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SENATE

RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE

Reference: Wheat Marketing Amendment Bill 2002

THURSDAY, 6 MARCH 2003

CANBERRA

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Thursday, 20 March 2003

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SENATE
RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE

Thursday, 6 March 2003

Members: Senator Heffernan (*Chair*), Senator Buckland (*Deputy Chair*), Senators Cherry, Colbeck, Ferris and O'Brien

Participating members: Senators Abetz, Boswell, Brown, Carr, Chapman, Coonan, Eggleston, Chris Evans, Faulkner, Ferguson, Harradine, Harris, Hutchins, Knowles, Lightfoot, Mason, Sandy Macdonald, McLucas, Murphy, Payne, Ray, Stephens, Tchen, Tierney and Watson

Senators in attendance: Senators Buckland, Cherry, Heffernan and O'Brien

Terms of reference for the inquiry:

Wheat Marketing Amendment Bill 2002

Committee met at 4.00 p.m.

CHAIR—I declare open this public hearing of the Senate Rural and Regional Affairs and Transport Legislation Committee. The committee is meeting today to consider the Wheat Marketing Amendment Bill 2002. On 5 February 2003, the Senate referred the bill to this committee for examination and report by Thursday, 20 March 2003. The purpose of the bill is to enable revenue to be raised for the continued operation of the single desk exporter of the Australian wheat crop, the Wheat Export Authority. The revenue will be raised by charging a levy on all exports of wheat. It is intended that the levy commence in the first half of this year.

The committee has received 36 submissions on the bill and authorises them for publication. Today's hearing is public and open to all. A *Hansard* transcript of the proceedings will be available from the committee secretariat or via the Parliament House Internet home page next week. It should be noted that the committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the order of the Senate of 23 August 1990 concerning the broadcasting of committee proceedings.

Before the committee commences taking evidence, let me place on the record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence given before it. Any act by any person which may operate to the disadvantage of a witness on account of evidence given by him or before the Senate or any committee of the Senate is treated as a breach of privilege. While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Senate. The Senate also has the power to order the production and/or publication of such evidence.

I should add that any decision regarding publication of in camera evidence or confidential submissions would not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing. Today the committee will be hearing from the Department of Agriculture, Fisheries and Forestry and the Wheat Export Authority. We will commence with the Department of Agriculture, Fisheries and Forestry.

[4.03 p.m.]

MAXWELL, Mr Stephen Andrew, Director, Levies Revenue Service, Department of Agriculture, Fisheries and Forestry

MORTIMER, Mr David Kenneth, Executive Manager, Food and Agriculture, Department of Agriculture, Fisheries and Forestry

NEWMAN, Mr Robert Meyrick John, Manager, Grains and International, Field Crops, Wine and Horticulture, Food and Agricultural, Department of Agriculture, Fisheries and Forestry

PITTAR, Mr Roland Yorke, Acting General Manager, Field Crops, Wine and Horticulture, Department of Agriculture, Fisheries and Forestry

Mr Mortimer—We have provided a short submission to the committee which you may have received. I do not intend to read through it. If you are happy to take it as read, that is fine. I will simply make a couple of points which essentially build on the points you have made already. The amendment is essentially to provide a funding mechanism to meet the operational costs of the Wheat Export Authority. An export charge will be implemented through regulations on the primary industries—

CHAIR—I will break in for a minute. Your submission is submission No. 35. I would like to seek authority from the committee for submissions 27 to 36 to be put on the public record before you proceed. There being no objection, it is so ordered.

Mr Mortimer—As well as providing the arrangements for funding the operation of the Wheat Export Authority, the bill makes some other changes to the Wheat Marketing Authority. They are largely operational changes designed to simplify its operations and improve its operational efficiency. The logic for them is set out in the explanatory memorandum. They relate to clarifying the objectives of the Wheat Export Authority, providing for the delegation of functions and strengthening compliance provisions. So if you are happy with that, I will leave it at that. I am happy to take questions.

CHAIR—That concludes the remarks from your side of the table, I take it?

Mr Mortimer—Absolutely.

Senator O'BRIEN—Mr Mortimer, am I correct in saying that the parliament, not the government, has given the monopoly regarding export power to a public company, AWBI?

Mr Mortimer—That is essentially right, Senator.

Senator O'BRIEN—So it is the parliament that has signed over the significant power?

Mr Mortimer—The export monopoly is provided for in legislation.

Senator O'BRIEN—Am I correct in saying that the only reporting obligation imposed on the holder of the single desk power is to report to shareholders under the provisions of the Corporations Act?

Mr Mortimer—There is a range of reporting mechanisms, Senator. If you like, I will quickly go through them. The company which holds the export monopoly, AWB International, is obliged under the Corporations Law to provide an annual report. So there is reporting on the operation of the company there. In terms of accountability to parliament, the Wheat Export Authority is required to report under the CAC Act, as the Wheat Export Authority is a CAC Act company. That report is provided to the minister and the parliament. There are also requirements under the Wheat Marketing Act 1989, which has been amended, which sets out a number of issues and mechanisms for reporting. They are set out in section 5 of the legislation, which requires the Wheat Export Authority to monitor and report on the operation of the export monopoly. Section 16 relates to the operational plan of the Wheat Export Authority. Section 57 relates to review provisions for the holding of the export monopoly.

Senator O'BRIEN—So section 5, where is the reporting power in it?

Mr Mortimer—Section 5(1)(b) refers to monitoring 'nominated company B's performance in relation to the export of wheat and examine and report on the benefits to growers that result from that performance'. Nominated company B is AWB International. The way that is done is through a report—

Senator O'BRIEN—Let us step back a bit. It says it is to report on the benefits to growers that result from that performance. Where should we look to see where that report is to be directed?

Mr Mortimer—That is not actually stated in the legislation. That has been agreed by the Wheat Export Authority with the government and, indeed, more broadly, with the industry that that is done through a report to the minister, which is provided—

Senator O'BRIEN—Sorry, more broadly with the industry: how is such an agreement reached and with whom?

Mr Mortimer—It is accepted as a reasonable reporting mechanism because what it provides is for a report that goes to the minister, as I said, which sets out the detailed operation of the company that holds the export monopoly. And there is a growers' report which derives from that, which is provided to the wheat industry.

Senator O'BRIEN—We have heard about that. I will come to it later. When you say it is accepted, therefore there has been no formal agreement with the industry about where the report should go?

Mr Mortimer—No. There is nothing signed. There is no documentation or signed agreement.

Senator O'BRIEN—And who has determined that the report will not be made public—that is, the report to the minister? You say it has been accepted that it should be the form of the report.

Mr Mortimer—That is a report to government.

Senator O'BRIEN—But the act does not say it is a report to government. That has been assumed. I am wondering where the determination has been made that this report would go to the minister and be the property of the minister. That is not what the act says.

Mr Mortimer—You are quite right. Essentially, it is the minister's decision, but he is guided by the nature of the issues that are dealt with. The essential logic of that report staying with the minister is that it contains considerable commercial information—information that is sensitive to the operation of the company that holds the export monopoly. It is not considered reasonable to make that all available in the public arena.

Senator O'BRIEN—So the minister has decided that this report will not go to the growers?

Mr Mortimer—The minister has agreed that there will be a growers' report that will derive from that. That will set out as much information as is possible to inform the wheat industry of the operation of Australian Wheat Board International.

Senator O'BRIEN—Does the minister decide what does and does not appear in this report to growers?

Mr Mortimer—I think that is actually done by the Wheat Export Authority, to be quite frank. Is that right?

Mr Newman—Yes.

Senator O'BRIEN—So the minister receives a report and presumably then authorises the Wheat Export Authority to edit it?

Mr Mortimer—Essentially—you might want to direct this question to the Wheat Export Authority when you talk to them—my understanding is that the Wheat Export Authority provides two reports. It provides a report to the minister and a report for growers.

Senator O'BRIEN—So did the minister request the report in that form, or is that a decision of the Wheat Export Authority?

Mr Mortimer—I would have to take that one on notice because I am not sure of the history of that.

Senator O'BRIEN—Is it correct to say that the reporting mechanism has been determined by the minister interpreting what the act says?

Mr Mortimer—The act has been interpreted on the basis of essentially a contemplation of the legal implications of doing anything else. It is a matter of finding the best and most practical way to make available the information to both the government and the wheat industry in such a way that does not cause any damage to commercial relationships and disadvantage any commercial operations.

Senator O'BRIEN—The provision in the act, then, appears to lack clarity in terms of what the parliament intended. It is not necessarily a matter for the minister to decide what parliament intended, although in practice he does.

Mr Mortimer—Certainly the relevant part of the legislation there is not precise. Because it is not precise, certainly the issue was considered with the government lawyers. The arrangement was concluded that we have in operation now.

Senator O'BRIEN—Was that concluded before or after the legislation was passed?

Mr Mortimer—I cannot answer that. I do not have the history in front of me. I will take it on notice.

Senator O'BRIEN—Thank you. In terms of the provisions of the bill, item 1 of the explanatory memorandum refers to the making of regulations under the Primary Industries (Customs) Charges Act 1991 to impose a wheat export charge. Firstly, it is my view that we cannot pass this bill until we have had a chance to consider any associated amendment or related secondary legislation. The EM does not explain how the levy will work. We have a recommended option, but that is scant in detail. Can you provide me with some clarity. Just how will the levy work?

Mr Mortimer—I will set out the broad framework, if you like, and Mr Maxwell might be able to help if need be. Essentially, there will be three regulations required for the parliamentary and accounting requirements of government. A levy we have imposed by regulations under the Primary Industries (Customs) Charges Act actually sets the levy. There is also a regulation under the Primary Industries Levies and Charges Collection Act, which collects it. There is another regulation under the Wheat Marketing Act 1989, which essentially directs that levy which is being collected to the purposes set out in the wheat marketing legislation. I am sorry if that is all a bit complicated, but that is the simplest way I can put it.

Senator O'BRIEN—It would be handy to actually see the instruments. When will we receive copies of the proposed regulations to get actual details?

Mr Mortimer—The regulations have not been prepared at this stage. Given that the Primary Industries (Customs) Charges Act is already in place and the Primary Industries Levies and Charges Collection Act is already in place, regulations could be done fairly readily under them. But at this stage we need the amendments to actually get the funding directed through from consolidated revenue, once it has been collected under the appropriate act, for the purposes set out in this act. Essentially, this act does not currently provide for a charge to be applied.

Senator O'BRIEN—Is there any other associated legislation?

Mr Mortimer—I think that is the extent of it.

Senator O'BRIEN—In item 2, it varies the functions and powers of the authority by inserting new sections 5A and 5B. The Wheat Export Authority will now be required to seek to complement any objective of company B to maximise net pool returns for pools operated by that company—that is, AWBI. The Wheat Export Authority will be required to seek and accept advice from AWBI as to exactly what it must seek to complement. Doesn't this basically entrench the dominant role of AWBI in the management of wheat exports?

Mr Mortimer—You are asking about the insertion of the objective under 5A(1). That is seeking to clarify the objective of the Wheat Export Authority. It arose from the NCP review of the wheat marketing arrangements which were reported in 2001. That review found that the objective had not been spelt out with sufficient clarity in the new arrangements. The government accepted that recommendation and indicated that it would implement it the next time the legislation was amended. Essentially, it is consistent with the nature of the arrangements in terms of emphasising the importance of maximising returns for pools. That was set out in the enabling legislation when the former Wheat Board was privatised. Indeed, it is set out also in the constitution of AWBI. But also the arrangements contemplated there would be opportunities for developing niche and other markets. That is what we see in the broad arrangements for the Wheat Export Authority as an organisation.

Senator O'BRIEN—But it refers to the fact that the Wheat Export Authority can use its power to develop markets, but that can only happen after consultation with AWBI and only if based on advice from AWBI that it is not disadvantaged or will not at some future time be disadvantaged. So am I correct in saying that this bill does not simply impose a new levy on grain growers? It changes the relationship between the Wheat Export Authority and the holder of the single desk monopoly power.

Mr Mortimer—No. I do not think that is a fair representation. I think essentially it does some housekeeping in terms of making clear the arrangements that the government has set in train. If you look through the extent of the arrangements, they all stand together and complement each other around that. The purpose of inserting the objective is essentially to clarify that and to provide a clear basis that is transparent for the ongoing activities of the Wheat Export Authority with regard to monitoring and evaluation.

Senator O'BRIEN—I know there are some who would disagree with that interpretation. In fact, it is my view that looking at this legislation we are really going to have to look at matters as well as the imposition of the levy and the performance of the Wheat Export Authority. Item 3 provides in part for the Commonwealth to recover costs associated with the collection of the levy from growers. I assume this will be a small amount. Could you give the committee some indication of the cost of administering this levy.

Mr Mortimer—I will ask Mr Maxwell to answer that.

Mr Maxwell—Based on the information I have, at this stage we would estimate the cost to be about \$20,000 plus some initial set-up costs for mail-outs and system changes per year.

Senator O'BRIEN—Some system changes?

Mr Maxwell—Yes.

Senator O'BRIEN—They could be expensive or inexpensive, depending on what they are.

Mr Maxwell—The information I have from our system provider is that it will be in the vicinity of about \$3,000.

Senator O'BRIEN—With respect to the ongoing costs, is that a staffing position that it is funding?

Mr Maxwell—Part of a staffing position.

Senator O'BRIEN—I assumed you were not paying anyone \$20,000 inclusive of all costs. If I understood it correctly, levy funds will flow to consolidated revenue. These will be provided to the Wheat Export Authority less any costs associated with collection and management.

Mr Maxwell—Yes.

Senator O'BRIEN—Why is the amendment in item 4 omitting section 19(3) and substituting section 18(3)? Was the wrong clause identified, or is it more complicated than that?

Mr Mortimer—That is a housekeeping exercise. Essentially, the legislation currently, before amendment, has a mistake in reference to the CAC Act and relates to the nature of investment activities by companies operating under the CAC Act.

Senator O'BRIEN—So it is correcting an error?

Mr Mortimer—Yes. I am sorry, but it is a mistake. We will have to confess that, in the previous draft, someone's eyes slipped.

Senator O'BRIEN—A heinous crime! Who is responsible for that? Is it your responsibility, Mr Mortimer?

Mr Mortimer—I think that person has gone missing, Senator.

Senator O'BRIEN—Item 5 provides for new sections 58 and 59. Can you confirm that a variation to a consent by the Wheat Export Authority cannot occur without the authority first consulting AWBI?

Mr Mortimer—If you read through it, basically it sets out a few steps. Subsection (3) says that the authority must consult nominated company B in the taking of those amounts. Subsection (4) then goes on to say subsection (3)(a) does not apply to a variation if, in the opinion of the authority, the variation is of a minor nature. Subsection (5) says that, without limiting subsection (4), a variation is taken to be of a minor nature if it relates only to that tonnage or a variation of 500 tonnes. So that would seem to make it clear that, in those instances, as set out in subsection (5) of that part, the AWB, company B, does not need to be consulted.

Senator O'BRIEN—Do I presume correctly that no variation to a consent order can be given if it is not in the interests of AWBI as determined by AWBI?

Mr Mortimer—No. The Wheat Export Authority makes that determination on the basis of its requirements and its guidelines.

Senator O'BRIEN—So does this clause change the relationship between the Wheat Export Authority and AWBI?

Mr Mortimer—No. It simply allows minor variations to be made without having to lodge a new application in itself. So it is designed to allow the Wheat Export Authority to be more responsive to potential exporters who might seek to lodge an application. So they do not have to recover the whole assessment process.

Senator O'BRIEN—A minor variation is taken to be minor if it is less than 500 tonnes—

Mr Mortimer—That is right.

Senator O'BRIEN—where the variation relates only to the tonnage of wheat to be exported. Is that the correct understanding?

Mr Mortimer—That is right.

Senator O'BRIEN—But the explanatory memorandum says that other matters, such as the grade of wheat, may be considered minor but that the Wheat Export Authority must consult AWBI. Does that mean that the Wheat Export Authority can only act independently where there is a small quantum change to the export?

Mr Mortimer—I think it is saying that if there are other relevant factors, the Wheat Export Authority will consult with AWB International. But other matters could be deemed to be minor by the WEA where it was considered not substantially changed. It is a matter of judgment, I guess it is fair to say. You will note that in those cases the Wheat Export Authority is required to inform AWBI of the change.

Senator O'BRIEN—Subsection (7) states that a consent cannot be varied otherwise than in accordance with this section. Subsection (3)(a) says that they must consult company B—except if it is minor in nature.

Mr Mortimer—That is right.

Senator O'BRIEN—Minor is if it varies the tonnage by not more than 500 tonnes?

Mr Mortimer—That is right.

Senator O'BRIEN—And what is minor is then a matter for interpretation. Is that what you are saying?

Mr Mortimer—No. The tonnage is clearly specified in terms of the 500 tonnes. The relevant sentence is contained in paragraph 14 of the explanatory memorandum, where it says the new subsection provides that a request to vary the tonnage to be exported by not more than 500 tonnes would be a minor matter. But other matters could also be deemed minor by the Wheat Export Authority where it is considered that the nature or impact of the consent would not be substantially changed by the variation. However, there is a safeguard clause in there in terms of the broad nature of the arrangements, which requires the Wheat Export Authority to inform AWBI of any such changes.

