

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

WHEAT MARKETING AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by the authority of the  
Minister for Primary Industry,  
the Hon John Kerin, MP)

## WHEAT MARKETING AMENDMENT BILL 1986

### OUTLINE

The purpose of this Bill is to amend several Acts relating to the operations and activities of the Australian Wheat Board and to other aspects of the wheat industry.

Amendments to the Wheat Marketing Act 1984 as contained in part II of this Bill provide for the remedying of a number of deficiencies or difficulties in the operation of that Act including the constitutional vulnerability of one aspect of the Tasmanian wheat freight shipment arrangements; the provisions which enable wheatgrowers to repurchase wheat previously delivered to the Australian Wheat Board; and the provision which authorises the Board to meet expenses associated with the selection of some Board members.

Other changes included in Part II of this Bill give effect to the Government's policy on reform of primary industry statutory marketing authorities. In this regard, a number of amendments relate to a diminution in the Minister's control over the operations of the Board and an increase in the number and scope of matters on which the Board will have to take responsibility for its own decisions. Associated with this is increased powers for the Board in several areas and a requirement for it to develop and present corporate and annual plans for approval by the Minister.

The Board's accountability to industry will be strengthened by requiring the Board to meet at least annually with the Australian Wheatgrowers' Federation for consultation on the Board's performance.

Parts III, IV and VI of this Bill are included to correct an omission which occurred during the preparation of the Rural Industries Research Act 1985 and the Rural Industries Research (Transitional Provisions and Consequential Amendments) Act 1985.

Part V of this Bill increases the Board's responsibilities in regard to the repayment to holders of permits for the purchase of feed-wheat any monies to which these permit holders are entitled.

### Financial Statement

Passage of this Bill will enable about \$50,000 to be recovered from the Australian Wheat Board for expenses incurred in connection with the selection in 1985 of members of the Board.

WHEAT MARKETING AMENDMENT BILL 1986

NOTES ON CLAUSES

Clause 1: Short Title

1. This clause provides for the Short Title of the Act to be the Wheat Marketing Amendment Act 1986.

Clause 2: Commencement

2. This clause provides for Part I and Part VI of the Act to come into operation on Royal Assent and for Parts III and IV to come into operation on 1 April 1986. Section 30 is to be deemed to have come into operation on 25 October 1984. The remaining provisions come into operation on a day or days as are fixed by Proclamation.

Clause 3: Principal Act

3. This clause establishes that the Wheat Marketing Act 1984 is the Principal Act in Part II of this Bill

Clause 4: Interpretation

4. This clause amends Section 3 of the Principal Act
5. Sub-clause 4(a) removes the definition of financial market.
6. Sub-clause 4(b) inserts a new sub-section to provide for the possibility of a change in the name and composition of the Australian Wheatgrowers' Federation.

Clause 5: Objects, functions and powers of Board

7. This clause provides for the repeal of sub-section 5(5) of the Principal Act. This approach is consistent with the Government's view that the Boards of Primary Industry Statutory Marketing Authorities should have power to make such contracts without Ministerial approval. Provision is, however, to be made under section 63 of the Principal Act for details of significant property purchases to be included in the Board's Annual report (clause 34 of this Bill refers).

Clause 6 "Subsidiaries"

8. This clause inserts new section 5A which provides for the Board to establish subsidiary companies or to take up equity in an existing company, in order to enable it to perform its functions more efficiently. This power will be subject to Ministerial approval, and the Board must be able to exercise effective control over the operations of the company. Where the Minister gives an approval under this section he or she is required under new sub-section 5A(5) to notify both Houses of the Parliament that the approval has been given and of any conditions to which the approval is subject, unless the Board's operations would be prejudiced by doing so.

9. New sub-section 5A(6) excludes the application of the section to acquisitions that the Board is empowered to make in the normal course of its business.

Clause 7: Powers of Board with respect to futures contracts, &c

10. This clause amends section 6 of the Principal Act to enable the Board to trade for hedging purposes in a wider range of instruments than are presently provided for in the Principal Act. Provision is also made for the Minister to approve the Board trading in new instruments which may arise from time to time.

