

# Chapter 1

## Conduct of inquiry

1.1 On 19 June 2014, the Senate referred the following matter to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 3 December 2014:

Grain export networks, including the on- and off-farm storage, transport, handling and export of Australian grain, with particular reference to:

- (a) the principles and practices underpinning an efficient grain supply chain from farm-gate to port;
- (b) grain marketing and export arrangements and their impact on farm-gate returns;
- (c) competition constraints on grain transport, storage and handling services;
- (d) the extent to which transport, storage and handling arrangements are transparent and accountable; and
- (e) any other related matter.

1.2 On 2 October 2014, the Senate granted an extension of time for reporting to 4 June 2015.<sup>1</sup>

1.3 The inquiry was advertised in *The Australian* and on the committee's website. The committee also wrote to key stakeholder groups, relevant government departments, organisations and individuals to invite submissions. The committee received 19 submissions which are listed at Appendix 1 and are also published on the committee's website.

1.4 The committee held a public hearing in Canberra on 5 February 2015. The committee took evidence from a number of industry bodies, the Australian Competition and Consumer Commission (ACCC) and agricultural businesses. A list of witnesses who appeared at the hearings is at Appendix 2.

## Acknowledgements

1.5 The committee acknowledges the individuals and organisations that made contributions to the inquiry through submissions and appearing as witnesses to the inquiry. The committee is particularly grateful to those witnesses who provided prompt responses to questions taken on notice.

## Note on references

1.6 References in this report are to individual submissions as received by the committee. The *Hansard* transcript of the committee's hearing is available on the Parliament's website at [www.aph.gov.au](http://www.aph.gov.au). References to the *Hansard* throughout the

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1 *Journals of the Senate*, 2014, p. 1583.

report are to the official transcript. Page numbers may vary between the proof and the official transcript.

### **Previous consideration by Senate committees**

1.7 In this and the previous Parliament, the Rural and Regional Affairs and Transport Legislation and References Committees have conducted a number of relevant inquiries. The most recent among these are:

- the legislation committee inquiry into the Wheat Export Marketing Amendment Bill 2012 [Provisions], tabled in June 2012;
- the references committee inquiry into the operational issues in export grain networks, tabled April 2012;
- the references committee inquiry into the Foreign Investment Review Board national interest test, tabled on 26 June 2013; and
- the references inquiry into the ownership arrangements of grain handling in Australia, interim report tabled in August 2013 and a final report was tabled in December 2013.<sup>2</sup>

1.8 The committee is pleased that its work in this area has brought evidence to the attention of the Senate and relevant Ministers. This inquiry continues in that tradition.

### **Mandatory Port Access Code of Conduct for Grain Exports**

1.9 A key issue for the committee and one identified by many submitters to this inquiry was the Mandatory Port Access Code of Conduct for Grain Exports (the Code). This Code was a particular focus of the committee during the February public hearing.

#### ***Background***

1.10 On 19 September 2014 the Minister for Agriculture, the Hon. Barnaby Joyce MP, released the Code, contained in the Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat) Regulation 2014.<sup>3</sup> The Regulation has a sunset date of 1 October 2024. The Regulation was tabled in the Senate on 24 September 2014 and a notice of motion to disallow the clauses dealing with exemptions for cooperatives was given on 24 November 2014.<sup>4</sup> A motion was moved on 11 February 2015 that subclauses 5(1), 5(4) and 5(5) of the Regulation be disallowed. The Senate postponed consideration of the disallowance motion on

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2 These reports are available from the committee's website: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Rural\\_and\\_Regional\\_Affairs\\_and\\_Transport/Completed\\_inquiries](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Completed_inquiries) (accessed 22 May 2015).

3 Legislative authority for the Regulation: sections 51AE and 139G of the *Competition and Consumer Act 2010* (Cth) and section 12(1) of the *Wheat Export Marketing Act 2008*.

