



*Agriculture – The New Frontier*

**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**

**Volume 1  
March 2008**



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- Attachments: 1. Wheat Industry Export Group - WEMA submission  
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Exposure Draft Wheat Export Marketing Bill 2008 – with marked-up comments

## About WAFarmers

The Western Australian Farmers Federation (Inc) (WAFarmers) is WA's largest and most influential rural lobby and service organisation.

WAFarmers represents 3,500 members, the majority of whom grow wheat as a component of their farming business. This is by far the largest membership base of any rural lobby group in Western Australia.

It is estimated that collectively our members are major contributors to the \$5.9 billion gross value of production (2005/06 – ABS, WA Agri-Food Industry Outlook – December 2007) that agriculture in its various forms contributes to Western Australia's economy.

Additionally, through differing forms of land tenure, our members own, control and capably manage many millions of hectares of the State's land mass and as such are responsible for maintaining the productive capacity and environmental well being of that land.

Members of *WAFarmers* are well informed on a wide range of economic, business and social issues and hold well considered views on key issues within their industry. *WAFarmers* membership is cross generational and includes many "young progressive" farmers. Through its diversity of membership the standing and credibility of *WAFarmers* in advocating the majority view of Western Australian grain growers is unsurpassed and has no peer.

WAFarmers are also strong proponents of approaching the grains industry from a "triple bottom line" perspective, ensuring appropriate and balanced outcomes are delivered across the three dimensions of the environment, social and cultural, and economic considerations.

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## Executive summary

- Wheat growers need marketplace certainty and reliability
- Wheat Export Marketing Bill 2008 –
  - (i) lacks grower related objectives, leading to a lack of clarity of purpose or measurable milestones
  - (ii) makes no reference to how the government’s “single desk” will deliver more to growers compared with the Act it is to replace
  - (iii) is inconsistent in its approach to gathering and collating industry information
  - (iv) is not supported by any economic, environmental or social impact modelling
  - (v) is not supported by any cost benefit analysis
  - (vi) does nothing to correct industry “free loader” problems
  - (vii) has some 16 sections that require review and amendment
  - (viii) fails to honour the policy statement that growers would be able to export their wheat through grower co-operatives and other Alliances
- The government is putting at significant risk Australia’s very valuable reputation as a supplier of quality wheat by repealing legislation that binds exporters of containerised wheat to a quality control regime
- The legislation does not have grass roots grower support
- The government has not explained income tax implications and economic consequences for growers of having to carry wheat stocks on their balance sheet at key dates during the tax year
- Relying on a few powerful multi-national trading companies to manage the sale of Australian wheat on export markets could potentially lead to an abrogating of government responsibility to ensure a sound structural and economic framework exists for the management of a key decentralised export earning industry
- The government’s timetable for change has not allowed wheat growers needing to up-skill, restructure their operations and/or develop a capacity to undertake wheat marketing for the first time, sufficient lead time to do so

***It is vital the government works with representative grower bodies including WAFarmers, in a committed manner to achieve a balanced approach to delivering triple bottom line environmental, social and economic outcomes that ensure WA, the largest wheat producing state, has a sustainable wheat industry that supports vibrant and viable farms, farm families and rural communities.***

## Foreword

WAFarmers was not consulted, or engaged in any way, by the ALP before announcing its 180 degree policy about face on export wheat marketing.

Until that time WAFarmers had been led to believe the ALP was fully committed to true single desk marketing and the concept of National Pool marketing for the benefit of all wheat growers.

WAFarmers has been at pains to make clear to ALP representatives during past meetings in WAFarmers Board room that regardless of the ALP's apparent political agenda to ensure that AWB was brought to justice over the "oil for food" scandal, the nation's wheat growers had no role to play in these events and should not be inadvertently penalised as a result of future legal or government actions towards AWB. Regrettably, the draft legislation has the potential to severely impact on grower livelihoods in its current form.

During the second half of 2007 WAFarmers was working with organisations of a like mind on getting a grower owned and grower controlled company established and in a position to become the "designated company" under the Wheat Marketing Act 1989. That process was at an advanced stage when the ALP announced it would develop a new "single desk" arrangement for bulk export wheat.

WAFarmers supported a designated company Business Plan that had been prepared to the satisfaction of leading Australian banks who advised funding would be available for what was being referred to as the AusWheat Business Model.

The AusWheat model was based on removing management of the National Pool single desk from the AWB Group. The new single desk marketing company was to be a special purpose company with a single share class and direct grower ownership, control and accountability.

