yet to come to grips with many of the issues relating to the mandatory wheat export accreditation scheme. We understand the EWC's also has concerns relating to the ongoing funding requirements of Wheat Exports Australia. Furthermore, the EWC will need time to visit and consider a further draft Bill.

The shortcomings of the Wheat Export Marketing Bill 2008 and the inability of the Wheat Export Commission to clearly enunciate aspects of the proposed new regime, supports the WGA proposition that few in executive government and the industry are ready to efficiently transition into such an uncertain and radically different marketing arrangement before the 2008/09 season.

## Recommendation to government

That the Hon Tony Burke MP, Minister of Agriculture, Fisheries and Forestry should -

1. not introduce any changes to the Wheat Marketing Act until the government has, in consultation with the major wheat grower representative bodies, prepared a comprehensive industry plan based on proper economic modelling and social impact studies;
2. allow the 2008/09 season wheat crop to be marketed under the existing Wheat Marketing Act;
3. have the Export Wheat Commission continue to issue bulk wheat export consents (i.e. export accreditation) under the Wheat Marketing Act;
4. maintain a wheat quality assurance system for container exports that protects the reputation of Australia as a reliable and ethical supplier of quality wheat to world markets.

If the government insists on pushing legislative change through the parliament before the 2008/09 harvest it should only do so after all Exposure Draft Bill corrections have been made and the date "30 April 2009" is substituted for the date "1 October 2008" wherever occurring in the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008.

## Situation analysis – at a glance

**Grower Opinion** - the government's legislation does not reflect the wishes or needs of the majority of wheat growers Australia-wide.

**Ralph Committee Report** - the Wheat Export Marketing Consultation Committee conducted regional meetings in every mainland state and concluded over 70 per cent of growers supported single desk export marketing with support consistent across the nation.

**WGA Grower Survey** - a Wheat Growers Association survey of wheat growers across Australia produced a result that 90 per cent supported single desk marketing.

**Growers Survey by Tony Windsor MP Member for New England** - results of an Australia-wide grower survey by the Member for New England indicated 82 per cent support for single desk marketing.

**Kevin Rudd on grower opinion** - "I think if the Howard Government is fair dinkum about finding out what wheat farmers want, what they should be doing is polling all registered wheat farmers. What have they got to fear from that?" (Doorstop Interview Warral Silo, Tamworth - 15th March 2006, source ALP Website)

**AWB Ltd Director Elections – February 2008** - wheat growers expressed support for a grower owned and grower controlled export marketing entity by electing to the AWB Ltd board a number of candidates who stood on a platform of supporting "single desk" marketing.

**AWB Ltd Constitutional Vote – February 2008** – "A Class" shareholders of AWB Ltd, i.e. wheat growers, rejected moves to amend the Constitution of AWB Ltd that could have lead to the Company's object not being "to be primarily involved in Grain Trading".

**Co-operative Bulk Handling Ltd - Director Elections 2007 and 2008** - over the past 12 months Co-operative Bulk Handling Ltd shareholders voted out of office three directors in elections marked by member dissatisfaction over the actions of the Co-operative on wheat marketing matters and corporate direction.

**Kevin Rudd, House of Representatives 12 March 2008** - "In Western Australia you have a huge deregulation constituency." Mr Rudd is wrong, and we would remind the Prime Minister of his own quote ".. if the ..... Government is fair dinkum about finding out what wheat farmers want, what they should be doing is polling all registered wheat farmers. What have they got to fear from that?"

**Wheat Export Marketing Bill 2008 and Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008** - the Bills do not provide any industry leadership or direction nor do they deliver growers a marketing regime on which they can rely. The Bills are simply not ready for tabling in Parliament.



## Wheat Growers Association Inc – background

Wheat Growers Association Inc (the “WGA”) is a not-for-profit organisation representing the interests of those wheat growers across Australia who deliver wheat into the National Wheat Pool for marketing on co-operative business principles.

The Association was formed in late 2002 by growers with the objective of having the net dollars per tonne paid to growers maximised through a well managed and efficient system of marketing export wheat that included:

1. Buyer of last resort facility
2. Estimated Pool Returns that were timely and reliable
3. Assured harvest cash flow
4. Financial benefits captured for growers through economies of scale
5. Graduated quality payments on an individual grower basis (i.e. Golden Rewards with no “cliff face” pricing)
6. Price and risk management through a collective National Wheat Pool approach
7. Year round management of the wheat stockpile for the benefit of all growers
8. Blending of available wheat stocks to maximise earnings and grower returns by matching quality with demand.

The Association is focused 100% on wheat industry matters with membership open to all wheat growers across Australia.

The Wheat Growers Association is member funded to ensure the Association’s objectives are not compromised by non-grower funding sources.

The WGA mission statement has always been to work constructively with the government of the day to maximise the net dollars per tonne growers receive from seasonal National Wheat Pools.

## Wheat Growers Association Inc – relationship with government

The Association has repeatedly endeavoured to engage the current government in dialogue to find common ground between the needs of the Australian wheat grower and the government's desire to change export wheat marketing arrangements.

However the WGA was not been afforded, either in its own right or through the Wheat Export Marketing Alliance, of which the WGA is a Member, an opportunity to work constructively with government.

The Labor Party whilst in opposition and now in government appear to have deliberately avoided dealing with grower representative bodies, such as the WGA, that represent the majority view on the needs of the Australian wheat grower.

Despite repeated assurances by Mr Rudd that he would not penalise wheat growers for the misdeeds of AWB executives in the Iraq wheat market, the subsequent actions of the Rudd Labor Government and statements by the Prime Minister in Parliament have delivered a contrary outcome.

Whilst the Labor Party talked of maintaining a single desk for export wheat, their October 2007 policy announcement represented a 180 degree policy shift and rejection of the majority industry view. Furthermore, the formulation and release of the Exposure Draft Bills has made the task of representing the majority wheat grower view to government even more difficult. It has been left to the likes of the Wheat Growers Association to point out shortcomings in the government's proposed legislation. The WGA has no option but to continue to raise issues that concern the majority of Australian wheat growers. However, whilst forced into a position of seemingly being critical of the government's legislation and approach to the export wheat industry the WGA puts trust in our system of government that the Association will get a fair hearing and will be afforded an opportunity to work with government on developing marketing arrangements that are in tune with the needs of the majority of Australian wheat growers.

## Wheat Export Marketing Alliance

The Rudd Government is incorrect in its claim that the Wheat Export Marketing Alliance (WEMA) was established by the Howard government to give effect to coalition policy on wheat marketing.

On 19 April 2007 the Wheat Growers Association was one of three grower representative bodies that formed the National Grain Alliance. The other two Alliance Members were the Western Australian Farmers Federation (Inc.) (WAFarmers) and the New South Wales Farmers Association (NSWFA), the state farming organisations (SFO) from the largest wheat producing states. In early June 2007 the state farming organisations from Queensland, South Australia and Victoria joined the Alliance which was re-named the Wheat Export Marketing Alliance.

As representatives of the majority grower view on wheat marketing matters, the Wheat Export Marketing Alliance repeatedly endeavoured to engage the Rudd Government on wheat marketing issues immediately following the 24<sup>th</sup> November 2007 federal election. The WGA also initiated its own contact with the government in a letter to the Minister dated 12 December 2007, however a reply was not received until 29 February 2008.

Whilst the only truly national representative body on export wheat marketing matters, the Minister continually refused to meet with the Wheat Export Marketing Alliance. It was not until 15 February 2008 that the Minister made himself available in Canberra to meet with WEMA, and then only for a little more than 30 minutes.

During that meeting the Minister advised that irrespective of the issues WEMA might bring forward he was immovable on policy and timing. This was despite earlier public comment by the Minister that he came to the agricultural portfolio with little knowledge or understanding of wheat industry issues.

At the time of preparing this submission WEMA had not received the Minister's promised formal response to the Alliance's 15 February 2008 submission. For the record the WEMA PowerPoint slide presentation is included in this document.

## Australian wheat production statistics by states

	new south wales		victoria		queensland		western australia		south australia		tasmania		total		wa plus nsw	others	total	
	area '000 ha	prod. kt	area '000 ha	prod. kt	area '000 ha	prod. kt	area '000 ha	prod. kt	area '000 ha	prod. kt	area '000 ha	prod. kt	area '000 ha	prod. kt	prod. kt	prod. kt	prod. kt	
wheat																		
2007-08 latest ABARE estimate	4 000	1 800	1 500	1 850	580	910	4 100	6 100	2 068	2 400	9	33	12 257	13 093	7 900	5 193	13 093	
state %		14%		14%		7%		47%		18%		0%		100%	60.3%	39.7%	100%	
2006-07 latest ABS estimate	3 633	2 671	1 374	857	571	750	3 884	4 905	2 155	1 438	7	20	11 624	10 641	7 576	3 065	10 641	
state %		25.1%		8.1%		7.0%		46.1%		13.5%		0.2%		100%	71.2%	28.8%	100%	
five year average to 2005-06	3 648	6 684	1 285	2 332	679	999	4 720	8 118	1 986	3 366	7	28	12 324	21 527	14 802	6 725	21 527	
state %		31.1%		10.8%		4.6%		37.7%		16%		0.1%		100%	68.8%	31.2%	100%	
seven year average to 2007-08	3 696	5 413	1 328	2 052	649	951	4 512	7 371	2 022	2 953	7	28	12 215	18 767	12 784	5 983	18 767	
state %		28.8%		7.1%		10.9%		39.3%		15.7%		0.0%		65.1%	100%	68.1%	32%	100%

## Wheat Industry Expert Group

The Wheat Industry Expert Group (IEG) discussion paper is a further demonstration of the lack of preparedness within government and the industry for wholesale overnight change. Of note are the following extract from the WIEG SUMMARY: PRELIMINARY RECOMMENDATIONS

“While the IEG believes that these functions can be delivered as suggested in this paper, it cannot be certain that this will be the case. As such, the IEG recommends that the Government consider re-visiting this matter as necessary to determine whether the delivery of these functions is occurring effectively.”

The boxes below contain abridged points lifted from the IEG discussion paper Chapter 6 - Analysis of Future Options for Delivery of Industry Good Functions followed by WGA comments/observations:

### 6.01 Industry Strategic Planning

*Is industry strategic planning essential to the industry?*

There are critical challenges facing the wheat industry that would benefit from a whole of industry response, including infrastructure, biotechnology and environmental challenges.

To achieve this objective, it is important that all sectors of the industry are involved in the consultation and planning process.

*Has the industry the capacity to deliver this function?*

In the absence of an industry wide strategic plan, individual participants have developed their own strategies based on commercial realities which have proved effective and will continue.

*What is the role for government?*

Industry strategic plans need ownership from the industry. The government does not have a role.

*Preliminary recommendation*

Organisations and companies continue to undertake strategic planning to meet their individual needs. Any industry wide strategic plan would be considered in the context of efforts to establish an industry body that represents all sectors.

*Are there any transitional issues?*

No.

### WGA comments/observations

The failure of the GCA initiated Single Vision project would indicate the conflict of interest of the various parties are such that it is unlikely we will see “all sectors of the industry are involved in the consultation and planning process”. The IEG conclusion that “The government does not have a role.” is disappointing. It conflicts with the IEG’s opening comment that the government would need to revisit any issue that suffers market failure. The failure of the IEG to comment on the need for governments to provide “leadership” through a combination of appropriate legislation, and business, economic and monetary policies that would encourage growth in one of the nation’s major wealth and employment generating industries, is of concern. To suggest there are no transitional issues overlooks the need for government to review and assess the impact market deregulation will have on the industry and the national economy. The government needs to review and resolve matters such as bio security issues, taxation rulings, international cost/value transfers etc.

## **6.02 Research and Development**

### *Is R&D essential to the industry?*

A robust and effective R&D program is essential if the wheat industry is to be viable and sustainable into the future.

### *Has the industry the capacity to deliver this function?*

Lack of investment in R&D is a classic example of market failure in the wheat industry. This is due to the fact that the benefits from R&D are not always captured exclusively by those who make the investment. People or companies can choose not to invest but still gain the benefit of the R&D.

### *Options for Delivery of R&D*

The GRDC cost benefit analysis presents a strong argument that it should continue to be the central R&D agency for key activities such as varietal improvement and agronomic research.

### *What is the role for government?*

The Australian Government is committed to current arrangements established under the *Primary Industries and Energy Research and Development Act 1989* which underpin R&D delivery for all major agricultural industries.

### *Preliminary recommendation*

The GRDC should continue to undertake R&D on behalf of the wheat and other grains industry as a whole. The IEG also noted that the longstanding funding arrangement between industry and the Australian Government for the GRDC has delivered significant benefits to the grains industry and should continue.

### *Are there any transitional issues?*

Investments in R&D will continue under the new wheat marketing arrangements. The core elements that comprise the AWB Ltd R&D portfolio such as developing cereal quality tests already form part of the GRDC portfolio.

## **WGA comments/observations**

The IEG discussion paper contains the statement “The Australian Government is committed to current arrangements established under the *Primary Industries and Energy Research and Development Act 1989* which underpin R&D delivery for all major agricultural industries”.

It is unusual for an advisory group to make such a statement. Is it a matter on which an independent IEG can comment from any position of authority?

### **6.03 Wheat Variety Classification**

*Is wheat classification essential to the industry?*

“..it is considered essential to the operation of the industry.

*Options for Delivery of Wheat Variety Classification*

The current process of wheat varietal classification into market grades is well established and Australia’s system is internationally recognised and well regarded. The advent of multiple exporters would not change the process but a different means of oversight and funding will be required.

“ ... individual companies develop and fund their own classification systems to support market grades. However this has potential to create confusion for international customers and would result in duplication of some costs. Continuing the current national system does not preclude individual companies from operating under a national umbrella and further differentiating their product where they can.

Exporters and domestic users are major beneficiaries of a national wheat classification system. In this context it may be appropriate that they contribute time and expertise to the Panel rather than be paid from the grower funded GRDC.

*Has the industry the capacity to deliver this option?*

Industry manages the existing system and is well placed to continue to do so under the new marketing arrangements.

