



Wheat Marketing Amendment Bill 2006

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Wheat Marketing Amendment Bill 2006

Date introduced: 6 December 2006

House: Senate

Portfolio: Agriculture, Fisheries and Forestry

Commencement: On Royal Assent

Purpose

The Wheat Marketing Amendment Bill 2006 proposes amendments to the *Wheat Marketing Act 1989* with a view to transferring the right to veto certain export applications from AWB (International) Limited to the Minister for Agriculture, Fisheries and Forestry. The proposed measure is temporary and effective until 30 June 2007.

Terminology

In this Digest:

- ‘AWB’ refers to the former statutory Australian Wheat Board
- ‘AWB Ltd’ refers to the publicly listed company and
- ‘AWB(I)’ refers to AWB International which is a subsidiary of AWB Ltd and currently the entity which holds the mandate for the export single operation including the power to veto other exports of bulk wheat.

Background

This Bill was introduced on 6 December 2006, passed Parliament on 7 December 2006, and came into force on 9 December 2006.

Monopoly selling of wheat underpinned by statutory arrangements has been a feature of Australian agricultural policy for generations. Indeed, the agricultural policy landscape at both the state and Federal level was once well populated by statutory trading monopolies and other legislated arrangements for the marketing of a range of farm products.

Reforms in both agricultural policy and the broader economic agenda over the last couple of decades have transformed agricultural marketing in Australia to the point where the monopoly over wheat exports is the only remaining such arrangement effective at the

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national level. The other long-term bastions of monopoly commodity marketing, namely the sugar and rice industries, have had their statutory underpinnings removed.¹

Basis of policy commitment

The [Volker report](#) into the UN Oil-for-food program and the subsequent [Cole inquiry](#) have triggered extensive public debate as to what, if any, changes should be made to Australia's wheat marketing arrangements.

The last formal review of Australia's wheat marketing policy was a national competition policy (NCP) review in 2000. The next NCP review is scheduled for 2010. However, early in the Cole inquiry process there was a strong indication that changes would be made to Australia's wheat export marketing arrangements. In March 2006, the Prime Minister advised Parliament:

The situation is that pending the outcome of the Cole inquiry—which obviously will bear on the future of AWB Ltd and not automatically in any way on the future of the single desk policy—the single desk policy must be looked at separately from the future of AWB.²

More recently, he stated 'In the light of the Cole inquiry, the status quo cannot remain.'³

During the course of the Cole Inquiry the Iraqi Government announced it would not conduct business with AWB Ltd but that other suppliers of Australian wheat could bid for contracts. Wheat Australia, a consortium of other Australian grain companies was established to make sales to Iraq and their export applications were not vetoed by AWB(I).

One of the companies involved in the consortium, CBH from Western Australia (WA), subsequently sought to export bulk wheat to other destinations and offered WA farmers a premium over prices being paid by AWB Ltd. AWB(I)'s veto of CBH's application has been heavily criticised and led to something of a stalemate with reports of WA wheat farmers boycotting AWB Ltd and warehousing their grain.⁴

In addition to the general debate of the future of single desk selling post Cole, it was largely the circumstances in Western Australia which led to the Government announcing the temporary transfer of veto power proposed by the Wheat Marketing Amendment Bill 2006. This was acknowledged by the Prime Minister in his comment:

"It [the veto transfer] recognises the reality that in all of the circumstances to leave the veto power with AWBI, particularly in relation to this year's crop, was not tenable."

Hence the Minister's comment in the Second Reading Speech:

"... the vesting of the veto transfer from AWBI to the minister is in response to the particular set of circumstances that confront the wheat industry and therefore the government."

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A short history of wheat marketing arrangements

Wartime arrangements

The Federal Government's first involvement in Australia's wheat industry occurred during World War I when temporary war-time measures were instituted. These included establishment of the Australian Wheat Board (AWB) in 1915. Similar measures were implemented during World War II.

