

WHEAT MARKETING BILL, 1984

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to make provision for the regulation of the marketing of wheat.

The proposed Act replaces the Wheat Marketing Act, 1979, and is complementary with legislation introduced or to be introduced into the Parliaments of the other States and of the Commonwealth.

The Bill contains the following provisions:—

PART I.—PRELIMINARY.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on the commencement of the Commonwealth Act.

Clause 3 is an interpretation provision.

Clause 4 provides that the proposed Act shall be construed subject to the Commonwealth Constitution.

PART II.—MARKETING OF WHEAT.

Clause 5 specifies the functions and powers of the Australian Wheat Board ("the Board").

Clause 6 provides that the Grain Handling Authority is an authorized receiver and makes provision with respect to the operation and obligations of authorized receivers.

Clause 7 provides that the Board is subject to the direction of the Commonwealth Minister in the performance and exercise of its functions and powers.

Clause 8 provides that the Board may acquire wheat by delivery or by a notice demanding delivery.

Clause 9 provides for the manner of delivery of wheat to the Board and for the furnishing of information by a person delivering the wheat.

Clause 10 enables a person to obtain from the Board, in respect of seed wheat or wheat of inferior quality, a declaration that the proposed Act does not apply to wheat the subject of the declaration.

Clause 11 enables a person, with the permission of the Board, to move wheat in the person's possession from a farm for gristing, or from one farm to another, in certain cases.

Clause 12 provides for the operation of a stockfeed wheat permit system for direct sales between growers and users outside the normal pooling arrangements.

Clause 13 enables a wheatgrower to accept, upon being so authorized by the Board, an offer made by a third party to purchase his or her wheat. Any such sale forms part of the normal pooling arrangements.

Clause 14 creates offences in connection with unauthorized dealings with wheat.

Clause 15 provides for interim and final advance payments to be made to wheatgrowers for wheat acquired by the Board, during the 5 seasons commencing 1st July, 1984.

Clause 16 provides for the final payment to be made for wheat referred to in proposed section 15.

Clause 17 provides for the adjustment of the preliminary allowances in the payments made for wheat referred to in proposed section 15.

Clause 18 provides for an early estimated final payment in lieu of the final payment under proposed section 16.

Clause 19 provides for the payment to be made for wheat acquired by the Board, where the wheat is wheat of one of the last 2 seasons commencing 1st July, 1989.

Clause 20 makes provision with respect to the rights of persons in relation to money payable by the Board pursuant to proposed section 15, 16, 17, 18 or 19.

Clause 21 generally makes provision for the price at which wheat of various qualities and for various uses shall be sold by the Board for home consumption.

Clause 22 provides that the Board shall keep a separate account in respect of the allowance made in the price of wheat for the cost of shipment to Tasmania and makes provision with respect to the application of money in that account and certain other money.

PART III.—MISCELLANEOUS.

Clause 23 provides for the appointment of authorized persons for the purposes of various provisions of the proposed Act.

Clause 24 empowers the Board to require persons to furnish information in relation to wheat and wheat products.

Clause 25 provides that a person possessing wheat which is the property of the Board shall take proper care of it.

Clause 26 provides that the Grain Handling Authority shall notify the Board of the proportion of its income by reference to capital expenditure in relation to its facilities as an authorized receiver.

Clause 27 empowers certain persons to enter and search premises in the execution of the proposed Act.

Clause 28 provides that offences against the proposed Act or regulations made thereunder shall be dealt with in a summary manner.

Clause 29 provides for the making of regulations.

PART IV.—REPEAL AND TRANSITIONAL.

Clause 30 repeals the Wheat Marketing Act, 1979 (and Acts amending that Act), but preserves its operation in certain respects.

Clause 31 makes transitional provisions with respect to payments for wheat under the repealed Act.

WHEAT MARKETING BILL, 1984

NEW SOUTH WALES.

TABLE OF PROVISIONS.

PART I.—PRELIMINARY.

1. Short title.
2. Commencement.
3. Interpretation.
4. Act to apply subject to Constitution.

PART II.—MARKETING OF WHEAT.

5. Functions and powers of Board.
6. Authorized receivers.
7. Directions by Commonwealth Minister.
8. Delivery of wheat.
9. Delivery to authorized receiver.
10. Act not to apply to certain wheat.
11. Permits for movement of wheat.
12. Permits for purchase of wheat for stockfeed use.
13. Contracts for sale of wheat entered into on behalf of Board.
14. Unauthorized dealings with wheat.
15. Advance payments for wheat of season other than last 2 seasons.
16. Final payment for wheat of season other than last 2 seasons.
17. Adjustments for allowances made under section 15.

