

Chapter 4

Committee conclusions and recommendations

Introduction

4.1 Chapter 3 of this report details the major issues examined by the committee as part of this inquiry. Chapter 2 also sets out a range of issues which fall outside the committee's terms of reference, but which the committee considers are pertinent to its consideration of the bills.

4.2 Issues regarding this legislation were raised with the committee by a wide range of active commercial participants in the Australian wheat market, including individual wheat growers, growers' representatives and by a number of commercial groups which have an interest in the changes proposed in the bills. The committee's conclusions on the key matters considered during this inquiry are set out below.

Status of current single-desk export arrangement for Australian wheat

4.3 From evidence heard during this inquiry, the committee notes that grower's views on the proposed reforms to the marketing of wheat fall into three distinct categories: supporters of the single desk; supporters of a regulated but competitive market and supporters of a de-regulated market.

4.4 The committee notes that many growers consider that the 'single desk' marketing model has offered growers a number of benefits including a degree of security and certainty in the marketing of their wheat. However, the committee also notes that many growers consider that the 'single desk' has presented obstacles to a competitive open market.

4.5 The committee also recognises that the marketing environment for wheat has evolved to include other options for growers to market their wheat. In particular, the deregulated domestic market in the eastern states, and the deregulated container market have offered important alternatives to growers, particularly in poor production years. The committee notes that many growers have embraced these alternatives in recent years in preference to the 'single desk'.

4.6 The committee notes that under the current legislation governing wheat exports the absence of a veto power from 1 July would inevitably result in an increase in the number of bulk exporters.

4.7 The committee also notes the pragmatic and proactive attitude of the industry in developing commercial responses to the changes proposed in these bills.

Industry good services being addressed by WIEG

4.8 The committee notes the significant concerns raised in evidence to it regarding the importance of access to detailed, accurate and timely information regarding the industry. The committee also notes the apparent need for education and training and other assistance to growers with regard to changed market conditions, new opportunities and products and services available in a more openly competitive market.

4.9 The committee notes that these concerns have been dealt with in detail by the Wheat Industry Expert Group (WIEG). However, the committee suggests that evidence received during this inquiry in relation to industry good services be considered in concurrence with the recommendations of WIEG.

4.10 The committee notes the strength of feeling amongst some growers about what has been perceived as a lack of consultation. The committee is very mindful of the need for appropriate consultation on issues that will ultimately have an impact on producers' livelihoods.

4.11 At the same time, the committee's attention has been drawn to the challenges involved in consulting with, and gauging the views of the grower community. The committee received evidence that suggests a need for caution in relying solely on grower organisations. However, the committee accepts the logistical difficulties associated with surveys, polls and public forums.

4.12 With regard to its own inquiry, the committee is particularly appreciative of those in the grower community who took advantage of the avenue for consultation offered by this inquiry. In particular, the committee owes a debt of gratitude to those growers and grower organisations who took the time to make specific comments on the draft bills and to offer suggestions on how the proposed legislation might be amended or improved to better address their specific concerns.

Committee conclusions

4.13 The committee has heard strong arguments for and against the passage of the proposed bills. The committee received evidence which suggested that there were a range of opinions on the bill which fell into three broad groups – support for the bill with some amendments, pragmatic acceptance of what continues to be an unwelcome or inadequate change, and those who totally reject the changes and continue to support some form of single desk. From the evidence presented to this inquiry, the committee believes that it is important that this process of reform does not stall at this point. The committee considers that maintaining the status quo is untenable. However, the committee also notes that some significant issues have been raised in relation to the regulatory processes contained in the bills. The committee considers that careful consideration must be given to these issues, and appropriate amendments made, before the bills are introduced into the Parliament.

Accreditation process

4.14 A number of issues were raised with the committee in relation to the proposed accreditation process, including whether non-corporate entities should be eligible for accreditation, the degree of discretion afforded to Wheat Exports Australia (WEA) in formulating and administering the accreditation scheme and the rigour of the proposed scheme.

4.15 The committee notes the concerns of many witnesses that accreditation under the proposed scheme is limited to registered companies. The committee acknowledges that companies can be formed with relative ease. However, the committee believes that further consideration should be given to allowing cooperatives to apply for accreditation.

4.16 The committee considers that the role of WEA is critical to the successful implementation of the accreditation scheme. The committee notes the degree of discretion afforded to WEA in its administration of the accreditation process. The committee supports calls for that discretion to be guided by clear objectives within the legislation.

4.17 The committee is concerned to ensure that WEA does not suffer from the same limitations in terms of access to power that beset the former Wheat Export Authority and, to an extent, its successor the Export Wheat Commission.

4.18 The committee expects that WEA will have at its disposal appropriate legislative, financial and physical/human resources to undertake its role as regulator and will have the preparedness to deploy them appropriately. In particular, the committee expects that WEA will have the ability to effectively monitor the operation of the accreditation scheme. The committee considers the intellectual capital available through the WEA board as part of the resources available to WEA. The committee trusts that in making appointments to the WEA board, the minister will ensure an appropriately broad range of expertise and experience is available to the WEA from this quarter.

4.19 The committee notes the strong arguments advanced regarding the level of regulation that should be applied through the accreditation scheme. Some witnesses would like to see more of the detail provided for in the legislation itself, together with clear guidance to WEA to administer the scheme in a 'light touch' manner. Other witnesses emphasised the significance of the accreditation scheme in providing a level of protection and confidence to growers and the broader industry.

4.20 The committee notes concerns about the potential for duplication in the proposed scheme. The committee would not like to see WEA duplicating activities currently undertaken by the Australian Prudential Regulatory Authority, the Australian Securities and Investments Commission and the Australian Competition and Consumer Commission (ACCC). The committee supports consideration being given to avenues for consultation and exchange of information between WEA and other relevant regulatory agencies.

4.21 The committee considers that further consideration should be given to framing the accreditation scheme to ensure that an appropriate balance is achieved between providing sufficient certainty for companies and their clients and appropriate confidence for growers.

Access to storage, handling and rail freight

4.22 The committee has heard serious concerns from all sides of the debate in relation to the proposed access provisions in the bill. The committee notes in particular the concerns raised regarding the potential for the formation of regional based bulk handling monopolies and vertically integrated supply chains and the risks associated with this.

4.23 As currently drafted, the bill provides that owners of port infrastructure must enter into an access undertaking approved by the ACCC. There is no similar requirement for owners of bulk handling and storage facilities at the point of receipt. The bill relies on the existing provisions in the Trade Practices Act 1974 (the TPA) to address any instances of uncompetitive behaviour such as the denial of access.

4.24 The committee notes that regulation of access to infrastructure at the point of delivery is at least as significant to growers and potential exporters as access to port infrastructure. The committee considers that all bulk handling and storage facilities owned by an accredited exporter should be subject to the same access requirements.

4.25 The committee heard concern from all quarters regarding the reliance on the TPA. The committee received evidence from the major bulk handling companies which suggested that the proposed access test imposes a potentially higher and more costly form of regulation than is warranted. The committee also received evidence expressing confidence in the TPA as a source of remedy for anticompetitive behaviour, as well as evidence expressing concern that the existing measures provided by the TPA are ineffective and largely out of the reach of smaller companies and individual growers.

4.26 The committee favours the application of a consistent set of access arrangements and considers that further consideration must be given to the specific issues raised during this inquiry regarding access to 'up-country' facilities. The committee notes the role of the TPA in addressing anticompetitive practices, but believes that careful consideration needs to be given to the concerns raised in this inquiry regarding the appropriateness of these provisions.

4.27 The three major bulk handling companies submitted a Supply Chain Code of Conduct as part of this inquiry. The committee welcomes this initiative. In particular, the committee considers that suggestions for providing a legislative link to the code via the accreditation conditions have merit. However, the committee has concerns regarding the level of protection provided under the code and the extent to which a code developed by the bulk handling companies could attract widespread agreement across all sectors of the industry. Without industry consensus, the committee is concerned that the code would merely serve as a catalyst for ongoing litigation.

4.28 Despite these concerns, the committee encourages the Government to consider this and other potential options closely in the interests of identifying a regulatory approach capable of taking account of the competing concerns expressed during this inquiry. In particular, the committee emphasises the need for an approach which provides for non-discriminatory access but does not provide a disincentive to potential exporters or to future infrastructure investment. The committee also considers that an accessible dispute resolution process is critical to the effectiveness of such regulation.

4.29 The committee notes the concerns raised about current protocols in place at port facilities regarding the receipt, accumulation, movement and loading of wheat. The committee considers that the collection and dissemination of data on wheat movements should reduce the risk of discriminatory practices considerably and facilitate equitable access to facilities and services.

4.30 Finally, the committee considers that it is critically important that accurate, timely and appropriately detailed data on wheat stocks throughout the wheat chain generally should be available to enable the successful functioning of the proposed changes. There were different views about the frequency required for reporting of information and it is possible that as the information is commercially valuable, a market may develop to cater to different requirements. However, the committee considers that in the transition period there should be independent collection and dissemination of monthly aggregated data on wheat stocks including the tonnage, quality and location, together with the shipping stem.

4.31 The committee has received a clear message that the Wheat Export Marketing Bill 2008 should be amended to address these and other concerns raised throughout this inquiry.

Committee recommendations

Recommendation 1

4.32 That the Wheat Export Marketing Bill 2008 when introduced into the Parliament address the issues noted in this report with respect to the accreditation of exporters and access to bulk storage and handling infrastructure as set out in paragraphs 3.45 to 3.146 and 4.14 to 4.30 of this report and that the other amendments suggested as follows also be reflected, namely:

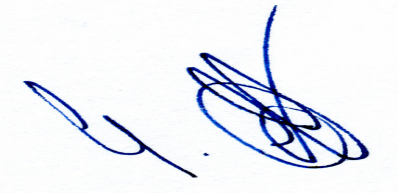
- **clarification of Wheat Exports Australia's (WEA) objectives;**
- **clarification and guidance in relation to the range of powers and discretions available to WEA;**
- **clarification and guidance in relation to the proposed process for renewal of accreditation;**
- **clarification of the process for review of decisions; and**
- **legislative provision for review of the legislation.**

Recommendation 2

4.33 That the bill be introduced into parliament as soon as practicable to facilitate its passage prior to 30 June 2008.

Recommendation 3

4.34 The committee recommends that transitional financial education and counselling (particularly in marketing and risk management) should be provided through appropriate existing farmer organisations for a period of three to four years to help existing producers effectively transition to the new market operating environment.



**Senator Glenn Sterle
Chair**