The war-time measures were attractive to producers because they were freed from the dominance of wheat merchants. Several Government inquiries in the early part of last century refer to the existence and impact of price and shipping cartels whose collusive actions depressed prices and controlled transport. This exploitation of farmers was facilitated partly by difficulties experienced with storage and transport arrangements during a period of rapid expansion and technological advancement.

The Depression Years

The Great Depression severely impacted on Australia's external trading position. In 1930, the Commonwealth Government sought to overcome these economic difficulties through an expansion in primary production, especially wheat-growing. Early in 1930, Australian wheat growers were urged to grow more wheat. The appeal was instigated and supported at the highest levels of Government. This was the first time that political factors directly influenced farmers' production decisions.

The 'grow more wheat' campaign was accompanied by obvious patriotic overtones and included the particularly attractive offer of a price guarantee of 4 shillings per bushel. Political leaders were unable to keep their end of the bargain with the Senate rejecting Australia's first Wheat Marketing Bill on July 4, 1930.

During 1930, however, world wheat prices declined significantly and, with most producers in the eastern States already in a financially weakened condition, the industry entered a severe economic slump. Several other legislative initiatives providing for assistance to the wheat industry were attempted during 1930 and 1931. The role and powers of the States were significant issues in the failure of most of these proposals.

Wheat-growers finally received their first Federal assistance following passage of the *Wheat Bounty (No. 2) Act*. This Act was assented to on November 25, 1931. It provided a bounty of 4½ pence per bushel on all wheat marketed in 1931-32. Further bounty and debt relief measures were provided by the Commonwealth Government during the 1930s. The States also became financially involved with direct and indirect measures to assist wheat-growers.

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Wheat Marketing Legislation

Comprehensive wheat marketing arrangements were first brought together in the *Wheat Industry Stabilisation Act 1948*. This Act embodied four main features arising from concepts of price stabilisation and orderly marketing (the removal of producer competition in the output market)

- guaranteed prices
- a home consumption price
- the Australian Wheat Board, and
- stabilisation arrangements.

These remained fundamental objectives of most subsequent legislation.

In all, eight fairly similar wheat marketing plans were enacted from World War II to 1984, with each enacted in time to give continuity of the major provisions. All plans shared some common features such as granting the AWB sole receipt and marketing powers for virtually all wheat grown in Australia; discriminatory pricing of wheat sold domestically (resulting in domestic consumers paying more than overseas customers); pooling of sales revenue and marketing costs and assistance provisions which transfer some (if not all) of the risk of adverse (downward) price movements to the Commonwealth Government.

Change in the wheat industry

The momentum for major changes to wheat marketing arrangements appears to have been well established prior to the 1984 legislation with several important High Court rulings in the late 1970s; a highly critical report in 1979 from the Senate Standing Committee on Finance and Government Operations questioning the AWB's competence and accountability; adverse reports by the Auditor General's Office; a 1981 report which was highly scathing of grain handling in NSW; and, the Industries Assistance Commission's (IAC) 1978 and 1983 reports on the wheat industry.

1984

The *Wheat Marketing Act 1984* was the first of three wheat marketing plans instituted under the then Labor Government. It was developed at a time of great financial pressures in the industry following, firstly, a severe drought over much of Eastern Australia in 1982 which caused production to plummet and the importation of wheat into Victoria from Western Australia, and secondly, in the 1983 season, heavy rains at harvest time in many areas causing a marked deterioration in crop quality.

Key changes introduced in 1984 were:

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- a system of permits for direct trade between producers and consumers of stockfeed wheat
- alterations to the Guaranteed Minimum Price arrangements which sent increased market signals to producers, and
- price underwriting for five categories of wheat (one previously) to reduce cross subsidisation.

Prior to the next wheat package there were two significant reports which served as catalysts for debate concerning the wheat industry.

Royal Commission into Grain Storage, Handling and Transport

This landmark inquiry commenced in late 1986 and continued through 1987 with its report published in 1988. It was required to advise on the most efficient and cost-effective integrated grain distribution system for Australia's future needs and to make recommendations about implementing such a system.