*What is the role for government?*

The Australian Government’s role is at the pre-classification stage.

*Preliminary recommendation*

The GRDC should manage wheat variety classification utilising the existing process, subject to confirmation by the Government that this function is eligible expenditure under the *Primary Industries and Energy Research and Development Act 1989*.

The Wheat Classification Panel should have representation from producers, major exporters, the domestic processing industry and independent expertise as required. The GRDC would oversee an appropriate consultation process for appointing the Panel members.

The representatives sitting on the Panel will be funded by their organisations, as the benefit of representation goes directly to those bodies. The GRDC should provide secretariat support for the Panel.

*Are there any transitional issues?*

AWB Ltd has undertaken to continue wheat variety classification until 30 June 2008. Minimal transitional issues are anticipated as the current process can easily be incorporated under a new management structure. The main issue will be how the Panel is appointed initially, in particular determining who will select the Panel and what consultation is required.

### **WGA comments/observations**

The IEG paper states “The current process of wheat varietal classification into market grades is well established and Australia’s system is internationally recognised and well regarded.” The paper goes on to state “Continuing the current national system does not preclude individual companies from operating under a national umbrella and further differentiating their product where they can”. There is no recognition of the conflicts of interests that will emerge by allowing money to dictate who sits on the wheat variety classification panel. The current system works because it has checks and balances. In a free market self-interest will prevail. No comment has been made on how a global view on varietal classification of Australian wheats will come about within the IEG proposed panel. What checks and balances will exist into the future?

#### **6.04 Wheat Receival Standards**

*Is the development and maintenance of wheat receival standards essential to the industry?*

Receival standards are an important quality assurance function. They are essential to the industry wheat is accumulated across Australia in a large number of relatively small consignments at 800 accumulation points.

Industry agreed standards for consignments of grain provide a basis for comparison for buyers and are essential to the operation of domestic and international trade.

*Golden Rewards* and other incremental payment arrangements rewarding quality have been widely acclaimed by growers. The separation of payment grades from binning lines has made for better transfer of market signals to growers as the price they have received more closely matches the quality of the wheat they deliver.

*Options for Delivery of Wheat Receival Standards*

In a more competitive environment with multiple exporters it will not be possible for AWB Ltd to continue to perform this function. However, NACMA is well placed to manage the setting and publication of industry agreed receival standards utilising the processes that are already in place.

AWB Ltd has been quoted that it will continue to use its trademarks such as *Golden Rewards* to promote its own marketing products under the new arrangements. Other marketers will decide on the suite of marketing products they offer but it is likely they will need to offer similar schemes to secure supplies of wheat. Incentive schemes, underpinned by receival standards are likely to continue or be developed.

*Has the industry the capacity to deliver this function?*

The industry therefore clearly has the capacity to continue to develop and maintain wheat receival standards through NACMA.

*What is the role for government?*

Wheat receival standards are industry agreed standards and the government does not have a role in this function.

*Preliminary recommendation*

The annual review and development of industry agreed wheat receival standards should be managed by NACMA under the existing processes.

Individual grain marketers should develop refinements to complement the industry agreed standards.

*Are there any transitional issues?*

The industry through NACMA already has a process to review and develop annual wheat receival standards which can easily replace current arrangements under AWB.

#### **WGA comments/observations**

The IEG has not addressed issues relating the risk of convergence of quality standards and storage arrangements (i.e. binning). The past practice of rewarding growers for quality has been based on the National Pool managing a large proportion of the wheat stockpile across Australia. As multiple exporters enter the market the ability to manage commingled wheat stocks will dissipate and payments to growers for grain quality will be lost.

The IEG has not addressed value transfer issues or how the risk of the industry being forced back into paying growers on a FAQ outturn basis will be avoided.



## **6.05 Information Provision**

### *Is information provision essential to the industry?*

The availability of base information is essential to all stakeholders (be they growers, grain traders or end-users) to develop their production, marketing and technical strategies. This includes information on the quality parameters of the crop and more general marketing information such as production and stocks.

It is critical to the proper operation of a fully functioning open and competitive market and a lack of information could adversely affect the efficiency of the Australian cash and futures markets for wheat.

In the cash market, there is the potential that traders will build risk premiums into their prices if there is an information vacuum. They could also choose to restrict or refuse to operate in particular markets, leading to a possible reduction in market liquidity.

### *Options for Delivery of Information Provision*

#### **Data on quality parameters**

The Australian Crop Report produced by AWB Ltd provides information on the quality parameters of Australian wheat grades in the National Pool.

AWB Ltd could continue to produce a restricted version for its own use and other major exporters could do the same.

Exporters are also likely to want to retain any competitive advantage concerning the composition of their stocks by restricting the distribution of that information.

Alternatively, a central industry body could provide this service to members who would provide the necessary funding or an independent analyst could produce a report on a fee for service basis. These two options are unlikely to be successful because of the lack of availability of the necessary data.

#### **General marketing information**

This information is currently provided by the ABS and ABARE data collection systems and ABARE's analysis and reporting. This is complemented by work done by the state farmer organisations and independent market analysts.

There is interest from some industry participants for access to more supply (both production estimates and stocks on hand) and sales (particularly export sales and shipments) data. This is partly satisfied by the work of agencies outlined above, but their ability to produce comprehensive reports is restricted by confidentiality covenants on some critical data.

To increase the amount of information on domestic grain supply will require more resources to provide monthly (rather than quarterly) updates on key information. This would include estimated/forecast production; an estimation of stocks through an ABS survey of operators of major grain storage facilities; and a farmer survey of on farm grain and fodder supplies.

Demand from the wheat industry and other sectors such as grains and domestic end users, including lot feeders, and the dairy and intensive livestock industries could provide incentives to set up reliable systems to obtain the necessary data.

It is important that a suitable balance is reached as increasing availability of supply side data without similar analysis on the demand side may not be in the interest of growers.

Market participants would then be able to use this base information to conduct their own analysis and apply it to their growing, sales and marketing strategies.

*Has the industry the capacity to deliver this function?*

The new wheat marketing arrangements will make it difficult to continue to provide crop quality data in the existing format. There will need to be strong commercial reasons for the main industry players to collaborate and provide the necessary data, some of which is commercial in confidence.

*What is the role for government?*

The importance of access to accurate and independent information is formally recognised through the Government's creation and support for the ABS and ABARE. ABS is particularly well positioned to produce an independent, credible monthly stocks and production report in order to provide baseline industry data. More specialised adaptation of information can be adequately handled by private information providers and commentators.

*Preliminary recommendation*

The lead agency would be ABS, which in conjunction with ABARE and other agencies as required, would publish monthly base information covering:

- \* production (forecast and actual) – commodity by tonnes by hectare by region;
- \* supply – stocks in storage – commodity by tonnes by major classification by port zone; and
- \* exports – commodity by tonnes by destination by port zone, both in containers and in bulk.

This information would be collated and distributed by ABS under its mission to 'assist and encourage informed decision making, research and discussion within governments and the community, by leading a high quality, objective and responsive national statistical service.'

*Are there any transitional issues?*

Changes to wheat marketing arrangements will mainly impact on the production of the Australian Crop Report.

The Government will need to arrange for the ABS to collect the base data discussed above, including the funding of this collection in the short and long terms.

**WGA comments/observations**

Grain trading is a knowledge based skill that processes information on which trading decisions are made with a view to making a profit. The IEG has raised many issues to do with the need for growers to have access to reliable and current industry information. The government's wheat marketing legislation is silent on how an open and transparent market will be created. Without access to meaningful market intelligence wheat growers will be disadvantaged.

Submissions and industry comment on the Bill have already raised the prospects of grower access to data critical to their decision making will be limited. It is already emerging that holders of that information will not willingly part with such valuable market intelligence.

## **6.06 Crop Shaping Activities**

### *Are crop shaping activities essential to the industry?*

Crop shaping activities are a natural element of commercial markets as they provide for the effective transfer of market signals through the supply chain to breeders and growers so that industry is capable of responding to customer requirements.

### *Options for Delivery of Crop Shaping Activities (market signals)*

AWB Ltd has historically provided crop shaping information and incentives through its preferred varieties, receival standards, segregation strategies and price incentives and has argued that these are industry development functions.

Commercial grain trading operators currently distribute market information to growers as part of broader grain accumulation services. Alternatively, it is provided by independent risk management advisors as a part of a fee for service arrangement.

Another option is for an industry organisation to collate and publish specific market information such as tender specifications by major domestic or export destinations.

### *Has the industry the capacity to deliver this function?*

AWB Ltd will continue to offer pricing incentives to match supply with perceived demand. Other exporters will need to offer similar incentives and competition to attract supplies of wheat which should stimulate a greater range of reward and incentive programs.

### *What is the role for government?*

None. Multiple exporters and domestic traders will check what markets want and inform growers through pricing signals.

### *Preliminary recommendation*

Companies should continue to provide pricing signals to growers that seek to reflect market conditions and customer demands.

### *Are there any transitional issues?*

No. Commercial realities should ensure that good information flow and pricing signals should act to shape the crop and give growers direction when making planting decisions.

## **WGA comments/observations**

Leaving “crop shaping” to grain trading companies will expose one of the nation’s major industries to potential manipulation.

In a global market still influenced by subsidised trade and domestic politics the Australian wheat crop should not be left exposed to being “shaped” for the benefit of anyone other than the Australian producer.

## **6.07 Technical Market Support**

*Is technical market support essential to the industry?*

Providing technical market support is an essential marketing tool in securing and maintaining sales of wheat.

*Options for Delivery of technical market support*

These activities are commercial in nature and best provided by individual companies rather than collective action by industry.

Alternatively, it could be provided by a central industry body acting on behalf of the industry as a whole. This would require an industry wide funding commitment.

*Has the industry the capacity to deliver this function?*

AWB Ltd should continue to provide existing support. Most other exporters have considerable experience in providing technical support for end users of other grains which can easily be translated to wheat sales.

*What is the role for government?*

None.

*Preliminary recommendation*

Technical market support is purely commercial in nature and the responsibility of exporters in line with market requirements.

*Are there any transitional issues?*

No.

### **WGA comments/observations**

Technical support is very much a requirement the seller must identify and satisfy.

## **6.08 Wheat Promotion**

### *Is wheat promotion essential to the industry?*

Promotion of the key advantages and customer value propositions of Australian wheat against overseas competitors is an important marketing tool.

### *Options for Delivery of Wheat Promotion*

While all exporters promote Australian wheat, they also highlight the particular advantages of their own brands to increase their competitive advantage. They are likely to want to retain the opportunity to continue to do this.

Alternatively, generic promotion of Australian wheat could be delivered through collective action under an industry managed program overseen by an industry body. This would be complemented by the efforts of individual exporters.

### *Has the industry the capacity to deliver this function?*

Commercial companies have the necessary experience and expertise and have been successful in promoting their products under Australian brands.

### *What is the role for government?*

The Australian Government does not provide funding for promotional programs for specific commodities. It does, however, support the activities of Australian companies in hosting promotional events through Austrade.

### *Preliminary recommendation*

The IEG considers that industry has a role in promoting Australian wheat generically but it will be for key stakeholders of Australian wheat to coordinate and lead this promotion, if they consider it is necessary. Exporters will also continue to undertake promotion activities in specific markets.

### *Are there any transitional issues?*

In the transition period, exporters will be able to continue to export on the back of the existing good global reputation of Australian wheat. However, the industry should attempt to coordinate generic promotion as soon as possible.

## **WGA comments/observations**

The irony of suggestions put forward by the IEG that the task be given over to “an industry managed program overseen by an industry body”, is that the problem has come about by the proposed dismantling of the existing marketing system. The government’s approach will give rise to industry functions being unbundled to which the IEG’s response is they should be “re-bundled”.

## 6.09 Branding

### *Is wheat branding essential to the industry?*

Customers identify with Australian wheat through the branding process and there could be a negative impact on trade if this was discontinued.

### *Options for Delivery of Wheat Branding*

Brand names such as Australian Premium White (APW) and Australian Standard White (ASW) are not trademarks and are in the public domain. These brand names have been used by companies other than AWB Ltd and this will continue to be the case under the new wheat marketing arrangements. Individual companies will continue to promote Australian wheat under the generic Australian brands and their own brands.

Without the classification system it is likely the brands would lose meaning and subsequently their value in marketing terms.

### *Has the industry the capacity to deliver this function?*

Commercial companies have the freedom and expertise to utilise the generic Australian wheat brands in a liberalised market.

### *What is the role for government?*

Branding is a commercial activity.

### *Preliminary recommendation*

Industry participants should continue to brand their products as they see fit, in the knowledge that the generic Australian wheat brands (eg. APH as representing Australian Prime Hard) will be available for their use.

### *Are there any transitional issues?*

There are no transitional issues. AWB Ltd does not make any claims on generic Australian wheat brands.

## **WGA comments/observations**

It is encouraging that generic branding will not be challenged by AWB.

However, the IEG has not addressed the need to oversee a number of potentially damaging reputation risks in the container trade. Removing the quality controls over the container trade puts the standing of the Australian wheat industry at considerable risk. There have been examples of harm being done to the Australian export wheat industry by misleading branding and poor quality management. To suggest there are no transitional issues ignores the need to ensure there are controls available to identify and eliminate false labelling, misleading conduct and minimise contract defaults that cause reputation damage.

## **6.10 Trade Advocacy**

### *Is trade advocacy essential to the industry?*

As the wheat industry is heavily export oriented and dependent on market access and world trading conditions, trade advocacy is essential to the Australian wheat industry.

### *Options for Delivery of Trade Advocacy Activities*

The Government will continue to provide trade advocacy services but will require industry assistance and advice on relevant issues.

### *Has the industry the capacity to deliver this function?*

Trade advocacy is the responsibility of the Government but there is a clear role for industry in providing expert advice to ensure Australian interests are fully protected.

Industry has delivered this role in the past, as outlined above, and is well placed to continue to do so.

### *What is the role for government?*

The Government is responsible for negotiating improved international trading conditions through the WTO, as well as negotiating trade access through bilateral agreements or specific representations on tariff or non-tariff barriers.