Senator O'BRIEN—I think that was my point. There would not be too many cases where there would not be consultation between AWBI and the Wheat Export Authority about variations.

Mr Mortimer—Essentially, I made the point earlier that the point of this legislation is not to change in any material way the operation of the export monopoly. Rather, it is to clarify and improve operational efficiency. The broad relationships, the arrangements and the operation of the Wheat Export Authority are not being changed or modified in any way by this legislation.

Senator O'BRIEN—I am reflecting on your answer to earlier questions about the regulations. Did you intend to tell us that the department cannot draft the regulations until the parliament passes the amendment bill?

Mr Mortimer—The department can indeed, yes.

Senator O'BRIEN—I understood you to be saying that you were not saying that.

Mr Mortimer—I was saying that we will move through this in a stepped process. There is a timetable to be met in terms of implementation. But at this stage we have not reached the step of drafting the regulations. Certainly that will be done expeditiously so we do not slow anything down. But it has not been done at this point.

Senator O'BRIEN—What is the timetable that you are working towards?

Mr Mortimer—That depends on a few timings. I will go to the timeline. This committee is due to report back on 20 March. It will make comments on the legislation which will then be considered by the Senate and parliament in order that the legislation can be finalised. After that, there is a week of sitting days in March. Then parliament rises until the budget sittings. Then there are a number of weeks of parliamentary sittings in May during which the parliament can finalise its position on this. In terms of implementing it—I am taking you through the steps—once the legislation is settled, the regulations can be finalised and executive council needs to sign off on the regulations to bring them into force. The government's policy is to give a month's notice of a new levy to levy payers. The levy then comes into place. If the levy is imposed on a monthly basis, the first levy collections are due within 28 days of the first of the month. So they are essentially the steps that we follow in terms of where we are today and when funding might be available to the Wheat Export Authority.

Senator O'BRIEN—When the regulations are promulgated, they are effective immediately, aren't they?

Mr Mortimer—They are. There is a notification period. In effect, there is a month's grace before payments are due.

Senator O'BRIEN—It is possible to have the regulations that are intended to be drafted to be drafted now?

Mr Mortimer—That is possible, but we still await parliament's approval of the legislation.

Senator O'BRIEN—Obviously, you could not promulgate any regulation until there was a power to do so.

Mr Mortimer—As I said, there is a collection of regulations required to give effect to it. But to promulgate the two regulations that the legislation provides for would essentially just collect money and put it into consolidated revenue. It would serve no purpose because it could not be directed to any particular purpose. So until this legislation is passed, there would be some issues of accountability in terms of collecting levy money and not having the capability to put it to its intended use.

Senator O'BRIEN—So the lead time for this sort of legislation for the purposes of collecting money is three or four months?

Mr Mortimer—From which point?

Senator O'BRIEN—From the point of the passage of the legislation.

Mr Mortimer—From the point of passage of the legislation, if the timetables for executive council align fairly well, it can happen fairly swiftly.

Senator O'BRIEN—Subject to that 28-day notification period?

Mr Mortimer—Yes. There is a policy of giving industry 28 days notification.

Senator O'BRIEN—And upon promulgation there is a waiting time until you start collecting?

Mr Mortimer—That is the notification period, yes. There is a notification period. After that, the money is due from a certain month, but it is not collected until the end of the month. Because the levy relates to transactions within the month period of time, the company—if I can use the technical language—or the levy payer then is due to put that return and provide those funds within 28 days. Is that a correct way of putting it, Mr Maxwell?

Mr Maxwell—That is correct.

Senator O'BRIEN—In the regulation impact statement under the subheading 'consultation' we are advised that consultation on a broad range of funding options was undertaken with the main stakeholders. The stakeholders were identified as the Wheat Export Authority, the Grains Council and AWB International. Was there consultation with any other stakeholders?

Mr Mortimer—That statement specifies the fact that the minister wrote formally to those organisations, because of their roles, seeking their views. The minister also put this issue on the table in a public speech to Grains Week last week and signified the government's thinking and indeed intent in terms of instituting a regime for charging for the operation of the Wheat Export Authority. He made that quite public there. Indeed, a number of industry groups other than those three listed there have made their views on the issue known.

Senator O'BRIEN—So the extent of the consultation was a speech at Grains Week and the letters to those three bodies?

Mr Mortimer—That is the extent of the formal consultation. You will appreciate that matters are discussed informally amongst people all the time.

Senator O'BRIEN—Yes, football and cricket and a whole lot of things. I am interested in what consultation took place on the matters pertaining to this bill.

Mr Mortimer—Yes.

Senator O'BRIEN—So the only formal process was the one you described—a speech to Grains Week and three letters?

Mr Mortimer—That is right.

Senator O'BRIEN—I just compare that with evidence from Mr Taylor from the Wheat Export Authority in May 2001, when he told this committee that, where the authority is dealing with a significant issue, it consults widely. He cited an example—a review of WEA guidelines that included consultation with 60 exporters and industry groups.

Mr Mortimer—That is a fair comment on behalf of the Wheat Export Authority. Essentially, this is a matter which the government needs to decide. The Wheat Export Authority is not in a position to actually settle the arrangements for funding its operations. That is a matter that the government has to decide and do in the way it thinks is the most effective.

Senator O'BRIEN—So the government thought the most effective consultation method was a speech at Grains Week and three letters?

Mr Mortimer—I think that is being a bit harsh on—

Senator O'BRIEN—I do not think so. You just told me that was their formal consultation.

Mr Mortimer—But the Grains Week forum is the major industry forum which happens every year which everyone who participates in the wheat industry attends. It certainly has very broad coverage. A statement there effectively is a signal there to everyone in the industry. I would also comment that the GCA is the peak national body representing the breadth of grain growers in Australia. It operates through affiliates in all the different states. So while you are free to make the comment, I think it is also fair to say that the minister has made efforts to engage with the key players in this exercise.

Senator O'BRIEN—Apart from the three letters, what efforts did the minister make to liaise with the key players in this sector? I presume they are more than the three organisations that you have identified so far.

Mr Mortimer—I cannot give any answer on that. I am not in a situation to give a list of meetings that the minister may or may not have had with people on the matter.

CHAIR—I have a question about funding. Do I understand that funding runs out on 3 October?

Mr Mortimer—It is not exactly precise, but our advice is September or October, potentially.

CHAIR—Obviously if the levy started then, there would not be a pool of money to continue. In fact, you would need several months of levy collection to have a pool of money to fund the future operations of the Wheat Export Authority.

Mr Mortimer—Our understanding is that if the levy were to be implemented from 1 July, we would be in a situation to be able to guarantee funding without interruption for the Wheat Export Authority.

Senator O'BRIEN—We will come to that. On the web site there is a document regarding the regulatory plan. In the section relating to the Wheat Export Authority's funding arrangements, you refer to consultation with the Wheat Export Authority, the Grains Council of Australia and AWB Ltd. Why AWB Ltd and not AWBI?

Mr Mortimer—It probably depends on the nature of the issue. I do not have that in front of me and I am not in a situation to comment on whether there is any finer distinction being made. But AWBI—

Senator O'BRIEN—They are two different companies. It is not that fine a distinction.

Mr Mortimer—One has a relationship to the other. The key issue for us is that AWBI is the company that holds the export monopoly. Indeed, as I mentioned earlier, AWBI was the company that the minister consulted with.

Senator O'BRIEN—There is also reference to future consultation with other sectors of the grain industry. Can you identify the other sectors that you refer to there?

Mr Mortimer—I do not think I am in a situation to do that. I do not have it in front of me. I cannot comment on what the document might say.

Senator O'BRIEN—The document says that funding of the Wheat Export Authority is the issue. That is why I am raising it. It is pertinent to the legislation that is before this committee at the moment. I am trying to find out what the intention is with regard to that consultation after the event.

Mr Mortimer—Essentially, the consultation was, as I outlined it, through the minister stating the government's intentions at Grains Week. In a formal sense, he wrote to the three organisations nominated. He has had those discussions.

Senator O'BRIEN—There are already provisions in the act to provide for regulations to enable the WEA to collect a fee for application for export consents, but such fees have not been charged. Has there been any consultation on the application of such fees?

Mr Mortimer—Not that I am aware of.

Senator O'BRIEN—You referred to Mr Truss's speech to Grains Week in April last year. The government would be funding the Wheat Export Authority; that is what I understood he said.

Mr Mortimer—I do not have the speech in front of me but I do not think that is what he said.

Senator O'BRIEN—I have paraphrased what he said. He said:

Let me make it clear—it would be inappropriate for taxpayers to fund the WEA.

Mr Mortimer—He said it would be—

Senator O'BRIEN—Inappropriate for taxpayers to fund the WEA. I have interpreted that to mean that the government is not going to be funding the WEA. Is that what the industry should have understood?

Mr Mortimer—I think that is a very clear signal.

Senator O'BRIEN—I thought it was. Dr Samson told us last May that AFFA had engaged in a series of discussions with the Grains Council about future funding arrangements. You also told us there had been some informal discussions with AWBI. Can you provide the committee with a schedule of all these consultations.

Mr Mortimer—I will take that on notice. I certainly was not dealing with this issue last year and cannot comment on whatever meetings may have been held then.

Senator O'BRIEN—I presume there would be the ability to ascertain where, when and with whom meetings were held about this issue.

Mr Mortimer—To the extent that they were formal meetings that were held specifically to discuss this matter, yes, that is right.

Senator O'BRIEN—Can you advise the committee on notice of the detail of those meetings—when, where and with whom—that the department held?

Mr Mortimer—Yes.

Senator O'BRIEN—Mr Walter told us last year that since the WEA was established the cost of administration had been fairly stable. How long has the department been aware of this deadline for attending to the funding needs of WEA?

Mr Mortimer—The department has been conscious that there is a finite amount of money that was provided for the operation of the Wheat Export Authority.

Senator O'BRIEN—We all knew that from the start.

Mr Mortimer—Fine. So it really depended on the rate of expenditure and how long it would last, and then consideration was given to how to fund that once that initial funding had expired. Clearly, the fact that the minister raised it at Grains Week last year makes it clear that the department was aware of the issue and the department was working with the minister in determining possible ways to deal with it.

Senator O'BRIEN—From early last year?

Mr Mortimer—Sorry?

Senator O'BRIEN—The department was working with the minister on possible ways to deal with the funding issue from early last year?

Mr Mortimer—I think that is a fair representation. As I have said, I was not responsible for this activity then, but the fact that the minister put that proposition publicly to Grains Week is a fair signal that it was being contemplated and indeed a remedy is being developed.

Senator O'BRIEN—Do I take it that consultations began early last year on how best to raise the money?

Mr Mortimer—The department would have done advisings in terms of broader discussions and consultations. I am not quite sure how helpful it is to try to pin down any possible conversation. I do not think it is really practical, to be quite frank. Clearly, there was a matter that was out there for public debate.

Senator O'BRIEN—I see. Can you tell the committee when the submission proposing this funding arrangement went to cabinet?

Mr Mortimer—I am not sure whether it went to cabinet. Mr Newman, can you help me? I will take it on notice. As I said, I did not have responsibility for this area then. I have to determine whether it was a matter that had to go to cabinet or whether it was settled amongst ministers.

Senator O'BRIEN—If it is the latter, when this minister signed it off.

Mr Mortimer—Okay, fine.

Senator O'BRIEN—When were the drafting instructions issued for this bill?

Mr Mortimer—I will have to take that on notice. I do not have that detail with me.

Senator O'BRIEN—I take it from your earlier answers there have been no drafting instructions prepared for regulations required to put the levy in place?

Mr Mortimer—Mr Newman tells me that drafting instructions have been issued.

Senator O'BRIEN—When was that? Recently?

Mr Mortimer—We would need to take the date on notice.

CHAIR—I have a question on the wheat funding decision. As I understand it, the act was last amended in 1999.

Mr Mortimer—I think that is probably right. I do not have the exact date. In moving from the statutory Wheat Board to the new arrangements, two sets of legislation went through. The latter one probably was in about 1999.

CHAIR—Anyhow, at that time the decision was taken to take up this \$6 million. So the speech to Grains Week last week would not have come as any great surprise, given the whole thing was in the system since 1999?

Mr Mortimer—That is right.

CHAIR—Sorry, last year.

Senator O'BRIEN—That is right, isn't it? There is surprise that the funds will run out because Mr Walter said the rate of expenditure was fairly stable. When it would run out would have been, give or take a couple of months, ascertainable early last year?

Mr Mortimer—That would depend on the experience and extent of operations with the new arrangements, yes.

Senator O'BRIEN—I am going on what Mr Walter told us last year about the Wheat Export Authority's costing and the outflow of funds at the organisation. At the moment, growers pay a levy related to the national residue survey. It is a levy to fund R&D. There are fees under the grain export program. Those fees were to be revised at the end of last year, were they?

Mr Mortimer—Which ones are you specifically referring to?

Senator O'BRIEN—NRS, R&D and the grain export program.

Mr Mortimer—You are interested in knowing what the quantum of those—

Senator O'BRIEN—Were they reviewed at the end of last year?

Mr Mortimer—I cannot answer that. I am not aware. I will take it on notice.

Senator O'BRIEN—There are a range of fees relating to both bulk and bagged or containerised grain. There are quarantine fees, for example. That is correct?

Mr Mortimer—I am sorry. I am aware that there are a range of charges that apply for the operation of AQIS, but I do not have the details and arrangements with me.

Senator O'BRIEN—Is there a document which would set out the range of fees that grain growers would pay in relation to their grain in export?

Mr Mortimer—I will take that on notice and see whether I can provide it for you. I expect there must be a sheet of charges for the AQIS fees.

Senator O'BRIEN—Well, there would be fees and charges through the supply chain for both domestic and export activities which would be Commonwealth fees, I would imagine.

Mr Mortimer—Absolutely. They are publicly known. Considerable effort is put into notifying them to the people who need to pay them. I just do not have a consolidated set with me and I do not know when they may have been last reviewed.

Senator O'BRIEN—You have told us the mechanics of setting up a funding arrangement. Once the bill passes, the regulations can be promulgated, whether they are drafted before or after that. What is involved in putting a collection mechanism in place? I am sure you told us about that.

Mr Mortimer—I will pass to Mr Maxwell on that.

Mr Maxwell—In our area, we have field officers based throughout Australia. Once we get the information that there is going to be a levy, we will go out to the collection points and work with them in terms of what their obligations are. We will mail out information notices. If practical, we will visit them if they are nearby. We will be on the phone. Once it is passed, the field officers take over and put the collection mechanism in place. We set up a system internally where the money comes in. It is then paid out twice a month, usually.

Senator O'BRIEN—It is noted in the regulation impact statement that the cost of administering the levy, if collected directly from growers, will be significantly higher than if it is collected from exporters. So the point of collection for the levy would be through AWBI?

Mr Maxwell—Usually, our advice is to minimise the collection points. So if that is practical, we usually work at a point of collection where there is a minimum so we can make sure that the costs do not get out of hand.

Senator O'BRIEN—Are you saying that you have to consider the issue of collection points?

Mr Mortimer—The issue is being considered. It is just that no arrangement has been entered into in terms of finalising that or coming to any agreement with any particular party on how it is done. I think what Mr Maxwell is saying is that you want to get it to the point that is closest to where, in a practical sense, it is designed to be levied. In this case, it is designed to be levied on wheat that is exported, so at a point on the wharf as close as possible to where the wheat gets put onto the boat. The question then becomes a matter of considering the administrative systems around that and whether it might be best done by, say, a customs agent or a shipping company or someone else or, as I indicated potentially, the company, whoever it might be, itself.

Senator O'BRIEN—That puts the grain on the boat?

Mr Mortimer—I think it is fair to say that that issue has not been decided. Is that what you are saying?

Mr Maxwell—Correct. Usually it is the export agent. In other levies, my experience is that it is usually the export agent.

Senator O'BRIEN—So following that precedent, it would be AWBI?

Mr Mortimer—Where it is the export agent. It may not necessarily be.

CHAIR—I declare an interest as an old worn-out farmer. If it is collected at the wharf or wherever it is exported, how do you apportion that back at the farm gate? I might sell my wheat to the flour mill. How do you actually apportion it?

Mr Maxwell—If you are assigning it to a flour mill, that is where the levy point is. Usually, it is the first point of sale. So if it then gets exported, there is no levy because you have paid it at the flour mill.

CHAIR—So if I deliver it to the pool and half the wheat at Junee subterminal goes for export and the other half goes to Manildra, where do I stand as the grower?

Mr Maxwell—It is deducted at the first point of sale.

Mr Mortimer—It is a matter of which levy we are talking about here. In terms of this charge on exports, I think what Mr Maxwell is suggesting is that it would actually be applied at the wharf in some practical way whereas, say, the R&D levy, which is already existing and is collected through related regulation, is collected at the first point after it leaves the farm.

Mr Maxwell—I am talking about the R&D levy, yes.

