

# **Dissenting Report by**

## **Senator Barnaby Joyce, Senator Fiona Nash and Senator Nigel Scullion**

### **Introduction**

The Wheat Export Marketing Bill 2008 and Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008 are deficient in many areas. Some of these deficiencies have been raised during the committee process.

The draft bills as proposed clearly do not satisfy the requirements necessary to ensure a wheat marketing system that would deliver the best outcomes for wheat growers. More dangerously, the draft bills lack sufficient safeguards to prevent regional monopolies from arising. These deficiencies are compounded by a weak Trade Practices Act which is failing to prevent the growing concentration of Australian industries to the detriment of competition, farmers and consumers.

The draft bills have not, in any way, taken into consideration that the majority of Australian wheat growers want the retention of a grower owned and controlled wheat marketing system.

The Nationals Senators dissent from the report. We contend that the draft bill be withdrawn, and be re-drafted to incorporate the following:

- a national pool in recognition of the need for farmers to have countervailing power when dealing with monopoly power in other areas of the wheat export market;
- a receiver of last resort;
- restrictions against Australian wheat competing against Australian wheat overseas;
- a regulatory process that has resources and power to investigate and prosecute breaches of both the legislation and regulations; and
- the power of veto to be held by an independent body and exercised in both the interest of the growers and the national interest

### **Background**

The Oil-for-Food scandal has been used very successfully as a means of leverage to destroy one of Australia's greatest wheat marketing advantages. The motivation for the contrived uproar was far from the protestation of an informed conscience but more of a financial opportunistic ploy for certain market players to set themselves up as regional monopolies with the windfall gain to those who had a financial interest in them.

### **Ramifications on Passage of Current Bill**

The same organisations that lead the crusade on behalf of the free market are now complaining bitterly against the access regimes required to truly bring about a competitive market. Graincorp's Chief Executive, Mark Irwin, stated in The Australian Financial Review

23/04/08 "we would be happy for the legislation not to go through." This is because of the access regime at the ports that would be imposed on them.

This is quite a turn around from the previous pressing need to remove the inspired blight of the oil-for-food scandal and it starts to give more transparency to the real motivations at play. CBH, with 95% of WA's receival infrastructure and 100% of the ports and soon a license to export, would have a monopoly to dream of and knowledge there are no divestiture powers to break up their stranglehold.

Without a clear access regime their position would be a multiple billion dollar windfall to the co-operative, which has already started on moves to corporatise so the owners can collect on the gain. Graincorp and its association with US multinational, Cargill, would have a very similar outcome in the east and ABB, to a lesser extent, in the south.

### **The Undemocratic Consequences**

Behind all this is the travesty that the majority of wheat growers across the nation do not want to lose the single desk marketing arrangement and neither the previous government nor this one will let the democratic right of the people be assessed or accepted, the refusal to table the Ralph report being but one of many indications of this lack of transparency.

The ridiculous situation, put in Canberra by WA Senators, that WA is in overwhelming support of the removal of the Single Desk was categorically debunked by their largest grower supported peak body, the WA Farmers Federation. Mr McMillian, Policy Director, at the Perth hearing said "WA Farmers members remain firm in their support for a single seller, single desk wheat marketing system."

The reality is that 60% of our wheat is purchased by single desk buyers and there is only one direction our price can go when two sellers turn up where one was before. The US has despised our single desk because of its effectiveness and this goes across the political divide in the US, from Sen Tom Harkin (D) to Sen Norm Coleman (R) to Allan Tracey (US Wheat Associates President), but the Labor party, supported by the Liberals, Greens and Democrats, it appears, is going to hand it over to them.

### **Peculiar Alliances and Consequences of the Current Bill**

The Greens have been breathtaking in their support of big business in this inquiry, especially US big business. If they want to know how the new controllers of a large part of Australia's wheat industry will play then a quick read of "Merchants of Grain" would be suggested against which our sins with AWB start to pale into insignificance.

The moral argument for the Oil for Food scandal, and review by the United Nations, found 270 names of individuals, political entities, and companies from across the world with questions to answer. There are many who still state that to operate in Saddam controlled Iraq with a clean sheet was to be completely ignorant of the reality of Saddam controlled Iraq. None the less, Australia conducted an investigation: the Cole Inquiry. Eleven AWB executives were cited, of whom all have left the company and of whom only six were charged.

