

**Senate Rural Affairs and Transport Legislation Committee**  
ANSWERS TO QUESTIONS ON NOTICE  
Supplementary Budget Estimates October 2011  
**Agriculture, Fisheries and Forestry**

**Question:** 43

**Division/Agency:** APD/WEA – Agricultural Productivity Division/ Wheat Exports Australia

**Topic:** Wheat Exports Australia

**Proof Hansard page:** 85

**Senator NASH asked:**

**Senator NASH:** I am very happy for you to take this on notice. Could you supply on notice the reasons that you are giving for the fact that the Sumitomo-Emerald link was not sufficient to require an access undertaking, as you have just said. You are saying that the way Emerald operates—I am assuming that in some way, shape or form it is ring fenced from the Sumitomo shareholder—

**Mr Woods:** I am sure we will be able to provide you with something along those lines.

**Senator NASH:** That would be really useful. When did Sumitomo surrender their accreditation? I think last time we spoke you said it was a few months ago, but what was the actual date?

**Answer:**

Wheat Exports Australia (WEA) advises that under section 24 of *Wheat Export Marketing Act 2008* (the Act) wheat exporters that are providers of port terminal facilities must pass an access test in relation to port terminal services.

Under section 5 of the Act, a *provider* in relation to a port terminal service means the entity that is the owner or operator of the port terminal facility that is used (or is to be used) to provide the service.

To pass the access test, a provider of a port terminal service that is an 'associated entity' of an accredited wheat exporter is required to have a formal access undertaking accepted by the Australian Competition and Consumer Commission (ACCC) relating to each of its port terminal facilities and the access given to accredited wheat exporters (generally).

The Australia Government Solicitor advised WEA that it is the statutory responsibility of WEA to form a view on whether a company that is an applicant for accreditation, or an associated entity of that company, is the provider of a port terminal service. What is an 'associated entity' for this purpose takes its meaning from the *Corporations Act 2001*.

A bulk grain export terminal operates at the Port of Melbourne and does not have a formal access undertaking in place. WEA views Melbourne Terminal Operations Pty Ltd (MTO) to be the provider of the port terminal service at the Melbourne Port Terminal (MPT). MTO operates as a subsidiary of Australian Bulk Alliance Pty Ltd (ABA) and is not an accredited exporter.

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**Question:** 43 (continued)

On 5 March 2010, Summit Agribusiness (Australia) Pty Ltd, a subsidiary of the Sumitomo Corporation (Japan), acquired a 50 per cent equity stake in Emerald Group Australia Pty Ltd (Emerald). MTO is also a member of the Sumitomo Group, being a subsidiary of the ultimate holding company, Sumitomo Corporation (Japan).

Emerald is an accredited wheat exporter that is 50 per cent held by a subsidiary of the Sumitomo group of companies and 50 per cent held by the Emerald Agribusiness Group (EAG). Each of Sumitomo and EAG appoint three directors to the board of Emerald. An EAG-appointed director is the chair and at that time had a casting vote. Being only 50 per cent held by the Sumitomo group, Emerald is not a subsidiary, and so was not an 'associated entity' of MTO on that basis.

Emerald would have been an 'associated entity' of MTO had Sumitomo Australia Pty Ltd been in a position to exercise 'control' of Emerald within the meaning of the *Corporations Act 2001*. However legal advice to WEA was that the casting vote arrangements prevented such control arising and, therefore, Emerald was not an 'associated entity' of MTO during this period.

On 28 September 2011, the ACCC accepted a port terminal access undertaking for MTO.

Sumitomo Australia Pty Ltd surrendered its accreditation on 19 May 2010.

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Supplementary Budget Estimates October 2011  
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**Question:** 44

**Division/Agency:** APD/WEA – Agricultural Productivity Division/ Wheat Export Australia

**Topic:** Wheat Exports Australia

**Proof Hansard page:** 90/91

**Senator NASH asked:**

**Mr Woodley:** We are more comfortable with where they are at. We still get regular information and they are still required to inform us if there is any adverse change in their circumstances. Those arrangements remain. But the actual process of renewal has now become far more routine than it was originally.