CHAIR—So it is collected from the exporter?

Mr Mortimer—That is right. The charge we are talking about in terms of this legislation—

CHAIR—who then charges it back to the grower, because it does not grow on trees. How does the grower know that his proportion of the levy was fair to him, having regard to whatever happened to his wheat?

Mr Mortimer—Essentially, it is related to the amount of wheat that is exported.

CHAIR—So out of the average across the pool?

Mr Mortimer—If the wheat goes out to AWBI, that would be right, yes. There would be a charge on the amount that goes from the pool out to the export market. Essentially, that is spread across that.

Senator O'BRIEN—So when will this collection point decision be made?

Mr Mortimer—It needs to be made soon so that we can finalise the regulation, because I do not think the regulation can be settled on that until we have made that decision. Is that fair?

Mr Maxwell—Yes.

Senator O'BRIEN—So how long have you been waiting for a decision on this? How long is it since a decision has been made that there will be a levy to now? How long have we been contemplating this issue?

Mr Mortimer—In terms of where to apply it at the wharf, I think it is fair to say it should not be too hard and should not take too long. It is the sort of thing that the levies management unit does all the time. The real issue in terms of parliament is actually getting agreement to the mechanism in a broad sense and settling that position.

Senator O'BRIEN—That may be your view, but I think a number of senators have expressed the view that we need to understand how it is going to work and how efficient the mechanism is going to be.

Mr Mortimer—That is a fair proposition.

Senator O'BRIEN—We do not have an opportunity to amend the regulation.

Mr Mortimer—That is true. You will notice in the explanatory memorandum the reference made to the range of the charge from 12c to 15c to apply to wheat that is sold overseas for export. So I think they are two critical markers that set and make fairly clear what the arrangement will be. I accept your point about having the mechanics of the administration settled. However, that should be able to be done fairly quickly.

CHAIR—The thing I am curious about is that, when it leaves the farm gate and is sold, the farmer does not know whether it is going to be exported or not.

Mr Mortimer—That is right.

CHAIR—The farmer would be very suspicious, if he is like me, that all transactions would get a little snip to pay the levy rather than just the export transaction. I cannot see how, in my muddled mind, you can actually separate at the point of sale what is going to be exported and what is not and how that all comes back fairly proportioned to the grower as to what happened to his wheat.

Mr Mortimer—Let me make an attempt to answer that. As you said earlier, if you sell it to Manildra, there is no further charge because it does not go to export markets. So that is transparent and straightforward. If it goes to AWB as a company, it then needs to be managed through the accounting system between AWB and AWBI. That will be recorded in their transactions. Depending on whether the wheat goes to export or not, the charge will or will not apply.

CHAIR—But if there is 100,000 tonnes in the heap at Junee and the Wheat Board or whoever exports 50,000 tonnes of that and I have delivered 200 tonnes in 100,000 tonnes, and there is a portion of it sold to GrainCorp or Billy Bloggs or whoever, how do I know what happened to my 200 tonnes?

Mr Mortimer—Essentially, the Wheat Board will record those transactions. You will be paid—

CHAIR—Proportionally.

Mr Mortimer—You will be paid from the Wheat Board on the basis of where they make their sales. Sales that go through pools will be treated one way as opposed to sales that go to the domestic market.

CHAIR—But if it is pooled into one 100,000-tonne dump of wheat, I do not keep track of every bit. I will be delighted when you have an answer.

Mr Mortimer—Thank you, Senator.

Senator O'BRIEN—I look forward to it. The government will make regulations under the Primary Industries (Customs) Charges Act. It says in the EM that it will make those charges and refers to any penalties payable under the Primary Industries Levies and Charges Collection Act. What are those penalties and what grounds will they be levied on? Who will they be imposed on?

Mr Maxwell—Under the collection act there is a penalty for late payment.

Mr Mortimer—It is simply providing for those penalties where they may be necessary.

Senator O'BRIEN—The bill provides for the payment of moneys out of consolidated revenue and requires the Commonwealth to pay to the Wheat Export Authority all levy funds except administrative costs. Is it the case that the funding will go to a specific account within consolidated revenue—that is, the levy funding will be quarantined within consolidated revenue?

Mr Mortimer—I think that is the sense of it. As I said earlier, there needs to be a tracking mechanism of the funds, from when they are charged and when they are collected and to the purpose that they are allocated for. Essentially, those amounts need to tally up. So that is what that is designed to do—to make sure that the amounts collected for this purpose actually go through to the purpose.

Senator O'BRIEN—So if there were a delay in the passage of this legislation, the government could provide funding from consolidated revenue by way of a loan? And that loan could be serviced out of future levy income, could it not?

Mr Mortimer—Potentially that is possible.

Senator O'BRIEN—So I take it the mechanics of that process would be the provision of funding for a new policy initiative through appropriation bill No. 2?

Mr Mortimer—In a technical sense, yes.

Senator O'BRIEN—Isn't another option for the Wheat Export Authority to borrow bridging finance commercially to meet short-term shortfall?

Mr Mortimer—I think there are two levels of answer to that. First, the Wheat Export Authority's capability to borrow is always going to depend on the commercial lender being satisfied that there is someone to pay. Essentially, the Wheat Export Authority is the Commonwealth, and the Commonwealth will need to bear that responsibility. I guess it is also fair to say that there is an issue of Commonwealth corporate behaviour here, in the sense that we need to be cognisant of whether it is reasonable for an authority to be operating on essentially a short-term stopgap measure when the Commonwealth has indicated it has a clear commitment to the activity of this authority and believes it is important activity that needs to continue. I think in a broad governance sense it probably would not be desirable to be putting that authority under the possible stresses of short-term funding arrangements.

Senator O'BRIEN—In terms of the proper consideration of the legislation, we would have been considering it perhaps last year if that was a consequence to be totally avoided, wouldn't we?

Mr Mortimer—I am not in a situation to comment on the timing issue of this.

Senator O'BRIEN—There is a limited amount of time for the consideration of legislation. It depends on the government's priorities for particular pieces of legislation.

Mr Mortimer—Yes.

Senator O'BRIEN—You are not telling me that there can be certainty about when this legislation will be given priority in the government's program?

Mr Mortimer—Essentially, as you say, the government determines its priorities, but also, as I have emphasised at the outset, the legislation has two key purposes. There is the funding purpose, which we are talking about, and that is important. Otherwise, it is essentially making desirable changes to the legislation

that are not in any shape or form representing a policy change on the operation of the wheat marketing arrangements.

Senator O'BRIEN—Let us return to the issue we have been discussing. I interpret from the Wheat Marketing Act that the authority has the power to do all things necessary or convenient to be done in connection with the performance of its functions. So that would mean it can borrow.

Mr Mortimer—There is a provision in the act that is a bit more specific than that; I will just see if I can find it. Section 12, division 4, 'Borrowing', on page 9 of the legislation, essentially says—

Senator O'BRIEN—It requires the approval of the minister.

Mr Mortimer—Yes. It says that the authority must not borrow money except in accordance with the written approval of the minister. So, at the end of the day, it is a government decision as to the funding for the authority.

Senator O'BRIEN—So it is not correct to say that the Wheat Export Authority will be unable to operate if this legislation is not passed in the next couple of weeks?

Mr Mortimer—Essentially, the government needs to take a decision on the best way to fund the Wheat Export Authority, Minister—sorry, Senator.

Senator O'BRIEN—I accept your apology. He is more offended than I am!

Mr Mortimer—Apologies for that slip. Essentially, the minister has to make the decision on behalf of government as to the best way to do this; the government is part of that. It considered the options. Indeed, we have already canvassed that in a broad sense in terms of the minister's statement and proposition to Grains Week last year. The minister needs to take into account a number of factors: the long-term arrangements with the Wheat Export Authority, what is the best, most stable and effective mechanism for funding it and so on.

Senator O'BRIEN—What does the minister do if the bill does not pass?

Mr Mortimer—The minister would have to contemplate other options, I guess.

Senator O'BRIEN—What are those other options?

Mr Mortimer—The other options would be, as you have indicated, the borrowings. That is provided for. I guess another option is to fund it from broader consolidated revenue.

Senator O'BRIEN—Is it an option for the minister to decide not to fund the authority at all?

Mr Mortimer—I do not think that is a particularly desirable or sensible option. In a technical sense, yes. But the government has established an authority for a purpose, and there is an ongoing need for that purpose, so it would not seem particularly productive to contemplate not funding it.

CHAIR—I understand it is about \$2 million a year that is required to run it. With the vagaries of the weather and the plight of the poor old farmer and the variation in the export program, how do you strike a middle ground? Does someone hold the money in a kitty in an excess year and someone tops up the kitty in a lean year like this year, for instance?

Mr Mortimer—That is a good point. Essentially, we would look at the operating costs of the agency and strike some sort of average line through the experience so far in terms of the volume of wheat, given that we are talking about a charge on the volume of exports here, and consider whatever tolerance might be needed and then strike a rate on that basis.

CHAIR—So would you have a variable rate or a reserve of funds?

Mr Mortimer—At this stage, it is expected that there would be a rate which is not variable but would be set. That would be set in the regulation.

CHAIR—From year to year, though—because this year would be a hell of a lot different, we hope, from next year?

Mr Mortimer—We would prefer to be able to set a rate that is close enough to \$2 million. But, you are right; there is a lot of variability in the production and sales of wheat. There will be the capability under regulation to do that if that situation arose

CHAIR—So you would set it at the minimum?

Mr Mortimer—Yes.

Senator O'BRIEN—At the projected amount you have mentioned, how many tonnes of wheat need to be exported?

Mr Mortimer—I do not have that number with me.

CHAIR—To raise the \$2 million? You should be able to do that in your head.

Senator O'BRIEN—Yes, but I am not as quick as you, Bill. I was just thinking that five million tonnes only gives you \$750,000—is that right?

Mr Mortimer—I am sorry, I do not have a calculator—that is not particularly helpful.

CHAIR—It would be 13 million tonnes or something, wouldn't it?

Mr Mortimer—I notice that the AWBI have made a stab at this in their submission.

Senator O'BRIEN—We will work that out. It is also proposed to impose a fee for the lodgment of an application to the Wheat Export Authority for export consent. Doesn't the Wheat Marketing Act already provide for this under section 57(3)(b)?

Mr Mortimer—That is correct.

Senator O'BRIEN—Does that mean that an exporter seeking a permit to ship containerised grain will pay a fee for the permit and also collect the levy on the grain?

Mr Mortimer—That is right.

Senator O'BRIEN—But AWBI will not make any permit payments and will potentially also collect the levy?

Mr Mortimer—What we are talking about here is a consent fee for a permit where a party other than the export monopoly holder makes application to export.

Senator O'BRIEN—So that will be a difference between the single desk holder and the others?

Mr Mortimer—That is right.

Senator O'BRIEN—The others will pay this permit fee and that will be another differentiation?

Mr Mortimer—Yes.

Senator O'BRIEN—What will the process be for putting in place a fee for service, if you like, for the issuing of permits for bagged or containerised grain?

Mr Mortimer—That is currently possible under the legislation. Essentially, the minister will make that determination.

Senator O'BRIEN—Do I take it that when the legislation came into being the minister decided not to impose a fee?

Mr Mortimer—That is right.

Senator O'BRIEN—And the matter has not been considered until recently? When was the decision taken to impose a fee?

Mr Mortimer—That was taken as part of the consideration of this package of arrangements that we are discussing here now.

Senator O'BRIEN—So some time from the beginning of last year?

Mr Mortimer—That is right.

Senator O'BRIEN—Can you be more precise than that? Was it the beginning of last year?

Mr Mortimer—No, it is not possible. Essentially, the decision was taken as part of the decision of implementing the charging arrangements that we have in front of us.

Senator O'BRIEN—Imposing a fee for the lodgment of an application with the Wheat Export Authority for an export consent. Can we clarify the purpose of the 2004 review: is it intended to be a review of AWBI's operation of the single desk and not the single desk itself?

Mr Mortimer—That is broadly the nature of it.

Senator O'BRIEN—Does that mean that if the Wheat Export Authority makes an adverse report on AWBI's performance, the department would then find itself in probably the absurd position of casting around for an alternative export monopoly holder rather than the single desk itself?

Mr Mortimer—That is essentially an issue that the minister would have to make on behalf of the government rather than the department.

Senator O'BRIEN—I guess the question is: if you get an adverse report on AWBI, however likely that is, the minister would then find himself in a position of potentially having to direct the department to find an alternative monopoly export holder?

Mr Mortimer—In broad terms, the government's position is that a single desk wheat export monopoly will continue. It has flagged a review under national competition policy principles by 2010, but has signified

that it will review the performance of the current export monopoly holder on the basis of WEA's assessment by the end of 2004. It is impossible to say how that will go. In the instance that there were adverse findings, the minister and the government would need to consider their position. I think that is about as much as you can say.

Senator O'BRIEN—I do not know whether Senator Cherry wants to ask some questions now—he is outside on the telephone, I think.

Senator BUCKLAND—I want to go back to an issue raised by Senator Heffernan. How do you know where your wheat is going and what you are paying or what you will get? It was put to me last week by two growers—this was in South Australia, where probably most, if not all, wheat goes to the export market—that if they deliver to Port Adelaide, for instance, and they take their grain down there, it will be exported, but if it goes to a local silo there is no guarantee where that wheat will go. How do you explain to those growers what the levy is and what they will get for the grain they deliver?

Mr Mortimer—At its simplest, there is no direct pathway of information that can actually track it neatly for them. The company can do all that. Whatever company exports will form a part or the totality of the chain, depending on whether it stays in the hands of the one company from initial purchase through to export. But the net consequence is that the charge applies on export. So there is a deduction of the relevant amount made. A charge is incurred by the exporter. The deduction is made from the payment back to the grower and then that is reflected in a reduced payment to the grower. There is an issue of transparency, depending on the nature of the transactions and how many transactions happen along the line.

Senator BUCKLAND—I see Senator Cherry is here now, so I will let him get on with it. But what concerns me is that the growers themselves are very confused with what is happening here, which makes me wonder where the consultation process really went.

CHAIR—We are a pretty confused mob.

Senator BUCKLAND—I know that.

Senator O'BRIEN—He was talking about the Liberal Party, not the growers.

Senator BUCKLAND—It worries me because you talk about transparency in some ways but there does not seem to be a very transparent dissemination of information to the growers.

Mr Mortimer—I accept what you are saying in broad terms. The arrangements will be in some regards quite complex but in other ways fairly simple. I suppose they are comparable to the sort of arrangements in place for, say, other charges on exports and such like, which seem to work. People work out how they operate and make the adjustments.

Senator CHERRY—I have a couple of questions. I missed the first part of your evidence, so if you have dealt with this stuff simply say that you have dealt with it and I will read the *Hansard* later. The first question is about the national competition policy review and whether or not the government accepted all of the recommendations of the review report. Do you have any information on that?

Mr Mortimer—Yes. The government did not accept all the recommendations of that. It accepted some but not others; you are quite right.

Senator CHERRY—Could you make your response to the review available to the committee?

Mr Mortimer—Yes. I can actually take you through it in broad terms. The government decided that the Wheat Export Authority 2004 review should not be altered to incorporate NCP reviews. But it did ask the Wheat Export Authority to develop rigorous and transparent performance indicators to ensure that the 2004 review is robust and can properly measure the benefits to industry and the wider community. I guess it is fair to say that that is broad agreement.

There was an issue about longer- and shorter-term consents for export. The minister asked the WEA to allow longer-term consents to be made available for the export of wheat. I think it was a period of about a year. That was agreed and has been provided for in the Wheat Export Authority guidelines. As I mentioned earlier, in discussion with Senator O'Brien, the NCP review commented on the objectives of the system and that they should be clearly articulated and understood. That is picked up in this amending legislation. We have already referenced that.

There were some things that the government did not agree. The government did not adopt the report's recommendations for removal of the AWBI's role in the consent process for export of wheat in containers and bags or for durum wheat in bulk. It considered that this would change significantly the balance between the operation of the Wheat Export Authority and AWBI. The government did not agree with the report's recommendation for a joint industry forum, on the basis that such an initiative is mainly an issue for the industry. I think they are the key recommendations and I have set out where they were agreed or not.

Senator CHERRY—Again, presumably Senator O'Brien would have asked about this. The consultation process for the approval of this levy: could you briefly take me through that unless you have done it earlier?

Mr Mortimer—That is fine. Essentially, the minister proposed the arrangements at Grains Week last year. He put the proposition on the table there in terms of the government's intention.

Senator CHERRY—To whom?

Mr Mortimer—Grains Week is a public forum. It is attended by the bulk of people involved in the grain industry in Australia—the whole range of organisations and people interested. The minister also consulted formally with the Wheat Export Authority, the GCA and AWBI. As Senator O'Brien noted, that is spelt out in the regulation impact statement.

Senator CHERRY—What percentage of grain growers would be outside the Grains Council of Australia?

Mr Mortimer—I cannot really comment on that. I do not have the membership list with me. But I am aware that it is the single largest industry representative organisation for the grains industry and it operates through affiliates in all grain producing states. I think it is fair to say it has the broadest membership and base of any representative organisation for the grains industry.

