

# EXPOSURE DRAFT

2008

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

<b>EXPOSURE DRAFT (05/03/2008)</b>
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## **Wheat Export Marketing Bill 2008**

**No.     , 2008**

*(Agriculture, Fisheries and Forestry)*

**A Bill for an Act relating to the export of wheat,  
and for other purposes**



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# EXPOSURE DRAFT

1     **A Bill for an Act relating to the export of wheat,**  
2     **and for other purposes**

3     The Parliament of Australia enacts:

4     **Part 1—Introduction**  
5

6     **^1 Short title**

7                 This Act may be cited as the *Wheat Export Marketing Act 2008*.

8     **^2 Commencement**

9                 (1) Each provision of this Act specified in column 1 of the table  
10                 commences, or is taken to have commenced, in accordance with

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TPart 1T IntroductionT

T T T T

## Section T^3T

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1 column 2 of the table. Any other statement in column 2 has effect  
2 according to its terms.

3

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections ^1 and ^2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Sections ^3 to ^73	1 July 2008.	1 July 2008

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4 Note: This table relates only to the provisions of this Act as originally  
5 passed by both Houses of the Parliament and assented to. It will not be  
6 expanded to deal with provisions inserted in this Act after assent.

7 (2) Column 3 of the table contains additional information that is not  
8 part of this Act. Information in this column may be added to or  
9 edited in any published version of this Act.

## 10 ^3 Simplified outline

11 The following is a simplified outline of this Act:

- |  |
|--|
| <ul style="list-style-type: none"><li>12 • This Act sets up a system for regulating exports of wheat<br/>13 (other than wheat in bags or containers).</li><li>14 • Exporters of wheat must be accredited under the wheat export<br/>15 accreditation scheme.</li><li>16 • An exporter will not be eligible for accreditation unless the<br/>17 exporter is a company that satisfies the eligibility criteria set<br/>18 out in the scheme.</li><li>19 • The eligibility criteria include being a fit and proper company.</li></ul> |
|--|

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Introduction T T Part 1 T  
T T TT

## Section T^4T

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- An accredited wheat exporter must comply with conditions of accreditation (including reporting conditions).
- Wheat Exports Australia (WEA) will administer the wheat export accreditation scheme.
- WEA has power to:
  - (a) obtain information from accredited wheat exporters; and
  - (b) direct the audit of an accredited wheat exporter.
- The Minister may direct WEA to carry out an investigation.
- WEA will report to growers on an annual basis.

## 11 ^4 Definitions

12  
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14  
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26

In this Act:

***access test*** has the meaning given by section ^20.

***access undertaking*** has the same meaning as in Part IIIA of the *Trade Practices Act 1974*.

***accredited wheat exporter*** means a company that is accredited as an accredited wheat exporter under the wheat export accreditation scheme.

***ACN*** has the same meaning as in the *Corporations Act 2001*.

***Australian law*** means a law of the Commonwealth or of a State or Territory.

***business*** includes a venture or concern in trade or commerce, whether or not conducted on a regular, repetitive or continuous basis.

***designated sanitary or phytosanitary measure*** means a measure applied by or under a law of a foreign country:

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T Part 1 T Introduction T

T T T T

## Section T<sup>4</sup>T

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- 1 (a) to protect animal or plant life or health from risks arising  
2 from the entry, establishment or spread of pests, diseases,  
3 disease-carrying organisms or disease-causing organisms; or  
4 (b) to protect human or animal life or health from risks arising  
5 from additives, contaminants, toxins or disease-causing  
6 organisms in foods, beverages or feedstuffs; or  
7 (c) to protect human life or health from:  
8 (i) risks arising from diseases carried by animals or plants;  
9 or  
10 (ii) risks arising from diseases carried by products of  
11 animals or plants; or  
12 (iii) the entry, establishment or spread of pests; or  
13 (d) to prevent or limit other damage from the entry,  
14 establishment or spread of pests;  
15 to the extent to which the measure relates to the importation into  
16 the foreign country of:  
17 (e) barley; or  
18 (f) canola; or  
19 (g) lupins; or  
20 (h) oats; or  
21 (i) wheat.

22 ***executive officer*** of a company means an individual, by whatever  
23 name called and whether or not a director of the company, who is  
24 concerned in, or takes part in, the management of the company.

25 ***external auditor*** means a person authorised under section <sup>28</sup> to be  
26 an external auditor for the purposes of this Act.

27 ***externally-administered body corporate*** has the same meaning as  
28 in the *Corporations Act 2001*.

29 ***final compliance report*** has the meaning given by subsection  
30 <sup>18</sup>(5).

31 ***final export report*** has the meaning given by subsection <sup>18</sup>(3).

32 ***foreign country*** includes a region where:

- 33 (a) the region is a colony, territory or protectorate of a foreign  
34 country; or

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IntroductionT TPart 1T  
T T TT

## Section T^4T

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- 1 (b) the region is part of a foreign country; or  
2 (c) the region is under the protection of a foreign country; or  
3 (d) a foreign country exercises jurisdiction or control over the  
4 region; or  
5 (e) a foreign country is responsible for the region's international  
6 relations.

7 ***foreign law*** means a law of a foreign country.

8 ***involved in a contravention*** has the meaning given by section ^5.

9 ***marketing year*** means a 12-month period beginning on 1 October.

10 ***port terminal facility*** means a ship loader that is:

- 11 (a) at a port; and  
12 (b) capable of handling wheat in bulk;  
13 and includes any of the following facilities:  
14 (c) an intake/receival facility;  
15 (d) a grain storage facility;  
16 (e) a weighing facility;  
17 (f) a shipping belt;

18 that is:

- 19 (g) at the port; and  
20 (h) associated with the ship loader; and  
21 (i) capable of dealing with wheat in bulk.

22 ***port terminal service*** means a service (within the meaning of  
23 Part IIIA of the *Trade Practices Act 1974*) provided by means of a  
24 port terminal facility, and includes the use of a port terminal  
25 facility.

26 ***pre-surrender period*** has the meaning given by subsection ^18(6).

27 ***protected confidential information*** has the meaning given by  
28 section ^70.

29 ***provider***, in relation to a port terminal service, means the entity  
30 that is the owner or operator of the port terminal facility that is  
31 used (or is to be used) to provide the service.

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T Part 1 T Introduction T

T T T T

## Section T^4T

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- 1                    ***related body corporate*** has the same meaning as in the  
2                    *Corporations Act 2001*.
- 3                    ***United Nations sanctions provision*** means:
- 4                    (a) a provision of regulations made for the purposes of section 6  
5                    of the *Charter of the United Nations Act 1945*; or  
6                    (b) any of the following provisions of the *Charter of the United*  
7                    *Nations Act 1945*:
- 8                    (i) subsection 20(1);  
9                    (ii) subsection 20(3C);  
10                    (iii) subsection 21(1);  
11                    (iv) subsection 21(2C);  
12                    (v) subsection 27(1);  
13                    (vi) subsection 27(2);  
14                    (vii) subsection 27(5);  
15                    (viii) subsection 27(6);  
16                    (ix) subsection 28(1);  
17                    (x) subsection 28(2);  
18                    (xi) subsection 32(1); or  
19                    (c) any of the following provisions of the *Customs Act 1901*:
- 20                    (i) subsection 233BABAB(1);  
21                    (ii) subsection 233BABAB(6);  
22                    (iii) subsection 233BABAC(1);  
23                    (iv) subsection 233BABAC(6);  
24                    (v) subsection 233C(1);  
25                    (vi) subsection 233C(2).
- 26                    ***WEA*** means Wheat Exports Australia.
- 27                    ***WEA Chair*** means the Chair of WEA.
- 28                    ***WEA member*** means a member of WEA, and includes the WEA  
29                    Chair.
- 30                    ***WEA staff*** means the staff described in section ^57.
- 31                    ***wheat export accreditation scheme*** means the scheme under  
32                    subsection ^7(1).

