

Senate Rural and Regional Affairs and Transport Legislation Committee

Questions on Notice – Monday, 14 May 2012 CANBERRA

Inquiry into the Wheat Export Marketing Amendment Bill 2012

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**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

Inquiry into the Wheat Export Marketing Amendment Bill 2012

Public Hearing Monday, 14 May 2012

Questions Taken on Notice – CBH Group

1. HANSARD, PG 13

Senator HEFFERNAN: We are having difficulty hearing you properly. You say you are going to look after everyone, that you have got the capacity to do it. Do you think your board understands the tax withholding arrangement you would have with offshore profit centres, where the profit goes, what transfer pricing you put on, all that stuff? If you do not understand the tax arrangements, do you think your board does? ...

Mr Crane: If you are talking about transfer pricing, there is a very clear commercial arms-length relationship between our trading business and our—I can assure you that that is a strong and robust relationship and there is no influence over the price.

Senator HEFFERNAN: Unfortunately that was not my question. You say you are going to be self-protecting the industry and interest of growers. Do you think even your board understands your tax arrangements and if you are participating in offshore profit centres with withholding tax? ...

Mr Crane: I was not prepared today for answering questions on withholding tax for our offshore investments. I am happy for us to provide you with more detailed answers about that. ...

Senator BACK: Very quickly, before I go to GrainCorp with one question, for the record, you will take on notice the questions that Senator Heffernan asked you about transfer pricing and you will come back to the committee with a response on that. ...

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Senator BACK: Very quickly, before I go to GrainCorp with one question, for the record, you will take on notice the questions that Senator Heffernan asked you about transfer pricing and you will come back to the committee with a response on that. ...

Answer:

The CBH Board has provided clear guidance for CBH to comply with the required transfer pricing rules of the various countries that CBH may operate in.

CBH conducts business at arms length from the overseas entities that it has jointly invested in. Australia like Indonesia has transfer pricing rules which require arms length dealings with the relevant taxation authority having the ability to adjust non arms length transactions. All grain sale proceeds for CBH Grain Pty Ltd (the CBH Group's marketing and trading division) are ultimately taxed in Australia.

Ultimately, profit from CBH's subsidiaries and investments comes back to CBH in Western Australia where it is used to provide services of value to Western Australian growers. The exception is where it is re-invested to grow the business of the subsidiary or investment. This was the case in the years immediately following CBH's investment in Asian Flour Mills. However, in the financial year ended 30 September 2011, the Asian Mills investment made a record US\$12 million cash contribution to the overall CBH Group performance, offsetting operating losses from a small harvest and difficult trading conditions.

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Questions Taken on Notice – Productivity Commission

1. HANSARD, PG 45

Senator HEFFERNAN: Righto. That keeps it simple. Thank you very much for that. Alright, then, did you give consideration, in giving advice to the government, to the advantages and disadvantages it is going to have for the various foreign, offshore tax alleviations? You are the competition policy person. Are you aware of the advantage that a foreign trader, as opposed to a domestic trader, can have with tax?

Ms Macrae: No.

Senator HEFFERNAN: I have got to say your stuff is completely flawed. If you have not given consideration to that stuff it is completely flawed and it is just bureaucratic blubber.

CHAIR: Senator Heffernan, that is an opinion. You have asked the question and you have got the answer. You did not like it so I do not know what more you are trying to prove.

Senator HEFFERNAN: So, having said no to that, are you prepared to go back and revisit the proposition of the tax position of some of these companies in the market? We have already got a situation where we can have regional monopolies from global cartel type companies and now we have got, in trying to come to a competitive, level playing field, half the people that can have a serious tax advantage versus half that cannot. Would you be prepared to go back and revisit that? Could you provide to us on notice the advice that you provided to the government that made you arrive at the decision that you should scrub the accreditation scheme et cetera? Do you understand how many—

CHAIR: There are two questions there, Senator. Let Ms MacRae answer the first part and the second part.

Ms MacRae: We are not in a position to reopen the terms of reference once it is closed.

Senator HEFFERNAN: Righto. Can you provide the advice you provided to government?

Ms MacRae: Sorry, in relation to what specifically?

Senator HEFFERNAN: Your decision to recommend the accreditation of this scheme be abolished, that wheat exports be wound up and that the wheat exports charge be abolished.

Ms MacRae: We provided our final report, so—

Senator HEFFERNAN: No, the advice.

Ms MacRae: We did not provide anything additional; that is what I say. Once we have provided our inquiry report we do not provide additional information other than briefings on what the report said. We did not provide any additional facts or information beyond what was in our final report.

2. HANSARD, PG 46

Senator NASH: Thanks, Ms MacRae. Earlier, and I do not think it was in your opening statement, you were talking about the remit and what you had been asked to do not as to the single desk but as to the deregulated market and how it could work more efficiently. Am I correct?

Ms MacRae: Yes. I am paraphrasing, but yes.

Senator NASH: That is fine. When you say 'work more efficiently', work more efficiently for whom and what was the measure of the efficiency?

Ms MacRae: It was really looking at—and I think I did say this in my opening comments—how we could have a successful wheat export market in Australia. So that was as broad as the terms were, and I am just trying to refresh my memory on specifically what the terms of reference said.

Senator NASH: No, that is okay. I do not necessarily need the terms of reference. I am asking in the context of 'efficiently' and a successful wheat export market—and that is all a fine goal to have. But when there are competing interests within the sector how did you determine what was 'efficient' and what was 'success'? What might be efficient for one part of the sector might be inefficient for another; what might be a success for one part of the sector might be not a success for another. So how did you define it?

