WHEAT MARKETING AMENDMENT BILL 2007

REVISED EXPLANATORY MEMORANDUM

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

(Circulated by Authority of the Minister for Agriculture, Fisheries and Forestry, the Hon Peter McGauran MP)
WHEAT MARKETING AMENDMENT BILL 2007

OUTLINE

Australia’s wheat export arrangements are established by the Wheat Marketing Act 1989 (the Act). The Act establishes the arrangements for controlling the export of wheat from Australia and the industry regulator, Wheat Export Authority (WEA).

This Bill contains six Schedules and proposes amendments to the Act as follows:

- Schedule 1 - to commence on Royal Assent - to provide the WEA with broader information gathering powers and to provide the Minister for Agriculture, Fisheries and Forestry (the Minister) with the power to direct the WEA to undertake investigations that the Minister considers to be in the public interest to undertake;

- Schedule 2 - to commence on Royal Assent - to extend the temporary transfer of the power of veto over bulk wheat export applications from AWB (International) Ltd (AWBI) to the Minister. This power is due to sunset on 30 June 2007 but will be extended to 30 June 2008. This will prevent the veto from reverting to AWBI while it manages the 2007-08 harvest;

- Schedule 3 – to commence on 1 March 2008 - to amend the Act to give the Minister the power to designate a company as the holder of the single desk export privilege under the Act. This is achieved by inserting a new section in the Act which will allow the Minister to rescind a previous declaration and make new declarations. This power will sunset on 30 June 2008. This schedule also provides that should, for any reason, AWBI or a related company still be the holder of the single desk privilege when the Minister’s power sunsets then the veto power will be permanently removed from it;

- Schedule 4 - to commence 60 days after Royal Assent of this Bill - to deregulate exports in bags and containers. These amendments will remove the requirement for wheat exported in bags and containers to first have a valid consent from the WEA. However, in its place the exporter will be required to comply with the conditions of a Quality Assurance scheme (QA scheme) which will be developed by the WEA. The purpose of the QA scheme will not be to dictate the quality of wheat that can be exported, rather to make sure that exporters are meeting the specification of their contracts with customers so as to protect the good reputation of Australian wheat from errant behaviour of rogue traders. Penalties will apply for non-compliance with the QA scheme;

- Schedule 5 - to commence on 1 October 2007 - to change the governance arrangements of the WEA. It will become an agency under the Financial Management and Accountability Act 1997 and be renamed the Export Wheat Commission. Staff of the new Commission will be engaged under the Public Service Act 1999. It will have a skills based Commission of between four and six members, with all members appointed by the Minister. At least one, but no more than two Commissioners, must be appointed based on their expertise in grain production. In addition, at least one, but no more than two Commissioners, must be appointed based on their expertise in export wheat production. The changes proposed are part of the Uhrig reforms for the governance of Commonwealth agencies; and
Schedule 6 - to commence on 1 October 2007 - to facilitate the transition of the WEA into the Export Wheat Commission a number of administrative matters dealing with finances, existing agreements and staffing must be accommodated.

FINANCIAL IMPACT STATEMENT

The Bill will have no financial impact.
NOTES ON CLAUSES

Clause 1: Short Title

1. Formal provision specifying that the Act will be called the *Wheat Marketing Amendment Act 2007*.

Clause 2: Commencement

2. This clause provides for Schedules 1 and 2 of the Bill, which relate to new information gathering and investigative powers for the Wheat Export Authority and the extension of the temporary arrangements, to commence on the day it receives the Royal Assent.

3. It also provides for Schedule 3, which relates to provisions for the substitution of ‘nominated company B’ with ‘the designated company,’ and the power for the Minister for Agriculture, Fisheries and Forestry to declare and revoke the designated company, to commence on 1 March 2008.

4. It also provides for the amendments in Schedule 4, which relate to the deregulation of wheat exported in bags and containers, the introduction of the Wheat Export Authority’s power to develop and implement a QA Scheme and the introduction of penalty units for non-compliance with the QA Scheme, to commence 60 days after the Bill receives Royal Assent.

5. It also provides for the amendments in Schedules 5 and 6, which relate to new governance arrangements for the Wheat Export Authority and transition provisions in moving to those new governance arrangements, to commence on 1 October 2007.

Clause 3: Schedule(s)

6. This clause advises that the amendments being made to the *Wheat Marketing Act 1989* are contained in Schedules 1 to 6.
Wheat Marketing Act 1989

SCHEDULE 1 – Information gathering and investigative powers etc.

Schedule 1, Item 1

7. This item adds a new paragraph 5(1)(c) clarifying that the functions of the Wheat Export Authority includes every such function described in the Act. It has been inserted to cover the new functions included in this schedule, being the new information gathering power and the new investigation power where directed by the Minister.

Schedule 1, Item 2

8. This item inserts three new sections into the Act. The existing provision providing the Wheat Export Authority to direct nominated company B to produce information contained in section 5D of the Act remains unchanged.

9. The new section 5DA provides the Wheat Export Authority with the power to request the provision of information and documents relevant to its functions from persons it believes have such information or documents. The request must be in writing and specify the time in which a response is requested (but must be at least 14 days). This section clarifies that the Wheat Export Authority’s ability to request information is not limited solely to Nominated Company B or its related bodies. There are no penalties for not complying with such a request and there are no powers of compulsion associated with such a request.

10. The new section 5DB is similar in intent to the new section 5DA outlined above. It differs in that it provides the Wheat Export Authority the power to request a person to prepare a report on the information and documents relevant to the Wheat Export Authority’s functions rather than simply provide the documents.

11. The new section 5DC describes the Minister’s power to direct the Wheat Export Authority to investigate certain matters, the requirement on the Wheat Export Authority to provide the Minister with a written report and how the report may be distributed (in both confidential and public versions).

