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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Wheat Export Marketing Amendment Bill 2012

No. , 2012

(Agriculture, Fisheries and Forestry)

**A Bill for an Act to amend the *Wheat Export
Marketing Act 2008*, and for other purposes**

Contents

1	Short title	1
2	Commencement	1
3	Schedule(s)	2
Schedule 1—Amendments relating to the wheat export accreditation scheme		3
Part 1—Amendments		3
<i>Wheat Export Marketing Act 2008</i>		3
Part 2—Consequential amendments		21
<i>Criminal Code Act 1995</i>		21
Schedule 2—Amendments relating to Wheat Exports Australia		22
Part 1—Amendments		22
<i>Wheat Export Marketing Act 2008</i>		22
Part 2—Transitional provisions		25
Division 1—Preliminary		25
Division 2—Transfer of assets and liabilities		26
Division 3—Transfer of other matters		28
Division 4—Other transitional matters		29
Schedule 3—Repeal of the Wheat Export Marketing Act 2008		32
<i>Wheat Export Marketing Act 2008</i>		32

1 **A Bill for an Act to amend the *Wheat Export***
2 ***Marketing Act 2008*, and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Wheat Export Marketing Amendment*
6 *Act 2012*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

**Schedule 1—Amendments relating to the
wheat export accreditation scheme**

Part 1—Amendments

Wheat Export Marketing Act 2008

1 Paragraph 3(a)

Repeal the paragraph, substitute:

- (a) to promote the operation of an efficient and profitable bulk wheat export marketing industry that supports the competitiveness of all sectors through the supply chain; and

2 Section 4

Repeal the section, substitute:

4 Simplified outline

The following is a simplified outline of this Act:

- This Act provides a system for regulating exports of wheat (other than wheat in bags or containers).
- A provider of a port terminal service who exports wheat, or who is an associated entity of a person who exports wheat, must pass the access test in relation to the port terminal service.
- An exporter of wheat:
 - (a) who provides a port terminal service; or
 - (b) who has an associated entity that provides the port terminal service;

must not export wheat using the port terminal service if a person who was required to pass the access test in relation to the port terminal service at a time during the previous 12 months did not pass the access test at that time.

- The Minister may approve a code of conduct dealing with the provision to wheat exporters of access to port terminal services by the providers of port terminal services.

3 Section 5 (definition of access test)

Omit “section 24”, substitute “section 9”.

4 Section 5 (definition of *accredited wheat exporter*)

Repeal the definition.

5 Section 5 (definition of *ACN*)

Repeal the definition.

6 Section 5 (definition of *Australian Consumer Law*)

Repeal the definition.

7 Section 5 (definition of *company*)

Repeal the definition.

8 Section 5 (definition of *continuous disclosure rules*)

Omit “subsection 24(4)”, substitute “subsection 9(4)”.

9 Section 5 (definition of *co-operative*)

Repeal the definition.

10 Section 5 (definition of *designated sanitary or phytosanitary measure*)

Repeal the definition.

11 Section 5 (definition of *executive officer*)

Repeal the definition.

12 Section 5 (definition of *external auditor*)

Repeal the definition.

13 Section 5 (definition of *externally-administered body corporate*)

Repeal the definition.

1 **14 Section 5 (definition of *foreign country*)**

2 Repeal the definition.

3 **15 Section 5 (definition of *foreign law*)**

4 Repeal the definition.

5 **16 Section 5 (definition of *individual producer*)**

6 Repeal the definition.

7 **17 Section 5 (definition of *involved in a contravention*)**

8 Repeal the definition.

9 **18 Section 5**

10 Insert:

11 *old Act* means this Act as in force immediately before the
12 commencement of this definition.

13 **19 Section 5 (definition of *post-cancellation compliance***
14 ***report*)**

15 Repeal the definition.

16 **20 Section 5 (definition of *post-cancellation export report*)**

17 Repeal the definition.

18 **21 Section 5 (definition of *pre-cancellation period*)**

19 Repeal the definition.

20 **22 Section 5 (definition of *pre-surrender compliance report*)**

21 Repeal the definition.

22 **23 Section 5 (definition of *pre-surrender export report*)**

23 Repeal the definition.

24 **24 Section 5 (definition of *pre-surrender period*)**

25 Repeal the definition.

26 **25 Section 5**

27 Insert:

1 *Secretary* means the Secretary of the Department.