Clause 8: "Exercise of Board's powers to be consistent with corporate plan and annual operational plan"

11. New section 6A requires the Board, subject to any direction given by the Minister pursuant to section 11, to endeavour to follow the provisions of any corporate plan and any annual operational plan in force at the time (clause 27 of this Bill refers).

Clause 9: Directions by Minister

12. This clause amends section 11 of the Principal Act to provide for a more limited general reserve power of direction over the affairs of the Board than at present. The legislation makes it clear that this power is to be exercised only in exceptional circumstances involving action by the Board which conflicts with major Government policies, that forewarning of an intended direction has to be given to the Board in writing and that before the direction is given, the Chairperson has adequate opportunity for discussion on the matter with the Minister.

13. New sub-section 11(3) outlines certain procedures the Minister must adopt when a direction is given to the Board. These procedures deal with public notification of any direction given.

Clause 10: Board may establish consultative groups

14. This clause amends section 12 of the Principal Act by providing the Board rather than the Minister with the power to determine terms and conditions related to consultative groups established by the Board.

Clause 11: Consultations with the Australian Wheatgrowers' Federation

15. This clause repeals existing section 13 and replaces it with a new section 13 which provides for meetings with the Australian Wheatgrowers' Federation, at least annually.

16. New sub-section 13(2) provides for the Chairperson to present the Board's Annual Report to such a meeting as soon as practicable after it has been tabled in the Houses of Parliament.

17. New sub-section 13(3) provides for the Board to reimburse the reasonable expenses of those attending such meetings.

Clause 12: Net Pool Return

18. Sub-clause 12(a) provides for determination of the net pool return for a season to take into account receipts and expenditure associated with the Board's involvement in a subsidiary company. Their treatment is to be as determined by the Minister. In practice, such receipts and expenditure could span several seasons and it would not be possible to prescribe an appropriate treatment before their magnitude was known.

19. Sub-clause 12(b) is a technical amendment which repeals sub-paragraph (2)(d)(i) of section 16 of the Principal Act as a consequence of amending section 49 (clause 29 of this Bill).

Clause 13: Final payment of wheat of season other than last two seasons

20. This clause repeals sub-paragraph 27(2)(a)(iii) of the Principal Act as a consequence of the repeal of sub-paragraph 16(2)(d)(i) (sub-clause 12(b) refers).

Clause 14: Payment of wheat of last 2 seasons

21. This clause amends section 30 of the Principal Act as a consequence of the repeal of sub-paragraph 16(2)(d)(i) (sub-clause 12(b) refers).

Clause 15: Home consumption price of wheat

22. This clause amends section 32 of the Principal Act by changing to 30 November each year the final purchasing day on which a wheatgrower can repurchase wheat previously delivered to the Board. The amendment also changes to 30 November the day by which the Minister is required to notify any variation to the final purchasing day. This amendment arose because of problems encountered by growers following enactment of the Principal Act.

Clause 16: Special account for freight to Tasmania

23. This clause repeals paragraph 33(1)(b) because of a constitutional difficulty identified as existing with the paragraph.

Clause 17: Membership of Board

- 24 Sub-clause 17(a) inserts new sub-sections 34(4), (5), (5A) and (5B) which provide that, as a general rule, a person who is 65 years of age or more, or who will attain the age of 65 before the expiry of the period of appointment, is precluded from appointment as a member. There is, however, provision to waive this if he or she has special skills needed by the Board. The President and members of the executive of the Australian Wheatgrowers' Federation are precluded from Board membership.

25. Sub-clause 17(b) includes new sub-section 34(6A) which provides for the Minister to determine any terms and conditions relating to the Chairperson which are not otherwise provided for in the Principal Act.

Clause 18: Deputy Chairperson

26. New section 34A provides for the Minister to appoint a Deputy Chairperson following consultation with the Chairperson and the Presiding Member of the Selection Committee. It also enables the Minister to terminate the Deputy Chairperson's appointment and for the Deputy Chairperson to resign that office.