Ms MacRae: It comes back to the prime aim we have in all our inquiries, that we are looking at it from a public or national interest perspective. So we are looking to have the most successful or the most productive wheat market that we can have in Australia and we were particularly looking at the export wheat market and what that would mean in terms of the productivity of the Australian economy in the broad.

Senator NASH: I am mindful of the time. To me that is still just words. Would you mind just taking on notice to give us perhaps a more detailed response to that. In terms of productivity, are you talking grain volumes, are you talking dollars, are you talking about individual success of growers, are you talking about the bulk handlers? Could you just take that on notice, because I think it is really important that we drill down into more than just a phrase and try and understand what you meant. What I am trying to get at is, as I said earlier, that success or efficiency for one part of the sector might affect the other negatively. So, overall, when you talk about 'the national interest', could you give us a definition of what the national interest was in this case? If you could take that on notice, that would be great.

I have just one quick question more: I do not know if you have read the Grain Producers Australia submission?

3. HANSARD, PG 47

Ms MacRae: No, sorry. There were alternative prices being offered where there would not have been previously under the single desk. So there were more revealed prices. I am not putting this very well. Andrew Weidemann made the point as well that grain growers, for the first time, were seeing things that were hidden under the previous arrangements. So there was a lot more transparency in terms of what growers were able to see in terms of costs in the system where previously they had not been able to identify some of those things. And in response to those prices and costs that they could see, that they were not able to see previously, we were seeing things like super sites being formed but then rival sites also opening up.

Senator NASH: Where did that happen? Where did the rival sites open up? I am happy for you to take that on notice, but could tell us where those rival sites opened up?

Ms MacRae: I cannot tell you now.

Mr Salerian: They were starting to happen while we were there. They were being contemplated.

Senator NASH: I know that is not something you would have with you but I am very interested in, since deregulation, where those rival sites have opened up.

Mr Salerian: The point I would add is that quite a lot of the discussion around the access regime we have got in the report. If you read through the chapter on the access itself and into the chapter on transport and storage, you will see that the concerns we identified very early on when we were doing the inquiry were about: there was significant scope to achieve efficiencies in the supply chain. Indeed, if I could just paraphrase it, it is a supply chain based on a different time, and, now, the nature of the exporter to wheat crop—it wants to go out in a hurry; it does not always want to go out evenly; there are opportunities as technology is changing the transport, so you can actually start to bypass. So you will see we put a fair bit of effort into trying to articulate how we set the access regime up and have it working, and the recommendations we have made, particularly around the CBH one, were designed to actually facilitate that competition and make it easier for people to either actually bypass or threaten to bypass.

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Senator HEFFERNAN: Could I just throw in a question on notice?

CHAIR: Yes, of course.

Senator HEFFERNAN: The assumptions behind the advice you gave to the government—could you provide them to the committee?

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Ms MacRae: Well, we can try.

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Ms MacRae: I am not disagreeing with you that there were assumptions.

Senator NASH: Perhaps you can limit what you are asking.

CHAIR: Perhaps we just pull it in here. The question has been asked. There has been an acknowledgement to take it on notice. We will now go to a break. I will ask committee members to stay behind for a private meeting. I thank officers from the Productivity Commission. I will throw the rest of you out of the room nicely.

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COMMISSION REPLY:

The Commission undertook extensive consultation, including with individual growers, traders, farmer organisations, Wheat Exports Australia, the Australian Competition and Consumer Commission, and the Treasury. The Commission also released an issues paper inviting participants to raise any relevant matters of concern, and released a draft report for consultation. One hundred submissions were received and public hearings and forums were also held in all wheat exporting States.

The matter of whether foreign traders of Australian wheat have a tax advantage relative to Australian traders was not raised by any of the participants to the Productivity Commission's inquiry. In addition, the matter did not arise in any of the research undertaken for the inquiry.

The Productivity Commission's inquiry was concluded with the submission of its final report to the Australian Government on 1 July 2010, in accordance with the Terms of Reference and the *Productivity Commission Act 1998*. The Productivity Commission does not provide any advice to Government other than its published reports, and it is not in a position to reopen an inquiry once it is completed.

2. HANSARD, PG 46

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I have just one quick question more: I do not know if you have read the Grain Producers Australia submission?

COMMISSION REPLY:

In responding to the terms of reference, the Commission has considered the effectiveness of arrangements for the transition to a competitive marketing environment of the export industry for bulk wheat. The industry includes all those involved, including growers, providers of transport and storage services, providers of port services, and traders.

The Productivity Commission's terms of reference required it to consider improvements to the new structure of the industry, and the Commission's charter further requires it to consider the issues from the perspective of maximising benefit to the community as a whole. For this inquiry, maximising community benefits essentially means promoting efficient and competitive on-farm production, transport, storage, handling, and marketing across Australia.

In making its recommendations, the Commission has recognised the need to focus on how the industry (including growers) can best position itself for the future in a highly competitive world market. In the Commission's assessment, having a productive and efficient wheat industry that can adapt to changing international market conditions and changing economic conditions in Australia is paramount for the performance and long-term viability of the industry. This includes having internationally competitive growers who are able to supply wheat for export.

3. HANSARD, PG 47

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not been able to identify some of those things. And in response to those prices and costs that they could see, that they were not able to see previously, we were seeing things like super sites being formed but then rival sites also opening up.

