

Western Australia

## **Bulk Handling Act 1967**



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Western Australia

## **Bulk Handling Act 1967**

**An Act to make better provision for the bulk handling of grain by the Company registered as Co-operative Bulk Handling Limited, and for incidental and other purposes.**

## Part I — Preliminary

### 1. Short title

This Act may be cited as the *Bulk Handling Act 1967*<sup>1</sup>.

### 2. Commencement

This Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.

[3. Deleted by No. 10 of 1998 s. 76.]

[4. Omitted under the Reprints Act 1984 s. 7(4)(f).]

### 5. Interpretation

In this Act, unless the contrary intention appears —

**bin** means any building, shed, silo or receptacle for the storage of grain, in bulk, pending transport or delivery, and includes any plant or equipment used in connection with the reception of grain in bulk;

**Company** means Co-operative Bulk Handling Limited, a company incorporated under the provisions of the *Companies Act 1893*<sup>2</sup>, and deemed to be registered under the *Companies (Co-operative) Act 1943*, and having its registered office at Wellington Street, Perth<sup>3</sup>;

**grade**, in relation to grain tendered to or received by the Company, means the grade as determined by the application of the standard or standards in accordance with which the Company is obliged by section 6A to make that determination or cause it to be made;

**grain** means the seeds of the cereal grasses wheat and barley;

**grain received in bulk** means grain in respect of which the Company renders a service;

**grower** includes the legal personal representative of a deceased person, a trustee, the liquidator of a company, a person entitled



to a share of a crop, under a share farming agreement, and a corporation, organization or body delivering grain to the Company;

**marketing authority** means the Australian Wheat Board or any other marketing authority constituted by or under any law of the Commonwealth or of the State for the marketing of any type of grain;

**miller** means a person whose business includes the milling, other processing or use of grain;

**representative**, in relation to a grower, means a person acting under the express or implied authority of the grower and includes a person tendering grain to the Company on behalf of the grower;

**season**, in relation to grain, means the period extending from 1 November in any year, or, if grain is received prior to 1 November, then from the date of receipt of the grain, to 31 October in the following year;

**section** means a section of this Act;

**terminal elevator** means a silo or container maintained at a port for the handling of grain and includes machinery and buildings ancillary to such a silo or container.

*[Section 5 amended by No. 3 of 1981 s. 3; No. 29 of 2002 s. 4; No. 30 of 2002 s. 47.]*

## **Part II — Obligations of the Company**

*[6. Deleted by No. 29 of 2002 s. 5.]*

### **6A. Determination of standards**

- (1) The Company shall, in relation to grain tendered to or received by it, determine or cause to be determined the grade of that grain in accordance with the standard or standards for the time being adopted by the Company in respect of grain of the type concerned.
- (2) Before adopting a standard or standards, the Company shall consult such persons as the Company considers appropriate.

*[Section 6A inserted by No. 29 of 2002 s. 6.]*

### **7. Liability of Company for conversion**

- (1) Nothing in this Act relieves the Company from liability for conversion or other action in respect to grain delivered to the Company in the course of its operations, but the Company may create an assurance or indemnity fund to protect it against liability in that regard.
- (2) Where the Company has, in good faith and without notice of the conversion, received grain in bulk from a person who has wrongfully converted it to his own use or in derogation of the right, title, claim or interest of another person, the Company may recover from the person wrongfully converting the grain any sum or sums and costs for which it may be liable in consequence of the receipt of the grain.

*[8-10. Deleted by No. 29 of 2002 s. 5.]*

### **11. Company to insure grain**

- (1) The Company shall, at its own expense, insure all grain from time to time in its custody or under its control to its full insurable value with a public insurance company that has, or underwriters who have, complied with the provisions of the

*Insurance Act 1932* <sup>4</sup> of the Commonwealth, as from time to time amended, against loss or damage by fire, explosion, storm, tempest or flooding and against such other insurable risks as may from time to time be prescribed.

- (2) The Company is authorised to receive and give a good discharge for all moneys payable under, and in respect of, and to settle, adjust and compromise all claims under, a policy of insurance.
- (3) Where any loss or damage occurs to any grain in the custody, or under the control, of the Company that is covered by insurance, the Company may apply the insurance moneys recovered in or towards the purchase of grain to replace that destroyed or damaged, or, at its discretion, may pay those moneys to a reserve fund to meet any liability for shortages under the provisions of section 16.