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IntroductionT TPart 1T  
T T TT

Section T^5T

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1 *wheat export charge amounts* means:

- 2 (a) amounts of charge imposed by Part 5 of Schedule 14 to the  
3 Primary Industries (Customs) Charges Regulations 2000; and  
4 (b) amounts payable under section 15 of the *Primary Industries*  
5 *Levies and Charges Collection Act 1991* in relation to that  
6 charge.

7 **^5 Involved in a contravention**

8 For the purposes of this Act, a person has been *involved in a*  
9 *contravention* if, and only if, the person:

- 10 (a) has aided, abetted, counselled or procured the contravention;  
11 or  
12 (b) has induced, whether by threats or promises or otherwise, the  
13 contravention; or  
14 (c) has been in any way, directly or indirectly, knowingly  
15 concerned in, or party to, the contravention; or  
16 (d) has conspired with others to effect the contravention.

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TPart 2T Wheat export accreditation schemeT

TDivision 1T Compliance with the wheat export accreditation schemeT

Section T^6T

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1

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## Part 2—Wheat export accreditation scheme

3

### Division 1—Compliance with the wheat export accreditation scheme

4

5

#### ^6 Compliance with the wheat export accreditation scheme

6

(1) A person commits an offence if:

7

(a) the person exports wheat; and

8

(b) the person is not an accredited wheat exporter.

9

Penalty: 600 penalty units.

10

(2) The prohibition in subsection (1) does not apply to the export of wheat in:

11

(a) a bag; or

12

(b) a container;

13

that is capable of holding not more than 50 tonnes of wheat.

14

15

Note: The defendant bears an evidential burden in relation to the matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

16

17

(3) An offence against subsection (1) is an indictable offence.

18

Note: For transitional provisions, see Schedule 3 to the *Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008*.

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2 **Division 2—Formulation of the wheat export accreditation**  
3 **scheme**

4 **^7 Wheat export accreditation scheme**

- 5 (1) WEA may, by legislative instrument, formulate a scheme (to be  
6 known as the *wheat export accreditation scheme*) about any or all  
7 of the following matters:  
8 (a) the accreditation of companies as accredited wheat exporters;  
9 (b) a matter required or permitted by this Act to be included in  
10 the wheat export accreditation scheme;  
11 (c) ancillary or incidental matters.

12 Note: For variation and revocation, see subsection 33(3) of the *Acts*  
13 *Interpretation Act 1901*.

- 14 (2) To avoid doubt, the wheat export accreditation scheme is taken to  
15 be a law of the Commonwealth.

16 **^8 Administrative decisions under the wheat export accreditation**  
17 **scheme**

- 18 (1) The wheat export accreditation scheme may make provision in  
19 relation to a matter by conferring a power to make a decision of an  
20 administrative character on WEA.
- 21 (2) The wheat export accreditation scheme may empower WEA to  
22 make any or all of the following decisions:  
23 (a) a decision to grant accreditation otherwise than by way of  
24 renewal;  
25 (b) a decision to grant accreditation by way of renewal;  
26 (c) a decision to suspend accreditation;  
27 (d) a decision to cancel accreditation;  
28 (e) a decision to consent to the surrender of accreditation;  
29 (f) a decision to impose one or more conditions to which an  
30 accreditation is subject;  
31 (g) a decision to revoke or vary a condition imposed as  
32 mentioned in paragraph (f).

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T T T T

TPart 2T Wheat export accreditation schemeT

TDivision 2T Formulation of the wheat export accreditation schemeT

Section T^9T

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1 (3) Subsection (2) does not limit subsection (1).

2 Note: For review of decisions, see Part 6.

3 **^9 Application fees**

4 (1) The wheat export accreditation scheme may provide that an  
5 application for accreditation must be accompanied by the fee  
6 specified in the scheme.

7 (2) A fee must not be such as to amount to taxation.

8 **^10 Accreditation is not transferable**

9 The wheat export accreditation scheme must provide that an  
10 accreditation is not transferable.

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Wheat export accreditation scheme T T Part 2 T  
Eligibility for accreditation T T Division 3 T

Section T^11 T

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## Division 3—Eligibility for accreditation

3

### ^11 Eligibility for accreditation

4

(1) The wheat export accreditation scheme must provide that a company is not eligible for accreditation unless:

5

6

(a) the company is registered as a company under Part 2A.2 of the *Corporations Act 2001*; and

7

8

(b) the company is a trading corporation to which paragraph 51(xx) of the Constitution applies; and

9

10

(c) WEA is satisfied that the company is a fit and proper company, having regard to the following:

11

12

(i) the financial resources available to the company;

13

(ii) the company's risk management arrangements;

14

(iii) the company's business record;

15

(iv) the company's record in situations requiring trust and candour;

16

17

(v) the business record of each executive officer of the company;

18

19

(vi) the experience and ability of each executive officer of the company;

20

21

(vii) the record in situations requiring trust and candour of each executive officer of the company;

22

23

(viii) whether the company, or an executive officer of the company, has been convicted of an offence against an Australian law or a foreign law, where the offence relates to dishonest conduct;

24

25

26

27

(ix) whether the company, or an executive officer of the company, has been convicted of an offence against an Australian law or a foreign law, where the offence relates to the conduct of a business;

28

29

30

31

(x) whether an order for a pecuniary penalty has been made against the company, or an executive officer of the company, under section 1317G of the *Corporations Act 2001* or section 76 of the *Trade Practices Act 1974*;

32

33

34

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T Part 2 T Wheat export accreditation scheme T

T Division 3 T Eligibility for accreditation T

## Section T<sup>11</sup>T

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- 1 (xi) if the company is or has been accredited under the  
2 wheat export accreditation scheme—whether the  
3 company has contravened a condition of the company’s  
4 accreditation;
- 5 (xii) whether an executive officer of the company has been  
6 involved in a contravention of a condition of an  
7 accreditation under the wheat export accreditation  
8 scheme;
- 9 (xiii) whether the company, or an executive officer of the  
10 company, has been convicted of an offence against  
11 section 136.1, 137.1 or 137.2 of the *Criminal Code*;
- 12 (xiv) whether the company, or an executive officer of the  
13 company, has committed or been involved in repeated  
14 contraventions, or a serious contravention, of a  
15 designated sanitary or phytosanitary measure;
- 16 (xv) whether the company, or an executive officer of the  
17 company, has committed or been involved in a  
18 contravention of a United Nations sanctions provision;
- 19 (xvi) whether the company, or an executive officer of the  
20 company, has committed or been involved in a  
21 contravention of an Australian law or a foreign law,  
22 where the contravention relates to trade in barley,  
23 canola, lupins, oats or wheat;
- 24 (xvii) such other matters (if any) as WEA considers relevant;  
25 and
- 26 (d) WEA is satisfied that the company is not an  
27 externally-administered body corporate; and
- 28 (e) if the company, or a related body corporate, is the provider of  
29 a port terminal service—WEA is satisfied that the company  
30 or the related body corporate, as the case may be, passes the  
31 access test in relation to that service; and
- 32 (f) if the wheat export accreditation scheme specifies one or  
33 more other eligibility requirements—WEA is satisfied that  
34 those requirements are met.

35 *Fit and proper company—5-year limit*

- 36 (2) Subparagraphs (1)(c)(i) to (xvii) do not apply to an act, omission,  
37 matter or thing that occurred:

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Wheat export accreditation scheme T T Part 2 T  
Eligibility for accreditation T T Division 3 T

## Section T^11 T

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- 1 (a) if the company is not, and has never been, accredited under  
2 the wheat export accreditation scheme—before the start of  
3 the preceding 5 years; or  
4 (b) if the company is or has been accredited under the wheat  
5 export accreditation scheme—before the start of the 5-year  
6 period that ended when the company first became accredited  
7 under the wheat export accreditation scheme.