12. Subsection 5DC(1) provides the Minister with the power to direct the Wheat Export Authority to investigate a matter where the Minister believes it is in the public interest to do so. Subsection 5DC(2) outlines the type of matters that may be the subject of an investigation. Subsection 5DC(3) makes clear that an investigation can be made into a matter that occurred before the commencement of this section while subsection 5DC(4) states that the Wheat Export Authority must comply with a direction from the Minister.

13. Subsections 5DC(5) and (6) outline the requirement for the Wheat Export Authority to provide a report to the Minister and what it must contain. Subsection 5DC(7) requires the report to be provided to the Minister as soon as practicable after its completion.
14. Subsection 5DC(8) enables the Wheat Export Authority to provide a copy of any such report to other agencies if it believes that matters uncovered in the investigation warrant further attention by those authorities. This capacity addresses one of the problems the Wheat Export Authority has in progressing possible breaches of the law under the current Act where it is restricted from sharing any confidential information.

15. Subsection 5DC(9) makes clear that the Wheat Export Authority may provide a copy of any such report, or part of any such report, to a person who is commented upon in that report.

16. Subsection 5DC(10) permits the Minister to release publicly a report of an investigation undertaken by the Wheat Export Authority but limits the material that may be so released. The limitations relate to the disclosure of information that may cause financial loss or detriment to a person or may reduce the return to a pool operated pursuant to section 84 of the Act.

Schedule 1, Item 3

17. This item makes clear that the limitation on disclosing confidential information contained in section 5E of the Act does not apply to reports disclosed to the Minister, the agencies listed in subsection 5DC(8) or to a person named in any such report.

SCHEDULE 2 – Veto Power etc.

Schedule 2, Item 1

18. This item amends the definition of the temporary period in paragraph 65(b) to change its sunset date from 30 June 2007 to 30 June 2008. This provides for a twelve month extension of the Minister’s temporary power to direct the Wheat Export Authority to approve or reject bulk wheat export applications.

SCHEDULE 3 – Replacement of nominated company B etc.

Schedule 3, Item 1

19. This item inserts a definition of the “designated company” into section 3 of the Wheat Marketing Act 1989. This term will replace the term “Nominated Company B” currently used in the Act. The term Nominated Company B relates to repealed sections of the Act and the term designated company is now a more meaningful term. This and all further amendments under Schedule 3 will commence on 1 March 2008. The commencement date has been set at 1 March 2008 because the Government has given growers until then to establish an entity to assume control of the single desk. Therefore the power to replace the designated company is not required until that date at the earliest. When the power may be exercised will depend on a number of factors including the progress growers make in developing and establishing a new entity, the capabilities of the new entity at a given point in
time, the need for AWB (International) Limited to finalise sales from the 2007-08 pools, and transition arrangements involved in the handover of the single desk entitlement to a new entity.

Schedule 3, Item 2

20. This item introduces the new section 3AA into the Act. The new subsections 3AA(1) to (4) provide the Minister with the power to declare a body to be the designated company. This will provide a facility for the company granted single desk privileges under the Act to be changed. Under the new section 3AA only one company can be the designated company at any one point in time.

21. The new subsection 3AA(5) is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act 2003.

22. The new subsections 3AA(6) to (8) provide the Minister with the power to revoke a company’s status as the designated company for the purposes of the Act. This will provide a facility for the company granted single desk privileges under the Act to be changed more than once.

23. The new subsection 3AA(9) is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act 2003.

24. The new subsection (10) provides that the power granted to the Minister under section 3AA to declare and revoke designated company status does not prohibit section 33(3) of the Acts Interpretation Act 1901 from applying to other powers granted by the Act. Section 33(3) of the Acts Interpretation Act 1901 states that where an Act confers a power to make, grant or issue an instrument it implies the power to repeal, rescind, amend or vary any such instrument unless the contrary intention appears. As the new section 3AA makes specific reference to both the power to declare and the power to revoke a declaration as the designated company, there is the possibility that it could be interpreted as limiting the application of section 33(3) of the Acts Interpretation Act 1901 to other instruments under the Wheat Marketing Act 1989. To avoid this possible interpretation, the new subsection 3AA(10) makes clear that section 33(3) of the Acts Interpretation Act 1901 applies.

25. The new subsection 3AA(11) states that should the designated company cease to be a company registered under the Corporations Act 2001 then it automatically loses its status as the designated company. This amendment makes sure that the designated company is not exempt from the existing legal obligations of the Corporations Act 2001 whilst operating the single desk.

26. The new subsection 3AA(12) automatically transfers the existing Nominated Company B to being the designated company on 1 March 2008.
27. The new subsection 3AA(13) provides for a sunset provision on the Minister’s power to designate or revoke the designated company. This power will commence on 1 March 2008 and end at the end of 30 June 2008. If the Minister has made a declaration before 30 June 2008 then it will survive beyond 30 June 2008. This will provide the Minister with a clear timeframe within which to consider and make a declaration for a new designated company, while giving industry certainty over the timing for the designation process. It will also provide any new company that is made the designated company with certainty about its tenure as the single desk operator.

Schedule 3, Item 3

28. This item deletes ‘nominated company B’ and substitutes ‘the designated company’ in paragraph 5(1)(b) of the Act. This is a consequential amendment which reflects the changing of the terminology used to describe the holder of the export privileges under the Act from nominated company B to the designated company.

Schedule 3, Item 4

29. This item deletes ‘nominated company B’ and substitutes ‘the designated company’ in subsections 5A(1) and (2) of the Act. This is a consequential amendment which reflects the changing of the terminology used to describe the holder of the export privileges under the Act from nominated company B to the designated company.

