

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

WHEAT MARKETING AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
representing the Minister for Primary Industry,
Senator the Hon Peter Walsh)

OUTLINE

The Wheat Marketing Amendment Bill 1985 implements a revised Australian Wheat Board ("the Board") structure to apply after the terms of office of the current members expire on 30 September 1985, as provided for in sub-section 35(1) of the Wheat Marketing Act 1984.

The proposal, while reducing the number of grower members from 11 to 6 (including a grower Chairperson and 1 grower from each mainland State), will result in a more streamlined Board of 11 members with an increased proportion of expertise in finance, marketing, and/or industrial relations. To ensure a balance of interests while maintaining a grower majority, alternates are to be appointed for each State grower member.

The Bill introduces a grower controlled Selection Committee to nominate 9 of the 11 members. The Chairperson and the Government member will be selected by the Minister for Primary Industry who will appoint all members to the Board.

Other provisions of the Bill will amend the Wheat Marketing Act 1984 so that sections relating to the delivery of wheat and the operation of the permit system for stockfeed wheat will be consistent with existing complementary State legislation.

The amendments should not involve any Commonwealth Government costs, savings or revenue. The Bill provides that any costs associated with the operation of the Selection Committee will be met by the Australian Wheat Board. These costs are estimated at approximately \$100,000 to select a full Board, which, when spread over an average season's wheat pool of 15 million tonnes would have a negligible impact on the net pool return to growers.*

WHEAT MARKETING AMENDMENT BILL 1985

NOTES ON CLAUSES

NO OF
CLAUSE

EXPLANATION

1. Sub-clause (1) provides for the Short Title of the Act to be the Wheat Marketing Amendment Act 1985.

Sub-clause (2) establishes that references to the Principal Act are references to the Wheat Marketing Act 1984.
2. Sub-clause (1) provides for the Bill to come into operation on the day of Royal Assent.

Sub-clause (2) provides for section 21 to come into operation on 1 October 1985, thereby enabling the current members of the Board to continue in office until 30 September 1985.
3. Defines additional terms to be incorporated in the Principal Act.

Sub-clause 3 (a) defines the Australian Wheat Board Selection Committee to be established by Clause 10 as a new section (section 33A) of the Principal Act.

Sub-clause 3 (b) includes the Chairperson in the definition of a member of the Board to correct an omission in the Principal Act.

Sub-clause 3 (c) includes the Presiding Member in the definition of a member of the Committee.

Sub-clause 3 (d) identifies the Presiding Member as the Presiding Member of the Committee.
4. Provides that the delivery requirements in a Territory are similar to the corresponding provisions under complementary State legislation. The States had some difficulties with the wording in the 1984 Commonwealth Act and reverted to formulations similar to those in their previous wheat marketing legislation. This clause will enable the Australian Wheat Board (AWB) to require the delivery of wheat in a Territory in a particular season.

Sub-clause 4 (b) re-instates the defence of "reasonable excuse" for failure to deliver wheat.
5. Requires that wheat delivered after the close of a season is identified with respect to season of harvest so that the AWB can correctly account for such wheat. A penalty is prescribed for a breach of this provision.

6. Amends section 22 to provide for consistency between the Commonwealth and the corresponding State provisions and is in accordance with the intention of the permit scheme.

Sub-clauses 6 (a) and (c) remove the restriction as to eligibility to apply for a permit to purchase wheat for stockfeed use.

Sub-clause 6 (b) corrects a typographical error in Sub-section 22 (7).

7. Amends section 23 to require a declaration as to the season to which wheat sold under an authorised grower-to-buyer transaction applies. This will enable the AWB to allocate this wheat to a particular season's pool, thereby more accurately accounting for it .

8. Sub-clause 8 (a) corrects a drafting error under sub-section 24 (1).

Sub-clause 8 (b) adds a new sub-section 24 (4) which will exclude from the provision relating to unauthorised dealings in a Territory, wheat purchased under a permit issued in a State.

9. Is a grammatical correction to section 32.

10. Provides for the establishment and operation of the Australian Wheat Board Selection Committee which will be responsible for nominating all members of the Board except for the Chairperson and the Government member.

A new sub-section 33A, establishes the Australian Wheat Board Selection Committee.

A new sub-section 33B specifies that the functions of the Committee are to select and nominate to the Minister, persons to be appointed to the Australian Wheat Board (other than the Chairperson and Government member) and persons to be appointed as alternates of the grower members.

A new sub-section 33C gives the Committee the powers to fulfil the functions under section 33B.

A new sub-section 33D(1) enables the Minister to determine selection criteria for the Committee's use. New sub-section 33D(2) requires the Minister to give a copy of the selection criteria, or any variations, to the Presiding Member.

A new section 33E authorises the Minister to request the Committee to provide him with suitable nominations for the purpose of appointing certain members to the Board, or of appointing alternates, or to fill casual vacancies caused by resignations or terminations of appointments of such members or alternates.

A new section 33F provides limitations on the selection of persons by the Committee.

Sub-sections 33F (1) and (2) will ensure that persons nominated by the Committee as members or alternates meet the requirements of being a wheatgrower in a particular State or have experience at a high level in at least one of finance, marketing or industrial relations.

Sub-section 33F (3) will ensure that the Committee satisfies itself that persons nominated by it meet the selection criteria determined by the Minister.

Sub-section 33F (4) provides that a person cannot be nominated for appointment to the Board if he or she is currently a member of the Committee, has been a member of the Committee during the previous two years.

A new section 33G specifies the requirements to be met by the Committee in providing nominations to the Minister, including a statement specifying details of each person's qualifications and experience, certifying that the nominee meets the selection criteria and providing any other relevant information.