8 *Ancillary provisions*

- 9 (3) For the purposes of the application of subparagraph (1)(c)(viii),  
10 (ix) or (xiii) to a person who is an executive officer of a company,  
11 it is immaterial whether a conviction occurred before or after the  
12 person became an executive officer of the company.
- 13 (4) For the purposes of the application of subparagraph (1)(c)(x) to a  
14 person who is an executive officer of a company, it is immaterial  
15 whether an order for a pecuniary penalty was made before or after  
16 the person became an executive officer of the company.
- 17 (5) For the purposes of the application of subparagraph (1)(c)(xii),  
18 (xiv), (xv) or (xvi) to a person who is an executive officer of a  
19 company, it is immaterial whether a contravention occurred before  
20 or after the person became an executive officer of the company.
- 21 (6) For the purposes of paragraph (1)(c), it is immaterial whether an  
22 act, omission, matter or thing occurred before or after the  
23 commencement of this section. This rule has effect subject to  
24 subsection (2).
- 25 (7) This section extends to acts, omissions, matters and things outside  
26 Australia.
- 27 (8) This section does not affect the operation of Part VIIC of the  
28 *Crimes Act 1914* (which includes provisions that, in certain  
29 circumstances, relieve persons from the requirement to disclose  
30 spent convictions and require persons aware of such convictions to  
31 disregard them).

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T Part 2 T Wheat export accreditation scheme T

T Division 4 T Conditions of accreditation T

Section T^12 T

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1

2

## Division 4—Conditions of accreditation

3

### ^12 Conditions of accreditation

4

The wheat export accreditation scheme must provide that an accreditation is subject to the following conditions:

5

6

(a) a condition that an accredited wheat exporter must comply with a requirement under subsection ^21(2) or ^27(1);

7

8

(b) such conditions as are specified in the scheme;

9

10

(c) such conditions (if any) as are imposed under the scheme by WEA.

11

### ^13 Condition—annual export report

12

(1) The wheat export accreditation scheme must provide that it is a condition of accreditation that an accredited wheat exporter must, within:

13

14

15

(a) 30 days after the end of each marketing year; or

16

(b) if WEA allows a longer period—that longer period;

17

give WEA a written report setting out:

18

(c) the quantity of wheat exported by the accredited wheat exporter during that year, broken down by grade and country of destination; and

19

20

21

(d) the terms and conditions on which the accredited wheat exporter, or a related body corporate, acquired wheat from growers during that year for export by the accredited wheat exporter.

22

23

24

25

(2) Paragraphs (1)(c) and (d) do not apply to the export of wheat in:

26

(a) a bag; or

27

(b) a container;

28

that is capable of holding not more than 50 tonnes of wheat.

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Wheat export accreditation schemeT TPart 2T  
Conditions of accreditationT TDivision 4T

Section T^14T

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1 **^14 Condition—annual compliance report**

2 The wheat export accreditation scheme must provide that it is a  
3 condition of accreditation that an accredited wheat exporter must,  
4 within:

- 5 (a) 30 days after the end of each marketing year; or  
6 (b) if WEA allows a longer period—that longer period;  
7 give WEA a report relating to the accredited wheat exporter’s  
8 compliance, during that year, with:  
9 (c) the conditions of the accredited wheat exporter’s  
10 accreditation under the wheat export accreditation scheme;  
11 and  
12 (d) Australian laws, and foreign laws, that are applicable to the  
13 accredited wheat exporter’s export trade in wheat; and  
14 (e) the United Nations sanctions provisions.

15 **^15 Condition—report about notifiable matters**

16 The wheat export accreditation scheme must provide that it is a  
17 condition of accreditation that, if:

- 18 (a) an event occurs or a circumstance comes into existence; and  
19 (b) the event or the circumstance is:  
20 (i) a ground on which WEA could cancel an accredited  
21 wheat exporter’s accreditation under the wheat export  
22 accreditation scheme; or  
23 (ii) likely to result in a conclusion that the company is not a  
24 fit and proper company within the meaning of the wheat  
25 export accreditation scheme;

26 the accredited wheat exporter must, within 14 days after the  
27 occurrence of the event or the coming into existence of the  
28 circumstance, give WEA a report about the matter.

29 **^16 Compliance with conditions of accreditation**

- 30 (1) A person commits an offence if:  
31 (a) the person is an accredited wheat exporter; and  
32 (b) the person contravenes a condition of the person’s  
33 accreditation under the wheat export accreditation scheme.

# EXPOSURE DRAFT

T T T T

**TPart 2T** Wheat export accreditation schemeT

**TDivision 4T** Conditions of accreditationT

Section T^16T

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- 1 Penalty: 600 penalty units.
- 2 (2) An offence against subsection (1) is an indictable offence.

# EXPOSURE DRAFT

T T T T  
Wheat export accreditation scheme T T Part 2 T  
Cancellation of accreditation T T Division 5 T

Section T^17 T

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1

## 2 **Division 5—Cancellation of accreditation**

### 3 **^17 Cancellation of accreditation**

#### 4 *Mandatory cancellation*

- 5 (1) The wheat export accreditation scheme must provide that WEA  
6 must cancel the accreditation of a company if:
- 7 (a) the company is not registered as a company under Part 2A.2  
8 of the *Corporations Act 2001*; or
  - 9 (b) the company is not a trading corporation to which paragraph  
10 51(xx) of the Constitution applies; or
  - 11 (c) WEA is satisfied that the company is not a fit and proper  
12 company, having regard to the following:
    - 13 (i) the financial resources available to the company;
    - 14 (ii) the company's risk management arrangements;
    - 15 (iii) the company's business record;
    - 16 (iv) the company's record in situations requiring trust and  
17 candour;
    - 18 (v) the business record of each executive officer of the  
19 company;
    - 20 (vi) the experience and ability of each executive officer of  
21 the company;
    - 22 (vii) the record in situations requiring trust and candour of  
23 each executive officer of the company;
    - 24 (viii) whether the company, or an executive officer of the  
25 company, has been convicted of an offence against an  
26 Australian law or a foreign law, where the offence  
27 relates to dishonest conduct;
    - 28 (ix) whether the company, or an executive officer of the  
29 company, has been convicted of an offence against an  
30 Australian law or a foreign law, where the offence  
31 relates to the conduct of a business;
    - 32 (x) whether an order for a pecuniary penalty has been made  
33 against the company, or an executive officer of the
-

# EXPOSURE DRAFT

T T T

T Part 2 T Wheat export accreditation scheme T

T Division 5 T Cancellation of accreditation T

## Section T<sup>17</sup>T

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- 1 company, under section 1317G of the *Corporations Act*  
2 2001 or section 76 of the *Trade Practices Act 1974*;
- 3 (xi) whether the company has contravened a condition of the  
4 company's accreditation under the wheat export  
5 accreditation scheme;
- 6 (xii) whether an executive officer of the company has been  
7 involved in a contravention of a condition of an  
8 accreditation under the wheat export accreditation  
9 scheme;
- 10 (xiii) whether the company, or an executive officer of the  
11 company, has been convicted of an offence against  
12 section 136.1, 137.1 or 137.2 of the *Criminal Code*;
- 13 (xiv) whether the company, or an executive officer of the  
14 company, has committed or been involved in repeated  
15 contraventions, or a serious contravention, of a  
16 designated sanitary or phytosanitary measure;
- 17 (xv) whether the company, or an executive officer of the  
18 company, has committed or been involved in a  
19 contravention of a United Nations sanctions provision;
- 20 (xvi) whether the company, or an executive officer of the  
21 company, has committed or been involved in a  
22 contravention of an Australian law or a foreign law,  
23 where the contravention relates to trade in barley,  
24 canola, lupins, oats or wheat;
- 25 (xvii) such other matters (if any) as WEA considers relevant;  
26 or
- 27 (d) if the company, or a related body corporate, is the provider of  
28 a port terminal service—WEA is satisfied that the company  
29 or the related body corporate, as the case may be, does not  
30 pass the access test in relation to that service; or
- 31 (e) if the wheat export accreditation scheme specifies one or  
32 more other grounds for mandatory cancellation—WEA is  
33 satisfied that at least one of those grounds is applicable to the  
34 company.