The charter of the growers' company was to deliver maximum farm gate returns to wheat growers through strategic positioning of the industry. AusWheat was to focus on meeting grower needs as identified in repeated industry surveys. The company was to provide a buyer of last resort facility, publish regular and reliable Estimated Pool Returns, arranged harvest cash flow facilities etc.

Following the November federal election efforts were made to meet with The Hon Tony Burke, the newly appointed Minister for Agriculture, Fisheries and Forestry. However it proved most difficult to get to meet with the Minister or his staff. One very brief meeting took place as part of the Minister's "whistle stop" tour of WA, leaving WAFarmers no better informed as to the details of the government's "single desk" arrangements.

A subsequent meeting was held in Canberra with the Minister's staff to preview the draft legislation and it was at this point that the government's agenda became obvious.

With the government moving in the opposite direction to WAFarmers policy of orderly marketing, the organisation has adopted a pragmatic view of where things currently stand. WAFarmers has therefore reviewed the Exposure Draft Bills and is making this submission in the hope that before proceeding further with their legislation the government addresses deficiencies in their wheat marketing legislation.

That said, WAFarmers in accepting that changes are inevitable has taken steps to assist our members with the transition to the new marketing arrangements and has commenced negotiations with Australia's leading independent grains manager, Emerald to develop a specialist wheat pooling product. This action reflects WAFarmers commitment to representing the interests of Western Australian wheat growers under the new industry structure.

## WAFarmers' preferred export wheat marketing system

WAFarmers export wheat marketing policy is based on -

- having a strong grower focused orderly marketing system for the export of wheat in bulk
- a marketing system that prevents Australian bulk wheat competing against Australian bulk wheat on export markets
- the development of increased Australia-wide capacity to export containerised wheat subject to an enforceable quality assurance regime
- grain growers and the industry as a whole reducing their greenhouse emission "footprint"
- a balanced mix of family and corporate farming enterprises
- initiatives that strengthen regional and rural communities
- the maintenance of rural land values
- satisfying regional community road and infrastructure objectives
- continuation of the Wheat Marketing Act 1989

### **Orderly Marketing Advantages:**

1. Grower focus, with role as the growers' market agent
2. Buyer of last resort obligation
3. Permanent market presence
4. Price discrimination sales techniques used to benefit all pool participants
5. Pooling that smooths prices and costs over all pool receivables
6. Graduated payments for delivered quality free from "cliff face" discounts/penalties
7. Stock blending benefits that flow 100% to growers
8. Ability to enter medium-term services agreements
9. Economies of scale when negotiating service contracts
10. Value creation by matching stock quality with market demand
11. Deployment of upfront pre harvest risk management strategies
12. Full multi-grade delivery option without penalty
13. Strong endorsement of and reliance by major rural lenders on reliable Estimated Pool Return
14. Upward price movements flow to growers

The following reflects grower opinion from within and beyond WAFarmers immediate membership base with respect to key issues not addressed in the Exposure Draft Bills.

Issues not addressed in legislation	Comments
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**Orderly marketing**

WAFarmers policy on wheat marketing has been consistently confirmed to be consistent with the views of in excess of 70% of Western Australian wheat growers as evidenced by internal member feedback and grower demonstrated support at several regional meetings of upwards of 300 growers over the past several years.

More recently anecdotal evidence has emerged of increased grower support for orderly marketing concepts. This follows periods of significant market volatility including the decision of a number of buyers to “close their book” during the most recent harvest, leaving growers in a highly uncertain and anxious state as to the demand and price outlook for the remaining crop year.

A key role of AWB International Ltd (AWBI) is to be the growers’ marketing agent. Using National Pools growers consign to AWBI a large proportion of the annual harvest for export on cooperative business principles with seasonal costs and rewards shared across all pool participants.

Critics of grower focused marketing systems are invariably driven by an investor desire to profit from a “disorderly” market in which they present themselves as being able to manage market risks for the grower on a fee for service basis. The cost of managing the annual grain stockpile at the individual farm level is far from insignificant with the consequences far reaching as experienced by many wheat growers in the 2007/08 season.

The cost to growers of farm based marketing and risk management systems would be significant on the loss of the current single desk. The role of a single desk manager is to “smooth” marketing and risk management costs and outcomes across all grain in a particular pool. This is currently done with minimal administration fees. However in an open market the cost of retaining professionals to advise on price risk is upwards of \$2.00 per tonne on top of basic retainer fees and transaction fees. Grain growers would also incur higher individual transaction costs with little scope to negotiate volume discounts.