### *Preliminary recommendation*

The Government should continue its current role in the negotiation of trade issues, with input from various industry organisations. No individual or organisation is precluded from making submissions or recommendations to the Government on trade issues and this should continue.

The wheat industry could consider whether a single representative body is required to put forward a unified view to the Government. However, this is a separate matter for the industry to consider as there is no such organisation currently providing this service.

### *Are there any transitional issues?*

If the industry decides to form a unified body to represent it then there will be transitional issues in determining its structure, charter and details. However, the impact on trade advocacy during that period will be minimal as interested parties can still make representations and submissions. The Government would continue to seek input from industry players, as necessary.

## **WGA comments/observations**

It is acknowledged that Trade Advocacy is a government responsibility.

However, the IEG has failed to address the fact the government's legislative intentions are viewed overseas as being unconditional market deregulation.

The Australian government will continue to encounter strong resistance from our competitor nations to calls to dismantle trade barriers and end market distorting policies. There will be little prospect now of securing better outcomes for Australian exporters in future trade negotiations having given away a major negotiating point.

## **6.11 Regulatory Advocacy**

### *Is regulatory advocacy essential to the industry?*

Regulatory advocacy is an essential function due to the complex nature of the wheat industry. There are a range of industry issues that do not fall under the ambit of trade advocacy. Some of these issues may have an impact on the capacity of the industry to execute exports and representation to the Government may be necessary.

### *Options for delivery of regulatory advocacy activities*

Regulatory advocacy could continue to be provided by the broad scope of stakeholders that currently provide representations and submissions to the Government.

Alternatively, if the industry had one body that represented all sectors of the industry, or a few bodies representing certain sectors, this body (or bodies) could make submissions and representations on behalf of those they represent.

### *Has the industry the capacity to deliver this function?*

Any representative industry organisation, company or individual can currently make representations and submissions to the state, territory or Commonwealth governments on any issue they wish.

### *What is the role for government?*

There is no role for government in this process as it is the body to which representations and submissions are being made. It would be inappropriate for the Government to fund such activities.

### *Preliminary recommendation*

No changes are necessary to the current arrangements. Representative industry organisations, companies and individuals will continue to make submissions and representations where they deem it necessary.

### *Are there any transitional issues?*

No. Stakeholders will continue to make representations on relevant issues, as necessary.

## **WGA comments/observations**

It is acknowledged that Regulatory Advocacy will remain substantially unchanged.



## **Bulk Export Wheat Marketing**

**Presentation to Hon. Tony Burke MP  
Minister for Agriculture Fisheries and Forestry**

By

## **Wheat Export Marketing Alliance (WEMA)**

### **Comprising:**

AgForce Grains Queensland  
New South Wales Farmers Association  
South Australian Farmers Federation Inc  
Western Australian Farmers Federation Inc  
Wheat Growers Association Inc

Canberra  
15 February 2008

## **Bulk Export Wheat Marketing**

### **WEMA proposal on behalf of Australian wheat growers that will:**

1. Satisfy Government's single desk export wheat policy
2. Not allow AWB to hold power of veto or any monopoly rights
3. Meet expectations of majority of wheat growers
4. Allow government and growers to work through what is required to deliver triple-bottom-line outcomes from the new marketing arrangements i.e.
  - a) Economic (e.g. farm and support industry profitability)
  - b) Environmental (e.g. land care sustainability and "footprint" issues); and
  - c) Social ( eg. ensuring viable regional communities exist, protecting the social "glue" that holds rural populations together)then look at what, if any, legislative change is required

## Bulk Export Wheat Marketing

Over 70 % of wheat growers Australia-wide support orderly marketing of bulk export wheat

3

### Bulk Export Wheat Marketing Key Lead-up Wheat Marketing Act (WMA) Changes - Chronological Events

Key Date	Legislative Change	Legislative Consequences	Marketplace Consequences
22/07/2003	Changes made to 2004 arrangements for reviewing performance of AWBI	Review to be undertaken by independent reviewers rather than Wheat Export Authority	<b>AWB</b> Ltd agreed that AWBI be "functionally separated" from AWB Ltd with AWBI board to have greater autonomy and decision making role <b>AWB</b> Ltd still required to support AWBI in accordance with Article 3 and more particularly Article 3.1
9/12/2006	AWBI veto removed. Minister given special temporary powers until 30/06/2007	AWBI not able to veto bulk export consents	<b>Multiple</b> sellers allowed into the bulk export wheat market <b>Grower</b> support for single desk
28/06/2007	Minister's temporary powers extended until 30/06/2008  Information gathering, investigative powers and other controls introduced	AWBI not able to veto bulk export consents  Greater control and powers of direction over AWB Group	Multiple sellers allowed into the bulk export wheat market  Overseas buyers' confidence in AWBI restored post Cole Inquiry
1/10/2007	Wheat Export Authority transitioned into Export Wheat Commission	Commission more accountable to government and subject to Ministerial guidelines	New level of operational control over AWB Ltd and AWBI reinforced return of buyer support for AWBI as main exporter of wheat in bulk

**70+ %  
Support**

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## Bulk Export Wheat Marketing

### Events if Government simply lets current WMA run its course i.e. no new legislation no new “designated company”

Key Date	Legislative Change	Legislative Consequences	Marketplace Consequences
1/03/2008	AWBI automatically becomes the “designated company”  Option vests with Minister for a period of 4 months to declare an alternative “designated company”	No change to existing marketing arrangements Exemption of AWBI from needing EWC export consent continues  Minister has discretionary powers for a limited period	<b>AWBI</b> only entity permitted to export bulk wheat without EWC consent <b>AWB</b> Ltd Article 3.8 not triggered <b>AWB</b> Ltd Article 3 requires parent to continue to financially support and underwrite AWBI <b>AWBI</b> competing against EWC accredited exporters of bulk wheat <b>AWB</b> Ltd exploiting chance to abandon A Class shareholders in favour of B Class shareholders <b>AWB</b> Ltd causing pressure on the government to give company an “out” by triggering Article 3.8
30/06/2008	WMA subsections 3AA (1) and (6) sunset  WMA Part 5 sunsets  If AWBI the designated company on 30/06/08 WMA subsection 57(3) sunsets	Minister’s right to declare an alternative “designated company” ends  Direct Ministerial involvement in export consent process comes to an end  AWBI veto ends permanently Ministerial powers not needed EWC accredits exporters as per Ministerial guidelines	None  None  <b>AWBI</b> to compete with EWC accredited exporters <b>AWB</b> Ltd Article 3 requires parent to continue to financially support and underwrite AWBI

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## Bulk Export Wheat Marketing

### Delivers Government policy without needing legislative change

Key Date	Legislative Change	Legislative Consequences	Marketplace Consequences
1/07/2008	None required	Not applicable	<b>AWBI</b> only entity permitted to export bulk wheat without EWC consent/ accreditation <b>EWC</b> to accredit other exporters <b>AWB</b> Ltd Article 3.8 not triggered <b>AWB</b> Ltd Article 3 requires parent to continue to financially support/ underwrite AWBI <b>AWBI</b> continues as growers’ bulk export wheat marketing company with - <ul style="list-style-type: none"> <li>• Buyer of last resort facility</li> <li>• Lender of last resort facility</li> <li>• Market IP not taken from growers</li> <li>• More autonomous AWBI Board (i.e. own staff, Audit and Risk Cttee, AWB Ltd MD not to sit on Board)</li> <li>• Improved management structure (Own staff, culture and reporting lines)</li> <li>• Competitively priced pool services</li> <li>• Economies of scale</li> <li>• Increased performance oversight</li> <li>• Relief from Industry GoodPractice expenses</li> </ul> (As recommended in 2004 Review Report i.e. functional separation )

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## Bulk Export Wheat Marketing

There are issues of concern to growers, bankers, service industries, rural and urban communities and customers that commodity traders will dictate the terms on which they will trade Australian wheat.


Unless there is some due regard for the rights of Australian wheat producers we expect the following - (in random order)



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7

## Bulk Export Wheat Marketing

- 
- No National Pool = No Estimated Pool Return figure
  - Banks have no stable or recognised pool price to work with
  - Financial options will impose additional costs on growers
  - No security in the market e.g. no buyer of last resort, a major concern to banks
  - More isolated districts will have few or no services e.g. fewer receival points, fewer buyers, highly volatile and variable price indicators, grain varietal/quality segregation problems etc
  - Substantial price variation/distortions which will put pressure on domestic market prices i.e. variations will be more than freight differentials
  - Grain industry profit centre changes from farm gate to shareholder returns disenfranchising producers with executives of AWB and other grain traders only interested in investor profits, share price and personal bonuses
  - Domestic freight costs will increase to growers i.e. lower farm returns

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8

## Bulk Export Wheat Marketing



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- There will be a massive increase in grain trucks on country and urban roads, creating dangerous road hazards particularly during the summer holiday months and rail network closures will not stop at what is happening in Victoria
- More grain trucks on the road will mean more pollution and an increase in the grain industry carbon footprint when we are meant to be reducing emissions (PM December 2007)
- Ocean freight costs will escalate significantly as ship owners protect themselves against port congestion, shipping disputes, cargo delays, erratic demand patterns, contract defaults and the like
- Growers will have to rely on a trader's offer price as being the market signal as they will not have true export price discovery systems available to them e.g. what information has Glencore provided industry/growers, AWB Ltd have said they want the same freedom as the international grain traders which would leave growers totally uninformed
- Use of crop liens to secure working capital will become an administrative nightmare, reducing their effectiveness and potentially ending a very important and long standing funding technique for many growers

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## Bulk Export Wheat Marketing




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- Absence of a deliverable futures market for most of Australia's export wheat is likely to remain the case for many years to come
- Regional marketing monopolies will emerge and sit completely outside meaningful government influence and oversight with no regard for industry standards with the overall quality of Australian wheat in all likelihood falling resulting in loss of value and exporting opportunities
- Blatant profiteering will take place by AWB's Geneva office exploiting 60 years of IP related to Australian wheat exports to trade wheat of non-Australian origin
- Storage companies who are also wheat traders will look after themselves before anyone else i.e. they will adopt value transfer practices
- Traders are unlikely to buy or pay for grain purchases until close to shipment
- Traders will disguise actual carrying costs behind an inflated estimate that they will deduct from the grower's return
- There will be a complete breakdown in attempts to establish a national grower representative body for the country's single largest cereal crop. Minister could solve by providing support along the lines of USA government funding of US Wheat Associates

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## Bulk Export Wheat Marketing

### AWB Ltd Constitution Article 3.8


- 
- 3.8(a) If the Pools Subsidiary ceases to be the holder of the Single Desk the Directors must, as soon as practicable, convene and hold a meeting of A Class Shareholders and a meeting of B Class Shareholders each to consider a resolution to the effect that Article 3 should cease to apply.
- (b) Article 3 shall cease to apply if a resolution to the effect that Article 3 should cease to apply is passed at the meeting of A Class Shareholders and at the meeting of B Class Shareholders convened under Article 3.8(a) in each case by a majority of the votes cast by those entitled to vote on the resolution at that meeting.
- (c) When convening the meetings under Article 3.8(a) the Directors may propose other resolutions amending or adding to any one of more of Articles 3, 19.12, 19.13, 19.14, 19.22, 19.23 and 19.24 for the purpose of amending the controls on the exercise of directors' powers in relation to pooling activities or the appointment of directors to the Pools Subsidiary or both.
- (d) If a resolution amending or adding to Articles 3, 19.12, 19.13, 19.14, 19.22, 19.23 or 19.24 for the purpose of amending the controls on the exercise of Directors' powers in relation to pooling activities or the appointment of directors to the Pools Subsidiary or both is passed at the meeting of A Class Shareholders and at the meeting of B Class Shareholders convened under Article 3.8(a) in each case by a majority of the votes cast by those entitled to vote on the resolution at the meeting, then Articles 3, 19.12, 19.13, 19.14, 19.22, 19.23 and 19.24 will be amended or added to in accordance with that resolution.

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## Bulk Export Wheat Marketing

### AWB Ltd Constitution Article 3.9

- 
- 3.9 For the purposes of Article 3.8 the Pools Subsidiary will cease to be the holder the Single Desk where the Pools Subsidiary ceases to be the person who has the sole right to lawfully export wheat from Australia without the consent of the Wheat Export Authority (disregarding persons who export wheat in bags or containers or who may from time to time be given specific consents to export wheat other than a consent to export wheat generally).

