

BULK HANDLING AMENDMENT BILL 2002

EXPLANATORY MEMORANDUM

Clause 1- short title

States the short title of the proposed Act

Clause 2 – Commencement

The Act will come into operation on the day on which it receives the Royal Assent, as there is no reason to delay it.

Clause 3 – The Act amended

The Act will amend the *Bulk Handling Act 1967*.

Clause 4- Section 5 amended

Removes definitions of:

- **“authorized receiver”** – because it is no longer capable of operating. The *Wheat Marketing Act 1979* to which it refers was repealed years ago and the *Grain Marketing Act 1975* is to be repealed by the Grain Marketing Bill 2002.
- **“Board”** because this refers to the Shippers’ Delivery Board, provisions relating to which are to be repealed by clause 8.
- **“dockage”** because the amendments in this Bill will remove this term from use in the Act.

Clause 5 – Sections 6, 8, 9 and 10 repealed

Section 6 provides that the Company (CBH) may be required by the Minister to furnish a bond of up to \$50,000. It has never been used and given the size of the Company it is considered inappropriate.

Section 8 prohibits CBH from being involved in any business relating to the buying or selling of, or broking in, grain. The grain trading activities of Grain Pool Pty Ltd, as a wholly owned subsidiary of CBH, would contravene this section so its continued existence would thwart the purpose of the merger to be effected by *the Grain Marketing Bill 2002*.

Section 9 is also repealed. Section 9(1) prohibits CBH, its directors, officers and agents from:

- discriminating or giving preference to any person wishing to avail themselves of the services of CBH;
- touting or canvassing on behalf of any grain buyer having business relations with CBH; or
- disclosing anything relating to the business or transactions of any person having business relations with CBH so as to afford an advantage to any other person.

Section 9(2) provides that CBH must terminate the employment of any officer, servant or agent whom CBH becomes aware has breached section 9(1).

The continued existence of this section would effectively frustrate the operations of the merged entity, unless the section was amended to exclude from its operation any entity in which CBH has a material financial interest. Changes to this effect would have been in conflict with national competition policy and therefore unacceptable.

The repeal of the section will also remove any possibility of argument that the Act requires the company to operate a pooled system of storage and handling charges.

Section 10 prevents CBH from altering its memorandum or articles of association without the Governor's consent. This requirement is unnecessary in the context of the present day Australian grains industry. As well, since the Company no longer has the exclusive right to receive grain, the Government's interest in its memorandum and articles is substantially reduced. The memorandum and articles of association themselves, and the voting procedure, maintain adequate control over alterations (changes to the memorandum or articles require the approval of 75% of voting members).

Clause 6 – Section 6A replaced

Section 6A contains complex and outdated provisions for the determination and publication of standards. Subsection (2) requires publication in the West Australian newspaper before any determination is made in accordance with it. The notifications/adoptions of standards referred to in this section are now too frequent to allow subsection (2) to be complied with and the whole section is a monument to confusion and overkill. The replacement section is simple and relevant to the current operations of the company and the needs of its customers.

Clause 7 – Section 16 amended

Deletes a reference to tolls in section 16 because the provisions for tolls are repealed by clause 10.

Clause 8 – Parts III and IV repealed

Part III contains various provisions requiring the Minister's approval of installations and allowing the Minister to direct the Company to install, maintain and alter its facilities. These provisions are out of place and no longer necessary, particularly as the Company no longer has sole rights to receive grain.

Part IV constitutes the Shippers' Delivery Board which has not operated in recent decades and will not be revived.

Clause 9 – Part V heading replaced

Replaces the heading of Part V so that it refers to "Charges" instead of "Tolls and Charges".

Clause 10 – Sections 31, 32, 33 and 34B repealed

Section 31 requires payment of foundation tolls. It is to be repealed because foundation tolls have not been collected since 1999. Traditionally tolls were used to fund infrastructure development but CBH now has other, more appropriate, commercial mechanisms for raising money for this purpose. Transitional provisions are found in Schedule 1 to ensure the repayment of remaining tolls.

Section 32 requires payment of port equipment tolls and is also to be repealed for the same reasons. Again with appropriate transitional provision.

Section 33 is dependent on 31 and 32 and so is repealed with them.

Section 34B provides for "special object charges" for the 1973-1974 season. To be repealed as it was only applicable to the 1973-74 season.

Clause 11 – Section 34 amended

Section 34 requires the Company's charges for services to be approved by the Governor by Order in Council. This is unnecessary and inappropriate in the modern context and so is to be replaced with approval by the Company's board of directors.