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COMMISSION REPLY:

The terms of reference for the inquiry required the Commission to take into consideration the recent reports and studies into Australia's grain supply chains. Evidence regarding the development of 14 super sites in NSW was drawn from publicly-available evidence from the New South Wales Farmers Association, as stated in the Commission's report on page 267.

In its submission to the New South Wales Grain Freight Review, the NSW Farmers Association gave the following example of how modern facilities, with faster rail outloading times and efficient intake from trucks have been built:

Investment in storage facilities includes construction of rapid rail outloading capability, which attracts rail freight discounts. Fourteen super sites have been established by the bulk handling companies to accumulate grain at locations where it is economic to transfer it efficiently and quickly from trucks (generally high capacity Road trains or B-doubles) to high capacity trains for direct haulage to ports. (NSW Farmers Association 2009, p. 10)

Behavioural changes of growers and supply chain operators are driving efficiencies throughout the chain:

Increased supply chain competition and integration have reduced transport and storage costs, benefiting grain producers. Growers have taken opportunities to reduce costs by choosing to

deliver grain to least cost receival facilities, and grain storage and handling companies have obtained lower prices for rail transport by consolidating loading to gain from economies of scale. (NSW Farmers Association 2009, p. 11)

Although it was not possible to confirm at the time of the inquiry, there was industry speculation that a major grain trader was about to announce a grain handling initiative to by-pass the CBH system in Western Australia, (page 282 of the Productivity Commission report).

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COMMISSION REPLY:

The Commission was asked to examine the operation and effectiveness of the current bulk Wheat Export Marketing Arrangements (WEMA) and to comment on:

- the effectiveness of the arrangements in meeting the objectives of the WEMA, including the role of Wheat Exports Australia (WEA);
- the suitability of the eligibility criteria for accreditation of exporters;
- the appropriate level of assessment of each applicant for accreditation by WEA against these eligibility criteria;
- the appropriateness of the access test requirements for accreditation of port terminal operators as exporters;

- the effectiveness of, and level of competition in, the transport and storage supply chain for wheat; and
- the availability and transparency of market information.

In considering any changes to the operation of the WEMA or the Scheme, the Commission was also asked to examine how such changes would affect the arrangements to fund WEA, and the use of cost-recovery mechanisms. The Australian Government also described the inquiry as 'one of a number of checks and transparency measures incorporated to assist wheat growers and industry with the transition'.

In any policy review, including in its inquiry into WEMA, the Commission endeavours to build a strong evidence base drawing on various information and data, conceptual frameworks and inputs from interested parties. Nevertheless, it is likely some information gaps will remain. Moreover, evidence can often be interpreted in different ways. In this particular inquiry, there were divergent opinions even amongst growers of export wheat on the best way forward for the industry. Inevitably, therefore, judgement and assumptions must be applied. The Commission tests judgements and assumptions relating to the evidence through its inquiry processes, including drawing on and assessing different stakeholder views, and by publishing a draft report for comment by stakeholders.

The terms of reference for this inquiry required it to consider improvements to the new structure of the industry, and the Commission's charter further requires it to consider the issues from the perspective of maximising benefits to the community as a whole, not just from the perspective of one single group in the community. The benefits and costs associated with a change to wheat marketing arrangements inevitably vary across growers (in terms of geographical location and the relative importance to their businesses of producing wheat for export in very competitive markets), as well as across sectors of industry and the community generally.

The Commission, in making its recommendations, judged that it was important to focus on how to create the best environment for growers of export wheat to be successful in the long term in a highly competitive world market.

The Commission often modifies its initial position after testing its assumptions and assessments through the inquiry process. For example, in the wheat inquiry, the draft report recommended that there should be minimal changes to the access undertakings of bulk handlers up until 2014. However, in the final report, the Commission removed this recommendation so that further progress could be made to address competition concerns with the operation of port access, other impacts of the access arrangements on competition in upstream supply chains, and the associated impacts on export wheat prices received by growers. This has paved the way for more effective use of auctions to manage port access in Western Australia and South Australia, as well as facilitate contestability in the upstream transport and storage supply chain, to the benefit of growers.

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**Questions Taken on Notice – Australian Competition and Consumer
Commission**

1. HANSARD, PG 51

Mr Pearson: We are a guiding hand in the process. We accept that role. The department and the minister will come to us. There is a role for us in providing advice to the minister, when the code is at the point where it will be presented to the minister. We have a pretty comprehensive set of guidelines that we have put together concerning voluntary codes and what is or is not acceptable within those codes. We are more than happy to put those to the committee. Right now I cannot think of any codes that I could put up in the agricultural—

Senator EDWARDS: As successful.

Mr Pearson: There are a lot of codes—

Senator EDWARDS: No, to do with the agriculture sector.

Mr Pearson: I am sorry but I cannot think of any right now. I should have checked that before I came in.

Senator EDWARDS: Nobody else can, either, if I could make that point.

Mr Pearson: I will take that on notice. I am not sure if my colleagues—

Senator EDWARDS: It would be helpful, because nobody can point me in that direction—

2. HANSARD, PG 51

Senator NASH: But that is my point: what happens if we cannot get past the impasse when the growers say, 'No, we're not happy with how this looks, unless the bulk handlers provide the stocks information, and we won't agree to a voluntary code that looks like that,' and the majority of the sector say, 'Yes, we are happy'? What I am getting at is: if you cannot get agreement of everybody across the sector, what happens with the voluntary code? Does it not go ahead or does it go ahead with the majority of players?

Mr Pearson: It would be very difficult, as you can appreciate, for me to pre-empt a decision on that.