<b>Issues not addressed in legislation</b>	<b>Comments</b>
<b>Risks to security of supply</b>	<p>International customers view the existing orderly wheat marketing and managed logistics chain as offering security of supply, quality and service with food access and bio-security issues becoming increasingly important. The government's proposal will put at risk the ability of overseas flour mills to enter reliable long-term supply agreements.</p> <p>The government's legislation will remove the role of AWBI without consideration being given to a replacement industry plan for the Australian export wheat industry. It has been through integrated management of the annual wheat crop that the industry has achieved stability and value for growers.</p>
<b>Pre-harvest risk management</b>	<p>The government's draft legislation defines a wheat marketing year as being a 12-month period beginning on 1 October. It would appear a very narrow view has been taken as to when market exposure commences. The legislation appears to disregard market factors ahead of the annual Australian wheat harvest.</p> <p>There appears to be no understanding or appreciation of the market place which is a prerequisite for any good public policy making and sound business outcomes.</p>
<b>Clarity of purpose</b>	<p>From a wheat grower's perspective the draft legislation lacks clarity of purpose. There are few signs, if any, of the export accreditation scheme delivering an industry marketing plan. Traders are already openly challenging the role of the Export Wheat Commission, and the future Wheat Exports Australia, over the right to impose conditions on accredited wheat exporters.</p>
<b>Countervailing powers</b>	<p>There is an ongoing need to countervail the power of international trading houses. With global industry rationalisation and integration five multinational agribusiness companies i.e. Cargill, Archer Daniels Midland (ADM), Bunge, Louis Dreyfus and Conagra, are said to account for around 80 per cent of the global grain market.</p> <p>The need for Australian grain growers to have access to countervailing wheat marketing systems is as great now, if not greater than ever before.</p>

Issues not addressed in legislation	Comments
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**Loss of economies of scale**

Changes being forced on to the wheat industry will have a significant negative impact on the ability of growers to capture economies of scale and have those benefits flow through to improved farm gate returns.

Market fragmentation has closed off most pre-harvest management options for both marketing and logistics. The inability to enter pre-harvest and long-term service contracts severely limits investment in new and replacement assets in supporting service industries. Lack of certainty and the forced reliance on the spot market or on post-harvest season by season agreements is already taking support industries such as transport into an asset run-down phase.

For grain growing to be sustainable it needs to be supported by efficient and equally sustainable industries supplying farm inputs year round and shifting the harvest over the short harvest period.

**Loss of domestic transport systems**

It has been reported that the decision by the Victorian rail operator to close its grain rail freight business would mean an additional 60 million kilometres of trucking on the roads to move that state's grain harvest. In the WA context it has been estimated<sup>10</sup> that in an 11 million tonne season 6,285,000 tonne would be moved by rail involving 1,881 million kilometre tonnes. Using a simple example of transferring a rail movement of 1,000 tonnes over 300 kilometres to road transport would require 20 road trucks each of 50 tonne capacity. One 600 kilometre round trip by a train to move 1,000 tonne of wheat becomes a 12,000 kilometre task involving 20 trucks moving through urban and built-up areas on both their inbound and outbound journey.

<sup>10</sup> GCA - Transport Infrastructure Issues Paper Two: Commercial Aspects for the Australian Grains Industry

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## WAFarmers' Position Summary

1. Growers need certainty and reliability in the marketplace.
2. Markets do fail with the knock on effect to growers very significant.
3. The lead time to change production is considerably longer than the short cycle time of seasonal prices.
4. There is no reliable Australian commodity futures market for WA wheat.
5. Not all physical markets buying WA wheat are priced off future markets.
6. Market information is not as readily discoverable as made out.
7. WAFarmers have entered into a marketing alliance with Emerald Group to assist members of WAFarmers with wheat marketing decisions. The alliance will operate within the market structure of the time.
8. Notwithstanding the existence of the alliance, WAFarmers policy for export wheat remains one of supporting a grower owned and grower controlled entity marketing wheat on behalf of the growers through orderly marketing and National Pools that reward growers for grain quality and proximity to export markets.

***It is vital the government works with representative grower bodies including WAFarmers, in a committed manner to achieve a balanced approach to delivering triple bottom line environmental, social and economic outcomes that ensure WA, the largest wheat producing state, has a sustainable wheat industry that supports vibrant and viable farms, farm families and rural communities.***

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## Questions on Notice

At the Senate Committee hearing held in Perth on Monday 31<sup>st</sup> March, WAFarmers committed to providing answers to the following questions taken on notice.