Senator CHERRY—Some of the submissions we have received have raised concerns about the information flows from exports in terms of changes in market and whether that then becomes proprietary control of AWB Ltd through its subsidiary. Does the government have any concerns about information flows about market intelligence and whether that is being appropriately shared with industry?

Mr Mortimer—In terms of the arrangements between AWB Ltd and AWBI, arrangements have been put in place by those companies to separate out their respective activities and to avoid inappropriate information exchanges between them. AWBI, I dare say, can expand on them to you. Was there another part to that question?

Senator CHERRY—What measures has the government put in place to improve the information flow or to ensure that market intelligence is shared with industry as a whole?

Mr Mortimer—That is a difficult one because essentially you have a competitive market here and people only share information where it is in their interests or, indeed, where there is a potential shared interest. The government does not interfere with that. The arrangements that are in place are simply designed to ensure that, where there may be an impact on the operations of the export monopoly and the pools behind that, the Wheat Export Authority consults on any applications.

Senator CHERRY—I am reading through the submission from one of the submitters we are dealing with later on which is concerned about the continuing vertical integration of AWB and the impact that is having more broadly on the industry in terms of competition. They assert here that there are progressively more restrictive business rules that stifle competition and reduce services available to Australian wheat growers. What monitoring generally does the government do of internal industry structures in terms of efficiency?

Mr Mortimer—Could you just say that last bit again?

Senator CHERRY—What monitoring does the government do in terms of measuring or improving efficiency in the structures of the industry?

Mr Mortimer—In terms of the structures of the wheat marketing industry more broadly?

Senator CHERRY—Yes.

Mr Mortimer—There is nothing specific to the wheat industry. Essentially, the provisions of the ACCC apply in terms of mergers and acquisitions and in terms of anticompetitive behaviour.

Senator CHERRY—You indicated that you have improved the performance indicators on the WEA. In your submission you mention some of the ones that you have, which are on pooling operations, pricing performance, supply chain, operating environment and grower services, products and benefits. What do the trends show with those performance indicators about how the industry is performing? What issues come out of that?

Mr Mortimer—In terms of the detail of that, you might want to follow up on that with the Wheat Export Authority. Essentially, that is set out in the growers reports. There are two that are public, one for the year 2001 and one for the year 2002. But probably the most direct source is to discuss those trends with the Wheat Export Authority.

Senator CHERRY—Thank you. That will do me; I think everything else is with the WEA.

Mr Mortimer—Thank you.

Senator O'BRIEN—I think we can finish with AFFA for the moment.

CHAIR—Thank you very much to the officers from the department.

Proceedings suspended from 5.27 p.m. to 5.38 p.m.

TAYLOR, Mr Glen, Chief Executive Officer, Wheat Export Authority

WALTER, Mr John, Chairman, Wheat Export Authority

CHAIR—Welcome. Would you like to make an opening statement?

Mr Walter—The Wheat Export Authority has made a submission to the committee. I do not seek to go through that submission except to say that it is intended to be a statement of the context in which the Wheat Export Authority operates, the experience it has had through its operations, the plans which it has had and the way the Wheat Export Authority has carried out its task, including the making of reports to the minister and to growers.

CHAIR—Thank you very much.

Senator O'BRIEN—Mr Walter, you were the initial chair of the Wheat Export Authority?

Mr Walter—Yes.

Senator O'BRIEN—I understand that before that you were with the Australian Barley Board.

Mr Walter—I was not with the Australian Barley Board. I have been a director of the Australian Barley Board.

Senator O'BRIEN—What period were you with the Australian Barley Board?

Mr Walter—I was a director of ABB Grain Ltd, which was a South Australian based public company, from early 2000 to late 2002.

Senator O'BRIEN—When did you take up the current position?

Mr Walter—I am not precisely certain but I believe it to be about the end of July 1999.

Senator O'BRIEN—Did that overlap require you to declare a conflict of interest at any time as a director of ABB Grains Ltd?

Mr Walter—To the best of my recollection, the only circumstances where that may have been the case would have been if there had been an application before us for export of wheat in bags or containers. But that would have been the only circumstance that I can either contemplate or, indeed, recollect.

Senator O'BRIEN—Thank you for that. Has the Wheat Export Authority received an application from Futuris for a permit to export bulk wheat?

Mr Walter—Not to my knowledge. It may be a matter that the chief executive of the authority is better able to answer.

Mr Taylor—At this point in time, my understanding is that there are no applications from Futuris to the Wheat Export Authority.

Senator O'BRIEN—Has the Wheat Export Authority ever issued a permit for bulk exports?

Mr Walter—It has issued one.

Senator O'BRIEN—How long ago?

Mr Walter—My recollection is that it would have been late 1999.

Senator O'BRIEN—Can you take us through the process for the issue of such a permit?

Mr Walter—You will recollect that, in terms of the legislative context within which we work, we are not able to provide a permit for bulk export unless AWBI has consented to that permit. Ex: hypothesis: AWBI must have consented to that permit before we granted the permit for bulk export.

Senator O'BRIEN—So the process would have been: receive an application—

Mr Walter—The usual administrative process would have been gone through, consistent with the guidelines which applied at that time.

Senator O'BRIEN—So what information would have to have been conveyed to AWBI?

Mr Walter—You will recollect that we pass on sufficient information for the consultation process to take place. That typically is tonnage, grade and destination.

Senator O'BRIEN—Country of destination?

Mr Walter—Country of destination. Bear in mind that we are required in terms of our guidelines—both then and the current guidelines—to administer those guidelines in a way which recognises the market strategies of AWBI with respect to specific overseas markets.

Senator O'BRIEN—Is grain type an issue?

Mr Walter—Grain type is certainly an issue because there may be different strategies. At the very broadest, you have a very significant difference between milling wheat and feed wheat.

Senator O'BRIEN—But you would not need to convey that to AWBI—is that what you are saying?

Mr Walter—I am suggesting that it is necessary to convey sufficient information for AWBI to understand the nature of the application which is before us for the consultation to be meaningful. AWBI has sought additional data, in particular, data as to the way in which we finally dispose of applications before us. But, essentially, our aim—and it is something which is reinforced within the processes of the authority—is to maintain confidentiality with respect to data which is provided to us and to consult with AWBI only with respect to that data which is necessary for there to be a meaningful consultation with AWBI against the background of their strategies.

Senator O'BRIEN—So presumably the consultation involves AWBI saying, 'We are concerned about this' or 'We are not concerned about this'?

Mr Walter—In terms of what it typically looks like, the specified data, the minimum data, is provided to AWBI. Bear in mind that we look now at this effectively quarterly process with short-term and long-term consents; and there is a whole process around that quarterly basis and, indeed, longer-term consents for niche exports. But, yes, you are right: we provide the data; they say, 'We like this' or 'We don't like this.' They will identify reasons consistent with their strategies. We will consider those reasons in the context of providing a consent or rejecting the application which has been made to us for a consent.

Senator O'BRIEN—Do I correctly presume that if AWBI are able to make a case that they have legitimate concerns about a shipment, you would not approve it?

Mr Walter—I would not quite put it in those terms. I would say that we consider our guidelines against the background of the data which we have from AWBI and we make a decision. From the published material you will see that in many cases we make decisions which are inconsistent with the specific advice which has been given to us with respect to specific applications by AWBI.

Senator O'BRIEN—So what you are telling us is that on many occasions you do not accept AWBI's view that a shipment, for example, should not be approved?

Mr Walter—On many occasions we do not accept the basis of advice which is given to us by AWBI. I should say that, bearing in mind the structure I have identified to you which is that we provide certain generic data to AWBI which is designed to preserve the confidentiality of the data we have, AWBI on many occasions is in a position where it is not perhaps as fully informed as to the circumstances and detail which we have in relation to the material before us. So we look at what AWBI has said, we look at the overall strategies of AWBI with respect to that market and we look at other issues, such as the development of the market by the particular exporter and the opportunities which may lie in that market, and we make a decision that is our decision.

CHAIR—Does that mean that if a box exporter successfully develops a market to where it becomes a bulk potential market there would be some concerns raised by AWBI and they would be fed into you and you would have to consider whether that market is really eating into the bulk market, even though it is a box market?

Mr Walter—In substance, the answer to that question is yes. The detail of that, though, is that the way in which we look at it is to say: 'Hey, we have a strategy identified by AWBI to us. We have an application before us with respect to exports. We have a consultation with AWBI and we make a decision on that background.' Now it is conceivable—

CHAIR—Has that happened?

Mr Walter—Vietnam is possibly an example—I think it has been referred to previously—where there have been very significant exports of containerised wheat and there have been developments in relation to the way in which AWBI strategies have sought to address that market. Having said that, one of the factors which we look at in the implementation of our guidelines, and it is expressly in the guidelines, is the extent to which a market has been developed by an exporter. So it is not as simple as saying, 'AWBI wants that market.' That is far too crude an analysis of these circumstances. If we are looking at a situation where there is a specific containerised export which is going to a customer relationship which has been developed by the particular exporter, and we are looking at a quite different context, for example, in which AWB may be seeking to export bulk exports, even though it may have a view in the consultation process as to the provision of consents with respect to that containerised export, we would make our decision in the context of all the circumstances. That may well be a decision in favour of the exporter.

CHAIR—So there could be a point where a box exporter who gets to the bulk stage, as it were, could pick the eyes out of the market on AWBI?

Mr Walter—Once again, it is very difficult to deal with hypotheticals here; I am conscious you are raising hypotheticals. Speaking theoretically, our guidelines require us to have regard to a number of matters. To some extent, those matters pull in different directions. It is the reason you presumably have an authority like the Wheat Export Authority to look at all those factors and to make an overall decision based upon the guidelines. I do not know what the answer is to your hypothetical because in fact it would be a question of burrowing down into the detail and making a decision.

Senator O'BRIEN—So the information you have on which to make your decisions is, apart from the application itself, the market information that is supplied to you by AWBI?

Mr Walter—There are a number of sources but, yes, it is market information provided to us in an overall strategic sense by AWBI—what we describe as country briefs. It is also the particular material which emerges from the consultation. It may be that we ask specific and additional questions of the exporter. It may be that we seek additional informing from AWBI. It may well be that we seek external information, in particular—I think we have identified this in the report—from sources such as Austrade. So we seek to take account of all the information sources which are available to us. We seek to engage with all our stakeholders to ensure that we have such information as will permit us to discharge our functions properly. And in particular—this is a general posture but it applies here specifically—data as to market, market conduct and market situations is something that we are always very happy to receive and to consider.

Senator O'BRIEN—It has been put to me that you are largely dependent on AWBI for the data against which you assess its performance?

Mr Walter—I think there are a number of issues there. One is the function of dealing with applications for export before us where, in terms of our guidelines, we do actually have regard specifically and consciously to AWBI's identified strategies. It is part of our guidelines; we look at it. We need the information from AWBI for those purposes. That information, in terms of making those decisions and testing, is also sourced from other sources, but certainly we need to understand the AWBI data to make those decisions. With respect to our other functions, of monitoring and reporting on the benefits to growers—which I think you identified to Mr Mortimer—the primary source, in a sense, for monitoring and reporting must indeed be the body which has been monitored and reported on—AWBI. But let there be no mistake: we are very receptive to information from other parties with respect to those activities. One of the difficulties is that you can have matters of comment which are interpretive issues but raw data is really our primary focus. Show the meat and we will look at it.

Senator O'BRIEN—That data goes into some sort of comprehensive report which goes only to the minister.

Mr Walter—One use of the data, all of the data from all sources, is a report to the minister, yes.

Senator O'BRIEN—The Irving report was right, wasn't it, when it said that in any practical way AWBI remains the regulator of wheat exports and the Wheat Export Authority is just an agent dealing in a limited way with some bagged and containerised grain?

Mr Walter—I would not seek to respond to that. I can simply say that we discharge the statutory functions which have been given to us. We find those statutory functions such as we are able to administer and we do that to the best of our ability.

Senator O'BRIEN—But you have a restricted ability to monitor the performance of the use of the monopoly power?

Mr Walter—We receive considerable flows of information from AWBI. I think we are in a position to make meaningful reports to the minister and do make meaningful reports to the minister.

Senator O'BRIEN—Isn't it the case that your major client is the minister and not growers?

Mr Walter—I would not seek to use the word 'client'. I would seek to say that, as a matter of the statutory framework within which we exist, we are in a situation where we are obliged to and make a report to the minister.

Senator O'BRIEN—At the minister's direction—he has determined what the act means in that regard. That is what we heard earlier today, that section 5B has been interpreted by the minister as saying that you report to him and no-one else.

Mr Walter—I would not seek to comment on that. It is our view of our function that our reporting obligation is to be made to the minister. We have also chosen—

Senator O'BRIEN—Can we home in on that?

Mr Walter—Yes.

Senator O'BRIEN—The act says that the authority has certain functions. One is to monitor nominated company B's performance in relation to the export of wheat and examine and report on the benefits to growers that result from that performance. We were told earlier today that the minister determined that that meant report to him.

Mr Walter—The reason I am not responding is that I have no specific recollection of the minister saying that that was the right interpretation of the act. I would have to say from the point of view of my position as a representative of the authority, it is our interpretation of the legislation that our obligation is to report to the minister. The minister is the responsible minister for this act. It is the minister to whom we report.

Senator O'BRIEN—Not to parliament?

Mr Walter—Not directly to parliament. The minister, of course, is a responsible minister to parliament.

Senator O'BRIEN—When was this decision taken by the Wheat Export Authority that that is what the act meant?

Mr Walter—My recollection is that that was in the context of the making of the first report.

Senator O'BRIEN—When was that?

Mr Walter—From recollection, it was at the end of September 2001.

Senator O'BRIEN—According to the evidence we heard earlier, the Wheat Export Authority determined that it would supply two forms of report: a full report and a commercially constrained report at that time. Was that the decision of the authority?

Mr Walter—It was a decision of the authority. One can cavil at the words you have used, but we do make a report to growers. That is a report the form of which, among other things, was settled after workshopping, in particular involving the two grower representatives on the Wheat Export Authority. It is intended to be informative to growers as to the state of play, if you will, of the activities of the authority.

Senator O'BRIEN—So did the authority take legal advice on this view of the legislation?

Mr Walter—To the best of my recollection, the answer is yes. I cannot summon up, because it is quite a considerable time ago, the precise detail or context.

Senator O'BRIEN—Perhaps you could tell us on notice if that is the case and supply us with a copy of the advice.

Mr Walter—I do not see any difficulty with making that inquiry.

Senator O'BRIEN—When you report to the minister, do you itemise in the report responses to individual applications? Do you itemise WEA's responses to requests for export permits and report the view of AWBI in relation to each of those applications?

Mr Walter—You have used the term 'itemised'. In our more general report we give information with respect to applications made and applications granted and applications which are the subject matter of AWBI, if you will, lack of consent. So it is quite transparent in terms of our published data.

Mr Taylor—That information is also included in WEA annual reports and is available on the WEA's web site.

Senator O'BRIEN—So we could look it at that and see the number of applications, the number approved and the number that you have approved which AWBI has suggested you not approve?

Mr Walter—Indeed.

Senator O'BRIEN—We will get that off your web site. Thank you very much for that. That is available for each of the years you have reported?

Mr Walter—Yes, indeed.

Senator O'BRIEN—The reason I am asking you about clients is that your function is interpreted by you on legal advice to be to report to the minister.

Mr Walter—It is. We have also chosen to report to growers. One of the issues on which I would comment—it may have been the subject of prior comment in Senate estimates—is that we receive information which may be described as commercially sensitive as part of our monitoring and reporting process, which is hardly surprising. AWBI is, after all, the marketing organisation. It has a number of customers. It exists in a competitive context. We are indeed seeking information which relates to its competitive conduct and its performance in markets which are effectively competing with other ex-Australian suppliers.

Even if we were totally free—and there are some constraints on the information we receive in terms of confidentiality arrangements with AWBI—to communicate to growers, it may be one thing to communicate

to growers but to communicate to 40,000 growers would certainly suggest to me that third parties, or indeed growers who had other interests external to their position as growers, would be receiving information which may be of utility in terms of an understanding, for example, of AWBI customers, pricing performance and strategies with respect to particular markets. In my view, even were we totally free to communicate the data, it would possibly not be a prudent thing to do.

Senator O'BRIEN—I find it hard to believe that the marketing strategy of AWBI wouldn't be fairly transparent just by following shipments.

Mr Walter—I think one is getting down into the detail of the strategies in the way in which a marketing organisation may seek to identify and deal with customers. Certainly, yes, you can tell from, as it were, backward looking figures, the destinations of markets from Australia.

Senator O'BRIEN—And you are reporting in arrears?

Mr Walter—We are reporting in arrears. To the extent that the ABS reports this data, it is in arrears as well. That as such does not convey much data. Of greater utility are the strategies which may have been adopted with respect to particular customers, the way in which the shipping may have been arranged and the way in which the market is being approached from a particular perspective of quality and branding of ex-Australian wheat. All those issues might well be circumstances which would be relevant to suppliers, say, from the US and Canada who may be concerned to identify markets which have been seen by Australia as premium markets. That is hypothesis, but it is simply to say that the information is not, in my view, generally available and is information which may well be seen as confidential and damaging if fully disclosed.