Senator NASH: I am certainly not asking you to do that.

Mr Pearson: It would be very hard for me to sit here and say, from my position, that I would provide advice to anyone to say that a code that did not include a major part of an industry sector would be an appropriate code. I am putting that on record in evidence, and my colleagues here will probably kick me afterwards, but, when you think about it, you have got a code that is supposed to run from one end of the supply chain to the other. You can imagine codes that maybe do not include everyone in the industry, but if you pull out an entire part of that sector, a major part of that sector, it is very difficult to imagine how you could then have a code that could operate effectively. I should have looked at our guidelines before I came over and thought about what the questions might have been, but I am pretty sure our guidelines would have some answers to some of these.

Senator NASH: I am happy for you to provide further information in answer to that question on notice if you would like to do that. Actually I would like you to do that. If the legislation goes through the parliament—and I sincerely hope it does not—and the requirement is then for a voluntary code, what happens if you cannot get agreement of the sector to form that voluntary code?

Mr Salisbury: In that case, the access test continues, and the access test is one that will continue to require that the bulk handlers have passed the access test by two means—they need to adhere to the continuous disclosure requirements, publish the shipping stem, and also have effective access arrangements in place, including an access undertaking with the ACCC.

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ANSWER

The ACCC's *Guidelines for developing effective voluntary industry codes of conduct* (available on the ACCC [website](#)) set out what the ACCC regards as characteristics of an effective voluntary code, including:

- a clear statement of objectives
- a code administration committee and transparent administration processes, such as the preparation of an annual report

- a complaints handling procedure (with an appeal mechanism)
- clear, unambiguous and enforceable obligations for signatories to the code
- commercially significant sanctions for non-compliance enforced by the code committee.

Effective voluntary codes also typically have wide industry coverage and include provisions for data collection.

The ACCC does not have a role in approving or endorsing voluntary codes and in many cases, may not be privy to the final version of codes that have been developed.

2. HANSARD, PG 51

Senator NASH: But that is my point: what happens if we cannot get past the impasse when the growers say, 'No, we're not happy with how this looks, unless the bulk handlers provide the stocks information, and we won't agree to a voluntary code that looks like that,' and the majority of the sector say, 'Yes, we are happy'? What I am getting at is: if you cannot get agreement of everybody across the sector, what happens with the voluntary code? Does it not go ahead or does it go ahead with the majority of players?

Mr Pearson: It would be very difficult, as you can appreciate, for me to pre-empt a decision on that.

Senator NASH: I am certainly not asking you to do that.

Mr Pearson: It would be very hard for me to sit here and say, from my position, that I would provide advice to anyone to say that a code that did not include a major part of an industry sector would be an appropriate code. I am putting that on record in evidence, and my colleagues here will probably kick me afterwards, but, when you think about it, you have got a code that is supposed to run from one end of the supply chain to the other. You can imagine codes that maybe do not include everyone in the industry, but if you pull out an entire part of that sector, a major part of that sector, it is very difficult to imagine how you could then have a code that could operate effectively. I should have looked at our guidelines before I came over and thought about what the questions might have been, but I am pretty sure our guidelines would have some answers to some of these.

Senator NASH: I am happy for you to provide further information in answer to that question on notice if you would like to do that. Actually I would like you to do that. If the legislation goes through the parliament—and I sincerely hope it does not—and the requirement is then for a voluntary code, what happens if you cannot get agreement of the sector to form that voluntary code?

Mr Salisbury: In that case, the access test continues, and the access test is one that will continue to require that the bulk handlers have passed the access test by two means—they need to adhere to the continuous disclosure requirements, publish the shipping stem, and also have effective access arrangements in place, including an access undertaking with the ACCC.

ANSWER

Section 12 of the Wheat Export Marketing Amendment Bill 2012 (the Bill) provides that the Minister may approve a code of conduct if he is satisfied that the code of conduct:

- deals with the fair and transparent provision to wheat exporters of access to port terminal services by the providers of port terminal services
- requires providers of port terminal services to comply with the continuous disclosure rules
- is consistent with the operation of an efficient and profitable wheat export marketing industry that supports the competitiveness of all sectors through the supply chain.

The Minister must also be satisfied that the code is consistent with any guidelines made by the ACCC relating to voluntary industry codes of conduct.

Section 2 of the Bill provides that the *Wheat Export Marketing Act 2008* will be repealed on 1 October 2014 if the Minister has approved a code of conduct. Therefore, if a code is not approved before that day, the 'access test' set out in section 9 of the Bill will continue to apply which will require certain port operators to have in place an access undertaking relating to the provision to wheat exporters of access to the port terminal service for purposes relating to the export of wheat and to comply with continuous disclosure rules.

If there is not unanimous support across the industry for the code submitted to the Minister, that will be a matter for the Minister's decision as to whether or not to grant approval.

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

Inquiry into the Wheat Export Marketing Amendment Bill 2012

Public Hearing Monday, 14 May 2012

**Questions Taken on Notice – Department of Agriculture, Fisheries and
Forestry**

1. HANSARD, PG 62

Senator NASH: Who determined the make-up of that committee?

Mr Ottesen: It was agreed by the participants that that is what the level of representation would be. Furthermore, the committee operates on a consensus basis, so it is not a voting body. In the end, I think the important point to note is that, when it makes its views known on what the code should look like, it is going to be up to the minister to determine whether it is adequate or not.

Senator NASH: Who were the participants that decided that that should be the make-up of the committee?