**12. Company to furnish balance sheet and revenue account to Minister**

- (1) The Company shall in every year, not later than the prescribed date, take out a balance sheet, showing its assets and liabilities and making due allowance for depreciation and for such other reserves as are usual for undertakings similar to that carried on by the Company, together with a revenue account for the preceding 12 months, and shall, on or before the date prescribed for that purpose, forward the balance sheet and revenue account to the Minister who shall cause a copy of both to be laid before both Houses of Parliament, as soon as may be practicable after their receipt.
- (2) Any officer of the Auditor General nominated by him shall, at all times, have free access to the books and records of the Company and be at liberty to make such copies of, or extracts from, them as he thinks fit.
- (3) The Company shall keep all such other records of its transactions as may, from time to time, be prescribed; and such

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records shall at all times be open for inspection as provided by subsection (2).

**13.      Power of Company to purchase shares**

Notwithstanding the provisions of section 174 of the *Companies (Co-operative) Act 1943*, or any provision contained in the memorandum or articles of association of the Company, the Company may, and shall be deemed always to have been empowered to, purchase, out of its reserve funds, any shares of a member of the Company, but to the extent only that the shares so purchased and not sold or disposed of do not, at any one time, exceed 40% of the paid up capital of the Company; and the shares so purchased are not deemed to be cancelled or to be purchased in reduction of capital, but may be sold or disposed of by the Company, in accordance with its articles of association.

*[Section 13 amended by No. 58 of 1982 s. 2.]*

**14.      Application of moneys received from excess of outturn**

All moneys arising from any excess of outturn in respect of each class of grain received by the Company, in any particular season, shall be paid to, and retained by, the Company in a special reserve account, as a fund to meet, from time to time, any shortages resulting in its operations or in the outturn of grain of any particular season or seasons; but where the reserve at any time exceeds the sum of \$200 000, the excess may be transferred to, and applied as part of, the general funds of the Company.

**15.      Company not liable for act of God or unforeseen loss**

- (1) The Company is not liable to any person in respect of loss sustained by him by reason of failure or delay in delivery of grain received in bulk in the course of its operations, where the failure or delay arises out of a riot, industrial dispute, civil commotion, war or act of God, or is occasioned by any unforeseen cause not attributable to the negligence of the Company.

- (2) In the event of any loss or damage arising to grain the Company shall apportion the loss of, or damage to, the grain rateably, as nearly as practicable, among those entitled to obtain delivery of grain at the time the loss or damage occurs and, to that extent, the Company shall be discharged from its obligation to deliver grain to the persons entitled to obtain delivery of it.

**16. Company's liability for shortages in stocks**

- (1) Where the Company is unable to give delivery of grain on account of loss or shortages in stocks of grain, other than losses or shortages arising from any cause for which it is relieved of liability under section 15, the Company shall pay to every person entitled to, and unable to obtain, delivery of grain the value of that quantity which it is unable to deliver at the time the request for delivery is made, or, where no request is made prior to 30 September next following the date of receipt of the grain, the Company shall pay the value of an equal quantity of grain on that day.
- (2) For the purposes of subsection (1), the value of the grain undelivered is deemed to be the value of an equal quantity of grain at —
- (a) the average buying price paid by merchants, published in *The West Australian* newspaper at the material time or published at 30 September, as the case may be; or
  - (b) where the price is not ascertainable under paragraph (a), the price quoted on the Liverpool Corn Exchange or such other exchange as may be operating, with due allowance for costs of transport and insurance; or
  - (c) at the election of the Company, the price determined by the Minister,

but nothing in this subsection precludes the recovery by a person entitled to delivery of grain of any further damages to which he may be lawfully entitled by reason of the Company not delivering the grain.

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- (3) A person entitled to receive grain that is lost or damaged is, notwithstanding that he has not received it, obliged to pay such charges as would have been payable, under the provisions of this Act, had he received the grain on the day on which the loss or damage occurred.

*[Section 16 amended by No. 29 of 2002 s. 7.]*

**17. Polls of growers to be taken by secret ballot**

- (1) Where, for any purpose under, or relating to, the provisions of this Act or the regulations, a poll of growers is taken, then, notwithstanding any provision of the memorandum or articles of association of the Company to the contrary, the poll shall be taken by secret ballot.
- (2) The person conducting a poll of growers may take such action and give such directions as he considers necessary to ensure that the poll is taken by secret ballot and that no irregularity occurs in, or in connection with, the ballot.
- (3) Every person who —
- (a) refuses or fails to comply with a direction given pursuant to subsection (2); or
  - (b) obstructs or hinders —
    - (i) the person conducting, or a person carrying out the directions of the person conducting, the ballot; or
    - (ii) the taking of any action pursuant to subsection (2),

commits an offence.

Penalty: \$1 000.

- (4) The Company shall take such steps as may be necessary to ensure that ballot papers, envelopes, counterfoils, lists and other documents used in connection with, or relating to, a ballot under this section are prepared and kept at such place, and for such

period after the completion of the ballot, as the Minister may direct.