Schedule 3, Item 5

30. This item deletes ‘nominated company B’ and substitutes ‘the designated company’ in paragraphs 5C(1)(a) and (3)(a) of the Act. This is a consequential amendment which reflects the changing of the terminology used to describe the holder of the export privileges under the Act from nominated company B to the designated company.

Schedule 3, Item 6

31. This item adds a provision to paragraph 5C to make clear that should there be more than one designated company during the course of a financial year (because the Minister has made a new declaration and revoked an existing one) then the Wheat Export Authority is obliged to report on the operations of each of the companies during their period as the designated company. This will make sure that the operation of the single desk is reported on for the entire financial year, irrespective of which company holds the export privilege.
Schedule 3, Item 7

32. This item amends subsection 5D(1) as a consequential amendment of the introduction of the designated company into the definitions. This provides the Wheat Export Authority with the power to request information of both nominated company B and the designated company, if both of these entities were to operate in the one reporting year. It makes clear that the Wheat Export Authority will have the power to request information from the current nominated company B after 1 March 2008 when it, or another company, becomes the designated company.

Schedule 3, Item 8

33. This item deletes ‘nominated company B’ and substitutes ‘the designated company’ in paragraph 5D(1)(b). This is a consequential amendment which reflects the changing of the terminology used to describe the holder of the export privileges under the Act from nominated company B to the designated company.

Schedule 3, Item 9

34. This item deletes ‘nominated company B’ and substitutes ‘the designated company’ in paragraphs 5DC(2)(b), (c), (d) and (e). This is a consequential amendment which reflects the changing of the terminology used to describe the holder of the export privileges under the Act from nominated company B to the designated company.

Schedule 3, Item 10

35. This item includes in paragraph 5E(1)(f) a consequential amendment that is a result of the repealing of subsection 57(7) of the Act. This is to make sure that the provisions relating to dealing with confidential information in the Act continue to apply to those persons who assisted in the 2004 Wheat Marketing Review.

Schedule 3, Item 11

36. This item is a consequential amendment due to the repeal of paragraph 5E(3)(f), which necessitates the need to end paragraph 5E(3)(e) with a full stop.

Schedule 3, Item 12

37. This item repeals paragraph 5E(3)(f), removing the ability for persons stated in the Act to legally disclose confidential information to persons that assisted with the 2004 Wheat Marketing Review. This is a redundant clause as the Review has been completed.

Schedule 3, Item 13

38. This item deletes ‘nominated company B’ and substitutes ‘the designated company’ in subsections 57(1A), (3A), (3B) and (6). This is a consequential amendment which reflects the changing of the terminology used to describe the holder of the export privileges under the Act from nominated company B to the designated company.
Schedule 3, Item 13A

39. This item inserts a new subsection 3(C) which provides that if AWB (International) Ltd (AWBI), as current Nominated Company B under the Act (or any other entity related to AWB Ltd), is the designated company from 1 July 2008 the bulk veto power will no longer apply. This effectively removes any possibility that the bulk veto power could revert to AWBI once the Minister’s temporary veto powers sunset on 30 June 2008. While it is not expected that AWBI would be the holder of the single desk privilege when the Minister’s power sunsets – because a new company would have been designated - this new subsection makes clear that the veto power in such a circumstance would not return to AWBI.

Schedule 3, Item 14

40. This item repeals subsections 57(7) to (12) which required the Minister to conduct an independent review of the single desk operator before the end of 2004, as well as outlining the parameters of that review. These are redundant clauses as the Review has been completed.

Schedule 3, Item 15

41. This item deletes ‘nominated company B’ and substitutes ‘the designated company’ in subsections 58(3) and (6). This is a consequential amendment which reflects the changing of the terminology used to describe the holder of the export privileges under the Act from nominated company B to the designated company.

Schedule 3, Item 16

42. This item deletes ‘nominated company B’ and substitutes ‘the designated company’ in subsection 84(1). This is a consequential amendment which reflects the changing of the terminology used to describe the holder of the export privileges under the Act from nominated company B to the designated company.

Schedule 3, Item 17

43. This item deletes ‘nominated company B’ and substitutes ‘the designated company’ in subsection 84(3). This is a consequential amendment which reflects the changing of the terminology used to describe the holder of the export privileges under the Act from nominated company B to the designated company.

Schedule 3, Item 18

44. This item prevents the application of subsection 4(1) of the Acts Interpretation Act 1901 to the Minister’s powers to determine and revoke the designated company conferred by section 3AA. This ensures that those powers cannot be exercised before 1 March 2008.
Schedule 3, Item 19

45. This item addresses the situation where the Minister has directed the Wheat Export Authority to undertake an investigation into nominated company B and that investigation is underway when the term nominated company B is changed to ‘the designated company’. The effect of this item is to make clear that any ongoing investigation into nominated company B may continue despite the change in terminology to ‘the designated company.’

SCHEDULE 4 – Non-bulk export of wheat etc.

Schedule 4, Item 1

46. This item inserts a definition for an ‘accredited testing laboratory’ into section 3. The Wheat Export Authority may use an accredited testing laboratory for the purposes of the non-bulk wheat Quality Assurance scheme (QA scheme). This and all further amendments under Schedule 4 will commence on a date set by proclamation.

Schedule 4, Item 2

47. This item inserts a definition of a ‘non-bulk wheat quality assurance scheme’ (QA scheme) into section 3. The QA scheme will be developed by the Wheat Export Authority to maintain the integrity of non-bulk wheat exports.

Schedule 4, Item 3

48. This item makes clear that the Wheat Export Authority’s function to control export wheat from Australia relates to bulk exports and does not apply to the export of wheat in bags and containers. The Wheat Export Authority will have a new function bestowed upon it to implement and enforce the QA scheme (see next item).

