

Additional Comments provided by Liberal Senators

Senator the Hon Bill Heffernan, Senator Julian McGauran, Senator Judith Adams, Senator Mary Jo Fisher and Senator Mathias Cormann

Introduction

The interests of Australia's wheat growers have always been foremost in the minds of the Liberal Party and Liberal Senators when considering wheat marketing arrangements.

Liberal Senators consider the Exposure Draft Wheat Export Marketing Bill 2008 and Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008 should be supported with amendments.

We acknowledge there is considerable diversity of opinion amongst wheat growers regarding preferred wheat marketing arrangements within Australia.

Liberal Senators believe the fundamental failing of the Exposure Draft Wheat Export Marketing Bill 2008 is the absence of objectives explaining the overarching purpose of, and principles underpinning, the Bill. These objectives must recognise wheat growers. Had such objectives been included in the original Exposure Draft it is conceivable that considerable angst may have been prevented, or at the very least lessened, amongst sections of the wheat growing community.

Liberal Senators also note that rejection of the Bills will simply see the Government re-presenting the new marketing arrangements after 30 June 2008 to the new Senate. Rejection of the Bills in the Senate will create uncertainty in the wheat market to the detriment of wheat growers, grain merchants and financiers. It was clear from the Committee hearings that all parties involved in the industry believed it was critical to have certainty as to the marketing arrangements for the coming harvests and beyond.

It can also be concluded from discussions and meetings from all industry players, that there is an acceptance and anticipation, albeit a reluctant one by some, that a multi-licensing system in one form or another will be introduced. For example, WAFarmers', a strident supporter of the single desk stated in their submission to the Senate Committee:

With the government moving in the opposite direction to WAFarmers policy of orderly marketing, the organisation has adopted a pragmatic view of where things currently stand. WAFarmers has therefore reviewed the Exposure Draft Bills and is making this submission in the hope that before proceeding further with their legislation the government addresses deficiencies in their wheat marketing legislation.

That said, WAFarmers in accepting that changes are inevitable has taken steps to assist our members with the transition to the new marketing arrangements and has commenced negotiations with Australia's leading independent grains manager, Emerald to develop a specialist wheat pooling product. This action reflects WAFarmers commitment to representing the interests of Western Australian wheat growers under the new industry structure.¹

It is evident that there is now no going back to the single desk marketing system under this Government.

If the new arrangements were rejected in the Senate before 30 June 2008, wheat growers would be left in an unsatisfactory and potentially detrimental position as noted in paragraphs 2.8 to 2.11 of the Report. AWB further stated in their evidence to the Senate Committee:

Senator McGAURAN—...in this transitional period your own company has made significant steps to prepare for the new competitive world. If this new legislation were stopped in the Senate, would you be capable of reverting to being the sole exporter, creating a pool?

Mr Hadler—I think the genie is out of the bottle; I do not think we can put it back in.

Senator McGAURAN—You are not capable, or you do not want to?

Mr Hadler—I think it is not commercially feasible for AWB to go back to the old arrangements. Let us remember the default set of conditions is a national pool—not a single desk—with bulk permits and deregulated bags and containers. It would not be commercially feasible to manage under those arrangements.

Mr Grebe—What you are reverting to, Senator, is the 2007 Wheat Marketing Amendment Bill, where the veto will transfer from the minister to the regulator, but there have not been additional legislative measures introduced that would spell out how the regulator would apply that veto, and that is the missing part of the picture at the moment.²

In light of this, the proposed Bills should be supported with amendments. Such amendments to the Exposure Draft *Wheat Export Marketing Bill 2008* and *Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008* are necessary to ensure the legislation operates to produce optimal outcomes for wheat growers.

Most of these amendments are covered by the Report, though additional comments are provided below.

1 Submission 18, The Western Australian Farmers Federation (Inc), p. 4.

2 *Committee Hansard*, 27 March 2008, p. 10.

Objectives

Support is provided for the inclusion of overarching objectives explaining the purpose of the Bill as discussed in paragraphs 3.30 and 3.32 of the Report.³ The proposed objectives recognise that the Act provides wheat growers with choice, enhanced by competition, transparency and security.

It is not necessary for the role of the regulator to be outlined in the overarching objectives. Instead this should be done in Part 5 Division 1 of the Act which provides for the establishment of Wheat Exports Australia and its functions, powers and liabilities.

Eligibility for Accreditation

It is not merely 'desirable' that the accreditation scheme supports increased choice for growers in marketing their wheat: it is fundamentally important. In light of this it is imperative that as many participants enter the market as possible. It is in the interests of the wheat grower that there are many buyers for their product. The greater the competition for the wheat crop the higher the farm gate prices.

Liberal Senators strongly support and endorse the submission of the Hon Wilson Tuckey MP which seeks to exempt wheat growers from the Act who wish to directly export their own wheat to a third party.

This could be achieved by an express provision under Part 2 Division 1 exempting an individual wheat grower where:

- The individual wheat grower provides a statutory declaration to the WEA stating that the wheat has been solely produced by the individual wheat grower;
- The individual grower provides supporting documentation to the WEA evidencing the contract for export sale by the individual grower to a third party (with such information to be protected by commercial-in-confidence provisions); and
- The individual grower complies with all applicable Australian quarantine and quality requirements as ordinarily apply to exported wheat.

Regardless of whether they are incorporated or not, individual wheat growers should not have to undergo the full accreditation process in order to directly sell their own wheat to a third party.

Wheat growers who possess the acumen to establish direct links with third parties deserve to be encouraged in their entrepreneurial endeavours rather than stifled by regulation and have their profits taken by middle men.

3 *Senate Rural and Regional Affairs and Transport Committee Report, April 2008, p. 24.*

Minimum Standard Trading Terms

GCA called for the adoption of minimum standard trading terms by the industry including truth in pricing and minimum standard payment schedules.⁴

AWB also supported standard industry contracts established through NACMA as outlined in paragraph 2.43 of the Report.⁵

It is important that these issues are addressed to ensure wheat growers are provided with transparent, easy to understand information.

Industry standards should be established and education about these standards should be incorporated into the industry education package outlined under Recommendation 3 (paragraph 4.34) of the Report.

Pool Products

GCA also called for all pool products to be classified as financial products under the Financial Services Legislation to improve the position of wheat growers as unsecured creditors.⁶

This matter should be addressed through the *Financial Services Reform Act 2001* or some other appropriate mechanism that provides the necessary security to wheat growers.

The Access Test

It is essential that non-discriminatory access to bulk storage and handling facilities is provided to all market participants. Non-discriminatory access needs to apply to: 'up country' storage facilities; port storage facilities; shipping stem; and, information.

There was agreement from all non-bulk handling company potential market participants, in some or all of the above areas, that such access is necessary for the optimal operation of the proposed new wheat marketing system.⁷ AWB, supported in part or in whole by a number of other potential market participants including Consolidated Grain Industries Pty Ltd, the Emerald Group, Southern Quality Produce Cooperative Limited and AGEA, outlined a specific approach to access in their submission.⁸

4 Submission 25, Grains Council of Australia, p. 10.

5 *Senate Rural and Regional Affairs and Transport Committee Report*, April 2008, p. 12.

6 Submission 25, Grains Council of Australia, p. 12.

7 Submission 2, AWB; Submission 25, Grains Council of Australia; Submission 12, Consolidated Grain Industries Pty Ltd; Submission 41, Emerald Group; Submission 20, Flour Millers' Council of Australia; Submission 40, ASX; Submission 23, AGEA.

8 Submission 2, AWB, pp. 2-5. See also Submission 12, Consolidated Grain Industries Pty Ltd; Submission 41, Emerald Group; Submission 42, Southern Quality Produce Cooperative Limited; Submission 23, AGEA.

As acknowledged in paragraph 3.145 of the Report, we also welcome attempts by bulk handling companies to provide a solution to these issues.

However, we consider that these issues must be dealt with by access undertakings through the ACCC under the powers provided for in Part IIIA of the *Trade Practices Act 1974*. The interests of wheat growers must be protected and we consider the access provisions to be the mechanism to achieve this outcome. The success or otherwise of the legislation will largely pivot upon the access provisions.

If an Industry Code is provided for in the final legislation, it must be an ACCC mandatory industry code. In stating this we note the difficulties in negotiating the Horticulture Code and further note that very few mandatory codes are in operation.

We are also concerned that the code could be “subject to acceptance by the WEA” and would welcome clarification on this issue.

In light of these difficulties with mandatory ACCC Industry Codes we reiterate that access undertakings should be the manner in which these issues are dealt with under Part IIIA of the *Trade Practices Act 1974*.

We reinforce that shipping stem and provision of information must be included in the principles contained in the legislation.

Information

Consolidated Grain Industries Pty Ltd reiterated the importance, amongst other issues, of the provision of timely information about grain stocks. They stated:

...in a deregulated market public access to timely information about grain stocks at each upcountry and port silo is imperative. Indeed the USDA goes further than this and demands that exporters notify major international sales within 48 hours of the contracts being written. All this information is publicly available immediately in the United States. The grain handling companies have this information and can make it available instantaneously from their data bases via email to the Wheat Export Commission for publication on a daily basis.

Why is this important?

- because without timely statistics the crop can be seriously oversold;
- huge logistical problems at export terminals can result; and
- coordination of export sales via the market mechanism will be frustrated.

This again plays into the hands of the bulk grain exporters who do have access to this information whereas the private trade does not. This affords

the grain handling companies' monopoly advantages which will distort the deregulated grain market and ensures that access is not fair and open.⁹

The ASX supports the provision of such information stating:

...ASX would support any measures that the Commonwealth Government may consider as deregulation approaches to improve the quality of data that will help inform industry stakeholders and participants in the futures market.

...

The continued growth and development of a liquid domestic futures market is, in part, dependent on the existence of a robust, independent, accurate and timely data reporting regime for crop estimates and stocks on hand.

Supplying data by port zone is important as ASX grain futures contracts are based on certain port zones. Independent and timely supply of data would ensure that all market participants have equal access to information to enable efficient pricing and assist in maintaining market integrity.¹⁰

AWB also supports the provision of daily reporting.¹¹

Along with daily reporting, weekly and monthly reporting should be collected and disseminated by the ABS and/or ABARE as follows:

- To ensure that market participants can properly price their product and/or services and growers can access this information;
- Information should be gathered from sources including growers, exporters & end-users;
- Should identify forecast crop tonnage, actual crop tonnage, tonnage available for sale, and tonnage exported.

Division 3 – External Audits

Clarification regarding the external auditing as requested by WEA needs to be provided to industry. The AGEA provided the following recommendation:

That any audit requests under S 27 of the draft Bill that are in addition to the routine company auditing undertaken by companies as part of the general company regulation obligations, be paid for by the WEA.¹²

9 Submission 12, Consolidated Grain Industries Pty Ltd, p. 2.

10 Submission 40, ASX.

11 *Senate Rural and Regional Affairs and Transport Committee Report*, April 2008, p. 12.

12 Submission 23, AGEA, p. 9. See also p. 8.

Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008

This Bill appears to propose that the WEA will not be subject to Freedom of Information (FOI) legislation. If this is the case the Bill must be amended so that the WEA is subject to the FOI legislation and enquiries.

Industry Representation

All major Australian agricultural commodities, such as wool, meat, livestock, dairy and wine are represented by a peak body underpinned by industry and government funding. A number of submissions called for the establishment of a peak body to undertake a range of industry good functions.¹³

A wheat body could potentially be based upon the Australian Wine and Brandy Corporation model which on behalf of the entire grape industry, including growers and traders, oversees:

- Export regulation and compliance
- Domestic and international wine promotion
- Wine sector information and analysis
- Maintaining the integrity of Australia's wine labels and winemaking practices
- Defining the boundaries of Australia's wine producing areas; and
- Assisting with negotiations with other countries to reduce trade barriers.¹⁴

We consider the government should consult with industry to determine the need for and appropriateness of an overarching body for the wheat industry.

Review of Legislation

We wholeheartedly support a review of the legislation in 2010, with the report of the review to be tabled before Parliament by the Minister. These requirements must be enshrined in the legislation. The review should be conducted by the Productivity Commission and must be an independent economic review, with an analysis based on the costs and benefits of the system as called for by PGA WA.¹⁵

13 Submission 25, Grains Council of Australia, pp. 2-3; ACIL Tasman, Commissioned by the AGEA, *Marketing Australian Wheat: Competition and Choice in the Australian export wheat market – increasing growers' net returns*, November 2006.

14 www.wineaustralia.com

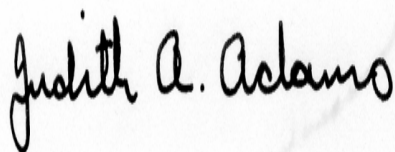
15 *Senate Rural and Regional Affairs and Transport Committee Report*, April 2008, p. 50.



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