

South Australia

Wheat Marketing Regulations 1998

under the *Wheat Marketing Act 1989*

Contents

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Promulgation of trust deed (section 9A of Act)

Schedule—Trust deed (as amended to 9 April 1998)

Legislative history

1—Short title

These regulations may be cited as the *Wheat Marketing Regulations 1998*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Interpretation

In these regulations—

Act means the *Wheat Marketing Act 1989*.

4—Promulgation of trust deed (section 9A of Act)

For the purposes of section 9A(3) of the Act, the trust deed (as amended to 9 April 1998) is set out in the Schedule.

Schedule—Trust deed (as amended to 9 April 1998)

TRUST DEED¹ made the fifth day of March 1991.

BETWEEN

THE MINISTER OF AGRICULTURE FOR THE STATE OF SOUTH AUSTRALIA ("the Minister") on the one part

AND

COLIN JOHN ROWE of "Ingle Downs", Culburra in the State of South Australia, **MALCOLM ANGAS SARGENT** of Crystal Brook in the said State, **KEN CHARLES SCHAEFER** of "Altbek" Buckleboo in the said State and **REUBEN JOHN VAN VELSEN** of Thorngate in the said State ("the Trustees") on the other part.

1. As amended by a trust deed made on 9 April 1998 between the Minister for Primary Industries, Natural Resources and Regional Development and the South Australian Farmers Federation Incorporated.

WHEREAS

- A. Wheat and barley growers in the State of South Australia formerly paid a voluntary levy for research purposes pursuant to section 28a of the Wheat Marketing Act 1980, section 10 of the Wheat Marketing Act 1989 and section 19b of the Barley Marketing Act 1947. The proceeds of these levies were paid to the Commonwealth of Australia pursuant to the provisions of the said legislative enactments.
- B. The said voluntary levies were rendered otiose by the system of Research and Development Corporations established under the Primary Industries and Energy Research and Development Act 1989 (Cwth).
- C. As a consequence of the redundancy of the said voluntary levy arrangements the Minister of Primary Industries and Energy for the Commonwealth of Australia paid to the credit of the Minister a sum of money being the balance of funds collected from South Australian wheat and barley growers under the said voluntary levy.

NOW THIS DEED WITNESSES as follows:

1. The Minister desires to settle the sum of four million and sixty six thousand, one hundred and twenty dollars and eighty five cents (\$4,066,120.85) upon the trust hereinafter expressed being the funds referred to in Recital C hereof.
2. The Trustees have agreed to become the Trustees hereof.
3. The Trustees shall hold all moneys paid to them upon the execution of this trust or at any future time by the Minister, the SAFF, grain growers and by any other person, corporation, government or government instrumentality UPON TRUST subject to the powers and provisions hereinafter expressed.

INTERPRETATION

4. In this deed the terms and words hereunder shall have the following meaning unless otherwise indicated by the context:

"**grain**" means any species of wheat, barley, triticale, maize, grain sorghum, soybeans, safflower seed, sunflower seed, linseed, oats, rye, rapeseed, rice, field peas, lupins, millet, canary seed, grain legumes, pulses, canola, oilseeds, and any product of the soil declared by both the Minister and the SAFF to be grain without limiting the generality of the foregoing.

"**group A Trustee**" means any and all of the said **COLIN JOHN ROWE**, the said **MALCOLM ANGAS SARGENT** and the said **KEN CHARLES SCHAEFER** and any subsequent trustee appointed pursuant to the provisions of clause 9(c) hereof.

"**group B Trustee**" means the said **REUBEN JOHN VAN VELSEN** and any subsequent trustee appointed pursuant to the provisions of clause 9(d) hereof.

"**SAFF**" which means the South Australian Farmers Federation Incorporated and includes any committee thereof to which the SAFF may delegate its powers to under this Deed.

APPLICATION OF FUND

5. The Trustees shall apply all moneys for the time being held by them and the income thereof (hereinafter referred to as "**the Fund**") generally for the benefit and advancement of the grain industry in South Australia for any one or more of the following purposes:
- (a) For research and development into the growing, harvesting, storage, processing and marketing of grain and generally into all aspects of the grain industry in South Australia;
 - (b) For the dissemination of technical information to the grain industry;
 - (c) For payment of all costs and expenses of and incidental to the management of the Fund.