### 35 *Discretionary cancellation*

- 36 (2) The wheat export accreditation scheme must provide that WEA  
37 may cancel the accreditation of a company if:

# EXPOSURE DRAFT

T T T T  
Wheat export accreditation scheme T T Part 2 T  
Cancellation of accreditation T T Division 5 T

## Section T<sup>17</sup>T

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- 1 (a) the company is an externally-administered body corporate; or  
2 (b) if the wheat export accreditation scheme specifies one or  
3 more other grounds for discretionary cancellation—WEA is  
4 satisfied that at least one of those grounds is applicable to the  
5 company.

6 *Fit and proper company—5-year limit*

- 7 (3) Subparagraphs (1)(c)(i) to (xvii) do not apply to an act, omission,  
8 matter or thing that occurred before the start of the 5-year period  
9 that ended when the company first became accredited under the  
10 wheat export accreditation scheme.

11 *Ancillary provisions*

- 12 (4) For the purposes of the application of subparagraph (1)(c)(viii),  
13 (ix) or (xiii) to a person who is an executive officer of a company,  
14 it is immaterial whether a conviction occurred before or after the  
15 person became an executive officer of the company.
- 16 (5) For the purposes of the application of subparagraph (1)(c)(x) to a  
17 person who is an executive officer of a company, it is immaterial  
18 whether an order for a pecuniary penalty was made before or after  
19 the person became an executive officer of the company.
- 20 (6) For the purposes of the application of subparagraph (1)(c)(xii),  
21 (xiv), (xv) or (xvi) to a person who is an executive officer of a  
22 company, it is immaterial whether a contravention occurred before  
23 or after the person became an executive officer of the company.
- 24 (7) For the purposes of paragraph (1)(c), it is immaterial whether an  
25 act, omission, matter or thing occurred before or after the  
26 commencement of this section. This rule has effect subject to  
27 subsection (3).
- 28 (8) This section extends to acts, omissions, matters and things outside  
29 Australia.
- 30 (9) This section does not affect the operation of Part VIIC of the  
31 *Crimes Act 1914* (which includes provisions that, in certain  
32 circumstances, relieve persons from the requirement to disclose

# EXPOSURE DRAFT

T T T T

**TPart 2T** Wheat export accreditation schemeT

**TDivision 5T** Cancellation of accreditationT

Section T^17T

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1

spent convictions and require persons aware of such convictions to  
disregard them).

2

# EXPOSURE DRAFT

T T T T  
Wheat export accreditation scheme T T Part 2 T  
Surrender of accreditation T T Division 6 T

Section T^18 T

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1

2 **Division 6—Surrender of accreditation**

3 **^18 Surrender of accreditation**

- 4 (1) The wheat export accreditation scheme must provide that an  
5 accredited wheat exporter may apply to WEA for consent to  
6 surrender its accreditation.
- 7 (2) The wheat export accreditation scheme must provide that WEA  
8 may refuse to consent to the surrender sought by the applicant  
9 unless:
- 10 (a) the applicant has complied with the conditions referred to in  
11 subsections ^13(1) and (2) and ^14(1) and (2); and
- 12 (b) the applicant has given WEA a final export report (see  
13 subsection (3)); and
- 14 (c) the applicant has given WEA a final compliance report (see  
15 subsection (5)).

16 *Final export report*

- 17 (3) For the purposes of this Act, a *final export report* is a report setting  
18 out:
- 19 (a) the quantity of wheat exported by the applicant during the  
20 pre-surrender period, broken down by grade and country of  
21 destination; and
- 22 (b) the terms and conditions on which the accredited wheat  
23 exporter, or a related body corporate, acquired wheat from  
24 growers during the pre-surrender period for export by the  
25 accredited wheat exporter.
- 26 (4) Paragraphs (3)(a) and (b) do not apply to the export of wheat in:  
27 (a) a bag; or  
28 (b) a container;  
29 that is capable of holding not more than 50 tonnes of wheat.

# EXPOSURE DRAFT

T T T T

T Part 2 T Wheat export accreditation scheme T

T Division 6 T Surrender of accreditation T

## Section T^18 T

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1

### *Final compliance report*

2

(5) For the purposes of this Act, a ***final compliance report*** is a report relating to the applicant's compliance, during the pre-surrender period, with:

3

4

5

(a) the conditions of the accredited wheat exporter's accreditation under the wheat export accreditation scheme; and

6

7

8

(b) Australian laws, and foreign laws, that are applicable to the applicant's export trade in wheat; and

9

10

(c) the United Nations sanctions provisions.

11

### *Pre-surrender period*

12

(6) For the purposes of this Act, the ***pre-surrender period*** is the period:

13

14

(a) beginning at the start of the marketing year in which the application was made; and

15

16

(b) ending when the application was made.

# EXPOSURE DRAFT

Wheat export accreditation scheme **Part 2**  
Register of accredited wheat exporters **Division 7**

Section **19**

---

1

2 **Division 7—Register of accredited wheat exporters**

3 **19 Register of accredited wheat exporters**

- 4 (1) WEA is to maintain a Register in which WEA sets out the name  
5 and ACN of each accredited wheat exporter.
- 6 (2) The Register may be maintained by electronic means.
- 7 (3) The Register is to be made available for inspection on the Internet.

# EXPOSURE DRAFT

T T T T

TPart 2T Wheat export accreditation schemeT

TDivision 8T Access testT

Section T^20T

---

1

2 **Division 8—Access test**

3 **^20 Access test**

4 *Before 1 October 2009*

5 (1) For the purposes of this Act, a body corporate passes the *access*  
6 *test* in relation to a port terminal service at a particular time if that  
7 time is before 1 October 2009, and:

- 8 (a) at that time, there is available on the body's Internet site a  
9 current statement to the effect that the body is willing to:
- 10 (i) provide accredited wheat exporters with access to the  
11 service for purposes relating to the export of wheat; and
  - 12 (ii) do so on such terms and conditions as are set out in the  
13 statement; or
- 14 (b) at that time:
- 15 (i) there is in force a decision under Division 2A of  
16 Part IIIA of the *Trade Practices Act 1974* that a regime  
17 established by a State or Territory for access to the port  
18 terminal service is an effective access regime; and
  - 19 (ii) under that regime, accredited wheat exporters have  
20 access to the port terminal service for purposes relating  
21 to the export of wheat.

22 *On or after 1 October 2009*

23 (2) For the purposes of this Act, a body corporate passes the *access*  
24 *test* in relation to a port terminal service at a particular time if that  
25 time is on or after 1 October 2009, and:

- 26 (a) at that time, there is in operation, under Division 6 of  
27 Part IIIA of the *Trade Practices Act 1974*, an access  
28 undertaking relating to the provision to accredited wheat  
29 exporters of access to the port terminal service for purposes  
30 relating to the export of wheat; or
- 31 (b) at that time:
- 32 (i) there is in force a decision under Division 2A of  
33 Part IIIA of the *Trade Practices Act 1974* that a regime

# EXPOSURE DRAFT

T T TT  
Wheat export accreditation schemeT TPart 2T  
Access testT TDivision 8T

## Section T^20T

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1                                    established by a State or Territory for access to the port  
2                                    terminal service is an effective access regime; and  
3                                    (ii) under that regime, accredited wheat exporters have  
4                                    access to the port terminal service for purposes relating  
5                                    to the export of wheat.