1. the number of growers who have taken advantage of the \$10 premium for containerised wheat since it was deregulated in August 2007
2. the number of farmers who have been refused finance due to the demise of the national pool
3. the number of farmers taking advantage of the new bulk export wheat licences
4. WAFarmers Grains Council position on GCA's proposal for it to be legislated as the nation's peak growers organisation
5. Grains Council President Derek Clauson's "if you can't beat them join them" comment in The West Australian newspaper on Saturday 29<sup>th</sup> March.
6. On farm storage in WA. How much is being built due to the new legislation.

The questions have been put to senior elected members of WAFarmers Grains Council and the following responses provided.

- 1. How many of your members have taken advantage of the deregulation of the containers and bags, which happened on the 7<sup>th</sup> August last year, as a choice of marketing their wheat?.**

It is not possible to inform the committee as to how many farmers have taken advantage of the opportunities that the container trade has offered them by way of price advantage or sale timing either as individuals or via marketers. Nor is it possible to accurately determine what pricing advantage, if any, they have obtained via the container trade. This is due to the fact that pricing information to the grower ceases at the point of sale to a marketer other than contract prices displayed on the Chicago Board of Trade and other similar derivative trading institutions and these prices are not reflective of actual trade prices that are being achieved in the international market. The other price benchmark that has been traditionally used by growers and marketers has been the National Pool Estimated Pool Return for a particular grade of wheat. In the current volatile market, this is not even a reliable benchmark but, it is one that growers have had some comfort in, as have the marketers, as they have routinely used it to promote their purchasing options against as the benchmark to beat.

WAFarmers believes that it is essential that there be routine disclosure to growers of the ultimate selling price of Australian export wheat so that growers have a basis of properly determining the soundness of the marketing decisions that they make. An example is CBH Ltd selling wheat to their own flourmills. They only report to growers that they have achieved a price for participating growers that achieved a premium/discount to the National Pool. This gives growers no idea as to the actual selling price to CBH's mills and whether the transaction price was at a premium to or less than the nearest independent purchasing alternative available to the mills to obtain wheat. Growers have also been confronted with similar circumstances when transactions have taken place between AWBI and AWB Geneva in the past, and in this instance, the lack of transparency was highlighted in the 2004 Wheat Marketing Review chaired by Alice Williams.

The proposed legislation does not ensure that Australian growers are provided with sufficient knowledgeable and timely pricing information that will allow them to make sophisticated export marketing decisions.

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WA Farmers was the first state organisation to push for the deregulation of export in bags and containers.

**2. The number of farmer who have been refused finance due to the demise of the National Pool?**

WA Farmers cannot give an accurate answer to this question. Certainly any grower who is near to the banking industry's farm equity thresholds will be experiencing difficulties in obtaining finance to plant the upcoming crop.

**3. The number of farmers taking advantage of the new bulk export wheat licences?**

The corporations who are exporting under bulk export wheat licences have been wheat accumulators under the single desk system and WAFarmers is unaware of any way that would accurately determine the number of farmers who have supported bulk wheat export licences on a philosophical basis as opposed to a spot price incentive.

**4. Grains Council position on GCA's proposal for it to be legislated as the nation's peak grower's organisation?**

It is unlikely that WAFarmers Grains Council would participate in GCA until some meaningful changes are made to the way it functions. We would also seek changes to the current office bearers to ensure a fresh start.

**5. WAFarmers Grains Council President's Derek Clauson's "if you can't beat them, join them" comment in The West Australian on Saturday 29<sup>th</sup> March?**

The "if you can't beat them, join them" comment was made to express the frustration being felt by the majority of WA grain growers. The major representative grower bodies in WA have presented both written and verbal presentations to the Prime Minister, Minister Burke and various DAFF officers that raise serious concerns and potential consequences that the organisations have and foresee arising from the introduction of the proposed legislation. To date the main WA grower organisations have not been successful in being able to discuss these matters on a meaningful basis with any of the parties named above. The frustration is added to by there being no effort by the current government to ascertain the true feelings of growers regarding a redesigned export wheat marketing system.

WAFarmers has joined with Emerald to ensure that WAFarmers members have access to a wheat pool that has farmers' oversight and management input that will ensure that WAFarmers stays current in wheat marketing intelligence and attempt to ensure that WA wheat growers are informed as to international wheat marketing developments on a timely basis.

**6. On farm Storage in WA. How much is been built due to the new legislation?**

WAFarmers has determined that it is too early to determine any trend as to the build up of on farm storage that may result from the proposed legislation. Such new facilities are expensive duplication of existing facilities and threaten the grains industry due to the deterioration of insect control.





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Amendments) Bill 2008**

**Volume 2  
March 2008**

# 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

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

Section ^3

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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 ^1 and ^2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Sections ^3 to ^73	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            **Eligibility criteria does not reflect the government's  
11            commitment to, or the needs of, wheat growers (see  
12            comments at section 11 for details).**

- 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       ^4 Definitions

2               In this Act:

3               ***access test*** has the meaning given by section ^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.

