



WHEAT MARKETING ACT, 1984

No. 83 of 1984

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A.D. 1984

No. 83 of 1984

An Act relating to the marketing of wheat; to repeal the Wheat Marketing Act, 1980; and for other purposes.

[Assented to 29 November 1984]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

**PART I
PRELIMINARY**

- Short title.** 1. This Act may be cited as the "Wheat Marketing Act, 1984".
- Commencement.** 2. This Act shall commence, or be deemed to have commenced, as the case may require, on the date of commencement of the Commonwealth Act.
- Interpretation.** 3. (1) In this Act, unless the contrary intention appears—
- "Australian standard white wheat" has the same meaning as in the Commonwealth Act:
- "authorized person" means a person appointed under section 23 for the purposes of the provision in which the expression occurs:
- "authorized receiver" means a body corporate authorized to receive wheat on behalf of the Board under section 6 or under a corresponding provision of the Commonwealth Act or of a State Act:
- "the Board" means the Australian Wheat Board continued in existence by the Commonwealth Act:
- "the Chairman" means the Chairman of the Board:
- "the Commonwealth Act" means the *Wheat Marketing Act 1984* of the Commonwealth:
- "the Commonwealth Minister" means the Minister of State of the Commonwealth administering the Commonwealth Act and includes a Minister of State of the Commonwealth acting on behalf of that Minister:

“the Company” means South Australian Co-operative Bulk Handling Limited:

“the former Commonwealth Act” means the *Wheat Marketing Act 1979* of the Commonwealth:

“guaranteed minimum price”, “net pool return”, “net pool return rate” and “preliminary guaranteed minimum price” have the same respective meanings as in the Commonwealth Act:

“the repealed Act” means the Wheat Marketing Act, 1980, repealed by this Act:

“season” means the period of twelve months commencing on the first day of July, 1984, and each of the next six succeeding periods of twelve months:

“State Act” means an Act of the Parliament of another State relating to the marketing of wheat, and includes regulations or other instruments made under, or by virtue of, that Act:

“Territory” means an internal Territory of the Commonwealth:

“wheat” does not include wheat harvested after the thirtieth day of June, 1991:

“wheat products” has the same meaning as in the Commonwealth Act:

“the Wheat Tax Acts” means the *Wheat Tax Act 1957* and the *Wheat Tax Act 1979* of the Commonwealth:

“the Wheat Tax (Permit) Acts” means the *Wheat Tax (Permit) Act 1984* and the *Wheat Tax (Permit) Collection Act 1984* of the Commonwealth.

(2) In this Act, references to wheat of a category, or wheat of a prescribed category, have the same meaning as such references in the Commonwealth Act.

(3) A reference in this Act to wheat of a season shall be read as a reference to wheat harvested during that season.

(4) A reference in this Act to wheat acquired by the Board under an Act (whether this Act, the Commonwealth Act or a State Act) shall be read as a reference to wheat of a season that, after the thirtieth day of June, 1984, has become the property of the Board by force of that Act or of an Act repealed by that Act.

(5) In this Act, unless the contrary intention appears, a reference to a final advance payment under section 15 in respect of any wheat is a reference to the final advance payment under that section in respect of that wheat before any reduction or increase is made under section 15 (8) or (11).

4. (1) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that, where any provision of this Act, or the application of any provision of this Act to any person or circumstances, is held invalid, the remainder of this Act and the application of the provision to other persons or circumstances shall not be affected.

Act to apply
subject to
Constitution.

(2) If, by reason of the Commonwealth of Australia Constitution Act, a provision of this Act or a notice under a provision of this Act cannot

validly apply in relation to any particular wheat or category or class of wheat, that provision or notice shall be construed as intended to operate in relation to all wheat to which it purports to apply, being wheat in relation to which it can validly apply.

PART II

MARKETING OF WHEAT

Functions and
powers of Board.

5. (1) The functions of the Board are—

- (a) to control the marketing of wheat;
- (b) to encourage and promote the use and sale of wheat;
- (c) to co-operate, consult and enter into agreements with, and make recommendations to, authorized receivers with respect to services provided by them and other matters relating to the marketing of wheat;
- (d) to determine, after consultation with the authorized receivers, standards for the classification of wheat delivered to the Board and, having regard to those standards, to determine categories of wheat containing one or more classes and grades of wheat;
- (e) to determine, after consultation with the authorized receivers, standards for the condition and quality of wheat delivered by the Company to purchasers;
- (f) to promote, fund, and arrange for the conduct of, research into matters relating to the marketing of wheat;
- (g) to provide advice and make recommendations to the Minister with respect to matters relating to the marketing of wheat;

and

- (h) to perform any other function conferred on the Board by this Act or the regulations.

(2) The Board has power to do all things that are necessary or convenient to be done for or in connection with, or that are incidental to, the performance of its functions and, in particular, without limiting the generality of the foregoing, the Board may—

- (a) purchase wheat;
- (b) accept the delivery of wheat to it;
- (c) sell or dispose of, or make arrangements for the sale or disposal of, wheat;
- (d) require, in circumstances where the Board considers it appropriate, a purchaser of wheat from the Board to give the Board a guarantee or other security for the payment of the purchase price of the wheat;
- (e) enter into an arrangement under which, in consideration of goods supplied, or to be supplied, by a purchaser of wheat from the Board, a third party makes payments to the Board for or in respect of the wheat;

- (f) enter into an arrangement under which, if the Board so requests, a third party provides to a purchaser of wheat from the Board finance for the purchase of the wheat;
- (g) enter into agreements with respect to the carriage of wheat by rail;
- (h) enter into contracts with respect to, or charter vessels for, the carriage, by sea, of wheat and other grains and commodities acquired by the Board;

and

- (i) charge such fees as are fair and proper for the provision of services by the Board or the use by other persons of the facilities of the Board when not required by the Board.

(3) The Board may keep its accounts and records in respect of costs and revenues relating to wheat in such manner as will, in its judgment, attribute those costs and revenues to wheat of different seasons in an equitable manner, and costs and revenues so attributed to wheat of a season shall be deemed to relate to wheat of that season.

(4) The Board may have regard to any advice furnished to it by a consultative group established under section 12 of the Commonwealth Act relating to the performance of the functions of the Board under this Act.