18. Payment in lieu of payment under section 16.
19. Payment for wheat of last 2 seasons.
20. Payment by Board.
21. Home consumption price of wheat.
22. Special account for freight to Tasmania.

PART III.—MISCELLANEOUS.

23. Appointment of authorized persons.
24. Information to be furnished.
25. Proper care to be taken of wheat owned by Board.
26. Notice by authorized receiver with reference to capital expenditure.
27. Access to premises.
28. Summary procedure for offences.
29. Regulations.

PART IV.—REPEAL AND TRANSITIONAL.

30. Repeal and transitional.
 31. Payments under repealed Act.
-

WHEAT MARKETING BILL, 1984

No. , 1984.

A BILL FOR

An Act relating to the marketing of wheat; to repeal the Wheat Marketing Act, 1979, and certain other Acts; and for other purposes.

Wheat Marketing 1984

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5

PART I.**PRELIMINARY.****Short title.**

1. This Act may be cited as the "Wheat Marketing Act, 1984".

Commencement.

- 10 2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), 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.

- 15 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;

- 20 "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;

"Board" means the Australian Wheat Board continued in existence by the Commonwealth Act;

Wheat Marketing 1984

- “Chairperson” means the Chairperson of the Board;
- “Commonwealth Act” means the Wheat Marketing Act 1984 of the Commonwealth as amended from time to time;
- 5 “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;
- “former Commonwealth Act” means the Wheat Marketing Act 1979 of the Commonwealth as amended from time to time;
- 10 “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;
- “regulation means a regulation made under this Act;
- 15 “season” means the period of 12 months commencing on 1st July, 1984, and each of the next 6 succeeding periods of 12 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;
- 20 “State corporation” means the Grain Handling Authority of New South Wales constituted under the Grain Handling Act, 1954;
- “Territory” means an internal Territory of the Commonwealth;
- “wheat” does not include wheat harvested after 30th June, 1991;
- “wheat products” has the same meaning as in the Commonwealth Act;
- 25 “Wheat Tax Acts” means the Wheat Tax Act 1957 and the Wheat Tax Act 1979 of the Commonwealth as amended from time to time;
- “Wheat Tax (Permit) Acts” means the Wheat Tax (Permit) Act 1984 and the Wheat Tax (Permit) Collection Act 1984 of the Commonwealth as amended from time to time.

Wheat Marketing 1984

(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 30th 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).

15 Act to apply subject to Constitution.

4. (1) This Act shall be read and construed subject to the Constitution of the Commonwealth 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.

(2) If, by reason of the Constitution of the Commonwealth 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—

- 5 (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
10 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;
- 15 (e) to determine, after consultation with the authorized receivers, standards for the condition and quality of wheat delivered by the State corporation to purchasers;
- (f) to promote, fund, and arrange for the conduct of, research into matters relating to the marketing of wheat;
- 20 (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;

Wheat Marketing 1984

-
- (c) sell or dispose of, or make arrangements for the sale or disposal of, wheat;
- 5 (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;
- 10 (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;
- 15 (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
- 20 (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) In subsection (3), "season" includes any period that is a season for the purposes of an Act repealed by this Act.

30 (5) 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.

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

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

Wheat Marketing 1984

- (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),

5 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.

10 (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
- 15
- (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).
- 20

(9) In subsections (6)–(8)—

25 “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;

30 “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 State corporation is authorized to receive wheat on behalf of the Board.

(2) An authorized receiver may carry on operations as such a receiver 5 by means of, and on the premises of, an agent of the authorized receiver, being such an agent approved by the Board.

(3) The State corporation shall—

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

10 (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 15 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—

20 (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,

25 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

Wheat Marketing 1984

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

Penalty: An amount calculated in respect of the quantity of the wheat in respect of which the offence is committed at the rate of \$200 per tonne or part thereof or imprisonment for 6 months, or both.

15 (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
20 a State Act;
- (c) wheat purchased under a permit under section 12 or wheat harvested outside New South Wales and purchased under a permit under the corresponding provision of the Commonwealth Act or a State Act; or
- 25 (d) wheat that has been sold by the Board.

Delivery to authorized receiver.

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.

30 (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: \$2,000 or imprisonment for 6 months, or both.

Wheat Marketing 1984

(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 5 in the wheat or the payment to be made for the wheat, and of all particulars known to the person of those interests.

Penalty: \$2,000 or imprisonment for 6 months, or both.

(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, 10 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 15 writing signed by that person correctly stating the season during which the wheat was harvested.

Penalty: \$2,000 or imprisonment for 6 months, or both.