2 **26 Section 5 (definition of *United Nations sanctions***
3 ***provision*)**

4 Repeal the definition.

5 **27 Section 5 (definition of *wheat export accreditation***
6 ***scheme*)**

7 Repeal the definition.

8 **28 Section 6**

9 Repeal the section.

10 **29 Part 2**

11 Repeal the Part, substitute:

12 **Part 2—Access test**

13 **Division 1—Requirement to pass the access test**

14 **7 Requirement to pass the access test**

15 *Who must pass the access test*

- 16 (1) A provider of a port terminal service must pass the access test in
17 relation to the port terminal service if:
18 (a) the provider exports wheat using the port terminal service; or
19 (b) the provider is an associated entity of a person who exports
20 wheat using the port terminal service.
- 21 (2) Subsection (1) does not apply to the export of wheat in:
22 (a) a bag; or
23 (b) a container;
24 that is capable of holding not more than 50 tonnes of wheat.

25 *When the access test must be passed*

- 26 (3) The provider must pass the access test in relation to the port
27 terminal service at all times during the 12-month period beginning
28 on the day of the export of the wheat.

1 *Exception*

- 2 (4) The Secretary may, by writing, determine that this section does not
3 apply in relation to a specified provider and to a specified period if
4 the Secretary is satisfied that there are special circumstances that
5 justify the Secretary doing so.

6 *Determination not a legislative instrument*

- 7 (5) A determination under subsection (4) is not a legislative
8 instrument.

9 **8 Exports of wheat**

10 *Exports of wheat*

- 11 (1) A person (the **exporter**) must not export wheat using a port
12 terminal service if:
13 (a) either:
14 (i) the exporter is the provider of the port terminal service;
15 or
16 (ii) an associated entity of the exporter is the provider of the
17 port terminal service; and
18 (b) a person (whether the exporter, the associated entity or
19 another person) was required by section 7 to pass the access
20 test in relation to the port terminal service at a time during
21 the 12-month period ending on the day of the export; and
22 (c) the person mentioned in paragraph (b) did not pass the access
23 test at that time.

24 *Exceptions*

- 25 (2) The Secretary may, by writing, determine that subsection (1) does
26 not apply in relation to a specified person and to a specified export
27 if the Secretary is satisfied that there are special circumstances that
28 justify the Secretary doing so.
- 29 (3) Subsection (1) does not apply if the wheat is exported in:
30 (a) a bag; or
31 (b) a container;
32 that is capable of holding not more than 50 tonnes of wheat.

- 1 (4) A person who wishes to rely on subsection (3) bears an evidential
2 burden in relation to that matter.

3 Note: For **evidential burden**, see section 5.

4 *Ancillary contraventions*

- 5 (5) A person must not:
6 (a) aid, abet, counsel or procure a contravention of
7 subsection (1); or
8 (b) induce, whether by threats or promises or otherwise, a
9 contravention of subsection (1); or
10 (c) be in any way, directly or indirectly, knowingly concerned in,
11 or party to, a contravention of subsection (1); or
12 (d) conspire with others to effect a contravention of
13 subsection (1).

14 *Civil penalty provisions*

- 15 (6) Subsections (1) and (5) are civil penalty provisions.

16 Note: Part 8 provides for pecuniary penalties for breaches of civil penalty
17 provisions.

18 *Determination not a legislative instrument*

- 19 (7) A determination under subsection (2) is not a legislative
20 instrument.

21 **Division 2—Access test**

22 **9 Access test**

23 *Access test—access undertaking*

- 24 (1) A person passes the **access test** in relation to a port terminal service
25 at a particular time if:
26 (a) at that time, there is in operation, under Division 6 of
27 Part IIIA of the *Competition and Consumer Act 2010*, an
28 access undertaking relating to the provision to wheat
29 exporters of access to the port terminal service for purposes
30 relating to the export of wheat; and

1 (b) the access undertaking obliges the person to comply, at that
2 time, with the continuous disclosure rules in relation to the
3 port terminal service (see subsection (4)); and

4 (c) at that time, the person complies with the continuous
5 disclosure rules in relation to the port terminal service.

6 (2) For the purposes of paragraph (1)(a):

7 (a) assume that subsection 44ZZBA(1) of the *Competition and*
8 *Consumer Act 2010* had never been enacted; and

9 (b) assume that an access undertaking comes into operation at
10 the time when the ACCC publishes its decision to accept the
11 undertaking.

12 *Access test—effective access regimes*

13 (3) A person passes the **access test** in relation to a port terminal service
14 at a particular time if:

15 (a) at that time:

16 (i) there is in force a decision under Division 2A of
17 Part IIIA of the *Competition and Consumer Act 2010*
18 that a regime established by a State or Territory for
19 access to the port terminal service is an effective access
20 regime; and

21 (ii) under that regime, wheat exporters have access to the
22 port terminal service for purposes relating to the export
23 of wheat; and

24 (b) at that time, the person complies with the continuous
25 disclosure rules in relation to the port terminal service (see
26 subsection (4)).