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## Bulk Export Wheat Marketing

### AWB Ltd Constitution trigger – what does it mean

- Not until the Article 3.9 event occurs will Article 3.8 come into operation
- Procedures in Article 3.8 relate only to voting on resolutions relating to Articles specified in Article 3.8 (c)
- Nothing in Article 3.8 requires a shareholder vote in any way on Article 2
- AWB Ltd 12 February 2008 shareholders' vote to remove Article 2 is "in anticipation" and "conditional" on the Article 3.9 event taking place. If there is no Article 3.9 event, Article 2 will remain in place irrespective of the 12 February vote outcome
- Triggering Article 3.9 would penalise wheat growers and deliver significant monetary benefit to AWB Ltd
- AWB Ltd should not benefit or be rewarded for the conduct of individuals found to have a case to answer over the sale of Australian wheat to Iraq



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## Bulk Export Wheat Marketing

### The Government's current approach to export wheat marketing will result in:

- Cost of doing business at every level in the wheat industry in Australia will go up significantly
- Market uncertainty and powerful grain traders will combine to extract high profit margins from producers, reducing on farm returns and profit margins
- Five multinational grain companies will come to dominate the Australian wheat market, as confirmed by the Minister's recent announcement that Glencore, a Swiss-based company heavily involved in the Iraq oil-for-food scandal (as detailed in the UN "Volcker Report"), received the biggest allocation of recent EWC export licenses. Cargill, another major international grain trader expressed initial interest in being part of the Wheat Industry Group to address Industry Good Functions but following announcements by the Minister, have withdrawn from the process so they can operate on their own with no controls, responsibility or accountability



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## Bulk Export Wheat Marketing

### The Government's current approach to export wheat marketing will result in:

- Financial institutions will reduce lending percentages to growers and increase margins to combat market uncertainty and lack of information, all at the grower's cost
- Growers' confidence has been undermined by ferocity of Cole Inquiry, supported strongly by both Labor and Liberal, by grower majority view on export marketing being ignored, lack of policy consultation with grower organisations, no policy presented with crop plantings imminent and evidence of government support for grain traders by ensuring financial security to traders and withdrawing all support from growers
- Financial and social impact on wheat dependant communities will be substantial

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15

## Bulk Export Wheat Marketing

### Growers were promised they would not be penalised for actions of others

- Australia's wheat growers are looking to you as Minister for Agriculture, Fisheries and Forestry to work to honour the Prime Minister's repeated promise to them that he supported the single desk and would not let growers suffer collateral damage in the political war waged on the former government over wheat sales to Iraq
- We would remind the Prime Minister of a very significant statement in his maiden speech to parliament when he said quite simply "I believe that governments must regulate markets"
- State Ministers Ian Macdonald, NSW and Kim Chance, WA, the two largest states exporting bulk wheat, support using the current Act in preference to rushing to enact a new legislation

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## **Bulk Export Wheat Marketing**

### **WEMA Recommendation**

That the Minister allow the present government legislation to progress without alteration on the basis of –

- a) it allows AWBI to continue to deal with producers' wheat as it has before and still has a responsibility to do; and
- b) it does not interfere with the proposed new export bulk wheat policy (as we understand it to be)



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**End**

Page



**Kevin Rudd MP**  
**LEADER OF THE OPPOSITION**

8 February 2007

Dear Mr

Thank you for your correspondence regarding the Australian Labor Party's position on the retention of the 'single desk' for wheat exports.

The Australian Labor Party has supported the single desk wheat marketing arrangements for over 65 years since 1939. During that period Labor has been a strong supporter of the current single desk marketing arrangements and it remains Labor policy that the single desk should remain in place while ever these arrangements have support from the growers and the community as well as delivering a benefit to Australian wheat growers.

It is essential that the debate over the whether the single desk is the most appropriate arrangement for Australian wheat marketing is not overwhelmed by the wheat-for-weapons scandal and the revelations that came out of the Cole Inquiry.

A study by Econtech of the premium attributed to the single desk indicates that on the benchmark of Australian premium white grade of wheat, the single desk captures a premium of between \$15 and \$30 a tonne. The total annual value to Australian growers of this premium on Australian premium white is \$80 million. On all grades the average premium attributed to the single desk is \$13 a tonne and the total annual value of the premium on all grades is \$200 million.

While it is clear that the revelations of the 'wheat for weapons' scandal has damaged Australia's reputation overseas, it is also clear that the Wheat Export Authority put in place by the Howard Government has manifestly failed in its primary responsibilities. The Wheat Export Authority was established in 1998-99 to control the export of wheat from Australia and to

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Page 2

monitor AWB's performance in relation to the export of wheat and examine and report on the benefits to growers that resulted from that performance.

The performance of the Wheat Export Authority in monitoring AWB has been the subject of criticism from both Labor and grower organisations for a number of years. The Wheat Export Authority completely missed the involvement of AWB in the wheat for weapons scandal, even though the potential impact on grower incomes was considerable. The incompetence of the organisation as it is currently staffed and structured was highlighted when it was revealed that it went through 2005 using the provisions of an out-of-date service agreement as the basis for monitoring AWB. It is important that the operation of the Wheat Export Authority be thoroughly reviewed as part of any process leading to improved arrangements for wheat marketing.

Labor is concerned that under the scrutiny of the WEA:

- AWB shareholders, many of them wheat growers, lost half the value of their investment;
- Trade with Iraq worth up to \$500 million a year was forfeited;
- AWB pool participants were potentially exposed to the impact of a number of Australian and International law suits;
- The AWB brand name was severely wounded; and
- The \$610 million that AWB inherited from the Wheat Industry Fund and the \$300 million it has captured as monopoly rent since privatisation have evaporated.

The WEA had the legislated powers to do the job it was required to do however it clearly lacked the will or resources. It is the Minister Warren Truss who had the responsibility for ensuring that the WEA undertook its primary roles and actually looked after the interests of wheat growers. Minister Truss and the Howard Government as a whole has failed completely in this regard.

Labor believes we must get it right when it comes to any proposals from the government that may change the single desk arrangements in the future. It is critical that the government through inadequate consultation on the future of the single desk does not further damage the interests of growers.

Australian wheat growers have been badly let down by the Howard Government through inaction that has led to Australia's export reputation becoming tarnished.

Labor's policy is to continue to support the single desk while we are convinced that there is strong economic value in the single desk for growers

Page 3

and the Australian economy and it retains the support of growers and the community.

Thank you for taking the time to contact Labor on this extremely important issue.

Yours sincerely



**Kevin Rudd**  
**Federal Labor Leader**  
**Member for Griffith**

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Office of Kevin Rudd MP  
LEADER OF THE OPPOSITION

RECEIVED  
12 NOV 2007

BY:.....

Mr Bob Iffla  
Chairman  
Wheat Growers Association  
Suite 1 Peer House  
2 Canning Highway South Perth WA 6151

Dear Bob,

Thank you for your letter dated 24 October to Mr Rudd concerning Labor's wheat marketing policy. Mr Rudd has asked that I respond on his behalf.

I note that you met with Senator O'Brien to discuss the policy on 17 October in Canberra. As you are aware this office was represented at that meeting.

I am advised that a range of issues were discussed including matters you have raised in your letter. I note that Wheat Export Marketers Alliance (WEMA) agreed at that meeting to provide Senator O'Brien with some additional views on the question of the market's operation in a year of oversupply. We look forward to receiving that additional input from your group.

I note your comments regarding Labor's proposed single desk arrangements. We are confident that with the appropriate resources, skills and legislative authority the new entity proposed to manage the single desk, Wheat Exports Australia, will ensure the returns to growers are maximised.

Labor is committed to working with members of WEMA to examine ways in which your organisation can participate in our proposed new framework for export wheat marketing.

This single desk model would enable to collective bargaining approach your are proposing through WEMA.

You would have noted from the policy document that the industry will have a direct role in identifying candidates for appointments to the board of Wheat Exports Australia, the body that will be responsible for managing the single desk.



**Office of Kevin Rudd MP**  
**LEADER OF THE OPPOSITION**

Importantly, if Labor is successful at the next election we will seek direct industry input as to the best means of progressing these new marketing arrangements.

Labor will also work with the wheat industry on how best to manage industry development functions such as strategic planning, research and development and quality assurance.

Thank you for your letter and I am advised by Senator O'Brien that he is available for further discussions with your group as required.

Yours sincerely

A handwritten signature in blue ink, appearing to read "David Epstein".

David Epstein  
**Chief of Staff,**  
**Office of the Leader of the Federal Opposition**

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**Submission to**

**Senate Rural and Regional Affairs and Transport Committee**

**Inquiry into the  
Wheat Export Marketing Bill 2008 and  
Wheat Export Marketing (Repeal and  
Consequential Amendments) Bill 2008**

**Presented by**

**Wheat Growers Association Inc  
Suite 1 Peer House  
2 Canning Highway  
SOUTH PERTH WA 6151**

**31 March 2008**

**Volume 2 of 2**

# EXPOSURE DRAFT

2008

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (05/03/2008)

**This document has been prepared on behalf of the Wheat Growers Association Inc and the Western Australian Farmers Federation and should be read in conjunction with their separate submissions to the Senate Rural and Regional Affairs and Transport Committee Inquiry into the Bill.**

**Issues have been raised throughout this Exposure Draft on behalf of over 70 per cent of wheat growers who support orderly marketing of Australian export wheat in bulk.**

## **Wheat Export Marketing Bill 2008**

**No.     , 2008**

*(Agriculture, Fisheries and Forestry)*

**A Bill for an Act relating to the export of wheat,  
and for other purposes**

# EXPOSURE DRAFT

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# EXPOSURE DRAFT

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# EXPOSURE DRAFT

1     **A Bill for an Act relating to the export of wheat,**  
2     **and for other purposes**

3     The Parliament of Australia enacts:

4     **Part 1—Introduction**  
5

6     **^1 Short title**

7                     This Act may be cited as the *Wheat Export Marketing Act 2008*.

8     **^2 Commencement**

9                     (1) Each provision of this Act specified in column 1 of the table  
10                     commences, or is taken to have commenced, in accordance with

**Part 1** Introduction

Section <sup>3</sup>

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1 column 2 of the table. Any other statement in column 2 has effect  
2 according to its terms.

3

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections <sup>1</sup> and <sup>2</sup> and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Sections <sup>3</sup> to <sup>73</sup>	1 July 2008.	1 July 2008

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4 Note: This table relates only to the provisions of this Act as originally  
5 passed by both Houses of the Parliament and assented to. It will not be  
6 expanded to deal with provisions inserted in this Act after assent.

7 (2) Column 3 of the table contains additional information that is not  
8 part of this Act. Information in this column may be added to or  
9 edited in any published version of this Act.



1 **^3 Simplified outline**

2 The following is a simplified outline of this Act:

- |   |   |
|---|---|
| 3 | • This Act sets up a system for regulating exports of wheat       |
| 4 | (other than wheat in bags or containers).                         |
| 5 | • Exporters of wheat must be accredited under the wheat export    |
| 6 | accreditation scheme.   |
| 7 | • An exporter will not be eligible for accreditation unless the   |
| 8 | exporter is a company that satisfies the eligibility criteria set |
| 9 | out in the scheme.  |

10	<b>Eligibility criteria does not reflect the government's</b>
11	<b>commitment to, or the needs of, wheat growers (see</b>
12	<b>comments at section 11 for details).</b>

- |    |  |
|----|--|
| 13 | • The eligibility criteria include being a fit and proper company. |
| 14 | • An accredited wheat exporter must comply with conditions of      |
| 15 | accreditation (including reporting conditions).                    |
| 16 | • Wheat Exports Australia (WEA) will administer the wheat          |
| 17 | export accreditation scheme.                                       |
| 18 | • WEA has power to:  |
| 19 | (a) obtain information from accredited wheat                       |
| 20 | exporters; and   |
| 21 | (b) direct the audit of an accredited wheat exporter.              |
| 22 | • The Minister may direct WEA to carry out an investigation.       |
| 23 | • WEA will report to growers on an annual basis.                   |

# EXPOSURE DRAFT

## 1     <sup>^</sup>4 Definitions

2             In this Act:

3             ***access test*** has the meaning given by section <sup>^</sup>20.

4             ***access undertaking*** has the same meaning as in Part IIIA of the  
5             *Trade Practices Act 1974*.

6             ***accredited wheat exporter*** means a company that is accredited as  
7             an accredited wheat exporter under the wheat export accreditation  
8             scheme.

9             ***accredited wheat exporter does not reflect the***  
10            ***government's commitment to, or needs of, wheat***  
11            ***growers (see comments at section 11 for details).***

12            ***ACN*** has the same meaning as in the *Corporations Act 2001*.

13            ***Australian law*** means a law of the Commonwealth or of a State or  
14            Territory.

15            ***business*** includes a venture or concern in trade or commerce,  
16            whether or not conducted on a regular, repetitive or continuous  
17            basis.

18            ***designated sanitary or phytosanitary measure*** means a measure  
19            applied by or under a law of a foreign country:

- 20            (a) to protect animal or plant life or health from risks arising  
21            from the entry, establishment or spread of pests, diseases,  
22            disease-carrying organisms or disease-causing organisms; or  
23            (b) to protect human or animal life or health from risks arising  
24            from additives, contaminants, toxins or disease-causing  
25            organisms in foods, beverages or feedstuffs; or  
26            (c) to protect human life or health from:  
27            (i) risks arising from diseases carried by animals or plants;  
28            or  
29            (ii) risks arising from diseases carried by products of  
30            animals or plants; or  
31            (iii) the entry, establishment or spread of pests; or  
32            (d) to prevent or limit other damage from the entry,  
33            establishment or spread of pests;

34            to the extent to which the measure relates to the importation into  
35            the foreign country of:

- 36            (e) barley; or  
37            (f) canola; or

- 1 (g) lupins; or  
2 (h) oats; or  
3 (i) wheat.

4 ***executive officer*** of a company means an individual, by whatever  
5 name called and whether or not a director of the company, who is  
6 concerned in, or takes part in, the management of the company.

7 ***external auditor*** means a person authorised under section ^28 to be  
8 an external auditor for the purposes of this Act.

9 ***externally-administered body corporate*** has the same meaning as  
10 in the *Corporations Act 2001*.

11 ***final compliance report*** has the meaning given by subsection  
12 ^18(5).

13 ***final export report*** has the meaning given by subsection ^18(3).

14 ***foreign country*** includes a region where:

- 15 (a) the region is a colony, territory or protectorate of a foreign  
16 country; or  
17 (b) the region is part of a foreign country; or  
18 (c) the region is under the protection of a foreign country; or  
19 (d) a foreign country exercises jurisdiction or control over the  
20 region; or  
21 (e) a foreign country is responsible for the region's international  
22 relations.

23 ***foreign law*** means a law of a foreign country.

24 ***involved in a contravention*** has the meaning given by section ^5.

Section ^4

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1                    *marketing year* means a 12-month period beginning on 1 October.

2                    **The 12 month period beginning on 1 October does not**  
3                    **represent the “marketing year” for wheat. Wheat can be**  
4                    **marketed as early as 6 months prior to harvest. The**  
5                    **definition incorrectly infers marketing is aligned with the**  
6                    **Australian harvest and the physical existence of the**  
7                    **wheat as harvested material (See detailed comments at**  
8                    **section 61).**

9                    *port terminal facility* means a ship loader that is:

- 10                    (a) at a port; and  
11                    (b) capable of handling wheat in bulk;

12                    **A number of ship loaders would be capable of loading**  
13                    **wheat but would not be suitable. As such consideration**  
14                    **should be given to rewording to “suitable for handling**  
15                    **wheat in bulk”. For example ship loaders for minerals or**  
16                    **woodchips may be capable of loading wheat but would**  
17                    **not necessarily be suitable for that task.**

18                    and includes any of the following facilities:

- 19                    (c) an intake/receival facility;  
20                    (d) a grain storage facility;  
21                    (e) a weighing facility;  
22                    (f) a shipping belt;  
23                    that is:  
24                    (g) at the port; and  
25                    (h) associated with the ship loader; and  
26                    (i) capable of dealing with wheat in bulk.