(6) Nothing in this Act affects the operation of a scheme of apportionment of storage space under section 12A of the Grain Handling Act, 1954.

20 **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,

25 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

Wheat Marketing 1984

- (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.

5 **(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;
- 10 (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
- 15 (f) such other particulars (if any) as the Board specifies from time to time,

and shall have effect according to its tenor.

Permits for movement of wheat.

20 **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.

25 **(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—

- 30 (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 the stock.

Wheat Marketing 1984

(4) On receipt by the Board of a notice by a person under subsection (3) in relation to the movement of wheat between 2 farms, an authorized person may, on behalf of the Board, if the authorized person is satisfied that—

- 5 (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
10 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;
- 15 (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)—
- 20 (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
- 25 (f) such other particulars (if any) as the Board specifies from time to time.

(6) For the purposes of this section, 2 farms shall be deemed to be associated farms if—

- (a) they are owned, operated or controlled by the same person or the same partnership;
- 30 (b) each of them is owned, operated or controlled by a partnership and the 2 partnerships have at least one common partner;

Wheat Marketing 1984

- (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
- 5 (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
10 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
15 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—

- 20 (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.

25 Penalty: \$2,000 or imprisonment for 6 months, or both.

(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;
- 30 (c) the season during which purchases authorized by the permit may be made;

Wheat Marketing 1984

- (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 (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,

10 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).

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

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

Contracts for sale of wheat entered into on behalf of 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
25 may, by notice served on the Board, notify the Board accordingly.

(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.

Wheat Marketing 1984

(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;
- 5 (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;
- 10 (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
15 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
20 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)
25 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
30 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 (subsection (8)): \$2,000 or imprisonment for 6 months, or both.

Unauthorized dealings with wheat.

14. (1) Except for the purpose of compliance with 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—

- 5 (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;
- 10 (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;
- 15 (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.
- 20 Penalty: An amount calculated in respect of the quantity of the wheat in respect of which the offence is committed at the rate of \$200 per tonne or part thereof or imprisonment for 6 months, or both.

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

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

Advance payments for wheat of season other than last 2 seasons.

- 30 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 1st 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
35 determined.

Wheat Marketing 1984

(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 90 per cent 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—

25 (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—

30 (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;

Wheat Marketing 1984

-
- 5 (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; and
- (iii) the time of the delivery of the wheat;
- (c) where the wheat was not delivered to the Board—
- 10 (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
- 15 (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
- 20 of this Act 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 25 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 30 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

Wheat Marketing 1984

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 the wheat shall—

- 5 (a) where the first-mentioned price is less than the second-mentioned price—be reduced by the amount of the difference between the 2 prices; or
- (b) where the first-mentioned price exceeds the second-mentioned price—be increased by the amount of the difference between the 2 prices.

10 **(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—

- 15 (a) the amount of any advance under subsection (9); and
- (b) the amount of any advance payment made by the Board under an Act repealed by this Act,

in respect of that wheat.

20 **(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)—

- 25 (a) may be paid as a lump sum on, or as soon as practicable after, delivery of the wheat to the Board; or
- (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 2 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
- 30 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.

Wheat Marketing 1984

(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,
5 or will receive, advance payments under this section in respect of wheat of that category of that season.

(14) Where—

- 10 (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,
- 15 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
- 20 (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.

25 (16) In this section—

“prescribed class”, in relation to wheat of a particular category, means a class determined from time to time by the Minister 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
30 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;

Wheat Marketing 1984

“prescribed period”, in relation to a particular place, means the period of 12 weeks commencing on the expiration of the period of 2 weeks after the prescribed day in relation to that place;

5 “season” does not include the season commencing on 1st July, 1989, or the next succeeding season.

Final payment for wheat of season other than last 2 seasons.

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
10 accordance with subsection (2) for Australian standard white wheat of that season acquired by the Board under this Act.

(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—

- 15 (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
20 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
25 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
30 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.

Wheat Marketing 1984

(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 that 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
- 10 (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—

- 15 (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—
 - 20 (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
 - 25 added to the amount calculated in accordance with paragraph (a); and
 - 30 (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).

Wheat Marketing 1984

(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

5 (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;

10 “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.

15 (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

20 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;

25 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).

30 (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

Wheat Marketing 1984

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 1st July, 1989, or the next succeeding season.

10 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 that subsection 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) were 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.

Wheat Marketing 1984

(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 the person under section 15 (3) in respect of that season, the Board shall pay to the person an amount equal to the difference between that
5 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
10 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 Wheat Marketing Act, 1979, from an amount payable by the
15 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 Wheat Marketing Act, 1979.