Clause 12 - Section 34A amended

Section 34A provides for special object charges. The reference to section 34B (repealed above) is deleted.

Clause 13 – Section 35 amended

Deletes references to “tolls” in the section giving the Company a priority lien over tolls and charges payable under the Act.

Clause 14 – Section 36 amended

Deletes reference to dockage in section 36 which requires weighbridge tickets. The term dockage is removed from the Act by the replacement of section 6A.

Clause 15 – Section 39 repealed

Section 39 gave the Company the sole right of receiving and delivering grain. This right expired on 31 December 2000 so the section may be repealed. (In any event the Company in fact lost its sole handling right by virtue of the operation of the *Wheat Marketing Act 1989* of the Commonwealth and the State Act of the same name.)

Clause 16 – Section 42 amended

Section 42 imposes the Company’s obligation to receive all bulk grain tendered to it. Under subsection (2)(b) this obligation is limited to receipt at a reasonably convenient time and place nominated by it. The further limitation that it not be obliged, unless the Minister so directs, to receive grain at any terminal elevator to which the grain has been transported more than 100 kilometres by road is no longer appropriate and so is to be deleted.

Clause 17 – Section 43 amended

Deletion of references to “dockage” from section dealing with determination of grade and dockage. It is the grade of grain that is important. Dockage is no longer used.

Subsection (4a) and (4b) refer to sending samples to the Australian Wheat Board. These are repealed because CBH determines the variety of wheat delivered to it. It does not send samples to the Australian Wheat Board (now the Wheat Export Authority).

Clause 18 – Section 45 amended

Deletion of reference to “tolls”.

Clause 19 – Section 46 amended

Deletion of references to the Shippers’ Delivery Board.

Clause 20 – Section 50A repealed

Section 50A allows for Guarantees to be given by the Treasurer in respect of moneys borrowed by the Company. This has been used only once and given the financial strength and size of the Company is highly unlikely to be used again. Given the current National Competition Policy it does not seem appropriate that the State Treasurer (on behalf of the Crown) should become a guarantor on behalf of the Company.

Clause 21 – Section 51 amended

A re-write of the first paragraph of this section to take account of other amendments made to the Act and small amendments to other paragraphs for a similar purpose.

Clause 22 – Section 52 amended

Removal of references to repealed sections.

Clause 23 – Section 53 amended

Deletion of reference to standards “notified to” as opposed to “adopted by” the Company in a relevant regulation-making power.

Clause 24 – Transitional and Savings

Schedule 1 has effect to make necessary transitional and savings provisions.

Clause 25 – consequential amendments

Consequential amendments to the Acts specified in Schedule 2.

SCHEDULE 1

Clause 1 – Interpretation

Self explanatory definitions of two terms used in Schedule 1.

Clause 2 - Tolls and Debentures (s.31 and 32)

Under sections 31 and 32 growers are required to pay “foundation” and “port equipment” tolls. These are deemed to be an advance by the grower to the Company; a debt that is satisfied by the issue to growers of debentures.

Clause 2(1) simply states that debentures issued before the commencement day continue on and after that day on the terms on which they were issued.

There will, however, be some outstanding tolls at the date of repeal of sections 31 and 32. Rather than subsequently issue debentures it is considered appropriate that members simply continue to be owed the debt created by the tolls, which will be repaid in the ordinary course.

To remove any doubts about debts not satisfied by the issue of debentures before the repeal subclause (2) provides that the debt remains payable by CBH to the grower on the terms set out in subclause (3) and that CBH need not issue a debenture in respect of that debt.

Subclause (3) sets out the terms of the debt:

- no interest is payable on it;
- the debt is repayable on 31 October in the year 10 years after the date the toll to which the debt relates was entered in the relevant register; but
- the Company may repay all or part of the debt at any time before then.

SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS

Clause 1 – *Transport Co-ordination Act 1966* amended

Amends a clause in the First Schedule to the *Transport Co-ordination Act 1966*. That Schedule specifies the carriage of goods for which a commercial licence is required. Clause 1 will be amended so that it refers to the carriage of farm produce from the farm to the nearest “bulk grain handling facility” rather than specifically to a CBH facility. Appropriate since CBH no longer has the sole right to receive grain.

Clause 2- *Wheat Marketing Act 1989* amended

Repeals section 7 of the *Wheat Marketing Act 1989*.

This section provided an exception of sorts to CBH’s sole right of receipt. Since it no longer has this right there is no need for section 7. (Even in theory. It wouldn’t operate in practice in any event because there is no longer any “Wheat Board”.)