6                                    (3) For the purposes of paragraph (2)(a):  
7                                    (a) assume that subsection 44ZZBA(1) of the *Trade Practices*  
8                                    *Act 1974* had never been enacted; and  
9                                    (b) assume that an access undertaking comes into operation at  
10                                    the time when the Australian Competition and Consumer  
11                                    Commission publishes its decision to accept the undertaking.

### 12                                    *Exceptions*

13                                    (4) Subsections (1) and (2) do not apply to the export of wheat in:  
14                                    (a) a bag; or  
15                                    (b) a container;  
16                                    that is capable of holding not more than 50 tonnes of wheat.

# EXPOSURE DRAFT

T T T T

T Part 3 T Information-gathering and audit powers T

T Division 1 T WEA may obtain information and documents from accredited wheat exporters T

Section T^21 T

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1

2

## Part 3—Information-gathering and audit powers

3

### Division 1—WEA may obtain information and documents from accredited wheat exporters

4

5

#### ^21 WEA may obtain information and documents from accredited wheat exporters

6

7

##### *Scope*

8

- (1) This section applies if WEA has reason to believe that an accredited wheat exporter has information or a document that is relevant to the functions or powers of WEA.

9

10

11

##### *Requirement*

12

- (2) WEA may, by written notice given to the accredited wheat exporter, require the accredited wheat exporter:

13

14

- (a) to give to WEA, within the period and in the manner and form specified in the notice, any such information; or

15

16

- (b) to produce to WEA, within the period and in the manner specified in the notice, any such documents; or

17

18

- (c) to make copies of any such documents and to produce to WEA, within the period and in the manner specified in the notice, those copies.

19

20

21

Note: See also paragraph ^12(a) (condition of accreditation).

22

- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

23

24

- (4) This section does not limit section ^25 or ^26.

25

#### ^22 Copying documents—compensation

26

A person is entitled to be paid by WEA reasonable compensation for complying with a requirement covered by paragraph ^21(2)(c).

27

# EXPOSURE DRAFT

T T TT  
Information-gathering and audit powersT TPart 3T  
WEA may obtain information and documents from accredited wheat exportersT  
TDivision 1T

Section T^23T

---

1 **^23 Copies of documents**

- 2 (1) WEA may:
- 3 (a) inspect a document or copy produced under subsection
- 4 ^21(2); and
- 5 (b) make and retain copies of, or take and retain extracts from,
- 6 such a document.
- 7 (2) WEA may retain possession of a copy of a document produced in
- 8 accordance with a requirement covered by paragraph ^21(2)(c).

9 **^24 WEA may retain documents**

- 10 (1) WEA may take, and retain for as long as is necessary, possession
- 11 of a document produced under subsection ^21(2).
- 12 (2) The person otherwise entitled to possession of the document is
- 13 entitled to be supplied, as soon as practicable, with a copy certified
- 14 by WEA to be a true copy.
- 15 (3) The certified copy must be received in all courts and tribunals as
- 16 evidence as if it were the original.
- 17 (4) Until a certified copy is supplied, WEA must, at such times and
- 18 places as WEA thinks appropriate, permit the person otherwise
- 19 entitled to possession of the document, or a person authorised by
- 20 that person, to inspect and make copies of, or take extracts from,
- 21 the document.

# EXPOSURE DRAFT

T T T T

T Part 3 T Information-gathering and audit powers T

T Division 2 T WEA's other information-gathering powers T

Section T^25 T

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1

2

## Division 2—WEA's other information-gathering powers

3

### ^25 Power to request information and documents

4

#### *Scope*

5

- (1) This section applies to a person if WEA believes on reasonable grounds that the person has information or a document that is relevant to the functions or powers of WEA.

6

7

8

#### *Request*

9

- (2) WEA may, by written notice given to the person, request the person:

10

11

- (a) to give to WEA, within the period and in the manner and form specified in the notice, any such information; or

12

13

- (b) to produce to WEA, within the period and in the manner specified in the notice, any such documents; or

14

15

- (c) to make copies of any such documents and to produce to WEA, within the period and in the manner specified in the notice, those copies.

16

17

18

- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

19

20

### ^26 Power to request a report

21

#### *Scope*

22

- (1) This section applies to a person if WEA believes on reasonable grounds that:

23

24

- (a) the person has information or a document that is relevant to the functions or powers of WEA; and

25

26

- (b) the person is capable of using the information or document to prepare a report about a particular matter that is relevant to the functions or powers of WEA.

27

28

# EXPOSURE DRAFT

Information-gathering and audit powersT **Part 3T**  
WEA's other information-gathering powersT **Division 2T**

Section T^26T

---

1  
2  
3  
4  
5  
6  
7  
8

*Request*

- (2) WEA may, by written notice given to the person, request the person:
  - (a) to prepare such a report; and
  - (b) to give the report to WEA within the period specified in the notice.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

# EXPOSURE DRAFT

T T T T

T Part 3 T Information-gathering and audit powers T

T Division 3 T External audits of accredited wheat exporters T

Section T^27 T

---

1

2

## Division 3—External audits of accredited wheat exporters

3

### ^27 WEA may direct external audit

4

(1) WEA may, by written notice given to an accredited wheat exporter, require the accredited wheat exporter to:

5

6

(a) appoint:

7

(i) an external auditor identified in the notice; or

8

(ii) if no external auditor is identified in the notice—an external auditor chosen by the accredited wheat exporter; and

9

10

(b) arrange for the external auditor to carry out an external audit of whichever of the following is specified in the notice:

11

12

(i) the accredited wheat exporter's compliance with one or more conditions of accreditation under the wheat export accreditation scheme;

13

14

(ii) the accuracy of information given to WEA by the accredited wheat exporter (whether orally, in a document or in any other way);

15

16

(iii) the accuracy of one or more statements made in the application that resulted in the accreditation of the accredited wheat exporter; and

17

18

19

20

21

(c) arrange for the external auditor to give the accredited wheat exporter a written report (the *audit report*) setting out the results of the audit; and

22

23

(d) give WEA a copy of the audit report within:

24

25

(i) the period specified in the notice; or

26

(ii) if WEA allows a longer period—that longer period.

27

28

Note: See also paragraph ^12(a) (condition of accreditation).

29

(2) The notice must specify:

30

(a) the matters to be covered by the audit; and

31

(b) the form of the audit report and the kinds of details it is to contain.

32

33

(3) If subparagraph (1)(b)(i) applies, the matters that may be specified under paragraph (2)(a) may include either or both of the following:

34

# EXPOSURE DRAFT

T T TT  
Information-gathering and audit powersT TPart 3T  
External audits of accredited wheat exportersT TDivision 3T

## Section T^28T

---

- 1 (a) an assessment of the accredited wheat exporter's existing  
2 capacity to comply with one or more conditions of  
3 accreditation under the wheat accreditation scheme;  
4 (b) an assessment of what the accredited wheat exporter will  
5 need to do, or continue to do, to comply with one or more  
6 conditions of accreditation under the wheat accreditation  
7 scheme.

8 (4) Subsection (3) does not limit paragraph (2)(a).

9 *Eligibility for appointment as an external auditor*

- 10 (5) An individual is not eligible to be appointed an external auditor by  
11 an accredited wheat exporter if the individual is a director,  
12 employee or agent of:  
13 (a) the accredited wheat exporter; or  
14 (b) a related body corporate.

15 **^28 External auditors**

- 16 (1) WEA may, by writing, authorise a specified individual to be an  
17 external auditor for the purposes of this Act.

18 Note 1: For specification by class, see subsection 46(3) of the *Acts*  
19 *Interpretation Act 1901*.

20 Note 2: For variation and revocation, see subsection 33(3) of the *Acts*  
21 *Interpretation Act 1901*.

- 22 (2) An authorisation under subsection (1) is not a legislative  
23 instrument.