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If we still talk about the disgraced AWB, then who in the organisation are we referring to? Is it just the attachment to the name? If it is the previous association of the organisation, then let us have a look at who currently is involved in other sectors of the Australian wheat market and their previous record. In regard to the 300 000 tonne export permit granted in February by Agriculture Minister Tony Burke:

‘The value of the Glencore deal has not been disclosed, but this tonnage of wheat would be worth more than \$100 million at current prices. Ironically, Glencore’s Swiss parent company, Glencore International, was also implicated in the UN oil-for-food scandal that led to AWB losing its contract for the sale of wheat to Iraq during the Cole inquiry into kickbacks.’ (*The Australian Financial Review*, 29 April 2008).

## **The Reality of Wheat Marketing for Australia**

The economics, the nature of man and how markets are exploited are a constant and wheat has for thousands of years been a mechanism for bending economics to your own advantage. That wheat is a food staple is the cornerstone and, as Socrates was quoted in the Senate Inquiry, “No man qualifies as a statesman who is entirely ignorant on the problems of wheat.”

In 2005/06 Australia produced a wheat crop of approximately 25 million tonnes (estimated value AUD\$5.7 billion) and exported 16 million tonnes. Seven million tonnes were retained for domestic use with 2 million tonnes in bags and containers.

In a large export year, the volume of wheat available for export in today’s infrastructure climate would be virtually impossible to handle. Without a pooling system and another crop in the field, there is little choice, especially after encouragement from the bank manager, but to sell down the crop which, on a cash basis, drags down the price. Traders, in this instance, react to the domestic market, not the international market. South of Coonamble in NSW this problem is anticipated and accentuated. The domestic price is not totally reliant on the international price. Australia does not have a bio-fuel industry like the US to supply.

The major buyers of our wheat are in Yemen, Sudan, Japan, Indonesia, Egypt, Iraq, India and China. India, Japan, China and Iraq are single desk buyers, that is, the government has legislated only one buyer has the authority to buy on behalf of the whole country.

## **The Demise of WEMA**

The WEMA model did not come to completion due of a range of factors including the factor of lack of time, lack of government support, lack of funding from growers that relied on voluntary payments, (saying that growers did not support the single desk because they did not make a payment to WEMA is similar to expecting voluntary taxes to raise money for the defence force) and a general lack of grower knowledge into what was the process and purpose of WEMA. The final nail in the WEMA coffin was the federal election and this has very little to do with the marketing of wheat.

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## **Socio-Economic Impact on Wheat Growers**

A Bill of this ramification to one of Australia's major exports, and the predominate income earner of many Australia's farmers, deserves a forensic socio-economic impact statement as part of its due diligence. To proceed with such a Bill without a socio-economic impact statement is irresponsible and would certainly call into question the integrity of the whole Bill if delivered without such a report. The integrity of the deliberations and capacity of those assigned to that job if they let it pass without a forensic socio-economic statement would have to be seriously questioned.

Response to Committee Conclusions and Recommendations

### ***Status of current single-desk export arrangement for Australian wheat***

In paragraph 4.7, the committee has noted the "pragmatic and proactive attitude" of the industry in developing commercial responses to the changes proposed in the bills.

*Senators' response to 4.7*

*They have certainly not considered the attitude of the majority of growers in this statement, but it has been foreshadowed that something may be stated in the final Government draft.*

### **Industry goods services being addressed by WIEG**

In paragraph 4.10, the committee has noted the strength of feeling amongst growers about their perception of a lack of consultation.

*Senators' response to 4.10*

*The growers' issues go far beyond consultation. Consultation is irrelevant if the view held by the growers is diametrically opposed to that being proposed and the process of deregulation will go forward regardless.*

In paragraph 4.11, the committee's attention is drawn to the challenges involved in consulting with, and gauging views of the grower community.