(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
20 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 2 or more categories of wheat of a season, a refer-
25 ence 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.

Payment in lieu of payment under section 16.

30 **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.

Wheat Marketing 1984

(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 the 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 the wheat within 3 months after the receipt by the Board of the application, but, if at the expiration of that 3 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 the 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.

Wheat Marketing 1984

Payment for wheat of last 2 seasons.

19. (1) In this section, "season to which this section applies" means the season commencing on 1st July, 1989, or the next succeeding season.

(2) Where any wheat of a season to which this section applies is 5 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 10 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 15 wheat is subject to the operation of the Wheat Tax Acts.

Payment by Board.

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 20 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.

(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 25 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 30 them discharges the Board from any further liability in respect of those moneys.

Wheat Marketing 1984

(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.

Home consumption price of wheat.

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.

(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, by—

- (a) taking the average amount per tonne of the export price, f.o.b., quoted by the Board on each of the 20 business days immediately preceding the 16th day of the month immediately preceding—
- (i) the relevant quarter; and
 - (ii) the quarter immediately preceding the relevant quarter,
- for Australian standard white wheat to be disposed of on each day of the relevant quarter or the quarter immediately preceding the relevant quarter, as the case requires, by the Board by way of export sale or sale for export; and
- (b) adding to the amount calculated in accordance with paragraph (a) such amount (if any) as is determined by the Commonwealth Minister, after consultation with the Minister and the Board, in relation to the relevant quarter or in relation to 2 or more quarters that include the relevant quarter, to be the amount per tonne by which the costs incurred by the Board in marketing wheat for human consumption in Australia exceed the costs incurred by the Board in marketing wheat for export.

Wheat Marketing 1984

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

- 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
- 10 (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)—

- 15 (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).

20 **(5)** There shall be added to a price determined under subsection (2) or (3) such amount as the Commonwealth Minister, after consultation with the Minister and the Board, considers from time to time to be necessary to be included in the price of all wheat sold by the Board for use in Australia for the purpose of enabling the Board to meet the costs of shipment of wheat that it is required by section 22 to meet.

25 **(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
30 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.

Wheat Marketing 1984

(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

Wheat Marketing 1984

equal to the aggregate of the amounts referred to in subsections (2) (b) and (5) that were 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;

“business day” means a day other than—

(a) a Saturday;

10 (b) a Sunday; or

(c) a day that is a public holiday in the place where the head office of the Board is situated;

15 “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 3 months commencing on any 1st January, 1st April, 1st July or 1st October;

“season” does not include the season commencing on 1st July, 1989, or the next succeeding season.

20 **Special account for freight to Tasmania.**

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

25 (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.

Wheat Marketing 1984

(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 Wheat Marketing Act, 1979, 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 a 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).

Wheat Marketing 1984

(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
- 5 (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.****Appointment of authorized persons.**

23. The Board or the Chairperson may appoint a person, or persons
10 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.

Information to be furnished.

24. (1) For the purposes of this Act, the Board may, by notice in writing
15 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—

- (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
- 20 (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.

25 Penalty: \$2,000 or imprisonment for 6 months, or both.

Wheat Marketing 1984

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

Penalty: \$2,000 or imprisonment for 6 months, or both.

(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: \$2,000 or imprisonment for 6 months, or both.

Notice by authorized receiver with reference to capital expenditure.

26. (1) As soon as practicable after the commencement of this section, the State corporation 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) A member of the police force or 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.

5 (2) Where a member of the police force or 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;

10 (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 or the regulations has been committed; or

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

the member or person may make application to a stipendiary magistrate for a search warrant authorizing the member or person to enter the premises for the purpose of exercising the functions of an authorized person under this section.

20 (3) If, on an application under subsection (2), a stipendiary magistrate 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

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

the stipendiary magistrate may issue a search warrant authorizing the applicant, with such assistance as the applicant thinks necessary, to enter the premises during such hours of the day or night as the warrant specifies or, if
30 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.

Wheat Marketing 1984

(4) A search warrant issued under this section 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) A member of the police force or an authorized person who enters any premises pursuant to subsection (1) or pursuant to a search warrant issued under this section may exercise the functions of an authorized person under this section.

(6) A person shall not, without reasonable excuse, obstruct or hinder a member of the police force or an authorized person acting pursuant to a search warrant issued under this section or pursuant to subsection (5).

Penalty: \$2,000 or imprisonment for 6 months, or both.

(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 of possession, under subsection (7), of wheat that, immediately before that 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—

“authorized person” includes—

- (a) a servant of the State corporation; or
- (b) a public servant of whose services the State corporation makes use,

appointed by the Minister for the purposes of this section;

“occupier”, in relation to premises, includes the person in charge of the premises.