The inquiry focused on the legislative and administrative arrangements within which grain distribution services were being provided. It found that, for the most part, the system of grain distribution did not meet the criteria of economic efficiency, cost effectiveness and integration. A quantitative evaluation suggested that cost savings of approximately \$10 per tonne could be achieved nationally by adopting a system which provided for the greatest choice and flexibility in all aspects of the grain distribution system.

The Royal Commission's key recommendations were:

- marketing authorities to deal with a deregulated distribution system and being specifically required to minimise storage, handling and transport costs
- abolition of sole receival rights for State storage and handling agencies allowing marketing authorities to utilise those agencies providing services at least cost
- removal of all restrictions and impediments to the transport of grain by road, and
- disaggregation of charges for port and shipping services to more closely reflect actual costs incurred.

1988 IAC wheat industry report

In February 1988, the IAC completed its third review of the wheat industry.⁵ The focus of its investigations was on whether future assistance should be provided to the wheat industry and, if so, the nature, duration and extent of such assistance.

The IAC made sixteen specific recommendations as well as commenting on other matters associated with Australia's wheat marketing arrangements. It outlined a preferred course of action:

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...designed to improve the wheat industry's competitiveness by removing those regulations which impede growers and buyers of Australian wheat from responding flexibly to market developments.⁶

The major recommendations were:

- limiting the AWB's power to control exports to prescribed markets
- extending the grower-to-buyer and permit arrangements to export sales
- extending permit arrangements from feed wheat to all domestic sales and with no restraints on reselling in the domestic market
- removing the AWB's obligation to supply the domestic market, and
- discontinuation of domestic pricing and underwriting

1989

Debate during 1988-89 over the future of wheat marketing was possibly the most controversial in fifty years and generated considerable hostility both within industry ranks and between the industry and the Government. The resultant legislative package probably contained the most significant changes ever made to Australian wheat marketing arrangements to that point and included:

- deregulation the domestic wheat market
- termination of administered domestic pricing arrangements
- introduction of a fixed government guarantee on AWB borrowings
- removal of the requirement for a majority of growers among Board members
- establishment of a Wheat Industry Fund (WIF), funded principally from a minimum 2 per cent grower levy, to generate a capital base for financing the AWB's marketing activities, and
- the AWB objective of maximising net returns to producers by minimising storage, handling and transport costs with costs to be passed back to be borne by individual growers wherever possible.

In addition, the AWB was permitted to trade in grains other than wheat, the composition of the Board changed from primarily growers to persons with relevant commercial expertise and there was no sunset provision on the life of the AWB.

1992

Amendments in 1992 extended until 31 June 1999 the Commonwealth guarantee of AWB borrowings at a rate of 85% of estimated net pool returns; continued accumulation of the

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WIF; and established an AWB subsidiary for the provision of grains based value adding services.

From 1992 to 1997

Moves towards a substantially new structure for the AWB had their origins in 1989 when the peak grower organisation the Grains Council of Australia (GCA) initiated the Grains 2000 project. This was in recognition of the need for strategic planning for the future of the grains industry.

At the Grains 2000 Conference in 1991, it was recognised that the AWB needed much greater flexibility to be successful in the medium to longer term given the changes occurring both internationally and domestically. In late 1993 the grains industry established the National Grain Marketing Strategic Planning Unit which drew membership from nine industry and government organisations. This exercise included consideration of the AWB's structure.

In February 1994, consultants began a study designed to culminate in a strategic plan for the Australian milling wheat industry. Their report was published in January 1995. Later that year the GCA issued a discussion paper and instigated an extensive schedule of grower meetings in September/October 1995. The main options canvassed were re-regulation, deregulation, maintaining the current structure, corporatisation with retention of single desk and privatisation with retention of the single desk.

The GCA subsequently identified key objectives for any AWB restructure, including:

- retention of single desk selling for exports
- grower control/ownership
- an adequate capital base to maintain the existing level of harvest payments
- increased commercial flexibility, and
- industry self determination.

It also expressed support for a structure based on a statutory authority and a wholly owned subsidiary company.