PROVIDED THAT the Trustees shall not make any payment from the Fund pursuant to this Clause without having first obtained the written authorisation of the SAFF.

6. The Trustees shall invest all moneys forming part of the Fund for the time being in the hands of the Trustees and not required for immediate use or application in the name of the Trustees in any bank account or in any investment for the time being authorised by the Trustee Act 1936.
7. The Trustees shall establish a bank account entitled the SA Grain Industry Trust Fund with a recognised bank in the State of South Australia and at such branch as the Trustees shall from time to time determine. Any two of the Trustees may sign cheques and anyone of them may endorse cheques on behalf of the Fund.

NAME OF FUND

8. The Fund shall be known as the "South Australian Grain Industry Trust Fund".

ADMINISTRATION VESTED IN TRUSTEES

9. The administration of the Fund shall be vested in the Trustees who shall be subject to the following rules:
- (a) The number of Trustees shall be not more than four nor less than two;

- (b) The office of trustee shall be and be deemed to be vacated on the happening of any one of the following events:
- If he or she shall:
- (i) Die; or
 - (ii) Resign from the office by notice in writing delivered to the other Trustees or any one of them; or
 - (iii) Become bankrupt or enter into a Deed of Assignment of Scheme of Arrangement for the benefit of or compound with his or her creditors; or
 - (iv) Become mentally or physically unfit to perform the office of trustee.
- (c) The SAFF may in writing appoint a new Group A Trustee to take the place of any Group A Trustee whose office shall be vacated or who is removed from office and such appointment may be made in anticipation of the vacation of the office of an outgoing Trustee.
- (d) The Minister may in writing appoint a new Group B Trustee to take the place of a Group B Trustee whose office shall be vacated or who is removed from office and such appointment may be made in anticipation of the vacation of the office of an outgoing Trustee.
- (e) The continuing or surviving Trustees may act notwithstanding any vacancy for the time being in the body but so that if the number falls below two the continuing or surviving Trustee shall not act except for the purpose of the collection of income.
- (f) The Trustees may meet together for the dispatch of business adjourn and otherwise regulate their meetings and proceedings as they think fit. Two Trustees shall constitute a quorum for the transaction of business. A meeting of trustees at which a quorum is present may exercise all or any of the authorities, powers and discretions vested in the Trustees.
- (g) The Trustees in the exercise of the authorities, powers and discretions hereby vested in them may refrain from exercising all or any of such authorities powers and discretions from time to time or at all.
- (h) Any Trustee may convene a meeting of trustees.
- (i) The Trustees shall keep proper minutes of all their resolutions and proceedings and proper records of and in connection with the Fund.
- (j) No Trustee shall be answerable for the acts or defaults of his co-trustees or for any act done for or in conformity with an effective or binding decision of the Trustees.
- (k) The Trustees shall not nor shall any of them as Trustees or Trustee of the Fund or in respect of the execution of purported or attempted execution or failure or neglect to exercise or carry out the trustee's duties authorities or discretions hereunder incur any personal liability or be liable for anything whatever except a breach of trust knowingly and intentionally committed by them or him.

- (l) Except for or in respect of a breach of trust knowingly and wilfully committed by him or them, the Trustees shall be indemnified out of and to the extent of the Fund held by them against all liabilities incurred by them hereunder or in the execution or attempted or purported execution or failure or neglect to execute the trusts duties authorities powers or discretions hereunder or any of them and shall have a lien on and may use the Fund for any indemnity and generally for the payment of all proper legal and other costs and expenses of administering or winding up the Fund and otherwise performing their duties under this Trust Deed.

