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Wheat Marketing Amendment Bill 2002

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No. 105 2002-03

Wheat Marketing Amendment Bill 2002

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Wheat Marketing Amendment Bill 2002

Date Introduced: 12 December 2002

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Royal Assent

Purpose

To amend the *Wheat Marketing Act 1989* in order to provide for the continued funding of the Wheat Export Authority (WEA) by the wheat industry. The Bill also makes some changes to the operations of the WEA and clarifies the objective of its export control functions.

Background

This Bill sets up a funding mechanism whereby the wheat industry can meet the running costs of the Wheat Export Authority (WEA). The proposed mechanism has two components. The first will consist of a charge applied to all exports of wheat, to commence during the first half of 2003. The wheat export charge is defined in this Bill and will be imposed by regulations to be made under the *Primary Industries (Customs) Charges Act 1999*. The second component of the funding arrangements will be the imposition of fees for lodging applications with the WEA for export consents. The *Wheat Marketing Act 1989* (the Act) already provides for regulations to enable the WEA to collect a fee for applications for export consents but to date, fees have not been charged.

Wheat Export Authority (WEA)

The WEA was established on 1 July 1999 as part of the restructure of the former Australian Wheat Board.¹ It was set up after the transfer of the Government's wheat marketing and selling role to an independent, grower-owned company called AWB Ltd. According to its latest *Annual Report*, the WEA operates independently from AWB Ltd and its subsidiaries, including AWB (International) Ltd (AWBI).²

Sub-section 5(1) of the Act gives the WEA two functions:

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- to control the export of wheat from Australia, and
- to monitor the performance of AWBI Ltd in relation to the export of wheat and to examine and report on the benefits to growers resulting from that performance.

Sub-section 57(7) of the Act also provides that the WEA is required to conduct a review, and report to the Minister for Agriculture, Fisheries and Forestry on AWBI's use of its wheat export rights under the legislation before the end of 2004.

In performing its function, the WEA is required to work closely with AWBI. Sub-section 57(1) of the Act provides that a person shall not export wheat unless the WEA has given its written consent. However this prohibition does not apply to AWBI (sub-section 57(1A)). The Act also requires the WEA to consult with AWBI before issuing each consent for bagged and container wheat exports (sub-section 57(3A)), and to obtain the approval of AWBI before issuing consents for bulk wheat exports (sub-section 57(3B)). In the opinion of the authors of the *National Competition Policy Review of the Wheat Marketing Act 1989* (the NCP Review), which was published in December 2000, the Act places significant limits on the WEA's power to perform its specified functions.³ They stated that the AWBI has the power of veto over the export of any wheat outside its own export pools,⁴ and may potentially also influence the WEA's decision on exports of bagged or containerised wheat.⁵ In their opinion, the WEA had to depend upon AWBI to provide the data for it to monitor AWBI's performance.⁶ The NCP Review concluded that 'the WEA may be seen as an administrative agent for approving the export of small parcels of wheat outside the AWBI system and for reviewing AWBI's performance'.⁷

The NCP Review was also critical of the time it took the WEA to process applications for export consents.⁸ It found that the system of granting export consents on a case-by-case basis had introduced delay and uncertainty into the process of clearing wheat intended for export to niche and other markets. The NCP Review concluded that such delay appeared to act as an impediment to the development of small or niche markets for wheat outside the main bulk markets being maintained or developed by AWBI. These markets are usually developed by non-AWBI exporters who are mostly grower owned and operated businesses. It suggested that, as a consequence, there may be a loss of business for Australian companies and export income for Australia.⁹

As a statutory authority, the WEA is required by section 9 of the *Commonwealth Authorities and Companies Act 1997* to report each year to the Minister for Agriculture, Fisheries and Forestry on how it has carried out its functions. The Minister may direct the WEA in the performance of its tasks. In April 2001 the Minister announced that, as a key response to the NCP Review, the Government required the WEA to broaden its monitoring and reporting on the performance of AWBI, and to develop a revised consent system.¹⁰

Specifically, the WEA was required to develop a process and key performance indicators so as to ensure that the 2004 review will be transparent and robust. The results of the WEA's monitoring and reporting on the benefits to growers resulting from AWBI's