*[Section 17 amended by No. 20 of 1989 s. 3.]*

**18. Title to grain in Company's care**

- (1) The receipt of grain in bulk by the Company does not confer on the Company any proprietary right or interest in the grain or render the grain liable to seizure or attachment, as against the Company.
- (2) As regards grain, the position of the Company at law is that of a custodian for reward.
- (3) The proprietary interest in grain is vested in the person who, for the time being, is entitled to obtain it from bulk stocks held by the Company or under its control.

**19. Company to allow use of port facilities**

Subject to this Act and the regulations, the Company shall allow a person, on payment of the prescribed charges, the use of any bulk handling facilities and equipment controlled by it at ports in the State.

*[Parts III and IV deleted by No. 29 of 2002 s. 8.]*

## **Part V — Charges**

*[Heading inserted by No. 29 of 2002 s. 9.]*

*[31-33. Deleted by No. 29 of 2002 s 10<sup>5</sup>.]*

**34. Charges by Company to be fixed by the Company's board of directors**

- (1) In return for the services of the Company in the receipt, handling, storage and delivery of grain, the Company is authorised to make such charges as are from time to time fixed by the Company's board of directors.

*[(2)-(3) deleted]*

*[Section 34 amended by No. 10 of 1998 s. 19; No. 29 of 2002 s. 11.]*

**34A. Special object charges**

Subject to this Act, the Company may from time to time in respect of any type of grain or seed received in bulk make a charge fixed under section 34C in relation to grain or seed of that type for the purpose of establishing and maintaining a fund for effecting any special object which the Company may determine to be in the common interest of growers.

*[Section 34A inserted by No. 64 of 1974 s. 3; amended by No. 29 of 2002 s. 12.]*

*[34B. Deleted by No. 29 of 2002 s. 10.]*

**34C. Special object charges for seasons subsequent to 1973-1974 season**

- (1) The charge referred to in section 34A shall not be imposed in respect of deliveries of grain or seed in a season subsequent to the 1973-1974 season unless in respect of that season the Company has submitted to its shareholders a proposal setting out the amount thereof and the special object to which the



charge is to be applied and has ascertained in accordance with the provisions of this section that they have agreed to the charge.

- (2) For the purpose of ascertaining whether its shareholders agree to the imposition of a charge under section 34A in respect of deliveries of grain or seed in a season subsequent to the 1973-1974 season the Company shall, in respect of that season, in accordance with its articles of association, call a meeting in at least 2 places in each district from which a director is elected under its articles of association, and submit the proposal referred to in subsection (1) to each meeting so called.
- (3) The shareholders shall be considered as having agreed to a charge imposed under section 34A in respect of deliveries of grain or seed in respect of a season subsequent to the 1973-1974 season if, and only if, in a majority of the districts a majority of the shareholders of the Company attending the meetings called under this section agree to a proposal in terms of subsection (1) and if a majority of all the shareholders attending those meetings also agree to the proposal.
- (4) For the purpose of ascertaining whether a proposal to impose a charge under section 34A in respect of deliveries of grain or seed in respect of a season subsequent to the 1973-1974 season has been agreed to by the shareholders of the Company, the votes cast in each district shall be totalled and the votes cast in all the districts from which directors are elected to the Company shall also be totalled.
- (5) The Governor, upon being satisfied that the requirements of subsections (1) to (4) (both inclusive) have been complied with, may by Order in Council fix the charge to be paid to the Company under section 34A in respect of deliveries of grain or seed in a season subsequent to the 1973-1974 season, but so that the amount of the charge —
  - (a) in relation to wheat shall not exceed \$1.10 per tonne;  
and

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- (b) in relation to any other grain or seed, shall be that amount as is ascertained by varying the charge then fixed in relation to wheat by such an amount as represents the relative densities of wheat and that other grain or seed.

*[Section 34C inserted by No. 64 of 1974 s. 3.]*

**34D. Company authorised to pay Skeleton Weed Fund contributions**

- (1) The Company is authorised, without further warrant than this section, to pay to the Skeleton Weed Eradication Fund or the Plant Diseases Eradication Fund, as the case requires, established under the *Plant Pests and Diseases (Eradication Funds) Act 1974* the amount of any contribution which appears to the Company to be payable to that Fund by a grower who has delivered grain or other seeds to the Company and any amount so paid by the Company to that Fund —
  - (a) shall operate to discharge the grower in respect of whom it is paid from liability to pay the contribution; and
  - (b) is a debt due to the Company from the grower in respect of whom it is paid.
- (2) The amount of the contribution paid by the Company pursuant to subsection (1) shall be a first charge in priority to all claims, other than a charge created under any other section, on the moneys payable to a grower in respect of grain or seed.