# EXPOSURE DRAFT

T T T T  
T Part 4 T Investigations T  
T T T T

Section T^29T

---

1

2

## Part 4—Investigations

3

4

### ^29 Minister may direct investigations

5

(1) If, in the Minister's opinion, it is in the public interest for a particular matter to which subsection (2) applies to be investigated, the Minister may, by written notice given to WEA, direct WEA to investigate that matter.

6

7

8

9

(2) This subsection applies to a matter relating to any of the following:

10

(a) a function or power conferred on WEA;

11

(b) an alleged or suspected contravention of:

12

(i) a condition of accreditation under the wheat export accreditation scheme; or

13

14

(ii) this Act.

15

(3) WEA must comply with a direction under subsection (1).

16

### ^30 Report on investigation

17

(1) At the end of an investigation under section ^29, WEA must prepare a report about the investigation.

18

19

(2) A report under section ^29 must set out:

20

(a) WEA's findings about the matter investigated; and

21

(b) the evidence and other material on which those findings are based; and

22

23

(c) such other matters relating to, or arising out of, the investigation as:

24

25

(i) WEA thinks fit; or

26

(ii) the Minister directs.

27

#### *Distribution of report*

28

(3) As soon as practicable after preparing a report under section ^29, WEA must give a copy of the report to the Minister.

29

# EXPOSURE DRAFT

T T TT  
InvestigationsT TPart 4T  
T T TT

---

## Section T^30T

- 1 (4) If a report, or a part of a report, under section ^29 relates to an  
2 alleged or suspected contravention of an Australian law, WEA may  
3 give a copy of the whole or a part of the report to:  
4 (a) the Australian Federal Police; or  
5 (b) the police force of a State or Territory; or  
6 (c) the Australian Securities and Investments Commission; or  
7 (d) the Australian Prudential Regulation Authority; or  
8 (e) the Commissioner of Taxation; or  
9 (f) the Australian Competition and Consumer Commission; or  
10 (g) a prescribed agency.
- 11 (5) If a report, or a part of a report, under section ^29 relates to a  
12 person's affairs to a material extent, WEA may:  
13 (a) at the person's request; or  
14 (b) on its own initiative;  
15 give the person a copy of the report or a part of the report.
- 16 *Publication of report*
- 17 (6) The Minister may cause the whole or a part of a report under  
18 section ^29 to be published (whether on the Internet or otherwise),  
19 so long as the publication does not involve the disclosure of  
20 information that could reasonably be expected to cause financial  
21 loss or detriment to a person.

# EXPOSURE DRAFT

T T T T

TPart 5T Wheat Exports AustraliaT

TDivision 1T WEA's establishment, functions, powers and liabilitiesT

Section T^31T

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1

2

## Part 5—Wheat Exports Australia

3

### Division 1—WEA's establishment, functions, powers and liabilities

4

5

#### ^31 Wheat Exports Australia

6

The body corporate known immediately before the commencement of this section as the Export Wheat Commission is continued in existence with the new name Wheat Exports Australia.

7

8

9

Note 1: In this Act, **WEA** means Wheat Exports Australia—see section ^4.

10

Note 2: See also section 25B of the *Acts Interpretation Act 1901*.

11

#### ^32 WEA's functions

12

WEA has the following functions:

13

(a) such functions as are conferred on WEA by this Act;

14

(b) such functions as are conferred on WEA by the wheat export accreditation scheme;

15

16

(c) to do anything incidental to or conducive to the performance of any of the above functions.

17

18

#### ^33 WEA's powers

19

(1) WEA has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

20

21

(2) WEA's powers include, but are not limited to, the power to enter into contracts.

22

23

(3) Any contract entered into by WEA is to be entered into on behalf of the Commonwealth.

24

25

(4) Any real or personal property held by WEA is held for and on behalf of the Commonwealth.

26

27

(5) Any money received by WEA is received for and on behalf of the Commonwealth.

28

# EXPOSURE DRAFT

T T TT  
Wheat Exports AustraliaT TPart 5T  
WEA's establishment, functions, powers and liabilitiesT TDivision 1T

## Section T^34T

---

1 (6) WEA cannot hold real or personal property, or money, on trust for  
2 a person other than the Commonwealth.

3 Note: The Commonwealth may hold real or personal property or money on  
4 trust.

5 (7) To avoid doubt, a right to sue is taken not to be personal property  
6 for the purposes of subsection (4).

### 7 **^34 WEA's financial liabilities are Commonwealth liabilities**

8 (1) Any financial liabilities of WEA are taken to be liabilities of the  
9 Commonwealth.

10 (2) In this section:

11 *financial liability* means a liability to pay a person an amount,  
12 where the amount, or the method for working out the amount, has  
13 been determined.

# EXPOSURE DRAFT

T T T T

T Part 5 T Wheat Exports Australia T

T Division 2 T WEA's constitution and membership T

Section T^35 T

---

1

2

## Division 2—WEA's constitution and membership

3

### ^35 WEA's constitution

4

(1) WEA:

5

(a) is a body corporate with perpetual succession; and

6

(b) must have a seal; and

7

(c) may acquire, hold and dispose of real and personal property;

8

and

9

(d) may sue and be sued in its corporate name.

10

(2) The seal of WEA is to be kept in such custody as WEA directs and must not be used except as authorised by WEA.

11

12

(3) All courts, judges and persons acting judicially must:

13

(a) take judicial notice of the imprint of the seal of WEA

14

appearing on a document; and

15

(b) presume that the document was duly sealed.

16

### ^36 WEA's membership

17

WEA consists of the following members:

18

(a) a Chair;

19

(b) at least 3, and not more than 5, other members.

20

### ^37 Appointment of WEA members

21

(1) Each WEA member is to be appointed by the Minister by written instrument.

22

23

Note: The WEA member is eligible for reappointment: see subsection 33(4A) of the *Acts Interpretation Act 1901*.

24

25

(2) A person is not eligible for appointment as a WEA member unless the Minister is satisfied that the person has:

26

(a) substantial experience or knowledge; and

27

(b) significant standing;

28

in at least one of the following fields:

29

(c) international trade;

30

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- 1 (d) international marketing;
- 2 (e) commodity trading;
- 3 (f) foreign exchange trading;
- 4 (g) finance;
- 5 (h) economics;
- 6 (i) regulation;
- 7 (j) public policy;
- 8 (k) business;
- 9 (l) law;
- 10 (m) grain production;
- 11 (n) grain handling.

12 (3) A WEA member holds office on a part-time basis.

### 13 **^38 Period of appointment for WEA members**

14 A WEA member holds office for the period specified in the  
15 instrument of appointment. The period must not exceed 5 years.

16 Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation*  
17 *Act 1901*.

### 18 **^39 Acting WEA Chair**

- 19 (1) The Minister may appoint a person to act as the WEA Chair:
- 20 (a) during a vacancy in the office of the WEA Chair (whether or
  - 21 not an appointment has previously been made to the office);
  - 22 or
  - 23 (b) during any period, or during all periods, when the WEA
  - 24 Chair:
  - 25 (i) is absent from duty or Australia; or
  - 26 (ii) is, for any reason, unable to perform the duties of the
  - 27 office.

28 (2) A person is not eligible for appointment to act as the WEA Chair  
29 unless the person is eligible for appointment as a WEA member.

30 Note: See subsection ^37(2).

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1

### *Validation*

2

(3) Anything done by or in relation to a person purporting to act under

3

an appointment is not invalid merely because:

4

(a) the occasion for the appointment had not arisen; or

5

(b) there was a defect or irregularity in connection with the

6

appointment; or

7

(c) the appointment had ceased to have effect; or

8

(d) the occasion to act had not arisen or had ceased.