27 *Continuous disclosure rules*

28 (4) The **continuous disclosure rules** in relation to a port terminal
29 service are as follows:

30 (a) there is available on the person's website a current statement
31 setting out the person's policies and procedures for managing
32 demand for the port terminal service (including the person's
33 policies and procedures relating to the nomination and
34 acceptance of ships to be loaded using the port terminal
35 service);

- 1 (b) there is available on the person's website a current statement
2 (a **loading statement**) setting out the name of each ship (a
3 **loading ship**) scheduled to load grain using the port terminal
4 service;
- 5 (c) the loading statement also sets out, for each loading ship:
6 (i) a unique slot reference number; and
7 (ii) the time when the ship was nominated to load grain
8 using the port terminal service; and
9 (iii) the time when the ship was accepted as a ship scheduled
10 to load grain using the port terminal service; and
11 (iv) the estimated time when the ship will arrive at the port
12 terminal service; and
13 (v) the estimated time when grain is to start being loaded by
14 the ship using the port terminal service; and
15 (vi) the estimated time when the ship will leave the port
16 terminal service; and
17 (vii) the name of the exporter of the grain; and
18 (viii) the quantity of grain to be loaded by the ship using the
19 port terminal service; and
20 (ix) the type of grain to be loaded by the ship using the port
21 terminal service; and
22 (x) if grain has started to be loaded by the ship, but the
23 loading has not been completed—that fact; and
24 (xi) if the ship has completed loading grain using the port
25 terminal service—the time when the loading was
26 completed;
- 27 (d) the person updates the loading statement each business day;
- 28 (e) both:
29 (i) the ACCC has a copy of the information set out in the
30 most recently updated loading statement; and
31 (ii) the information was given to the ACCC in the manner
32 and form approved, in writing, by the ACCC.

33 *Export of wheat*

- 34 (5) In this section, a reference to the export of wheat does not include a
35 reference to the export of wheat in:
36 (a) a bag; or
37 (b) a container;
-

1 that is capable of holding not more than 50 tonnes of wheat.

2 **Division 3—Application of the Customs Act 1901**

3 **10 Application of the Customs Act 1901**

4 If:

- 5 (a) an exportation of wheat contravenes section 8; and
6 (b) the Secretary notifies the Chief Executive Officer of Customs
7 in writing that the Secretary wishes the *Customs Act 1901* to
8 apply to that exportation;

9 the *Customs Act 1901* has effect as if the goods included in that
10 exportation were goods described as forfeited to the Crown under
11 section 229 of that Act because they were prohibited exports within
12 the meaning of that Act.

13 **11 Delegation by the Secretary**

- 14 (1) The Secretary may, by writing, delegate any or all of his or her
15 functions or powers under this Division to an SES employee, or
16 acting SES employee, in the Department.

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

- 19 (2) In exercising powers under a delegation, the delegate must comply
20 with any directions of the Secretary.

21 **Division 4—Code of conduct**

22 **12 Minister to approve code of conduct**

- 23 (1) The Minister may, by notice published in the *Gazette*, approve a
24 code of conduct for the purposes of this section.
- 25 (2) The Minister must not approve a code of conduct under
26 subsection (1) unless the Minister is satisfied that the code of
27 conduct:
- 28 (a) deals with the fair and transparent provision to wheat
29 exporters of access to port terminal services by the providers
30 of port terminal services; and

- (b) requires providers of port terminal services to comply with continuous disclosure rules; and
- (c) is consistent with the operation of an efficient and profitable wheat export marketing industry that supports the competitiveness of all sectors through the supply chain; and
- (d) is consistent with any guidelines made by the ACCC relating to voluntary industry codes of conduct.

(3) A notice under subsection (1) is not a legislative instrument.

Division 5—Transitional reports

13 Export reports and compliance reports

Scope

- (1) This section applies in relation to a person who was, immediately before the commencement of this subsection, an accredited wheat exporter within the meaning of the old Act.

Export report

- (2) The person must, within 30 days after the end of the marketing year beginning on 1 October 2011, give WEA a written report setting out the quantity of wheat exported by the person during that year, broken down by specification and country of destination.
- (3) Subsection (2) does not apply to the export of wheat in:
- (a) a bag; or
 - (b) a container;
- that is capable of holding not more than 50 tonnes of wheat.