(5) In subsection (3), "season" includes any period that is a season for the purposes of the repealed Act.

(6) Subject to subsection (7), the Board may, in relation to—

- (a) a sale or proposed sale of wheat by the Board;

or

- (b) a borrowing or raising of moneys by the Board or a proposed borrowing or raising of moneys by the Board (including a borrowing or raising of moneys by the Board by dealing with securities),

enter into and deal with currency contracts or futures contracts for hedging purposes at a financial market (whether at a place in or outside Australia).

(7) The Board shall not enter into or deal with currency contracts or futures contracts otherwise than in accordance with the guidelines having effect from time to time under section 6 (2) of the Commonwealth Act.

(8) A currency contract or futures contract shall be taken to be entered into or dealt with for hedging purposes if, and only if—

- (a) in the case of a contract with respect to corn futures or wheat futures—the contract is entered into or dealt with for the purpose of minimizing the risks of adverse variations in the price obtainable for wheat under a contract for the sale of wheat that has been, or is to be, entered into by the Board;

and

- (b) in the case of a currency contract or a contract with respect to financial futures—the contract is entered into or dealt with for the purpose referred to in paragraph (a) or for the purpose of minimizing the risks of adverse variations in the costs of a borrowing or raising of moneys by the Board or a proposed

borrowing or raising of moneys by the Board (including a borrowing or raising of moneys by dealing with securities).

(9) In subsections (6), (7) and (8)—

“currency contract” means a contract with respect to currency futures or a forward exchange contract:

“financial market” means a market, exchange or other place at which currency contracts or futures contracts are regularly made or traded:

“futures contract” means a contract with respect to financial futures, corn futures or wheat futures (including such a contract relating to corn harvested outside Australia).

Authorized
receivers.

6. (1) The Company is authorized to receive wheat on behalf of the Board.

(2) An authorized receiver may carry on operations as such a receiver by means of, and on the premises of, an agent of the authorized receiver, being such an agent approved by the Board.

(3) The Company shall—

(a) comply with any standards referred to in section 5 (1) (d) or (e);

and

(b) enter into an agreement with the Board in accordance with section 56 of the Commonwealth Act.

Directions by
Commonwealth
Minister.

7. The Commonwealth Minister may give directions in writing to the Board concerning the performance of its functions and the exercise of its powers, and the Board shall comply with those directions.

Delivery of
wheat.

8. (1) Subject to this Act, a person who is in possession of wheat may deliver that wheat to the Board.

(2) The Board may—

(a) by notice in writing served personally on the person to whom it is addressed or served on the person by post at the person's usual or last known place of abode or business;

or

(b) by notice published in the *Gazette* and addressed to persons generally or to persons included in a class of persons,

require the person, or each person, as the case may be, to whom the notice is addressed—

(c) to deliver to the Board, in accordance with any directions in the notice, wheat (other than exempt wheat) that is in the possession of the person;

or

(d) to deliver to the Board, in accordance with any directions in the notice, wheat (other than exempt wheat) that, during such period as is specified in the notice, comes into the possession of the person.

(3) Upon the delivery of wheat to the Board under this section, the wheat becomes the absolute property of the Board, freed from all mortgages, charges, liens, pledges, interests and trusts.

(4) A person shall not—

(a) without reasonable excuse, refuse or fail to deliver wheat to the Board as required by a notice under subsection (2);

or

(b) deliver to the Board wheat that has previously been sold by the Board.

Penalty: Ten thousand dollars in the case of a person not being a body corporate or fifty thousand dollars in the case of a body corporate.

(5) In this section—

“exempt wheat” means—

(a) wheat retained by the grower for use on the farm where it was grown;

(b) wheat in respect of which a permit has been issued under section 11 or the corresponding provision of the Commonwealth Act or a State Act;

(c) wheat purchased under a permit under section 12 or wheat harvested outside the State and purchased under a permit under the corresponding provision of the Commonwealth Act or a State Act;

or

(d) wheat that has been sold by the Board.

9. (1) Delivery of wheat to the Board may be made by delivering the wheat to an authorized receiver and not otherwise, and the delivery is not effective unless and until the delivery is accepted by the authorized receiver.

Delivery to
authorized
receiver.

(2) A person who delivers wheat to an authorized receiver shall, at the time of the delivery of the wheat, furnish to the authorized receiver a declaration in writing signed by the person stating, in the opinion of the person, the variety of the wheat so delivered.

Penalty: One thousand dollars.

(3) A person who delivers wheat to an authorized receiver shall, not later than the time of the delivery of the wheat, furnish to the authorized receiver a statement in writing signed by the person of the names and addresses of all persons known by the person to have, or to claim, an interest in the wheat or the payment to be made for the wheat, and of all particulars known to the person of those interests.

Penalty: One thousand dollars.

(4) A statement may be furnished by a person under subsection (3) with respect to more than one delivery, or with respect to all deliveries, of wheat to be made by the person to an authorized receiver within such period as is specified in the statement.

(5) A person who, after the expiration of a season, delivers to an authorized receiver wheat harvested in that season shall, at the time of the

delivery of the wheat, deliver to the authorized receiver a declaration in writing signed by that person correctly stating the season during which the wheat was harvested.

Penalty: One thousand dollars.

Act not to apply
to certain wheat.

10. (1) A person who has possession of—

(a) seed wheat;

or

(b) wheat that satisfies none of the standards determined by the Board for the classification of wheat delivered to it,

may, by notice served on the Board, notify the Board accordingly.

(2) Where, on receipt by the Board of a notice by a person under subsection (1), an authorized person is satisfied—

(a) in the case of wheat stated by the notice to be seed wheat—that the wheat will be used as seed wheat;

or

(b) in any other case—that the wheat is wheat to which subsection (1) (b) applies,

the authorized person may, on behalf of the Board, issue to the first mentioned person a declaration that this Act does not apply to that wheat.

(3) A declaration under subsection (2) shall be in writing and shall specify—

(a) the name and address of the person to whom the declaration is issued;

(b) whether the wheat to which the declaration applies is seed wheat or wheat to which subsection (1) (b) applies;

(c) the quantity of the wheat;

(d) the address of the place where the wheat is when the declaration is issued;

(e) the date of the issue of the declaration;

and

(f) such other particulars (if any) as the Board specifies from time to time.