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     <sup>^</sup>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     <sup>^</sup>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 what decision of an**  
8 **administrative character would be in the absence of**  
9 **readily identifiable authority within the body of the**  
10 **Bill.**

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

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### ^11 Eligibility for accreditation

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(1) The wheat export accreditation scheme must provide that a company is not eligible for accreditation unless:

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(a) the company is registered as a company under Part 2A.2 of the *Corporations Act 2001*; and

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**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."**

31

(b) the company is a trading corporation to which paragraph 51(xx) of the Constitution applies; and

32

33

(c) WEA is satisfied that the company is a fit and proper company, having regard to the following:

34

35

(i) the financial resources available to the company;

36

(ii) the company's risk management arrangements;

37

(iii) the company's business record;

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(iv) the company's record in situations requiring trust and candour;

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(v) the business record of each executive officer of the company;

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42

(vi) the experience and ability of each executive officer of the company;

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44

(vii) the record in situations requiring trust and candour of each executive officer of the company;

45



- 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 (N0:119).  
“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).

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## Division 4—Conditions of accreditation

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### ^12 Conditions of accreditation

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

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(a) a condition that an accredited wheat exporter must comply with a requirement under subsection ^21(2) or ^27(1);

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(b) such conditions as are specified in the scheme;

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(c) such conditions (if any) as are imposed under the scheme by WEA.

11

### ^13 Condition—annual export report

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(1) The wheat export accreditation scheme must provide that it is a condition of accreditation that an accredited wheat exporter must, within:

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(a) 30 days after the end of each marketing year; or

16

(b) if WEA allows a longer period—that longer period;

17

give WEA a written report setting out:

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(c) the quantity of wheat exported by the accredited wheat exporter during that year, broken down by grade and country of destination; and

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

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**a) wheat variety;**

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**b) season of production;**

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**c) acquisitions by region;**

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**d) shipping port, and**

**e) number of shipments.**

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(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.

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**Report should also disclose -**

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**a) terms and conditions on which wheat was acquired from non grower sources for export; and**

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**b) quantity of wheat bought for export from**

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**i) growers; and**

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**ii) non-growers.**

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- 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

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### ^17 Cancellation of accreditation

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#### *Mandatory cancellation*

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

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**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.**

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

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

16

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

17

18

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

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- (i) the financial resources available to the company;

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- (ii) the company's risk management arrangements;

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- (iii) the company's business record;

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- (iv) the company's record in situations requiring trust and candour;

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- (v) the business record of each executive officer of the company;

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- (vi) the experience and ability of each executive officer of the company;

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- (vii) the record in situations requiring trust and candour of each executive officer of the company;

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- (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;

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- (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;

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

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

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- 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).**

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*Discretionary cancellation*

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

*Fit and proper company—5-year limit*

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

*Ancillary provisions*

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



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2 **Division 6—Surrender of accreditation**

3 **^18 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 ^13(1) and (2) and ^14(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 ^18

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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**

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### **<sup>^19</sup> Register of accredited wheat exporters**

4

(1) WEA is to maintain a Register in which WEA sets out the name and ACN of each accredited wheat exporter.

5

6

(2) The Register may be maintained by electronic means.

7

(3) The Register is to be made available for inspection on the Internet.

8

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

9

10

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

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

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

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2 **Division 8—Access test**

3 **^20 Access test**

4 *Before 1 October 2009*

5 (1) For the purposes of this Act, a body corporate passes the *access*  
6 *test* in relation to a port terminal service at a particular time if that  
7 time is before 1 October 2009, and:

8 (a) at that time, there is available on the body's Internet site a  
9 current statement to the effect that the body is willing to:

10 (i) provide accredited wheat exporters with access to the  
11 service for purposes relating to the export of wheat; and

12 (ii) do so on such terms and conditions as are set out in the  
13 statement; or

14 (b) at that time:

15 (i) there is in force a decision under Division 2A of  
16 Part IIIA of the *Trade Practices Act 1974* that a regime  
17 established by a State or Territory for access to the port  
18 terminal service is an effective access regime; and

19 (ii) under that regime, accredited wheat exporters have  
20 access to the port terminal service for purposes relating  
21 to the export of wheat.

