Wheat Marketing Bill 1989

Date Introduced: 13 April 1989
House: House of Representatives
Presented by: Hon. John Kerin, M.P., Minister for Primary Industries and Energy

Digest of Bill

Purpose
To allow corporations to market wheat in the domestic market and to allow greater competition in the transport and storage of grains. The Bill will also restructure the Australian Wheat Board (AWB).

Background
Grain is produced in all mainland States, principally within a belt stretching from central Queensland, through New South Wales, Victoria and South Australia, and in the south-west region of Western Australia. Australian grain production in the five years to 1985-86 averaged 25 million tonnes, but has seen severe fluctuations. Wheat is the dominant grain crop grown in Australia and accounted for approximately 65% of total grain production over the five years to 1985-86. In 1986-87, Australia exported 15.6 million tonnes of wheat to 47 countries and received income of $2.3 billion (almost a third less than the previous year's $3.2 billion). The domestic market continued to be one of the largest markets, with single sales of 1.6 million tonnes. Income from domestic sales in 1986-87 was $326 million, down $37 million on the previous year.¹

The decline in income was the direct result of depressed international wheat prices. However, wheat prices are expected to average 30% higher in 1988-89. The two major factors behind this forecast are the drought-reduced US and Canadian harvests and the continued reduction of US wheat stocks through their export subsidy system.² On 16 March 1989 wheat prices reached a seven-year high. The AWB set its spot price at $US185 ($A228) a tonne. This represents a rise of 7% over the previous month.³

Wheat marketing in Australia is regulated by the Wheat Marketing Act 1984 (the Principal Act) in conjunction with Wheat and Marketing Acts of the various States. These Acts are similar and grant the AWB a monopoly over the marketing of wheat, both internationally and domestically (with the exceptions of wheat sold under the permit system for stockfeed purposes, direct grower to buyer arrangements and, in Queensland, where the State Wheat Board exercises domestic marketing powers).

The AWB is a marketing co-operative whose primary objective is to secure, develop and maintain markets for Australian wheat and to maximise the return to growers. The membership of the AWB comprises a wheat grower as Chairperson
(appointed by the Commonwealth Minister); a grower representative from producer States; and four special members appointed by the Minister for their marketing, financial, industrial, scientific, economic or commercial expertise. All wheat has to be delivered to the AWB or one of its authorised receivers. There is only one such receiver in each State. However, sales made under these arrangements attract certain State charges and levies. Under the Principal Act the Minister is responsible for setting the Guaranteed Minimum Price, determining the net pool return when the gross return from sales is known, and has the power to give directions to the AWB.\(^4\)

In April 1986, a Royal Commission (the Commission) was established to inquire into the most efficient and cost-effective grain storage, handling and transport system. The Commission found that the central feature of the existing legislative and administrative arrangements for grain storage, handling and transport was the exclusion of significant competition for most of the organisations involved. Instead of competitive influences, the statutory authorities rely largely on other incentives to stimulate efficiency in their operations; for example, government-initiated inquiries, Ministerial accountability, and pressure from growers.

The Commission also found that the current system was not the most efficient system for meeting Australia's grain distribution needs. Greater efficiency has not been achieved primarily because most grain is channelled along a restricted number of predetermined paths with little scope for using lower cost paths; for example, the compulsory use of rail for most grain transport. Also, prices charged rarely reflect the actual cost of providing the related service; for example, bulk handling agencies pool costs and charge growers an average price, and this distortion results in an inappropriate basis for investment decisions.

The general thrust of the Commission's recommendations was that greater efficiency could best be achieved through a mixture of administered efficiency and increased competition. Commonwealth and State marketing boards should be required to minimise storage, handling and transport service costs, and should reflect in returns to each grower the actual charges incurred by that grower for those services. Marketing boards should provide for competition in storage and handling services by not being restricted to only one licensed receiver in each State, and disaggregate port services and sea transport charges and reflect these in returns to individual growers.\(^5\)

Critics of the Commission's recommendations have focused on its views regarding market deregulation. Supporters of the current regime have argued; for example, that if it were not for the AWBs monopoly powers, the price of wheat would be set by the weakest seller. In addition, that currently the AWB gets the best return for growers; that strong firms would drive out the weak, and one buyer will monopolise the market; that grain hygiene control would fail; and following deregulation, growers' incomes would collapse as they did in New Zealand.
Main Provisions

The Bill, except for sub-clauses 85(1) and (2) and clause 86 (which will operate from proclamation), will operate from 1 July 1989 (clause 2).

The AWB which existed under the Principal Act (which is to be repealed by clause 91) will continue in existence by virtue of clause 4. The objects of the restructured AWB will be to secure, develop, and maintain markets for Australian wheat; provide growers with a choice of marketing options; and maximise returns to growers (clause 5).

The functions and powers of the AWB are contained in clauses 6 and 7 and include to control the export and overseas marketing of wheat; buy and sell wheat in Australia; and arrange for the, storage, handling, transport and other marketing services for wheat. The AWB may also exercise its functions and powers in respect of other grains provided it promotes an object of the AWB. The AWB will be empowered to perform its functions, subject to Ministerial approval, notwithstanding the operation of prescribed State or Territory laws (clause 7).

The Minister may give directions to the AWB where its operations conflict with major government policies. The AWB must comply with any such directions (clause 8).

The AWB may, with Ministerial approval, form subsidiary companies; enter into partnerships; participate in joint ventures; and buy, hold, or sell shares, debentures and securities (clause 13).