Compliance report

- (4) The person must, within 30 days after the end of the marketing year beginning on 1 October 2011, give WEA a written report relating to the person's compliance, during that year, with:
- (a) the conditions of the person's accreditation under the wheat export accreditation scheme; and
 - (b) Australian laws, and foreign laws, that, during the year, were applicable to the person's export trade in wheat; and
 - (c) the United Nations sanctions provisions.

Ancillary contraventions

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2) or (4); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2) or (4); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2) or (4); or
 - (d) conspire with others to effect a contravention of subsection (2) or (4).

Civil penalty provisions

- (6) Subsections (2), (4) and (5) are civil penalty provisions.

Note: Part 8 provides for pecuniary penalties for breaches of civil penalty provisions.

Definitions

- (7) For the purposes of this section:

accredited wheat exporter has the same meaning as in the old Act.

United Nations sanctions provision has the same meaning as in the old Act.

wheat export accreditation scheme has the same meaning as in the old Act.

14 Post-cancellation reports

Scope

- (1) This section applies if:
- (a) WEA cancels the accreditation of a company as an accredited wheat exporter on or after 1 September 2012; and
 - (b) as at the commencement of this subsection, the company has not given WEA both of the following:
 - (i) a post-cancellation export report;
 - (ii) a post-cancellation compliance report.

Reports

- (2) The company must, within 30 days after the cancellation, give WEA:
- (a) if the company has not given WEA a post-cancellation report—a post-cancellation report; and
 - (b) if the company has not given WEA a post-cancellation compliance report—a post-cancellation compliance report.

Ancillary contraventions

- (3) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (4) Subsections (2) and (3) are civil penalty provisions.

Note: Part 8 provides for pecuniary penalties for breaches of civil penalty provisions.

Definitions

- (5) For the purposes of this section:

accredited wheat exporter has the same meaning as in the old Act.

post-cancellation compliance report has the same meaning as in the old Act.

post-cancellation export report has the same meaning as in the old Act.

30 Transitional—access test

- (1) If, at a particular time (the ***test time***) before the commencement of this item, a person passed the old access test in relation to a port terminal

1 service, the person is taken, on and after the commencement of this
2 item, to have passed the new access test at the test time in relation to the
3 port terminal service.

4 (2) In this item:

5 **new access test** means the access test within the meaning of the *Wheat*
6 *Export Marketing Act 2008* as in force immediately after the
7 commencement of this item.

8 **old access test** means the access test within the meaning of the *Wheat*
9 *Export Marketing Act 2008* as in force immediately before the
10 commencement of this item.

11 **31 Part 3 (heading)**

12 Repeal the heading, substitute:

13 **Part 3—Information-gathering powers**

14 **32 Division 1 of Part 3 (heading)**

15 Repeal the heading, substitute:

16 **Division 1—Secretary may obtain information and** 17 **documents**

18 **33 Section 25 (heading)**

19 Repeal the heading, substitute:

20 **25 Secretary may obtain information and documents**

21 **34 Subsection 25(1)**

22 Repeal the subsection, substitute:

23 *Scope*

24 (1) This section applies if the Secretary has reason to believe that a
25 person has information or a document that is relevant to:

26 (a) determining whether the person is required to pass the access
27 test in relation to a particular port terminal service; or

- 1 (b) determining whether the person passed the access test in
2 relation to a particular port terminal service at a particular
3 time; or
4 (c) a function or power of WEA under the old Act.

5 **35 Subsection 25(2)**

6 Omit “WEA may, by written notice given to the company, require the
7 company”, substitute “The Secretary may, by written notice given to the
8 person, require the person”.