22 *On or after 1 October 2009*

23 (2) For the purposes of this Act, a body corporate passes the *access*  
24 *test* in relation to a port terminal service at a particular time if that  
25 time is on or after 1 October 2009, and:

26 (a) at that time, there is in operation, under Division 6 of  
27 Part IIIA of the *Trade Practices Act 1974*, an access  
28 undertaking relating to the provision to accredited wheat  
29 exporters of access to the port terminal service for purposes  
30 relating to the export of wheat; or

31 (b) at that time:

32 (i) there is in force a decision under Division 2A of  
33 Part IIIA of the *Trade Practices Act 1974* that a regime  
34 established by a State or Territory for access to the port  
35 terminal service is an effective access regime; and

36 (ii) under that regime, accredited wheat exporters have  
37 access to the port terminal service for purposes relating  
38 to the export of wheat.

39

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

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

7 **^25 Power to request information and documents**

8 *Scope*

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

12 *Request*

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

24 **^26 Power to request a report**

25 *Scope*

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



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*Request*

- (2) WEA may, by written notice given to the person, request the person:
  - (a) to prepare such a report; and
  - (b) to give the report to WEA within the period specified in the notice.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

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:

7

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

8

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

9

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11

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

12

13

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

14

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16

(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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21

22

(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

23

24

25

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

26

(i) the period specified in the notice; or

27

(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:

30

(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.

32

33

(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:

34

35

(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;

36

37

38

(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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42

(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 **<sup>28</sup> 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:

- (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.

15

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

16

### **^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:

- (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.

27

#### *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:

- (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.

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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## Part 5—Wheat Exports Australia

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

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#### ^31 Wheat Exports Australia

6

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.

7

8

9

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

10

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

11

#### ^32 WEA's functions

12

WEA has the following functions:

13

(a) such functions as are conferred on WEA by this Act;

14

(b) such functions as are conferred on WEA by the wheat export accreditation scheme;

15

16

(c) to do anything incidental to or conducive to the performance of any of the above functions.

17

18

#### ^33 WEA's powers

19

(1) WEA has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

20

21

(2) WEA's powers include, but are not limited to, the power to enter into contracts.

22

23

(3) Any contract entered into by WEA is to be entered into on behalf of the Commonwealth.

24

25

(4) Any real or personal property held by WEA is held for and on behalf of the Commonwealth.

26

27

(5) Any money received by WEA is received for and on behalf of the Commonwealth.

28

29

(6) WEA cannot hold real or personal property, or money, on trust for a person other than the Commonwealth.

30

31

Note: The Commonwealth may hold real or personal property or money on trust.

32

33

(7) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).

34

1 **<sup>^</sup>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.

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

3

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

4

(1) WEA:

5

(a) is a body corporate with perpetual succession; and

6

(b) must have a seal; and

7

(c) may acquire, hold and dispose of real and personal property;

8

and

9

(d) may sue and be sued in its corporate name.

10

(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.

11

12

(3) All courts, judges and persons acting judicially must:

13

(a) take judicial notice of the imprint of the seal of WEA

14

appearing on a document; and

15

(b) presume that the document was duly sealed.

16

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

17

WEA consists of the following members:

18

(a) a Chair;

19

(b) at least 3, and not more than 5, other members.

20

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

21

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

22

23

Note: The WEA member is eligible for reappointment: see subsection 33(4A) of the *Acts Interpretation Act 1901*.

24

25

(2) A person is not eligible for appointment as a WEA member unless the Minister is satisfied that the person has:

26

(a) substantial experience or knowledge; and

27

(b) significant standing;

28

in at least one of the following fields:

29

(c) international trade;

30

(d) international marketing;

31

(e) commodity trading;

32

(f) foreign exchange trading;

33

(g) finance;

34

(h) economics;

35

(i) regulation;

36

(j) public policy;

37

(k) business;

38

(l) law;

39



- 1 (m) grain production;  
2 (n) grain handling.  
3 (3) A WEA member holds office on a part-time basis.

4 **<sup>^</sup>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 **<sup>^</sup>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 <sup>^</sup>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*.

1

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

3

### **<sup>40</sup> Remuneration**

4

(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.

5

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8

(2) A WEA member is to be paid the allowances that are prescribed by the regulations.

9

10

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

11

12

### **<sup>41</sup> Disclosure of interests to the Minister**

13

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.

14

15

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17

### **<sup>42</sup> Disclosure of interests to WEA**

18

(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.

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20

21

(2) The disclosure must be made as soon as possible after the relevant facts have come to the WEA member's knowledge.

22

23

(3) The disclosure must be recorded in the minutes of the meeting of WEA.

24

25

(4) Unless WEA otherwise determines, the WEA member:

26

(a) must not be present during any deliberation by WEA on the matter; and

27

28

(b) must not take part in any decision of WEA with respect to the matter.