*[Section 34D inserted by No. 64 of 1974 s. 4; amended by No. 3 of 1981 s. 6; No. 53 of 1996 s. 13.]*

**35. Company to have priority lien for charges**

- (1) The Company has a lien, in priority to all other claims, over any grain received by it, in respect of the charges payable in respect of that grain under the authority of this Act.
- (2) A person obtaining delivery of grain from the Company is authorised to pay the charges in respect of the grain and to set

off any amount so paid against any moneys payable by him in respect of the grain, or of any equivalent quantity of grain, of which he may obtain delivery.

*[Section 35 amended by No. 29 of 2002 s. 13.]*

## **Part VA — Application of income and property**

*[Heading inserted by No. 4 of 1971 s. 3.]*

### **35A. Manner of applying income and property of the Company**

Notwithstanding any of the provisions of the *Companies (Co-operative) Act 1943* or of the memorandum or articles of association of the Company —

- (a) no part of any income or property of the Company shall be, directly or indirectly, paid or transferred as a profit, by way of a dividend or bonus or otherwise, to any member of the Company;
- (b) all the income and property of the Company shall be applied, subject to this Act, towards the objects of the Company as set out in clause 2 of its memorandum of association and not otherwise;
- (c) the directors of the Company may set aside out of the profits of the Company such sums as they think fit as reserves for application, in the discretion of those directors, in meeting contingencies or in achieving any other purpose that is, under the memorandum or articles of association of the Company but subject to this Act, a proper purpose for the application of profits of the Company;
- (d) where any reserves set aside pursuant to paragraph (c) are not immediately required for application in accordance with that paragraph, they may, in the discretion of the directors of the Company, be applied in the business of the Company or in furthering, subject to this Act, the objects of the Company as set out in clause 2 of its memorandum of association, paying off or reducing some or all of its debentures for the time being outstanding, or liquidating any other indebtedness of the Company or they may be invested in such investments as those directors think fit; and

- (e) if the Company is wound up and any surplus assets remain after payment of its debts and liabilities and the costs of the winding up and repaying to shareholders the capital paid upon their shares, those surplus assets shall not be distributed among the members of the Company but shall be distributed or applied in such other manner as shall be directed by the Treasurer of the State acting for and on behalf of the State.

*[Section 35A inserted by No. 4 of 1971 s. 3.]*

## **Part VI — Weighbridge tickets and warrants**

### **36. Company to issue weighbridge ticket on receipt of grain**

- (1) On receipt of grain, the Company shall cause it to be weighed, its grade to be determined and a weighbridge ticket to be issued for the grain.
- (2) Every weighbridge ticket issued pursuant to this section shall set out —
  - (a) the type of grain in respect of which it is issued;
  - (b) the name of the person in whose name the grain is delivered;
  - (c) the weight and quantity of grain delivered;
  - (d) where determined at the time of delivery, its grade; and
  - (e) such other particulars as may be prescribed.
- (3) All weighbridge tickets issued for any one type of grain shall be consecutively numbered and the Company shall not issue 2 weighbridge tickets bearing the same number, for the same type of grain, in any one season.

*[Section 36 amended by No. 3 of 1981 s. 7; No. 29 of 2002 s. 14.]*

### **37. Company to issue warrants**

- (1) The Company shall issue a warrant in respect of grain received, setting out such particulars as may be prescribed, as soon as practicable after being so required by the grower and, where the grower does not, within a reasonable period, require the issue of a warrant, the Company may issue it of its own motion.
- (2) Every warrant shall be serially numbered and the Company shall not issue 2 warrants bearing the same number for the same type of grain, in any one season.

**38. Liability of persons for conversion**

- (1) Where a person delivers grain to the Company and the delivery is made in derogation of the right, title or interest of another person —
  - (a) the person in whose name the grain is delivered;
  - (b) the person to whom a warrant is issued in respect of the grain; and
  - (c) the holder of a warrant issued in respect of the grain,is liable to the person whose right, title or interest is so affected.
- (2) Subject to the provisions of subsection (1), every warrant is a negotiable instrument transferable by endorsement; but every person to whom a warrant is negotiated or transferred accepts and holds it subject to any lien over, and the right, title or interest of any person to or in, the grain in respect of which the warrant was issued.
- (3) An endorsement of a warrant may be general or special.

## **Part VII — Receival and delivery of grain by the Company**

*[39. Deleted by No. 29 of 2002 s. 15.]*

### **40. Company to provide statement showing handling conditions**

The Company shall make available to a grower requiring it, at any point at which it is operating, a statement showing the prescribed terms, conditions and charges under which grain is received in bulk by the Company and then in force.

### **41. Company to handle grain in accordance with Act**

Notwithstanding any contract or agreement to the contrary, the terms and conditions provided by, or prescribed under, this Act apply to every receival, handling and delivery of grain by the Company.