The next part of the process was a working group comprising GCA, AWB and Commonwealth Department of Primary Industries and Energy representatives to investigate options and make recommendations for the restructure of AWB. The Working Group appointed independent financial and legal advisers to advise on the appropriate corporate and financial structure for the AWB in line with the GCA objectives. Other possible corporate/financial models, including the dual class and grower corporate models were later added to the advisers' brief.

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After much deliberation and newspaper headlines using terms such as 'impasse' and 'crisis', the working group finally agreed to recommend the grower corporate model to the Minister for Primary Industries and Energy and this was essentially the structure announced by the incoming Minister Hon John Anderson on 17 April 1997.

Finalisation of a preferred option by the working group proved an extremely difficult task due in part to differences between the AWB and the GCA but also to lack of unanimity amongst the GCA's state affiliates. The most vocal internal GCA critic was the Western Australian Farmers Federation (WAFF) who considered in particular that they would be disadvantaged by the proposed share voting system which was based on 'one grower, one vote'. In the end, a last minute substantial compromise within the GCA resulted in shares being allocated on a delivery basis.⁷

Corporatisation/privatisation

In June 1997, the Government introduced legislation representing the first of a two-stage process of providing the framework for the restructure of Australia's wheat marketing arrangements. The *Wheat Marketing Amendment Act 1997* received Royal Assent in December 1997 and its main features were:

- retention of AWB's control of export wheat and overseas marketing function
- establishment of AWB Limited under Corporations Law and its two wholly owned subsidiaries to which its wheat marketing and financing functions would be transferred, and
- termination on 30 June 1999 of the WIF component of the levy on wheat sales.

The corporatised AWB entities commenced operations on 1 June 1998. The second stage of the privatisation process was effected by the *Wheat Marketing Legislation Amendment Act 1998* (1998 Act). This provided for the statutory AWB to continue as a legal entity renamed as the Wheat Export Authority (WEA) which has the following main statutory functions:

- to control the export of wheat from Australia, and
- to monitor AWB(I)'s performance in relation to the export of wheat and to examine and report on the benefits to growers that result from that performance.⁸

The 1998 Act conferred single desk status on AWB(I) by empowering it to:

- export wheat without WEA's consent, and
- veto any application to export bulk wheat made to the WEA by another party.

AWB Limited became fully privatised on 1 July 1999 and in August 2001 it was publicly floated with B-Class shares listed on the Australian Stock Exchange. These developments did not affect the single desk arrangements.

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NCP review

In April 2000 the Government announced a review of the *Wheat Marketing Act 1989* (the WMA) would be conducted in accordance with National Competition Policy (NCP). The [Report](#), which was published in December 2000, amounted to a review of the single desk arrangements.

Amongst other things the review was to:

analyse and quantify the benefits, costs and overall effects on businesses involved in the Australian wheat industry and/or the community generally (the public benefits test), of the existing WMA arrangements.⁹

In order to undertake this assessment the Committee sought tangible evidence on the magnitude of such benefits, costs and overall effects.

The Committee's conclusion in relation to the public benefits test was:

Regarding the public benefits test, the Committee was not presented with, nor could it find, clear, credible, and unambiguous evidence that the current arrangements for the marketing of export wheat are of net benefit to the Australian community. As the NCP guidelines place the burden of proving that the current system delivers demonstrable net benefits to the Australian community on those arguing for the retention of the legislation, this suggests that the WMA should now be modified, or repealed.¹⁰

Further pertinent comments made by review include:

On the 'single desk price premiums' claimed to be earned by AWBI, conflicting evidence was presented to the Committee. Despite some claims that substantial premiums are being earned, most of the evidence the Committee was able to obtain supported the view that, averaged across all markets, such price premiums were likely to be small.¹¹

The Committee's view was that:

... on average, the 'single desk price premium' which Australian single seller of bulk wheat was able to obtain from export markets in the period 1997 to 1999 markets was relatively small (of the order of US\$1 per tonne).¹²

And

At the same time, the Committee received convincing evidence that the WMA's restrictions on competition have had an inhibiting effect on innovation in marketing, the identification of new marketing opportunities including small, niche, or specialised export markets, and ongoing development of existing markets for Australian wheat.