9

Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

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1

2 **Division 3—Terms and conditions for WEA members**

3 **^40 Remuneration**

- 4 (1) A WEA member is to be paid the remuneration that is determined  
5 by the Remuneration Tribunal. If no determination of that  
6 remuneration by the Tribunal is in operation, a WEA member is to  
7 be paid the remuneration that is prescribed by the regulations.
- 8 (2) A WEA member is to be paid the allowances that are prescribed by  
9 the regulations.
- 10 (3) This section has effect subject to the *Remuneration Tribunal Act*  
11 *1973*.

12 **^41 Disclosure of interests to the Minister**

13 A WEA member must give written notice to the Minister of all  
14 interests, pecuniary or otherwise, that the member has or acquires  
15 and that conflict or could conflict with the proper performance of  
16 the member's functions.

17 **^42 Disclosure of interests to WEA**

- 18 (1) A WEA member who has an interest, pecuniary or otherwise, in a  
19 matter being considered or about to be considered by WEA must  
20 disclose the nature of the interest to a meeting of WEA.
- 21 (2) The disclosure must be made as soon as possible after the relevant  
22 facts have come to the WEA member's knowledge.
- 23 (3) The disclosure must be recorded in the minutes of the meeting of  
24 WEA.
- 25 (4) Unless WEA otherwise determines, the WEA member:  
26 (a) must not be present during any deliberation by WEA on the  
27 matter; and  
28 (b) must not take part in any decision of WEA with respect to the  
29 matter.

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- 1 (5) For the purposes of making a determination under subsection (4),  
2 the WEA member:  
3 (a) must not be present during any deliberation of WEA for the  
4 purpose of making the determination; and  
5 (b) must not take part in making the determination.  
6 (6) A determination under subsection (4) must be recorded in the  
7 minutes of the meeting of WEA.

### 8 ^43 Leave of absence

- 9 (1) The Minister may grant the WEA Chair leave of absence on the  
10 terms and conditions as to remuneration or otherwise that the  
11 Minister determines.  
12 (2) The WEA Chair may grant leave of absence to any other WEA  
13 member on the terms and conditions that the WEA Chair  
14 determines.

### 15 ^44 Resignation

- 16 (1) A WEA member may resign his or her appointment by giving the  
17 Minister a written resignation.  
18 (2) The resignation takes effect on the day it is received by the  
19 Minister or, if a later day is specified in the resignation, on that  
20 later day.

### 21 ^45 Termination of appointment

- 22 (1) The Minister may terminate the appointment of a WEA member  
23 for misbehaviour or physical or mental incapacity.  
24 (2) The Minister may terminate the appointment of a WEA member if:  
25 (a) the member:  
26 (i) becomes bankrupt; or  
27 (ii) applies to take the benefit of any law for the relief of  
28 bankrupt or insolvent debtors; or  
29 (iii) compounds with his or her creditors; or

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- 1 (iv) makes an assignment of his or her remuneration for the  
2 benefit of his or her creditors; or  
3 (b) the member fails, without reasonable excuse, to comply with  
4 section ^41 or ^42; or  
5 (c) the member is absent, except on leave of absence, from 3  
6 consecutive meetings of WEA.

7 **^46 Other terms and conditions**

8 A WEA member holds office on the terms and conditions (if any)  
9 in relation to matters not covered by this Act that are determined  
10 by the Minister.

# EXPOSURE DRAFT

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1

## 2 **Division 4—Decision-making by WEA**

### 3 **^47 Holding of meetings**

4 (1) WEA is to hold such meetings as are necessary for the  
5 performance of its functions.

6 (2) The WEA Chair may convene a meeting at any time.

### 7 **^48 Presiding at meetings**

8 (1) The WEA Chair presides at all meetings at which he or she is  
9 present.

10 (2) If the WEA Chair is not present at a meeting, the WEA members  
11 present must appoint one of themselves to preside.

### 12 **^49 Quorum**

13 At a meeting of WEA, 3 WEA members constitute a quorum.

### 14 **^50 Voting at meetings etc.**

15 (1) At a meeting of WEA, a question is decided by a majority of the  
16 votes of WEA members present and voting.

17 (2) The person presiding at a meeting has a deliberative vote and, in  
18 the event of an equality of votes, also has a casting vote.

### 19 **^51 Conduct of meetings**

20 WEA may, subject to this Division, regulate proceedings at its  
21 meetings as it considers appropriate.

22 Note: Section 33B of the *Acts Interpretation Act 1901* provides for  
23 participation in meetings by telephone etc.

### 24 **^52 Minutes**

25 WEA must keep minutes of its meetings.

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2 **Division 5—Delegation**

3 **^53 Delegation by WEA**

4 (1) WEA may, by writing, delegate any or all of its functions and  
5 powers to a person who is:

6 (a) a member of WEA staff; and

7 (b) an SES employee or acting SES employee.

8 Note: The expressions *SES employee* and *acting SES employee* are defined  
9 in section 17AA of the *Acts Interpretation Act 1901*.

10 (2) Subsection (1) does not apply to the power conferred by section ^7.

11 (3) A delegate must comply with any written directions of WEA.

# EXPOSURE DRAFT

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1

## 2 **Division 6—Wheat Exports Australia Special Account**

### 3 **^54 Wheat Exports Australia Special Account**

4 (1) The Wheat Exports Australia Special Account is established by  
5 this section.

6 (2) The Wheat Exports Australia Special Account is a Special Account  
7 for the purposes of the *Financial Management and Accountability*  
8 *Act 1997*.

### 9 **^55 Credits of amounts to the Wheat Exports Australia Special** 10 **Account**

11 (1) There are to be credited to the Wheat Exports Australia Special  
12 Account amounts equal to the wheat export charge amounts  
13 received by the Commonwealth.

14 (2) There are to be credited to the Wheat Exports Australia Special  
15 Account amounts equal to amounts received by way of fees  
16 referred to in section ^9.

17 Note: An Appropriation Act may contain a provision to the effect that, if any  
18 of the purposes of a Special Account is a purpose that is covered by an  
19 item in the Appropriation Act (whether or not the item expressly refers  
20 to the Special Account), then amounts may be debited against the  
21 appropriation for that item and credited to that Special Account.

### 22 **^56 Purposes of the Wheat Exports Australia Special Account**

23 The purposes of the Wheat Exports Australia Special Account are  
24 as follows:

25 (a) paying or discharging the costs, expenses and other  
26 obligations incurred in connection with the operation of  
27 WEA;

28 (b) paying remuneration and allowances of WEA members;

29 (c) paying remuneration, and other employment-related costs  
30 and expenses, in respect of WEA staff.

31 Note: See section 21 of the *Financial Management and Accountability Act*  
32 *1997* (debits from Special Accounts).

# EXPOSURE DRAFT

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1

2 **Division 7—WEA staff etc.**

3 **^57 Staff**

4

(1) The staff of WEA are to be persons engaged under the *Public Service Act 1999*.

5

6

(2) For the purposes of the *Public Service Act 1999*:

7

(a) the WEA Chair and WEA staff together constitute a Statutory Agency; and

8

9

(b) the WEA Chair is the Head of that Statutory Agency.

10 **^58 Persons assisting WEA**

11

WEA may also be assisted:

12

(a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or

13

14

(b) by officers and employees of authorities of the Commonwealth;

15

16

whose services are made available to WEA in connection with the performance of any of its functions.

17

# EXPOSURE DRAFT

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TDivision 8T Planning and reporting obligationsT

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1

## 2 **Division 8—Planning and reporting obligations**

### 3 **^59 Operational plan**

- 4 (1) Before the start of each financial year, WEA must prepare an  
5 operational plan for the financial year and give it to the Minister.
- 6 (2) The plan must include details of the strategies and policies that are  
7 to be followed by WEA in performing its functions during the  
8 financial year.
- 9 (3) The WEA Chair must keep the Minister informed about:  
10 (a) changes to the plan; and  
11 (b) matters that might affect significantly WEA's ability to  
12 perform its functions in accordance with the plan.
- 13 (4) The Minister may give the WEA Chair written guidelines that are  
14 to be used by the WEA Chair in deciding whether a matter is  
15 covered by paragraph (3)(b).
- 16 (5) A guideline given under subsection (4) is not a legislative  
17 instrument.