### **42. Company to receive all bulk grain tendered**

- (1) Subject to subsection (2), the Company shall receive all grain that is tendered to it in bulk.
- (2) Notwithstanding the provisions of subsection (1), the Company —
  - (a) shall not receive, as and when tendered, any grain that is unsound or that is inferior to the lowest grade then in force, but shall make arrangements to receive the grain at such time or place, or subject to such conditions, as it may require;
  - (b) is not obliged to receive any grain except at a reasonably convenient time and place nominated by it.

*[Section 42 amended by No. 69 of 1973 s. 7; No. 29 of 2002 s. 16.]*

### **43. Determination of grade of grain**

*[(1) deleted]*



- (2) When grain is tendered to the Company by, or on behalf of, a grower, an officer of the Company shall, subject to the succeeding provisions of this section, determine the grade of the grain and shall inform the person tendering the grain of his determination.
- (2a) An officer of the Company who has made a determination under subsection (2) in respect of wheat tendered to the Company by or on behalf of a grower may take, and deal with, a sample of that wheat in the manner prescribed by the regulations.
- (3) If the grower consents, the officer mentioned in subsection (2) may, instead of determining the grade of the grain, receive it subject to the determination of the grade at an office of the Company nominated by it and the grower shall be informed by the Company of a determination so made.
- (4) Where the grade of grain is not to be determined by the officer at the place where it is tendered, he shall take, and deal with, a sample of the grain, in the manner prescribed by the regulations.
- (5) A person who is dissatisfied with a determination made pursuant to subsection (2), may require the determination to be made by an officer of the Company at Perth or by the Department of Agriculture of the State and the determination shall, subject to subsection (5a), thereupon be made in the manner prescribed by the regulations.
- (5a) A determination made by an officer of the Company in Perth or by the Department of Agriculture of the State under subsection (5) —
  - (a) shall be made in accordance with the standard or standards in accordance with which the Company would, if it were making that determination or causing it to be made under this Act, be obliged by section 6A to make that determination or cause it to be made; and
  - (b) shall not comprise or include, as the case requires, the determination of the variety of any wheat received by the Company.

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- (6) The regulations may provide for the payment of fees for, and expenses attendant upon, a determination made pursuant to subsection (5).
- (7) Where the grower or his representative does not dispute the grade determined pursuant to subsection (2), the officer of the Company shall cause his determination to be entered on the weighbridge ticket.

*[Section 43 amended by No. 3 of 1981 s. 9; No. 29 of 2002 s. 17.]*

**44.        Guarantee of quality and quantity**

The holder of a warrant is, subject to any variations allowed by this Act or the regulations, entitled to receive an equivalent weight of grain of the type corresponding with, and of a grade at least equal to, that in respect of which the warrant was issued.

**45.        Company may sell if delivery not taken by 30 September**

- (1) The holder of a warrant shall take delivery of the grain to which the warrant relates, on or before 30 September next following the receival of the grain by the Company.
- (2) In the event of a warrant holder not taking delivery as provided by subsection (1), the Company is relieved of its obligations to deliver the grain under the warrant and may, at any time and from time to time thereafter, sell the grain —
  - (a) in one or more parcels;
  - (b) in one or more different sales; or
  - (c) separately or together with any other grain,

as may be prescribed, and shall, in the manner prescribed, pay the proceeds of the sale or sales to the warrant holder, making deductions for charges and expenses of the sale.

- (3) Notwithstanding the foregoing provisions of this section, where the Governor is of the opinion that a state of emergency exists, he may, by Order in Council, extend the time limited by

subsection (1) for the taking of delivery of grain, by fixing such date subsequent to that provided by that subsection as he considers necessary.

*[Section 45 amended by No. 29 of 2002 s. 18.]*

**46. Shippers to give notice of charter**

- (1) A holder of a warrant requiring grain from the Company for shipment, shall notify the Company of the requirement, forthwith after arranging the charter of a ship to carry the grain from a port at which the Company loads bulk grain, and shall furnish, with the notice, such other particulars as may be prescribed.
- (2) Where the holder of a warrant who has given notice pursuant to subsection (1) receives any notification of an alteration in the estimated date of arrival of a ship chartered by him, he shall forthwith notify the Company of that happening and shall, in any event and at least 6 days before the vessel is due to arrive, notify the Company of the then last port of call of the vessel and the date of departure therefrom and shall furnish such other particulars as may be prescribed.

*[Section 46 amended by No. 29 of 2002 s. 19.]*

**47. Warrant holder's right to sample grain**

- (1) The holder of a warrant is entitled to receive a sample of grain that is in any bin, truck or container from or in which grain may be delivered to him.
- (2) The holder of a warrant is not entitled to reject individual bins, trucks or containers, unless, in the case of grain being delivered for shipment, the running bulk sample of the shift being worked, or in the case of grain being delivered other than for shipment, the running bulk sample of the bin, truck or container is below the grade as specified in the warrant.

