



Express law *fast track information for clients*

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New system for regulating export of bulk wheat

The [Wheat Export Marketing Act 2008](#) (WEM Act) has established a new system for regulating the export of bulk wheat. Significantly, the 'single desk' arrangement, which generally required growers to sell their bulk wheat through one exporter, has been replaced. A person may now export bulk wheat if accredited under the [Wheat Export Accreditation Scheme 2008](#) (the Scheme), which is administered by Wheat Exports Australia (WEA). To be eligible for accreditation an exporter must satisfy the eligibility criteria set out in the Scheme, which include being a fit and proper company.

Also, there has been a deregulation of the arrangements applying to the export of non-bulk wheat—that is, the export of wheat in bags or containers. *The Non-bulk Wheat Quality Assurance Scheme 2007* (the Non-bulk Scheme), which related to the export of wheat in bags or containers, has come to an end. The new system does not apply to non-bulk wheat, which means that that trade is no longer regulated.

Old system

On 1 July 2008, the WEM Act and the Scheme made under it commenced operation. The WEM Act replaces the old system for regulating the export of wheat under the *Wheat Marketing Act 1989*.

Bulk export of wheat

Under the old system, a person could not export bulk wheat unless the Export Wheat Commission (EWC) had given its written consent. The EWC applied guidelines issued by it in deciding whether to give a consent. Further, the EWC could not give a consent without the written agreement of the Minister for Agriculture, Fisheries and Forestry. The Minister was required to have regard to the public interest in deciding whether to agree to the giving of a consent.

As holder of the single desk for bulk wheat exports, AWB (International) Ltd (AWBI) managed wheat in the 'national pool' and was entitled to export bulk wheat without obtaining the consent of the EWC.

Non-bulk export of wheat

Under the old system, a person who exported wheat in bags or containers—'non-bulk wheat'—committed an offence if they contravened a requirement imposed on them by the Non-bulk Scheme in relation to the export of the wheat. Administered by the EWC, the Non-bulk Scheme was directed towards ensuring that non-bulk wheat which had been exported

corresponded with the relevant contractual description of the wheat. The Non-bulk Scheme came to an end on 1 July 2008.

New system

Bulk export of wheat

Under the new system, generally a person must not export bulk wheat if the person is not an accredited wheat exporter. The new system does not apply to non-bulk wheat: that is, wheat exported in bags or containers which are capable of holding not more than 50 tonnes of wheat.

The Scheme

The Scheme provides for the accreditation of companies (defined to include co-operatives) as accredited wheat exporters. An accreditation is not transferable.

Under the transitional provisions relating to the new system, the prohibition on the export of bulk wheat by a non-accredited exporter does not apply to AWBI before 1 October 2008. Also, under the *Customs (Prohibited Exports) Regulations 1958*, the accreditation regime does not apply to the export of wheat by AWBI before 1 October 2008. Therefore, AWBI can continue exporting wheat from the 2007/2008 national pool until 30 September 2008 without being an accredited wheat exporter.

Eligibility for accreditation

To be eligible for accreditation, a company must satisfy the eligibility criteria set out in the Scheme. In particular, WEA must be satisfied that the company is a fit and proper company, having regard to matters relating to the company and/or an executive officer of the company including:

- the financial resources available to the company
- the company's risk management arrangements
- the company's business record
- the company's record in situations requiring trust and candour
- whether the company, or an executive officer, has committed or been involved in repeated contraventions, or a serious contravention, of a designated sanitary or phytosanitary measure
- whether the company, or an executive officer, has committed or been involved in a contravention of a United Nations sanctions provision
- whether the company, or an executive officer, has committed or been involved in a contravention of an Australian law or a foreign law, where the contravention relates to trade in barley, canola, lupins, oats or wheat

and such other matters (if any) as WEA considers relevant.

Conditions of accreditation

Under the Scheme, an accreditation is subject to various conditions. In particular, reporting conditions require an accredited company to give WEA

- an annual export report

- an annual compliance report, relating to its compliance with conditions of accreditation, Australian and foreign laws applicable to its trade in wheat, and the United Nations sanctions provisions
- a report about notifiable matters, being a report about an event or circumstance which is a ground on which WEA could cancel its accreditation, or likely to result in a conclusion that it is not a fit and proper company.

Administrative decisions under the Scheme

The Scheme provides that WEA can make various decisions, including suspension and cancellation of accreditation.

WEA's wider regulatory role under the WEM Act

Apart from administering the Scheme, WEA has other regulatory roles under the WEM Act, including information-gathering powers and the power to direct an external audit of an accredited company.

WEA must prepare and publish a report for growers each marketing year in relation to the operation of the Scheme during that year.

AGS's Peter Lahy, Susie Brown, Mark Molloy and Julia Ziolkowski provided advice on the development of the WEM Act and the Scheme.

For further information please contact:

Peter Lahy
Special Counsel
T 02 6253 7085 F 02 6253 7304
peter.lahy@ags.gov.au

Julia Ziolkowski
Counsel
T 02 6253 7416 F 02 6253 7304
julia.ziolkowski@ags.gov.au

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