Schedule 4, Item 4

49. This item amends the functions of the Wheat Export Authority to include those required of it under the QA scheme. This is to make sure that the Wheat Export Authority has the development and administration of the QA scheme as one of its core functions.

Schedule 4, Item 5

50. This item clarifies that the function referred to in subsection 5A(1) relates to the bulk export of wheat and not wheat in bags and containers.

Schedule 4, Item 6

51. This item amends the heading of Part 4 of the Act to reflect that on proclamation of this schedule of amendments the Wheat Export Authority will only have the authority to control the export of wheat in bulk.
Schedule 4, Item 7

52. This item substitutes the current monetary penalty for non-compliance outlined in subsection 57(1) with a fine designated in penalty units. This will allow the maximum penalty under this section to increase as the value of a penalty unit increases. The maximum penalty of 600 penalty units applies to a natural person and, consistent with the Criminal Code, a penalty of up to 3000 penalty units applies to a body corporate.

Schedule 4, Item 8

53. This item exempts exports in bags and containers from the prohibition on exporting without a consent from the Wheat Export Authority contained in subsection 57(1). This achieves the deregulation of exports in bags and containers. There will also be a consequential change to the Customs (Prohibited Exports) Regulations 1958 to make clear that exports of wheat in bags and containers are no longer a prohibited export without a consent from the Wheat Export Authority.

Schedule 4, Item 9

54. This item is a consequential amendment to subsection 57(3B) which reflects that the Wheat Export Authority will only have control over wheat exports in bulk.

Schedule 4, Item 10

55. This item is a consequential amendment to subsection 57(3B) which reflects that the Wheat Export Authority will only have control over wheat exports in bulk.

Schedule 4, Item 11

56. This item is a consequential amendment to subsections 60(1) and (2) which reflects that the Wheat Export Authority will only have control over wheat exports in bulk.

Schedule 4, Item 12

57. This item is a consequential amendment to paragraphs 62 (1)(a) and (b) which reflects that the Wheat Export Authority will only have control over wheat exports in bulk.

Schedule 4, Item 13

58. This item is a consequential amendment to repeal the definition of a bulk-export consent from section 65 of the Act to reflect that the Wheat Export Authority will only have control over wheat exports in bulk.

Schedule 4, Item 14

59. This item inserts a new Part 6 – Non-bulk export of wheat into the Act. The new Part 6 sets out the parameters of the QA scheme to be developed by the Wheat Export Authority.
60. Under Part 6, a new section 66 is introduced which outlines the obligations of exporters who export wheat in bags and containers, including compliance with the requirements of a QA Scheme. This provision is to protect the international reputation of Australian wheat by ensuring that exporters deliver to their contract specifications.

61. The new subsection 66(1) provides for a penalty for non-compliance with the QA scheme. The penalty is up to 600 penalty units for a natural person and, consistent with the Criminal Code, a penalty of up to 3000 penalty units for a body corporate. Unlike the penalty under subsection 57(1) of the Act, the penalty under the new subsection 66(1) will not be an indictable offence. It was decided to make this penalty a summary offence as a non-compliance breach against the QA scheme is not a direct attempt to undermine the single desk policy. A summary offence will also make it easier for the Wheat Export Authority to pursue a prosecution for non-compliance with the QA scheme.

62. The new subsection 66(2) allows for the QA scheme to specify circumstances where the scheme will not apply to wheat exports in bags and containers. It provides flexibility in construction of the QA scheme to cover situations where compliance with the QA scheme may be cost prohibitive and unnecessary. For example, the export of small quantities of wheat for scientific or research purposes.

63. The new subsection 66(3) provides that all export consents issued by the Wheat Export Authority before the commencement of this section will not be subject to the requirements of the QA scheme. This reflects that in granting a consent under subsection 57(1) of the Act the Wheat Export Authority would have already have had regard to the need to protect the reputation of Australian wheat exports. However, the exporter will still need to comply with the conditions of the consent even after the commencement of Schedule 4.

64. A new section 67 is introduced which outlines the parameters for the Wheat Export Authority to develop a non-bulk wheat QA scheme. The QA scheme will be a legislative instrument and will have to comply with the Legislative Instruments Act 2003. This includes an obligation to consult industry in developing the QA scheme. The Wheat Export Authority will have the power to revise or amend the QA scheme consistent with the requirements for changing a legislative instrument.

65. The new subsection 67(2) defines the QA scheme as the ‘non-bulk wheat quality assurance scheme.’

66. The new subsection 67(3) outlines provisions that may be included in the QA scheme. These provide parameters within which the Wheat Export Authority may develop the QA scheme.

67. This new subsection 67(4) allows the QA scheme to provide for an accredited testing laboratory to charge a fee for testing a wheat sample and issuing a QA certificate. The fee can reflect costs of providing the service, including a fair return on capital, but must not be set at a level which would amount to a tax.
68. The new subsection 67(5) provides the Wheat Export Authority with the power to make decisions of an administrative nature relating to the operation of the QA scheme. Such decisions may include designating accredited testing laboratories. The decisions of the Wheat Export Authority under the QA scheme will be subject to the *Administrative Decisions (Judicial Review) Act 1977*.

69. The new subsection 67(6) provides for the QA scheme to include provisions taken from other legislative instruments or writing. This will allow the Wheat Export Authority to draw on documents such as published industry standards to assist the QA scheme. This would also allow industry standards or procedures to change and still apply to the QA scheme without directly requiring amendments to the scheme. For example, if the QA scheme were to accredit testing laboratories based upon criteria laid down by the National Association of Testing Authorities (NATA) it would permit any changes made by NATA to be automatically incorporated into the QA scheme without the need to amend the legislative instrument.

70. The new subsection 67(7) has the effect of overriding the *Legislative Instruments Act 2003* provision that prevents the application, adoption or incorporation of instruments as in force from time to time.