Mr Ottesen: There were discussions with Grain Trade Australia, who provide the leadership role in organising this, and there were conversations with the various participants about the level of membership.

Senator NASH: Can you take on notice for me exactly who those participants were and exactly how it was determined that that would be the make-up of the committee?

Mr Ottesen: The people who participate in the meeting are the very people who were consulted at that time.

Senator NASH: All right. Can you take on notice for me and provide the process of how we arrived at that, because somebody must have decided which participants were going to be asked to the initial meeting where there was then going to be a decision made on who was actually going to make up the code development committee. Could you provide in detail for the committee how that process worked?

Mr Ottesen: Sure, but I can just add to that as well that it is an industry initiative; it is not being run by the government. What we did in the conversations that we had with the participants was that we reminded them that they had to follow the ACCC guidelines, and in that they also made it clear that there should be wide representation from all industry participants, and that is what we saw did happen. There were conversations between participants about how many people and which organisations should participate. We stood there as an observer but also to facilitate that conversation and that outcome.

Senator NASH: That is fine, but what I want is some exact detail around how these numbers were arrived at and who was in the group that decided what the conversation was that led to: 'Okay, port owners, you get four; major users, you get three; GPA and NFF will have one each.' I want some substantive detail around that conversation and how that was arrived at.

Mr Grant: We will consult with Grain Trade Australia, because they are facilitating that.

Senator NASH: I do not mind who you consult with; I just want the answer.

Mr Grant: Just to make it clear: the government did not provide direction in this area.

Senator NASH: That is okay, but I am sure the government, with such a keen interest, would know exactly what took place and how it came about, given that is going to inform the voluntary code that is part of the legislation.

2. HANSARD, PG 64

Senator NASH: But industry has very clearly said that they do not think it is mature enough. So do you not take that into account? I should not say 'industry'. I should say that growers have clearly said, through all their submissions, that they do not think the deregulated industry is mature enough to cope with this type of change and move to a voluntary code of conduct. So have you just disregarded that?

Mr Grant: No. I think there is a mixture of growth. Some growers are saying, 'Yes, it is mature enough and some growers are saying that they do want—

Senator EDWARDS: So divide and conquer is it?

Senator NASH: I do not think there is one submission we have had that is saying that it is mature enough—

Senator EDWARDS: I have not heard that evidence.

Senator NASH: Chair, actually could I just ask something on notice before I hand back to Senator Edwards—

CHAIR: Yes. I tell you what, gang: we have got two minutes left, so we are going to finish at 4.15 pm.

Senator NASH: Mr Grant, could you take on notice for us to provide to the committee who are those grower representatives, the ones that you have just referred to, who have indicated to you that the deregulated market is mature enough to move to these changes to the voluntary code?

Mr Grant: Yes.

3. HANSARD, PG 65

Senator EDWARDS: Are you familiar with the ASX submission to the inquiry?

Mr Grant: No, I am not.

Senator EDWARDS: Can I fly this as a flare to you. The ASX and the New Zealand SX are bodies that I do respect. In fact, we in this place hold one of them in such a high regard that our nation's Treasurer stopped the takeover of the ASX because they are such an important organisation to be run and owned, and I agreed with the Treasurer's intervention then. Their submission says effectively, and I am paraphrasing and I know their representatives are in the room, that the market is not mature enough, that it does not provide the mechanisms that are sufficient to have a global marketplace and that we still probably—and I am drawing an inference here—need more intervention—so not covering it off saying, 'We'll fix it up later if you still reckon it's a problem.' I ask for your response, on notice, to the ASX submission specifically and the assertions which they make. I do not always subscribe to 'We're from the government; we know what's best for you'. Could you respond in the context of the ASX's submission and why you think your position should vary from their position.

Mr Grant: I will do that. I do not have full familiarity with the submission, but it is my understanding that the ASX were talking about information services and their view was that there was a need for further information services and information transparency throughout the industry. I am not sure that the ASX said there should not be a regulated system, or there should be a regulated system—

Senator EDWARDS: I am sure they did not, but you are talking about a mature market.

Mr Grant: I was not quite sure whether you were talking about the bill being a bill to stop a regulatory purpose or a bill—

Senator EDWARDS: I will make it easy for you, Mr Grant.

CHAIR: I will make it easier for you both. You said you would take it on notice. We are out of time. I thank witnesses. Thank you to the department, the secretariat, Hansard and Broadcasting.

Department of Agriculture, Fisheries and Forestry

Committee inquiry: Rural and Regional Affairs and Transport Legislation
Committee Inquiry into the Wheat Export Marketing Amendment Bill 2012

Date Held: Public Hearing Monday, 14 May 2012

Question Taken on Notice

Senators Nash and Edwards asked officers appearing as witnesses at the Wheat Export Marketing Amendment Bill 2012 hearing held on 14 May 2012 the following questions which were taken on notice:

Question 1:

Senator NASH: Who determined the make-up of that committee?

Mr Ottesen: It was agreed by the participants that that is what the level of representation would be. Furthermore, the committee operates on a consensus basis, so it is not a voting body. In the end, I think the important point to note is that, when it makes its views known on what the code should look like, it is going to be up to the minister to determine whether it is adequate or not.

Senator NASH: Who were the participants that decided that that should be the make-up of the committee?

Mr Ottesen: There were discussions with Grain Trade Australia, who provide the leadership role in organising this, and there were conversations with the various participants about the level of membership.

Senator NASH: Can you take on notice for me exactly who those participants were and exactly how it was determined that that would be the make-up of the committee?