Summary procedure for offences.

28. (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before—

- 5 (a) a court of petty sessions constituted by a stipendiary magistrate sitting alone; or
- (b) the Supreme Court in its summary jurisdiction.

(2) If proceedings for an offence against this Act or the regulations are brought before a court of petty sessions constituted by a stipendiary magistrate, the maximum penalty that the court may impose in respect of 10 the offence is, notwithstanding any other provision of this Act, \$5,000 or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(3) If proceedings for an offence against this Act or the regulations are brought before the Supreme Court in its summary jurisdiction, that Court 15 may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

Regulations.

29. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted 20 to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may impose a penalty not exceeding \$500 for any contravention thereof.

Wheat Marketing 1984

PART IV.

REPEAL AND TRANSITIONAL.

Repeal and transitional.

30. (1) The following Acts are repealed:—

- 5 Wheat Marketing Act, 1979;
Wheat Marketing (Amendment) Act, 1980;
Wheat Marketing (Grain Handling) Amendment Act, 1980;
Wheat Marketing (Grain Handling) Amendment Act, 1982;
Wheat Marketing (Amendment) Act, 1982;
10 Wheat Marketing (Amendment) Act, 1984.

(2) Notwithstanding the repeals effected by subsection (1), any provisions of an Act (other than section 21 of the Wheat Marketing Act, 1979) that would, but for that repeal, apply to, or in relation to, wheat that was harvested before 1st July, 1984, continue to apply as if those provisions
15 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 section, be read as a reference to the Board as continued in existence by the Commonwealth Act.

20 (4) An appointment of a person as an authorized person for the purposes of a provision of the Wheat Marketing Act, 1979, to which a provision of this Act corresponds, being an appointment in force immediately before the commencement of this section, has effect after that commencement as if the person had been appointed under section 23 of this Act for
25 the purposes of the corresponding provision of this Act.

Payments under repealed Act.

31. (1) Where, before the commencement of this section, the Board made a payment to a person under section 16 or 18 of the Wheat Marketing Act, 1979, in respect of wheat harvested on or after 1st July, 1984, and

Wheat Marketing 1984

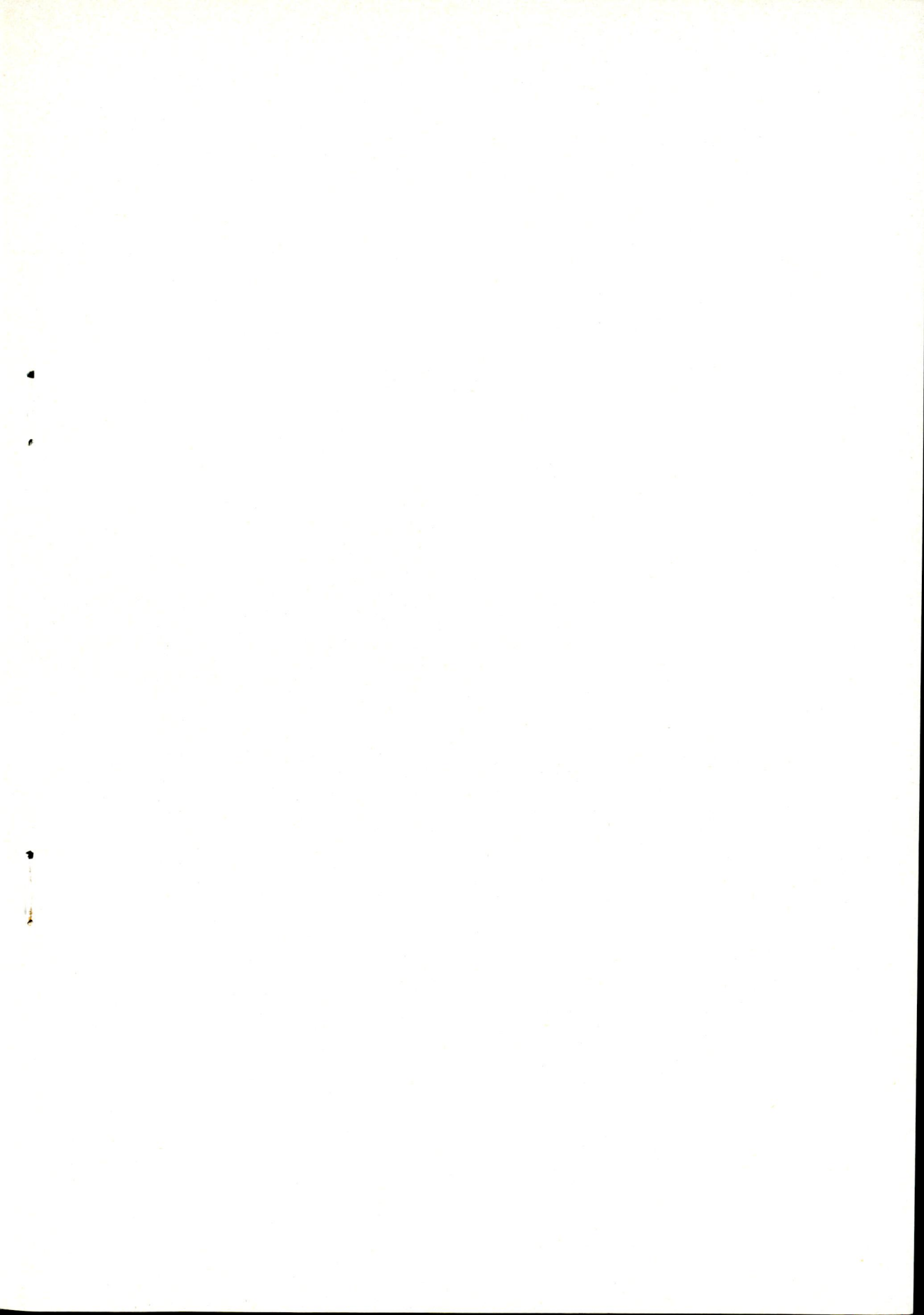
the amount of that payment exceeds the amount of the interim advance payment that is payable under section 15 of this Act in respect of that wheat, the person is liable to pay to the Board an amount equal to the amount of that excess.