71. The new subsection 67(8) requires the Wheat Export Authority to make available on its Internet site any document or standard that is incorporated into the QA scheme under subsection 67(6). This is to make sure that persons exporting in bags and containers may access all elements of the QA scheme through the Wheat Export Authority website and not be required to search other websites to find any such incorporated documents. For example, if the QA scheme was to reference standards established by NATA then those standards would have to be made available either on or through the Wheat Export Authority’s website.

72. The new subsection 67(9) clarifies that in developing the QA scheme as required by under subsection 67(1) the Wheat Export Authority is not limited to only those matters referred to in subsections 67(3), (4), (5) and (6). This is intended to make sure that the Wheat Export Authority uses the guidelines outlined in these subsections, but is not constrained to only those matters in developing the QA Scheme.

73. The new subsection 67(10) requires the Wheat Export Authority, in developing the QA scheme, to consult with the Minister for Agriculture, Fisheries and Forestry. This is to make sure the Wheat Export Authority develops a QA scheme that is satisfactory to the Minister for tabling in Parliament.
SCHEDULE 5 – Governance review implementation

The items contained in this Schedule alter the governance arrangements for the Wheat Export Authority. These changes are a result of the Uhrig Review of governance arrangements for Commonwealth agencies.

Examination of the Wheat Export Authority’s role and functions against the principles recommended by the Uhrig Review revealed that the Wheat Export Authority should be changed from an agency with an independent Board operating under the Commonwealth Authorities and Corporations Act 1997 to a statutory commission operating under the Financial Management and Accountability Act 1997, with staff employed under the Public Service Act 1999 and with a skills based Commission. The new commission is to be known as the Export Wheat Commission.

Financial Management and Accountability Regulations 1997

Schedule 5, Item 1

74. This item inserts the Export Wheat Commission into the Financial Management and Accountability Regulations 1997. The Export Wheat Commission is to be subject to the Financial Management and Accountability Act 1997 and in order to make this happen it needs to be included in the regulations.

Wheat Marketing Act 1989

Schedule 5, Item 2

75. This item deletes the definition of Authority in Part 1 section 3. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 3

76. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in section 3 of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 4

77. This item inserts the definition of the term ‘Commission’ in section 3 of the Act. The new definition clarifies that any reference to Commission in the Act refers to the Export Wheat Commission.
Schedule 5, Item 5

78. This item deletes the definition of ‘Grains Council’ in section 3 of the Act. This definition is no longer required. The Export Wheat Commission is to have greater objectivity, transparency and regulatory independence and skills based Commissioners. The Grains Council of Australia will not be nominating members of the Commission, unlike the current situation in which it nominates two Wheat Export Authority Board members.

Schedule 5, Item 6

79. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in section 3 of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 7

80. This item deletes the heading of Part 2 of the Act and substitutes it with ‘Export Wheat Commission.’ This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 8

81. This item deletes the current subsection 4(1) of the Act and adds two new subsections to clarify that, despite a new name, the Wheat Export Authority continues on as the Export Wheat Commission. It also confirms that any use of the term ‘Wheat Export Authority’ in any other legislation or law is a reference to the ‘Export Wheat Commission.’

Schedule 5, Item 9

82. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsection 4(2) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 10

83. This item deletes paragraph 4(2)(c) of the Act which allows the Wheat Export Authority to acquire, hold and dispose of property. This change reflects that the Commission will operate under the provisions of the Financial Management and Accountability Act 1997. The current paragraph 4(2)(c) is inconsistent with the requirements of the Financial Management and Accountability Act 1997.
Schedule 5, Item 11

84. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsections 4(3) and (4) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 12

85. This item deletes the term ‘Authority’ (wherever it occurs) and substitutes ‘Commission’ in subsections 5(1) and (2) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 13

86. This item amends subsection 5(2) to make clear the power referenced in the subsection is limited in certain ways. The limitations relate to the requirements of the Financial Management and Accountability Act 1997 and remove from the Commission the power to acquire, hold or dispose of real or personal property, enter into contracts or to lease the whole or any part of any land or building for its purposes.

Schedule 5, Item 14

87. This item inserts subsection 5(3) at the end of section 5. It provides that a right to sue is not taken to be personal property for the purposes of paragraph 5(2)(a). The purpose of this addition is to make clear that the Commission would be able to exercise rights to sue (and be sued) in connection with its statutory functions.

Schedule 5, Item 15

88. This item inserts section 5AA after section 5. It provides that any financial liabilities of the Commission will be taken to be liabilities of the Commonwealth. ‘Financial liability’ is defined in subsection 5AA(2) to mean a liability to pay to a person an amount, where the amount, or the method for working out the amount, has been determined. This new section is consistent with the operation of an agency under the Financial Management and Accountability Act 1997.

Schedule 5, Item 16

89. This item deletes the term ‘Authority’ (wherever it occurs) and substitutes ‘Commission’ in subsection 5A(1) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.
Schedule 5, Item 17

90. This item replaces the WEA Board’s current ability to delegate powers or functions to its chief executive officer with the power for the Commission to delegate its powers and functions to an SES level employee of the Commission.

Schedule 5, Item 18

91. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsection 5B(2) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 19

92. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsections 5C(1), (2), (3) and (4) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 20

93. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsections 5D(1) and (5) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 21

94. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsections 5DA(1) and (2) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 22

95. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsections 5DB(1) and (2) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.
Schedule 5, Item 23

96. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsections 5DC(1), (2), (4) and (5) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 24

97. This item deletes the term ‘Authority’s’ and substitutes ‘Commission’s’ in paragraph 5DC(6)(a) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 25

98. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subparagraph 5DC(6)(c)(i) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 26

99. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsections 5DC(7), (8) and (9) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 27

100. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in paragraphs 5E(1)(a), (b) and (c) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 28

101. This item inserts a provision after paragraph 5E(1)(c) which extends the scope of the subsection to make it clear that anyone who is providing services to the Commission is bound not to disclose information in accordance with subsection 5E(2).
Schedule 5, Item 29

102. This item deletes the term ‘Authority’ (wherever it occurs) and substitutes ‘Commission’ in paragraphs 5E(2)(a) and (3)(c) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 30

103. This item deletes the word ‘or’ in subparagraph 5E(3)(c)(iii) of the Act. This is to reflect the additional item added at the end of this subsection.