Mr Ottesen: The people who participate in the meeting are the very people who were consulted at that time.

Senator NASH: All right. Can you take on notice for me and provide the process of how we arrived at that, because somebody must have decided which participants were going to be asked to the initial meeting where there was then going to be a decision made on who was actually going to make up the code development committee. Could you provide in detail for the committee how that process worked?

Mr Ottesen: Sure, but I can just add to that as well that it is an industry initiative; it is not being run by the government. What we did in the conversations that we had with the participants was that we reminded them that they had to follow the ACCC guidelines, and in that they also made it clear that there should be wide representation from all industry participants, and that is what we saw did happen. There were conversations between participants about how many people and which organisations should participate. We stood there as an observer but also to facilitate that conversation and that outcome.

Senator NASH: That is fine, but what I want is some exact detail around how these numbers were arrived at and who was in the group that decided what the conversation was that led to: 'Okay, port owners, you get four; major users, you get three; GPA and

NFF will have one each.' I want some substantive detail around that conversation and how that was arrived at.

Mr Grant: We will consult with Grain Trade Australia, because they are facilitating that.

Senator NASH: I do not mind who you consult with; I just want the answer.

Mr Grant: Just to make it clear: the government did not provide direction in this area.

Senator NASH: That is okay, but I am sure the government, with such a keen interest, would know exactly what took place and how it came about, given that is going to inform the voluntary code that is part of the legislation.

Question 2:

Senator NASH: But industry has very clearly said that they do not think it is mature enough. So do you not take that into account? I should not say 'industry'. I should say that growers have clearly said, through all their submissions, that they do not think the deregulated industry is mature enough to cope with this type of change and move to a voluntary code of conduct. So have you just disregarded that?

Mr Grant: No. I think there is a mixture of growth. Some growers are saying, 'Yes, it is mature enough and some growers are saying that they do want—

Senator EDWARDS: So divide and conquer is it?

Senator NASH: I do not think there is one submission we have had that is saying that it is mature enough—

Senator EDWARDS: I have not heard that evidence.

Senator NASH: Chair, actually could I just ask something on notice before I hand back to Senator Edwards—

CHAIR: Yes. I tell you what, gang: we have got two minutes left, so we are going to finish at 4.15 pm.

Senator NASH: Mr Grant, could you take on notice for us to provide to the committee who are those grower representatives, the ones that you have just referred to, who have indicated to you that the deregulated market is mature enough to move to these changes to the voluntary code?

Mr Grant: Yes.

Question 3:

Senator EDWARDS: Are you familiar with the ASX submission to the inquiry?

Mr Grant: No, I am not.

Senator EDWARDS: Can I fly this as a flare to you. The ASX and the New Zealand SX are bodies that I do respect. In fact, we in this place hold one of them in such a high regard that our nation's Treasurer stopped the takeover of the ASX because they are such an important organisation to be run and owned, and I agreed with the Treasurer's intervention then. Their submission says effectively, and I am paraphrasing and I know their representatives are in the room, that the market is not mature enough, that it does not provide the mechanisms that are sufficient to have a global marketplace and that we still probably—and I am drawing an inference here—need more intervention—so not covering it off saying, 'We'll fix it up later if you still reckon it's a problem.' I ask for your response, on notice, to the ASX submission specifically and the assertions which they make. I do not always subscribe to 'We're from the government; we know what's best for you'. Could you respond in the context of the ASX's submission and why you think your position should vary from their position.

Mr Grant: I will do that. I do not have full familiarity with the submission, but it is my understanding that the ASX were talking about information services and their view was that there was a need for further information services and information transparency throughout the industry. I am not sure that the ASX said there should not be a regulated system, or there should be a regulated system—

Senator EDWARDS: I am sure they did not, but you are talking about a mature market.

Mr Grant: I was not quite sure whether you were talking about the bill being a bill to stop a regulatory purpose or a bill—

Senator EDWARDS: I will make it easy for you, Mr Grant.

CHAIR: I will make it easier for you both. You said you would take it on notice. We are out of time. I thank witnesses. Thank you to the department, the secretariat, Hansard and Broadcasting.

Answer:

Question 1:

On 23 September 2011, the government announced its response to the Productivity Commission inquiry into wheat export marketing arrangements, including agreeing in-principle that a voluntary industry Code of Conduct (the Code) be developed to cover port access arrangements.

The Department of Agriculture, Fisheries and Forestry understands that Grain Trade Australia (GTA), a broad based grain-industry body with experience in developing industry codes, worked with major industry stakeholders to discuss the formation of a committee for the purpose of developing the Code. The department is advised that these consultations included discussion on committee membership, taking into account guidance for broad industry involvement provided by Australian Competition and Consumer Commission (ACCC) guidelines.

On 22 February 2012, Grain Trade Australia (GTA) convened a meeting of industry participants based on earlier consultations. Organisation represented at the meeting included GTA, Australian Grain Exporters Association, CBH Ltd, Viterra, GrainCorp, ABA, Grain Producers Australia and the National Farmers' Federation. Officers of the Department of Agriculture, Fisheries and Forestry and ACCC attended the meeting as observers.

Participants of the meeting agreed that all major stakeholders be represented on the Code Development Committee (CDC), and two additional companies were invited to join the CDC, but declined.

On 29 March 2012, the CDC agreed, by consensus, to Terms of Reference, including industry membership. It was agreed that each of the port terminal service providers have one nomination each, major users have 3 nominations, the production sector has 2 nominations and industry has 1 nomination. The Terms of Reference include that the CDC aim to reach decision by consensus. The Terms of Reference and information sheet for the CDC are attached.