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**48. Disputes as to quality of grain for shipment**

- (1) In the event of any dispute as to the quality or condition of grain tendered by the Company to the holder of a warrant for shipment, the holder may require delivery operations to be discontinued and the Company and the holder of the warrant shall, thereupon, each appoint an arbitrator to determine the dispute.
- (2) For the purposes of an arbitration under this section, a sealed sample of the grain that is the subject of dispute shall be taken jointly by the parties to the dispute and shall be supplied to the arbitrators, together with a standard sample, in such a manner that the identity of the samples is not known to the arbitrators.
- (3) The arbitrators shall make their award with the least possible delay, and in any case not later than 24 hours after the reference, and the arbitration shall, subject to the express provisions of this Act, be conducted as, and have all the incidents of, a reference under the *Arbitration Act 1895* <sup>6</sup>.

**49. Disputes as to quality of grain delivered other than for shipment**

- (1) In the event of any dispute as to the quality or condition of grain tendered by the Company to the holder of a warrant for delivery, other than at a port, the holder of the warrant may require the dispute to be submitted to arbitration.
- (2) Sealed samples of the grain that is the subject of dispute under this section shall be taken in the prescribed manner.
- (3) Upon payment of the prescribed fee on behalf of the holder of the warrant, the samples of the grain that is the subject of dispute shall be forwarded to the Department of Agriculture and there inspected in accordance with the regulations by an officer of that department nominated by the Minister, and the officer shall give his decision on the matter in dispute.

**50. Costs of arbitration**

The cost of arbitration pursuant to section 48 or 49, together with any costs reasonably and directly incurred for demurrage, hauling, handling or otherwise arising out of the dispute shall be borne by the party against whom the award is given under the arbitration.

## **Part VIII — Miscellaneous**

*[50A. Deleted by No. 29 of 2002 s. 20.]*

### **51. Compulsory marketing**

- (1) Notwithstanding any other provisions of this Act, during the operation of any law, whether of the Commonwealth or the State, providing for compulsory marketing of any grain handled by the Company —
  - (a) the charge or charges referred to in section 34A shall be payable by, and recoverable from, the grower to whom it is or they are credited and the charges, including any arrears of charges, shall be a first charge in priority to all other claims on the moneys payable under the relevant compulsory marketing law in respect of the relative grain;
  - (aa) the contribution paid by the Company in respect of a grower under the *Plant Pests and Diseases (Eradication Funds) Act 1974* shall be a first charge in priority to all other claims, other than a charge created under the section referred to in paragraph (a), on the moneys payable under the relevant compulsory marketing law in respect of the relative grain;
  - (b) the Company shall not be obliged to issue a warrant pursuant to section 37 but shall, instead, issue such document or documents as may be agreed with the relevant marketing authority and approved by the Minister; and
  - [(c) deleted]*
  - (d) subject to subsection (2), instead of the remuneration elsewhere provided by this Act, the Company shall, for its services, be entitled to such remuneration, with the exception of the remuneration to which the Company is entitled pursuant to section 34A, being not less in the aggregate than that provided by this Act, as may be negotiated by it with the relevant marketing authority.

- (2) The charges referred to in subsection (1)(d) in respect of wheat shall be such as are determined by the Company having regard to any agreement between the Company and the Board as defined in the *Wheat Marketing Act 1979*<sup>7</sup> providing for the remuneration of the Company for its services, with the exception of the remuneration to which the Company is entitled pursuant to section 34A.

*[Section 51 amended by No. 64 of 1974 s. 5; No. 3 of 1981 s. 10; No. 115 of 1982 s. 3; No. 53 of 1996 s. 13; No. 29 of 2002 s. 21.]*

**52. Contracts for bulk handling of grains other than wheat or barley**

- (1) The Company has the right of receiving, handling, transporting and delivering in bulk such seeds other than the seeds of wheat and barley as the Minister may approve.
- (2) The Company shall at all times take and use all reasonable precautions to ensure that seeds received by it under the authority of this section are kept segregated from one another and from the seeds of wheat and barley.
- (3) The provisions of sections 5, 6A, 7, 11, 14 to 16 inclusive, 18, 35 to 38 inclusive, 43 to 50 inclusive, 51 and 53 apply, *mutatis mutandis*, to all seeds received under the authority of this section.

*[Section 52 amended by No. 3 of 1981 s. 11; No. 29 of 2002 s. 22.]*

**52A. Company water rate**

- (1) Notwithstanding the provisions of any other Act or anything done or purporting to be done under any other Act, the water rate payable by the Company in respect of Area A shall be 25% of the rate determined in accordance with the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*, but nothing in this section shall apply to any portion of Area A which shall be

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occupied as a permanent residence or upon which a permanent residence shall be erected.