Schedule 5, Item 31

104. This item inserts a provision at the end of paragraph 5E(3)(c) which extends the scope of the subsection to make it clear that anyone who is providing services to the Commission may disclose information in accordance with the measures outlined in subsection 5E(3).

Schedule 5, Item 32

105. This item repeals subsections 6(1), (2), (3) and (4) of the Act and inserts additional criteria relating to the composition and structure of the membership of the Commission. These changes are consistent with the governance changes outlined by the Uhrig Review and an assessment of the most appropriate governance structure for the WEA given its functions. It reflects the transition from an authority acting under the Commonwealth Authorities and Companies Act 1997, to a statutory commission operating under the Financial Management and Accountability Act 1997.

106. The Commission will consist of one Chairperson and at least three, and no more than five, other members. The Minister will have the power to appoint each member, including the Chairperson, as well as the power to determine the period of each of their appointments. The Minister must make these appointments in a written document.

107. In making his/her appointments, the Minister must be satisfied that the candidate has substantial experience or knowledge, and significant standing, in one or more of the fields listed at subsection 6(3)(c) through to subsection 6(3)(n) of the Act. This is to be an exhaustive list.

108. The Minister must appoint at least one, but not more than two, members based on their substantial experience or knowledge, and significant standing in the field of grain production (subsection 6(4)). In addition, the Minister must appoint at least one, but not more than two, members based on their substantial experience or knowledge, and significant standing in the field of export wheat production (subsection 6(3A)). This is to ensure a balanced Commission with a mix of technical and practical experiences, and that growers are adequately represented.
Schedule 5, Item 33

109. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsection 6(6) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the *Commonwealth Authorities and Companies Act 1997*, to the ‘Export Wheat Commission’ operating under the *Financial Management and Accountability Act 1997*.

Schedule 5, Item 34

110. This item repeals the current section 7 of the Act and substitutes a new section requiring that a written document must convey a Commission member’s resignation to the Minister. The insertion also states that a resignation will take place on the day the Minister receives it unless there is another day specified in the resignation document. This change gives greater clarity in terms of member appointments.

Schedule 5, Item 35

111. This item repeals the current paragraph 8(2)(b) and substitutes a new paragraph that expands the list of situations in which the Minister must terminate a member’s appointment. The new situations relate to where a member has failed to disclose a conflict of interest without a reasonable excuse.

Schedule 5, Item 36

112. This item deletes the term ‘Authority’ (wherever it occurs) and substitutes ‘Commission’ in paragraph 8(2)(c) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the *Commonwealth Authorities and Companies Act 1997*, to the ‘Export Wheat Commission’ operating under the *Financial Management and Accountability Act 1997*.

Schedule 5, Item 37

113. This item inserts new sections 9A and 9B at the end of Division 2 of Part 2. It ensures all possible conflicts of interest that may be held by a Commission member are disclosed fully to the Minister and to each Commission member, in writing. Such disclosures must be made before the Commission member is involved in a decision to which the conflict of interest relates.

114. This item also inserts a new section 9C that permits the Minister to determine the terms and conditions of Commission members in situations where those terms and conditions are not otherwise covered in the Act. It is expected that the terms and conditions under which Commission members will be engaged are covered in the Act (for example, the Remuneration Tribunal will set remuneration and allowances under section 9) but this item allows scope to deal with unanticipated situations.
115. This item also inserts a new section 9D which allows the Minister to appoint an acting Chairperson in situations where the Chairperson is absent from Australia or unable to perform his or her duties. Subsection 9D(3) provides for any such acting appointment to be valid despite minor defects that may have occurred in the appointment process, such as the incorrect spelling of a name on the instrument appointing the Acting Chairperson.

116. These insertions allow for greater transparency and accountability measures within the Commission, in line with the recommendations delivered by the Uhrig Review of the corporate governance of statutory authorities and office holders.

Schedule 5, Item 38

117. This item deletes the term ‘Authority’ (wherever it occurs) and substitutes ‘Commission’ in subsections 10(1) and (2). This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 39

118. This item deletes part of subsection 10(3) to reflect the fact that the Grains Council of Australia will not be able to nominate any Commission members. The removal of the Grains Council’s right to nominate two members reflects the review of the governance arrangements for regulatory bodies. In the case of the new Export Wheat Commission, it was decided that the Commission should be entirely skills based and not have representative appointments to better reflect the independence of its regulatory role. Similarly, there will no longer be a Government Director.

Schedule 5, Item 40

119. This item deletes the term ‘Authority’ (wherever it occurs) and substitutes ‘Commission’ in subsections 10(8) and (9) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 41

120. This item deletes Division 4 of Part 2 of the Act and substitutes new provisions accommodating the establishment of the Export Wheat Commission Special Account. This account will be established in accordance with regulations in the Financial Management and Accountability Act 1997.

121. A special account is desired so that revenue raised from the Wheat Export Charge and from application fees will be clearly identifiable to the wheat industry. These funds will be used to fund the operations of the Export Wheat Commission.
122. The special account will also provide a means to set aside and record amounts used for specified purposes by the Commission. These changes will provide accountability and transparency to the Commission’s finance structure.