27                    **See above reference to “suitable” in preference to**  
28                    **“capable”.**

29                    *port terminal service* means a service (within the meaning of  
30                    Part IIIA of the *Trade Practices Act 1974*) provided by means of a  
31                    port terminal facility, and includes the use of a port terminal  
32                    facility.

33                    *pre-surrender period* has the meaning given by subsection ^18(6).

34                    *protected confidential information* has the meaning given by  
35                    section ^70.

36                    *provider*, in relation to a port terminal service, means the entity  
37                    that is the owner or operator of the port terminal facility that is  
38                    used (or is to be used) to provide the service.

1                   **related body corporate** has the same meaning as in the  
2                   *Corporations Act 2001*.

3                   **United Nations sanctions provision** means:

- 4                   (a) a provision of regulations made for the purposes of section 6  
5                   of the *Charter of the United Nations Act 1945*; or  
6                   (b) any of the following provisions of the *Charter of the United*  
7                   *Nations Act 1945*:  
8                   (i) subsection 20(1);  
9                   (ii) subsection 20(3C);  
10                  (iii) subsection 21(1);  
11                  (iv) subsection 21(2C);  
12                  (v) subsection 27(1);  
13                  (vi) subsection 27(2);  
14                  (vii) subsection 27(5);  
15                  (viii) subsection 27(6);  
16                  (ix) subsection 28(1);  
17                  (x) subsection 28(2);  
18                  (xi) subsection 32(1); or  
19                  (c) any of the following provisions of the *Customs Act 1901*:  
20                  (i) subsection 233BABAB(1);  
21                  (ii) subsection 233BABAB(6);  
22                  (iii) subsection 233BABAC(1);  
23                  (iv) subsection 233BABAC(6);  
24                  (v) subsection 233C(1);  
25                  (vi) subsection 233C(2).

26                  **WEA** means Wheat Exports Australia.

27                  **WEA Chair** means the Chair of WEA.

28                  **WEA member** means a member of WEA, and includes the WEA  
29                  Chair.

30                  **WEA staff** means the staff described in section ^57.

31                  **wheat export accreditation scheme** means the scheme under  
32                  subsection ^7(1).

33                  **wheat export charge amounts** means:

- 34                  (a) amounts of charge imposed by Part 5 of Schedule 14 to the  
35                  Primary Industries (Customs) Charges Regulations 2000; and  
36                  (b) amounts payable under section 15 of the *Primary Industries*  
37                  *Levies and Charges Collection Act 1991* in relation to that  
38                  charge.

1     **^5 Involved in a contravention**

2                     For the purposes of this Act, a person has been *involved in a*  
3                     *contravention* if, and only if, the person:

- 4                     (a) has aided, abetted, counselled or procured the contravention;  
5                     or  
6                     (b) has induced, whether by threats or promises or otherwise, the  
7                     contravention; or  
8                     (c) has been in any way, directly or indirectly, knowingly  
9                     concerned in, or party to, the contravention; or  
10                    (d) has conspired with others to effect the contravention.

1

2 **Part 2—Wheat export accreditation scheme**

3 **Division 1—Compliance with the wheat export**  
4 **accreditation scheme**

5 **^6 Compliance with the wheat export accreditation scheme**

- 6 (1) A person commits an offence if:  
7 (a) the person exports wheat; and  
8 (b) the person is not an accredited wheat exporter.

9 Penalty: 600 penalty units.

- 10 (2) The prohibition in subsection (1) does not apply to the export of  
11 wheat in:  
12 (a) a bag; or  
13 (b) a container;  
14 that is capable of holding not more than 50 tonnes of wheat.

15 Note: The defendant bears an evidential burden in relation to the matter in  
16 subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

- 17 (3) An offence against subsection (1) is an indictable offence.

18 Note: For transitional provisions, see Schedule 3 to the *Wheat Export*  
19 *Marketing (Repeal and Consequential Amendments) Act 2008*.

# EXPOSURE DRAFT

## 1 **Division 2—Formulation of the wheat export accreditation** 2 **scheme**

### 3 **^7 Wheat export accreditation scheme**

4 (1) WEA may, by legislative instrument, formulate a scheme (to be  
5 known as the *wheat export accreditation scheme*) about any or all  
6 of the following matters:

- 7 (a) the accreditation of companies as accredited wheat exporters;  
8 (b) a matter required or permitted by this Act to be included in  
9 the wheat export accreditation scheme;  
10 (c) ancillary or incidental matters.

11 Note: For variation and revocation, see subsection 33(3) of the *Acts*  
12 *Interpretation Act 1901*.

13 **As there must be a *wheat export accreditation scheme***  
14 **there is no discretionary “may, by legislative instrument,**  
15 **formulate a scheme”. The WEA must formulate a**  
16 **scheme. The WEA may include some things and exclude**  
17 **other things but there must be a scheme.**

18 (2) To avoid doubt, the wheat export accreditation scheme is taken to  
19 be a law of the Commonwealth.

### 20 **^8 Administrative decisions under the wheat export accreditation** 21 **scheme**

22 (1) The wheat export accreditation scheme may make provision in  
23 relation to a matter by conferring a power to make a decision of an  
24 administrative character on WEA.

25 (2) The wheat export accreditation scheme may empower WEA to  
26 make any or all of the following decisions:

- 27 (a) a decision to grant accreditation otherwise than by way of  
28 renewal;

29 **The Bill makes no reference to accreditation being**  
30 **subject to renewal or expiring at some future time.**  
31 **Reference to “otherwise than by way of renewal” is**  
32 **either**  
33 **a) gratuitous with no meaning or relevance; or**  
34 **b) intending that the legislation allow**  
35 **accreditation to be for a finite period as a condition**  
36 **as distinct from an administrative determination.**  
37 **If accreditation is to be renewed, the Bill needs**  
38 **editing based on a demonstrable benefit flowing to**  
39 **growers from such an imposition as renewal cost**  
40 **will be passed on to growers through the wheat**  
41 **price.**



1 (b) a decision to grant accreditation by way of renewal;

2 **See notes under (a) above.**

3 (c) a decision to suspend accreditation;

4 **The Bill is prescriptive on matters relating to**  
5 **granting, cancelling and surrendering accreditation**  
6 **but does not address “suspension” of**  
7 **accreditation. It is therefore a question of what**  
8 **decisions of an administrative character would be**  
9 **possible in the absence of readily identifiable**  
10 **authority within the body of the legislation.**

11 (d) a decision to cancel accreditation;

12 (e) a decision to consent to the surrender of accreditation;

13 (f) a decision to impose one or more conditions to which an  
14 accreditation is subject;

15 (g) a decision to revoke or vary a condition imposed as  
16 mentioned in paragraph (f).

17 **It should be possible to impose new conditions**  
18 **subsequent to an initial accreditation. However**  
19 **doubts exist in terms of WEA’s ability to do so**  
20 **under legislation as drafted. There could be**  
21 **occasions where adding new conditions would**  
22 **deliver a better outcome to having to cancel one**  
23 **accreditation and replace with another.**

24 (3) Subsection (2) does not limit subsection (1).

25 Note: For review of decisions, see Part 6.

26 **^9 Application fees**

27 (1) The wheat export accreditation scheme may provide that an  
28 application for accreditation must be accompanied by the fee  
29 specified in the scheme.

30 (2) A fee must not be such as to amount to taxation.

31 **^10 Accreditation is not transferable**

32 The wheat export accreditation scheme must provide that an  
33 accreditation is not transferable.

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## Division 3—Eligibility for accreditation

### ^11 Eligibility for accreditation

- (1) The wheat export accreditation scheme must provide that a company is not eligible for accreditation unless:
- (a) the company is registered as a company under Part 2A.2 of the *Corporations Act 2001*; and
  - (b) the company is a trading corporation to which paragraph 51(xx) of the Constitution applies; and
  - (c) WEA is satisfied that the company is a fit and proper company, having regard to the following:
    - (i) the financial resources available to the company;
    - (ii) the company’s risk management arrangements;
    - (iii) the company’s business record;
    - (iv) the company’s record in situations requiring trust and candour;
    - (v) the business record of each executive officer of the company;
    - (vi) the experience and ability of each executive officer of the company;
    - (vii) the record in situations requiring trust and candour of each executive officer of the company;

**Restricting accredited wheat exporters to companies registered under Part 2A.2 of the *Corporations Act 2001* does not reflect the government’s commitment to, or the needs of, wheat growers. The government has advised its accreditation scheme will not carry with it any obligations comparable to the current requirement that there be a buyer of last resort. Nor will there be any obligation on the proposed Wheat Exports Australia to concern itself with the quantum of farm-gate returns when granting accreditation. However the Bill denies wheat growers the opportunity**

- a) to export their wheat through a co-operative;**
- b) to export their own wheat as a sole trader or in partnership with other sole traders;**
- c) to export their wheat through non-corporate trusts.**

**Significant editing of the Bill is required to have the eligibility criteria embrace the government’s October 2007 policy statement that “Growers will be able to directly participate in bulk exports through Grower Co-operatives and/or Alliances.”**

1 (viii) whether the company, or an executive officer of the  
2 company, has been convicted of an offence against an  
3 Australian law or a foreign law, where the offence  
4 relates to dishonest conduct;

5 (ix) whether the company, or an executive officer of the  
6 company, has been convicted of an offence against an  
7 Australian law or a foreign law, where the offence  
8 relates to the conduct of a business;

9 **Why only convictions? Should be required to**  
10 **take notice of ASIC and APRA Enforceable**  
11 **Undertakings.**

12 (x) whether an order for a pecuniary penalty has been made  
13 against the company, or an executive officer of the  
14 company, under section 1317G of the *Corporations Act*  
15 *2001* or section 76 of the *Trade Practices Act 1974*;

16 (xi) if the company is or has been accredited under the  
17 wheat export accreditation scheme—whether the  
18 company has contravened a condition of the company’s  
19 accreditation;

20 (xii) whether an executive officer of the company has been  
21 involved in a contravention of a condition of an  
22 accreditation under the wheat export accreditation  
23 scheme;

24 (xiii) whether the company, or an executive officer of the  
25 company, has been convicted of an offence against  
26 section 136.1, 137.1 or 137.2 of the *Criminal Code*;

27 (xiv) whether the company, or an executive officer of the  
28 company, has committed or been involved in repeated  
29 contraventions, or a serious contravention, of a  
30 designated sanitary or phytosanitary measure;

31 (xv) whether the company, or an executive officer of the  
32 company, has committed or been involved in a  
33 contravention of a United Nations sanctions provision;

34 (xvi) whether the company, or an executive officer of the  
35 company, has committed or been involved in a  
36 contravention of an Australian law or a foreign law,  
37 where the contravention relates to trade in barley,  
38 canola, lupins, oats or wheat;

39 (xvii) such other matters (if any) as WEA considers relevant;  
40 and

Section 11

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**The subsection 11(1)(c) “having regard to” list should include “the contract terms and conditions on which the accredited wheat exporter purchases wheat for export”. WEA should not accredit an exporter who imposes oppressive or unfair terms and conditions. For example, it should not be possible for an accredited exporter to include in their contract with a grower, an extension of the following prohibition clause 17 in GAFTA Grain and Feed Trade Association (GAFTA) General Contract for Feedingstuffs in Bags or Bulk FOB Terms (NO:119).**

**“PROHIBITION – In case of prohibition of export, blockade or hostilities or in case of any execution or legislative act done by or on behalf of the government of the country of origin or of the territory where the port or ports of shipment named herein is/are situate, restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this contract and to the extent of such total or partial restriction to prevent fulfillment whether by shipment or by any other means whatsoever and to that extent this contract or any unfulfilled portion therefore shall be cancelled. Sellers shall advise Buyers without delay with the reasons therefore and, if required, Sellers must produce proof to justify the cancellation. A buyer should not be able to void a contract to buy as a consequence of losing export accreditation.**

- (d) WEA is satisfied that the company is not an externally-administered body corporate; and
- (e) if the company, or a related body corporate, is the provider of a port terminal service—WEA is satisfied that the company or the related body corporate, as the case may be, passes the access test in relation to that service; and
- (f) if the wheat export accreditation scheme specifies one or more other eligibility requirements—WEA is satisfied that those requirements are met.

*Fit and proper company—5-year limit*

- (2) Subparagraphs (1)(c)(i) to (xvii) do not apply to an act, omission, matter or thing that occurred:
  - (a) if the company is not, and has never been, accredited under the wheat export accreditation scheme—before the start of the preceding 5 years; or

1 (b) if the company is or has been accredited under the  
2 wheat export accreditation scheme—before the start of the  
3 5-year period that ended when the company first became  
4 accredited under the wheat export accreditation scheme.

5 *Ancillary provisions*

- 6 (3) For the purposes of the application of subparagraph (1)(c)(viii),  
7 (ix) or (xiii) to a person who is an executive officer of a company,  
8 it is immaterial whether a conviction occurred before or after the  
9 person became an executive officer of the company.
- 10 (4) For the purposes of the application of subparagraph (1)(c)(x) to a  
11 person who is an executive officer of a company, it is immaterial  
12 whether an order for a pecuniary penalty was made before or after  
13 the person became an executive officer of the company.
- 14 (5) For the purposes of the application of subparagraph (1)(c)(xii),  
15 (xiv), (xv) or (xvi) to a person who is an executive officer of a  
16 company, it is immaterial whether a contravention occurred before  
17 or after the person became an executive officer of the company.
- 18 (6) For the purposes of paragraph (1)(c), it is immaterial whether an  
19 act, omission, matter or thing occurred before or after the  
20 commencement of this section. This rule has effect subject to  
21 subsection (2).
- 22 (7) This section extends to acts, omissions, matters and things outside  
23 Australia.
- 24 (8) This section does not affect the operation of Part VIIC of the  
25 *Crimes Act 1914* (which includes provisions that, in certain  
26 circumstances, relieve persons from the requirement to disclose  
27 spent convictions and require persons aware of such convictions to  
28 disregard them).