Senator O'BRIEN—Will you supply a copy of such a report to this committee in confidence? I find it difficult to contemplate exactly what you are saying in relation to why it is essential that that material be kept in confidence. Let me explain why I am focusing on this lest there be any doubt. It is pretty clear that you have interpreted the legislation to say that the minister is the person to whom you report. So the minister and the government are the beneficiary of that information much more than anyone else. The minister says that it is not appropriate for the taxpayer to fund this. The implication is either that the funding of the Wheat Export Authority is the cost of the single desk or that the user should pay. If the user should pay then perhaps it should be the minister. I want to understand why the information you are reporting needs to be kept confidential. I wonder why this committee cannot see such a report in order to understand that.

Mr Walter—First of all, you ask questions which, in one sense, I am not able to answer. I will come to that in a moment. My comment was confined to the proposition that even if there were a capacity to be totally transparent, there are reasons why one might not wish to be totally transparent because of the nature of the information. You have quite rightly, I think, said that it is our view that our reporting obligation is to our minister and we have chosen to provide certain information to the growers consistent with our overall view. I think the response to your question is not one which I can give. I think it is probably a response which best comes from the minister because of the view we have taken of the legislation and our responsibilities under the legislation.

Senator O'BRIEN—It is not competent for you to ask the minister whether you can release such a report to us?

Mr Walter—It is competent for me to ask the minister, but I suggest it is not, bearing in mind the view we have consistently adopted of the legislation, a decision which we, the authority, can make.

Senator O'BRIEN—I accept that. Perhaps if you will accept being the conduit for the request, I request that it be supplied in confidence to the committee so that we can understand the nature of the material that you say is essential to be kept in confidence in that reporting process.

Mr Walter—I take the question, certainly, and the request.

Senator O'BRIEN—Can you give the committee an update on when you will run out of funding?

Mr Walter—We estimate that we will run out of funding at the end of this calendar year.

Senator O'BRIEN—The end of 2003?

Mr Walter—The end of this financial year.

Mr Taylor—I will clarify that. The WEA's financial year is 1 October to 30 September. At this point in time, it is estimated that the WEA's funds are sufficient until about 30 September this year.

Mr Walter—You correct me totally.

Senator O'BRIEN—So we can rely on that as an accurate forecast, can we, Mr Taylor?

Mr Taylor—Yes, you can.

Senator O'BRIEN—So if for some reason there has been no levy, you will require funding from some other source to continue past that date, or people will be working for nothing?

Mr Taylor—Our estimate is that there will be no funds remaining in the authority's bank account by 30 September 2003.

Senator O'BRIEN—Unless it is supplemented from other sources.

Mr Taylor—Unless some other funding mechanism is made available to the authority.

Senator O'BRIEN—Is it fair to say that your expenditure pattern has been fairly stable?

Mr Taylor—In recent years, that is correct.

Senator O'BRIEN—How many recent years?

Mr Taylor—I would say that in the last two full financial years the authority's activities have been on track. We have a clear indication of the resources required consistent with the policies and objectives set down by the members of the Wheat Export Authority. Therefore, I believe that the authority's funding is consistent over the last couple of years.

Mr Walter—That is 2001-02.

Senator O'BRIEN—So how long have you known the end of September date with any reliability?

Mr Walter—You indicated that I had said previously that there was a fairly stable outgoing. That would suggest that, if we have an amount of \$6-odd million and an indefinite life, that will run out around the end of 2003-04.

Senator O'BRIEN—It is fairly obvious what I am getting at. You have obviously been able to tell the government how long you could function on the funds you had at some stage.

Mr Walter—Indeed.

Senator O'BRIEN—When did you tell them that the end of September was probably it?

Mr Walter—In terms of the end of September, that would be—you might like to confirm it—when we were able to precisely match the circumstance of the funding against budgeting, which would have been last year some time. But of course the issue, in a sense, is—

Senator O'BRIEN—Last September you had 12 months left.

Mr Walter—Indeed.

Senator O'BRIEN—So was it before September?

Mr Walter—I am sure it was before September. The reason I am sure it was before September is the reason you have identified, which is that we knew how much we spent probably a number of years ago and we knew how much we had, and you can tell from that approximately when you are going to run out.

CHAIR—So given that the new funding arrangements, if and when the legislation is passed, is from levies which will be lumpy, have you any idea how many months worth of levies you will have to collect before you have a kitty to ensure your ongoing funding?

Mr Walter—This is not something the members have considered. As was discussed previously, there is a capacity to borrow. But speaking personally as an officer of the Wheat Export Authority, nobody would lend to us, nor indeed I would be party to borrowing, unless there were an identified source of funding.

CHAIR—A guarantee of funding.

Mr Walter—To my mind, the borrowing power might permit some addressing of the lumpiness of the receipts. We have not even considered the detail of that because, after all, this piece of legislation and machinery is going through parliament. Borrowing might address some of that lumpiness, but it is not a matter we have considered. I am aware that other authorities and other recipients of levies have addressed some of these issues through a borrowing mechanism.

CHAIR—But you would need to be able to identify to the bank a funding stream to guarantee against the loan.

Mr Walter—In my view, no bank would lend money to the Wheat Export Authority or anybody else, hopefully, unless there were a source of repayment.

CHAIR—There is probably a time and place when you would have found someone, but those times have passed.

Senator O'BRIEN—What part of the legislation specifies your funding source?

Mr Walter—I am not sure I know. My recollection—and I say this only to assist senators, not because I wish to be held to it—is that, because the Wheat Export Authority is the vestigial remnant of the statutory authority called the Australian Wheat Board, when everything else went off to the new structures, \$6 million was left behind. The \$6 million was therefore ours from the moment of our coming into existence as something different from AWB, the statutory authority. So having said that, we may not find anything about it in the legislation. Am I right?

Senator O'BRIEN—I asked the question because I did not know where it was and I cannot find it.

Mr Walter—I am not surprised you cannot.

Senator O'BRIEN—So you have been funded to this point with residual moneys and there is no provision in the legislation for anything else. You have the ability to borrow. It was contemplated by parliament that you might be able to borrow to continue, but there is no ability to repay borrowings?

Mr Walter—There are circumstances, if the legislation changes, where we might, but at the moment I can see no basis upon which we can borrow, because we cannot repay. I have lost the train of the question you asked. Have I answered it, do you think?

Senator O'BRIEN—It is unanswerable, isn't it? You cannot pay off borrowings without income.

Mr Walter—We don't have the money.

Senator O'BRIEN—You have no means of raising money—

Mr Walter—No.

Senator O'BRIEN—other than making charges for export permits.

Mr Walter—I was about to mention that. That is the only other basis and source of funding.

Senator O'BRIEN—But that was contemplated in the original legislation.

Mr Walter—I think the minister has a power to impose a fee for service under our legislation.

Senator O'BRIEN—Without amending the legislation, it is and has been for some time competent for the authority to raise the cost of administering that part of the legislation by levying a charge for the issue of export permits?

Mr Walter—It has been competent for the minister to set such a fee, yes.

Senator O'BRIEN—Has the authority requested that the minister do that?

Mr Walter—We have had discussions with the minister with respect to that. We have provided information to the minister with respect to that, yes.

Senator O'BRIEN—Certainly that would be a user pays function. Perhaps are you not the appropriate person to ask the consequential questions. In terms of the reports that you prepare for the minister, you told estimates last year that the Wheat Export Authority reports to the minister on a quarterly and annual basis.

Mr Walter—We provide, effectively in letter form, an update to the minister on a quarterly basis.

Senator O'BRIEN—You write him a letter every quarter and give him a full report annually?

Mr Walter—That is correct. We may indeed meet with the minister, for example.

Senator O'BRIEN—Can you explain to us the basis of the decision to report to growers? You say the legislation does not require you to.

Mr Walter—Forgive me if my recollection is imperfect, because I am sure it will be imperfect. It was the view of the authority that it was appropriate to provide to growers some indication of its activities and to provide that information in a way which was understandable and within the limits of the frugal approach to spending which the authority has taken, responsibly discharged in terms of drawing it to the attention of growers. It was against that background and against the background of the other issues which I have mentioned to you; namely, our perception of our primary responsibility—our legislative responsibility—to the minister and the confidential data of much of the material which we had.

Senator O'BRIEN—So reporting to the growers is a matter of policy?

Mr Walter—It is a choice we have made. I should say it is a choice with which I believe—because the minister has made public statements to this effect—the minister agrees.

Senator O'BRIEN—But it is not a matter of obligation; it is a matter of policy?

Mr Walter—We do not believe it to be a matter of obligation.

Senator O'BRIEN—So in the view of the authority, if we wanted to mandate that reporting process, we would have to amend the legislation?

Mr Walter—It is for you to form a view. I have indicated what our belief of our obligation is.

Senator O'BRIEN—So consistent with that we would have to amend the legislation to require that, to mandate it, to clarify any doubt there is about what the legislation means?

Mr Walter—Your analysis in response to our view of the operation of the legislation is, I think, impeccably logical.

Senator O'BRIEN—So given that it is legislation of the parliament, you have obviously taken advice that you are not obliged to report to the parliament?

Mr Walter—We believe we are reporting appropriately, consistent with my recollection of the advice we received. We, of course, make an annual report to parliament, as I think has been referred to by Mr Mortimer, because of our other reporting obligations as a CAC agency.

Senator O'BRIEN—I think you told us last year that the Wheat Export Authority has no specific powers to require information. In May last year you said:

... we have no specific powers to require information so that our reporting, which is based on AWB (I) activity is dependent upon receipt of information from AWB (I).

... the services for AWB (I) ... to carry out its activities are contracted to be provided by AWB Limited ...

You told us that the Wheat Export Authority has no role with respect to AWB Ltd. The movement and handling of grain for the export pool is provided to AWBI by AWB Ltd. Is it fair to say that nearly all of the data that the Wheat Export Authority relies on therefore comes through WBI from AWB Ltd?

Mr Walter—We receive the information from AWBI. We are aware of the arrangements between AWB and AWBI. I suggest that in terms of analysis the information is certainly AWBI's information. It may well be that it is derived from services which have been provided by AWB to AWBI, but I would be very surprised if it were not in fact AWBI's information.

Senator O'BRIEN—That is, you get a document from AWBI and not from AWB Ltd?

Mr Walter—We get a document from AWBI which, in my belief, is information which is owned by and controlled by AWBI.

Senator O'BRIEN—But aren't they dependent on AWB Ltd for the basis of that information?

Mr Walter—Services are provided to them by AWB Ltd, but I have to be quite clear that it is AWBI's information that is given to us.

Senator O'BRIEN—We have two boards managing both AWB companies with four common directors. I note that the Grains Council has engaged a consultant to look at the issue of joint directors in the two AWB companies. Has the Wheat Export Authority or any officers therefrom had discussions with the GCA about their concerns about your directors?

Mr Walter—I think our function, if I could be clear, is not on the institutional relationships of AWBI to AWB Ltd. Our focus is on AWBI. We do look at the service level agreement which exists between AWBI and AWB Ltd against the background of the relevance of that to the function we have of monitoring and reporting on the benefits to growers which arise from the operations of AWBI. It is not, in my view, in terms of our mandate, our role. It would be beyond our role in fact to deal with the institutional relationships between AWB Ltd and AWBI.

CHAIR—So when someone applies to the Wheat Export Authority for an export licence for whatever market and AWBI is consulted and it says, 'We don't think it is a good idea for you to give this permit or licence for this crowd to export,' I take it the logic they would use is that it would be in the best interests of the growers that you do not do that.

Mr Walter—It is all to do in terms of our guidelines with the strategies in relation to, effectively, pooled returns. That is AWBI.

CHAIR—So when you overrule AWBI and grant the licence, what does that say?

Mr Walter—It says that looking at the totality of our guidelines—

CHAIR—That you do not believe AWBI?

Mr Walter—No, it does not say that necessarily. I withdraw the proposition that we do not believe AWBI; of course we do. It is more likely to say that, looking at all the circumstances, we hear what AWBI has said but we do know, to take the example which I gave before, that this is a specific customer, not being an AWBI customer, which has been developed by this particular exporter over a period of time. The tonnages might be quite low. We grant our consent because we do not see that as in any sense inconsistent with the overall application of our guidelines. Certainly AWBI strategies and pooled returns are at the heart of the guidelines, but the guidelines are more general in nature as well.

CHAIR—But in some way you would be in conflict with what AWBI thought about that particular market?

Mr Walter—Yes, indeed.

Senator BUCKLAND—Would it be limited in any way by the size of the contract or the export?

Mr Walter—That is a factor we take into account. I do not know whether you have seen the guidelines we employ.

Senator BUCKLAND—Yes.

Mr Walter—You will see that for the niche export guidelines, which could be larger, one of the guidelines is less than 1,500 tonnes per annum. Once you get into the niche category, you do not have quite the same, because necessarily you are in a niche and therefore different from the bulk exporting arrangements. There tends to be a more streamlined process of consideration and granting of those permits.

Senator BUCKLAND—But if a group of growers or a grower organisation were able to establish a market with a five-year contract of 800 or one million tonnes or whatever—

Mr Walter—That is a theoretical issue. If it is bulk export then indeed AWBI have control over that.

Senator BUCKLAND—So really you could not do that?

Mr Walter—If it were bulk export and AWBI did not wish to approve it then it would not be competent for us to provide an approval for that.

Senator BUCKLAND—Doesn't that limit competition?

Mr Walter—That is an implication you draw. All I can tell you is what the legislation says, how we administer and what our perspectives are of that legislation.

Senator CHERRY—Has AWBI approved any bulk export licences?

Mr Walter—I gave an answer when that question was asked and there is one circumstance. One application has been approved by us. The only circumstance where we can approve an application is where AWBI has indeed consented to that bulk export.

Senator O'BRIEN—You referred me to information on the web site about the applications approved by AWBI. We only find the statistics for 2000-01. Are there statistics for 1999, 2000, 2001 and 2002 on the web site?

Mr Taylor—I believe there should be. Those statistics are contained in the current annual report, the 2001-02 annual report.

Senator O'BRIEN—That is at page 72.

Mr Taylor—The annual report is available on the web site of the Wheat Export Authority. Those statistics start at appendix B at page 69.

Senator O'BRIEN—I am looking for the ones supported by and not supported by AWBI. That is on page 72 or 73, isn't it?

Mr Taylor—On page 72, yes; there is a column there.

Senator O'BRIEN—But it is only long-term applications.

Mr Taylor—That is correct. That is long-term applications.

Senator O'BRIEN—What about the short term—the information I asked for in relation to those supported and not supported?

Mr Taylor—Page 70 has a table of short-term applications processed and it includes a column there.

Senator O'BRIEN—It does not have the approved and not approved statistics.

Mr Taylor—It does not on that particular one. Apologies, Senator.

Senator O'BRIEN—Nor on page 69.

Mr Walter—It deals with the indicative—

Senator O'BRIEN—It is a different sort of table.

Mr Taylor—It is not quite the same table.

Mr Walter—If the question is the collection and provision to you of the published data which deal with and reveal these issues, I think that is something we would be happy to take on notice and provide to you.

Senator O'BRIEN—I think it would be important to have that information clear and properly available to the committee in terms of understanding evidence and comments that may be made about how the process

works and the relationship between AWBI's support and non-support of applications. It appears fairly transparent. So perhaps we will reserve the right to ask some questions if there is a lack of clarity in relation to some aspect of it.

Mr Walter—Certainly.

Senator O'BRIEN—Following up your earlier answer about the common directorship between the two companies, you are saying that the Wheat Export Authority has no interest in the corporate structure of AWB and the relationship between the parent and the wholly owned subsidiaries.

Mr Walter—Not as such. Our remit is on the performance of AWBI.

Senator O'BRIEN—But is it not possible that that relationship affects the performance?

Mr Walter—To the extent that it may be seen as affecting the performance, I think the only context in which that might be seen to arise is in terms of the service arrangement which we do indeed focus on; that is, the provision of services to AWBI. The overall question of the performance of AWBI is where we are unremittingly focused.

CHAIR—Would it be fair to say that the largest export approvals you gave, which were to the UK, Italy and the Netherlands, would be durum wheat?

Mr Walter—I am not sure whether we have identified grades. Certainly Italy tends to be a durum wheat market. I am not sure that the UK is necessarily a durum wheat market. My recollection is that specialised types of wheat tend to be exported from Australia to the UK. I cannot remember the third country you identified.

CHAIR—It was the Netherlands.

Mr Walter—I cannot comment on the Netherlands.

CHAIR—In any event, the disagreement between yourselves and the AWBI in effect is 70,000 tonnes out of the whole?

Mr Walter—Where did you derive that figure from?

CHAIR—Page 73. It is the difference between what was actually approved and what AWBI did not support.

Mr Walter—I see, yes.

CHAIR—There is not a big argument there.

Mr Walter—It is 120,000 tonnes out of a total approval of 270,000. Unless I am misreading the figures, it seems to me that is a very significant proportion.