29

30

(5) For the purposes of making a determination under subsection (4), the WEA member:

31

32

(a) must not be present during any deliberation of WEA for the purpose of making the determination; and

33

34

(b) must not take part in making the determination.

35

(6) A determination under subsection (4) must be recorded in the minutes of the meeting of WEA.

36

1 **<sup>^</sup>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 **<sup>^</sup>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 **<sup>^</sup>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 <sup>^</sup>41 or <sup>^</sup>42; or  
27 (c) the member is absent, except on leave of absence, from 3  
28 consecutive meetings of WEA.

29 **<sup>^</sup>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.

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## **Division 4—Decision-making by WEA**

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

4

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

5

6

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

7

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

8

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

9

10

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

11

12

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

13

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

14

### **<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.

16

17

(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.

18

19

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

20

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

21

22

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

23

24

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

25

WEA must keep minutes of its meetings.

1

2 **Division 5—Delegation**

3 **<sup>^</sup>53 Delegation by WEA**

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

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

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

10 (2) Subsection (1) does not apply to the power conferred by section <sup>^</sup>7.

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

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**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.**

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

3 **^54 Wheat Exports Australia Special Account**

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

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

9 **^55 Credits of amounts to the Wheat Exports Australia Special**  
10 **Account**

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

14 (2) There are to be credited to the Wheat Exports Australia Special  
15 Account amounts equal to amounts received by way of fees  
16 referred to in section ^9.

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

22 **^56 Purposes of the Wheat Exports Australia Special Account**

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

- 25 (a) paying or discharging the costs, expenses and other  
26 obligations incurred in connection with the operation of  
27 WEA;
- 28 (b) paying remuneration and allowances of WEA members;
- 29 (c) paying remuneration, and other employment-related costs  
30 and expenses, in respect of WEA staff.

31 Note: See section 21 of the *Financial Management and Accountability Act*  
32 *1997* (debits from Special Accounts).

1

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.

1

2 **Division 8—Planning and reporting obligations**

3 **^59 Operational plan**

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

18 **^60 Corporate plan**

- 19 (1) WEA must prepare a corporate plan at least once each 3-year  
20 period and give it to the Minister.
- 21 (2) The plan must cover a 3-year period.
- 22 (3) The plan must include details of the following matters:  
23 (a) the objectives of WEA;  
24 **The Bill makes no reference to the objectives of the  
25 legislation or WEA. It should not be for WEA to  
26 determine its own objectives; they should be set  
27 out in the legislation.**
- 28 (b) the strategies and policies that are to be followed by WEA in  
29 order to achieve those objectives;  
30 (c) such other matters (if any) as the Minister requires.
- 31 (4) The WEA Chair must keep the Minister informed about:  
32 (a) changes to the plan; and  
33 (b) matters that might significantly affect the achievement of the  
34 objectives set out in the plan.

35 **The objectives should be in the legislation (see  
36 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.

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.

1

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.

14

### **^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.

26

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

28

### **^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.

32

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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.

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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:

7

(a) any of the following subparagraphs applies:

8

(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

30

31

(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

37

(b) a member of WEA staff; or

38

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

39

40

(d) the Minister; or

41

(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*;

42

43

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:

15  
16

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

17  
18

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

19

### **^73 Regulations**

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23

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.



25<sup>th</sup> March 2008

Mr Wayne Collier  
IEG Secretariat  
GPO Box 858  
Canberra ACT 2601



**The Western Australian  
Farmers Federation (Inc.)**

Dear Mr Collier,

**Submission re: Industry Good requirement for collection of End Point Royalties on PBR protected wheat varieties.**

The Grains Industry of Australia is reliant on having Australian Breeding Companies to provide locally adapted varieties to ensure that Australian grain remains competitive in the international market but to also ensure the continued development of grain to face the ever changing environment of primary production.

The Australian grains industry has established a fair and equitable value capture system, which is the End Point Royalty (EPR) system. In Western Australia, the EPR system has enabled growers to receive the benefit of 'farmer to farmer' trading. This ability enables growers to rapidly access and uptake the newest and most advanced wheat varieties, to ensure the competitiveness of Australian grain, such an example could be the wheat variety Wyalcatchem.

The de-regulation of the Grains Trading markets will see the need to increase the number of grain traders and to ensure that the Plant Breeder's can contrive to permit 'farmer to farmer' trading. If a grower sells grain to a buyer who is not providing an EPR collection service then the breeder is at risk of being denied the opportunity to collect royalties as it is not always possible to invoice growers direct. Even if direct invoicing was possible it is very resource intensive and adds significant costs to the EPR system and reduces the funds available to maintain essential ongoing breeding programs. It is far more efficient and would reduce non-compliance for grain traders to be required as part of their accreditation to ensure EPR deductions are made when acquiring wheat varieties that are subject to a grant of PBR.