- (2) Subsection (1) is deemed to have come into operation on and from the commencement of the rateable year ending 30 June 1978.
- (3) In this section Area A means all that piece or parcel of land contained in Rockingham Lot 1304 the subject of Special Lease 3116/5215.

*[Section 52A inserted by No. 13 of 1979 s. 2.]*

**53. Regulations**

- (1) The Governor may make such regulations as are contemplated or required by this Act and may make such other regulations as may, in his opinion, be necessary or convenient for giving full effect to the provisions of, and for the due administration of, this Act.
- (2) Without limiting the generality of subsection (1), the Governor may make regulations for —
  - (a) the conduct of bulk handling by the Company;
  - (b) the method and procedure to be followed and observed by the Company in the exercise of its powers and in the conduct of its business under this Act, the records to be kept by the Company and the audit of its books and accounts;
  - [(c) deleted]*
  - (d) the delivery to, and receipt by, the Company of grain in bulk, the precautions to be taken in regard to the checking of the quality and weight of grain received and ensuring that the quality of grain received by the Company is not below the limit of variations from the relevant standards adopted by, the Company under section 6A;



- (e) the protection of charges, liens or securities over grain offered or delivered to the Company;
- (f) the delivery of grain by the Company and ensuring that proper precautions are taken to check the weight and quality of the grain delivered;
- (g) the issue of warrants in place of warrants lost or destroyed, the conditions under which 2 or more warrants may be issued in exchange for one or under which one warrant may be issued in exchange for 2 or more;
- (h) the settlement by arbitration, subject to any specific provisions of this Act, of questions and disputes arising between the Company and the holders of warrants; and
- (i) the imposition of penalties not exceeding \$2 000 for any breach of the regulations made pursuant to this section.

*[Section 53 amended by No. 3 of 1981 s. 12; No. 20 of 1989 s. 3; No. 29 of 2002 s. 23.]*

**54. General penalty**

Every person guilty of an offence against this Act for which a penalty is not expressly provided is liable to a penalty not exceeding \$2 000.

*[Section 54 amended by No. 20 of 1989 s. 3.]*

*[Schedule omitted under the Reprints Act 1984 s. 7(4)(f).]*

### Notes

- <sup>1</sup> This is a compilation of the *Bulk Handling Act 1967* and includes the amendments made by the other written laws referred to in the following table<sup>1a, 8</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Bulk Handling Act 1967</i>	15 of 1967	20 Oct 1967	4 Jan 1968 (see s. 2 and <i>Gazette</i> 4 Jan 1968 p. 1)
<b>Reprint of the <i>Bulk Handling Act 1967</i> authorised 15 Jan 1970</b>			
<i>Bulk Handling Act Amendment Act 1971</i>	4 of 1971	13 Sep 1971	13 Sep 1971
<i>Bulk Handling Act Amendment Act 1972</i>	45 of 1972	24 Aug 1972	24 Aug 1972
<i>Metric Conversion (Grain and Seeds Marketing) Act 1973 Pt. I</i>	69 of 1973	6 Dec 1973	18 Jan 1974 (see s. 2 and <i>Gazette</i> 18 Jan 1974 p. 124)
<i>Bulk Handling Act Amendment Act 1974</i>	64 of 1974	9 Dec 1974	13 Dec 1974 (see s. 2 and <i>Gazette</i> 13 Dec 1974 p. 5320-1)
<i>Bulk Handling Act Amendment Act 1976</i>	29 of 1976	9 Jun 1976	9 Jun 1976
<i>Bulk Handling Act Amendment Act 1979</i>	13 of 1979	30 Aug 1979	30 Aug 1979
<b>Reprint of the <i>Bulk Handling Act 1967</i> approved 31 Mar 1980</b> (includes amendments listed above)			
<i>Bulk Handling Amendment Act 1981</i>	3 of 1981	18 May 1981	4 Dec 1981 (see s. 2 and <i>Gazette</i> 4 Dec 1981 p. 4972)
<i>Bulk Handling Amendment Act 1982</i>	58 of 1982	22 Sep 1982	22 Sep 1982
<i>Bulk Handling Amendment Act (No. 2) 1982</i>	115 of 1982	10 Dec 1982	31 Dec 1982 (see s. 2)
<i>Wheat Marketing Act 1984</i> s. 14(8)	98 of 1984	11 Dec 1984	25 Oct 1984 (see s. 2)
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3 <sup>9</sup>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Grain Marketing) Act 1987 s. 11</i>	112 of 1987	19 Dec 1987	22 Jan 1988 (see s. 2 and <i>Gazette</i> 22 Jan 1988 p. 109)
<i>Agricultural Legislation (Penalties) Amendment Act 1989 s. 3</i>	20 of 1989	1 Dec 1989	15 Dec 1989 (see s. 2 and <i>Gazette</i> 15 Dec 1989 p. 4513)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i> <sup>9</sup>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<b>Reprint of the <i>Bulk Handling Act 1967</i> as at 13 Sep 1993</b> (includes amendments listed above)			
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Skeleton Weed and Resistant Grain Insects (Eradication Funds) Amendment Act 1996 s. 13</i>	53 of 1996	31 Oct 1996	31 Oct 1996 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 19 and 76</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Bulk Handling Repeal Act 2000</i>	33 of 2000	6 Jul 2000	s. 7: 30 Oct 2000 (see s. 3(1)); balance repealed by No. 37 of 2006 s. 3(1))
<i>Bulk Handling Amendment Act 2002</i> <sup>5, 10</sup>	29 of 2002	25 Oct 2002	25 Oct 2002 (see s. 2)
<i>Grain Marketing Act 2002 s. 47</i>	30 of 2002	25 Oct 2002	31 Oct 2002 (see s. 2 and <i>Gazette</i> 30 Oct 2002 p. 5351)
<b>Reprint 4: The <i>Bulk Handling Act 1967</i> as at 5 Dec 2003</b> (includes amendments listed above) (correction in <i>Gazette</i> 23 Jan 2004 p. 306)			