Clause 19: Repeal of Section 35

27. This clause repeals section 35 of the Principal Act as this section related only to the term of office of members appointment until 1 October 1985.

Clause 20: Term of office of members

28. This clause amends sub-section 35A(1) of the Principal Act to provide for members to be appointed for periods of up to 3 years and for them to be eligible for re-appointment. This amendment does not affect the appointment of current members, nor of the Government member who will continue to hold office during the Minister's pleasure.

Clause 21: Acting Chairperson

29. Clause 21 provides for the Deputy Chairperson to act as chairperson if the latter is unavailable and for the Board to appoint another member to act as Chairperson if there is no Deputy Chairperson or if the Deputy Chairperson is also unavailable. The Board is given the power previously held by the Minister to determine the terms and conditions of appointment of the member who acts as Chairperson.

Clause 22: Alternate members

30. This clause varies the term of appointment of alternate members to remain consistent with the variation in the term of their corresponding member under amended section 35A (clause 20 refers).

Clause 23: Remuneration and allowances of members of Board

31. This clause introduces a number of amendments, essentially of a machinery nature, to section 37 of the Principal Act which provides for remuneration and allowances for Board members. It makes the payment of remuneration to a member subject to new sub-sections (3A) and (3B).
32. New sub-section 37(3A) precludes the payment of remuneration and allowances to a member who is a State Parliamentarian or a candidate for State Parliament where the law of the State concerned provides that such a person would not be eligible to remain or to be elected as a member of that Parliament if he or she were entitled to remuneration or allowances under the Principal Act. Such a person shall only be reimbursed for expenses reasonably incurred as a Board member.

33. New sub-section 37(3B) provides that where a Board member is a member of a State Parliament, public servant or employee of a State authority, other than a State referred to in sub-section 37(3A), it is a condition of that person's holding office that any remuneration received be paid to the State within one month of its receipt. Such a person is not to be paid allowances and shall only be reimbursed for expenses reasonably incurred as a Board member.

34. New sub-section 37(3C) provides that a State may recover an amount payable to it by a person under sub-section 37(3B).

Clause 24: Termination of appointments of members of Board

35. Clause 24 provides for the termination of the appointment of a member to which sub-section 37(3B) applies (Clause 23 refers) if that member fails, without reasonable excuse, to pay any remuneration received to the State within one month of receiving it.

Clause 25: Disclosure of interest by members

36. Clause 25 excludes from the application of section 41 of the Principal Act, a pecuniary interest that a wheatgrower member has because he or she is a wheatgrower and in common with other wheatgrowers.

Clause 26: Appointment of officers

37. This clause removes from sub-section 45(2) of the Principal Act, the requirement for the terms and conditions of officers of the Board to be subject to Public Service Board approval.

Clause 27: This clause inserts, after Part IV of the Principal Act, a new Part IVA concerning corporate and annual plans. The new Part IVA comprises Division 1 (Corporate Plans) and Division 2 (Annual Operational Plans).

"PART IVA -

CORPORATE AND ANNUAL PLANS

"Division 1 - Corporate Plans

"Board to develop corporate plans



38. New section 45A requires the Board to prepare annually a corporate plan, to cover successive periods of 3, 4 or 5 years commencing on 1 October, setting out its objectives and outlining in broad terms the strategies to be pursued in reaching those objectives as well as providing a statement assessing the market outlook for the wheat industry. The Board is required to submit its plans before 1 July each year except in the first year when it is required to submit the plan before 1 September. The purpose of the corporate plan is to enhance the effectiveness of the operation of the Board. It will enable the Minister's relationship with the Board to be largely at a strategic level rather than be involved in a detailed oversighting of activities.

#### "Approval of the corporate plans

39. New section 45B provides that corporate plans may either be approved by the Minister or for the Minister to request a revision to the plan if he or she is of the opinion that it is in the interests of all or part of the wheat industry that such revision should be made. The Minister is required to provide reasons for such a request and the Board is required to make such revision to the plan as it considers appropriate. A corporate plan is to come into force at the later of the beginning of the period to which it relates or the day on which the Board receives notice of the Minister's approval. This is to ensure that adequate time is provided for consultation.