The AWB is to consist of a Chairperson, a Managing Director (if at any time the Chairperson is not appointed in an executive capacity), a government member, and eight nominated members (clause 15). AWB members, other than the Managing Director, will be appointed by the Minister from nominees of the Australian Wheat Board Selection Committee which will be established by clause 29. This Committee will consist of people chosen from a list prepared by the Grains Council.

The Minister may set the selection criteria to be used by the Australian Wheat Board Selection Committee in selecting persons for nomination to the AWB (clause 30).

The Australian Wheat Board Selection Committee shall only nominate persons for appointment as members of the AWB who have expertise in production, marketing or processing of grain; production or marketing of other products; business management; and finance (clause 31).

The Minister may reject nominations for appointment to the AWB made by the Wheat Board Selection Committee (clause 33).
The AWB will appoint a Managing Director if at any time the Chairperson is not appointed in an executive capacity (clause 45).

Clause 47 will require the AWB to develop and implement an equal employment opportunity program.

The AWB is, after consultation with the Grains Council, to prepare three, four or five year corporate plans, which are to define the AWBs principal goals, the strategy for achieving those goals, the market outlook, and outline research and development plans (clause 49). The Minister may agree to the plan or request amendments (clause 50). In addition, the AWB is to prepare annual operational plans (clause 54).

Part 4 of the Bill (clauses 57 to 66) deals with the marketing of wheat. The consent of the AWB will be required before a person may export wheat. The maximum penalty for breach of this provision will be a fine of $100 000 (clause 57). The AWB will classify wheat offered to it for sale according to quality, variety, and any other classification determined by it after consultation with the Grains Council. In addition, the AWB may set quality control standards in respect of the storage, handling, and transport of grain delivered to it (clauses 58 and 59).

Where the AWB has bought wheat, it will be required to establish pools for each type of wheat of each season (clause 61).

Clauses 62 and 64 provide for advance payments and payments in lieu of a final payment to sellers of wheat. Payment in lieu of a final payment will be an amount estimated by the AWB to be payable under clause 66. However, payments in lieu of final payments may be reduced to take account of borrowing and administrative costs, and any other factors the AWB considers relevant in dealing with the application.

When the AWB closes a pool it will calculate the actual net return per tonne (i.e. the final amount payable to a seller) of wheat in that pool. This will be calculated by subtracting total costs of sale from total revenue of sale divided by the number of tonnes of wheat in the pool (clause 65).

Where the actual net return per tonne payable to a seller exceeds advance payments made to that seller, the AWB will pay the excess to the seller. Where advance payments are higher than the actual net return per tonne payable, the AWB will not make any further payments (clause 66).

Part 5 of the Bill (clauses 67 to 79) deals with the AWBs finances. Clause 71 provides that the AWB, subject to Ministerial approval, may borrow money both within and outside Australia.
The AWB may enter into certain contracts for hedging purposes, subject to Ministerial approval, in relation to the purchase, sale, and shipment of wheat, and borrowing and investment of money by the AWB. The range of contracts includes currency, futures, interest swaps, currency swaps, options, and other contracts approved by the Minister (clause 74).

The AWB will provide a breakdown of storage, handling, transport, and port charges when accounting to growers for the return from their wheat (clause 75).

The AWB may borrow money, subject to Ministerial approval, to make advance payments for wheat sold to them (clause 77).

The Commonwealth will underwrite AWB borrowings for advance payments where the AWBs borrowing liability exceeds money available for repayment of the borrowing. The level of Commonwealth underwriting will be set at a fixed percentage of the aggregate estimated net pool return from wheat of a season. The Minister will determine the aggregate estimated net pool return by subtracting estimated total costs of sale from estimated total revenue from sale of wheat of that season. The percentage of the aggregate estimated net pool return that the Commonwealth shall underwrite will be 90% for the 1989/90 season, falling annually by 2.5%, to 80% for the 1993/94 season (clause 78).

Clause 79 provides that the AWB will be subject to taxation, other than income tax, under Commonwealth laws, but not State or Territory laws unless specified in the regulations.

Clause 80 provides for the establishment of the Wheat Industry Fund (the Fund). The AWB will put into the Fund moneys paid to the AWB under clause 86 (see below), interest and profits from the Fund, and money required by regulations to be paid into the Fund (clause 81). Money in the Fund may be used by the AWB for such purposes as making higher advance payments, insurance, payment to the Commonwealth of levy collection costs, and any purpose approved by the Minister (clause 82).

Prior to the start of each season, the Grains Council will set a percentage of the sale value of wheat subject to a levy that will be paid into the AWB to go into the Fund and the Research Fund. The minimum percentage for payment into the Fund will be 2% and for the Research Fund 0.25% (clause 85).

Payments to the AWB by the Commonwealth will be calculated in accordance with the formula contained in clause 86. The formula is based on the amount of levy received, the total amount of levy payable on the particular wheat, and an amount equal to the percentage of the sale value of wheat subject to a levy that will be paid into the Research Fund.
Clause 88 will allow trading corporations, other than the AWB, to make contracts for the export or interstate trade of grain, notwithstanding the operation of State or Territory laws. This protection will extend to sale contracts and service contracts; for example, contracts for the storage, handling, and transport of grain for a trading corporation. Trading corporations will be protected from State or Territory laws only where those laws are prescribed by regulations.

References

For further information, if required, contact the Law and Government Group.

20 April 1989

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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