Permits for
movement of
wheat.

11. (1) A person who has possession of wheat on a farm may, by notice served on the Board, notify the Board that the person wishes to deliver the wheat to a miller for gristing with the object of having the produce of the gristing returned to the farm for use on the farm.

(2) On receipt by the Board of a notice by a person under subsection (1), an authorized person may, on behalf of the Board, issue to the person a permit for the movement of the wheat from the farm to the mill and the movement of the produce of the gristing from the mill to the farm.

(3) A person who has possession of wheat on the farm on which the wheat was grown may, by notice served on the Board, notify the Board that the person wishes—

(a) to move the wheat from that farm to an associated farm;

or

- (b) where the owner of that farm owns stock that are being agisted on another farm—to move the wheat from that farm to the other farm for the purpose of feeding those stock.

(4) On receipt by the Board of a notice by a person under subsection (3) in relation to the movement of wheat between two farms, an authorized person may, on behalf of the Board, if the authorized person is satisfied that—

- (a) the proposed movement of the wheat would not detrimentally affect the orderly marketing of wheat by the Board;

and

- (b) the proposed movement of the wheat is of a kind described in subsection (3) (a) or (b),

issue to the first mentioned person a permit for the movement of the wheat between those farms.

(5) A permit under this section shall be in writing and shall specify—

- (a) the name and address of the person to whom the permit is issued;

- (b) the quantity of the wheat to which the permit applies;

- (c) the date of the issue of the permit;

- (d) in the case of a permit issued under subsection (2)—

- (i) the address of the farm where the wheat is at the time of the issue of the permit;

and

- (ii) the address of the miller who is to grist the wheat;

- (e) in the case of a permit issued under subsection (4)—

- (i) the address of the farm where the wheat is at the time of the issue of the permit;

and

- (ii) the address of the farm to which the wheat is to be moved;

and

- (f) such other particulars (if any) as the Board specifies from time to time.

(6) For the purposes of this section, two farms shall be deemed to be associated farms if—

- (a) they are owned, operated or controlled by the same person or the same partnership;

- (b) each of them is owned, operated or controlled by a partnership and the two partnerships have at least one common partner;

- (c) one of them is owned, operated or controlled by a person and the other is owned, operated or controlled by a partnership of which that person is a member;

or

- (d) they are, in some other manner, so associated with the same person that the Board is of the opinion that they should be treated as associated farms for the purposes of this section.

Permits for
purchase of wheat
for stockfeed use.

12. (1) The Board may, on application made to it by a person and on payment of such fee as the Board may determine, issue to the person a permit authorizing the person to make, during a season, purchases of wheat from growers for a stockfeed use.

(2) An application under subsection (1) shall be in accordance with a form approved by the Board.

(3) A person to whom a permit has been issued under this section shall, not later than the expiration of the month immediately succeeding a month in which wheat was purchased under the permit, by notice in accordance with a form approved by the Board served on the Board, notify the Board, with respect to each such purchase during the last mentioned month, of—

- (a) the name and address of the person from whom the wheat was purchased;
- (b) the date of the purchase;
- (c) the quantity of wheat so purchased;
- and
- (d) any other matter required to be specified by the notice.

Penalty: One thousand dollars.

(4) A permit under this section shall be in writing and shall specify—

- (a) the name and address of the person to whom the permit is issued;
- (b) the date of the issue of the permit;
- (c) the season during which purchases authorized by the permit may be made;
- (d) the total quantity of wheat authorized by the permit to be purchased;
- and
- (e) such other particulars (if any) as the Board specifies from time to time.

(5) The Minister may, by determination in writing—

- (a) set guidelines for the purpose of the exercise by the Board of its power to issue permits under this section;
- and
- (b) revoke or vary guidelines set for that purpose or set new guidelines for that purpose,

and shall give to the Board a copy of each determination made under this subsection.

(6) The Board shall not issue a permit under this section otherwise than in accordance with the guidelines having effect from time to time under subsection (5).

(7) This section has effect subject to the Wheat Tax (Permits) Acts.

(8) The rate applicable for the purposes of section 6 (b) (ii) of the *Wheat Tax (Permit) Act 1984* of the Commonwealth is such rate as may be determined from time to time by the Minister, and notified in writing to the Board.

13. (1) Where a person (in this section referred to as the "offeror") offers to purchase for use in Australia wheat that is in the possession of another person (in this section referred to as the "grower") in the State, the grower may, by notice served on the Board, notify the Board accordingly.

Contract for sale of wheat entered into on behalf of Board.

(2) Subsection (1) does not apply in relation to the proposed purchase of wheat for a stockfeed use that is authorized by a permit in force under section 12.

(3) A notice under subsection (1) shall be in accordance with a form approved by the Board and shall specify—

- (a) the name and address of the grower;
- (b) the name and address of the offeror;
- (c) the quantity of wheat to which the offer made by the offeror relates;
- (d) that the wheat is proposed to be purchased for human consumption, for a stockfeed use or for an industrial use, whichever is applicable;
- (e) the terms and conditions (including the price) of the offer made by the offeror;

and

- (f) such other information as is required to be specified by the notice.

(4) Where, on the receipt by the Board of a notice under subsection (1), an authorized person is satisfied that acceptance of the proposed offer would not detrimentally affect the orderly marketing of wheat by the Board, the authorized person may authorize the grower, in writing, to accept the offer on behalf of the Board.

(5) On the receipt by the grower of an authorization under subsection (4), the grower shall set aside wheat for sale in accordance with that authorization and, thereupon, the wheat so set aside becomes the absolute property of the Board, freed from all mortgages, charges, liens, pledges, interests and trusts.

(6) A contract for the sale of wheat entered into by the grower, on behalf of the Board, under an authorization given under subsection (4) shall provide that the price for the wheat shall be paid directly to the Board.

(7) A contract for the sale of wheat under this section shall not be entered into in a season other than a season in relation to which section 21 operates.