BOOKS OF ACCOUNT

10. The Trustees shall keep proper books of account and will from time to time whenever requested by either the Minister or the SAFF so to do supply to both the Minister and the SAFF full and complete information as to the amount of the Fund and the state of investments thereof and of the allocation of any part of the Fund and will once in every year at such time as is fixed by the Minister and the SAFF deliver to the Minister and the SAFF a statement of their receipts and expenditure on account of capital and income during the twelve months ending on some day fixed for the purpose by the Minister and the SAFF. All books of account and other records of the Trustees and all securities shall be submitted as required for audit by an auditor nominated by the Minister and the SAFF who shall report thereon to the Minister and the SAFF at least once a year. In default of agreement between the Minister and the SAFF as to the appointment of an auditor, the President of the South Australian division of the Institute of Chartered Accountants shall have power to nominate an auditor.
11. In addition to the powers that may by law be granted the Trustees shall have the following powers;
 - (a) To insure or reinsure any risks, contingencies or liabilities of the Fund;
 - (b) To retain the services of professional advisers, whether natural persons, firms or companies, in relation to the management administration or investment of the Fund to delegate to such professional advisers such powers other than those contained in Clauses 5 and 6 hereof, as they shall see fit from time to time and to determine the fees payable to such professional advisers;
 - (c) To commence carry on or defend proceedings relating to the Fund;
 - (d) To indemnify or undertake to indemnify any person corporation government or institution in respect of claims, matters or things relating to the Fund;
 - (e) Delegate to any person or persons such powers other than those contained in Clauses 5 and 6 hereof, as the Trustees shall think fit from time to time;
 - (f) To arrange or borrow money either bearing or free of interest and to secure the repayment of moneys so borrowed and any interest thereon by mortgage or charge over all or any of the assets of the Fund with or without giving any other form of security or acknowledgment and apply such money for any of the purposes for which either the income or capital of the Fund is for the time being applicable hereunder and no lender shall be concerned to inquire as to whether the necessity for such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed;

- (g) Generally do all acts and things as the Trustees may consider necessary or expedient for the administration, maintenance and preservation of the Fund in the performance of their obligations under this Deed.

VALIDITY OF DEALINGS

12. No person dealing with the Trustees shall be concerned to inquire as to the adequacy of the powers of the Trustees in relation to such dealing or as to the proper exercise by the Trustees of any of the powers or authorities and discretions vested in the Trustees by the provisions of this Deed or to the propriety or regularity of any transaction affecting the Fund or any of the assets thereof or to see to the application of any moneys paid to the Trustees or to any person or corporation at the Trustees' discretion and in the absence of fraud on the part of any such person dealing with the Trustees such dealing shall be deemed so far as the safety and protection of such person is concerned to be within the powers of the Trustees and to be valid and effectual accordingly and the receipt of the Trustees or the receipt of any person or corporation paid as aforesaid at the direction of the Trustees shall effectually discharge any such person dealing with the Trustees from all liability in respect thereof.

APPLICATION OF LAWS

13. Except as herein otherwise expressly provided the provisions of the Trustee Act 1936 (as amended) or any other Act relating to trustees for the time being in force in South Australia shall apply to the trusts hereof.

VARIATION OF TRUSTS

14. The Minister and the SAFF acting jointly may at any time by Deed but not otherwise alter all or any of the provisions of this Trust and make new provisions to the exclusion of or in addition to all or any of the provisions herein contained and such provisions shall be subject in the manner to alteration or modification provided always that the Trust shall remain a charitable trust for the benefit of primary production and primary producers.

WINDING UP OF FUND

15. The Fund shall be wound up upon both the Minister and the SAFF executing a Deed so resolving. Upon the winding up of the Fund should there remain after the satisfaction of all debts and liabilities any property whatsoever the same shall be given and transferred to the SAFF for the purposes of and for the benefit of the grain industry of South Australia and the SAFF shall have an absolute discretion as to the disposal of such property for such purposes aforesaid.

IN WITNESS whereof the parties hereto have hereunto set their hands the day and year hereinafter mentioned.

THE COMMON SEAL of the MINISTER OF AGRICULTURE was hereunto affixed with the authority of the MINISTER in the presence of:

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SIGNED SEALED AND DELIVERED by the said COLIN JOHN ROWE in the presence of:

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SIGNED SEALED AND DELIVERED by the said MALCOLM ANGAS SARGENT in the presence of:

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SIGNED SEALED AND DELIVERED by the said KEN CHARLES SCHAEFER in the presence of:

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SIGNED SEALED AND DELIVERED by the said REUBEN JOHN VAN VELSEN in the presence of:

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Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Revocation of regulations

The *Wheat Marketing Regulations 1998* were revoked by r 3 of the *Wheat Marketing (Revocation) Regulations 2013* on 8.8.2013.

Principal regulations

Year	No	Reference	Commencement
1998	45	<i>Gazette 21.5.1998 p2221</i>	21.5.1998: r 2