9 **36 Paragraphs 25(2)(a) and (b)**

10 Omit “WEA”, substitute “the Secretary”.

11 **37 Paragraph 25(2)(b)**

12 Omit “documents; or”, substitute “documents.”.

13 **38 Paragraph 25(2)(c)**

14 Repeal the paragraph.

15 **39 Subsection 25(2) (note)**

16 Repeal the note.

17 **40 Subsection 25(4)**

18 Repeal the subsection.

19 **41 Subsection 25(5)**

20 Omit “company”, substitute “person”.

21 **42 Section 26**

22 Repeal the section.

23 **43 Subsection 27(1)**

24 Omit “(1) WEA”, substitute “The Secretary”.

25 **44 Paragraph 27(1)(a)**

26 Omit “or copy”.

27 **45 Subsection 27(2)**

28 Repeal the subsection.

1 **46 Section 28 (heading)**

2 Repeal the heading, substitute:

3 **28 Secretary may retain documents**

4 **47 Subsection 28(1)**

5 Omit “WEA”, substitute “The Secretary”.

6 **48 Subsections 28(2) and (4)**

7 Omit “WEA” (wherever occurring), substitute “the Secretary”.

8 **49 Divisions 2 and 3 of Part 3**

9 Repeal the Divisions, substitute:

10 **Division 2—ACCC may obtain information and documents**
11 **etc.**

12 **29 ACCC may obtain information and documents etc.**

13 For the purposes of this Act, section 155 of the *Competition and*
14 *Consumer Act 2010* applies as if compliance with paragraphs
15 9(1)(c) and 9(3)(b) of this Act were a matter referred to in
16 subsection 155(1) of the *Competition and Consumer Act 2010*.

17 **50 Subsection 57(2)**

18 Repeal the subsection.

19 **51 Paragraph 59(b)**

20 Repeal the paragraph.

21 **52 Paragraph 60(c)**

22 Omit “staff;”, substitute “staff.”.

23 **53 Paragraphs 60(d) and (e)**

24 Repeal the paragraphs.

25 **54 Sections 67 to 72**

26 Repeal the sections, substitute:

72 Review by the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Secretary:

- (a) a decision under subsection 7(4) to determine that section 7 does not apply in relation to a specified provider and to a specified period;
- (b) a decision under subsection 8(2) to determine that subsection 8(1) does not apply in relation to a specified person and to a specified export.

55 Subparagraph 73(a)(iii)

Omit “is given to WEA under subsection 25(2) or 29(2)”, substitute “was given to WEA under subsection 25(2) or 29(2) of the old Act”.

56 Subparagraph 73(a)(iv)

After “29(2)”, insert “of the old Act”.

57 Subparagraph 73(a)(v)

After “30(2)”, insert “of the old Act”.

58 Subparagraph 73(a)(vi)

After “31(1)(d)”, insert “of the old Act”.

59 Subsections 76(4) and (5)

Repeal the subsections, substitute:

- (4) The pecuniary penalty payable under subsection (1) by a body corporate must not exceed:
 - (a) in the case of a contravention of subsection 8(1) or (5)—3,000 penalty units for each contravention; or
 - (b) in the case of a contravention of subsection 25(5) or (6)—1,500 penalty units for each contravention; or
 - (c) in the case of a contravention of subsection 13(2), 13(4), 13(5), 14(2) or 14(3)—1,000 penalty units for each contravention.
- (5) The pecuniary penalty payable under subsection (1) by a person other than a body corporate must not exceed:

- 1 (a) in the case of a contravention of subsection 8(1) or (5)—600
2 penalty units for each contravention; or
3 (b) in the case of a contravention of subsection 25(5) or (6)—300
4 penalty units for each contravention.

5 **60 Subsection 77(1)**

6 Repeal the subsection, substitute:

- 7 (1) Only the Secretary may apply for a civil penalty order in relation to
8 a contravention of any of the following provisions:

- 9 (a) subsection 8(1) or (5);
10 (b) subsection 25(5) or (6).

- 11 (1A) Only WEA may apply for a civil penalty order in relation to a
12 contravention of any of the following provisions:

- 13 (a) subsection 13(2), (4) or (5);
14 (b) subsection 14(2) or (3).

15 **61 Subsection 86(1)**

16 Repeal the subsection, substitute:

17 *Scope*

- 18 (1) This section applies to proceedings for a civil penalty order against
19 a person for a contravention of any of the following provisions:

- 20 (a) subsection 8(1);
21 (b) subsection 13(2);
22 (c) subsection 13(4);
23 (d) subsection 14(2);
24 (e) subsection 25(5).

25 **62 Section 87**

26 Repeal the section, substitute:

27 **87 Sharing information**

28 *Department*

- 29 (1) An officer or employee of the Department may give:
30 (a) WEA; or

- 1 (b) Customs; or
2 (c) the ACCC;
3 information that is relevant to determining either or both of the
4 following:
5 (d) whether a person is required to pass the access test in relation
6 to a particular port terminal service;
7 (e) whether a person passed the access test in relation to a
8 particular port terminal service at a particular time.

9 *Customs*

- 10 (2) A customs officer, or a member of the staff referred to in
11 subsection 15(1) of the *Customs Administration Act 1985*, may
12 give:
13 (a) WEA; or
14 (b) the Department; or
15 (c) the ACCC;
16 information that is relevant to determining either or both of the
17 following:
18 (d) whether a person is required to pass the access test in relation
19 to a particular port terminal service;
20 (e) whether a person passed the access test in relation to a
21 particular port terminal service at a particular time.