*Senators' response to 4.11*

*The Ralph report was commissioned to gauge the views of the grower community however the findings were never reviewed. Assertion and wishful thinking have taken the place of empirical evidence.*

Accreditation process

In paragraph 4.14, the committee has noted issues in relation to the proposed accreditation process and whether corporate and non-corporate entities should be eligible. It also notes in a later point (4.19) the significance of the accreditation scheme in providing a level of protection and confidence to growers and the broader industry.

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*Senators' response to 4.14*

*Corporate entities must operate to benefit shareholders; this is often at odds with providing maximum benefit to growers. The constitution of the AWB was drafted to ensure the purpose of the organisation was to provide the best return to growers.*

*Doug Clarke and Mike Chaseling noted in their appearance before the committee that CBH already has a view to corporatise. Once corporatised, CBH will be required to operate to benefit shareholders rather than growers.*

In paragraph 4.18, the committee notes that it expects the WEA will have appropriate legislative, financial and human resources to undertake its role as regulator. This expectation is confusing in the extreme when the ACCC is demonstrably unable to deal with corporations in the Australian marketplace. How will the WEA deal with multi-national grain traders in an international marketplace?

*Senators' response to 4.18*

*The legislation, in its current form, is inadequate in structure and power and will be run over in the marketplace by new players who will become ever present very quickly. If the ACCC, under existing legislation, can't deal with the growing market power oil industry and supermarket, how will this same legislation deal with players such as Cargill in the wheat market?*

***Access to storage, handling and freight***

In paragraph 4.22, the committee has noted the concerns raised regarding the formation of regional monopolies.

*Senators' response to 4.22*

*This is a critical issue. The emergence of regional monopolies is the growers' greatest threat. There has never been an example of a current market player providing a better price to the grower in the long term nor a benefit to the Australian economy in the long term than the wheat single desk. In the past, AWB was the countervailing power bulk handlers were required to deal with. If this countervailing power is removed, regional monopolies will result.*

In paragraph 4.25, the committee notes concern from all quarters regarding the reliance on the Trade Practices Act (TPA).

*Senators' response to 4.25*

*The TPA is weak and is currently an ineffective tool for dealing with unconscionable and anti-competitive conduct. The TPA has been hopelessly inadequate in stopping abuses of monopoly power, with the ACCC not having been able to take any s 46 cases to Court since the High Court's Boral decision in 2003. The mergers law under s 50 of the TPA has also*

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*failed to prevent the creation of monopoly power and this has been detrimental to competition and consumers.*

### **Recommendation 1**

That the legislation be withdrawn.

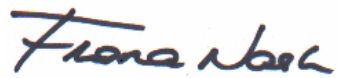
### **Recommendation 2**

- AWBI to maintain the management of the single desk for the forthcoming year with power of veto to remain with the Minister.
- AWBI to remain for that period with a constitutional requirement to have primacy of the grower's return.
- The bill be re-drafted to incorporate the following:
  - a national pool, if so required to be underwritten by the Australian Government;
  - a receiver of last resort, and if so required to be underwritten by the Australian Government;
  - restrictions against Australian wheat competing against Australian wheat overseas;
  - a regulatory process that has resources and power to investigate and prosecute breaches of both the legislation and regulations;
  - the power of veto to be held by an independent body and exercised in both the interest of the growers and the national interest;
  - the code of access to be mandatory and initiated from the passage of the bill at all points at and between receipt and port;
  - strong FIRB oversight over any export relationships which could affect a larger section of the wheat market; and
  - a Socio-Economic study into the consequences of the Bill be completed prior to its passage.

A failure of the Bill to address these primary issues necessitates the rejection of the whole Bill. The consequences of the outcome of this Bill are firmly attached to the decisions which will be made by those who now vote for it and fair warning has been given so no excuses down the track should be accepted.



Senator Barnaby Joyce  
**The Nationals' Senator for Queensland**

A handwritten signature in black ink that reads "Fiona Nash". The signature is written in a cursive style with a prominent initial 'F'.

Senator Fiona Nash  
**The Nationals' Senator for New South Wales**

A handwritten signature in blue ink that reads "Nigel Scullion". The signature is written in a cursive style with a prominent initial 'N'.

Senator Nigel Scullion  
**Country Liberal Party Senator for the Northern Territory**