A new section 33H authorises the Minister to reject nomination/nominations if he is not satisfied as to suitability and require the Committee to submit for appointment a new nomination/nominations in accordance with the Act.

A new section 33I specifies the membership of the Committee and provides for their appointment.

Sub-section 33I (1) provides for the Committee to consist of a Presiding Member (selected by the Minister), the Chairperson of the Board, the President of and one other person nominated by the National Farmers' Federation (NFF) and 5 wheatgrowers nominated by the Australian Wheatgrowers' Federation (AWF).

Sub-section 33I (2) will allow all but the two ex-officio members to hold office for a 2 year term.

Sub-section 33I (3) will preclude Board members (except for the Chairperson) or the alternates of Board members from being eligible for appointment to the Committee.

Sub-sections 33I (4) and (5) are standard provisions relating to the operations of committees.

A new section 33J specifies the procedure for the appointment and termination of appointment of an acting Presiding Member and establishes his powers and entitlements.

A new section 33K will enable the Minister to appoint persons to the Committee to complete any unexpired period of appointment of a member who has ceased to hold office.

A new section 33L is a standard provision which provides for the remuneration and allowances of members of the Committee.

A new section 33M provides for the granting of leave of absence to the Presiding Member and other members of the Committee.

A new section 33N provides that a member may resign by writing to the Minister.

A new section 33P is a standard provision by which the Minister may terminate an appointment of a member for reasons of misbehaviour, physical or mental incapacity and is required to terminate an appointment for reasons of bankruptcy, failure to comply with obligations concerning disclosure of pecuniary interests and absence without leave from 3 consecutive meetings.

A new section 33Q is a standard provision which provides for a member, who has a direct or indirect pecuniary interest in a matter being considered, to disclose the nature of his interest. It also provides for the member to abstain from the Committee's consideration of the matter, subject to the discretion of the Minister to determine otherwise.

New section 33R provides for the convening of meetings and the working arrangements to apply at such meetings. A quorum is to be constituted by 7 members of whom at least 4 are to be the AWF nominees and at least 1 is either the NFF President or the other NFF nominee.

Questions are to be decided by a majority of votes of the members present, and the member presiding at a meeting has a deliberative vote only

A new section 33S provides a procedure for the consideration of issues outside formal meetings.

A new section 33T, provides for the Presiding Member, on behalf of the Committee, to engage consultants and staff on such terms and conditions as the Committee approves, to assist it in the performance of its functions.

11. Amends section 34 to provide for the revised membership of the Board. The Board will consist of a Chairperson (who is a wheat grower at the time of appointment), one Government member, one grower member from each mainland State; and 4 members with extensive high level experience in the areas of finance, marketing or industrial relations. Provision will also be made under a new Section 36A for 1 alternate grower member from each of the 5 mainland States. The Chairperson and Government member will be selected by the Minister while all other members and alternates will be nominated by the Selection Committee (clause 10). All members are to be appointed by the Minister.

Paragraph 11(c) is a drafting amendment.

12. Amends Section 35 to provide for existing Board members to hold office until 1 October 1985, but to be eligible for re-appointment. Provision is also made to enable casual vacancies during this period to be filled on the same basis as at present.
13. A new section 35A provides for the term of office of members appointed on or after 1 October 1985.

Sub-section 35A(1) provides that the term of office of Board members appointed on or after 1 October 1985 will be 3 years.

Sub-section 35A(2) continues the current arrangement whereby the Government member holds office during the Minister's pleasure.

Sub-sections 35A(3) and (4) provide that, with the exception of the Government member, the Minister may appoint a person to fill a casual vacancy on the Board for the remainder of a member's term, and that, except for the Chairperson, he must do so in accordance with the new selection arrangements (Clause 10).

14. A new Section 36A provides for the appointment, of alternate grower members.

Sub-section 36A(1) enables the Minister to appoint an alternate to each of the grower members.

Sub-section 36A(2) precludes the appointment of an alternate unless he or she was nominated by the Selection Committee.

Sub-section 36A(3) provides that an alternate will hold office for 3 years, but is eligible for re-appointment.

Sub-section 36A(4) enables an alternate to resign by writing to the Minister.

Sub-sections 36A(5) and (6) enable the Minister to fill a casual vacancy of an alternate, but only where the person has been nominated by the Selection Committee.

Sub-section 36A(7) provides for an alternate to be permitted to perform all the functions of a member if the member vacates the office, is absent from duty or from Australia, or is otherwise unable to perform the functions of the office.

Sub-section 36A(8) is a standard provision relating to aspects of or irregularities in appointments

15. Amends section 37 to provide for an alternate member to receive remuneration or allowances as determined for members.
16. Amends section 40 so as to extend to an alternate any reference in the section to a member, except the reference in paragraph 40(2)(c).
17. Amends section 44 to extend to alternates the provision that Board members are not personally liable for actions of the Board.
18. Amends section 53 to provide for the AWB to meet the expenses incurred in connection with the performance by the Selection Committee of its functions. Any remuneration and allowances payable to the members of the Committee would be provided for under the existing sub-section 53(b).
19. Adds a new sub-section 55(3) to define as the appropriate Minister referred to in the Audit Act 1901, the Minister of State administering the Principal Act.
20. Amends sub-section 56(4) to bring the Principal Act into line with the operation of the stockfeed wheat permit system under Section 22.

21. Provides for the repeal of provisions which enabled the current Chairperson and the grower members to continue their term of office after the commencement of the Principal Act. The term of office of these members expires on 30 September 1985 and Clause 2 provides that this Section will not have effect until 1 October 1985.