Schedule 5, Item 42

123. This item simply deletes the heading of Division 5 - Miscellaneous of Part 2 of the Act and substitutes it with Division 5 – Staff.

Schedule 5, Item 43

124. This item deletes sections 14 and 15 of the Act and substitutes them with new sections relating to the employment of staff of the Commission. These changes reflect the proposed governance arrangement changes.

125. The new section 14 means that staff of the Export Wheat Commission will be employed under the Public Service Act 1999. The new section 15 makes clear that the Commission may be assisted by staff from other Commonwealth agencies in the performance of its functions.

Schedule 5, Item 44

126. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsections 16(1) and (2) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 45

127. This item deletes the term “Authority’s” and substitutes “Commission’s” in paragraph 16(3)(b) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 46

128. This item inserts sections 17 and 18 at the end of Part 2. These sections will require the Commission to prepare both a Corporate Plan and an Annual Report. The addition of these two requirements, together with the existing requirement to prepare an Operational Plan, will ensure that good governance procedures and monitoring functions are in place in the Commission.
Schedule 5, Item 47

129. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in paragraph 57(1)(a) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 48

130. This item deletes the term “Authority’s” and substitutes “Commission’s” in subsection 57(3) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 49

131. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsection 57(3A) and (3B) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 50

132. This item deletes the term ‘Authority’ and substitutes ‘Commonwealth’ in subsection 57(3D) of the Act. This change is a result of the governance changes and the application of the Financial Management and Accountability Act 1997. The new Export Wheat Commission will not receive any monies. All monies will be paid to the Commonwealth and an equivalent amount will then be credited to the new Export Wheat Commission Special Account.

Schedule 5, Item 51

133. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsection 57(3E) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.
Schedule 5, Item 52

134. This item deletes the term ‘Authority’ (wherever it occurs) and substitutes ‘Commission’ in subsection 57(4) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the *Commonwealth Authorities and Companies Act 1997*, to the ‘Export Wheat Commission’ operating under the *Financial Management and Accountability Act 1997*.

Schedule 5, Item 53

135. This item deletes the term ‘Authority’ (wherever it occurs) and substitutes ‘Commission’ in subsections 58(1), (2), (3), (4) and (6) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the *Commonwealth Authorities and Companies Act 1997*, to the ‘Export Wheat Commission’ operating under the *Financial Management and Accountability Act 1997*.

Schedule 5, Item 54

136. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsections 59(1) and (2) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the *Commonwealth Authorities and Companies Act 1997*, to the ‘Export Wheat Commission’ operating under the *Financial Management and Accountability Act 1997*.

Schedule 5, Item 55

137. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsections 60(1), (2), (3) and (4) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the *Commonwealth Authorities and Companies Act 1997*, to the ‘Export Wheat Commission’ operating under the *Financial Management and Accountability Act 1997*.

Schedule 5, Item 56

138. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in section 61 of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the *Commonwealth Authorities and Companies Act 1997*, to the ‘Export Wheat Commission’ operating under the *Financial Management and Accountability Act 1997*. 
Schedule 5, Item 57

139. This item deletes the term ‘Authority’ (wherever it occurs) and substitutes ‘Commission’ subsections 62(1) and (2) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 58

140. This item deletes the term ‘Authority’ and substitutes ‘Wheat Export Authority’ in section 64 of the Act. This amendment relates to consents that had been issued before the beginning of the temporary period. Any such consent would have been issued by the Wheat Export Authority. As the term ‘Authority’ is no longer defined in the Act (due to the change to the Export Wheat Commission) the full name of the former entity needs to be inserted.

Schedule 5, Item 59

141. This item adds a note referring the reader to subsection 4(1) in interpreting section 64. This makes clear that the ‘Authority’ referred to in section 64 is the new Export Wheat Commission.

Schedule 5, Item 60

142. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsection 66(3) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

Schedule 5, Item 61

143. This item deletes the term ‘Authority’ and substitutes ‘Commission’ in subsections 67(1), (5) and (9) of the Act. This is a consequential amendment which reflects the changing of the name and structure of the ‘Wheat Export Authority’ operating under the Commonwealth Authorities and Companies Act 1997, to the ‘Export Wheat Commission’ operating under the Financial Management and Accountability Act 1997.

SCHEDULE 6 – Transitional provisions

144. Schedule 5 to the Bill contains transitional provisions, including provisions dealing with the transfer of assets and liabilities of the Wheat Export Authority to the Commonwealth, and provisions for the continuing operation of Wheat Export Authority instruments after the commencement of the Bill.
Schedule 6, Item 1

145. This item simply inserts definitions of key terms used in Schedule 5 to the Bill.

Schedule 6, Item 2

146. The effect of this item is that the assets of the Wheat Export Authority (as are covered by the definition of ‘asset’ in item 1), will automatically become the Commonwealth’s assets without the need for any conveyance, transfer or assignment. The Commonwealth will become the Wheat Export Authority’s successor in law in relation to those assets.

147. The assets of the Wheat Export Authority would vest in the Commonwealth because the new Export Wheat Commission could not hold the assets given it is to become an agency subject to the requirements of the Financial Management and Accountability Act 1997.

Schedule 6, Item 3

148. The effect of item 3 is the same as for item 2, except that it deals with liabilities rather than assets. It is a consequence of the new Export Wheat Commission being subject to the requirements of the Financial Management and Accountability Act 1997.

Schedule 6, Item 4

149. Item 4 provides for a simplified procedure in connection with the registration of assets other than land vested in the Commonwealth as a consequence of the vesting of the Wheat Export Authority’s assets in the Commonwealth.

150. This procedure is as follows:

- The Minister signs a certificate identifying the asset and stating that a right or interest in the asset (see the definition of ‘asset’ in item 1) has become vested in the Commonwealth.