4 Subclauses 5(1), 5(4) and 5(5) of the Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat) Regulation 2014.

10 February 2015 until 4 March 2015.<sup>5</sup> The Senate debated the motion on 4 March 2015 and the subclauses were not disallowed.<sup>6</sup>

1.11 The committee's hearing in February, with its particular focus on the Code, elicited important evidence that informed the Senate's consideration of the subsequent disallowance motion for the Code.<sup>7</sup>

### ***The effect of the Code***

1.12 The Code is intended to ensure that exporters of bulk wheat have fair and transparent access to port terminal services (and to trigger the automatic repeal of the *Wheat Export Marketing Act 2008*).<sup>8</sup> The three objectives of the Code are:

- to promote the operation of an efficient and profitable bulk wheat export industry;
- to provide a regulatory framework to ensure all bulk wheat exporters have port terminal access; and
- to reduce unnecessary regulatory burden on port terminal service providers.<sup>9</sup>

1.13 The Code removed the requirement for vertically integrated port terminal operators or wheat marketers to hold access undertakings with the ACCC. Approximately ten port terminal service providers are likely to be impacted by the Code, and it is estimated that each provider will save approximately \$260,000 a year in regulatory costs (compared to costs incurred under the *Wheat Export Marketing Act 2008*).<sup>10</sup> The Code came into force on 1 October 2014.

### ***Support for the Code***

1.14 The majority of submitters to the inquiry support the Code and the gradual move towards reduced regulation.

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5 See, for example, *Senate Hansard*, 4 March 2015, p. 1216. Subordinate legislation may not be amended by the Senate but can be disallowed. As the disallowance motion was negated, the full regulation remains in force. For more information regarding the disallowance process, see the *Brief Guide to Senate Procedure No. 19 - Disallowance*, available online: [http://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Brief\\_Guides\\_to\\_Senate\\_Procedure/No\\_19](http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Brief_Guides_to_Senate_Procedure/No_19) (accessed 28 May 2015).

6 Senate Standing Committee on Regulations and Ordinances, *Disallowance Alert 2014*, available online: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Alerts/alert2014](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Alerts/alert2014) (accessed 28 May 2015).

7 See, for example, *Senate Hansard*, 4 March 2015, pp 1209-1216.

8 Explanatory Statement, Select Legislative Instrument No. 136, 2014, Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014, p. 1.

9 Explanatory Statement, Select Legislative Instrument No. 136, 2014, Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014, p. 1.

10 Explanatory Statement, Select Legislative Instrument No. 136, 2014, Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014, p. 2.

1.15 Glencore Grain and Viterra observed that decreased regulation would enable the market to operate more efficiently and increase the competitiveness of the industry.<sup>11</sup>

1.16 The New South Wales (NSW) Farmers Federation submitted that the Code would ensure 'contestability in the export supply chain', explaining to the committee that:

NSW Farmers has joined with other farming organisations to develop a combined position supporting the development of the code and proposing the principles upon which the code should be based. This submission is available from the Department of Agriculture's website.

The importance of such a code to farmers can be seen in the fact that for every dollar added to the price of wheat in the export market as a result of competition that is underpinned by an open access regime, \$43 million dollars of benefit is created for Australia's grain farmers.<sup>12</sup>

1.17 The Victorian Farmers' Federation (VFF) supported the Code, noting that the grain bulk handling market in Australia is 'dominated by three bulk handlers' and that in Western Australia (WA) and South Australia (SA) there are monopolies.<sup>13</sup> The VFF's submission cited the following data from the Australian Export Grains Innovation Centre:

- In Western Australia, 90-95 percent of grain is handled by Cooperative Bulk Handling (CBH). CBH controls 100 percent of the port throughput, and 48 percent of WA bulk exports.
- In South Australia, 80 percent of grain is handled by Glencore-Viterra, which similarly controls 100 percent of the port throughput and 46 percent of SA exports.
- Although there is more competition on the east coast, GrainCorp handles 75 percent of the region's grain, and operates seven of nine bulk grain ports (estimated to be 80-90 percent of port throughput). Emerald and Cargill also own significant receival networks in the eastern states.<sup>14</sup>

1.18 This evidence illustrates the important role that the Code will perform in promoting fairness and competition in the industry.

1.19 Mr Rod Sims, Chairman of the ACCC, explained that 'some level of regulation is needed to make markets work'.<sup>15</sup> Mr Sims described the purpose behind Code as:

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11 Glencore Grain and Viterra, *Submission 15*, p. 8.