Senator O'BRIEN—Could we assume that, if AWBI supported an application, it was approved?

Mr Walter—It is independently considered but, if it is supported by AWBI, in my view it is very likely to be approved.

Senator O'BRIEN—I am just looking at the figures at the bottom just to assist. AWBI supported 72,821 tonnes. So we assume that that component of the 153,808 tonnes were supported and the balance were not?

Mr Walter—I cannot answer definitively not, because we do actually consider the applications independently.

Mr Taylor—There certainly are occasions where AWBI may support the granting of an application through the consultation process. The WEA rejects the application on the basis—

Senator O'BRIEN—Can you add that to these documents—that is, applications supported by AWBI and not approved—just in numbers and tonnes?

Mr Taylor—Certainly we can do that.

CHAIR—The other issue is that not every application turns into a contract, because you have competing applications, I take it.

Mr Walter—I think it is clear that there are more applications granted than there are tonnes exported in containers and bag exports. We have sought to bring the permits closer to the actual exports through the amended export arrangements. Nevertheless, there is still a gap.

Senator CHERRY—The table on page 7 of your submission seems to imply that the percentage of applications supported by AWBI has fallen from 60 per cent to 35 per cent to about 20 per cent over the last three years. Does that suggest that the attitude of AWBI to applications and other potential exporters has been hardening over the last three years, or am I reading that table wrongly?

Mr Walter—I do not discern a particular pattern. I would say in 1999-2000—

Senator CHERRY—I am just dividing the applications supported by AWBI by applications received, and the percentage has been falling quite sharply.

Mr Walter—You are looking at the short and long term for 2001 and 2002.

Senator CHERRY—I am looking at 1999, 2000, 2001 and then combining the two before you had the two categories.

Mr Walter—I accept that. That is certainly what the figures say. The figures stand for what they say.

Senator CHERRY—Are there policy implications from that?

Mr Walter—There could be a number of reasons for this. One is that there are now different AWB strategies. Our perspective of those strategies with respect to particular markets is that we should not grant approvals for those markets. That is true for some markets. Another explanation with respect to these matters could be precisely what you say, which is that there is a difference of perspective from AWBI with respect to these markets.

Senator CHERRY—When I look at that, I see a hardening of corporate attitudes towards the approvals process from AWBI.

Mr Walter—I do not feel able to respond. I would not seek to say there is a hardening in AWBI's corporate attitude. What I would say is that the figures stand for whatever they stand for. It could simply be the outcome of different perspectives as to strategies.

Senator O'BRIEN—Are you aware of the attitude of state based industry organisations with regard to concerns about the operation of the single desk through AWBI?

Mr Walter—Of course we and the authority and the members read the press—we do not exist in a vacuum—but our focus has to be on the discharge of our functions. We have certain statutory functions, and that is where we are focused.

Senator O'BRIEN—So if there are concerns that go to the issue of the performance of AWBI, what notice would you take of that, given your current mandated role and the review of that function by the end of 2004?

Mr Walter—We do of course take notice of that—I thought your comment was directed towards more general concerns—but if they are focused on the performance of AWBI, what we have said and said quite openly is that we are wanting every stakeholder to communicate with us, to identify those issues and to provide us, hopefully, with data. It is the data that will determine whether this is something which can be the subject matter of proper investigation by us and properly part of our consideration. That is not to say that we are reactive—we try to be proactive—but it is issues that relate to AWBI's performance, certainly. We have identified, I think quite transparently, to all of our stakeholders, both through the growers report and directly, the way in which we are looking at the performance and the structure within which we are looking at the performance of AWBI and the particular areas that we see as the focus of our activity.

Senator O'BRIEN—Has the authority taken any advice on the meaning of section 5(2) of the act?

Mr Walter—I have no specific recollection of specific advice. It may well be that we have taken advice when we have been looking at issues at the margin. Section 5(2), I assume, is the one—

Senator O'BRIEN—It is an empowering provision.

Mr Walter—It is about incidental powers.

Senator O'BRIEN—No. I suggest to you it is the facilitating section that prescribes the range of your powers. It says you have the power—the authority, that is—'to do all things that are necessary or convenient to be done in connection with the performance of its functions'. You are saying that the authority has never taken any legal advice.

Mr Walter—I am reminded that we have had some advice. It probably is within the competence of my technical skill base to respond in part to this, but of course one always takes advice. A provision like this is common in most legislation. It is typically interpreted comparatively narrowly because it does indeed include reference to functions. It is related to the functions. The functions are those set out in subsections (1)(a) and (1)(b).

Senator O'BRIEN—Sure. It is constrained to that. You cannot do something that does not relate to those functions. One of the functions is:

to monitor nominated company B's performance in relation to the export of wheat and examine and report on the benefits to growers that result from that performance.

Mr Walter—Indeed.

Senator O'BRIEN—So it can be read narrowly in that sense. I am interested to know, if indeed you have taken advice, whether that advice can be made available to the committee.

Mr Walter—Could I take that on notice?

Senator O'BRIEN—Do you think you have taken advice?

Mr Walter—The chief executive has indicated that we do have some advice, or he believes we have taken some advice, on the meaning of this provision in context.

Senator O'BRIEN—It is a fairly critical provision in terms of how you interact with AWBI, isn't it?

Mr Walter—Of course it is easy for me to say in the absence of reviewing the advice, but I would regard it as not a particularly significant provision in terms of it giving us much additional power.

Senator O'BRIEN—Where do you get your powers otherwise?

Mr Walter—We have our functions.

Mr Walter—They are functions. Where do you get your powers?

Mr Walter—We have certain specific entitlements and directions in terms of the legislation. There are certain issues which arise. I see subsections (1) and (2)—I am conscious that I am lapsing into areas of statutory provisions—as essentially provisions that actually remove an inference which might otherwise exist, which is that you are totally confined to the provisions of the legislation. But it does not do very much more than that. I am saying that—

Senator O'BRIEN—That is what you think your legal advice says?

Mr Walter—I should stop talking at this time, Senator.

Senator O'BRIEN—Mr Taylor might be able to help us.

Mr Walter—Yes, he may be able to help us; I had better stop.

Mr Taylor—We will take that on notice and refer back to the advice that has been received from the authority.

Senator O'BRIEN—I would have thought this is a fairly critical provision. Section 5 of the act is entitled 'Functions and powers of the Authority'. There are other provisions which go to things such as membership, resignation, termination of appointment, remuneration of allowances, meetings and finances. But this provision talks about what the authority is supposed to do, not its administrative mechanisms.

Mr Walter—We will take it on notice. I would have to say that I would not necessarily accept the proposition that this provision is of great assistance to us.

Senator O'BRIEN—I am pretty sure the parliament thought of it in that way when it was passed.

Mr Walter—No doubt the parliament had an intent. But these sorts of provisions are very common in many statutes and are typically taken as not doing very much more than saying, 'You can do matters which are incidental to that which is derived from the rest of the statutory provision but it doesn't give you *carte blanche*.' So we will take it on notice, but I would like you to understand that my perspective is that it might not be as significant as you think it might be.

Senator O'BRIEN—I am interested in the legal advice you have in that regard. Mr Taylor, you are telling us you think there is such legal advice.

Mr Taylor—It is my recollection that there has been advice on that particular matter. My recollection—I stand to be corrected—is that the advice was such that that particular section of the Wheat Marketing Act is not as empowering as it may appear initially.

Senator O'BRIEN—How long ago would that advice have been received?

Mr Taylor—I could not tell you specifically, but it was very early on in the establishment days of the Wheat Export Authority.

Senator O'BRIEN—Presumably that advice has been communicated to the minister?

Mr Taylor—I could not confirm that.

Mr Walter—Rather than go into areas where we cannot be confident—

Senator O'BRIEN—I have to ask you now while you are before me rather than call you back to ask you one question. So if you can take these on notice, that may save us all some time in the future. It may not, but we can only do our best.

Mr Walter—Certainly.

Senator O'BRIEN—I am interested in the performance of this function in subsections (1)(b) and (2) of section 5. I think we were exploring whether, if your state based industry organisations are concerned about the operation of AWBI, there is a formal process for them to communicate with you to express those concerns. Do you have means of ascertaining that information?

Mr Walter—I think we made a comment in relation to our grower report in particular. They will come back to us. I do not know whether that is where you are going. We certainly seek in a more or less structured way to meet with all of the persons who have identified themselves as our stakeholders. We have had specific meetings—you speak about state based organisations—within the last several months with those organisations which were concerned with commissioning the Kronos report. That has included state based organisations within that context.

Similarly, with respect to the Accenture report, which has been commissioned by state based organisations, we have had interaction with the state based organisation in that case concerned with commissioning that report. I am aware that members of the authority—in particular the grower representatives—have certainly been part of meetings where, in a broad sense, organisations which may be seen as state based organisations have been part of the audience and part of the group where it has been the subject matter of the meeting attended by those members.

Senator O'BRIEN—So accidental?

Mr Walter—No. I would not describe it as accidental. I think they have been meetings which the members have attended on the basis that, among our things, there would be broadly representative grain industry organisations and bodies present.

Senator O'BRIEN—So is that how we would describe the authority's strategies to accurately identify the nature of any concerns and options for remedying these concerns?

Mr Walter—I am not quite certain where you are going there.

Senator O'BRIEN—You have described a process of consultation. I am wondering if that is part of the strategy that the authority has in place to accurately identify the nature of any concerns about the operation of company B, AWBI, and the options for remedying these concerns.

Mr Walter—It might be useful, perhaps, because Glen has drawn my attention to it, to refer, for example, to the material on pages 32 and 33 of the report for 2001-02, where indeed the way in which interaction has taken place with industry and industry representatives has been identified. The grower report, which of course in a sense is more widely available than simply to growers, seeks stakeholder feedback and seeks to identify contact points for that stakeholder feedback. To my knowledge, that feedback has been received. I have certainly received feedback directly and I know that other members of the authority have received it directly. I know that that has informed our discussions and decision making. I know that it has been taken account of and formed part of the reporting process which we have adopted. It has been relevant to the discussions we have had directly with AWBI. We do have a vigorous program of communication, feedback and using that data within the functions which we have.

CHAIR—So you have about six or seven people employed in your organisation?

Mr Walter—We have approximately 10 employed within our organisation. It is 10 plus or minus.

CHAIR—It was six or seven before.

Senator O'BRIEN—I think it is more than that.

CHAIR—In any event, that is of no consequence. Your report to the government in 2004, which you are charged with: are you going to employ outsiders to make that assessment?

Mr Walter—We already have. I think it has been transparently identified. There is a long-term consultancy with the Allen Consulting Group, which has economic, policy and other skills which are used in a complementary fashion to the skill base which exists within the authority.

CHAIR—So are they part of the consultation process with that long list of people on pages 32 and 33?

Mr Walter—By and large, the answer to that is no. That consultation process is a process which is driven by the authority and the members.

CHAIR—So they will only actually compile a report with the information you give them rather than what they collect out in the field?

Mr Taylor—That is actually not correct. The Allen Consulting Group are consultants who work to the Wheat Export Authority and are actively gathering information and feeding it back in to the functions of the Wheat Export Authority, particularly the performance monitoring functions.

CHAIR—Thanks very much for that. In your \$2 million budget you have mentioned compiling a report for 2004?

Mr Walter—Yes.

CHAIR—Thanks.

Senator O'BRIEN—I return again to my question. Do you have any strategies in place to accurately identify concerns about and options for remedying the performance of AWBI?

Mr Walter—I believe that we have a structured and vigorous program of communication and collection of information. I believe we use that appropriately within our statutory functions. I believe that is an answer to the question you have raised.

Senator O'BRIEN—So there is not a strategy document as such?

Mr Walter—No.

Senator O'BRIEN—So the board has not adopted a strategy? The management team has not adopted a strategy? There is a process that is followed which you believe fits in with the idea that that somehow might be a strategy?

Mr Walter—I would not accept the proposition. I would state quite clearly that we work within a strategic context. There is a strategy. The strategy is consistent with what I have described to you. There is a plan. It is worked to. It provides feedback. We have transparently identified our approach to the stakeholders. We have identified the basis upon which we are carrying out our assessment of the performance of AWBI within our framework, which is part of material we have submitted to you. We are responsive and proactive in relation to those activities. They are our statutory functions. Our strategy is all about that.

Senator O'BRIEN—How much reliance do you place on the AWB grower survey?

Mr Walter—We have made reference to it in our grower report. It is simply a survey. We have also made reference in our report to other material. We have identified it as one of the issues which is relevant. It is simply a matter to be looked at in context. Communication is important with a widespread base, clearly. It is part of performance in that sense.

Senator O'BRIEN—Dr Samson, in evidence to estimates committee hearings, has confirmed that information provided by the Wheat Export Authority could be used to assist the government in dealing with the argument that is currently being pushed by the USA in the context of free trade agreement negotiations that the single desk is an anti free trade strategy to protect Australian grain growers. Has WEA done any work to assist the government in the maintenance of the defence of those allegations?

Mr Walter—I am not aware of the use that may have been made of the information and reports which we have undertaken. I am not aware of the detailed use of that.

Senator O'BRIEN—You have only provided the normal reports, no reports in relation to that matter?

Mr Walter—The normal reports, of course, do include matters which are very relevant to the way in which AWBI seeks to deal with and attack overseas markets, and the way in which those benefits come through to the growers.

Senator O'BRIEN—So you have received no requests for such specially focused reports?

Mr Walter—I am not aware of that.

Senator O'BRIEN—Mr Taylor?

Mr Taylor—I am not aware of any such requests.

Mr Walter—That is not to say it has not been used for those purposes.

Senator O'BRIEN—You do not control the information once you have reported it. I am just asking if you have been requested to provide information focused on that end. Can you check that and let us know?

Mr Taylor—Yes.

Senator O'BRIEN—In your annual report 2001-02 at page 10, you say you sought legal advice from the Australian Government Solicitor on the scope of the 2004 review and report as designed by the legislation. Have you received that advice?

Mr Walter—We have received advice, yes.

Senator O'BRIEN—Can we have a copy of that advice?

Mr Walter—Can I take that issue on notice?

Senator O'BRIEN—Is there some reason that—

Mr Walter—I have no particular—

Senator O'BRIEN—It may be that you want it supplied in confidence or something like that.

Mr Walter—It is simply that I do not have in my mind a recollection of the context and whatever in which the advice was provided. That is the only reason I raise the issue.

Senator O'BRIEN—Is it fair to say that the levy will fund not only the ongoing monitoring role of the Wheat Export Authority but the review that is due by the end of 2004?

Mr Walter—It seems to me to follow that if there is no other source of funding, the funding has to extend to that time.

Senator O'BRIEN—If we interpret what the minister said at Grains Week 2002 and the legislation, it is probably fair to interpret that the government wants all the money to be raised by the levy. So if there is no form other than the fees for the export permit applications, it is the levy that is going to fund the review, isn't it?

Mr Walter—I do not know whether there will be any other sources of funding.

Senator O'BRIEN—You might borrow some if you are allowed to borrow it.

Mr Walter—Subject to the issues I raised. It is not really for me to answer that question. All I can say is that all that is on the horizon is the levy plus whatever might be raised from fees for service.

Senator O'BRIEN—So we should assume, shouldn't we, that there is a distinct possibility that funds raised in the levy will be used to pay for the review mandated under section 57 of the act?

Mr Walter—That is your assumption. In a sense, it seems a logical assumption.

Senator O'BRIEN—Have you made any plan as to how you will fund it otherwise?

Mr Walter—Let's be clear: we do not have any money after 30 September in any case.

Senator O'BRIEN—It is my assumption. I am asking you if you think it is a reasonable assumption.

Mr Walter—I do not mean to prevaricate. Any assumption you have I am sure is reasonable. But there is no suggestion, as I understand it—

Senator O'BRIEN—I do not think you should assume that. I might have some quite unreasonable assumptions. I am asking you about a specific one.

Mr Walter—Thus far, you have distinguished yourself by your reasonableness.

Senator O'BRIEN—Thank you.

Mr Walter—All I can do is provide the facts as they appear to us, which is that we run out of money on 30 September. We have identified that issue. We need money both to carry out our monitoring role and for the 2004 review. The legislation currently before parliament provides a source of revenue. That is all I am aware of.

Senator O'BRIEN—The authority under the legislation is required to conduct a review before the end of 2004. In relation to that, I want to turn to the review's components. Section 57(7)(a) requires the authority to report to the minister on the operation of subsection (1A) in relation to the operation of AWBI. That subsection excludes AWBI from the prohibition on the export of wheat. So the only thing that that can be construed to mean is that the Wheat Export Authority is to review how the single desk has operated.

Mr Walter—Indeed. It is the operation in relation to nominated company B. That is what 57(7) says.

Senator O'BRIEN—That is the only thing you could be reviewing under that?

Mr Walter—On the operation of (1A), which is the prohibition in relation to the nominated company B, yes. I think we have made statements as to the way in which we propose going about that process.

Senator O'BRIEN—Are they in the annual report or on the web site?