(8) A person who, after the expiration of a season, serves a notice on the Board under subsection (1) with respect to wheat harvested in that season shall at the time of the service of the notice serve by post on the Board a declaration in writing signed by that person correctly stating the season during which the wheat was harvested.

Penalty: One thousand dollars.

Unauthorized
dealings with
wheat.

14. (1) Except as provided by section 8 or in accordance with a permit under section 11 or 12 or an authorization under section 13 or with the consent in writing of the Board—

- (a) a person shall not sell or deliver to a person or transfer to a person the possession of, or take possession of, or grist or otherwise process, or mix with any other grain or substance, any wheat, other than wheat that has been sold by the Board;
- (b) a person shall not move wheat, or cause or permit wheat to be moved, from the farm where the wheat was grown or from the farm or other place to which the wheat has been moved in accordance with a permit under section 11;
- (c) where a person has purchased wheat under a permit under section 12—the person shall not use the wheat for a use other than a stockfeed use;

and

- (d) where wheat has been sold by the Board under a contract of sale that specifies a purpose for which the wheat is to be used—the purchaser under the contract shall not use the wheat for any other purpose.

(2) A person who contravenes subsection (1) is guilty of an offence.

Penalty: Ten thousand dollars in the case of a person not being a body corporate or fifty thousand dollars in the case of a body corporate.

(3) A reference in subsection (1) to a permit under section 12 includes, in relation to wheat harvested outside the State, a reference to a permit under a corresponding provision of the Commonwealth Act or a State Act.

(4) Subsection (1) (a) does not prohibit the use of wheat on the farm on which the wheat was grown.

Advance
payments for
wheat of season
other than last
two seasons.

15. (1) The Board shall make an interim advance payment determined by the Board in accordance with subsection (2) in respect of wheat of each category of a season acquired before the first day of March of that season by the Board under this Act if, at the time when the wheat is so acquired, the guaranteed minimum price for wheat of that category of that season has not been determined.

(2) The amount of an interim advance payment under subsection (1) in respect of wheat of a particular category of a season is an amount calculated at ninety per centum of the preliminary guaranteed minimum price for wheat of that category of that season increased or decreased, as the case may be, by such allowances as the Board considers proper for the matters set out in subsection (5).

(3) The Board shall make a final advance payment determined by the Board in accordance with subsection (4) in respect of wheat of each category of a season acquired by the Board under this Act as soon as practicable after the guaranteed minimum price for wheat of that category of that season has been determined.

(4) The amount of a final advance payment under subsection (3) in respect of wheat of a particular category of a season is an amount calculated at the guaranteed minimum price for Australian standard white wheat of that season increased or decreased, as the case may be, by such allowances

as the Board considers proper for the matters set out in subsections (5) and (6).

(5) The following matters are matters for which allowances referred to in subsection (2) or (4) in respect of wheat of a particular category of a season may be calculated:

(a) where the wheat is wheat of a prescribed class of that category—the characteristics of the variety or varieties of wheat included in that class and—

(i) where the wheat was delivered to the Board—the place at which the wheat was so delivered;

or

(ii) in any other case—the place at which, if the wheat had been delivered to the Board, it would, in the opinion of the Board, have been so delivered;

(b) where the wheat was delivered to the Board—

(i) charges by the Board in respect of costs of the transport of the wheat to a terminal port from the place at which the wheat was so delivered;

(ii) charges by the Board in respect of so much of the cost to the Board of remuneration payable under an agreement in force under the Commonwealth Act by the Board to the authorized receiver to whom the wheat was so delivered as is applicable to the wheat;

(iii) the time of delivery of the wheat;

and

(iv) any toll payable to the Company in respect of wheat by members of the Company under section 29 of the Bulk Handling of Grain Act, 1955;

(c) where the wheat was not delivered to the Board—

(i) charges that the Board would have made if the wheat had been delivered to the Board in respect of the cost of the transport of the wheat from the place at which, in the opinion of the Board, the wheat would have been so delivered to the appropriate terminal port in relation to that place;

and

(ii) charges by the Board in respect of so much of the cost to the Board of that proportion of the remuneration payable under an agreement in force under the Commonwealth Act by the Board to the authorized receiver at the place referred to in subparagraph (i) that is specified in a notice from the authorized receiver to the Board under section 26 as would be applicable to the wheat if the wheat had been delivered to the authorized receiver at that place;

(d) other necessary adjustments.

(6) An additional matter for which allowances referred to in subsection (4) in respect of wheat of a particular category of a season may be calculated is the quality of the wheat.

(7) The power of the Board to determine allowances referred to in subsection (2) or (4) includes a power to determine allowances with respect to some only of the matters set out in subsections (5) and (6) and to determine different allowances with respect to different grades or different prescribed classes of any category of wheat.

(8) Where the price received by the Board under a contract of sale of wheat entered into under section 13 differs from the price that would be the appropriate price for the wheat if the wheat were Australian standard white wheat sold under a contract of sale to which section 21 applied, the amount of an advance payment that would, but for this subsection, be payable under subsection (1) or (3) in respect of that wheat shall—

(a) where the first mentioned price is less than the second mentioned price—be reduced by the amount of the difference between the two prices;

or

(b) where the first mentioned price exceeds the second mentioned price—be increased by the amount of the difference between the two prices.

(9) The Board may make advances to a person on account of interim advance payments under subsection (1) in respect of wheat of each category of a season.

(10) An interim advance payment under subsection (1) in respect of wheat shall be reduced by an amount equal to the aggregate of—

(a) the amount of any advance under subsection (9);

and

(b) the amount of any advance payment made by the Board under the repealed Act,

in respect of that wheat.

(11) A final advance payment under subsection (3) in respect of wheat shall be reduced by the amount of any interim advance payment under subsection (1) in respect of that wheat.

(12) An advance payment in respect of wheat of a category of a season under subsection (1) or (3)—

(a) may be paid as a lump sum on, or as soon as practicable after, delivery of the wheat to the Board;

(b) if the Board and the person to whom the payment is to be made agree, may be paid at such later time as is, or may comprise two or more payments to be made at such later times as are, determined by agreement between the Board and that person, and shall be paid on such conditions (including conditions relating to the payment to that person of interest on the amount of the advance payment that is from time to time unpaid) as are so determined.