Another example would be in auditing. Three years ago we regularly did audits on all companies. Now, it is not quite so necessary for us to do that, in a general sense. So, we are being a little bit more targeted in terms of what we undertake. Through those sorts of measures we see that as a lighter touch. It is lighter touch in terms of our costs and our involvement, but it is also lighter touch in terms of our impact on the costs of the accredited exporters.

**Senator HEFFERNAN:** You being here is the equivalent of having a copper living in town, if you are a country town, instead of living in the city next door. Just the presence—the speed camera effect, if you know what I mean. What you are not allowing for there is that, given that the speed camera disappears, there will be more cowboys entering the industry.

**Mr Woodley:** I think this has been a transition process. It is a transition from a fully regulated market to a fully deregulated market.

**Senator HEFFERNAN:** But you still have to have someone to keep everyone driving on the right side of the road.

**Senator NASH:** On notice could you give us a detailed outline of the lighter touch. I appreciate that you have tried to give us a bit of a sense here, but I am looking for a comparison between what happened previously and what will happen now. You mentioned that there is a difference in administration—in the way you used to do it to the way you do it now. Again, if you would not mind giving us some comparative information on that. I think you said that the companies are required to notify you of any adverse changes. Could you just give the committee a sense of what any of those adverse changes are and how often they have been supplied to you in the past, when there have been instances of that occurring, and will the notification of adverse changes still apply under the potential future regime of just having the Trade Practices Act and the ACCC?

**Answer:**

The ‘lighter-touch’ accreditation scheme (the scheme) will operate within the bounds of the existing legislation but will reduce the level of ‘red tape’ for exporters and, as a result, the associated costs of export accreditation while still meeting grower concerns about ‘fit and proper’ issues and maintaining the link with the access test that many exporters believe is critical.

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**Agriculture, Fisheries and Forestry**

**Question:** 44 (continued)

During the first three years of the wheat export accreditation scheme, there was a requirement for companies to provide very detailed information in applying for and complying with accreditation. In the transition to the abolition of the scheme, that level of detail is no longer required.

Wheat Exports Australia (WEA) forms will be refined to reduce the level of information accredited exporters and new applicants are required to provide. WEA policies and procedures relating to notifiable matters and non-mandatory conditions of accreditation will also be reviewed to make sure they are consistent with the 'lighter-touch' approach. Finally, WEA will also be adopting a more targeted and risk-based audit program that responds to identified issues, rather than an audit schedule.

While the 'lighter-touch' scheme will be less onerous on accredited exporters and WEA itself, WEA will retain its capacity to respond to any issues that may relate to the accreditation of an exporter. The department is working with WEA to finalise and implement the changes outlined above.

**Senate Rural Affairs and Transport Legislation Committee**

ANSWERS TO QUESTIONS ON NOTICE

Supplementary Budget Estimates October 2011

**Agriculture, Fisheries and Forestry**

**Question:** 120

**Division/Agency:** APD/WEA – Agricultural Productivity Division/Wheat Exports Australia

**Topic:** Wheat exports

**Proof Hansard page:** Written

**Senator NASH asked:**

With regard to Sumitomo and their 50 percent ownership of Emerald Group Australia – can you please explain why Emerald could continue to trade bulk wheat exports while the port terminal access undertaking for Melbourne Port Terminal took place?

**Answer:**

Please refer to the answer to Question 43 from the Supplementary Budget Estimates hearing on 17 October 2011.

**Senate Rural Affairs and Transport Legislation Committee**  
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**Question:** 121

**Division/Agency:** APD/WEA – Agricultural Productivity Division/Wheat Exports Australia

**Topic:** Wheat exports

**Proof Hansard page:** Written

**Senator NASH asked:**

As Emerald Group Australia was already an accredited exporter under the WEMA, why didn't Emerald Group Australia surrender their accreditation until an access undertaking was in place for MPT?

**Answer:**

Please refer to the answer to Question 43 from the Supplementary Budget Estimates hearing on 17 October 2011.