Question 2:

Submissions to the enquiry by grower representative organisations Grain Growers Ltd (GrainGrowers) and the Pastoralists and Graziers Association of Western Australia (PGA) support the transition away from a regulatory framework as proposed by the Wheat Export Marketing Amendment Bill 2012.

In its submission to the inquiry, GrainGrowers stated that the organisation 'supports the conclusion of this wheat export regulatory framework'. PGA have also stated that they are 'supportive of the Government's decision to abolish the Wheat Export Accreditation Scheme (Scheme), administered by Wheat Exports Australia (WEA) and primarily funded by the Wheat Export Charge (WEC) on 30 September 2012.'

Question 3:

The submission made by the ASX does not directly comment on the specific elements of the Wheat Export Marketing Amendment Bill. It does, however, call on the government to improve the quality of reported grain data to 'maximise the benefits available from the deregulation process...'

As noted by the ASX in its submission, the Productivity Commission report into wheat export marketing arrangements (2010) found value in 'the provision of stock information by state to support the effective operation of the domestic and export wheat markets'. However, the Commission recommended against making the information compulsorily available; if industry wanted the information, it should pay for it.

The government is aware of the concerns of some industry sectors that a lack of access to market information may be negatively affecting competitiveness. As described in the second reading speech associated with the Wheat Export Marketing Amendment Bill 2012, the government is committed to assisting industry identify potential solutions to this issue.

The Department of Agriculture, Fisheries and Forestry is engaged with industry on this matter and has commissioned independent advice on market information needs across the supply chain to help industry identify potential solutions. The department is also aware of the announcement made by Emerald on 10 May 2012 to make available stack average quality details by commodity and location for each of ABA country storage site on a monthly basis.



GRAIN TRADE AUSTRALIA

Code of Conduct Development Committee

To oversee the process, a Code Development Committee (CDC) will be established and report to the Minister for Agriculture, Fisheries and Forestry. All major stakeholders will be represented on the Committee.

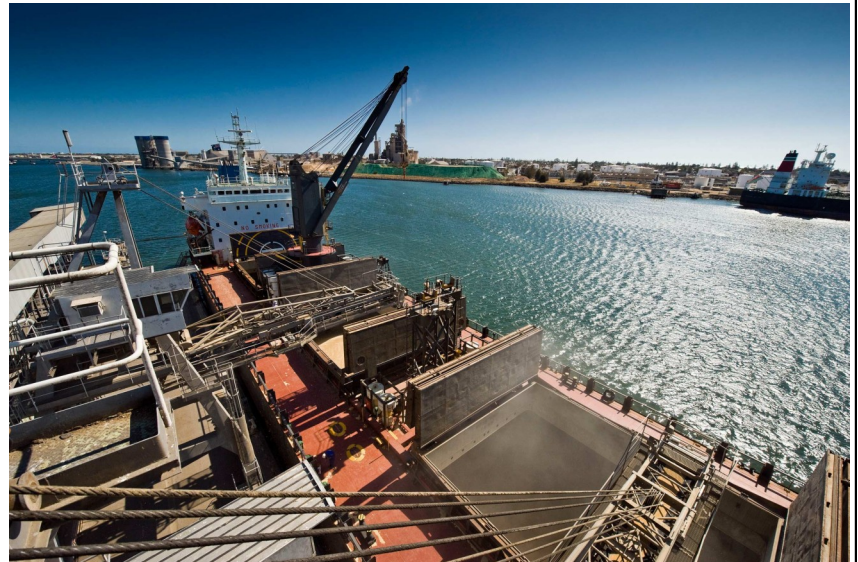
The CDC will be convened by an independent chairman, who will be an individual of significant standing in the Australian grain industry and accepted by members of the CDC to be independent of commercial conflict for the purpose of the Code.

Membership of the CDC will comprise representatives of key stakeholders, and include nominees appointed on behalf of the following organisations:

- Established port owners;
- Major users;
- Production sector;
- Industry sector.

Representatives of Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Competition and Consumer Commission (ACCC) may attend Committee meetings as observers and provide advice where necessary.

The CDC will be required to consult widely and undertake a thorough examination of the issues by stakeholders in formulating the Code, which will be release for public prior to finalization.



Name	Company	Representing
Tom Keene	GTA	Chairman
Chris Aucote	Bunge	AGEA
Mitch Morison	Cargill	AGEA
David Mattiske	Glencore	AGEA
Paul Scott	CBH	CBH
Richard Codling	CBH	CBH
Caroline Rhodes	Viterra	Viterra
Neil Johns	GrainCorp	GrainCorp
Andrew Weidemann	GPA	GPA
Pete Mailer	GPA	GPA
Paula Fitzgerald	GGL	NFF
Geoff Honey	GTA	Industry
John Warda	Emerald	Emerald
Peter Ottersen	DAFF	Observer
Des Naughton	DAFF	Observer
Roxy Auld	DAFF	Observer
Lyn Camilleri	ACCC	Observer
Richard Weksler	ACCC	Observer
Kim Parker	ACCC	Observer
Ben Smith-Stubbs	Minister's Office	Observer
Rosemary Richards	AGEA	Observer
Sean Flanery	GTA	Secretariat



GRAIN TRADE AUSTRALIA

Terms of Reference
CODE DEVELOPMENT COMMITTEE
Relating to the
PORT ACCESS VOLUNTARY CODE OF CONDUCT
For
AUSTRALIAN BULK WHEAT SHIPMENTS

The Australian Government has announced its policy intent to transition the wheat export market to full deregulation, in accordance with amendments to the *Wheat Export Marketing Act 2008* to be introduced to Parliament in 2012. From 1 October 2014, the market will be fully deregulated and access to port terminal services will be governed by a voluntary industry code of conduct (the Code) and general competition law.