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Furthermore, considerable evidence was provided that the 'single desk' has had an anti-competitive effect on the grain supply chain, constraining vertical integration and impeding the realisation of least cost grain paths and potential cost savings in grain receipt, storage, handling and transport. Again, however, various submissions made assertions that were conflicting.¹³

The NCP Committee noted that

... considerable progress has been made in recent years toward putting export wheat marketing on a more commercial basis. Australia no longer has a statutory marketer for wheat exports, and Australian wheat growers receive negligible government support. Hence, while the Committee believes that the introduction of more competition would most likely deliver additional net benefits to growers and the wider community, it does acknowledge the possibility that the new more commercial arrangements for wheat marketing might achieve more clearly demonstrable net benefits than was evident during this review. Partly for this reason, and partly because of residual uncertainty about whether the WMA does or does not pass the net public benefits test, the Committee believes that it would be premature to recommend the repeal of WMA prior to a further relatively short evaluation period.¹⁴

The recommendation which resulted from the Committee's deliberation was this:

The Committee recommends that the 'single desk' be retained until the scheduled review in 2004 by the Wheat Export Authority (WEA) of AWBI's operation of the 'single desk'. However, the main purpose and implementation of this scheduled review should be changed so that it provides one final opportunity for a compelling case to be compiled that the 'single desk' delivers a net benefit to the Australian community. In particular:

- the WEA review would allow further information to be gathered about the level of 'single desk price premiums' and about the ability of AWBI to achieve significant and sustainable cost savings in the supply chain for the benefit of growers; and
- if no compelling case can be made by the time of the 2004 review that there is a net public benefit, then the 'single desk' should be discontinued; but
- if a compelling case can be made by the time of the 2004 review that there is a net public benefit, then the 'single desk' should continue with ongoing regular WEA reviews of AWBI's performance in managing the 'single desk', and if necessary, a further NCP review in 2010.¹⁵

2004 Wheat Marketing Review

The 2004 Wheat Marketing Review (the [Review](#)) was a provision of the amended *Wheat Marketing Act 1989*, however, its terms of reference as subsequently announced by the Government specifically excluded consideration of retention of the single desk. This was despite the NCP review recommending it be used to further evaluate the claim that the

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single desk delivers net benefits to the Australian community. Rather, the main focus of this review was AWB(I)'s performance as commercial manager of the single desk.

Bulk wheat export applications to WEA

Table 1 shows the number of applications to export bulk wheat received and rejected annually by the WEA up to 2004-05. All rejections by the WEA are due to applications being vetoed by AWB(I).

Table 1: Applications to WEA export bulk

	Received	Vetoed
1998-99 ¹	1	0
1999-00	26	26
2000-01	9	9
2001-02	2	2
2002-03	4	4
2003-04	3	3
2004-05	0	0

1 Covers July to Sep 99 only.

Source: Wheat Export Authority Annual Reports

Prior to the special arrangements instituted for wheat sales to Iraq in 2006 the only approval granted by AWB(I) was in July 1999 and this is believed to have been the result of an administrative error.¹⁶

A contrast can be made regarding the role of other exporters since AWB(I) gained veto power with the situation in earlier times. It was previously common for private grain traders to export Australian wheat with AWB approval. For example, in 1987-88 almost 40% of Australian wheat was marketed using what were referred to as 'Recognised Exporters'. This was in accordance with the AWB's policy:

... of utilizing to full advantage the skills and capabilities of grain traders where they are able to provide a service or buy Australian wheat at a price which provides the highest return to growers.¹⁷

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Financial implications

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

Main provisions

Brief overview of the amendment

The proposed amendments will:

- be effective for a ‘temporary period’ – the last day being 30 June 2007
- suspend AWBI’s ‘right of veto’ over other companies’ bulk wheat export applications
- transfer the ‘right of veto’ to the Minister for Agriculture, Fisheries and Forestry (the Minister).
- give the Minister the additional power to direct the WEA to make decisions, and
- require the Minister to base the discretionary decision to exercise the right of veto and to give a direction on public interest considerations.

The proposed amendments will not change the present export consent system for the export of wheat in bags and containers.¹⁸

The individual provisions

Item 2 introduces **proposed Part 5** into the *Wheat Marketing Act 1989* (the WMA). This Part will make specific rules with respect to the application of Part 4 of the WMA during the so-called *temporary period*. The term ‘temporary period’ is defined in **new section 65** to mean the period beginning with the law’s commencement day, that is the day after the legislation received Royal Assent, and ending at the end of 30 June 2007.

Under **new subsections 60(1)** and **(2)**, the Minister may agree in writing with the decision of the WEA to give or refuse bulk-export consent (as the case may be). Conversely, the Minister may refuse to agree with the WEA’s decision. This power is often referred to as a right of veto.¹⁹ However, a literal reading of **new subsections 60(1)** and **(2)** suggests that the Minister’s power is determinative and more akin to a *condition precedent*.²⁰ On this interpretation, the WEA will not be able to make a decision unless the Minister has exercised his or her power. It is likely that the proposed provision was drafted to overcome an ambiguity in the current legislation that had been identified (without resolving the issue) by Justices McHugh, Gummow and Callinan in *NEAT Domestic Trading Pty Ltd v AWB Ltd* (2003) 198 ALR 179 at p. 192.²¹

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New subsection 60(3) applies this ministerial right to agree to both decisions of the WEA in relation to applications that have been lodged prior to the commencement of this legislation as well as those lodged subsequently.

New section 61 will suspend the operation of subsection 57(3B) of the WMA. This section currently restricts the Authority's ability to give bulk-export consent without the prior approval given by AWBI.

New section 62 will give the Minister an additional power to give directions to the WEA. The Minister may direct the WEA to give or refuse bulk-export consent to an applicant (**new paragraphs 62(1)(a) and (b)**). Under **new paragraph 62(2)**, the Authority is under an obligation to follow the direction. To shield the Authority from any possible claims that it violated its objectives as stipulated in section 5A of the WMA, **new subsection 62(3)** prescribes that new section 62 will override all other provisions of the WMA.²² The power to give directions to the authority applies to both applications which have been lodged with the Authority prior to the amendment's commencement date and those lodged thereafter (**new subsection 62(4)**).

In exercising both the right to veto under **new section 60** as well as the power to direct the WEA under **new section 62**, the Minister is required to have regard to the *public interest*. Further guidance is not provided as part of the proposed amendments, although the Minister remarked in his Second Reading speech that he would:

naturally hav[e] in mind obligations under the World Trade Organisation, the WTO, in exercising these powers.²³

The concept of *public interest* is very broad and accepted to be almost undefinable.²⁴ As Justice Lockhart noticed:

The public interest is a concept of wide meaning and not readily limited by precise boundaries. Opinions have differed, do differ and doubtless always will differ as to what is or is not in the public interest.²⁵

In August 1999, the *Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy* highlighted that the application of this test can be confusing and possibly lacks transparency.²⁶ **New section 64** will clarify that the amendments of proposed Part 5 will not have any bearing on decisions made by the WEA prior to the commencement of the amendments.

New section 65 provides definitions for the terms *bulk-export consent*, *commencement day* and, importantly, *temporary period*.

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Concluding Comments

Along with the temporary transfer of veto power the Government has also announced a three month consultation ‘around a range of options about future marketing arrangements’.²⁷ This will occur during the six months of the temporary transfer of veto power and the Government expects during this time to have determined its longer term approach to wheat marketing.²⁸

Given all the indications that there will be changes to the long term arrangements Parliament seems likely to deal with more wheat marketing legislation before the middle of 2007.

Endnotes

1. Even though the marketing arrangements for sugar and rice were the responsibility of the Queensland and NSW governments respectively, they were national in effect because of the industries being concentrated within those states.
2. ‘Questions without notice’, House of Representatives, *Debates*, 1 March 2006, p 77.
3. Transcript of The World Today 29/11/06
<http://www.abc.net.au/worldtoday/content/2006/s1800224.htm>. Accessed 6/12/06.
4. C. Bolt and S. Wright, ‘Farmers in limbo as AWB loses veto’, *The West Australian*, 6 December 2006
5. Industries Assistance Commission, *The Wheat Industry*, Report No. 411, 25 February 1988.
6. *ibid.*, p. 19.
7. Wheat growers resolve industry split, *The Australian Financial Review*, 3 September 1997.
8. It is important to note that: i) WEA only controls non-AWB(I) exports and permits exports where this is complimentary to the national pool and allows for niche and other export opportunities and ii) in monitoring and reporting on AWB(I)’s performance, the WEA is not making recommendations to AWB(I). The manner in which AWB(I) conducts its business resides with the Board of AWB(I) and is governed by AWB(I)’s constitution and an established corporate governance framework.
9. Irving, Arnery and Lindner 2000, ‘National Competition Policy Review of the Wheat Marketing Act 1989’, Department of Agriculture, Fisheries and Forests, p. viii.
10. *ibid.*, p. 6.
11. *ibid.*
12. *ibid.*, p. 120.
13. *ibid.*, p. 6.
14. *ibid.*, p. 7.

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15. *ibid.*, p. 8.
16. J. Freed ‘Secondary players now have a chance to score’, *The Sydney Morning Herald*, 16 February 2006
17. Australian Wheat Board, Annual Report 1987-88, p13
18. The Explanatory Memorandum to the Wheat Marketing Amendment Bill 2006 states that this is to secure the ability of wheat traders ‘to continue to develop niche and other markets within the single desk framework for the benefits of growers and the industry.’ Explanatory Memorandum to the Wheat Marketing Amendment Bill 2006, p. 2.
19. See, for example, P. McGauran, Minister for Agriculture, Fisheries and Forestry, ‘Wheat Market Amendment Bill 2006, 2nd reading speech, House of Representatives, *Debates*, 7 December 2006, p. 61.
20. See the discussions in relation to the power contained in section 57(3B) of the WEA in *Neat Domestic Trading Pty Ltd v AWB Ltd* (2003) 198 ALR 179, pp. 187 (per Gleeson CJ), 192 (per Mc Hugh, Hayne, Callinan JJ).
21. Their Honours noted with respect to the powers held by AWBI that: ‘If AWBI gave its approval to the authority giving a bulk-export consent it may not be entirely clear whether the authority had a discretion to refuse consent. For present purposes, it is convenient to consider both possible constructions. On one construction of the 1989 Act the authority would retain no discretion to refuse a consent once AWBI had given its approval in writing. If that were so, it would be evident that AWBI’s decision to give, or not give, approval would be determinative. The competing view is that the authority retained a discretion to refuse a bulk-export consent, even if AWBI had given its approval to it. On that view AWBI’s role might better be described as exercising a power of veto.’
22. Section 5A of the WMA relevantly states that the Authority must ‘... seek to complement any objective of AWBI to maximise net returns for pools operated by that company...’
23. P. McGauran, Minister for Agriculture, Fisheries and Forestry, ‘Wheat Market Amendment Bill 2006, 2nd reading speech, House of Representatives, *Debates*, 7 December 2006, p. 61.
24. C. Wheeler, ‘The public interest – we know it is important, but do we know what it means?’, (2006) 48 *AIAL Forum*, p. 24.
25. *Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health* (1995) 128 ALR 238
26. Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy - Terms of Reference and Executive Summary from the ‘Interim Report: Competition Policy: Friend or Foe - Economic Surplus, Social Deficit?’, August 1999; Appendix 11.
27. Transcript of the Prime Minister The Hon. John Howard MP joint press conference with the Hon. Mark Vaile MP, Deputy Prime Minister and Minister for Transport and Regional Services, Parliament House, Canberra, 5 December, 2006
28. *ibid.*

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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