22 *ACCC*

- 23 (3) A member of the staff of the ACCC may give:
24 (a) WEA; or
25 (b) Customs; or
26 (c) the Department;
27 information that is relevant to determining either or both of the
28 following:
29 (d) whether a person is required to pass the access test in relation
30 to a particular port terminal service;
31 (e) whether a person passed the access test in relation to a
32 particular port terminal service at a particular time.
33

Part 2—Consequential amendments

Criminal Code Act 1995

63 Subparagraph 136.1(1)(c)(iii) of the *Criminal Code*

Omit “benefit; or”, substitute “benefit; and”.

64 Subparagraph 136.1(1)(c)(iv) of the *Criminal Code*

Repeal the subparagraph.

65 Subparagraph 136.1(4)(c)(iii) of the *Criminal Code*

Omit “benefit; or”, substitute “benefit; and”.

66 Subparagraph 136.1(4)(c)(iv) of the *Criminal Code*

Repeal the subparagraph.

**67 Subsection 136.1(9) of the *Criminal Code* (definition of
wheat export accreditation scheme)**

Repeal the definition.

1 **Schedule 2—Amendments relating to Wheat**
2 **Exports Australia**

3 **Part 1—Amendments**

4 ***Wheat Export Marketing Act 2008***

5 **1 Section 5 (definition of *Australian law*)**

6 Repeal the definition.

7 **2 Section 5 (definition of *business*)**

8 Repeal the definition.

9 **3 Section 5 (definition of *marketing year*)**

10 Repeal the definition.

11 **4 Section 5 (definition of *old Act*)**

12 Repeal the definition.

13 **5 Section 5 (definition of *protected confidential information*)**

14 Repeal the definition.

15 **6 Section 5 (definition of *related body corporate*)**

16 Repeal the definition.

17 **7 Section 5 (definition of *WEA Chair*)**

18 Repeal the definition.

19 **8 Section 5 (definition of *WEA member*)**

20 Repeal the definition.

21 **9 Section 5 (definition of *WEA staff*)**

22 Repeal the definition.

23 **10 Section 5 (definition of *wheat export charge amounts*)**

24 Repeal the definition.

11 Division 5 of Part 2

Repeal the Division.

12 Part 4

Repeal the Part.

13 Part 5 (heading)

Repeal the heading, substitute:

Part 5—Wheat Industry Special Account

14 Divisions 1 to 5 of Part 5

Repeal the Divisions.

15 Division 6 of Part 5

Repeal the Division, substitute:

Division 6—Wheat Industry Special Account

58 Wheat Industry Special Account

(1) The Wheat Exports Australia Special Account that was, immediately before the commencement of this subsection, in existence under this Act, is continued in existence as the Wheat Industry Special Account.

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

59 Credits to the Wheat Industry Special Account

There must be credited to the Wheat Industry Special Account amounts equal to amounts received for the purpose of the Wheat Industry Special Account.

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

1 **60 Purpose of the Wheat Industry Special Account**

2 The purpose of the Wheat Industry Special Account is funding a
3 measure or program, if the following conditions are satisfied:

- 4 (a) the purpose of the measure or program is to assist the wheat
5 export industry, or a sector of that industry;
6 (b) the Minister has approved the funding.

7 Note: See section 21 of the *Financial Management and Accountability Act*
8 1997 (debits from Special Accounts).

9 **16 Divisions 7 to 9 of Part 5**

10 Repeal the Divisions.

11 **17 Part 7**

12 Repeal the Part.

13 **18 Paragraph 76(4)(b)**

14 Omit “contravention; or”, substitute “contravention.”.

15 **19 Paragraph 76(4)(c)**

16 Repeal the paragraph.

17 **20 Subsection 77(1A)**

18 Repeal the subsection.

19 **21 Paragraphs 86(1)(b), (c) and (d)**

20 Repeal the paragraphs.

21 **22 Paragraphs 87(1)(a), (2)(a) and (3)(a)**

22 Repeal the paragraphs.
23

1 **Part 2—Transitional provisions**

2 **Division 1—Preliminary**

3 **23 Definitions**

4 In this Part:

5 **Appropriation Act** means an Act appropriating money for expenditure
6 out of the Consolidated Revenue Fund.

7 **asset** means:

- 8 (a) any legal or equitable estate or interest in real or personal
9 property, whether actual, contingent or prospective; and
10 (b) any right, power, privilege or immunity, whether actual,
11 contingent or prospective.