#### "Variation of corporate plans by Board

40. New section 45C provides that variations to the corporate plan, other than those of a minor nature, shall not be made by the Board without the Minister's approval.

#### "Variation of corporate plans at request of Minister

41. New section 45D provides for the corporate plan to be varied at the request of the Minister. Such request is to be in writing and is to set out the reasons for the request. The consequent variation requires the Minister's approval.

#### "Date of effect of variations

42. New section 45E provides for an amended corporate plan to operate from the date that the Minister's approval to the variation is received by the Board or, if the variation was of a minor nature made by the Board, the day on which the variation was made.

#### "Division 2 - Annual Operational Plans

#### "Board to develop annual operational plans

43. New section 45F requires the Board to prepare an annual operational plan relating to the financial year commencing on 1 October and setting out details of the action it will pursue in that year to give effect to the corporate plan. These plans are required to be submitted by 1 August each year, except the first year when it is to be submitted before 1 September.

"Approval of annual operational plans

44. New section 45G provides for annual operational plans to be submitted for the approval of the Minister, enables the Minister to request revisions and provides that the revised plan be re-submitted to the Minister for approval. An annual operational plan comes into force at the later of the beginning of the period to which it relates or the day on which the Board receives notice of that Minister's approval.

"Variation of annual operational plans

45. New section 45H provides for variation of annual operational plans by the Board and at the request of the Minister and for the date of effect of such variations to be applied in the same manner as those relating to corporate plans. This section also includes provision to ensure consistency between a corporate plan and the relevant operational plan when a variation to the former is proposed.

Clause 28: Discounting of letters of credit

46. This clause removes from section 48 of the Principal Act the requirement for Ministerial approval to be obtained prior to the Board discounting letters of credit and replaces this with a new provision for the Minister to set, revoke or vary guidelines with which the Board must comply when discounting letters of credit. These amendments will give the Board greater commercial flexibility in its discounting operations.

Clause 29: Payments to Board in respect of underwritten payments

47. This clause amends the provisions relating to the Government's payments to the Board under the underwriting arrangements.
48. New sub-section 49(2) is a technical amendment to overcome several difficulties identified with the application of existing sub-section 49(2) and as a consequence of the repeal of sub-paragraph 27(2)(a)(iii).

49. New sub-section 49(2A) provides that, 'if the Board has entered into or dealt with futures or other contracts authorised under section 6 of the Principal Act, for other than hedging purposes or not in accordance with the guidelines, or if it has discounted a letter of credit not in accordance with the guidelines, then, to the extent that such action would have caused a Government payment to occur or would have caused a payment to be greater than it would otherwise have been, either no money is payable or the amount of money payable is reduced by the amount determined by the Minister in writing.
50. As it relates to contracts under section 6 of the Principal Act, this sub-section has the same effect as the application of sub-paragraph 16(2)(d)(i) to the calculation of the net pool return. Sub-paragraph 16(2)(d)(i) is however being rescinded (clause 12 refers) as the proposed treatment under new sub-section 49(2A) is considered to be technically preferable. The inclusion in this sub-section of letters of credit discounted under section 48 of the Principal Act not in accordance with guidelines, is consistent with the treatment of contracts under section 6 entered into also not in accordance with guidelines.

Clause 30:                      Payments to Board of certain proceeds  
   of tax on permits

51. This clause provides for a new sub-section 50(2) of the Principal Act to enable that portion of Wheat Research Tax payments collected under the Wheat Tax (Permit) Act 1984, which correspond with wheat authorised to be but not in fact purchased under permits, to be repaid to the Board for repayment to the relevant permit holders. This amendment has resulted from a shortcoming identified with the Principal Act.