Mr Taylor—There are some public statements which have been made by the authority in presentations to stakeholders about the authority's approach to the 2004 report. I cannot tell you off the top of my head whether that material is contained on our web site, but I can check that and get back to you, if you like.

Senator O'BRIEN—If they are, can you give us the reference. If they are not, can you supply us with copies?

Mr Taylor—Certainly.

Senator O'BRIEN—Will that information tell me what matters the Wheat Export Authority believes fall within the requirements of 57(7)(b)?

Mr Walter—I cannot answer that. I would need to check the material.

Senator O'BRIEN—If it does not, can you tell me what the authority believes falls within the requirements of 57(7)(b)? Can you tell me whether you have taken legal advice on those matters?

Mr Walter—I think we have referred to that previously in the context of your drawing my attention to page 10.

Senator O'BRIEN—That is certainly true. Thank you for reminding me. Have you drafted a timeline for the completion of the report to comply with section 57?

Mr Walter—We have certainly had discussions and the membership has considered timelines. I would have to say we are not locked into firm timelines, but we certainly have considered the timelines.

Senator O'BRIEN—Can you give us an approximation of what they might be at this stage?

Mr Taylor—I will take that on notice and get back to you.

Senator O'BRIEN—Do I take it that this review will be completely separate from the activities of the authority in the past—that is, you won't simply be looking at the reports you have already presented and that there is going to be a fresh look at all of the information that has been provided?

Mr Walter—I think it is a combination of the information we have gathered and then it is specifically a report on 2004. I think we have published the way in which we go about our performance monitoring, review and reporting framework, which will form the basis of the 2004 review. I think that has been part of the various statutory reports.

CHAIR—Is that compiled or assisted by the consultants?

Mr Walter—It is assisted by the consultants. It is the authority's report.

CHAIR—So how did you pick the consultants?

Mr Walter—We conducted a tender process. We made an assessment of the organisations we felt would be most compatible with assisting us. On that basis, we selected the Allen Consulting Group.

CHAIR—You would be aware, from what I can gather, that one of the points of contestability about all of this process is the suitability of your organisation to make this judgment for 2004.

Mr Walter—I have seen, including just briefly the material on the web site, that there have been statements made as to various issues like that. I am certainly aware of that, yes. I have the view that the skill base within the authority and the consultants is totally adequate to address the task in front of us.

CHAIR—And they have been far enough out there to pick up the criticisms that are about of the performance review?

Mr Walter—Yes.

Senator O'BRIEN—Mr Walter, where would we look in the legislation for the powers which will enable the authority to conduct this review without inappropriate limitation? For example, where can we find the power for the authority to have access to the information that it needs to conduct this review under the act?

Mr Walter—The legislation has no specific provision for giving us powers to obtain information.

Senator O'BRIEN—Depending on your view of 5(2).

Mr Walter—I take the point you make.

Senator O'BRIEN—The interpretations you have of 5(2) and the absence of anything else are telling the authority that you do not have the power to require the production of information, for example, by AWBI or AWB Ltd?

Mr Walter—That is our view.

Senator O'BRIEN—So your ability will be constrained by the preparedness of AWB Ltd and AWBI to provide information?

Mr Walter—We are dependent upon AWBI providing us with information. But history demonstrates that there is every incentive, and our experience demonstrates that there is incentive, for AWBI to provide information to us. Bear in mind that our role is to make recommendations. We have at the very least a circumstance where there is very considerable incentive for AWBI to provide information to us.

Senator O'BRIEN—Some people would say there is an incentive for them to supply the information that they want you to have.

Mr Walter—That is certainly a perspective that I understand some people have expressed. Our experience is that there are meaningful, significant and useful flows of information which we are getting from AWBI. Let there be no mistake: we are taking a very critical perspective of that information.

Senator O'BRIEN—You would be lost without the information you get from them now, certainly, wouldn't you

Mr Walter—'Lost' is not the word I would use. We would certainly be identifying that as an issue if it were the case.

CHAIR—Senator O'Brien, would you like to lose the train of your thought for a minute while I give Senator Cherry a go?

Senator O'BRIEN—Yes, certainly. I do not want to hog the microphone.

Senator CHERRY—You dealt with my first question earlier. My second question was about information flows. I am going through your grower report, which outlines some of the issues that people have been raising about the performance of the WEA. With the issue of information flows between AWBI and the WEA, what methods will you be using to ensure that the reporting on that in your next grower report or your internal report is improved so that full accountability and transparency are brought to those information flow issues?

Mr Walter—I think this issue is one which we, the authority, have signalled. I think you are referring to the grower report. We have said we have identified this issue as a priority issue for investigation and report.

Senator CHERRY—It is a key issue regarding the AWB structures. It is obviously a key issue.

Mr Walter—The issue is not so much whether AWB gets a benefit from AWBI. That is irrelevant to us. I assume you accept that proposition.

Senator CHERRY—I accept it is all about return to growers and return to the pool as a key issue.

Mr Walter—So it is only relevant to us to the extent that it may have an impact on the benefits to growers. If, for example, the flow of information to AWB Ltd somehow impinged on the returns to growers, then it would be relevant to us.

Senator CHERRY—The key mechanism you are looking at in terms of that is your analysis of the services agreement? Would that be right?

Mr Walter—It is an analysis of the service agreement. It will be questioning and discussions, and is questioning and discussions, with AWB. It will be independent material which comes to us from consideration of industry sources. It will be, for example, an absence of answers to the questions. If the questions are not answered in a way which is satisfactory to us, then we will be at liberty to draw negative inferences from that.

Senator CHERRY—In the grower report again, under the services agreement section, you put great emphasis on the ability of the AWBI to impose financial penalties on AWB Ltd. That is highly unlikely given their ownership structures and overlapping directors boards, wouldn't you think?

Mr Walter—It is important that we look at the issue of the incentives and disincentives of AWB Ltd to perform its obligations under the service agreement. One of the things that we would look at—I think we have identified it there—is the existence and the meaningfulness of those incentives and disincentives. I think it is not impossible, without expressing it as a double negative. It seems to me that it is something that we will look at, that we will test. There are procedures in place. There is a process which exists for the imposition of those penalties. We will see what happens. We will see if it does work. If it does not work, then certainly we will be focused on it.

Senator CHERRY—Just looking at the issue of the general supply chain, again in that same report, would you be familiar with the consultants report by Accenture done by the Grain Growers Association?

Mr Walter—We are indeed. In fact, we consulted several times with Accenture. You will be speaking to representatives of the Grain Growers Association. We have certainly responded to the Grain Growers Association with respect to the issues they raised with us arising out of the Accenture report.

Senator CHERRY—Could you make that response available to the committee.

Mr Walter—I think that is a matter for the Grain Growers Association. From our point of view, there is no difficulty in making it available.

Senator CHERRY—We shall ask them tomorrow. As a general concept, the estimate that Accenture put up of estimated savings to growers of up to \$150 million from improvements in the supply chain, would that be in the ballpark of the sort of analysis which your authority has been doing?

Mr Walter—We are not precisely able to identify the components of those savings which have been put forward by Accenture. In fact, I think I am correct in saying that the letter actually says to GGA, 'Well, tell us where that is. We'd like to know where that is.' I do not know whether Glen wants to comment.

Mr Taylor—The authority has been in consultation with the Grain Growers Association in order to try to identify data supporting that claim of the \$150 million in savings. To date, we have not had provided the detailed data used to support those claims.

Senator CHERRY—We will take that up tomorrow. I am looking at the issue of the supply chain because it does interest me in terms of the effectiveness of the authority in maximising returns to growers. I am looking at one of our other submissions from the UGH from South Australia. They essentially argue that AWB has progressively become less accountable to growers and other industry stakeholders. They state that AWB Limited will not disaggregate their costs, their charges to growers, and on behalf of AWBI, it has progressively introduced restrictive business rules that stifle competition and reduce services available to Australian wheat growers. Is that coming through your analysis of the supply chain? What policy implications come out of those sorts of assertions?

Mr Walter—The supply chain is relevant in so far as—I sound like a broken record—it reflects on benefits to growers, in particular as pool participants. So the way we test that is to ask ourselves whether the process is such as to deliver effectively lowest cost to growers through the pool.

Senator CHERRY—But a competitive supply chain is most likely to do that, isn't it?

Mr Walter—Indeed, I think we have made reference in the report to the fact that AWBI have said to us that they adopt the lowest cost path in relation to the logistics of movement from paddock effectively to ship. We have said that one of our focuses over this year is the verification and understanding of the detail of that.

Senator CHERRY—That was my next question. What sort of process would you go through to test that?

Mr Walter—It would be with Allens because it is a focus for them as well.

Senator CHERRY—For the 2004 inquiry?

Mr Walter—Absolutely. It will be the subject matter of detailed inquiry consistent with the other discussions as to our methodology.

Senator CHERRY—Again, I am interested in the issue of AWB and AWBI and its relationship to growers. You say in your grower report that AWBI—I am looking at page 5 of your grower report—has advised that the legal and constitutional obligations of the directors of AWBI and AWB Ltd ensure that benefits to growers always take precedence over other factors. That surprises me in a corporate legal sense. Have you been able to get independent advice on whether that is in fact the case or not?

Mr Walter—As I understand it, that is derived from the provisions in the constitutions of both AWBI and AWB Ltd, which have been referred to, I think, by Mr Mortimer, which provide that, perhaps at variance with the dynamics of many constitutions, there is a specific carve-out for pools and pool participants. That is where it comes from. We have said, in terms of where we stood then—I am not sure whether we have made a decision as to how we might approach that—that that is what they have said to us and I believe that is the derivation of what they have said to us.

Senator CHERRY—If there are conflicts of interest which develop between the returns to growers and the returns to shareholder type issues, do you have the powers to sort out those conflicts of interest?

Mr Walter—Bear in mind our role is monitoring and reporting. We cannot fix anything, really. All we can do is monitor and report. We have seen some evidence, I think, of conduct change as a result of that. Our focus is on growers and on the benefits to growers and whether the benefits are being captured and maximised. If they are not, we will be reporting on it to the best of our ability.

CHAIR—Do you think you have the capacity to do that with reference to any trading by Wheat Board International in Geneva?

Mr Walter—Our focus is on benefits to growers from nominated company B, which is AWBI, so to the extent that those benefits are not being fully realised, and if it were the case that there were some failure under the service arrangements for those benefits to be delivered, then we can look at that. It is not our function, though, to address your question, to look at the activities of AWB Ltd in Geneva.

CHAIR—It is in the context of the best interests of the grower. Can I paint a little scenario which I am not alleging is ever likely to occur. But if there were a sale through the Geneva office of wheat from country A to country B—which may be a great service to the growers to maintain a market, I might say, in certain times—there could also be in the best interests of the shareholders a sale from country A to country B which doesn't include Australia, which gives a bigger profit than a sale of wheat from the Australian growers to the same market. There could be; I am not saying there ever will be. How will you judge that?

Mr Walter—Our focus has to be on—

CHAIR—On the best interests to the growers.

Mr Walter—the benefits to growers from the operations of company B and whether they are being maximised.

CHAIR—Do you see what I am talking about, though?

Mr Walter—I do. But I think there are certain impediments to our looking at that.

CHAIR—So you cannot do that?

Mr Walter—The circumstance you postulate, which is theoretical, is almost certainly the conduct not of nominated company B. It is the activity of AWB Ltd.

Senator CHERRY—The R&D bodies have expressed some considerable concerns about the information flow issues, particularly given the ownership by AWB of the Longreach venture. Have you been in any consultations with the various R&D bodies about improving information flows and ensuring they are part of that loop?

Mr Walter—I think I saw the reference to which you refer. You will understand that we have only just had the ability to glance at the other submissions on the web site.

Senator CHERRY—Yes.

Mr Walter—I am not aware of any specific consultation as such. Glen may be.

Mr Taylor—Not of consultation for that specific purpose.

Senator CHERRY—One of the submissions—I have lost it now—referred to the Vietnamese market and the fact that niche marketers went into Vietnam and established niches and then subsequently the AWBI developed an interest in that area. Could you enlighten the committee on the development of the Vietnamese market in the last couple of years?

Mr Walter—I can make some general comments which may be of assistance. I should say that members of the WEA and a member of the executive went to Vietnam for precisely these reasons—to find out what was indeed happening within the Vietnamese market. Vietnam is, of course, a developing market with living standards improving quite significantly. It has a French heritage. They therefore have a heritage, if you will, of French sticks, bakeries, flour milling and all those sorts of things. They have also had a situation where, whilst flour might have been exported to Vietnam at one time, there were certain tariffs placed upon the importation of flour such that it encouraged widespread small-scale milling within Vietnam. So the market really consisted of some organisations which were large-scale millers and then quite a large number of smaller scale millers. It is also a market in which the logistic circumstances are average, to say the least. There is lots of human labour used to move, for example, shipments of wheat. It is not nicely mechanised. Of course, it does not have nice railways and roads, so it is hard to move this stuff around.

The result is that you have, in our view, a market which exists at a number of levels. There was an AWB view which at one time sought, during the developmental phase, to suggest that because it was a disparate market there might be benefit in there being many exporters into that market because of the nature of the market. I think part of the difficulty with what has taken place with respect to Vietnam is that, consistent with our guidelines, we have had to have regard, among other things, to AWB strategies, the development of the market and the way in which AWB has sought to strategise by looking at more than simply the large-scale takers of bulk wheat and looking at the market more generally.

So with respect to this developing market—a major market potentially and actually for Australian wheat—there have been large-scale exports of containers into that market. The exports of containers have diminished for reasons to do with two matters. One is AWB strategies and our having regard to them. Second is the fact that the economics of containers have also changed significantly. Also, there are cheap alternative sources of grain available in a container based way into that market. I think I am right in saying that our research and visits to the market indicated it was not particularly quality sensitive. Quality testing was in many respects not as advanced as it might have been in other places.

Senator CHERRY—I have one final question. I know that your board includes two representatives of the Grains Council on it.

Mr Walter—Two nominees, yes.

Senator CHERRY—What mechanisms exist for the authority to keep in contact with other stakeholders in industry, such as the other grain growers associations, the various cooperative or corporate bulk handlers et cetera?

Mr Walter—Pages 32 and 33 identify the way in which we handle communications and relationship management. Having said that, it should be noted that the statute in fact provides for mandated meetings with the Grains Council of Australia. So I would say that we are catholic in terms of access. As we have said in our

grower report, we want to hear from stakeholders, growers, customers, providers—and we do. We seek them out. But there is a particular and specially mandated process of report to the GCA.

Senator CHERRY—Thank you, Chair. That will keep me happy.

Senator O'BRIEN—I have some questions of detail which you may want to take on notice. The performance indicators identified on your web site show six key areas: wheat export arrangements; pooling operations; pricing performance; supply chain operating environment; and growers, services, products and benefits. We have had discussions about these matters before. For the purpose of this inquiry, I think it is important that we get some detail. Firstly, can you tell me when work started on the development of these performance indicators? Was it in 2000 or 2001?

Mr Walter—I think we have answered this question before. It might be useful, to make sure we are totally consistent, to respond subject to that.

Senator O'BRIEN—I want to work through some of these areas so the committee can get some sense of what growers will get for their money if we pass this bill and allow the regulations that will be associated with it. Wheat export arrangements cover the following areas, according to your web site: AWBI export rights; AWBI's role in export consent arrangements; niche and complementary market facilitation; impact on national pool returns; non-AWBI exporter compliance. Can you tell the committee what the starting point for each of these benchmarks is? What baseline data are you using to make judgments on that?

Mr Walter—For each of these items, the starting point is the structure that we have—the arrangements which exist, the statutory basis we have. With respect to what we have actually done in terms of looking at this material, I think the grower report is probably not a bad area to start looking at this. Some of these issues run into each other. We seek to say, 'What is it that could be achieved in these areas?' It is not so much a baseline. In costs it is more of a baseline. It is really a matter of saying, 'What could be achieved?' It then seeks to look at what AWB has achieved. If you will, it is a baseline in reverse. It is possibly the best context in which that might be seen—

Senator O'BRIEN—You are effectively setting what you believe should be the performance targets?

Mr Walter—The best context in which you can see that is the pricing performance analysis where, for example, you have, in our preliminary view, two bases upon which there might be seen to be benefits from AWB's activities. One would be the extent to which it captures the freight benefits, which have been referred to by the NCP review. Another is the extent to which it seeks to differentiate between the markets which are available to it so as to maximise its overall returns from pools. It is a question of looking at what might have been achieved and what is achieved. I think there is a difference, though, between that which fits probably most into the wheat export arrangements and pricing performance and that which relates to, as it were, expenses and costs, which are supply chain issues, operating environments and part of pooling where you are indeed seeking to say, bearing in mind the revenue side of the equation, 'How are they performing against relevant benchmarks in relation to expenses?' We have before us, of course, the wheat industry benchmark which has been adopted for the service level agreement which does attempt to identify some of these issues of whether there is revenue maximisation and whether costs are being appropriately contained.