It is essential that the new Wheat Marketing Legislation take steps to ensure the following recommendations are implemented:

- **The new legislation for export wheat marketing includes a requirement for licensees to have robust system's and processes in place in order for them to report annually to their licensor [Wheat Export Authority (WEA)] that to their reasonable knowledge and belief the obligations to pay EPR's on the grain they have exported have been met;**
- **The requirements for robust systems and processes around meeting EPR obligations is part of the accreditation process requiring licensees to be fit and proper organisations in order to gain bulk wheat export licence**

- **That this requirements be explicitly included in the legislation through:**
  - **An additional clause 11 (1)(c) of the legislation (accreditation)**
  - **A requirement to include variety level reporting in 13 (1) (c) (reporting obligations)**
  - **A requirement in Clause 13 (1) that there be an annual statement from the licensee that to its reasonable knowledge and belief the obligations to pay EPR's on the grain they have exported have been met (reporting obligations).**

Australia has a very strong R&D system which is funded by the EPR system and its implementation; however it relies on an effective value capture system. Such a system is extremely important in attracting technology to Australia, technology which will drive future innovation and total factor productivity in the Australian grains industry. This will ensure our ongoing competitiveness in the international market and increase our advancement.

Yours sincerely

Clare Bridger  
Executive Officer – Grains



# WEMA

The Wheat Export Marketing Alliance

*Comprising The Western Australian Farmers Federation, The South Australian Farmers Federation, AgForce Queensland,  
The New South Wales Farmers Association, & The Wheat Growers Association Inc*

27 February 2008

Mr John Crosby  
Chairman  
Wheat Industry Expert Group  
GPO Box 858  
Canberra ACT 2601

Dear John

The Wheat Export Marketing Alliance has raised a number of concerns with regard to the future direction of the wheat industry. Whilst our focus has been on the market structure for bulk export wheat our concerns extend to broader issues around industry efficiency and sustainability.

The enclosed presentation sets out a number of industry-wide matters that need to be addressed. We believe that a significant number of these matters are "industry good" in character and as such see them to be important aspects of the work being undertaken by the Wheat Industry Expert Group.

If you or any WIEG member would like background information or elaboration on any aspect of presentation or the underlying issues I can make myself available. I can also arrange for other WEMA representatives to be available if that would be of assistance.

For Wheat Export Marketing Alliance

Graham Blight  
Chairman

**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

## **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**

# 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	AWB Ltd agreed that AWBI be "functionally separated" from AWB Ltd with AWBI board to have greater autonomy and decision making role AWB 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
<b>70+ % Support</b>	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

# 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"	No change to existing marketing arrangements Exemption of AWBI from needing EWC export consent continues Minister has discretionary powers for a limited period	AWBI only entity permitted to export bulk wheat without EWC consent AWB Ltd Article 3.8 not triggered AWB Ltd Article 3 requires parent to continue to financially support and underwrite AWBI AWBI competing against EWC accredited exporters of bulk wheat AWB Ltd exploiting chance to abandon A Class shareholders in favour of B Class shareholders AWB 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	Minister's right to declare an alternative "designated company" ends	None
	WMA Part 5 sunsets	Direct Ministerial involvement in export consent process comes to an end	None
	If AWBI the designated company on 30/06/08 WMA subsection 57(3) sunsets	AWBI veto ends permanently Ministerial powers not needed EWC accredits exporters as per Ministerial guidelines	AWBI to compete with EWC accredited exporters AWB Ltd Article 3 requires parent to continue to financially support and underwrite AWBI

**70+ %  
Support**



## 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	<p><b>AWBI</b> only entity permitted to export bulk wheat without EWC consent/ accreditation</p> <p><b>EWC</b> to accredit other exporters</p> <p><b>AWB</b> Ltd Article 3.8 not triggered</p> <p><b>AWB</b> Ltd Article 3 requires parent to continue to financially support/ underwrite AWBI</p> <p><b>AWBI</b> continues as growers' bulk export wheat marketing company with -</p> <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> <p>(As recommended in 2004 Review Report i.e. functional separation )</p>

**70+ %  
Support**

## **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)

**70+ %  
Support**

## 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
- **70+ %** Domestic freight costs will increase to growers i.e. lower farm returns

**Support**

## Bulk Export Wheat Marketing

- 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

**70+ %**

**Support**

## **Bulk Export Wheat Marketing**

- 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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**Support**

## **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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## **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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Support**