- 5 **(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.
- 10 **(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 or a corresponding provision of the Commonwealth Act, the former Commonwealth Act or of a State Act or of the Wheat Marketing Act, 1979.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984





WHEAT MARKETING ACT, 1984, No. 115

NEW SOUTH WALES.

TABLE OF PROVISIONS.

PART I.—PRELIMINARY.

1. Short title.
2. Commencement.
3. Interpretation.
4. Act to apply subject to Constitution.

PART II.—MARKETING OF WHEAT.

5. Functions and powers of Board.
6. Authorized receivers.
7. Directions by Commonwealth Minister.
8. Delivery of wheat.
9. Delivery to authorized receiver.
10. Act not to apply to certain wheat.
11. Permits for movement of wheat.
12. Permits for purchase of wheat for stockfeed use.
13. Contracts for sale of wheat entered into on behalf of Board.
14. Unauthorized dealings with wheat.
15. Advance payments for wheat of season other than last 2 seasons.
16. Final payment for wheat of season other than last 2 seasons.
17. Adjustments for allowances made under section 15.

18. Payment in lieu of payment under section 16.
19. Payment for wheat of last 2 seasons.
20. Payment by Board.
21. Home consumption price of wheat.
22. Special account for freight to Tasmania.

PART III.—MISCELLANEOUS.

23. Appointment of authorized persons.
24. Information to be furnished.
25. Proper care to be taken of wheat owned by Board.
26. Notice by authorized receiver with reference to capital expenditure.
27. Access to premises.
28. Summary procedure for offences.
29. Regulations.

PART IV.—REPEAL AND TRANSITIONAL.

30. Repeal and transitional.
 31. Payments under repealed Act.
-

WHEAT MARKETING ACT, 1984, No. 115

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 115, 1984.

An Act relating to the marketing of wheat; to repeal the Wheat Marketing Act, 1979, and certain other Acts; and for other purposes. [Assented to, 31st October, 1984.]

Wheat Marketing 1984

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.**PRELIMINARY.****Short title.**

1. This Act may be cited as the "Wheat Marketing Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), 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;

"Board" means the Australian Wheat Board continued in existence by the Commonwealth Act;

Wheat Marketing 1984

- “Chairperson” means the Chairperson of the Board;
- “Commonwealth Act” means the Wheat Marketing Act 1984 of the Commonwealth as amended from time to time;
- “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;
- “former Commonwealth Act” means the Wheat Marketing Act 1979 of the Commonwealth as amended from time to time;
- “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;
- “regulation” means a regulation made under this Act;
- “season” means the period of 12 months commencing on 1st July, 1984, and each of the next 6 succeeding periods of 12 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;
- “State corporation” means the Grain Handling Authority of New South Wales constituted under the Grain Handling Act, 1954;
- “Territory” means an internal Territory of the Commonwealth;
- “wheat” does not include wheat harvested after 30th June, 1991;
- “wheat products” has the same meaning as in the Commonwealth Act;
- “Wheat Tax Acts” means the Wheat Tax Act 1957 and the Wheat Tax Act 1979 of the Commonwealth as amended from time to time;
- “Wheat Tax (Permit) Acts” means the Wheat Tax (Permit) Act 1984 and the Wheat Tax (Permit) Collection Act 1984 of the Commonwealth as amended from time to time.