Section ^12

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## Division 4—Conditions of accreditation

### **^12 Conditions of accreditation**

The wheat export accreditation scheme must provide that an accreditation is subject to the following conditions:

- (a) a condition that an accredited wheat exporter must comply with a requirement under subsection ^21(2) or ^27(1);
- (b) such conditions as are specified in the scheme;
- (c) such conditions (if any) as are imposed under the scheme by WEA.

### **^13 Condition—annual export report**

- (1) The wheat export accreditation scheme must provide that it is a condition of accreditation that an accredited wheat exporter must, within:
  - (a) 30 days after the end of each marketing year; or
  - (b) if WEA allows a longer period—that longer period; give WEA a written report setting out:
  - (c) the quantity of wheat exported by the accredited wheat exporter during that year, broken down by grade and country of destination; and

**The report should specify quantities by the following additional subsets of information:**

- a) wheat variety;**
- b) season of production;**
- c) acquisitions by region;**
- d) shipping port, and**
- e) number of shipments.**

- (d) the terms and conditions on which the accredited wheat exporter, or a related body corporate, acquired wheat from growers during that year for export by the accredited wheat exporter.

**Report should also disclose -**

- a) terms and conditions on which wheat was acquired from non grower sources for export; and**
- b) quantity of wheat bought for export from
  - i) growers; and**
  - ii) non-growers.****

- 1 (2) Paragraphs (1)(c) and (d) do not apply to the export of wheat in:  
2 (a) a bag; or  
3 (b) a container;  
4 that is capable of holding not more than 50 tonnes of wheat.

5 **<sup>^</sup>14 Condition—annual compliance report**

6 The wheat export accreditation scheme must provide that it is a  
7 condition of accreditation that an accredited wheat exporter must,  
8 within:

- 9 (a) 30 days after the end of each marketing year; or  
10 (b) if WEA allows a longer period—that longer period;  
11 give WEA a report relating to the accredited wheat exporter’s  
12 compliance, during that year, with:  
13 (c) the conditions of the accredited wheat exporter’s  
14 accreditation under the wheat export accreditation scheme;  
15 and  
16 (d) Australian laws, and foreign laws, that are applicable to the  
17 accredited wheat exporter’s export trade in wheat; and

18 **Why is this only in relation to wheat? Comparable**  
19 **subsection 11(1)(c)(ix) relates to “the conduct of a**  
20 **business” and ss11(1)(c)(xvi) relates to “trade in**  
21 **barley, canola, lupins, oats or wheat”.**

- 22 (e) the United Nations sanctions provisions.

23 **<sup>^</sup>15 Condition—report about notifiable matters**

24 The wheat export accreditation scheme must provide that it is a  
25 condition of accreditation that, if:

- 26 (a) an event occurs or a circumstance comes into existence; and  
27 (b) the event or the circumstance is:  
28 (i) a ground on which WEA could cancel an accredited  
29 wheat exporter’s accreditation under the wheat export  
30 accreditation scheme; or  
31 (ii) likely to result in a conclusion that the company is not a  
32 fit and proper company within the meaning of the wheat  
33 export accreditation scheme;

34 the accredited wheat exporter must, within 14 days after the  
35 occurrence of the event or the coming into existence of the  
36 circumstance, give WEA a report about the matter.

37 **<sup>^</sup>16 Compliance with conditions of accreditation**

- 38 (1) A person commits an offence if:  
39 (a) the person is an accredited wheat exporter; and  
40 (b) the person contravenes a condition of the person’s  
41 accreditation under the wheat export accreditation scheme.

42 Penalty: 600 penalty units.

- 43 (2) An offence against subsection (1) is an indictable offence.

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## Division 5—Cancellation of accreditation

### ^17 Cancellation of accreditation

#### *Mandatory cancellation*

- (1) The wheat export accreditation scheme must provide that WEA must cancel the accreditation of a company if:

**Mandatory cancellation may not be in the interests of sellers of export wheat to the accredited entity. In the case of paragraph (c) matters, there should be scope to vary the conditions of a particular accreditation. See subsection 11(1)(c) and 17(1)(c) comments regarding GAFTA Prohibition terms.**

- (a) the company is not registered as a company under Part 2A.2 of the *Corporations Act 2001*; or

**Refer to notes at subsection 11(1)(a).**

- (b) the company is not a trading corporation to which paragraph 51(xx) of the Constitution applies; or

- (c) WEA is satisfied that the company is not a fit and proper company, having regard to the following:

- (i) the financial resources available to the company;
- (ii) the company's risk management arrangements;
- (iii) the company's business record;
- (iv) the company's record in situations requiring trust and candour;
- (v) the business record of each executive officer of the company;
- (vi) the experience and ability of each executive officer of the company;
- (vii) the record in situations requiring trust and candour of each executive officer of the company;
- (viii) whether the company, or an executive officer of the company, has been convicted of an offence against an Australian law or a foreign law, where the offence relates to dishonest conduct;
- (ix) whether the company, or an executive officer of the company, has been convicted of an offence against an Australian law or a foreign law, where the offence relates to the conduct of a business;

**Why only convictions? Should be required to take notice of ASIC and APRA Enforceable Undertakings.**

- (x) whether an order for a pecuniary penalty has been made against the company, or an executive officer of the



Section ^17

- 1 company, under section 1317G of the *Corporations Act*  
2 *2001* or section 76 of the *Trade Practices Act 1974*;
- 3 (xi) whether the company has contravened a condition of the  
4 company's accreditation under the wheat export  
5 accreditation scheme;
- 6 (xii) whether an executive officer of the company has been  
7 involved in a contravention of a condition of an  
8 accreditation under the wheat export accreditation  
9 scheme;
- 10 (xiii) whether the company, or an executive officer of the  
11 company, has been convicted of an offence against  
12 section 136.1, 137.1 or 137.2 of the *Criminal Code*;
- 13 (xiv) whether the company, or an executive officer of the  
14 company, has committed or been involved in repeated  
15 contraventions, or a serious contravention, of a  
16 designated sanitary or phytosanitary measure;
- 17 (xv) whether the company, or an executive officer of the  
18 company, has committed or been involved in a  
19 contravention of a United Nations sanctions provision;
- 20 (xvi) whether the company, or an executive officer of the  
21 company, has committed or been involved in a  
22 contravention of an Australian law or a foreign law,  
23 where the contravention relates to trade in barley,  
24 canola, lupins, oats or wheat;
- 25 (xvii) such other matters (if any) as WEA considers relevant;  
26 or
- 27 (d) if the company, or a related body corporate, is the provider of  
28 a port terminal service—WEA is satisfied that the company  
29 or the related body corporate, as the case may be, does not  
30 pass the access test in relation to that service; or
- 31 (e) if the wheat export accreditation scheme specifies one or  
32 more other grounds for mandatory cancellation—WEA is  
33 satisfied that at least one of those grounds is applicable to the  
34 company.

**See subsection 11(1)(c) comments on the “having regard to” list including “the contract terms and conditions on which the accredited wheat exporter purchases wheat for export”. Editing ss11(1)(c) should lead to consequential editing to ss17(1)(c).**

Section 17

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*Discretionary cancellation*

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- 2 (2) The wheat export accreditation scheme must provide that WEA  
3 may cancel the accreditation of a company if:  
4 (a) the company is an externally-administered body corporate; or  
5 (b) if the wheat export accreditation scheme specifies one or  
6 more other grounds for discretionary cancellation—WEA is  
7 satisfied that at least one of those grounds is applicable to the  
8 company.

9 *Fit and proper company—5-year limit*

- 10 (3) Subparagraphs (1)(c)(i) to (xvii) do not apply to an act, omission,  
11 matter or thing that occurred before the start of the 5-year period  
12 that ended when the company first became accredited under the  
13 wheat export accreditation scheme.

14 *Ancillary provisions*

- 15 (4) For the purposes of the application of subparagraph (1)(c)(viii),  
16 (ix) or (xiii) to a person who is an executive officer of a company,  
17 it is immaterial whether a conviction occurred before or after the  
18 person became an executive officer of the company.
- 19 (5) For the purposes of the application of subparagraph (1)(c)(x) to a  
20 person who is an executive officer of a company, it is immaterial  
21 whether an order for a pecuniary penalty was made before or after  
22 the person became an executive officer of the company.
- 23 (6) For the purposes of the application of subparagraph (1)(c)(xii),  
24 (xiv), (xv) or (xvi) to a person who is an executive officer of a  
25 company, it is immaterial whether a contravention occurred before  
26 or after the person became an executive officer of the company.
- 27 (7) For the purposes of paragraph (1)(c), it is immaterial whether an  
28 act, omission, matter or thing occurred before or after the  
29 commencement of this section. This rule has effect subject to  
30 subsection (3).
- 31 (8) This section extends to acts, omissions, matters and things outside  
32 Australia.
- 33 (9) This section does not affect the operation of Part VIIC of the  
34 *Crimes Act 1914* (which includes provisions that, in certain  
35 circumstances, relieve persons from the requirement to disclose  
36 spent convictions and require persons aware of such convictions to  
37 disregard them).

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2 **Division 6—Surrender of accreditation**

3 **<sup>18</sup> Surrender of accreditation**

- 4 (1) The wheat export accreditation scheme must provide that an  
5 accredited wheat exporter may apply to WEA for consent to  
6 surrender its accreditation.
- 7 (2) The wheat export accreditation scheme must provide that WEA  
8 may refuse to consent to the surrender sought by the applicant  
9 unless:
- 10 (a) the applicant has complied with the conditions referred to in  
11 subsections <sup>13</sup>(1) and (2) and <sup>14</sup>(1) and (2); and  
12 **There is no subsection 14(1) or 14(2).**
- 13 (b) the applicant has given WEA a final export report (see  
14 subsection (3)); and
- 15 (c) the applicant has given WEA a final compliance report (see  
16 subsection (5)).

17 *Final export report*

- 18 (3) For the purposes of this Act, a *final export report* is a report setting  
19 out:
- 20 (a) the quantity of wheat exported by the applicant during the  
21 pre-surrender period, broken down by grade and country of  
22 destination; and  
23 **See comments under subsection 13(1)(c).**
- 24 (b) the terms and conditions on which the accredited wheat  
25 exporter, or a related body corporate, acquired wheat from  
26 growers during the pre-surrender period for export by the  
27 accredited wheat exporter.  
28 **See comments under subsection 13(1)(d).**
- 29 (4) Paragraphs (3)(a) and (b) do not apply to the export of wheat in:  
30 (a) a bag; or  
31 (b) a container;  
32 that is capable of holding not more than 50 tonnes of wheat.

33 *Final compliance report*

- 34 (5) For the purposes of this Act, a *final compliance report* is a report  
35 relating to the applicant's compliance, during the pre-surrender  
36 period, with:
- 37 (a) the conditions of the accredited wheat exporter's  
38 accreditation under the wheat export accreditation scheme;  
39 and

**Part 2** Wheat export accreditation scheme

**Division 6** Surrender of accreditation

Section <sup>18</sup>

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- 1 (b) Australian laws, and foreign laws, that are applicable to the  
2 applicant's export trade in wheat; and

3 **See comments under subsection 14(d)**

- 4 (c) the United Nations sanctions provisions.

5 *Pre-surrender period*

- 6 (6) For the purposes of this Act, the *pre-surrender period* is the  
7 period:  
8 (a) beginning at the start of the marketing year in which the  
9 application was made; and  
10 (b) ending when the application was made.

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## **Division 7—Register of accredited wheat exporters**

### **^19 Register of accredited wheat exporters**

- (1) WEA is to maintain a Register in which WEA sets out the name and ACN of each accredited wheat exporter.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

**Section 19 will require editing to reflect changes to section 11.**

**Register should set out the conditions of the respective accreditations.**

**Register should contain the name in which every application for accreditation is made.**

**Register to be made available for inspection free of charge.**

Section ^20

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**Division 8—Access test**

**^20 Access test**

*Before 1 October 2009*

- (1) For the purposes of this Act, a body corporate passes the **access test** in relation to a port terminal service at a particular time if that time is before 1 October 2009, and:
- (a) at that time, there is available on the body's Internet site a current statement to the effect that the body is willing to:
    - (i) provide accredited wheat exporters with access to the service for purposes relating to the export of wheat; and
    - (ii) do so on such terms and conditions as are set out in the statement; or
  - (b) at that time:
    - (i) there is in force a decision under Division 2A of Part IIIA of the *Trade Practices Act 1974* that a regime established by a State or Territory for access to the port terminal service is an effective access regime; and
    - (ii) under that regime, accredited wheat exporters have access to the port terminal service for purposes relating to the export of wheat.

*On or after 1 October 2009*

- (2) For the purposes of this Act, a body corporate passes the **access test** in relation to a port terminal service at a particular time if that time is on or after 1 October 2009, and:
- (a) at that time, there is in operation, under Division 6 of Part IIIA of the *Trade Practices Act 1974*, an access undertaking relating to the provision to accredited wheat exporters of access to the port terminal service for purposes relating to the export of wheat; or
  - (b) at that time:
    - (i) there is in force a decision under Division 2A of Part IIIA of the *Trade Practices Act 1974* that a regime established by a State or Territory for access to the port terminal service is an effective access regime; and
    - (ii) under that regime, accredited wheat exporters have access to the port terminal service for purposes relating to the export of wheat.

- 1 (3) For the purposes of paragraph (2)(a):  
2 (a) assume that subsection 44ZZBA(1) of the *Trade Practices*  
3 *Act 1974* had never been enacted; and  
4 (b) assume that an access undertaking comes into operation at  
5 the time when the Australian Competition and Consumer  
6 Commission publishes its decision to accept the undertaking.