- The certificate is lodged with a relevant State or Territory official responsible for the registration of the asset (the ‘asset official’ as defined in item 1).

151. The asset official may deal with the certificate in the same way as, or in a way similar to the way that, other dealings in relevant assets are dealt with and make such entries in a register as are necessary.

Schedule 6, Item 5

152. This item clarifies that if there are any legal proceedings relating to the assets and liabilities of the Wheat Export Authority at the time it becomes the Export Wheat Commission then the Commonwealth replaces the Wheat Export Authority in those proceedings. There are no such proceedings currently underway, but the paragraph makes provision to cope with such circumstances if they exist on 1 October 2007 when the transition occurs.
Schedule 6, Item 6

153. This item deals with situations where the Wheat Export Authority is a party to an instrument and what happens when the Wheat Export Authority transitions to the Export Wheat Commission.

154. Subitem 6(1) deals with situations where the Wheat Export Authority is a party to an instrument but the new Export Wheat Commission does not have the power, under the revised arrangements, to enter into such an instrument. For example, the holding of real and personal property. In such circumstances subitem 6(1) makes clear that the Commonwealth replaces the Wheat Export Authority in that instrument.

155. Subitem 6(2) deals with the situation where the new Export Wheat Commission does have the power to be a party to an instrument in place at the time of the transition. In such circumstances then section 25B of the *Acts Interpretation Act 1901* will apply and the Export Wheat Commission will replace the Wheat Export Authority as a party to the instrument.

156. Subitem 6(3) would allow regulations to determine that either subitem 6(1) or (2) applies in relation to a particular reference or class of references rather than the other. This would enable a situation to be addressed where it is more appropriate for an instrument to have effect as if a reference to the new Export Wheat Commission rather than the Commonwealth, or vice versa.

Schedule 6, Item 7

157. Item 7 provides for references to the Wheat Export Authority in an Appropriation Act (as defined in subitem 9(2)) to be read as references to the Export Wheat Commission. This would enable money appropriated to the Wheat Export Authority in an Appropriation Act to be appropriated to the Export Wheat Commission. This provision is required because item 6 does not apply to references to the Commonwealth in Acts.

Schedule 6, Item 8

158. Item 8 provides that at the time of transition to the new Export Wheat Commission the tenures of the current Board members of the Wheat Export Authority are terminated. Subitem 8(3) provides that any members of the Wheat Export Authority whose memberships are terminated may nevertheless be appointed as a member of the new Export Wheat Commission.
Schedule 6, Item 9

159. This item requires that Export Wheat Commission Special Account be credited with an amount equal to the amounts held by the Wheat Export Authority in accounts with an authorised deposit taking institution at the time of transition. This is because the funds held by the Wheat Export Authority will be vested in the Commonwealth as part of its transition to an agency under the *Financial Management and Accountability Act 1997* and not available to the new Export Wheat Commission. It ensures the new Export Wheat Commission will be in the same financial position as the current Wheat Export Authority.

Schedule 6, Item 10

160. This item deals with the period on which the new Export Wheat Commission must report in its first year. The current financial year of the Wheat Export Authority is 1 October to 30 September whereas the new Export Wheat Commission will have a financial year of 1 July to 30 June. The effect of this item is to require the first annual report of the Export Wheat Commission to cover the nine months from 1 October 2007 to 30 June 2008.

Schedule 6, Item 11

161. This item is inserted to make clear the fact that the Commission is required to prepare an annual report for the Wheat Export Authority for the period 1 October 2006 to 30 September 2007. It obliges the new Commission to complete the reporting task that would have been required of the Wheat Export Authority.

Schedule 6, Item 12

162. This item requires the Chairperson of the new Export Wheat Commission to provide any other report, other than the annual report specified in Item 11 above, that the Wheat Export Authority would have been required to provide covering the period leading up to 1 October 2007. This is included to make sure the reporting requirements of the Wheat Export Authority are fulfilled despite its transformation to a commission.

Schedule 6, Item 13

163. This item requires the new Export Wheat Commission to retain the accounting records of the Wheat Export Authority for a period of seven years.

Schedule 6, Item 14

164. Item 10 provides that stamp duty and other State or Territory taxes would not be payable in respect of the vesting of an asset or liability of the Wheat Export Authority in the Commonwealth.

165. The Minister would be able to certify in writing that a specified matter is an exempt matter or that a specified thing was connected with a specified exempt matter. In all courts, and for all purposes (other than for the purposes of criminal
proceedings), the Minister’s certificate would be prima facie evidence of the matters stated in it.

**Schedule 6, Item 15**

166. Item 15 provides that if the operation of Schedule 6 to the Bill would result in the acquisition of property from a person otherwise than on just terms in contravention of paragraph 51(xxxi) of the Constitution, the Commonwealth would be liable to pay reasonable compensation to the person in respect of the acquisition.

167. If the Commonwealth and the person cannot agree on the amount of the compensation, the person would be able to institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

**Schedule 6, Item 16**

168. Item 16 provides that a document that appears to be a certificate issued under Schedule 6 is taken to be such and taken to have been properly given unless the contrary is established. This is to ensure that effect is given to documents that appear to be certificates given by the Minister unless it is shown that a document is not a certificate or was not properly given by the Minister. For example, Item 4 refers to certificates that may be signed by the Minister and given to an assets official.

**Schedule 6, Item 17**

169. Item 17 provides for the Minister to be able to delegate, in writing, all or any of his or her powers under Schedule 6 of the Bill to the Secretary, or an SES officer, in the Department (currently the Department of Agriculture, Fisheries and Forestry). The delegate will exercise these powers subject to the Minister’s directions.

**Schedule 6, Item 18**

170. Item 18 provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

171. In particular, to deal with unforeseen circumstances, regulations will be able to be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Bill or the enactment of the Bill.