On the cost side, we have expressed in our grower report some of the issues which we are grappling with there. There is a test within the wheat industry benchmark which is related to an allocation effectively of a dollar figure based upon tonnages which is weighted to deal with issues like drought years. Our perspective there is that certainly historical data is a start but it should not be the end. I think you can draw a distinction between our approach to revenue and our approach to cost. Cost is benchmarking. Revenue is what you could achieve.

Senator O'BRIEN—So have you got documentation of the aims somewhere, of what you could achieve?

Mr Walter—We do. It very much relates, I have to say, to material which goes to the heart of the confidential data which we receive from AWB, as you might imagine, because we are talking here about markets and prices and differentiation between markets on the revenue side, in particular.

Senator O'BRIEN—You have a history of performance which one assumes relates to the information supplied to you. But the expected performance benchmarks are not directly related to that, are they?

Mr Walter—The expected performance benchmarks are partly related to that because the extent, for example, to which you can price differentiate is related to the markets which you have and the prices which you achieve in particular markets. So if, for example, one is looking at whether you allocate your tonnage to the market where you are going to get the most revenue, because after all you are Australia incorporated for this purpose, you actually need to look at the markets and the prices and the contracts in those markets to be able to see whether the tonnages have been allocated to the markets which are going to produce the highest overall returns. So you do absolutely need to look at that data.

Senator O'BRIEN—How are you measuring the performance of AWBI against each of these aims or benchmarks? Is it purely a measure against numbers, as it were?

Mr Walter—No, it is not. I think you can see that from some of the detail. For example, grower services, products and benefits is necessarily qualitative. I suggest it is partly quantitative. But it is necessarily qualitative. You have referred to the grower surveys. The grower surveys, in a sense, are measuring a subjective response from the grower base on some quasi-scientific basis at least. The analysis of the service agreement is partly a matter of logic and partly a matter of using it against the background of whether the drivers are right and whether the incentives and disincentives are right and whether that might be seen as reinforcing some of the other aims in relation to achieving appropriate price performance. So it is not a question of one size fitting all in this analysis, which is the reason in a sense I have sought to say that primarily it is looking at what can be achieved and it is looking at what the expenses are but there are definitely qualitative aspects in that and logic aspects.

Senator O'BRIEN—So will you be looking at AWBI or AWB Ltd through AWBI as a source of that analysis?

Mr Walter—Not as a source of that analysis. As a source of data, yes, and to the extent that they have analysis, such as the wheat industry benchmark, to the extent it is based upon data and factual material which we are comfortable with, the answer to that is yes. But our primary drive here will be the data and a consideration of the data.

Senator O'BRIEN—Is this work very well advanced at this stage?

Mr Walter—There are a number of areas in which the work is quite advanced. I think you would have seen from the comments I made as to price differentiation and the issues of the operation of the freight differential that we are focused on a number of areas in a very detailed way but areas which I believe will be very significant in terms of making a report as to the performance of AWBI.

Senator O'BRIEN—So benchmarks and targets are known and the work measuring the performance—

Mr Walter—I think in some areas we are very advanced and we know precisely what the population of the process will be. There are other areas—let me be clear—where we are less advanced.

Senator O'BRIEN—What does AWBI export rights mean in the context of the 2004 review?

Mr Walter—One of the tasks in terms of the material you referred to is the way in which AWB performs its role as nominated company B.

Mr Taylor—In looking at AWBI export rights, we are looking at issues such as AWBI's conduct in the process of consultation with the Wheat Export Authority, its right to export wheat without consent from the Wheat Export Authority and, more generally, its role in the overall export consent process.

Mr Walter—Let's be clear that this is simply a model. Many of the issues relate one to the other. This is a construct. The real issue overall is whether they are capturing what they should capture and whether they are doing it for a reasonable price.

Senator O'BRIEN—So it is a review in part of the single desk as well as the management of the single desk?

Mr Walter—Yes.

Senator O'BRIEN—Page 5 of your last annual report says the review will not assess the ongoing existence of the single desk. What if there is an adverse finding in terms of the benefit to growers from the current arrangements? Do we assume the problem must be with the management of the monopoly by AWBI as distinct from the structure of the single desk arrangements? Is that what you are bound to find?

Mr Walter—I think that the task is in terms of we hope our results will speak for themselves. It is up to government and, you have pointed out, the parliament of Australia as to what they may wish to do with respect to the structure.

Senator O'BRIEN—The finding may be that AWBI is managing a less than optimum model.

Mr Walter—Our focus is on the extent to which the benefits are being captured. In other words, the job it is doing is our focus.

Senator O'BRIEN—So irrespective of the model, you would be saying that it is doing its job or it is not doing its job?

Mr Walter—That is where our focus is, yes.

Senator O'BRIEN—So I guess if it is not doing the job, then someone else has to decide either then or over the next six years whether something else needs to happen. It is not your role to do that. Is that what you are saying?

Mr Walter—It is not our role to do that. In fact, we have no capacity to do that.

Senator O'BRIEN—The Irving report at pages 96 and 97 refers to the need for the 2004 review to take into account the need to preserve to the maximum extent possible the value of grower equity. It says that the 2004 review is the most appropriate vehicle for a post-float reassessment of the single desk and therefore should be expanded in both scope and resources. Do you know whether the minister has accepted or rejected that advice?

Mr Walter—I cannot answer that specifically. I can tell you where we are and our view of our task, and you have heard that.

Senator O'BRIEN—Do you have any view on the potential impact that the 2004 review might have on the value of AWB Ltd class B shares?

Mr Walter—I think that is beyond our remit.

Senator O'BRIEN—Do you know whether any consideration has been given to the suggestion by Irving to expand the review?

Mr Walter—I cannot answer that.

Senator O'BRIEN—The next area for review under the heading of 'pool operations' includes market characteristics and customer analysis and pool management and pool returns. I suppose pool returns is something that is easily numerically addressed.

Mr Walter—Yes. Pool management is a more subjective issue, in a sense. It is a question of opening and closing pools. It is a question of the relationship between cash trading, which is conducted by AWB and the pools. It is relevant to us to the extent that benefits may be captured by AWBI and growers more generally.

Senator O'BRIEN—Are the benchmarks and targets established for these areas?

Mr Walter—I said to you previously that there were some areas that were less advanced than others. Pooling is an area we have identified as a priority. We have had discussions with AWBI about pooling operations and the detail of the relationship between AWB and AWBI trading and the implications that may have for grower capture, but it is not as advanced as, for example, some of the pricing and cost issues.

Senator O'BRIEN—What is the deadline to have this work completed?

Mr Walter—You referred to time lines previously. I think we took that on notice. Of course we have a need to complete our report in due time.

Senator O'BRIEN—Can you tell us how much dependence there is on AWBI and AWB Ltd indirectly in establishing the measurement benchmarks or targets?

Mr Walter—They have within their performance model a thing call WIB, which is the wheat industry benchmark. This has been publicly identified. We are quite happy to consider the data which comprises the wheat industry benchmark, but we are performing our own analysis on those issues and will form our own view as to the test as to whether costs are being minimised.

Senator O'BRIEN—Is this putting an extra burden on the authority? You say that your expenditure patterns are pretty constant.

Mr Walter—I think it is fair to say that the 2004 report is an additional activity of the authority. But one of the aims—I think it is a matter of appropriate public administration—is that, with respect to the work which has been done during the period leading through to 2004, the data which has been collected, which is really the expensive and time consuming bit, will actually feed into the 2004 review. So it is not like saying 'multiply by another year's worth of activity'.

Senator O'BRIEN—But it is an additional task.

Mr Walter—It is an additional task.

Senator O'BRIEN—So how much additional resource is it taking out of your team of 11?

Mr Walter—Glen might wish to respond to that.

Mr Taylor—As has been indicated, the 2004 review will be built around the findings from the annual performance monitoring activities of the WEA. The budget of the Wheat Export Authority has been structured around identifying issues as outlined in the performance modelling framework that are relevant to 2004. It is not going to be a significant additional cost to the Wheat Export Authority over and above its annual operating budget.

Senator O'BRIEN—What is the budget for it?

Mr Taylor—I could not tell you the actual budget off the top of my head. It is not straightforward. It is built into a range of budget items within the detailed WEA budget.

Mr Walter—Correct me if I am wrong, but one of the constraints on budgeting within the authority is running out of money.

CHAIR—I think you told me earlier that all of this is covered within the \$2 million.

Mr Walter—The consultation and the work of Allen Consulting and our staff is within the range of \$2 million.

CHAIR—It is just a matter of where you get the \$2 million from.

Mr Walter—That is a matter for parliament and others, no doubt, yes.

Senator O'BRIEN—In terms of pricing performance, the areas under this heading are gross sales revenue, price discrimination, pricing, commodity hedging and foreign exchange. Will you be supplying us with the same information in relation to this? I want to know where the work is in terms of establishing the benchmarks or targets.

Mr Walter—This is the area where the activity is probably furthest advanced in the sense of actually having the pricing data from AWBI over two and three years which permits us to run the analysis which looks at where there is a capacity to differentiate, the extent to which differentiation is possible and the extent to which it has been captured. It is also in this area that we can look at the extent to which the freight differential is captured. There are various models which address effectively the difference in cost to various markets, say, out of the west coast of the US and out of Fremantle. You can look and see the extent to which, looking at the totality of AWBI's performance, it has in fact realised the potential which it might have achieved from the capacity to differentiate and the freight differentials which may be of advantage to it in a number of especially Middle Eastern and Asian markets. So this is well advanced stuff.

Senator O'BRIEN—That has essentially been drawn from the information you have from AWBI?

Mr Walter—Precisely.

Senator O'BRIEN—Can you tell me again how you will measure the performance of AWBI against these benchmarks?

Mr Walter—The information we have will be indicative of that which might have been achieved. In other words, what is revenue maximisation and how far has that been achieved?

Senator O'BRIEN—In relation to price discrimination by AWBI, have you made progress on that one, or are you still back at square one?

Mr Walter—No, we have made progress on that. Part of what I am saying to you really relates to those issues. I think the better way of understanding that is that price discrimination, for whatever reason, seems to be a concept which people find hard to grasp. It is the reason I have used the term 'differentiation', because that is what it is. It is saying, 'Am I pricing differently with respect to different markets so as to maximise my revenue?'

Senator O'BRIEN—According to the 2002 growers report, during early meetings of the WEA consultative group agreement was not reached on the models or methods for testing price discrimination. Has progress been made since then?

Mr Walter—Since that time, progress has been made consistent with the approach that we have previously identified. Perhaps in fairness to AWBI, I should say that that very last paragraph, which the chief executive has drawn my attention to, should be taken into account. It says that whilst finalising this report, there was a late addition to the report, and AWBI agreed to the use of the pricing data to allow WEA to confirm whether price discrimination happens and the degree to which it occurs. So we have made reference to it in the report. Our earlier statement was correct when it was originally penned.

Senator O'BRIEN—So when did you start looking at the price discrimination issue?

Mr Walter—It has been an issue that I think was on the agenda in terms of discussions with AWB for some time in terms of actually getting the capacity to utilise it. As you would see, it was something which was approximately contemporaneous with the making of this report, which was at the end of last year. Bearing in mind that it needs pricing data over a period of time, we are now looking this year at the third year of detailed pricing data as the basis for that analysis.

Senator O'BRIEN—In relation to pricing, your last report refers to the wheat industry benchmark and states that AWBI achieved higher average prices than last year and higher prices for comparable grades sold overseas. But you qualify the value of the wheat industry benchmark.

Mr Walter—Indeed. It is something I probably referred to in passing earlier. We are happy to look at it. We are looking at the underlying material. You will see from the area you are referring to that there was some discontinuity. There was some discontinuity in the historical data inputs which made it difficult for us to

verify or utilise the data because the inputs were different. As you know, there are different inputs and different outputs.

Senator O'BRIEN—It is the old comparing apples with apples situation. You also compare AWBI's returns to international Grains Council data.

Mr Walter—Yes, we did.

Senator O'BRIEN—You qualify the value of that as well. Is that the same problem?

Mr Walter—I think the point of that was to simply say it is fairly crude data, although it is independent data, and it is simply a question of being some evidence of the performance of AWBI. We are not saying it is necessarily conclusive. But the reason we made reference to it was that we felt it was desirable that growers in particular could see that there was some independent data and that independent data in general terms, as I think the statement on page 6 mentions, was consistent with the WIB figures. It is part of the process which I have suggested in that we are interested in the facts. This was partly a validation of some of the data and the implication of some of the data from AWBI.

Senator O'BRIEN—You concluded returns to be \$14 to \$32 per tonne above prices received by overseas competitors. You say you deducted AWBI's rate of \$US5 to allow for single desk and freight advantages.

Mr Walter—Yes.

Senator O'BRIEN—How does that work? I assume that AWBI—

Mr Walter—Effectively, it derives from the way the performance arrangements between AWBI and AWB operate before the performance benefits cut in. The theory is that—and this is part of the analysis in the operating environment too—you should not be compensating AWB for performance which is simply the outcome of the institutional circumstance which it confronts; for example, being the only exporter of wheat from Australia when no other wheat that can be exported from Australia, and having freight advantages with respect to certain ports over other suppliers. So they should not be rewarded in the sense of getting any incentive payment for being in that position. That is an institutional constraint. That is the reason there is effectively a figure before they get a return. I counsel against too much reliance on the \$14 to \$32 differential as such. It is fairly crude, but it is independent data which tends to be supportive of the AWB WIB outcome.

Senator O'BRIEN—So it is possible the real number could be \$5, \$14 or above \$32?

Mr Walter—It could.

Senator O'BRIEN—I have a fair few other questions. We are scheduled to go until eight o'clock. I can put them in writing and see whether we can get answers in the next week or so if people are keen to get away. I know it is late on a Thursday night.

CHAIR—I want to ask two questions. What are the circumstances in which a member attends a board or committee meeting which they are not eligible to attend?

Mr Walter—I am not certain of the context.

CHAIR—In your annual report, you say that two of your people, without naming them, were eligible to attend—one bloke attended five meetings when in fact he attended seven. I just wondered what it all meant.

Mr Walter—This is page?

CHAIR—Page 31.

Mr Walter—I see. You are referring in particular to Dr Samson.

CHAIR—And Mr Besley, I presume. Are they overzealous?

Mr Walter—I am not sure I have an immediate answer to the question. I can think of one answer but I do not perhaps want to identify it, which is that it may well be an error.

CHAIR—Anyhow, that is one question. The other question is: what are the circumstances in which AWB gets an incentive payment from AWBI?

Mr Walter—It develops the issues that Senator O'Brien raised. If the wheat industry benchmark is exceeded, then up to a limit of—I think there is an absolute percentage of some sort—

Mr Taylor—I understand it is a three per cent ceiling.

Mr Walter—Up to a limit, above the wheat industry benchmark plus the \$5, which is the institutional benefit that should not be captured as a result of performance, there is a sharing in what proportion?

Mr Taylor—In 80 to 20.

Mr Walter—So 80 per cent to the pool and 20 per cent to AWB. That is subject to an overall cap.

CHAIR—Could you give me an example of one of those circumstances in which they would get paid?

Mr Walter—If they outperform the benchmark, which is to say they get more than \$5 above the benchmark, which is effectively world price, they share in the marginal dollar up to the absolute limit, which I think is three per cent, but we can provide—

CHAIR—Why don't the growers get the benefit of it?

Mr Walter—The basis for the arrangement is that the 20 per cent provides an incentive for AWB to outperform. It is only payable when AWB is in fact outperforming in the sense of—

CHAIR—How do they outperform? What is their function of outperforming? International is the marketer.

Mr Walter—It is effectively the benchmark, which is internationally based. It is the benchmark plus an allowance of \$US5 for the institutional benefits of having the single desk—for having the freight differentials and the other benefits of a single desk. If you perform beyond that which might be expected from the benchmark plus a figure for the institutional allowances attributable to having the single desk, then you are rewarded in the provisions—

CHAIR—Who decides the benchmark?

Mr Walter—That is one of the subjects of our report as to the reality and appropriateness of the benchmark. It is the reason that the issue that Senator O'Brien—

CHAIR—Who actually strikes it?

Mr Walter—Our role is to monitor and report. That is what we do.

CHAIR—But you must know who strikes the—

Mr Walter—It is the outcome of certain inputs into—

CHAIR—But who derives that?

Mr Walter—AWB derive that.

CHAIR—So they set their own high jump bar?

Mr Walter—It is intended to be objectively based, which is the reason in this area that we identified particularly the circumstances of wanting to verify the factual data which was used as an input.

CHAIR—At the end of the day, they set the height of the bar over which someone has to jump to get the incentive.

Mr Walter—The answer is that it is an arrangement between AWBI and AWB Ltd. It is an arrangement that has been negotiated between them. It is an arrangement which is subject to our independent perspective. You will see, in terms of the issues that Senator O'Brien was identifying, that the service agreements—and our comments and analysis of the service agreements—are one of the critical areas for attention to be addressed in our reports.

CHAIR—Thank you very much. I think it would be fair to say that that concludes this evening's hearing. The committee stands adjourned. We will meet again at nine o'clock in the morning for all those lonely souls who want to come to a committee meeting.

Committee adjourned at 8.04 p.m.