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
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Short title	Number and year	Assent	Commencement
<i>Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007</i> s. 69 <sup>11</sup>	24 of 2007	12 Oct 2007	To be proclaimed (s. 2(2))

<sup>2</sup> The *Companies Act 1893* was repealed by the *Companies Act 1943*. The latter Act was repealed by the *Companies Act 1961* s. 4 except in relation to co-operative companies in respect of which it is now cited as the *Companies (Co-operative) Act 1943* (s. 382).

<sup>3</sup> Now 30 Delhi Street, West Perth.

<sup>4</sup> Now see *Insurance (Deposits) Act 1932* of the Commonwealth.

<sup>5</sup> The *Bulk Handling Amendment Act 2002* Sch. 1 reads as follows:

“

**Schedule 1 — Transitional and savings**

[s. 24]

**1. Interpretation**

In this Schedule —

**CBH** means Co-operative Bulk Handling Limited, a company registered under the *Companies (Co-operative) Act 1943*;

**commencement day** means the day on which this Act comes into operation.

**2. Tolls and debentures (s. 31 and 32)**

- (1) Debentures issued before the commencement day in accordance with section 31 or 32 of the *Bulk Handling Act 1967* continue on and after that day on the terms on which they were issued.
- (2) If, before the commencement day, a grower paid a foundation toll or a port equipment toll but as at that day had not been issued a debenture in satisfaction of the debt created by that payment —
  - (a) the debt created by the payment of the toll remains payable by CBH to the grower on the terms set out in subclause (3); and
  - (b) CBH need not issue a debenture in respect of that debt.
- (3) The terms of a debt referred to in subclause (2)(a) are that —
  - (a) no interest is payable in respect of the debt; and
  - (b) CBH —
    - (i) must repay the debt in full on or before 31 October in the year 10 years after the day on

- which the toll was entered in the relevant register; but
- (ii) may repay all or part of the debt at any time before then.

”.

<sup>6</sup> Repealed by the *Commercial Arbitration Act 1985* s. 3.

<sup>7</sup> Repealed by the *Wheat Marketing Act 1984* s. 31.

<sup>8</sup> Marginal notes containing sectional references to the *Bulk Handling Act 1935* have been omitted from this reprint.

<sup>9</sup> The *Acts Amendment (Financial Administration and Audit) Act 1985* s. 4 and the *Financial Administration Legislation Amendment Act 1993* s. 18 are transitional provisions that are of no further effect.

<sup>10</sup> The amendment in the *Grain Marketing Act 2002* Sch. 2 cl. 1(2) to s. 8 of this Act is not included because s. 8 was repealed by the *Bulk Handling Amendment Act 2002* s. 5.

<sup>11</sup> On the date as at which this compilation was prepared, the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* s. 69 had not come into operation. It reads as follows:

“

**69. Bulk Handling Act 1967 amended**

- (1) The amendments in this section are to the *Bulk Handling Act 1967*.
- (2) Section 34D is repealed and the following section is inserted —

“

**34D. Company authorised to pay certain statutory contributions**

- (1) The Company is authorised, without further authority than this section, to pay, in accordance with the provisions of —
- (a) the *Plant Pests and Diseases (Eradication Funds) Act 1974*; or
- (b) regulations made for the purposes of the *Biosecurity and Agriculture Management Act 2007* section 141,
- the amount of any contribution for which a person who has delivered any grain or seed to the Company appears to be liable under those provisions.
- (2) The amount of a contribution so paid —
- (a) is a debt due to the Company by the person in respect of whom it is paid; and

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- ”