### 18 **^60 Corporate plan**

- 19 (1) WEA must prepare a corporate plan at least once each 3-year  
20 period and give it to the Minister.
- 21 (2) The plan must cover a 3-year period.
- 22 (3) The plan must include details of the following matters:  
23 (a) the objectives of WEA;  
24 (b) the strategies and policies that are to be followed by WEA in  
25 order to achieve those objectives;  
26 (c) such other matters (if any) as the Minister requires.
- 27 (4) The WEA Chair must keep the Minister informed about:  
28 (a) changes to the plan; and

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- 1 (b) matters that might significantly affect the achievement of the  
2 objectives set out in the plan.
- 3 (5) The Minister may give the WEA Chair written guidelines that are  
4 to be used by the WEA Chair in deciding whether a matter is  
5 covered by paragraph (3)(c) or (4)(b).
- 6 (6) A guideline given under subsection (5) is not a legislative  
7 instrument.
- 8 (7) WEA must ensure that the first corporate plan is prepared within  
9 12 months after the commencement of this section.

### 10 **^61 Annual report**

- 11 WEA must, as soon as practicable after the end of each financial  
12 year, prepare and give to the Minister, for presentation to the  
13 Parliament, a report on its operations during that year.
- 14 Note: See also section 34C of the *Acts Interpretation Act 1901*, which  
15 contains extra rules about annual reports.

### 16 **^62 Report for growers**

- 17 (1) WEA must prepare and publish a report for growers each  
18 marketing year in relation to the operation of the wheat export  
19 accreditation scheme during that year.
- 20 (2) WEA must publish the report for a marketing year on or before  
21 31 December in the next marketing year.
- 22 (3) This section does not apply to the marketing year that began on  
23 1 October 2007.

# EXPOSURE DRAFT

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T Part 5 T Wheat Exports Australia T

T Division 9 T Other matters T

Section T^63 T

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1

2 **Division 9—Other matters**

3 **^63 WEA Chair not subject to direction by WEA on certain matters**

4 To avoid doubt, the WEA Chair is not subject to direction by WEA  
5 in relation to the WEA Chair's performance of functions, or  
6 exercise of powers, under:

7 (a) the *Financial Management and Accountability Act 1997*; or

8 (b) the *Public Service Act 1999*;

9 in relation to WEA.

# EXPOSURE DRAFT

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1

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## Part 6—Review of decisions

3

4

### ^64 Simplified outline

5

The following is a simplified outline of this Part:

6

7

8

9

- Decisions of WEA under the wheat export accreditation scheme may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by WEA.

10

### ^65 Decisions that may be subject to reconsideration by WEA

11

12

13

An application may be made to WEA for reconsideration of a decision made by WEA under the wheat export accreditation scheme.

14

### ^66 Applications for reconsideration of decisions

15

16

17

(1) A person affected by a decision of a kind referred to in section ^65 who is dissatisfied with the decision may apply to WEA for WEA to reconsider the decision.

18

19

20

(2) The application must:  
(a) be in a form approved in writing by WEA; and  
(b) set out the reasons for the application.

21

22

23

24

25

(3) The application must be made within:  
(a) 28 days after the applicant is informed of the decision; or  
(b) if, either before or after the end of that period of 28 days, WEA extends the period within which the application may be made—the extended period.

26

27

(4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

# EXPOSURE DRAFT

T T T T

T Part 6 T Review of decisions T

T T T T

Section T^67T

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1 **^67 Reconsideration by WEA**

2 (1) Upon receiving such an application, WEA must:

3 (a) reconsider the decision; and

4 (b) affirm, vary or revoke the decision.

5 (2) WEA's decision on reconsideration of a decision has effect as if it  
6 had been made under the provision of the wheat export  
7 accreditation scheme under which the original decision was made.

8 (3) WEA must give to the applicant a written notice stating its decision  
9 on the reconsideration together with a statement of its reasons for  
10 its decision.

11 **^68 Deadline for reconsideration**

12 (1) WEA must make its decision on reconsideration of a decision  
13 within 30 days after receiving an application for reconsideration.

14 (2) WEA is taken, for the purposes of this Part, to have made a  
15 decision affirming the original decision if it has not informed the  
16 applicant of its decision on the reconsideration before the end of  
17 the period of 30 days.

18 **^69 Review by the Administrative Appeals Tribunal**

19 Applications may be made to the Administrative Appeals Tribunal  
20 to review a decision of a kind referred to in section ^65 if WEA  
21 has affirmed or varied the decision under section ^67.

# EXPOSURE DRAFT

1

2

## Part 7—Protection of confidential information

3

4

### ^70 Protected confidential information

5

For the purposes of this Act, information is *protected confidential information* if:

6

7

(a) any of the following subparagraphs applies:

8

(i) the information is given to WEA under subsection ^21(2) or ^25(2), and the person who gave the information claims it is commercial-in-confidence information;

9

10

11

12

(ii) the information is contained in a document or copy produced to WEA under subsection ^21(2) or ^25(2), and the person who produced the document or copy claims that the information is commercial-in-confidence information;

13

14

15

16

17

(iii) the information is contained in a report given to WEA under subsection ^26(2), and the person who gave the report claims the information is commercial-in-confidence information;

18

19

20

21

(iv) the information is contained in a report given to WEA under the wheat export accreditation scheme, and the person who gave the report claims the information is commercial-in-confidence information; and

22

23

24

25

(b) the disclosure of the information could reasonably be expected:

26

27

(i) to cause financial loss or detriment to the person; or

28

29

(ii) if the person is a body corporate—to cause financial loss or detriment to a related body corporate; or

30

31

(iii) to directly benefit a competitor of the person; or

32

(iv) if the person is a body corporate—to directly benefit a competitor of a related body corporate.

# EXPOSURE DRAFT

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T Part 7 T Protection of confidential information T

T T T T

Section T^71 T

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1

## **^71 Protection of confidential information**

2

(1) This section restricts what a person (the *entrusted public official*) who is or was:

3

(a) a WEA member; or

4

(b) a member of WEA staff; or

5

(c) a person whose services are made available to WEA under section ^58; or

6

7

(d) the Minister; or

8

(e) a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*;

9

10

11

may do with protected confidential information.

12

13

(2) The entrusted public official commits an offence if:

14

(a) the official has obtained protected confidential information; and

15

(b) the official discloses the information to another person.

16

17

Penalty: Imprisonment for 1 year.

18

(3) Each of the following is an exception to the prohibition in subsection (2):

19

(a) the disclosure is with the consent of the person who gave the information;

20

21

(b) the disclosure is in accordance with an order of a court;

22

(c) the disclosure is to any of the following persons, for a purpose in connection with the performance of the functions, or the exercise of the powers, of WEA:

23

24

25

(i) a WEA member;

26

(ii) a member of WEA staff;

27

(iii) a person whose services are made available to WEA under section ^58;

28

29

(d) the disclosure is to the Minister;

30

(e) the disclosure is authorised by subsection ^30(3), (4) or (5);

31

(f) the disclosure is to a person employed as a member of staff of the Minister under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*.

32

33

34

# EXPOSURE DRAFT

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1  
2

Note: The defendant bears an evidential burden in relation to a matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

# EXPOSURE DRAFT

T T T T  
T Part 8 T Miscellaneous T  
T T T T

Section T^72T

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## Part 8—Miscellaneous

3

4

### ^72 Compensation for acquisition of property

5

(1) If the operation of this Act or the wheat export accreditation scheme would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

6

7

8

9

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

10

11

12

13

14

(3) In this section:

15

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

16

17

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

18

19

### ^73 Regulations

20

The Governor-General may make regulations prescribing matters:

21

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

22

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

23