12 New South Wales Farmers' Federation, *Submission 16*, p. 13.

13 Victorian Farmers' Federation, *Submission 13*, p. 5.

14 Victorian Farmers' Federation, *Submission 13*, p. 6.

15 Mr Rod Sims, Chairman of the Australian Competition and Consumer Commission, *Committee Hansard*, 5 February 2015, p. 1.

The whole point of the wheat code is to allow the competitors who will buy the grain off the farmers to actually get their wheat out to the export markets, because they will have access to the ports. It is all about giving access to the ports; if you do not have access to the ports, you may find that you have only got one buyer of the wheat. Just as we regulate poles and wires, like we regulate access to Telstra's copper wire, we argue that it is important that there is regulation of wheat ports where there are monopolies. If there are not monopolies, that is fine and they do not need regulation.<sup>16</sup>

1.20 Despite the general support for the Code, some concerns were raised about the Minister's power to exempt cooperatives who are port terminal service providers from certain elements of the Code.

### ***Concerns about cooperative exemptions as they apply to CBH in Western Australia***

1.21 The Code allows the Minister for Agriculture to exempt cooperatives from port access provisions that would apply to other port operators. On 17 November 2014 the Minister made a determination to exempt all four of CBH's ports in Western Australia.<sup>17</sup> CBH Holdings is a cooperative that exists for its members, yet it also has monopoly power over grain ports in Western Australia. Some submitters considered that this exemption was inappropriate because of CBH's monopoly position.

1.22 Mr John Snooke, Pastoralists and Graziers Association of Western Australia, outlined his organisation's key concern with exempting CBH:

Exempting CBH from certain aspects of the code is essentially giving them a licence to do as they wish. It is rewarding CBH for being a cooperative rather than a corporate—because the minister favours cooperatives. That means the bad behaviour that CBH has done, which has been identified and which the ACCC has tried to rectify, will continue. If previous history is any example, it will continue. If you give CBH a little bit of slack, it will take it. That is our concern. We have put CBH up on a pedestal. It is not back in the pack with the other bulk handlers where it should be.<sup>18</sup>

1.23 However, CBH and others argued that the cooperative nature of the organisation fundamentally distinguished it from companies on the east coast, such as GrainCorp. During the hearing Dr Andrew Crane, CEO, CBH, explained:

More than anything I believe very strongly that the committee, in considering the merits of the exemption of cooperative businesses and the disallowance motion, should remain really cognisant of just why the cooperative exemption was included in the first place...The cooperative and

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16 Mr Rod Sims, Chairman of the Australian Competition and Consumer Commission, *Committee Hansard*, 5 February 2015, p. 1.

17 Senator the Hon Michaelia Cash, *Senate Hansard*, 4 March 2015, p. 1212. See also, clause 5(1) of the Select Legislative Instrument No. 136, 2014, Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014.

18 Mr John Douglas Snooke, Chairman, Grain Growers Committee, Pastoralists and Graziers Association of Western Australia, *Committee Hansard*, 5 February 2015, p. 23.

mutual business model is fundamentally different to a corporate model. Unlike Australian publicly listed companies, those assorted foreign owned and controlled multinationals and even privately owned traders, CBH as a cooperative exists solely to create and return value to growers. We only have one beneficiary. We are not trying to make money out of one group to provide value to external shareholders. We do not exist to make that profit and return dividends to those faraway shareholders.<sup>19</sup>

1.24 The CBH Group rejected the characterisation made by some witnesses that it had acted in an anti-competitive manner as described by the Pastoralists and Graziers Association of Western Australia.<sup>20</sup> Indeed, the committee received evidence from other witnesses that CBH had not limited competitor access to its ports. For example, Mr Christopher Aucote, General Manager, Bunge Enterprises, told the committee that CBH had not prevented reasonable access.<sup>21</sup>

1.25 The ACCC declined to be drawn on whether the exemption for CBH was appropriate, observing that this was a policy question as to whether WA grain growers, most of whom are members of CBH, are best served by the cooperative or whether they would get a better price for their wheat if there was competition.<sup>22</sup>

1.26 The committee received mixed evidence about whether CBH was acting in an anti-competitive manner, and, for this reason, should not receive an exemption and instead should be treated like a corporation for the purposes of the Code. On balance, it seems to the committee that the vast majority of grain growers in Western Australia are satisfied that CBH is acting fairly in relation to port access. Mr Kim Simpson, Western Australian Farmers' Federation, explained to the committee that on the whole grain growers were satisfied with the access provided by CBH:

I have spoken to quite a few traders myself, and, by and large, they are happy with the way the system works. You will never get 100 per cent. We all know that you will never get 100 per cent of anything. There will always be some disaffected parties.<sup>23</sup>

### ***Committee view***

1.27 Since 2008, bulk wheat port access issues have been governed by the *Wheat Export Marketing Act 2008* (Cth). Under the Act port terminal operators with a wheat

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19 Dr Andrew Crane, Chief Executive Officer, CBH Group, *Committee Hansard*, 5 February 2015, p. 27.

20 Dr Andrew Crane, Chief Executive Officer, CBH Group, *Committee Hansard*, 5 February 2015, pp 36-37.

21 Mr Christopher Aucote, General Manger, Bunge Agribusiness Australia Pty Ltd, *Committee Hansard*, 5 February 2015, p. 42. Bunge Agribusiness noted it did not always have the access it needed due to the high demand at peak times, but this was not due to anti-competitive behaviour.

22 Mr Rod Sims, Chairman, Australian Competition and Consumer Commission, *Committee Hansard*, 5 February 2015, p. 2.

23 Mr Kimberly James Simpson, President, Western Australia Farmers' Federation, *Committee Hansard*, 5 February 2015, p. 15.

exporting business were required to develop, and receive approval for, an access undertaking with the ACCC. The Code replaces the Act, and is the next step in deregulation. As a result of the Code, port terminal operators no longer need to make arrangements with the ACCC but instead must comply with the Code. The Code expands jurisdiction and covers all terminal operators, not just wheat. The Code is designed to reduce the administrative burden on port terminal operators while working with existing competition law to ensure third party access to port infrastructure. For these reasons, it is not surprising that the majority of submitters and witnesses support the Code.

1.28 However, some submitters and witnesses questioned the power given by the Code to the Minister to exempt cooperatives from some clauses. The committee has given careful attention to these concerns. The committee is persuaded of the unique nature of cooperatives: CBH exists for the benefit of its members, and its members are the majority of grain growers in WA. In this respect CBH fundamentally differs from for-profit businesses on the east coast such as GrainCorp. In any event, CBH is still subject to many aspects of the Code, and must comply with Australian laws, including competition laws regulated by the ACCC.

1.29 Important protections are also contained within the Code. The CBH exemption can be revoked by the relevant Minister in two cases: if the circumstances for granting the exemption no longer apply or if the Minister is satisfied that the continuation of the exemption is not in the interests of relevant grain producers.<sup>24</sup> Grain producers, either individually or as a group, may also write to the Minister if they are concerned about the impact of an exemption.<sup>25</sup> As of 4 March 2015, no grain producers had written to the Minister about any such concerns.<sup>26</sup>

1.30 During debate on the disallowance motion, Senator Cameron indicated that he did not agree with the removal of the 5 year sunset clause or the amendment to give the minister the power to exempt monopoly cooperatives, but 'would not stand in the way of [the government's] right to be proven wrong'.<sup>27</sup>

### **Other matters**

1.31 The committee received evidence on a range of other issues relating to the terms of reference. These include:

- Supply chain inefficiencies, storage costs, and transport costs were the focus of many submissions, and particular attention was given to the high cost and

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24 Subclause 5(5), Select Legislative Instrument No. 136, 2014, Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014.

25 Subclause 5(4), Select Legislative Instrument No. 136, 2014, Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014.

26 Senator the Hon Michaelia Cash, *Senate Hansard*, 4 March 2015, p. 1212.

27 Senator the Hon Doug Cameron, *Senate Hansard*, 4 March 2015, p. 1211.

inefficiencies of rail transport.<sup>28</sup> WA grain growers reported additional challenges in transporting their grain, especially as 80-90 per cent of stock is exported.<sup>29</sup> CBH is seeking to take management of the rail network from the current private operator, to ensure that tier 3 tracks receive appropriate remedial work and maintenance.<sup>30</sup>