Wheat Marketing 1984

(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 30th 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).

Act to apply subject to Constitution.

4. (1) This Act shall be read and construed subject to the Constitution of the Commonwealth 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.

(2) If, by reason of the Constitution of the Commonwealth 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 State corporation 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;

Wheat Marketing 1984

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

(5) 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.

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

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

Wheat Marketing 1984

- (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)–(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 State corporation 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 State corporation 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

Wheat Marketing 1984

(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: An amount calculated in respect of the quantity of the wheat in respect of which the offence is committed at the rate of \$200 per tonne or part thereof or imprisonment for 6 months, or both.

(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 New South Wales 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.

Delivery to authorized receiver.

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.

(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: \$2,000 or imprisonment for 6 months, or both.

Wheat Marketing 1984

(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: \$2,000 or imprisonment for 6 months, or both.

(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: \$2,000 or imprisonment for 6 months, or both.

(6) Nothing in this Act affects the operation of a scheme of apportionment of storage space under section 12A of the Grain Handling Act, 1954.

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

Wheat Marketing 1984

- (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,

and shall have effect according to its tenor.

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 the stock.

Wheat Marketing 1984

(4) On receipt by the Board of a notice by a person under subsection (3) in relation to the movement of wheat between 2 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, 2 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 2 partnerships have at least one common partner;

Wheat Marketing 1984

- (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: \$2,000 or imprisonment for 6 months, or both.

(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;

Wheat Marketing 1984

- (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 (Permit) Acts.

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

Contracts for sale of wheat entered into on behalf of 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.

(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.

Wheat Marketing 1984

(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 (subsection (8)): \$2,000 or imprisonment for 6 months, or both.

Unauthorized dealings with wheat.

14. (1) Except for the purpose of compliance with 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.

Penalty: An amount calculated in respect of the quantity of the wheat in respect of which the offence is committed at the rate of \$200 per tonne or part thereof or imprisonment for 6 months, or both.

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

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

Advance payments for wheat of season other than last 2 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 1st 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.

Wheat Marketing 1984

(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 90 per cent 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;

Wheat Marketing 1984

- (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; and
 - (iii) the time of the delivery of the wheat;
- (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 of this Act 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

Wheat Marketing 1984

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 the 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 2 prices; or
- (b) where the first-mentioned price exceeds the second-mentioned price—be increased by the amount of the difference between the 2 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 an Act repealed by this 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; or
- (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 2 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.

Wheat Marketing 1984

(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, 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 from time to time by the Minister 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;

Wheat Marketing 1984

“prescribed period”, in relation to a particular place, means the period of 12 weeks commencing on the expiration of the period of 2 weeks after the prescribed day in relation to that place;

“season” does not include the season commencing on 1st July, 1989, or the next succeeding season.

Final payment for wheat of season other than last 2 seasons.

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.

(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.

Wheat Marketing 1984

(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 that 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).

*Wheat Marketing 1984***(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

Wheat Marketing 1984

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 1st 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 that subsection 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) were 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.

Wheat Marketing 1984

(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 the person under section 15 (3) in respect of that season, the Board shall pay to the 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 Wheat Marketing Act, 1979, 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 Wheat Marketing Act, 1979.

(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 2 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.

Payment in lieu of payment under section 16.

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.

Wheat Marketing 1984

(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 the 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 the wheat within 3 months after the receipt by the Board of the application, but, if at the expiration of that 3 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 the 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.

Payment for wheat of last 2 seasons.

19. (1) In this section, "season to which this section applies" means the season commencing on 1st July, 1989, or the next succeeding season.

(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.

Payment by Board.

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.

(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.

Wheat Marketing 1984

(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.

Home consumption price of wheat.

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.

(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, by—

- (a) taking the average amount per tonne of the export price, f.o.b., quoted by the Board on each of the 20 business days immediately preceding the 16th day of the month immediately preceding—
 - (i) the relevant quarter; and
 - (ii) the quarter immediately preceding the relevant quarter,for Australian standard white wheat to be disposed of on each day of the relevant quarter or the quarter immediately preceding the relevant quarter, as the case requires, by the Board by way of export sale or sale for export; and
- (b) adding to the amount calculated in accordance with paragraph (a) such amount (if any) as is determined by the Commonwealth Minister, after consultation with the Minister and the Board, in relation to the relevant quarter or in relation to 2 or more quarters that include the relevant quarter, to be the amount per tonne by which the costs incurred by the Board in marketing wheat for human consumption in Australia exceed the costs incurred by the Board in marketing wheat for export.