Clause 31:                      Application of moneys of Board

52. This clause amends section 53 of the Principal Act to enable the Board to meet all the expenses incurred in connection with the selection and nomination of the grower and specialist Board members including those which occurred prior to enactment of the Wheat Marketing Amendment Act 1985. Some \$50,000 is repayable by the Australian Wheat Board to the Commonwealth in respect of such expenses.

Clause 32: Application of Division 2 of Part XI of Audit Act

53. This clause amends section 55 of the Principal Act by omitting sub-section (2) and substituting a new sub-section (2) to apply Division 2 of Part XI of the Audit Act 1901 in relation to the Board and to provide that reference to an approved bank or banks in sub-section 63D(1) of that Act includes a reference to the Reserve Bank. In addition, references to the Auditor-General under section 63G of the Audit Act include reference to an auditor appointed under new sub-section 55A(6) inserted by clause 33 of this Bill.

Clause 33: This clause inserts after section 55 of the Principal Act a new section 55A concerning the appointment of commercial auditors

"Appointment of commercial auditors

54. New sub-section 55A(1) provides that the Board, after consultation with the Australian Wheatgrowers' Federation may request the Minister in writing to appoint a company auditor to be the auditor of the Board.
55. New sub-sections 55A(2) and 55A(3) provide that the Minister shall give the Auditor-General particulars of any such request and that the Auditor-General shall, after considering the suitability of the company auditor specified in the request, inform the Minister in writing of his decision and of the reasons for that decision.
56. New sub-sections 55A(4) and 55A(5) provide that where the Auditor-General has informed the Minister in writing that a company auditor is suitable, the Minister shall give particulars to the Chairman of the Joint Committee of Public Accounts. The Committee shall subsequently inform the Minister in writing whether or not it agrees to the appointment of the company auditor.
57. New sub-sections 55A(6) and 55A(8) provide that where the Joint Committee of Public Accounts agrees to the appointment of the company auditor, the Minister may appoint the auditor and shall inform the Board in writing.
58. New sub-section 55A(7) provides for the Minister to revoke an appointment made under sub-section 55A(6).

59. New sub-section 55(9) provides that, where the Auditor-General decides the company auditor is not suitable or the Minister refuses to make or revokes an appointment made under sub-section (6), the Minister shall give the Board the reasons in writing.
60. New sub-section 55A(10) provides that where the Joint Committee of Public Accounts does not agree to the appointment of the company auditor, the Minister is to inform the Board of the decision in writing.
61. New sub-section 55A(11) defines "company auditor".

Clause 34: Annual report

62. This clause amends section 63 of the Principal Act by omitting sub-section (3) and substituting a new sub-section (3) and by adding a new sub-section (7).
63. New paragraph 63(3)(a) provides for the inclusion in the annual report of the text of all Ministerial directions given under section 11 (clause 9 of this Bill refers) together with a statement of the Board's opinion of the effect such directions had on its operations.
64. New paragraph 63(3)(b) provides that the details of any contracts entered into by the Board for the purchase of property in excess of \$500,000 be included in the annual report. This is in lieu of the previous requirement for Ministerial approval for such contracts, rescinded by clause 5 of this Bill.
65. New paragraph 63(3)(c) provides that a statement be made in the annual report of any variations to the corporate plan or annual operational plan approved by the Minister under new Part IVA of the Principal Act. (clause 27 of this Bill).
66. New sub-section 63(7) provides that references in section 63 to the Auditor-General shall be read as references to an auditor appointed under new sub-section 55A(6) (clause 33 of this Bill).

"PART III - AMENDMENTS TO THE RURAL INDUSTRIES  
RESEARCH ACT 1985

Clause 35: Principal Act

67. This clause provides that the Rural Industries Research Act 1985 is referred to as the Principal Act in Part III of this Bill.

Clause 36: Interpretation

68. This clause inserts in section 4 of the Principal Act a new sub-section (1A) which provides that a tax imposed under the Wheat Tax (Permit) Act 1984 on a permit issued by the Australian Wheat Board shall be regarded as a tax imposed on the wheat to which that permit relates. This amendment is necessary because the Wheat Tax (Permit) Act 1984 levies a tax on permits, whereas the Principal Act deals with taxes levied on produce. This amendment deems this tax to be on the wheat to which a permit relates, thereby establishing a consistent basis for applying the tax moneys in the principal Act.