7 *Exceptions*

- 8 (4) Subsections (1) and (2) do not apply to the export of wheat in:  
9 (a) a bag; or  
10 (b) a container;  
11 that is capable of holding not more than 50 tonnes of wheat.

**Part 3** Information-gathering and audit powers

**Division 1** WEA may obtain information and documents from accredited wheat exporters

Section ^21

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**Part 3—Information-gathering and audit powers**

**Division 1—WEA may obtain information and documents from accredited wheat exporters**

**^21 WEA may obtain information and documents from accredited wheat exporters**

*Scope*

- (1) This section applies if WEA has reason to believe that an accredited wheat exporter has information or a document that is relevant to the functions or powers of WEA.

**The scope should extend to current and past accredited wheat exporters when the “information or a document” relates to a period during which accreditation was in existence. On that basis consequential amendments to section 16 would be required.**

*Requirement*

- (2) WEA may, by written notice given to the accredited wheat exporter, require the accredited wheat exporter:
- (a) to give to WEA, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to WEA, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to WEA, within the period and in the manner specified in the notice, those copies.
- Note: See also paragraph ^12(a) (condition of accreditation).
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.
- (4) This section does not limit section ^25 or ^26.

**^22 Copying documents—compensation**

A person is entitled to be paid by WEA reasonable compensation for complying with a requirement covered by paragraph ^21(2)(c).



1 **^23 Copies of documents**

- 2 (1) WEA may:
- 3 (a) inspect a document or copy produced under subsection
- 4 ^21(2); and
- 5 (b) make and retain copies of, or take and retain extracts from,
- 6 such a document.
- 7 (2) WEA may retain possession of a copy of a document produced in
- 8 accordance with a requirement covered by paragraph ^21(2)(c).

9 **^24 WEA may retain documents**

- 10 (1) WEA may take, and retain for as long as is necessary, possession
- 11 of a document produced under subsection ^21(2).
- 12 (2) The person otherwise entitled to possession of the document is
- 13 entitled to be supplied, as soon as practicable, with a copy certified
- 14 by WEA to be a true copy.
- 15 (3) The certified copy must be received in all courts and tribunals as
- 16 evidence as if it were the original.
- 17 (4) Until a certified copy is supplied, WEA must, at such times and
- 18 places as WEA thinks appropriate, permit the person otherwise
- 19 entitled to possession of the document, or a person authorised by
- 20 that person, to inspect and make copies of, or take extracts from,
- 21 the document.

Section ^25

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**Division 2—WEA's other information-gathering powers**

**The Division refers to “other information – gathering powers” however there is no power within this Division to enforce disclosure of information, raising a question as to the value of the Division.**

**^25 Power to request information and documents**

*Scope*

- (1) This section applies to a person if WEA believes on reasonable grounds that the person has information or a document that is relevant to the functions or powers of WEA.

*Request*

- (2) WEA may, by written notice given to the person, request the person:
  - (a) to give to WEA, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to WEA, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to WEA, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

**^26 Power to request a report**

*Scope*

- (1) This section applies to a person if WEA believes on reasonable grounds that:
  - (a) the person has information or a document that is relevant to the functions or powers of WEA; and
  - (b) the person is capable of using the information or document to prepare a report about a particular matter that is relevant to the functions or powers of WEA.

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*Request*

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(2) WEA may, by written notice given to the person, request the person:

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(a) to prepare such a report; and

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(b) to give the report to WEA within the period specified in the notice.

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(3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

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Section ^27

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**Division 3—External audits of accredited wheat exporters**

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**^27 WEA may direct external audit**

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(1) WEA may, by written notice given to an accredited wheat exporter, require the accredited wheat exporter to:

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(a) appoint:

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(i) an external auditor identified in the notice; or

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(ii) if no external auditor is identified in the notice—an external auditor chosen by the accredited wheat exporter; and

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(b) arrange for the external auditor to carry out an external audit of whichever of the following is specified in the notice:

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(i) the accredited wheat exporter’s compliance with one or more conditions of accreditation under the wheat export accreditation scheme;

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(ii) the accuracy of information given to WEA by the accredited wheat exporter (whether orally, in a document or in any other way);

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(iii) the accuracy of one or more statements made in the application that resulted in the accreditation of the accredited wheat exporter; and

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(c) arrange for the external auditor to give the accredited wheat exporter a written report (the *audit report*) setting out the results of the audit; and

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(d) give WEA a copy of the audit report within:

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(i) the period specified in the notice; or

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(ii) if WEA allows a longer period—that longer period.

28

Note: See also paragraph ^12(a) (condition of accreditation).

29

(2) The notice must specify:

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(a) the matters to be covered by the audit; and

31

(b) the form of the audit report and the kinds of details it is to contain.

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(3) If subparagraph (1)(b)(i) applies, the matters that may be specified under paragraph (2)(a) may include either or both of the following:

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(a) an assessment of the accredited wheat exporter’s existing capacity to comply with one or more conditions of accreditation under the wheat accreditation scheme;

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(b) an assessment of what the accredited wheat exporter will need to do, or continue to do, to comply with one or more conditions of accreditation under the wheat accreditation scheme.

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(4) Subsection (3) does not limit paragraph (2)(a).

1                    *Eligibility for appointment as an external auditor*

- 2                    (5) An individual is not eligible to be appointed an external auditor by  
3                    an accredited wheat exporter if the individual is a director,  
4                    employee or agent of:  
5                    (a) the accredited wheat exporter; or  
6                    (b) a related body corporate.

7                    **^28 External auditors**

- 8                    (1) WEA may, by writing, authorise a specified individual to be an  
9                    external auditor for the purposes of this Act.

10                    Note 1:    For specification by class, see subsection 46(3) of the *Acts*  
11                    *Interpretation Act 1901*.

12                    Note 2:    For variation and revocation, see subsection 33(3) of the *Acts*  
13                    *Interpretation Act 1901*.

- 14                    (2) An authorisation under subsection (1) is not a legislative  
15                    instrument.

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## Part 4—Investigations

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### ^29 Minister may direct investigations

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(1) If, in the Minister's opinion, it is in the public interest for a particular matter to which subsection (2) applies to be investigated, the Minister may, by written notice given to WEA, direct WEA to investigate that matter.

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(2) This subsection applies to a matter relating to any of the following:

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- (a) a function or power conferred on WEA;
- (b) an alleged or suspected contravention of:
  - (i) a condition of accreditation under the wheat export accreditation scheme; or
  - (ii) this Act.

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(3) WEA must comply with a direction under subsection (1).

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### ^30 Report on investigation

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(1) At the end of an investigation under section ^29, WEA must prepare a report about the investigation.

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(2) A report under section ^29 must set out:

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- (a) WEA's findings about the matter investigated; and
- (b) the evidence and other material on which those findings are based; and
- (c) such other matters relating to, or arising out of, the investigation as:
  - (i) WEA thinks fit; or
  - (ii) the Minister directs.

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#### *Distribution of report*

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(3) As soon as practicable after preparing a report under section ^29, WEA must give a copy of the report to the Minister.

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(4) If a report, or a part of a report, under section ^29 relates to an alleged or suspected contravention of an Australian law, WEA may give a copy of the whole or a part of the report to:

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- (a) the Australian Federal Police; or
  - (b) the police force of a State or Territory; or
  - (c) the Australian Securities and Investments Commission; or
  - (d) the Australian Prudential Regulation Authority; or
  - (e) the Commissioner of Taxation; or
  - (f) the Australian Competition and Consumer Commission; or
  - (g) a prescribed agency.
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1 (5) If a report, or a part of a report, under section ^29 relates to a  
2 person's affairs to a material extent, WEA may:

3 (a) at the person's request; or

4 **A person would not necessarily know if a report**  
5 **"relates to a person's affairs to a material extent" in**  
6 **order to make a request under subsection 30(5)(a)?**  
7 **WEA should be required to give [i.e. "must" rather**  
8 **than "may"]the person a copy of the report or at**  
9 **least that part of the report that falls within the**  
10 **material extent reference.**

11 (b) on its own initiative;

12 give the person a copy of the report or a part of the report.

13 *Publication of report*

14 (6) The Minister may cause the whole or a part of a report under  
15 section ^29 to be published (whether on the Internet or otherwise),  
16 so long as the publication does not involve the disclosure of  
17 information that could reasonably be expected to cause financial  
18 loss or detriment to a person.

19 **The wording of this clause is likely to be self-defeating.**  
20 **The "...so long as the publication does not involve the**  
21 **disclosure of information that could reasonably be**  
22 **expected to cause financial loss or detriment to a**  
23 **person" prohibition on publication of report findings**  
24 **would stop important information being made available**  
25 **to wheat growers. This section promotes the interests of**  
26 **an accredited exporter over those of a wheat grower.**  
27 **The Minister should be free to publish any part of the**  
28 **report.**

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Section ^31

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## **Part 5—Wheat Exports Australia**

### **Division 1—WEA's establishment, functions, powers and liabilities**

#### **^31 Wheat Exports Australia**

The body corporate known immediately before the commencement of this section as the Export Wheat Commission is continued in existence with the new name Wheat Exports Australia.

Note 1: In this Act, *WEA* means Wheat Exports Australia—see section ^4.

Note 2: See also section 25B of the *Acts Interpretation Act 1901*.

#### **^32 WEA's functions**

WEA has the following functions:

- (a) such functions as are conferred on WEA by this Act;
- (b) such functions as are conferred on WEA by the wheat export accreditation scheme;
- (c) to do anything incidental to or conducive to the performance of any of the above functions.

#### **^33 WEA's powers**

- (1) WEA has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) WEA's powers include, but are not limited to, the power to enter into contracts.
- (3) Any contract entered into by WEA is to be entered into on behalf of the Commonwealth.
- (4) Any real or personal property held by WEA is held for and on behalf of the Commonwealth.
- (5) Any money received by WEA is received for and on behalf of the Commonwealth.
- (6) WEA cannot hold real or personal property, or money, on trust for a person other than the Commonwealth.

Note: The Commonwealth may hold real or personal property or money on trust.
- (7) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).



- 1     **^34 WEA's financial liabilities are Commonwealth liabilities**
- 2             (1) Any financial liabilities of WEA are taken to be liabilities of the
- 3                 Commonwealth.
- 4             (2) In this section:
- 5                 *financial liability* means a liability to pay a person an amount,
- 6                 where the amount, or the method for working out the amount, has
- 7                 been determined.

Section <sup>35</sup>

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**Division 2—WEA's constitution and membership**

**<sup>35</sup> WEA's constitution**

- (1) WEA:
  - (a) is a body corporate with perpetual succession; and
  - (b) must have a seal; and
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued in its corporate name.
- (2) The seal of WEA is to be kept in such custody as WEA directs and must not be used except as authorised by WEA.
- (3) All courts, judges and persons acting judicially must:
  - (a) take judicial notice of the imprint of the seal of WEA appearing on a document; and
  - (b) presume that the document was duly sealed.

**<sup>36</sup> WEA's membership**

- WEA consists of the following members:
- (a) a Chair;
  - (b) at least 3, and not more than 5, other members.

**<sup>37</sup> Appointment of WEA members**

- (1) Each WEA member is to be appointed by the Minister by written instrument.

Note: The WEA member is eligible for reappointment: see subsection 33(4A) of the *Acts Interpretation Act 1901*.
- (2) A person is not eligible for appointment as a WEA member unless the Minister is satisfied that the person has:
  - (a) substantial experience or knowledge; and
  - (b) significant standing;in at least one of the following fields:
  - (c) international trade;
  - (d) international marketing;
  - (e) commodity trading;
  - (f) foreign exchange trading;
  - (g) finance;
  - (h) economics;
  - (i) regulation;
  - (j) public policy;
  - (k) business;
  - (l) law;

- 1 (m) grain production;  
2 (n) grain handling.

3 (3) A WEA member holds office on a part-time basis.

4 **^38 Period of appointment for WEA members**

5 A WEA member holds office for the period specified in the  
6 instrument of appointment. The period must not exceed 5 years.

7 Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation*  
8 *Act 1901*.

9 **^39 Acting WEA Chair**

- 10 (1) The Minister may appoint a person to act as the WEA Chair:  
11 (a) during a vacancy in the office of the WEA Chair (whether or  
12 not an appointment has previously been made to the office);  
13 or  
14 (b) during any period, or during all periods, when the WEA  
15 Chair:  
16 (i) is absent from duty or Australia; or  
17 (ii) is, for any reason, unable to perform the duties of the  
18 office.

19 (2) A person is not eligible for appointment to act as the WEA Chair  
20 unless the person is eligible for appointment as a WEA member.

21 Note: See subsection ^37(2).

22 *Validation*

- 23 (3) Anything done by or in relation to a person purporting to act under  
24 an appointment is not invalid merely because:  
25 (a) the occasion for the appointment had not arisen; or  
26 (b) there was a defect or irregularity in connection with the  
27 appointment; or  
28 (c) the appointment had ceased to have effect; or  
29 (d) the occasion to act had not arisen or had ceased.

30 Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

Section ^40

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**Division 3—Terms and conditions for WEA members**

**^40 Remuneration**

- (1) A WEA member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a WEA member is to be paid the remuneration that is prescribed by the regulations.
- (2) A WEA member is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**^41 Disclosure of interests to the Minister**

A WEA member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

**^42 Disclosure of interests to WEA**

- (1) A WEA member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by WEA must disclose the nature of the interest to a meeting of WEA.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the WEA member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of WEA.
- (4) Unless WEA otherwise determines, the WEA member:
  - (a) must not be present during any deliberation by WEA on the matter; and
  - (b) must not take part in any decision of WEA with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the WEA member:
  - (a) must not be present during any deliberation of WEA for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of WEA.

1 **^43 Leave of absence**

2 (1) The Minister may grant the WEA Chair leave of absence on the  
3 terms and conditions as to remuneration or otherwise that the  
4 Minister determines.

5 (2) The WEA Chair may grant leave of absence to any other WEA  
6 member on the terms and conditions that the WEA Chair  
7 determines.