12 **assets official**, in relation to an asset other than land, means the person
13 or authority who, under:

- 14 (a) a law of the Commonwealth, a State or a Territory; or
15 (b) a trust instrument; or
16 (c) otherwise;

17 has responsibility for keeping a register in relation to assets of the kind
18 concerned.

19 **commencement time** means the commencement of this Part.

20 **departmental item** means a departmental item in the most recent
21 Appropriation Act.

22 **Finance Minister** means the Minister who administers the *Financial*
23 *Management and Accountability Act 1997*.

24 **land** means any legal or equitable estate or interest in real property,
25 whether actual, contingent or prospective.

26 **land registration official**, in relation to land, means the Registrar of
27 Titles or other proper officer of the State or Territory in which the land
28 is situated.

29 **liability** means any liability, duty or obligation, whether actual,
30 contingent or prospective.

31 **Secretary** means the Secretary of the Department.

32 **WEA** has the same meaning as in the *Wheat Export Marketing Act*
33 *2008*.

Division 2—Transfer of assets and liabilities

24 Vesting of assets of WEA

- (1) This item applies to the assets of WEA immediately before the commencement time.
- (2) At the commencement time, the assets cease to be assets of WEA and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the assets.

25 Vesting of liabilities of WEA

- (1) This item applies to the liabilities of WEA immediately before the commencement time.
- (2) At the commencement time, the liabilities cease to be liabilities of WEA and become liabilities of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the liabilities.

26 Certificates relating to vesting of land

- (1) This item applies if:
- (a) any land vests in the Commonwealth under this Division; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become vested in the Commonwealth under this Division.
- (2) The land registration official may:
- (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.
- (3) A certificate made under subitem (1) is not a legislative instrument.

27 Certificates for vesting of assets other than land

- 1 (1) This item applies if:
2 (a) an asset other than land vests in the Commonwealth under
3 this Division; and
4 (b) there is lodged with an assets official a certificate that:
5 (i) is signed by the Minister; and
6 (ii) identifies the asset; and
7 (iii) states that the asset has become vested in the
8 Commonwealth under this Division.
- 9 (2) The assets official may:
10 (a) deal with, and give effect to, the certificate as if it were a
11 proper and appropriate instrument for transactions in relation
12 to assets of that kind; and
13 (b) make such entries in the register in relation to assets of that
14 kind as are necessary, having regard to the effect of this
15 Division.
- 16 (3) A certificate made under subitem (1) is not a legislative instrument.

17 **28 Exemption from stamp duty and other State or Territory** 18 **taxes**

- 19 (1) No stamp duty or other tax is payable under a law of a State or a
20 Territory in respect of an exempt matter, or anything connected with an
21 exempt matter.
- 22 (2) An *exempt matter* is:
23 (a) the vesting of an asset or liability under this Division; or
24 (b) the operation of this Part in any other respect.
- 25 (3) The Minister may certify in writing:
26 (a) that a specified matter is an exempt matter; or
27 (b) that a specified thing was connected with a specified exempt
28 matter.
- 29 (4) A certificate made under subitem (3) is not a legislative instrument.

30 **29 Certificates taken to be authentic**

- 31 A document that appears to be a certificate made or issued under this
32 Part:
33 (a) is taken to be such a certificate; and
-

- 1 (b) is taken to have been properly given;
2 unless the contrary is established.

3 **Division 3—Transfer of other matters**

4 **30 Transitional—acts of WEA to be attributed to the**
5 **Commonwealth**

- 6 (1) This item applies to anything done by, or in relation to, WEA before the
7 commencement time.
8 (2) After the commencement time, the thing has effect as if it had been
9 done by, or in relation to, the Commonwealth.

10 **31 Transitional—substitution of the Commonwealth as a**
11 **party in certain proceedings**

- 12 (1) This item applies to any proceedings:
13 (a) that were pending in any court or tribunal immediately before
14 the commencement time; and
15 (b) to which WEA was a party.
16 (2) The Commonwealth is substituted for WEA, from the commencement
17 time, as a party to those proceedings.

18 **32 Transitional—transfer of records to the Department**

- 19 (1) This item applies to any records or documents that:
20 (a) were in the possession of WEA immediately before the
21 commencement time; and
22 (b) relate to WEA.
23 (2) The records and documents are to be transferred to the Department after
24 the commencement time.

25 **33 Transitional—transfer of Ombudsman investigations**

- 26 If:
27 (a) before the commencement time, a complaint was made to the
28 Ombudsman, or the Ombudsman began an investigation,
29 under the *Ombudsman Act 1976* in relation to action taken by
30 WEA; and

(b) immediately before the commencement time, the
Ombudsman had not finally disposed of the matter in
accordance with the *Ombudsman Act 1976*;
the *Ombudsman Act 1976* applies after the commencement time as if
that action had been taken by the Department.