- Grain suppliers are not always able to access the storage they want, when they need it.<sup>31</sup> Demand for storage peaks in December through to July when Australian grain exporters are able to obtain the highest price per tonne, as less grain is available in the Northern Hemisphere.<sup>32</sup>
- The financial hardship experienced by farmers when some smaller grain traders do not pay on time, or at all.<sup>33</sup>
- CropLife Australia called for legislative reform in SA to ensure that genetically modified grain and seed can travel freely through that state.<sup>34</sup>
- The importance of an efficient and transparent grain network to the livestock sector, one the largest domestic purchasers of grain.<sup>35</sup>
- Calls for transparency and accountability in relation to transport costs.<sup>36</sup>
- Difficulties encountered by employers who need to hire labour during peak periods.<sup>37</sup>

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28 See for example, Glencore Grain and Viterro, *Submission 15*, p. 5; Grain Growers Ltd, *Submission 6*; Victorian Farmers' Federation (Grains Group), *Submission 13*, p. 4, GrainCorp, *Submission 9*, p. 1.

29 Western Australian Farmers' Federation, *Submission 13*.

30 Dr Andrew Crane, Chief Executive Officer, CBH Group, *Committee Hansard*, 5 February 2015, p. 38; Mr Kimberly James Simpson, President, Western Australia Farmers' Federation, *Committee Hansard*, 5 February 2015, pp 14-15, and Dr Andrew Crane, Chief Executive Officer, CBH Group, *Committee Hansard*, 5 February 2015, p. 34. See also, CBH Group, *Submission 10*, pp 14-15.

31 For example, Bunge Agribusiness has built a small facility in Bunbury, WA, to ensure security through the supply chain: Mr Christopher Aucote, General Manger, Bunge Agribusiness Australia Pty Ltd, *Committee Hansard*, 5 February 2015, p. 44. New ports have also opened up in Brisbane, Newcastle and Melbourne: CBH Group, *Submission 10*, p. 11.

32 Mr Christopher Aucote, General Manger, Bunge Agribusiness Australia Pty Ltd, *Committee Hansard*, 5 February 2015, p. 41.

33 See, for example, Mr Wayne Hayward; *Submission 3*; Mr Malcolm Wythes, *Submission 5*, Mr Duncan and Ms Anna Giles, *Submission 7*, and Mrs Trudy Ryan, *Submission 8*. Submitters suggested that a failure to address this activity would mean that some farmers would stop selling to smaller traders, resulting in a decrease of competition in the market and called for a range of reforms, including shorter payment terms and business credit insurance.

34 CropLife Australia, *Submission 4*, p. 1.

35 Intensive Livestock Sector, *Submission 1*; Australian Lot Feeders' Association, *Submission 2*.

36 Grain Growers Ltd, *Submission 6*, p. 10.



- The benefits experienced generally by WA farmers since the deregulation of the wheat industry in 2008.<sup>38</sup>

## **Conclusion**

1.32 As the grain industry continues to undergo deregulation, a number of legacy issues remain. Transport of grain from farms to port continues to be an area of concern, along with storage at the port and transparency of pricing, and the other issues discussed in this report. The committee notes the divergent views on how to best address these issues and will continue to monitor the effectiveness of the current regulation and oversight provided by both Commonwealth and State governments.

1.33 As part of the general move to deregulation, the Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat) Regulation 2014 has come into force. The committee notes the general support for this transition and for deregulation more generally. The committee has paid particular attention to the ministerial exemption for cooperatives. For the reasons outlined earlier, the committee is satisfied that appropriate protections are in place to ensure adequate competition in the grain market in WA.

1.34 The Code has been in force for less than a year, and it is appropriate to give the new regime time to play out. While the committee is optimistic about the ability of the Code to reduce red-tape and improve competition in the grain market, it is too early to reach any definitive conclusion on the impact of the Code on the industry. The committee will continue to monitor this, as well as the ongoing concerns of Australian grain growers, especially those that relate to railways, port access and potential anti-competitive behaviour within the industry. These and other unresolved matters raised in this inquiry may be the subject of future committee scrutiny.

**Senator Glenn Sterle**  
**Chair**

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37 Grain Trade Australia, *Submission 11*, p. 7.

38 Pastoralists and Graziers Association of WA, *Submission 12*, and Western Australian Farmers Federation, *Submission 13*.