Clause 37: Establishment and functions of State Research Committee

69. This clause amends section 12 of the Principal Act by inserting in sub-section (2) a reference to the Wheat Tax (Permit) Act 1984 to enable levies imposed by the Wheat Tax (Permit) Act 1984 to be included in the appropriate prescribed class of levies.

Clause 38: Schedule 1

70. This clause inserts in Schedule 1 to the Principal Act a reference to the levy imposed by the Wheat Tax (Permit) Act 1984 and relates the amount of the levy that is to be applied to the Wheat Research Trust Fund to an amount equal to the wheat research tax imposed on the quantity of wheat actually purchased under a permit.

Clause 39: Schedule 2

71. This clause inserts in Column 1 of Part II of Schedule 2 of the Principal Act a reference to the levy imposed by the Wheat Tax (Permit) Act 1984.

"PART IV - AMENDMENTS OF THE RURAL INDUSTRIES RESEARCH  
(TRANSITIONAL PROVISIONS AND CONSEQUENTIAL  
AMENDMENTS) ACT 1985

Clause 40: Principal Act

72. This clause provides that the Rural Industries Research (Transitional Provisions and Consequential Amendments) Act 1985 is referred to as the Principal Act in Part IV of this Bill.

Clause 41. Interpretation

73. This clause inserts in section 4 of the Principal Act a new sub-section (2) which provides that a tax imposed under the Wheat Tax (Permit) Act 1984 on a permit issued by the Australian Wheat Board shall be regarded as a tax imposed on the wheat to which that permit relates. This amendment is similar to that contained in clause 36 of this Bill and for similar reasons.

Clause 42: Certain amounts to be paid from  
Research Fund

74. This clause amends section 9 of the Principal Act by inserting in sub-section (2) a reference to the Wheat Tax (Permit) Act 1984 to enable moneys collected from a levy imposed by the Wheat Tax (Permit) Act 1984 to be paid from the Wheat Research Trust Fund.

Clause 43: Schedule 1

75. This clause inserts in Schedule 1 to the Principal Act a reference to the levy imposed by the Wheat Tax (Permit) Act 1984

"PART V - AMENDMENT OF THE WHEAT TAX (PERMIT)  
COLLECTION ACT 1984

Clause 44: Principal Act

76. This clause provides that the Wheat Tax (Permit) Collection Act 1984 is referred to as the Principal Act in Part V of this Bill.

Clause 45: Payments by Board to taxpayers

77. This clause removes the requirement under section 5 of the Principal Act for a permit holder who does not purchase the quantity of wheat authorised by the permit to be purchased to make an application in writing to the Board before becoming eligible to receive a refund of the taxes paid by that person in respect of the unpurchased wheat.

78. New sub-section 5(2) provides that where the Board is unable to make a refund to a person who is entitled to receive it, the amount of that refund is to be paid to the Commonwealth. This avoids the problem of having surplus money which the Board is not authorised to use included in the Board's finances.

"PART VI - OPERATION OF RURAL INDUSTRIES  
RESEARCH REGULATIONS

Clause 46:                   Operation of Rural Industries Research  
Regulations.

79. This clause provides for the inclusion in Statutory Rules No 2 1986 as amended, of a reference to the levy imposed by the Wheat Tax (Permit) Act 1984 and for the Wheat Research Trust Fund to have been established as if a reference to the levy imposed under the Wheat Tax (Permit) Act 1984 on permits issued by the Australian Wheat Board had been included in Schedule 2 at the time of making those regulations. This amendment is necessary because the Wheat Research Trust Fund was established from 1 April 1986 following the publication of Amendments to Statutory Rules No 2 1986 in the Gazette of 27 March 1986. This having occurred, it became necessary to provide a method of ensuring that the research component of the levy imposed by the Wheat Tax (Permit) Act 1984 was able to be included in the Fund.