8 **^44 Resignation**

9 (1) A WEA member may resign his or her appointment by giving the  
10 Minister a written resignation.

11 (2) The resignation takes effect on the day it is received by the  
12 Minister or, if a later day is specified in the resignation, on that  
13 later day.

14 **^45 Termination of appointment**

15 (1) The Minister may terminate the appointment of a WEA member  
16 for misbehaviour or physical or mental incapacity.

17 (2) The Minister may terminate the appointment of a WEA member if:

18 (a) the member:

19 (i) becomes bankrupt; or

20 (ii) applies to take the benefit of any law for the relief of  
21 bankrupt or insolvent debtors; or

22 (iii) compounds with his or her creditors; or

23 (iv) makes an assignment of his or her remuneration for the  
24 benefit of his or her creditors; or

25 (b) the member fails, without reasonable excuse, to comply with  
26 section ^41 or ^42; or

27 (c) the member is absent, except on leave of absence, from 3  
28 consecutive meetings of WEA.

29 **^46 Other terms and conditions**

30 A WEA member holds office on the terms and conditions (if any)  
31 in relation to matters not covered by this Act that are determined  
32 by the Minister.

Section <sup>47</sup>

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**Division 4—Decision-making by WEA**

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**<sup>47</sup> Holding of meetings**

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(1) WEA is to hold such meetings as are necessary for the performance of its functions.

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(2) The WEA Chair may convene a meeting at any time.

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**<sup>48</sup> Presiding at meetings**

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(1) The WEA Chair presides at all meetings at which he or she is present.

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(2) If the WEA Chair is not present at a meeting, the WEA members present must appoint one of themselves to preside.

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**<sup>49</sup> Quorum**

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At a meeting of WEA, 3 WEA members constitute a quorum.

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**<sup>50</sup> Voting at meetings etc.**

15

(1) At a meeting of WEA, a question is decided by a majority of the votes of WEA members present and voting.

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(2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

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**<sup>51</sup> Conduct of meetings**

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WEA may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

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Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

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**<sup>52</sup> Minutes**

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WEA must keep minutes of its meetings.

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## **Division 5—Delegation**

### **^53 Delegation by WEA**

(1) WEA may, by writing, delegate any or all of its functions and powers to a person who is:

- (a) a member of WEA staff; and
- (b) an SES employee or acting SES employee.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

(2) Subsection (1) does not apply to the power conferred by section ^7.

(3) A delegate must comply with any written directions of WEA.

**There is power to delegate any or all WEA functions and powers to a member of staff or an SES or acting SES employee, yet there is no expressed power to delegate to an individual WEA member. It should be possible for WEA to delegate tasks to a WEA Member if WEA so determines.**

Section <sup>4</sup>54

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**Division 6—Wheat Exports Australia Special Account**

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**<sup>4</sup>54 Wheat Exports Australia Special Account**

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(1) The Wheat Exports Australia Special Account is established by this section.

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(2) The Wheat Exports Australia Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

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**<sup>5</sup>55 Credits of amounts to the Wheat Exports Australia Special Account**

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(1) There are to be credited to the Wheat Exports Australia Special Account amounts equal to the wheat export charge amounts received by the Commonwealth.

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(2) There are to be credited to the Wheat Exports Australia Special Account amounts equal to amounts received by way of fees referred to in section <sup>4</sup>9.

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Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

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**<sup>6</sup>56 Purposes of the Wheat Exports Australia Special Account**

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The purposes of the Wheat Exports Australia Special Account are as follows:

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(a) paying or discharging the costs, expenses and other obligations incurred in connection with the operation of WEA;

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28

(b) paying remuneration and allowances of WEA members;

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(c) paying remuneration, and other employment-related costs and expenses, in respect of WEA staff.

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Note: See section 21 of the *Financial Management and Accountability Act 1997* (debits from Special Accounts).



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2 **Division 7—WEA staff etc.**

3 **^57 Staff**

- 4 (1) The staff of WEA are to be persons engaged under the *Public*  
5 *Service Act 1999*.
- 6 (2) For the purposes of the *Public Service Act 1999*:  
7 (a) the WEA Chair and WEA staff together constitute a Statutory  
8 Agency; and  
9 (b) the WEA Chair is the Head of that Statutory Agency.

10 **^58 Persons assisting WEA**

- 11 WEA may also be assisted:  
12 (a) by officers and employees of Agencies (within the meaning  
13 of the *Public Service Act 1999*); or  
14 (b) by officers and employees of authorities of the  
15 Commonwealth;  
16 whose services are made available to WEA in connection with the  
17 performance of any of its functions.

Section ^59

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## Division 8—Planning and reporting obligations

### ^59 Operational plan

- (1) Before the start of each financial year, WEA must prepare an operational plan for the financial year and give it to the Minister.
- (2) The plan must include details of the strategies and policies that are to be followed by WEA in performing its functions during the financial year.
- (3) The WEA Chair must keep the Minister informed about:
  - (a) changes to the plan; and
  - (b) matters that might affect significantly WEA’s ability to perform its functions in accordance with the plan.
- (4) The Minister may give the WEA Chair written guidelines that are to be used by the WEA Chair in deciding whether a matter is covered by paragraph (3)(b).
- (5) A guideline given under subsection (4) is not a legislative instrument.

### ^60 Corporate plan

- (1) WEA must prepare a corporate plan at least once each 3-year period and give it to the Minister.
- (2) The plan must cover a 3-year period.
- (3) The plan must include details of the following matters:
  - (a) the objectives of WEA;
  - (b) the strategies and policies that are to be followed by WEA in order to achieve those objectives;
  - (c) such other matters (if any) as the Minister requires.
- (4) The WEA Chair must keep the Minister informed about:
  - (a) changes to the plan; and
  - (b) matters that might significantly affect the achievement of the objectives set out in the plan.

**The Bill makes no reference to the objectives of the legislation or WEA. It should not be for WEA to determine its own objectives; they should be set out in the legislation.**

**The objectives should be in the legislation (see comment at subsection 60(3)(a)).**

Section **61**

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- 1 (5) The Minister may give the WEA Chair written guidelines that are  
2 to be used by the WEA Chair in deciding whether a matter is  
3 covered by paragraph (3)(c) or (4)(b).
- 4 (6) A guideline given under subsection (5) is not a legislative  
5 instrument.
- 6 (7) WEA must ensure that the first corporate plan is prepared within  
7 12 months after the commencement of this section.

8 **WEA should have a corporate plan on coming into**  
9 **existence. There should not be a period of up to 12**  
10 **months during which the WEA can exist without such a**  
11 **plan.**

12 **61 Annual report**

13 WEA must, as soon as practicable after the end of each financial  
14 year, prepare and give to the Minister, for presentation to the  
15 Parliament, a report on its operations during that year.

16 Note: See also section 34C of the *Acts Interpretation Act 1901*, which  
17 contains extra rules about annual reports.

Section ^62

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1       **^62 Report for growers**

2       **The new marketing arrangements require different timelines for**  
3       **reporting to growers compared with the current Wheat Marketing**  
4       **Act 1989.**  
5       **Whilst the 12 month period 1 October to 30 September was the**  
6       **a) AWB International Ltd financial year;**  
7       **b) the period for delivery of wheat to the National Pool; and**  
8       **c) the Wheat Export Commission financial year,**  
9       **the period does not translate into a “marketing year”.**  
10       **In a deregulated market, reporting to growers in late December will**  
11       **have little, if any, value. Growers will require information prior to**  
12       **harvest in order to determine their strategy to sell on delivery or**  
13       **hold wheat not already under a pre-harvest contract of sale.**  
14       **If WEA reports to growers are to be a source of meaningful**  
15       **information using a “marketing year” of 1 October to 30 September**  
16       **will not achieve that outcome.**  
17       **In a deregulated market 1 July to 30 June is a more likely marketing**  
18       **year. Growers will be assessing pre-harvest risk management**  
19       **strategies and options.**  
20       **Harvest time decisions centre around selling or stockpile.**  
21       **In the run up to 30 June taxation implications of holding “trading**  
22       **stock” come into considerations.**  
23       **Of all the dates in a seasonal cycle of wheat marketing 31**  
24       **December would be one of the least significant.**  
25       **It is not apparent from the Bill what information would be conveyed**  
26       **in a separate WEA report to growers compared with the section 61**  
27       **report.**  
28       **As wheat growers will be required to fund WEA, and therefore this**  
29       **proposed annual report through a levy on exported wheat, a full**  
30       **cost benefit analysis needs to be presented on the content and**  
31       **value of this report to the growers of export wheat.**

- 32               (1) WEA must prepare and publish a report for growers each  
33               marketing year in relation to the operation of the wheat export  
34               accreditation scheme during that year.
- 35               (2) WEA must publish the report for a marketing year on or before  
36               31 December in the next marketing year.
- 37               (3) This section does not apply to the marketing year that began on  
38               1 October 2007.

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2 **Division 9—Other matters**

3 **^63 WEA Chair not subject to direction by WEA on certain matters**

4 To avoid doubt, the WEA Chair is not subject to direction by WEA  
5 in relation to the WEA Chair's performance of functions, or  
6 exercise of powers, under:

7 (a) the *Financial Management and Accountability Act 1997*; or

8 (b) the *Public Service Act 1999*;

9 in relation to WEA.

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## Part 6—Review of decisions

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### **^64 Simplified outline**

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The following is a simplified outline of this Part:

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- Decisions of WEA under the wheat export accreditation scheme may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by WEA.

10

### **^65 Decisions that may be subject to reconsideration by WEA**

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An application may be made to WEA for reconsideration of a decision made by WEA under the wheat export accreditation scheme.

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### **^66 Applications for reconsideration of decisions**

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(1) A person affected by a decision of a kind referred to in section ^65 who is dissatisfied with the decision may apply to WEA for WEA to reconsider the decision.

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(2) The application must:  
(a) be in a form approved in writing by WEA; and  
(b) set out the reasons for the application.

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(3) The application must be made within:  
(a) 28 days after the applicant is informed of the decision; or  
(b) if, either before or after the end of that period of 28 days, WEA extends the period within which the application may be made—the extended period.

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(4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

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### **^67 Reconsideration by WEA**

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(1) Upon receiving such an application, WEA must:  
(a) reconsider the decision; and  
(b) affirm, vary or revoke the decision.

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(2) WEA's decision on reconsideration of a decision has effect as if it had been made under the provision of the wheat export accreditation scheme under which the original decision was made.

Section ^68

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- 1 (3) WEA must give to the applicant a written notice stating its decision  
2 on the reconsideration together with a statement of its reasons for  
3 its decision.

4 **^68 Deadline for reconsideration**

5 (1) WEA must make its decision on reconsideration of a decision  
6 within 30 days after receiving an application for reconsideration.

7 (2) WEA is taken, for the purposes of this Part, to have made a  
8 decision affirming the original decision if it has not informed the  
9 applicant of its decision on the reconsideration before the end of  
10 the period of 30 days.

11 **^69 Review by the Administrative Appeals Tribunal**

12 Applications may be made to the Administrative Appeals Tribunal  
13 to review a decision of a kind referred to in section ^65 if WEA  
14 has affirmed or varied the decision under section ^67.

Section ^70

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## Part 7—Protection of confidential information

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### **^70 Protected confidential information**

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For the purposes of this Act, information is *protected confidential information* if:

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(a) any of the following subparagraphs applies:

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(i) the information is given to WEA under subsection ^21(2) or ^25(2), and the person who gave the information claims it is commercial-in-confidence information;

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(ii) the information is contained in a document or copy produced to WEA under subsection ^21(2) or ^25(2), and the person who produced the document or copy claims that the information is commercial-in-confidence information;

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(iii) the information is contained in a report given to WEA under subsection ^26(2), and the person who gave the report claims the information is commercial-in-confidence information;

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(iv) the information is contained in a report given to WEA under the wheat export accreditation scheme, and the person who gave the report claims the information is commercial-in-confidence information; and

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(b) the disclosure of the information could reasonably be expected:

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(i) to cause financial loss or detriment to the person; or

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(ii) if the person is a body corporate—to cause financial loss or detriment to a related body corporate; or

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(iii) to directly benefit a competitor of the person; or

32

(iv) if the person is a body corporate—to directly benefit a competitor of a related body corporate.

33

### **^71 Protection of confidential information**

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(1) This section restricts what a person (the *entrusted public official*) who is or was:

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(a) a WEA member; or

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(b) a member of WEA staff; or

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(c) a person whose services are made available to WEA under section ^58; or

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(d) the Minister; or

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(e) a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*;

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- 1                   may do with protected confidential information.
- 2           (2) The entrusted public official commits an offence if:
- 3               (a) the official has obtained protected confidential information;
- 4               and
- 5               (b) the official discloses the information to another person.
- 6           Penalty: Imprisonment for 1 year.
- 7           (3) Each of the following is an exception to the prohibition in
- 8           subsection (2):
- 9               (a) the disclosure is with the consent of the person who gave the
- 10              information;
- 11              (b) the disclosure is in accordance with an order of a court;
- 12              (c) the disclosure is to any of the following persons, for a
- 13              purpose in connection with the performance of the functions,
- 14              or the exercise of the powers, of WEA:
- 15                  (i) a WEA member;
- 16                  (ii) a member of WEA staff;
- 17                  (iii) a person whose services are made available to WEA
- 18                  under section ^58;
- 19              (d) the disclosure is to the Minister;
- 20              (e) the disclosure is authorised by subsection ^30(3), (4) or (5);
- 21              (f) the disclosure is to a person employed as a member of staff
- 22              of the Minister under section 13 or 20 of the *Members of*
- 23              *Parliament (Staff) Act 1984*.
- 24           Note:       The defendant bears an evidential burden in relation to a matter in
- 25                      subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

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## Part 8—Miscellaneous

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### **^72 Compensation for acquisition of property**

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(1) If the operation of this Act or the wheat export accreditation scheme would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

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(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

14

(3) In this section:

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*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

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*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

19

### **^73 Regulations**

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The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.