(13) The Board shall not enter into an agreement of a kind referred to in subsection (12) (b) with a person in relation to an advance payment under this section in respect of wheat of a particular category of a season on conditions that are inequitable as regards other persons who have received, or will receive, such advance payments under this section in respect of wheat of that category of that season.

(14) Where—

- (a) wheat is delivered to the Board at a particular place on a day (in this subsection referred to as the “delivery day”) within a prescribed period in relation to that place;
 - (b) the wheat was available for delivery on the prescribed day in relation to that place;
- and
- (c) an interim advance payment under subsection (1) is payable in respect of the wheat,

the Board may, in calculating an allowance for the matter referred to in subsection (5) (b) (iii), include an amount equal to the amount of interest that the person to whom the interim advance payment is payable would have received if that person—

- (d) had delivered the wheat to the Board on the prescribed day;
- and
- (e) had, on that day, entered into an agreement under subsection (12) (b) providing for the payment of the whole of the interim advance payment on the delivery day.

(15) The obligations of the Board under this section in respect of any wheat are subject to the operation of the Wheat Tax Acts.

(16) In this section—

“prescribed class”, in relation to wheat of a particular category, means a class determined by the Board of wheat of that category, being a class so determined by reference to a variety or varieties of wheat, whether or not it is also so determined by reference to another criterion or other criteria:

“prescribed day”, in relation to the delivery of wheat to the Board at a particular place, is the day on which, in the opinion of the Minister, wheat would normally become available for delivery at that place:

“prescribed period”, in relation to a particular place, means the period of twelve weeks commencing on the expiration of the period of two weeks after the prescribed day in relation to that place:

“season” does not include the season commencing on the first day of July, 1989, or the next succeeding season.

16. (1) Where the net pool return rate for wheat of a season exceeds the guaranteed minimum price for Australian standard white wheat of that season, the Board shall make a final payment of an amount determined in accordance with subsection (2) for Australian standard white wheat of that season acquired by the Board under this Act.

Final payment for wheat of season other than last two seasons.

(2) Subject to subsection (6), the Board shall determine an amount payable under subsection (1) in respect of Australian standard white wheat of a season by—

- (a) calculating the amount that the final advance payment under section 15 in respect of that wheat would have been if—
 - (i) the reference in section 15 to the guaranteed minimum price for Australian standard white wheat of that season

were a reference to the net pool return rate for wheat of that season;

- (ii) the net pool return for that season were reduced by an amount (if any) equal to the amount, or the sum of the amounts, deducted by the Board from the disposal of wheat of that season and paid into a reserve account under section 7 of the Commonwealth Act;

and

- (iii) the net pool return for that season were adjusted to take into account the result of any contract or dealing of the kind referred to in section 16 (2) (d) (i) of the Commonwealth Act that was entered into or that took place in relation to that season;

and

- (b) deducting from the amount calculated in accordance with paragraph (a) the amount of the final advance payment under section 15 in respect of that wheat.

(3) For the purpose of determining whether or not to make a final payment for wheat of a prescribed category of a season acquired by the Board under this Act, the Board shall make a calculation in accordance with subsection (4) in relation to wheat of that category of that season and, where the amount per tonne for that wheat calculated in accordance with that subsection is a positive amount, the Board shall make a final payment per tonne for such wheat of an amount calculated by—

- (a) taking the aggregate of that positive amount and the guaranteed minimum price for wheat of that category of that season;

and

- (b) deducting from that aggregate the amount per tonne of the final advance payment under section 15 in respect of that wheat.

(4) For the purposes of the application of subsection (3) in relation to wheat of a prescribed category of a season—

- (a) the guaranteed minimum price for Australian standard white wheat of that season shall be deducted from the net pool return rate for wheat of that season;

and

- (b) where—

- (i) the gross return per tonne for wheat of that category of that season does not exceed the gross return per tonne for Australian standard white wheat of that season—the amount per tonne of the final difference in relation to wheat of that category shall be deducted from the amount per tonne of the original difference in relation to wheat of that category and the amount so obtained shall be added to the amount calculated in accordance with paragraph (a);

and

- (ii) the gross return per tonne for wheat of that category of that season exceeds the gross return per tonne for

Australian standard white wheat of that season—the amount per tonne of the original difference referred to in subparagraph (i) shall be deducted from the amount per tonne of the final difference referred to in that subparagraph and the amount so obtained shall be added to the amount calculated in accordance with paragraph (a).

(5) In subsection (4)—

“final difference”, in relation to wheat of a prescribed category, means the difference between—

(a) the gross return per tonne for wheat of that category;

and

(b) the gross return per tonne for that wheat that would, in the opinion of the Board, have been received by the Board from the disposal of that wheat if that wheat had been Australian standard white wheat sold at the same times and in the same quantities as that wheat was sold:

“original difference”, in relation to wheat of a prescribed category, means the difference that was calculated for the purposes of section 15 (3) (b) of the Commonwealth Act between the gross return per tonne and the notional gross return per tonne for wheat of that category.

(6) An amount payable under subsection (1) or (3) in respect of wheat of a season to a person who has purchased a quantity of wheat of that season (in this subsection referred to as the “purchased quantity of wheat”) from the Board in accordance with section 21 (8) shall be calculated in accordance with the formula:

$$A - \frac{AB}{C}$$

where—

A is the amount that, but for this subsection, would be the amount required to be paid by the Board to the person under subsection (1) or (3), as the case requires, in respect of that season:

B is the purchased quantity of wheat:

and

C is the total quantity of wheat of that season acquired by the Board from the person under this Act.

(7) The Board may make advances on account of final payments under subsection (1) or (3).

(8) For the purposes of calculating the amount referred to in subsection (2) (a) in respect of Australian standard white wheat of a season, the amount of the final advance payment under section 15 in respect of that wheat shall be increased or decreased, as the case may be, by the same amount of allowances in respect of the matters referred to in section 15 (5) and (6) as the amount of that final advance payment was increased or decreased.

(9) For the purposes of this section, the net pool return rate for wheat of a season shall be calculated as if the net pool return for that season were

calculated taking into account the adjustments referred to in subsection (2) (a) (ii) and (iii).