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performance are to feed into the 2004 review. In addition, the Government directed the WEA to develop a longer term consent system for the export of wheat in containers and/or bags. The Government's requirement was for a revised consent system that complemented the role of the single desk arrangements in maximising net pool returns through AWBI, while at the same time allowing flexibility to capture niche and other markets where this can benefit wheat growers.¹¹ On 28 September 2001, WEA announced that it had the support of the Grains Council of Australia (GCA) and AWBI for revised consent arrangements that met the Government's requirement. The revised arrangements applied to all wheat exported from 1 January 2002.¹²

Funding the WEA

Since 1999 the WEA has been funded by a \$6 million grant given to it from wheat industry funds after the privatisation of the former Australian Wheat Board. According to the Minister, this was essentially grower money in reserves of the former Australian Wheat Board, established from pool revenues not distributed to growers.¹³ In Senate Estimates Committee on 27 May 2002 it was stated that the costs of the WEA are approximately \$2 million a year¹⁴ and that less than this amount remains of the original grant.¹⁵

In April 2002 the Minister announced that the WEA would require an alternative funding arrangement if it was to continue to undertake its statutory functions.¹⁶ He stated at that time, and subsequently, that it would be inappropriate for taxpayers to fund the WEA.¹⁷ His argument is firstly, that 'wheat growers are the beneficiaries of the wheat export single desk arrangements and thus the wheat industry should fund the WEA'.¹⁸ And secondly, that 'prior to 1999 the former Australian Wheat Board directly controlled the single desk and growers paid for these functions out of pool administration costs.'¹⁹

The President of the GCA, Mr Keith Perrett, apparently disagreed the Minister's arguments. He is reported in *The Land* as saying that the benefits of the single desk flowed beyond wheat growers and the cost of the WEA should be shared accordingly.²⁰ He is quoted as saying '...the viewpoint of the GCA remains: the Government is a user of that service so they should contribute some of the funding'.²¹ At Senate Estimates Committee on 27 May 2002, the Chairman of the WEA told the Committee that a key role of the Authority was to inform the Minister in detailed quarterly reports about the performance of the AWBI.²² Shortly afterwards Senator Kerry O'Brien issued a press release arguing that:

It is clear from the Chairman's evidence that the Federal Government is a major beneficiary of the work of the Authority.

It therefore does not seem unreasonable that the Government meet some of the Authority's costs as payment for the services it receives.

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Mr Truss should now reconsider his decision to force growers to meet the entire cost.²³

The Minister has said that he will give consideration to allowing wheat growers some say in recommending the amount of the export charge.²⁴ According to the *Explanatory Memorandum*, in a normal season a charge of around 12-15 cents per tonne of wheat exported would be sufficient to meet the WEA's current budgeted expenditure of around \$2 million a year.²⁵ Approximately 80 per cent of wheat grown in Australia is exported. Currently the estimated return for a tonne of the benchmark Australian Premium White (APW) grade wheat delivered to the AWBI pool is \$265.²⁶ Growers who sell on the domestic market do not use the services of the WEA. They will not be required to pay the export charge levy.

Export Consents

Approximately 98 per cent of all wheat exported from Australia is exported by AWBI. Only about two per cent of wheat is exported using export consents issued by the WEA. In exercising its powers under section 57 of the Act to give written consent to the export of wheat, the WEA must have regard to:

- the need to maintain effective control over the export of wheat from Australia, and
- Australia's reputation in overseas markets as a reliable supplier of wheat.

Revised consent arrangements were announced on 28 September 2001. Under the revised arrangements, two types of applications are considered for the export of wheat in containers and bags. Longer-term export consent applications apply for a 12 month period and must meet the 'niche market criteria'. In determining whether the proposed export meets the 'niche market criteria', the WEA must have regard to whether there is no or minimal likelihood that the export will adversely affect AWBI's sales, premiums or export marketing strategies. Short-term export consent applications apply for a three-month period. They are complementary to AWBI's strategies.²⁷ From October 2001 to May 2002 the WEA received 337 applications and approved 231 applications seeking consent to export wheat.²⁸ The tonnage of wheat exported under the new consent arrangements for the first quarter of 2002 was 69,000 tonnes.²⁹

From 1999 until the present, exporters applying for consent to export wheat to niche or specialised markets have not been charged an application fee. In his Second Reading speech the Minister indicated that application fees would be charged. He said that the level of the fees would be set to cover only the WEA's costs of processing those applications.³⁰ The *Explanatory Memorandum* says that the WEA is opposed to the introduction of consent application fees.³¹ It says the WEA has argued that anything other than a nominal fee could drive some niche and low volume exporters out of business with adverse consequences for marketing opportunities for growers and export market development, and that the cost of collecting the fees could outweigh the revenue benefit.