Wheat Marketing 1984

(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, after consultation with the Minister and the Board, considers from time to time to be necessary to be included in the price of all wheat sold by the Board for use in Australia for the purpose of enabling the Board to meet the costs of shipment of wheat that it is required by section 22 to meet.

(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.

Wheat Marketing 1984

(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

Wheat Marketing 1984

equal to the aggregate of the amounts referred to in subsections (2) (b) and (5) that were 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;

“business day” means a day other than—

- (a) a Saturday;
- (b) a Sunday; or
- (c) a day that is a public holiday in the place where the head office of the Board is situated;

“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 3 months commencing on any 1st January, 1st April, 1st July or 1st October;

“season” does not include the season commencing on 1st 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.

Wheat Marketing 1984

(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 Wheat Marketing Act, 1979, 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 a 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)

Wheat Marketing 1984

(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.****Appointment of authorized persons.**

23. The Board or the Chairperson 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.

Information to be furnished.

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—

- (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: \$2,000 or imprisonment for 6 months, or both.

Wheat Marketing 1984

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

Penalty: \$2,000 or imprisonment for 6 months, or both.

(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: \$2,000 or imprisonment for 6 months, or both.

Notice by authorized receiver with reference to capital expenditure.

26. (1) As soon as practicable after the commencement of this section, the State corporation 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) A member of the police force or 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 a member of the police force or 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 or the regulations has been committed; or

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

the member or person may make application to a stipendiary magistrate for a search warrant authorizing the member or 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), a stipendiary magistrate 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 stipendiary magistrate may issue a search warrant authorizing the applicant, with such assistance as the applicant 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.

Wheat Marketing 1984

(4) A search warrant issued under this section 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) A member of the police force or an authorized person who enters any premises pursuant to subsection (1) or pursuant to a search warrant issued under this section may exercise the functions of an authorized person under this section.

(6) A person shall not, without reasonable excuse, obstruct or hinder a member of the police force or an authorized person acting pursuant to a search warrant issued under this section or pursuant to subsection (5).

Penalty: \$2,000 or imprisonment for 6 months, or both.

(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 of possession, under subsection (7), of wheat that, immediately before that 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—

“authorized person” includes—

- (a) a servant of the State corporation; or
- (b) a public servant of whose services the State corporation makes use,

appointed by the Minister for the purposes of this section;

“occupier”, in relation to premises, includes the person in charge of the premises.

Summary procedure for offences.

28. (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before—

- (a) a court of petty sessions constituted by a stipendiary magistrate sitting alone; or
- (b) the Supreme Court in its summary jurisdiction.

(2) If proceedings for an offence against this Act or the regulations are brought before a court of petty sessions constituted by a stipendiary magistrate, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, \$5,000 or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(3) If proceedings for an offence against this Act or the regulations are brought before the Supreme Court in its summary jurisdiction, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

Regulations.

29. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may impose a penalty not exceeding \$500 for any contravention thereof.

Wheat Marketing 1984

PART IV.

REPEAL AND TRANSITIONAL.

Repeal and transitional.

30. (1) The following Acts are repealed:—

Wheat Marketing Act, 1979;

Wheat Marketing (Amendment) Act, 1980;

Wheat Marketing (Grain Handling) Amendment Act, 1980;

Wheat Marketing (Grain Handling) Amendment Act, 1982;

Wheat Marketing (Amendment) Act, 1982;

Wheat Marketing (Amendment) Act, 1984.

(2) Notwithstanding the repeals effected by subsection (1), any provisions of an Act (other than section 21 of the Wheat Marketing Act, 1979) that would, but for that repeal, apply to, or in relation to, wheat that was harvested before 1st 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 section, 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 Wheat Marketing Act, 1979, to which a provision of this Act corresponds, being an appointment in force immediately before the commencement of this section, 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 section, the Board made a payment to a person under section 16 or 18 of the Wheat Marketing Act, 1979, in respect of wheat harvested on or after 1st July, 1984, and

Wheat Marketing 1984

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 or a corresponding provision of the Commonwealth Act, the former Commonwealth Act or of a State Act or of the Wheat Marketing Act, 1979.

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

L. W. STREET,
By deputation from His Excellency the Governor.

*Government House,
Sydney, 31st October, 1984.*