34 References in certain instruments to Wheat Exports Australia

- (1) If:
- (a) an instrument is in force immediately before the
commencement of this item; and
 - (b) the instrument contains a reference to Wheat Exports
Australia;
- the instrument has effect from the commencement time as if the
reference to Wheat Exports Australia was a reference to the
Commonwealth.
- (2) The Minister may, by writing, determine that subitem (1) does not apply
in relation to a specified reference.
- (3) A determination under subitem (2) is not a legislative instrument.

Division 4—Other transitional matters

35 Transitional—secrecy of information obtained under the *Wheat Export Marketing Act 2008*

- (1) This item applies in relation to the following provisions (the
information provisions) of the *Wheat Export Marketing Act 2008* as in
force immediately before the commencement time:
- (a) the definition of **WEA** in section 5;
 - (b) the definition of **WEA member** in section 5;
 - (c) the definition of **WEA staff** in section 5;
 - (d) the definition of **protected confidential information** in
section 5;
 - (e) Part 7.
- (2) Despite the repeal of the information provisions by this Schedule, those
provisions continue to apply, in relation to protected confidential
information disclosed to, or obtained by, a person before the

1 commencement time, as if those repeals had not happened and as if the
2 following paragraph were added at the end of subsection 74(3) of that
3 Act:

4 ; (p) the disclosure is to an officer or employee of the Department
5 for a purpose that is relevant to a function of the Department.

6 **36 Appropriation of money**

7 (1) For the purposes of the operation of an Appropriation Act after the
8 commencement time, references to WEA are to be read as references to
9 the Department.

10 (2) If an amount (the **Account balance**) stands to the credit of the Wheat
11 Industry Special Account immediately after the commencement time,
12 the Minister must, by writing, determine that one or more specified
13 departmental items for the Department are to be increased by specified
14 amounts.

15 (3) The sum of the amounts specified in the determination must equal:
16 (a) if the Account balance is not more than \$500,000—the
17 Account balance; and
18 (b) otherwise—\$500,000.

19 (4) In making the determination, the Minister must comply with any written
20 directions given by the Finance Minister.

21 (5) If the Minister makes a determination under subitem (2):
22 (a) the sum of the amounts specified in the determination is
23 debited from the Wheat Industry Special Account; and
24 (b) the departmental items specified in the determination are
25 taken to be increased in accordance with the determination.

26 (6) Neither a determination made under subitem (2) nor a direction under
27 subitem (4) is a legislative instrument.

28 **37 Compensation for acquisition of property**

29 (1) If the operation of this Part would result in an acquisition of property
30 from a person otherwise than on just terms, the Commonwealth is liable
31 to pay a reasonable amount of compensation to the person.

32 (2) If the Commonwealth and the person do not agree on the amount of the
33 compensation, the person may institute proceedings in a court of

1 competent jurisdiction for the recovery from the Commonwealth of
2 such reasonable amount of compensation as the court determines.

- 3 (3) In this item:
4 ***acquisition of property*** has the same meaning as in paragraph 51(xxxi)
5 of the Constitution.
6 ***just terms*** has the same meaning as in paragraph 51(xxxi) of the
7 Constitution.

8 **38 Delegation by Minister**

- 9 (1) The Minister may, by writing, delegate all or any of his or her powers
10 and functions under this Part to a person.
- 11 (2) The delegate must be:
12 (a) the Secretary; or
13 (b) an SES employee, or acting SES employee, in the
14 Department.
- 15 Note: The expressions **SES employee** and **acting SES employee** are defined in the *Acts*
16 *Interpretation Act 1901*.
- 17 (3) In exercising powers or functions under a delegation, the delegate must
18 comply with any directions of the Minister.

19 **39 Transitional—regulations**

- 20 (1) The Governor-General may make regulations prescribing matters of a
21 transitional nature (including prescribing any saving or application
22 provisions) relating to the amendments or repeals made by this
23 Schedule.
- 24 (2) The regulations may provide that the provisions of this Part are taken to
25 be modified as set out in the regulations. Those provisions then have
26 effect as if they were so modified.
- 27 (3) Subitem (2) does not limit subitem (1).
28

1 **Schedule 3—Repeal of the Wheat Export**
2 **Marketing Act 2008**
3

4 ***Wheat Export Marketing Act 2008***

5 **1 The whole of the Act**

6 Repeal the Act.