To oversee this process, a Code Development Committee (the CDC) will be established and report to the Minister for Agriculture, Fisheries and Forestry (the Minister). All major stakeholders will be represented on the Committee.

The CDC will be convened by an Independent Chairman, who will be an individual of significant standing in the Australian grains industry and accepted by members of the CDC to be independent of commercial conflict for the purpose of the Code.

Membership of the CDC will comprise representatives of key stakeholders, and include nominees appointed on behalf of the following organisations:

- Established port owners - CBH, GrainCorp, Viterra and ABA (Emerald). (4 nominations)
- Major users - Australian Grain Exporters Association (AGEA) (3 nominations)
- Production - Grain Producers Australia (GPA) (1 nomination)
- Production - National Farmers' Federation (NFF) (1 nomination), and
- Industry - Grain Trade Australia (GTA) (1 nomination).

Representatives of Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Competition and Consumer Commission (ACCC) may attend Committee meetings as observers and provide advice where necessary.

The CDC will be required to consult widely and undertake a thorough examination of the issues raised by stakeholders in formulating the Code, which will be released for public comment prior to finalisation. All submissions will be made publicly available on the GTA website.

The CDC is required to commence its work by 22 February 2012 and report to the Minister for Agriculture, Fisheries and Forestry no later than June 2012.

Context

The *Wheat Export Marketing Act 2008* establishes an 'Access Test' relating to the provision of port terminal services to accredited bulk wheat exporters. The requirement for port terminal operators to pass the Access Test as a condition for exporting bulk wheat will remain in place until 30 September 2014.

The CDC will be responsible for the development of a non-prescribed voluntary code of conduct for all grain export terminals. The Code should meet the needs of both growers and exporters, be consistent with ACCC guidelines for developing effective voluntary codes of conduct and include continuous disclosure rules.

The Australian Government has signalled in its policy that abolishment of the Access Test in 2014 will be conditional on the Code being implemented by 30 September 2014.

Scope of the Code

The scope of the Code will include the following matters relating to port terminal access:

1. Cover all bulk port terminals involved with the shipment of bulk wheat;
2. Obligations on port terminal operators not to discriminate or hinder access in the provision of port terminal services to third parties;
3. Obligation to publish port loading protocols for managing demand for port terminal services;
4. Obligation on port terminal operators to provide port terminal services on standard terms and prices to third parties and provide third parties with a framework to negotiate non-standard terms and prices and the requirement to publish a shipping schedule in accordance with the 'continuous disclosure' obligations of the Access Test and other information
5. The Code will not specify the commercial terms required to be contained in port loading protocols or the standard terms and prices. Dispute resolution will be limited to the compliance with the Code and not relate to matters of a commercial or operational nature which shall be governed by each party's respective contractual relationship.

Role of the Code Development Committee

The CDC is established to develop a non-prescribed voluntary code of conduct for port terminal access relating to the export of bulk wheat, in accordance with the:

- Australian Government's response to the Productivity Commission recommendations on wheat export marketing arrangements
- Access Test provisions of the *Wheat Export Marketing Act 2008*, as amended
- ACCC guidelines for developing effective voluntary industry codes of conduct, and
- the *Competition and Consumer Act 2010*.

The CDC will give consideration to issues relevant to the development of the Code, including but not limited to:

- Specific standards of conduct for the Australian wheat export industry in relation to port terminal access.
- Continuous disclosure rules, including the publication of the 'shipping stem' for each port terminal service.
- Data collection and publication of key port terminal information and performance indicators.
- Compliance and accountability, including sanctions for non-compliance.
- Code administration arrangements, including industry awareness and education initiatives, compliance monitoring and Code review procedures.
- An effective system of complaints handling.
- An appropriate dispute resolution mechanism
- Consideration of funding and resource allocation required to administer the Code.
- Any other factors required by the Access Test provisions in gaining Ministerial approval for the implementation of the Code.

The successful implementation of the Code will require the direct participation of infrastructure owners and coverage of all bulk grain export terminals in Australia, in meeting the objectives of:

- Promoting the development of a bulk wheat export marketing industry that is efficient, competitive and responsive to the needs of wheat growers; and
- Providing an industry framework to allow exporters to access services at all port terminal facilities within Australia that export bulk wheat.

The CDC should aim to reach decision by consensus wherever possible.

Consultation

In developing the Code, the CDC will consult widely with key industry stakeholders, including growers and their representative groups, industry bodies, companies and government agencies. The draft Code will be published for public consultation with a **[No.]** week period to respond, with further rounds of public consultation as deemed necessary by the CDC in achieving a high level of engagement.

The CDC will accept written submissions from interested parties at any time:

Email cdc@graintrade.org.au

Mail Secretariat – Port Access CDC
Grain Trade Australia
PO Box R1829
Royal Exchange NSW 1225

Secretariat

DAFF will assist GTA with secretariat services for the purposes of developing the Code.

Tenure

The CDC will cease operations on completion of its role under these Terms of Reference.

For further information please contact Grain Trade Australia, Secretariat, on +61 2 9235 2155.