(10) In this section, "season" does not include the season commencing on the first day of July, 1989, or the next succeeding season.

Adjustments for allowances made under section 15.

17. (1) In this section, "adjusted advance payment", in relation to a person who has received a final advance payment under section 15 (3) in respect of a season, means, subject to subsection (2), the amount that, in the opinion of the Board, would have been the amount of the final advance payment made to that person under section 15 (3) in respect of that season if the amount of that payment had been calculated at the time when the amount of allowances for the matters referred to in section 15 (5) and (6) in relation to that person could be finally ascertained.

(2) The amount of an adjusted advance payment under this section in respect of wheat sold under a contract entered into by a person under section 13 shall be determined as if the amount of allowances for the matter referred to in section 15 (6) was the same as the amount of allowances for that matter calculated for the purpose of determining the amount of the final advance payment under section 15 (3) in respect of that wheat.

(3) The amount of the adjusted advance payment for a season in relation to a person who has purchased a quantity of wheat of that season from the Board in accordance with section 21 (8) shall be adjusted by such allowances as the Board considers proper for the quality of wheat of that season acquired by the Board from the person under this Act compared to the quality of the wheat so purchased by the person from the Board, having regard to allowances that were taken into account by the Board in determining the price for the wheat so purchased.

(4) Where the adjusted advance payment in relation to a person in respect of a season is greater than the amount of the final advance payment made to that person under section 15 (3) in respect of that season, the Board shall pay to that person an amount equal to the difference between that adjusted advance payment and the amount of that final advance payment.

(5) Where the amount of the final advance payment made to a person under section 15 (3) in respect of a season is greater than the adjusted advance payment in relation to the person in respect of that season, the person is liable to pay to the Board an amount equal to the difference between the amount of that final advance payment and that adjusted advance payment.

(6) The Board may deduct the whole or a part of an amount payable by a person to the Board under subsection (5) or the corresponding provision of the repealed Act from an amount payable by the Board to the person under section 15, 16 or 18 or a corresponding provision of the Commonwealth Act, the former Commonwealth Act or of a State Act or of the repealed Act.

(7) An amount payable by a person to the Board under subsection (5) is a debt due by the person to the Board and may be recovered as a debt due to the Board by action against the person in a court of competent jurisdiction.

(8) The Board may make advances on account of payments under subsection (4).

(9) Where a person has received final advance payments under section 15 (3) in respect of two or more categories of wheat of a season, a reference

in this section to the amount of the final advance payment received by the person shall be read as a reference to the aggregate of the amounts of those final advance payments.

18. (1) A person may, at any time after payment to the person of a final advance payment under section 15 in respect of wheat and before payment of a final payment under section 16 in respect of the wheat, apply to the Board for a payment under this section in respect of the wheat.

Payment in lieu
of payment under
section 16.

(2) Where a person to whom a final advance payment under section 15 has been made dies, an application may be made under subsection (1) by the trustee of the estate of the person.

(3) An application under subsection (1) shall be in accordance with a form approved by the Board.

(4) Subject to this section, the Board shall grant each application under subsection (1).

(5) The Board shall not grant an application under subsection (1) in respect of wheat where, in the opinion of the Board, the amount of the final payment under section 16 in respect of that wheat cannot reasonably be estimated or no final payment under that section is likely to be made.

(6) The Board may refuse to grant an application under subsection (1) in respect of wheat if the Board proposes to make a final payment under section 16 in respect of that wheat within three months after the receipt by the Board of the application, but, if at the expiration of that three months the Board has not made such a final payment, the Board shall, subject to subsection (5), grant the application.

(7) A person to whom a payment is made under this section in respect of wheat is not entitled to a final payment under section 16 in respect of that wheat.

(8) The amount of a payment in respect of wheat of a season under this section shall be an amount estimated by the Board of the amount of the final payment that would, if the first mentioned payment were not made, be payable to the person under section 16 reduced by such amount as the Board considers proper having regard to—

(a) the cost to the Board of borrowing moneys for the purpose of making payments under this section in respect of wheat of that season;

(b) the administrative costs incurred by the Board in dealing with the application;

and

(c) such other factors as the Board considers relevant.

19. (1) In this section, “season to which this section applies” means the season commencing on the first day of July, 1989, or the next succeeding season.

Payment for
wheat of last two
seasons.

(2) Where any wheat of a season to which this section applies is acquired by the Board under this Act, the Board shall pay for that wheat an amount determined by the Commonwealth Minister equal to the amount that would be determined by the Commonwealth Minister in accordance with section 30 (3) of the Commonwealth Act in respect of that wheat if

that wheat were wheat to which section 30 of the Commonwealth Act applied.

(3) The Board may, with the approval of the Commonwealth Minister, make advances on account of payments referred to in subsection (2).

(4) The obligation of the Board under this section in respect of any wheat is subject to the operation of the Wheat Tax Acts.

20. (1) Subject to subsections (4) and (5) and to any other law to which the Board is subject, an amount payable under section 15, 16, 17, 18 or 19 in respect of any wheat is payable to the person who would have been entitled to receive the price of the wheat if the wheat had been lawfully sold to the Board at the time of the acquisition of the wheat by the Board.

Payment by Board.

(2) The same rights (if any) exist against the person receiving an amount paid by the Board under section 15, 16, 17, 18 or 19 in respect of wheat as would exist if the moneys so paid were the proceeds of a sale or purported sale of the wheat by the person, and any such rights may be enforced by action in any court that would have had jurisdiction if the moneys were the proceeds of such a sale or purported sale.

(3) Payment in good faith by the Board of any moneys payable under this Act to the person appearing to the Board to be entitled to receive them discharges the Board from any further liability in respect of those moneys.

(4) An assignment of moneys payable by the Board in respect of wheat delivered to the Board (not including a registered crop lien) is voidable at the instance of the Board.

(5) An assignment of moneys payable by the Board in respect of wheat delivered to the Board, being a registered crop lien, is voidable at the instance of the Board unless and until notice in writing of the registration of the lien has been furnished to the Board by the holder of the lien.

21. (1) The price at which, during a season, the Board shall, by a contract made in the State (other than a contract entered into under section 13), sell wheat for use in Australia is the appropriate price that is applicable in accordance with this section.