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Main Provisions

Item 1 of Schedule 1 inserts a new definition of ‘wheat export charge amounts’ into section 3 of the *Wheat Marketing Act 1989* (the Act). It is proposed to make regulations under the *Primary Industries (Customs) Charges Act 1999* to impose a wheat export charge. Those regulations will link that new charge to this definition.

Item 2 inserts **proposed new sections 5A and 5B** into the Act. **Proposed new section 5A** clarifies the WEA’s wheat export control functions. It provides that as long as AWBI is the manager of the wheat single desk rights under section 57 of the Act, then the WEA must perform its export control functions so as to complement any objective of AWBI to maximise net returns to growers selling wheat for inclusion in its pools. However, this does not prevent the WEA from exercising its export control functions so as to allow the development of niche or other markets by other exporters, where the WEA considers that they may benefit the growers and the wider community. The purpose of this amendment, according to the *Explanatory Memorandum*,³² is to recognise that a flexible approach is desirable both to allow exporters to take advantage of market opportunities, and to capture the benefits from the single desk arrangements.

Proposed new section 5B allows the WEA Board to delegate its functions and powers, except those relating to employment and terms and conditions of staff, to the Chief Executive Officer of the WEA.

Item 3 deals with funds raised by the wheat export charge. **Proposed new section 10A** provides that the Commonwealth (which will collect the wheat export charge) must pay the WEA an equivalent amount from the Consolidated Revenue Fund. The Commonwealth may recover from the WEA any expenses it incurs in collecting or recovering the wheat export charge amounts, and its costs of administering the charge arrangements (**proposed new section 10B**).

Item 5 deals with the process for making minor variations to export consents. **Proposed new section 58** provides for the WEA to vary a consent it has issued for the export of wheat, on request by the person to whom the consent was granted. However the WEA is prevented from making a variation to a consent except in the matters for which the variation was requested (**proposed new subsection 58(2)**). The WEA is not able to vary the original consent without a request if the result makes the consent less favourable to the person (**proposed new paragraph 58(2)(b)**). Variations of a minor nature may include a variation in the tonnage to be exported of less than 500 tonnes (**proposed new subsection 58(5)**). In the case where a minor variation to a consent is made, the WEA is required to inform AWBI of the change.

Proposed new section 59 deals with the sharing of information between the WEA and other agencies such as the Australian Quarantine and Inspection Service (AQIS) for the purposes of control of wheat exports. It is said in the *Explanatory Memorandum*³³ that

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sharing of such information, including personal information, with other agencies will enable the WEA to better monitor compliance with the export consents that it has issued.

Endnotes

- 1 The Wheat Export Authority was established by the *Wheat Marketing Legislation Amendment Act 1998*. More information on this legislation is provided by *Bills Digest* No. 220, 1997-98, by Ian Ireland at: <http://www.aph.gov.au/library/pubs/bd/1997-98/98bd220.htm>
- 2 Wheat Export Authority, *Annual Report 2000/2001*, p. 3.
- 3 *National Competition Policy Review of the Wheat Marketing Act 1989*, by Malcolm Irving, Jeff Arney and Bob Lindner, Canberra, Dept. of Agriculture, Fisheries and Forestry, December 2000, p. 92.
- 4 ‘export pools’: The AWB aggregates the production of Australian wheat growers into a number of export pools to provide a more consistent supply to customers and to facilitate higher and more stable returns to growers.
- 5 *National Competition Policy Review of the Wheat Marketing Act 1989*, op cit, p. 92.
- 6 *ibid.*, p. 92. This matter was raised at a Senate Rural and Regional Affairs and Transport Legislation Committee ‘Consideration of Budget Estimates’ Hearing on 27 May 2002 when the Chairman of the WEA said in answer to a question: ‘Senator, we have no specific powers to require information so that our reporting, which is based upon AWB(I) activity is dependent upon receipt of information from AWB(I)’. (p. RRA&T 13)
- 7 *National Competition Policy Review of the Wheat Marketing Act 1989*, op cit, p. 92.
- 8 *ibid.*, p. 94.
- 9 *ibid.*, p. 94.
- 10 Hon Warren Truss, ‘Wheat single desk to remain’, *Media Release*, 2 April 2001.
- 11 Wheat Export Authority, *Annual Report 2000/2001*, p. 9.
- 12 Wheat Export Authority, ‘Improved wheat export consent arrangements announced’, *Media Release*, 28 September [2001]. The new arrangements applied to wheat exported from 1 January 2002. However applications under the new arrangements could be received by the WEA from 1 October 2001.
- 13 Hon Warren Truss, Address at the Grains Council of Australia ‘Grains Week 2000’, Melbourne, 16 April 2002, p. 7.
- 14 Senate Rural and Regional Affairs and Transport Legislation Committee ‘Consideration of Budget Estimates’ Hearing, 27 May 2002, p. RRA&T 28.
- 15 *ibid.*, p. RRA&T 29.
- 16 Hon Warren Truss, Address at the Grains Council of Australia ‘Grains Week 2000’, Melbourne, 16 April 2002, p. 7.

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- 17 *ibid.*, p. 7. Also ‘Second reading speech’, Wheat Marketing Amendment Bill 2002, House of Representatives, *Debates*, 12 December 2002, p. 10267.
- 18 *ibid.*, p. 7.
- 19 *ibid.*, p. 7.
- 20 ‘Truss to kill cash for WEA’ by Will Rayner, *The Land* 18 April 2002.
- 21 *ibid.*
- 22 Senate Rural and Regional Affairs and Transport Legislation Committee ‘Consideration of Budget Estimates’ Hearing on 27 May 2002, p. RRA&T 11.
- 23 Senator Kerry O’Brien, ‘Wheat growers paying bills for Government’. [*Press release*], 27 May 2002.
- 24 Hon Warren Truss, ‘Second reading speech’, Wheat Marketing Amendment Bill 2002, House of Representatives, *Debates*, 12 December 2002, p. 10268.
- 25 Grain yields in Australia are particularly subject to variations in rainfall and seasonal conditions. This is demonstrated by national average wheat yields which have ranged from 1.14 to 2.10 tonnes per hectare over the last decade. This can result in large changes in production levels even though changes in area sown may be quite modest. This was demonstrated in 1982, and again in 1994, when a major drought led to production of less than 9.0 million tonnes of wheat. 1982 was followed by a spectacular 1983/84 season with a crop of 22.0 million tonnes being produced. (Information from AWB Ltd webpage at www.awb.com.au/ (grain production). Recent media reports estimate that the total wheat harvest in the 2002/2003 season will be only 10.5 million tonnes. (Cathy Bolt, ‘AWB risks losses as prices fall’, *Australian Financial Review*, 3 February 2003, p. 17.)
- 26 AWB Limited, ‘National Pool softens impact of market crash’, *Media Release*, 20 January 2003; Cathy Bolt, ‘Rising currency adds to long list of woes for farmers’, *Australian Financial Review*, 21 January 2003. By way of comparison, in 2001-2002 this figure was \$256 per tonne of APW grade wheat (AWB Ltd web page www.awb.com.au/).
- 27 Senate Rural and Regional Affairs and Transport Legislation Committee, Consideration of Budget Estimates’ Hearing on 27 May 2002, p. RRA&T 23.
- 28 Senate Rural and Regional Affairs and Transport Legislation Committee, ‘Additional information received, Additional Estimates 2001-2002, Agriculture, Fisheries and Forestry Portfolio’, Vol 2, May 2002, p. 28.
- 29 Senate Rural and Regional Affairs and Transport Legislation Committee, Consideration of Budget Estimates’ Hearing on 27 May 2002, p. RRA&T 27–28.
- 30 Hon Warren Truss, ‘Second reading speech’, Wheat Marketing Amendment Bill 2002, House of Representatives, *Debates*, 12 December 2002, p. 10268.
- 31 *Explanatory Memorandum*, Wheat Marketing Amendment Bill 2002, p. 8.
- 32 *ibid.*, p. 10.
- 33 *ibid.*, p. 12.

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