Home consumption price of wheat.

(2) Subject to subsection (5), during a quarter (in this subsection referred to as the "relevant quarter") the price per tonne of Australian standard white wheat in bulk sold free on rail at a port of export for human consumption in Australia is such price as is determined by the Commonwealth Minister, or by a person authorized in writing by the Commonwealth Minister, as the case may be, for the purposes of section 32 (2) of the Commonwealth Act with respect to the relevant quarter.

(3) Subject to subsections (4) and (5)—

(a) the price for Australian standard white wheat in bulk sold free on rail at a port of export for a use (in this section referred to as the "relevant use") in Australia that is a stockfeed use is such price as is determined from time to time by the Board in respect of the relevant use;

and

(b) the price for Australian standard white wheat in bulk sold free on rail at a port of export for a use (in this section also referred to as the "relevant use") in Australia that is an industrial use

is such price as is determined from time to time by the Board in respect of the relevant use.

(4) A price determined for a relevant use under subsection (3)—

(a) shall not vary as between wheat at one port of export and wheat at another port of export;

and

(b) shall be the same as any corresponding price determined by the Board under a provision of the Commonwealth Act or of a State Act that corresponds to subsection (3).

(5) There shall be added to a price determined under subsection (2) or (3) such amount as the Commonwealth Minister determines from time to time under section 32 (5) of the Commonwealth Act.

(6) The price in respect of wheat that is not Australian standard white wheat in bulk sold free on rail at a port of export is such price as the Board determines by adding to, or deducting from, the price that would be applicable to the wheat if it were Australian standard white wheat in bulk sold free on rail at a port of export an amount by way of allowances in respect of the quality of the wheat, the conditions of sale and the place of delivery of the wheat.

(7) The Board may discount a price for wheat sold by the Board other than for human consumption on the basis of the quantity of wheat so sold.

(8) The price for Australian standard white wheat in bulk, being wheat of a season sold free on rail at a port of export before the final purchasing day for that season to a person who has delivered wheat of that season to the Board for a stockfeed use by the person in Australia, is the price determined from time to time by the Board to be an equitable price in respect of the sale of wheat of that season to the person in respect of that stockfeed use, being a price that is not less than the price per tonne paid to the person by the Board under section 15 (3) for wheat of that season increased or decreased by such allowances as the Board considers proper for—

(a) the costs incurred by the Board in handling and storing that wheat before it is sold to the person;

(b) any costs incurred by the Board in delivering that wheat to the person;

and

(c) other necessary adjustments.

(9) The Board may, in determining a price in respect of the sale of wheat of a season under subsection (8) to a person who has delivered wheat of that season to the Board, make allowances for the quality of the wheat sold to the person under that subsection compared to the quality of the wheat of that season delivered by the person to the Board.

(10) For the purposes of subsection (8), wheat shall be taken to be sold to a person for a stockfeed use by the person if it is sold to the person for a stockfeed use—

(a) by the person at the farm at which the wheat of that season that was delivered to the Board by the person was harvested;

or

(b) by the person or by another person at an associated farm approved by the Board.

(11) The Board shall not sell to a person under subsection (8) a total amount of wheat of a season that is greater than the total amount of wheat of that season delivered to the Board by the person.

(12) Where a person other than the Board exports wheat products containing any wheat sold by the Board under this section, the Board shall, on application made to it by the person, refund to the person an amount equal to the aggregate of—

(a) the amount referred to in subsection (5) of this section that was applicable in relation to the wheat at the time when the wheat was sold by the Board;

and

(b) the amount (if any) determined by the Commonwealth Minister under section 32 (2) (b) of the Commonwealth Act that was applicable in relation to the wheat at the time when the wheat was sold by the Board.

(13) An application under subsection (12) shall be in accordance with a form approved by the Board.

(14) In this section—

“associated farm” has the same meaning as in section 11:

“final purchasing day”, in relation to a season, means the day that is the final purchasing day in relation to that season under section 32 of the Commonwealth Act:

“quarter” means a period of three months commencing on any first day of January, first day of April, first day of July or first day of October:

“season” does not include the season commencing on the first day of July, 1989, or the next succeeding season.

Special account
for freight to
Tasmania

22. (1) Subject to this section, the Board shall keep a separate account of—

(a) moneys received by the Board by reason of the inclusion in the price for a sale of wheat to which section 21 applies of an amount referred to in section 21 (5);

and

(b) payments made out of those moneys,

and the Board shall not apply those moneys except in accordance with this section.

(2) The Board may combine the account required to be kept under subsection (1) with any similar account or accounts to be kept by it under the Commonwealth Act or a State Act.

(3) The Board shall use the moneys referred to in subsection (1) in meeting the costs of shipment of wheat by the Board to a port in Tasmania, and shall not use for that purpose any other moneys derived by it from the sale of wheat acquired by it under this Act.

(4) The Board shall not meet any costs of shipment of wheat under subsection (3) to the extent that those costs exceed the costs of shipment of

that wheat from whichever of the following ports in Victoria the costs of that shipment are lower:

- (a) Geelong;
- (b) Portland.

(5) Any moneys referred to in subsection (1) that are not, and in the opinion of the Board are not likely to be, required for the purpose of payments under subsection (3) shall be applied by the Board for the benefit of the wheat industry in such manner as the Commonwealth Minister, after consultation with the appropriate Minister of each State, directs.

(6) Any moneys referred to in section 22 (1) of the repealed Act, as continued in force by section 30 of this Act, that remain unexpended after the Board has made the final payment required to be made under section 22 (3) of that Act shall be deemed to be moneys referred to in subsection (1) of this section.

(7) In relation to sales of wheat by the Board for shipment to a port in Tasmania in respect of which the Board bears the cost of shipment, the Board shall take such measures as are practicable to obtain recoupment of the cost of the shipment in respect of such of that wheat as is used in the production in Tasmania of wheat products that are sent to other States for use in Australia, and may include in any contracts made by the Board provisions for that purpose.

(8) Any moneys received by the Board in accordance with subsection (7) by way of recoupment of costs of shipment shall be deemed to be moneys referred to in subsection (1).

(9) In this section—

(a) a reference to the costs of shipment of wheat includes a reference to the costs of unloading the wheat;

and

(b) a reference to a port in Tasmania is a reference to the port, or the first port, at which the wheat concerned is landed.

PART III

MISCELLANEOUS

23. The Board or the Chairman may appoint a person, or persons included in a class of persons, to be an authorized person or authorized persons, as the case may be, for the purposes of a specified provision of this Act.

Appointment of authorized persons.

24. (1) For the purposes of this Act, the Board may, by notice in writing served on a person, either personally or by post at the person's usual or last known place of abode or business, require the person—

Information to be furnished.

(a) to furnish in writing to the Board, in accordance with the notice, such information relating to wheat or wheat products as is specified in the notice;

or

(b) to produce to the Board, in accordance with the notice, such documents relating to wheat or wheat products as are specified in the notice.

(2) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Penalty: One thousand dollars.

(3) A person shall not furnish to the Board information that is false or misleading in a material particular.

Penalty: One thousand dollars.

(4) A person is not excused from furnishing information, or producing a document, when required to do so under this section, on the ground that the information or production of the document might tend to incriminate the person or make the person liable to a penalty, but any information so furnished, or the production by the person of any such document, is not admissible against the person in proceedings other than proceedings for an offence against subsection (2) or (3).

Proper care to be taken of wheat owned by Board.

25. A person having care or possession of wheat that is the property of the Board shall exercise proper care and take all proper and reasonable precautions and do all things necessary to preserve and safeguard that wheat and keep it free from damage or deterioration.

Penalty: Five hundred dollars.

Notice by authorized receiver with reference to capital expenditure.

26. (1) As soon as practicable after the commencement of this Act, the Company shall, by notice in writing to the Board, for the purposes of section 15 (5) (c) (ii) or the corresponding provision of the Commonwealth Act, specify a proportion of the remuneration payable to it as an authorized receiver under an agreement under the Commonwealth Act, being a proportion that does not exceed the proportion of that remuneration that, in its opinion, is referable to capital expenditure (including depreciation allowances and maintenance costs) in relation to its facilities as an authorized receiver.

(2) An authorized receiver may, from time to time, by notice in writing to the Board, vary a proportion specified in a notice under subsection (1).

Access to premises.

27. (1) An authorized person may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an authorized person under this section.

(2) Where an authorized person has reason to believe that—

(a) there is on any premises—

(i) wheat that is the property of the Board and is not in the possession of the Board;

(ii) wheat that is required by this Act to be delivered to the Board;

or

(iii) wheat in respect of which an offence against this Act has been committed;

or

(b) there are on any premises books, documents or other papers relating to wheat or wheat products,

the authorized person may make application to a justice of the peace for a warrant authorizing the authorized person to enter the premises for the

purpose of exercising the functions of an authorized person under this section.

(3) If, on an application under subsection (2), the justice of the peace is satisfied by information on oath or affirmation—

(a) that there are reasonable grounds for believing that there is on the premises any wheat, or that there are on the premises any books, documents or papers, referred to in subsection (2);

and

(b) that the issue of the warrant is reasonably required for purposes of, or related to the operation of, this Act,

the justice of the peace may issue a warrant authorizing the authorized person, with such assistance as the authorized person thinks necessary, to enter the premises during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an authorized person under this section.

(4) A warrant under subsection (3) shall specify a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

(5) An authorized person who enters any premises pursuant to subsection (1) or pursuant to a warrant issued under subsection (3) may exercise the functions of an authorized person under this section.

(6) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting pursuant to a warrant issued under subsection (3) or pursuant to subsection (5).

Penalty: One thousand dollars.

(7) The functions of an authorized person under this section are—

(a) to search for and inspect wheat;

(b) to take possession of and remove wheat referred to in subsection (2) (a);

and

(c) to search for, inspect, take extracts from and make copies of books, documents or papers referred to in subsection (2) (b).

(8) On the taking possession, under subsection (7), of wheat that, immediately before such taking, was not the property of the Board, the wheat becomes the absolute property of the Board, freed from all mortgages, charges, liens, pledges, interests and trusts.

(9) In this section, “occupier”, in relation to premises, includes the person in charge of the premises.

28. Proceedings for offences against this Act shall be disposed of summarily.

Proceedings for offences.

29. The Governor may make regulations, not inconsistent with this Act, prescribing matters—

Regulations.

(a) required or permitted by this Act to be prescribed;

or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular, making provision for penalties not exceeding a fine of two hundred dollars for offences against the regulations.

PART IV

REPEAL AND TRANSITIONAL

Repeal and
transitional

30. (1) The Wheat Marketing Act, 1980, is repealed.

(2) Notwithstanding the repeal effected by subsection (1), any provisions of the repealed Act (other than section 21 of that Act) that would, but for that repeal, apply to, or in relation to, wheat that was harvested before the first day of July, 1984, continue to apply as if those provisions had not been repealed.

(3) A reference in any of the provisions referred to in subsection (2) to the Australian Wheat Board shall, in relation to things done or to be done after the commencement of this Act, be read as a reference to the Board as continued in existence by the Commonwealth Act.

(4) An appointment of a person as an authorized person for the purposes of a provision of the repealed Act to which a provision of this Act corresponds, being an appointment in force immediately before the commencement of this Act, has effect after that commencement as if the person had been appointed under section 23 of this Act for the purposes of the corresponding provision of this Act.

Payments under
repealed Act.

31. (1) Where, before the commencement of this Act, the Board made a payment to a person under section 16 or 18 of the repealed Act in respect of wheat harvested on or after the first day of July, 1984, and the amount of that payment exceeds the amount of the interim advance payment that is payable under section 15 of this Act in respect of that wheat, the person is liable to pay to the Board an amount equal to the amount of that excess.

(2) An amount payable by a person to the Board under subsection (1) is a debt due by the person to the Board and may be recovered as a debt due to the Board by action against the person in a court of competent jurisdiction.

(3) The Board may deduct the whole or a part of an amount payable by a person to the Board under subsection (1) from an amount payable by the Board to the person under section 15, 16 or 18 of this Act or a corresponding provision of the Commonwealth Act, the former Commonwealth Act, or a State Act or of the repealed Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor