The Senate

Standing Committee on Rural and Regional Affairs and Transport

Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008

April 2008

ISBN 978-0-642-71911-9

This document was prepared by the Senate Rural and Regional Affairs and Transport References Committee, and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

Membership of the Committee

Members

Senator Glenn Sterle	ALP, Western Australia	**Chair**
Senator Rachel Siewert	AG, Western Australia	**Deputy Chair**
Senator the Hon. Bill Heffernan	LP, New South Wales	
Senator Steve Hutchins	ALP, New South Wales	
Senator Annette Hurley	ALP, South Australia	
Senator Julian McGauran	LP, Victoria	
Senator Fiona Nash	NPA, New South Wales	
Senator Kerry O'Brien	ALP, Tasmania	

Substitute Members

Senator Judith Adams, LP, Western Australia, replaced Senator the Hon. Bill Heffernan, LP, New South Wales for the hearing in Canberra on 26 March 2008.

Senator Judith Adams, LP, Western Australia, replaced Senator Julian McGauran, LP, Victoria, for the hearing in Perth on 31 March 2008.

Senator Mathias Cormann, LP, Western Australia, replaced Senator the Hon. Bill Heffernan, LP, New South Wales for the hearing in Perth on 31 March 2008.

Senator Judith Adams, LP, Western Australia, replaced Senator Julian McGauran, LP, Victoria, for the hearing in Canberra on 22 April 2008.

Participating Members

Senator Adams, LP, WA
Senator Brandis, LP, QLD
Senator Cormann, LP, WA
Senator Fielding, FFP, VIC
Senator Fisher, LP, SA
Senator Joyce, NATS, QLD
Senator Ian Macdonald, LP, QLD
Senator Murray, AD, WA
Senator Scullion, CLP, NT

Committee Secretariat

Ms Jeanette Radcliffe, Secretary
Ms Trish Carling, Senior Research Officer
Ms Kyriaki Mechanicos, Research Officer
Ms Rosalind McMahon, Executive Assistant

Parliament House, Canberra
Telephone: (02) 6277 3511
Facsimile (02) 6277 5811

Internet: www.aph.gov.au/senate_rrat
Email: rrat.sen@aph.gov.au

TABLE OF CONTENTS

ABBREVIATIONS

ABA	Australian Bankers' Association
ABARE	Australian Bureau of Agricultural and Resource Economics
ACCC	Australian Competition and Consumer Commission
AGEA	Australian Grain Exporters Association
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange Limited
AWB	Australian Wheat Board Ltd
AWBI	Australian Wheat Board International Ltd
CBH	Co-operative Bulk Handling Limited
DAFF	Department of Agriculture, Fisheries and Forestry
EWC	Export Wheat Commission
GGA	Grain Growers Association
GPI	Grains Policy Institute
IPA	Institute of Public Affairs
NCC	National Competition Council
NACMA	National Agricultural Commodity Marketers Association
NSW Farmers	NSW Farmers' Association
PGA WA	Pastoralists and Graziers Association of Western Australia
TPA	Trade Practices Act
USDA	United States Department of Agriculture
VFF	Victorian Farmers' Federation

WAFF	Western Australian Farmers' Federation
WEA	Wheat Exports Australia
WIEG	Wheat Industry Expert Group

Chapter 1

Introduction

Conduct of the inquiry

1.1 Exposure Drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008 (the bills) were tabled in the Senate on 11 March 2008.

1.2 The Wheat Export Marketing Bill 2008 establishes Wheat Exports Australia as a statutory entity to regulate the export of bulk wheat from Australia through a wheat export accreditation scheme. Consequential on the Wheat Export Marketing Bill 2008, the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008 repeals the *Wheat Marketing Act 1989*, and makes consequential amendments to six Acts as well as transitional amendments.[1]

1.3 On 12 March 2008 the bills were referred to the Senate Standing Committee on Rural and Regional Affairs and Transport for inquiry and report by 11 April 2008. On 13 March 2008, the Senate moved to extend the reporting date for the inquiry to 24 April 2008.

1.4 On 24 April 2008 the Chair of the committee, Senator Glenn Sterle, presented a progress report to the President of the Senate, indicating the committee's intention to table on 30 April 2008. The committee's final report was presented to the President of the Senate on 30 April 2008.

1.5 The committee advertised the inquiry in *The Australian* on 17 March 2008. The inquiry was also advertised in *The Land,* the *Stock and Land, Queensland Country Life, Farm Weekly* and the *Stock Journal* on 20 March 2008. In addition to the relevant government agencies and departments, the committee wrote to a number of individual growers, grower groups and peak bodies inviting written comment on the bills. The committee also approached a number of interested parties prior to the closing date for submissions, with an invitation to provide evidence at public hearings.

1.6 The committee received 48 submissions (including four supplementary submissions). A full list of submissions is at Appendix 1.

1.7 The committee held four public hearings as follows:

- Wednesday, 26 March 2008 Canberra
- Thursday, 27 March 2008 Canberra
- Monday, 31 March 2008 Perth

---

1 Senate Table Office, Bills List, as at 2 April 2008, p. 42.

- Tuesday, 22 April 2008 Canberra

1.8 The committee heard evidence from a number of witnesses, including representatives from government departments and agencies, grower groups, industry organisations, peak bodies and farming groups as well as individual growers. For a full list of witnesses see Appendix 2.

1.9 The relevant submissions and the Hansard transcripts of the committee's hearings are available on the parliament's homepage at http://www.aph.gov.au

Acknowledgements

1.10 The committee appreciates the time and work of all those who provided both written and oral submissions to the inquiry – particularly in view of the short timeframe. Their work has assisted the committee considerably in its inquiry.

Chapter 2

Reform of the single desk

2.1 The primary focus of this inquiry is the exposure draft of the Wheat Export Marketing Bill 2008 and the related bill. However, during the inquiry the committee received evidence in relation to a number of broader issues surrounding the deregulation of the wheat industry. While a number of these concerns are outside the terms of reference of the committee's inquiry into the bills, the committee recognises that these issues are of significance to growers. Accordingly, the committee has chosen to highlight and publish these concerns. The committee considers that by airing these issues, broader policy considerations can be addressed by government, growers, industry and the Parliament in concurrence with the implementation of the legislative changes contained in the bills.

Preserving the status quo

2.2 Currently, the Australian domestic and export wheat markets operate very differently. The Australian domestic wheat market was completely deregulated in 1989, and has operated free of specific government regulation since that time. Consequently, growers are able to directly sell their wheat to domestic traders and consumers, or to deliver their wheat into pools. The Australian export wheat market however is directed through a single exporter of bulk wheat – Australian Wheat Board International Limited (AWBI). The statutory regulator, the Export Wheat Commission and its predecessor, the Wheat Export Authority, monitor the operation of AWBI, and manage the export of non-bulk wheat (bagged and container wheat).[1]

2.3 Due to the lack of domestic demand in Western Australia (WA) and South Australia (SA), the majority of their wheat crop is exported, and growers in those states have remained largely dependant on the export market, which has been controlled by the single desk. Eastern state growers however, have the option to sell to various buyers in the large domestic market, or to the single desk for export.[2]

2.4 The committee heard evidence that the single desk delivers significant benefits to wheat growers by maximising returns and by providing security of payment.[3] The committee heard on a number of occasions, assertions that the majority of growers were strongly in favour of retention of the single desk. However, the

---

1 Australian Bureau of Statistics, Year Book Australia (1301.0), 15 March 2007, p. 8 of 11, http://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/1301.0Feature%20Article212006?opendocument&tabname=Summary&prodno=1301.0&issue=2006&num=&view= (accessed 28 April 2008).

2 Institute of Public Affairs, *The Politics of Wheat*, Briefing Paper, March 2008, p. 2.

3 See, for example, Submission 6, Mrs Marion Billing; Submission 27, Mr Darryl Kitto; Submission 31, Mr Barwon Staggs and Submission 32, Mr Alan Malcolm.

committee notes that it was not always clear which model of the single desk witnesses were referring to as the single desk has undergone progressive change in recent years.

2.5 The committee notes that a number of growers referred to a model of the single desk which operated before the Australian Wheat Board Ltd (AWB) was corporatised.[4] Some also referred to how things were under the *Wheat Industry Stabilisation Act 1948*. Needless to say, these models of the single desk no longer exist as operational models.

2.6 The committee also received evidence regarding the efforts of the Wheat Export Marketing Alliance (WEMA) to establish a new single desk through the formation of a grower-owned and controlled co-operative. The committee notes that the WEMA proposal has not proceeded and considers that it is not the task of this committee to review the reasons for this.[5]

2.7 The committee also notes that preserving the status quo is problematic. The Department of Agriculture, Fisheries and Forestry (DAFF) told the committee

> If nothing has changed between now and the end of June, then what happens on 1 July is that the minister's current power to grant or refuse applications for export permits will lapse and the Export Wheat Commission will become the sole determinant of whether or not an export permit should be issued. The test it will have to apply is the one in the existing act, which is whether or not the application for a bulk permit will complement the objectives of AWBI in running the national pools or whether it develops niche markets.[6]

2.8 DAFF went on to confirm that AWB is required to operate national pools under the current legislation for as long as it is exempt from acquiring an export approval from the Export Wheat Commission.[7]

2.9 AWB advised the committee that the default position of not passing the legislation would present an extremely difficult operating environment for all players in the industry. Mr Robert Hadler, General Manager, Corporate, AWB, stated that 'it is not feasible for AWB to go back to the old arrangements'.

> The reality is that Australia's wheat export marketing arrangements have fundamentally changed over the last 18 months and there is no longer a single desk in place. We have a hybrid set of arrangements, with a national

---

4 *Committee Hansard*, 26 March 2008, p. 102.

5 See, for example, Mr Angus McLaren, *Committee Hansard,* 22 April 2008, pp 6-7; Mr Chris Kellock, *Committee Hansard,* 22 April 2008, p. 8; Mr Hugh Hart, *Committee Hansard*, 22 April 2008 p. 16 and Mr Graham Blight, *Committee Hansard*, 22 April 2008, pp 32-39.

6 Mr Russell Phillips, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 27 March 2008, p. 14.

7 Mr Russell Phillips, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 27 March 2008, pp 14-15.

> pool that accommodates about 60 percent of wheat exports; there are bulk export permits that are given to a range of other exporters; and wheat exporting in bags and containers is deregulated.[8]

2.10 AWB further noted that while it is 'potentially possible' to run a pool under the current arrangements,

> …the current arrangements do not provide volume certainty for AWB in running a national pool. That makes it incredibly difficult to maximise returns to growers that participate in the pool…we would not be able to run the sorts of pools that have been run in the past…[9]

2.11 While growers may not have been clear on which specific model of the single desk they might wish to retain, the committee did gain a clear impression of the key features of a single desk environment that are important to many growers. These features are discussed below.

Collective marketing of Australian wheat

2.12 The collective marketing of Australian grain on the overseas market by a single marketing body is seen by many growers as the best strategy for Australia, both for maximising returns to growers and providing stability in a highly subsidised international market.[10] Mr Alan Malcolm told the committee:

> One grower on their own is very small, but working together growers have a fair degree of strength.[11]

2.13 Growers expressed concern that the introduction of multiple sellers, potentially competing against each other to win a share of the international market, would result in a loss of certainty and a decrease in returns to growers. Growers argued:

> … we will have two Australian competitors, two Australian exporters of our grain, competing in the same market. … The company that will come back out winning that market … will be the company that has come in with the lowest price. … It will be at the cost of us, the Australian growers.[12]

> … under a single desk system we are able to put allotments of grain together, so we have one collective body of grain right across from the eastern seaboard to the western seaboard.[13]

---

8 Mr Robert Hadler, *Committee Hansard*, 27 March 2008, p. 1.

9 Mr Robert Hadler, *Committee Hansard*, 22 April 2008, p. 47.

10 See, for example, Mr Barry Bishop, *Committee Hansard*, 26 March 2008, p. 88; Mr Gary Bibby, *Committee Hansard*, 26 March 2008, p. 89 and Mr M Gollasch, *Committee Hansard*, 27 March 2008, p. 35.

11 Mr Alan Malcolm, *Committee Hansard* , 26 March 2008, p. 99.

12 Mr Lance Drum, *Committee Hansard*, 26 March 2008, p. 56.

13 Mr Lance Drum, *Committee Hansard*, 26 March 2008, p. 57.

2.14 In its submission, the Institute of Public Affairs (IPA) told the committee that these concerns were misplaced, and that in a more competitive market, the buyers would compete to drive the price up. The IPA noted that low prices are a function of more sellers than buyers in a market. The IPA also expressed confidence that multiple buyers would need to outbid each other to get sellers to deal with them.[14]

Regional pools

2.15 A number of growers expressed concern that the development of regional pools would force growers into a difficult position. Growers perceived a risk that regional pools may close at any time, and that growers who harvest later, or who have not committed to the pool at the time of delivery, may be unable to sell their wheat and may be forced into costly storage options.

2.16 The IPA suggested that such concerns are unfounded, and noted that the current AWB national pool is a series of pools that open and close in response to world grain prices. The IPA submitted that further deregulation of the market will lead to innovation in this area.

> At least one pool for next harvest is already operating that allows a grower to insure for production risk. The grower can commit to the pool with certainty knowing if the crop fails, the maximum washout cost is $20 a tonne.[15]

Financial security and access to finance

2.17 A number of growers expressed concern that under the proposed changes growers would face greater risks without the security of payment and finance offered under the single desk. A number of growers and grower organisations told the committee that harvest finance payments (whereby growers receive up to 80 percent of the estimated pool return as an upfront payment); the Golden Rewards scheme (in which incremental payments are made for premium choice varieties of wheat); and the receiver of last resort, have provided growers with a degree of certainty and stability.

2.18 Many submitters also raised concerns about their ongoing financial viability if there was no national pool offering up-front payments. However, at least one exporter indicated to the committee that they expected to provide a percentage payment up-front, and a number of exporters have also indicated that they intend to run national pools.[16]

---

14 Submission 22, Institute of Public Affairs, pp 5-6.

15 Submission 22, Institute of Public Affairs, p. 5.

16 See for example: Mr Robert Hadler, AWB, Committee Hansard, 22 April 2008, p. 64; Mr Michael Chaseling, Emerald Group, *Committee Hansard*, 22 April 2008, pp. 99 and 103; Submission 41, Emerald Group, p. 8,

2.19 Growers also indicated to the committee the importance of the national pool in establishing a floor price for wheat, not only in the export market but also in the deregulated domestic market.

> Anybody who follows the daily pricing of domestic wheat can see that in a normal production year, where the domestic market is likely to be oversupplied, on any one day only bids which are in excess of the estimated silo return from the national pool are achieving any sales. Nobody would sell to a private buyer for less than what they expected to get from the pool.[17]

Receiver of last resort

2.20 The committee noted the significance to growers of the perceived role of the 'receiver of last resort' in providing a market for excess stock in high production years, or in situations where production did not meet a required standard. Many growers referred to this facility as the 'buyer of last resort', and told the committee that this facility provided much needed security, particularly to smaller growers, who might not have the capacity to store excess grain.

2.21 However, the committee also heard that, in practical terms, there is no 'buyer of last resort':

> While the Wheat Marketing Act stipulates that the holder of the export licence must receive all grain presented to it, the exporter has the right to accept only grain that meets its receival standards (which are set by AWB Ltd itself). Those receival standards apply across broad quality bands, for which an average price is paid to growers.[18]

2.22 AWB confirmed that there is no 'buyer of last resort'.

> Under the current legislation and the arrangements managed by AWB, if wheat does not meet delivery standards we do not have to accept it. The wheat is then usually discounted into the domestic market or other markets as feed wheat at a lower price or it cannot be sold, because it does not meet anyone's quality standards.[19]

Access to finance

2.23 From the evidence received, the committee notes that many growers are similarly concerned at the impact the proposed changes will have on their ability to gain access to finance, particularly in relation to the coming season. Many growers are clearly anxious about how banks and other financial institutions will respond to this

---

17 Mr Mark Gollasch, *Committee Hansard*, 27 March 2008, p. 37.

18 ACIL Tasman, *Marketing Australian Wheat: Competition and choice in the Australian export wheat market – increasing grower's net returns*, November 2006, p. 8. (Document tabled at 27 March 2008 hearing by Australian Grain Exporters Association).

19 Mr Robert Hadler, AWB, *Committee Hansard*, 27 March 2008, p. 3.

major change in the market. A number of growers expressed concern that further deregulation of the market would lead to greater uncertainty in relation to securing finance in the future. Growers commented that the single desk and the estimated pool return gave confidence to both growers and the banks.[20]

2.24 The IPA's submission indicated that such concerns lack foundation, and argued that, in the past some banks may have relied on estimated national pool prices as the basis on which they budgeted projected returns. Whilst this has led to claims that banks lend against the pool return, this is not actually correct:

> Banks may use pool prices in their estimation of returns but the decision whether to advance borrowings is based on the overall financial viability of the farm. After all, even the best-projected prices are insufficient security if there is substantial production risk due to drought.[21]

2.25 In its submission to the Government's Wheat Export Marketing Consultation Committee, the Australian Bankers' Association (ABA) stated that:

> Access to finance should not be affected by the proposed changes to wheat marketing arrangements. Counter party risk is an issue that will need to be addressed by growers and their financiers and the responsibility of WEA to only accredit Company's [sic] with appropriate financial capacity and risk management practices will assist greatly in this regard.[22]

2.26 The committee notes that in a Media release dated 2 April 2008, the ABA also provided the following assurance to growers:

> The banking sector wants to reassure grain growers that access to finance will continue, despite uncertainty about how future Australian wheat crops will be marketed and exported.
>
> While the wheat prices are expected to come back from their current levels, the outlook is they will remain relatively high despite the Australian dollar's strength. Rural property values have held up despite the drought as result of the positive outlook for the demand for agricultural commodities. However, the drought has adversely affected this sector and some farmers may be carrying considerable debt. This is why it is important to keep open the lines of communication. I urge any farmer who is concerned about their financial position to discuss the situation with their bank and other financial advisors.[23]

2.27 The committee received evidence to suggest that a range of new pools and services would emerge within the new market environment that would fill the gap left

---

20 See, for example, Mr Lance Drum, *Committee Hansard*, 26 March 2008, p. 67.

21 Submission 22, Institute of Public Affairs, p. 6.

22 Correspondence provided by the Australian Bankers' Association Inc, copy of submission to Wheat Export Marketing Consultation Committee, dated 1 April 2008, p. 1.

23 Australian Bankers' Association, Media Release, *Banks and wheat crop funding – access to finance continues*, dated 2 April 2008.

by the single desk. The committee notes the evidence of Mr Robert Hadler that AWB has announced that it will offer wheat pools for the forthcoming 2008-09 harvest. Mr Hadler told the committee that:

> Key elements of AWB pooling, which Australian wheat growers are familiar with, will remain. That includes the trust structure that protects pool participants, harvest finance loans and payments, regular pool distributions and incentives for grain quality. The final details of any AWB pooling offer will depend on the legislative arrangements that will ultimately be in place on 1 July.[24]

2.28 In addition, Mr Hadler drew the committee's attention to other new marketing arrangements, also expected to be in place for the 2008-09 harvest, that indicate that the grains industry is getting ready for new wheat export marketing arrangements. He said that:

> … two state grain organisations have indicated that they are expecting that new wheat-marketing initiatives will be in place. The Western Australian Farmers Federation and the Emerald grain trading company have announced the formation of a marketing alliance. The suggestion is that this commercial arrangement will assist the WA Farmers Federation and its members to take greater control of their wheat marketing, as the Australian market deregulates. The Victorian Farmers Federation are also looking at developing a new wheat export cooperative. They announced that at their recent conference.[25]

Industry good functions[26]

2.29 A number of growers expressed concern about who will undertake industry good functions such as market development and promotion, and plant breeding.[27] Such activities have been undertaken by the single desk in the past and therefore the costs and risks associated with them have been spread across the industry as a whole.[28] Growers emphasised that Australia's competitive advantage in the world market lies in its ability to deliver quality wheat. They also emphasised the importance of effective management of quality in a more competitive market.[29]

---

24 Mr Robert Hadler, AWB Limited, *Committee Hansard*, 22 April 2008, p. 46.

25 Mr Robert Hadler, AWB Limited, *Committee Hansard*, 22 April 2008, p. 46.

26 For the purposes of this discussion the committee has defined 'industry good functions' to mean those 11 services identified and discussed in the Wheat Industry Expert Group Discussion Paper *The Provision and Transition of Industry Development Functions for the Australian Wheat Industry,* March 2008

27 Mr Gary Bishop, *Committee Hansard*, 26 March 2008, p. 88.

28 Mr Andrew Broad, *Committee Hansard*, 26 March 2008, p. 91.

29 Mr Andrew Broad, *Committee Hansard*, 26 March 2008, pp 90-91.

2.30 The committee also received evidence that not all industry good functions can be left to the market and noted calls for a national wheat body, funded by growers, to carry out industry good functions that the market may fail to deliver.[30]

2.31 Mr John Crosby, Chair of the Wheat Industry Expert Group (WIEG), provided evidence to the committee about the work of the Group. WEIG was set up on 6 February 2008 to advise on the delivery of wheat 'industry development' (or 'industry good') functions which have historically been carried out by the single desk operator, AWB (International) Ltd (AWBI). In its March 2008 discussion paper, WIEG noted that the definition of what constitutes an industry development function has been a matter for some debate across the Australian wheat industry. Some sections of the industry believe services provided by AWBI such as branding and wheat promotion are legitimate industry development functions. Others, however, argue that these services are purely commercial activities 'carried out to maintain strong customer relationships and support the penetration of its product in a market'.[31]

2.32 WIEG has produced a list of eleven services that industry representatives have suggested constitute industry development or 'industry good' functions:

1. Industry strategic planning
2. Research and development
3. Wheat variety classification
4. Wheat receival standards
5. Information provision
6. Crop sharing activities
7. Technical market support
8. Wheat promotion
9. Branding
10. Trade advocacy
11. Regulatory advocacy[32]

2.33 WIEG has been charged with identifying which of the above functions are essential and determining how these functions are currently being delivered. In addition, WIEG has been asked to detail options for the delivery and funding of these functions under the new wheat marketing arrangements.

---

30 Submission 17, Callum Downs Commodity News, p. 7.

31 Wheat Industry Expert Group, *The Provision and Transition of Industry Development Functions for the Australian Wheat Industry, Discussion Paper*, March 2008, p. 8.

32 Wheat Industry Expert Group, *The Provision and Transition of Industry Development Functions for the Australian Wheat Industry, Discussion Paper*, March 2008, p. 8.

2.34 The committee notes that WIEG has been requested to report to the Minister for Agriculture Fisheries and Forestry by 24 April 2008. The committee's terms of reference do not include duplicating the work being undertaken by WIEG, however, the committee considers that it is important to highlight the following issues that were raised during this inquiry.

Access to timely information about grain stocks

2.35 The committee observed that a consistent theme throughout the inquiry was the importance of the availability of reliable and timely information and effective price signals is of central importance to the success of the proposed changes, more so than the accreditation of traders.[33]

> Grain marketers and, indeed, all players in the supply chain need to be able access data on wheat stocks in storage through the supply chain so as to manage both supply and risk. Formal collection and availability of suitable information will be a necessary requirement.[34]

2.36 Witnesses to the inquiry emphasised the importance of equitable access to market information as a means of ensuring a high level of transparency in a more competitive market. It was argued that, in moving to a more competitive market, the lack of such information could result in grain handling companies having a significant advantage over other exporters and as a consequence, market failure would be a very real risk.[35] The availability of easily accessible and reliable information is also of vital importance to growers. It enables them to effectively undertake pre-harvest planning, make decisions about how and when to market their wheat and to manage risk.[36]

2.37 The Grains Policy Institute (GPI) supported the removal of the current 'commercial-in-confidence' classification on the release of wheat export data. The GPI stated that this would allow the preparation of an accurate and informative grains 'balance sheet'.[37]

2.38 The importance of access to information is further illustrated by the evidence the committee received from individual growers in relation to their personal experience with hedging.[38] A number of growers told the committee that, partly in response to uncertainty surrounding the future of the single desk, they had chosen to hedge a portion of their crops with varying degrees of success. The committee notes

---

33 Submission 28, Grain Growers Association, p. 8.

34 Submission 20, Flour Millers' Council of Australia, p. 2.

35 Submission 17, Callum Downs Commodity News, p. 6.

36 Submission 28, Grain Growers Association, p. 8.

37 Submission 21, Grains Policy Institute, p. 8.

38 See, for example, Messrs Curry and MacPherson (Junee Growers Group); Messrs Anthony and Lance Drum (Temora Growers Group) and Messrs Walton, Hamilton and Packer (Condamine Growers Group), *Committee Hansard*, 26 March 2008.

that for growers to make effective use of hedging and related risk management products they need access to good financial advice and a high level of market information.

2.39 In its submission to the inquiry, the Australian Securities Exchange Limited (ASX) also emphasised the importance of the provision of timely and accurate data on wheat forecasts and stocks as the industry moves toward deregulation. The ASX described its role in:

- Facilitating price discovery and the transfer of risk;
- Minimising the prospect for counter-party and settlement default; and
- Reducing transaction costs.

2.40 The ASX said that continued growth of the domestic futures market is, 'in part, dependent on the existence of a robust, independent, accurate and timely data reporting regime for crop estimates and available stocks on hand.'[39]

2.41 The NSW Farmers' Association also suggested that, in addition to access to reliable information, many farmers may require training in marketing and risk management. They expressed concern that many farmers lack the necessary marketing/hedging skills that will be required to operate their businesses effectively in the new environment. Growers have traditionally relied on the expertise of AWBI. The NSW Farmers' Association recommended that government funded training and education should be incorporated in the process of implementing the bill.[40]

2.42 AWB also suggested that the grains industry could play an important role in supporting and protecting growers from abuse of market power. Mr Robert Hadler told the committee that:

> I think NACMA, as an industry group, is looking at standard industry contracts, and that could be a good way, through a voluntary code of practice, of providing industry support for greater transparency on estimated silo returns and how growers are treated at silo.[41]

2.43 Views varied as to the frequency with which market information should be made available. While there is general support for WIEG's proposal that aggregated data be made available on a monthly basis, some submitters suggested that certain data sets should be made available on a more frequent basis.

2.44 AWB and Consolidated Grain Industries advocated daily reports for receival data. Consolidated Grain Industries referred the committee to the USDA requirement that exporters notify major international sales within 48 hours of the contracts being

---

39 Submission 40, ASX Limited.

40 Submission 35, NSW Farmers' Association, p. 3.

41 Mr Robert Hadler, AWB, *Committee Hansard*, 27 March 2008, p. 5.

written and that this information is immediately made publicly available.[42] Callum Downs Commodity News also supported the production of weekly reports on export sales and export shipments.[43] The NSW Farmers' Association advocated weekly reporting of the amount of grain on hand and its quality.[44] WIEG and GPI supported the monthly reporting of production and stocks. The committee notes that WIEG also recommended weekly reports on export shipments and export sales.[45]

2.45 The Grain Growers Association (GGA) noted the recommendation of WIEG that information could be collated and distributed by the Australian Bureau of Agricultural and Resource Economics (ABARE) on a monthly basis. GGA also noted the potential for market participants to seek to limit the information available to the marketplace where this information is seen as commercially valuable:

> To ensure that the market remains competitive, a detailed range of information on prices, supply chain costs, wheat supply and demand, will need to be readily available to all participants. The provision of this information will ensure that the market remains transparent, small to medium sized operators are competitive, and there are lower barriers to entry for new entrants.[46]

Differences in scale and timing of production

2.46 Throughout this inquiry the committee has been mindful of significant differences within the Australian wheat industry and the impact that these differences have in defining the challenges and opportunities individual growers perceive within the proposed changes.

2.47 The committee notes evidence from the IPA that over 80 percent of the national wheat crop is produced by large wheat growers and the greater percentage of these are in Western Australia (WA). The IPA told the committee that WA is the largest wheat producing state despite having only 18 percent of wheat growers. The average wheat-growing farm in WA is now 1½ times larger than in NSW and 2 ½ times larger than in Victoria.

2.48 The committee also notes that differences in scale of production may result in differences in the degree of flexibility growers have in marketing their crop. The committee heard that under the proposed arrangements, larger growers, particularly those in Western Australia and South Australia, are likely to have the cash flow capacity to exercise greater choice as to when to market their wheat and to whom.

---

42 Submission 12, Consolidated Grain Industries, p. 2.

43 Submission 17, Callum Downs Commodity News, p. 6.

44 Submission 35, NSW Farmers' Association, p. 4.

45 Wheat Industry Expert Group, *The Provision and Transition of Industry Development Functions for the Australian Wheat Industry, Discussion Paper*, March 2008 and Submission 21, Grains Policy Institute, p. 8.

46 Submission 28, Grain Growers Association, pp. 10-11.

> Australian wheat is in demand not just up until the pool closes but every day of the year, so farmers will be able to find a bid in the market that represents the world demand for wheat long after harvest. There will be a price there for them in December and January at harvest, certainly, but also through March, April, May, June and right out to September. We have seen a small amount of that already in the container market. Importantly, that means that farmers do not have to force their cash pricing decisions into marketing alternatives that are pre-harvest or pre-closure of the pool.[47]

2.49 The IPA told the committee that larger farmers are also less reliant on pools because they have greater capacity to manage pricing risk through financial products such as forward contracts, futures and swaps.[48]

2.50 The committee recognises, however, that not all growers have the capacity to manage risk in this way. The committee heard evidence from smaller growers in the eastern states which indicated that under the proposed changes they would be forced to manage their own carryover stocks. These growers expressed concern that regional pools may close at any time and that growers who harvest later, or who have not committed to the pool at the time of delivery may be unable to sell their wheat. It was argued that because they will be unable to afford to warehouse their wheat, these growers would be forced to accept whatever price is offered at the completion of the harvest.[49]

2.51 Representatives from DAFF and WIEG, however, expressed confidence that smaller growers would not find themselves in an unduly vulnerable position under the proposed changes. Dr Terence Sheales, of DAFF, told the committee:

> Apart from what I said earlier about small growers in every state making a lot of use of other methods of marketing their grain, the bottom line of all this is that it will be a competitive market. If someone tries to take advantage of what they think are captive suppliers in that market, others will step into the breach and out compete them.[50]

2.52 Mr John Crosby, Chair, WIEG, told the committee he believed that smaller growers would find that their most economic option would be to continue to supply grain through the current storage system.

> Given that the bigger growers will vacate space out of those storages, I cannot imagine that the grain-handling people with the grain storage are going to find it difficult to deal with those people who still want to use them. We will have empty silo space, and the reason we will have that is

---

47 Mr Alick Osborne, Australian Grain Exporters Association, *Committee Hansard*, 27 March 2008, p. 45.

48 Submission No. 22, Institute of Public Affairs, p. 3.

49 Mr Hugh Hart, *Committee Hansard*, 26 March 2008, p. 74 and Mr M Gollasch, *Committee Hansard,* 27 March 2008, p. 36.

50 Dr Terence Sheales, *Committee Hansard*, 27 March 2008, p. 27.

> because those farmers who make the decision to put in on-farm storage actually increase the entire pool of storage.
>
> … in my view, the smaller farmer will find no difference in their current arrangements with the current grain-handling authorities, because they will be required customers, even though they are small.[51]

2.53 Some small growers do perceive opportunities under the proposed legislation, particularly an ability to exercise greater flexibility in managing the marketing of their grain. As one grower commented:

> I believe that under the old legislation we were the ultimate price takers. We had no option to do anything else – to be entrepreneurial, to be a free marketer or to find a way to value-add our product. … I believe that under this legislation … small growers like me have at last the opportunity to employ some of our entrepreneurial skills to try to come above the average.[52]

2.54 The committee was also told about the impact of climatic differences and variations in the commencement of harvest in different growing regions. The committee heard that the flow of production from the north to the south has a significant influence on the range of marketing options available to growers. In the current deregulated domestic market, growers in the south already find that the number of buyers in the market decreases as the harvest progresses.

> The harvest in Victoria starts in the north, near Mildura, and progresses by a week to about a fortnight into the southern Mallee, the Wimmera and the Western District. It is quite common for a group of buyers … to buy up in the middle if there is a good harvest and good quality grain there. By the time the harvest gets to about Horsham, at Christmas time, very often some of them have pulled out of the market. Usually, by the time they get to Lake Bolac, in mid-January, which is the last area of Victoria to be harvested, it is quite common for there to be only one buyer left in the market.[53]

Consultation with growers

2.55 One of the greatest sources of concern to growers was that the government had not consulted directly with them in developing the proposed changes. One grower left the committee in no doubt as to who it should be speaking to about the proposed changes.

> … this is our industry; you ask us. We are the bottom line and you should talk to us first before you start talking to traders.[54]

---

51 Mr John Crosby, *Committee Hansard,* 27 March 2008, pp. 26-27.

52 Mr Jeff Fordham, *Committee Hansard*, 31 March 2008, p. 2.

53 Mr Alan Malcolm, *Committee Hansard*, 26 March 2008, p. 93.

54 Mrs Velia O'Hare, *Committee Hansard*, 26 March 2008, p. 73.

2.56 However, the committee also received evidence that suggested consultation with the grower community is not without its challenges. This was illustrated in the committee's questioning of Mr Peter Woods, Acting Chief Executive Officer of the Export Wheat Commission (EWC), about the consultation process undertaken in relation to the development of the proposed accreditation process. The following exchange highlights the problems associated with determining appropriate grower representation:

> **Senator Joyce** – You talked about consultation with growers, your engagement with wheat growers. Can you give me a summary of how many people you met and how you ascertained their views.
>
> **Mr Woods** – With regard to growers, we invited the state grower representative organisations to come to our consultation meetings. There were representatives from the four organisations in Western Australia and from South Australia, New South Wales, Queensland and Victoria. We also met representatives from GCA, GGA and the Eastern Wheat Growers association.
>
> **Senator Joyce** – So how many people met with you, in summary?
>
> **Mr Woods –** There was face-to-face consultation, but some people could not make it, so we hooked those particular people up by phone. Representing those groups there were between two and four people from each group.
>
> **Senator Joyce** – So there were four groups from Western Australia?
>
> **Mr Woods –** Yes.
>
> **Senator Joyce** – And four from South Australia?
>
> **Mr Woods** – There are four representative grower groups in Western Australia and one in South Australia, one in Victoria, one in New South Wales and one in Queensland. We also met with GCA, GGA and the Eastern Wheat Growers.
>
> **Senator Joyce** – So that is 11 groups. You say you averaged between two and four from each group, which is three. So you met a maximum of 33 people?
>
> **Mr Woods** – Grower representatives.
>
> **Senator Joyce –** So you met 33 people, and that determines that you know the majority of the views of the growers?
>
> **Mr Woods** – Those organisations are representative of the growers.
>
> **Senator Joyce –** How do you determine that?
>
> **Mr Woods** – I do not have to determine that. We have grower representative bodies in each state and we have met with them.
>
> **Senator Joyce –** Could I suggest that you have public meetings in some of the major regional towns to determine the views of the growers.[55]

55 *Committee Hansard,* 26 March 2008, pp. 15-16.

2.57 The Pastoralists and Graziers Association (PGA) of WA, also told the committee that industry groups are not always representative of growers, or may only represent a particular segment of the grower population.

> Most grain growers across Australia are not members of a State farm organisation (such as NSW Farmers, VFF or WAFF). Informal estimates on the level of grain grower representation have been put as low as 25 per cent in the Eastern States.[56]

2.58 Councillor Jim Alexander, President of the Shire of Beverley, also told the committee about the difficulties of getting young producers involved in the consultation process:

> We went to young producers. These are young people that have their future in the industry – I am talking about 25-year-olds to 45-year-olds. We said: 'There's a Senate hearing. We know you mightn't understand the full ramifications, but why don't you come and expound your wishes and so on?' They said to us straight out: 'We went to a meeting in Beverley.' There were 300 producers. Senator Adams was there. There was a 98 per cent vote in favour of a single desk. We got them all lined up for the Ralph report when it came to town. We wanted them to put forward their wishes – and everybody in Australia wants their younger types to do that. After that, nothing happened, so they have said: 'No way. We're not wasting our time. We've got plenty of work to do at the moment. We're not going down to Perth to talk to some mob of senators who'll take no notice of us.'[57]

2.59 The committee notes that the debate about the degree to which certain grain industry bodies might be representative of the broader grower population extends the question of whether there is a role for a peak body to represent the interests of all grain growers. The committee notes that while there does appear to be a role for such a body, there does not appear to be a single grower organisation that could confidently claim to represent the grower community on a national basis.

2.60 Mr Angus McLaren, from the Eastern Wheat Growers Group offered the following suggestion:

> Although not covered in the legislation, we believe there is a need for an industry peak body. Ideally this peak body would encompass all grains. The oilseeds, pulse and barley industries have already established peak bodies that seem to operate reasonably well. We believe that a peak industry body will be formed some time down the track, once the industry has regrouped from the destructive infighting of the past decade. There is a need for an industry peak body to coordinate industry good activities and perform those industry good activities in which benefits cannot be quarantined and which

56 Submission 29, PGA Western Graingrowers, p. 4.

57 Councillor Jim Alexander, *Committee Hansard*, 31 March 2008, p. 69.

> therefore will not be performed by the private sector, including trade advocacy and generic promotion of Australian wheat.[58]

Conclusion

2.61 The committee is aware that a number of the issues raised in this chapter are being considered in detail as part of the WIEG process. However, the committee has drawn attention to them here as they provide important context for its examination of the draft bills. The committee notes the strength of feeling amongst some growers about the perceived benefits of the single desk. The committee also notes the level of concern within the wheat export industry in relation to the need for certainty and security in the lead up to the coming season and into the future. The committee understands the important role that access to accurate and timely information will play in the transition to further deregulation in the wheat export market and going forward.

58 Mr Angus McLaren, *Committee Hansard,* 22 April 2008, p. 3.

Chapter 3

Main provisions of the bills and key issues raised

Introduction

3.1 This chapter outlines the purpose and provisions of the proposed Wheat Export Marketing Bill 2008 and the proposed Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008. The chapter also examines the issues raised during this inquiry in relation to specific provisions of the bills.

Purpose of the bill

3.2 The main purpose of the Wheat Export Marketing Bill 2008 is to implement reforms to Australia's export wheat marketing arrangements. The bill will establish a statutory entity, Wheat Exports Australia (WEA), to regulate the export of bulk wheat from Australia though a wheat export accreditation scheme. If this bill is enacted it will create the need to amend other existing laws. These proposed amendments are detailed in the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008.

3.3 The bills create WEA and give it the power to develop an accreditation scheme to assess the suitability of companies to export wheat. The proposed accreditation scheme includes measures to address fair access to port terminal facilities. Provision is made for accreditation of wheat exporters who own and control bulk handling facilities to be subject to an access test. The bills also give WEA the power to suspend and revoke accreditation and to place conditions on the accreditation granted to an exporter.

Main provisions of the Wheat Export Marketing Bill 2008

Part 2 – Wheat export accreditation scheme

Compliance with the wheat export accreditation scheme

3.4 **Clause 6** makes it an offence to export wheat in bulk without being accredited under the wheat export accreditation scheme. Export of wheat in bags and containers is not affected by the accreditation scheme and remains unregulated.

Formulation of the wheat export accreditation scheme

3.5 **Division 2** of the bill provides for the formulation of the wheat export accreditation scheme. **Clause 7** permits WEA to develop an accreditation scheme, by way of legislative instrument, to manage the accreditation of companies to export bulk wheat. **Clause 8** provides for the wheat export accreditation scheme to empower WEA to make a range of administrative decisions such as granting, suspending, cancelling or varying the conditions of accreditation. **Clause 9** provides for WEA to

charge an application fee for export accreditation and for the amount of the fee to be determined on a cost recovery basis.

3.6 **Clause 10** provides that an accreditation under the wheat export accreditation scheme is not transferable.

Eligibility for accreditation

3.7 **Clause 11** of the bill provides the eligibility criteria that WEA must apply in developing the accreditation scheme. To be eligible for accreditation a company must be registered as a company under Part 2A of the *Corporations Act 2001* and must be a trading corporation to which paragraph 51(xx) of the Constitution applies. WEA must also be satisfied that the company is a fit and proper company, having regard to specified criteria. These criteria include the financial strength and business record of the company, its risk management strategies, and its criminal record during the five year period prior to the application for accreditation. WEA must also take into account the company's record in meeting importing countries' sanitary and phytosanitary requirements.

3.8 If the applicant company, or a related body corporate, is the provider of a port terminal service as defined in **Clause 4** of the bill, WEA must be satisfied that the company passes the access test provided for in **Clause 20** of the bill.

Conditions of accreditation

3.9 **Division 4** of the Bill provides that accreditation is subject to certain conditions imposed under the accreditation scheme. **Clauses 13 to 15** of the bill require an accredited company to give WEA an annual export report, an annual report on its compliance with Australian and foreign laws, and to report on any changes to the company which may affect its accreditation. **Clause 16** provides that contravention of a condition of accreditation is an offence under the bill.

Cancellation of accreditation

3.10 **Clause 17** sets out the conditions under which WEA can cancel the accreditation of a company. These conditions are similar to those considered in the application process. However, while a company in administration is ineligible for accreditation, if an accredited company enters administration, WEA will have the discretion to determine whether accreditation should be terminated. This provision allows WEA to assess whether the best interests of growers may be served by allowing the administrator to trade out of the situation. **Clause 17(2)** also provides for the wheat export accreditation scheme to specify other grounds for discretionary cancellation.

Surrender of accreditation

3.11 **Clause 18** provides for an accredited wheat exporter to apply to WEA to surrender its accreditation. If a company surrenders its accreditation, it must have met

its obligations under **Clauses 13 and 14** and must still provide its final export and compliance reports to WEA.

Register of accredited wheat exporters

3.12 **Clause 19** provides that WEA must maintain a register of accredited wheat exporters and make it available on the internet, to allow growers to check whether a company seeking to buy their wheat is an accredited exporter.

Access test

3.13 **Clause 20** provides for port terminal access for all accredited exporters. It sets out conditions that exporters who also operate grain storage and handling facilities at ports have to agree to before being accredited. If the port terminals are not already covered by an effective access regime, as certified by the National Competition Council, the following arrangements apply:

- for the period until 1 October 2009, such exporters must agree to provide access to accredited exporters and publish the terms and conditions for access to other exporters on their internet site before they can be accredited; and
- for the period after 1 October 2009, such exporters must enter into an access undertaking to provide access to accredited exporters. The undertaking must be approved by the Australian Competition and Consumer Commission (ACCC).

3.14 The notes to the bill state that the reason for the different conditions before and after 1 October 2009 is that it is not possible for the ACCC to receive, process and approve all of the access undertakings in time for the 2008-2009 marketing season. Under the *Trade Practices Act 1974*, the ACCC must observe certain public processes in considering an access undertaking and these necessitate the additional time.

Information-gathering and audit powers

3.15 **Part 3** of the Bill sets out WEA's information-gathering and auditing powers, which are generally consistent with the powers currently available to the Export Wheat Commission under the current *Wheat Marketing Act 1989*.

3.16 **Clauses 21 to 24** provide that WEA may demand information and documents from accredited exporters that it considers relevant to the performance of its functions. Failure to provide information required is a breach of a mandatory condition of accreditation. **Clauses 25 and 26** provide that WEA may request information, documents and reports of a person where WEA believes there are reasonable grounds that the person has information or a document that is relevant to WEA's powers or functions. **Clause 27** will provide WEA with the additional power to require an external audit of accredited companies.

3.17 **Clauses 29 and 30** of the bill provide for the minister to direct WEA to investigate and report on matters relating to any of its other functions, including the operation of the wheat export accreditation scheme. The same power is held under the existing *Wheat Marketing Act 1989*.

Establishment of Wheat Export Australia

3.18 **Part 5** of the bill provides for the establishment, functions, powers and liabilities of WEA. **Division 2** provides for WEA's constitution and for the membership of WEA. **Clause 37** provides for the minister to appoint between three and six part-time WEA members, having regard to the relevant eligibility criteria.

Planning and reporting obligations

3.19 **Division 8** sets out the planning and reporting obligations of WEA. **Clause 62** provides for WEA to prepare and publish a report for growers each marketing year in relation to the operation of the wheat export accreditation scheme during that year.

Review of decisions

3.20 **Part 6** provides for the process though which applicants may appeal decisions made by WEA. **Clause 66** provides for a person affected by such a decision to apply to WEA to reconsider the decision. **Clauses 67 and 68** provide for the process of reconsideration of a decision by WEA. **Clause 69** provides for review by the Administrative Appeals Tribunal.

Main provisions of the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008

3.21 This bill provides for the Repeal of the *Wheat Marketing Act 1989* and for consequential amendments to the *Criminal Code Act 1995* (with regard to false statements), the *Customs (Prohibited Exports) Regulations 1958* (to amend the current prohibition on companies other than AWBI to export bulk wheat). The bill also amends the:

- *Financial Management and Accountability Regulations 1997;*
- *Freedom of Information Act 1982;*
- *Primary Industries and Energy Research and Development Act 1989;* and
- *Primary Industries Levies and Charges Collection Act 1991.*

3.22 Provisions under **Schedule 3** allow for the transition of the Export Wheat Commission (EWC) to WEA, including the transfer of funds, the termination of EWC members and the finalisation of the EWC's last annual report. **Schedule 3, Clause 3** provides that the EWC members will not be transferred to WEA at the time of transition. However, **Clause 3(3)** provides that neither this bill nor the Wheat Export Marketing Bill 2008 prevents an EWC member from being appointed as a member of

WEA. The notes to the bill state that permanent staff of the EWC will be transferred to WEA.

3.23 **Clause 7 of Schedule 3** provides for the EWC to begin developing the accreditation scheme before the *Wheat Export Marketing Act 2008* comes into force.

3.24 **Clause 8** will allow for AWB (International) Ltd (AWBI) to export wheat from the national pool until 30 September 2008, in order to prevent delays in finalising the 2007-08 pool runs and the receipt of final payments by growers. Other companies that have valid consents issued by the EWC to export bulk wheat will be able to continue to export wheat under the conditions of their existing consent until 1 October 2008.

3.25 **Clause 9** provides for WEA to report AWBI's performance and activities to the minister and to growers following finalisation of the 2007-2008 pool.

3.26 **Clause 10** provides that any investigation that the minister has directed, prior to 1 July 2008, will be continued and reported on, as necessary, by WEA.

Comments in relation to the Wheat Export Marketing Bill 2008

3.27 A wide range of views were expressed in relation to the changes embodied in the bill. The committee noted some general support for key elements of the bill; in particular, the creation of a contestable Australian wheat export market and provisions to ensure equitable access to key infrastructure at ports. The committee also received many suggestions for amendments to the bill and these are discussed below.[1]

Objectives of the Bill

3.28 A number of submitters suggested that the bill should contain a clearer and expanded set of objectives. In particular, the Grains Policy Institute (GPI)[2] would like to see a statement of the broad priorities and objectives of the regulator, including a clear definition of who the regulator is responsible to, who it reports to, and what its regulatory priorities are.[3]

3.29 The Australian Grain Exporters Association (AGEA) also considers that WEA, growers and the wheat industry would be better served if the bill contained clear direction for WEA in relation to the aims of the scheme and what it has been established to achieve. The AGEA is concerned that, in its present form, the bill provides WEA with considerable discretionary powers in relation to the establishment and administration of the accreditation scheme. The AGEA emphasised the need for WEA, and the accreditation scheme, to be responsive to the changing needs of

1 Submission 28, Grain Growers Association, pp 26-27.

2 The Grains Policy Institute is a subsidiary of GrainCorp Operations Ltd and is funded by GrainCorp and the CBH Group.

3 Submission 21, Grains Policy Institute, p. 4.

growers and the broader industry, particularly during the period of transition from a regulated to a contestable market.[4]

3.30 PGA Western Graingrowers (PGA WG) would also like to see the objectives of the bill made clear, either in the bill itself or in an explanatory memorandum, legislative instrument, or the Second Reading Speech. PGA WA suggested the bill be amended to include the following objectives:

> The purpose of the Wheat Export Marketing Act 2008 is to enhance choice, competition, transparency and security in the export of bulk wheat from Australia.
>
> - Choice: to enable growers to sell to a range of accredited exporters.
> - Competition: to enable accredited exporter [sic] to compete for grower's wheat, and export it with no restrictions on quantity or destination.
> - Transparency: to enable all commercial participants to access aggregate information, in order to maximise the benefits of choice and competition and increase grower confidence in the system.
> - Security: to protect the international reputation of Australia wheat [sic]; to maintain high commercial standards for Australian exporter [sic]; to diversify export risk across accredited exporters.[5]

3.31 The Department of Agriculture, Fisheries and Forestry told the committee that:

> The role of the regulator is to administer the export of bulk wheat from Australia through making, administering and enforcing the accreditation scheme. It does not have a charter written into the act that it is working for anyone in particular. It is there to administer the scheme for the bulk export of wheat.[6]

Committee view

3.32 The committee considers that it is desirable that the bill provides guidance to WEA through a clearly stated objective. This objective should reflect the policy principles which underpin the legislation. The committee accepts that the role of the regulator is to administer the scheme in the best interests of the bulk wheat industry as a whole. However, the committee recognises that not all participants in the industry are on an equal footing. The committee therefore suggests that consideration be given to framing the objective in such a way as to recognise the interests of growers in the provision of a competitive wheat export market, particularly with regard to the scrutiny of the prudential and governance arrangements of exporters.

---

4 Submission 23, Australian Grain Exporters Association, pp 3-4.

5 Submission 29, PGA Western Graingrowers, p. 6.

6 Mr Russell Phillips, *Committee Hansard*, 27 March 2008, p. 23.

Definitions

3.33 The committee received a number of suggestions for amendments to definitions of terms used in the bill.

Designated sanitary or phytosanitary measures

3.34 **Clause 4** of the bill provides for ***designated sanitary or phytosanitary measures*** to mean measures applied by or under a law of a foreign country to: protect human, animal, or plant life or health from certain risks or prevent or limit other damage from the entry and/or establishment of pests, to the extent that the measure relates to the importation of barley, canola, lupins, oats or wheat. This definition is relevant to WEA's assessment of fitness and propriety (see **Clause 11(1)(c)(xiv)**).

3.35 AWB submitted that the requirement should be compliance with the standard imposed by Australian law or, if a higher standard, those expressly required by the terms and conditions of the particular export contract. AWB expressed concern that it is common for issues with sanitary and phytosanitary measures to be used for political purposes or as negotiating tactics.[7]

3.36 The Emerald Group agreed with these proposed changes, but also suggested that some consideration should also be given in situations where a bulk handling company is a service provider for loading exports. The Emerald Group stated that in such circumstances the bulk handling company will be responsible for loading and testing exports, including meeting any designated sanitary or phytosanitary measures. The Emerald Group believes that provision should be made for bulk handling companies to accept contractual or legislative liability for failure to meet these requirements.[8]

Executive officer

3.37 CBH suggested that the definition of 'executive officer' be amended to specifically include 'non executive directors' regardless of the director's involvement in the company. CBH submitted that WEA should be satisfied with the suitability of all directors of an applicant in addition to the 'executive officers'.[9]

Export

3.38 AWB submitted that the term 'export' should also be defined. AWB suggested that the meaning used in the *Barley Exporting Act 2007* (SA) would provide an appropriate model for a definition.[10]

---

7 Submission 2, AWB Limited, p. 2.

8 Emerald Group Australian Pty Ltd, Answer to Question on Notice, 23 April 2008, p. 2.

9 Submission 23, CBH Group, p. 1.

10 Submission 2, AWB Limited, p. 2.

Administrative decisions - Clause 8 and Clauses 17 and 18

3.39 Some submitters sought clarification of the range of powers available to the WEA in administering the export accreditation scheme. The Grain Growers Association submitted that the range of powers provided to WEA under **Clause 8** of the bill should be expanded to include the power to grant conditional accreditation.[11]

3.40 In particular, the Wheat Growers Association of Western Australia (WGA WA) and the Western Australian Farmers Federation (WAFF) also noted that it is not clear whether WEA will have the power under **Clause 17** to impose new conditions subsequent to an initial accreditation. Both organisations have submitted that there may be circumstances in which applying new conditions to an exporter's accreditation may deliver a more desirable outcome than cancellation of accreditation.[12]

3.41 AWB also raised concerns about the breadth of WEA's discretion to determine the grounds for cancellation. AWB considered that WEA's power in this regard is too broad and consequently AWB does not support WEA having the power to specify grounds for mandatory or discretionary cancellation of accreditation as provided for in **Clauses 17(1)(e) and 17(2)(b)**. AWB argued that the bill should be more prescriptive regarding matters to be taken into account by WEA when cancelling accreditation.

3.42 The WGA WA and the WAFF also raised concerns regarding the provision in **Clause 8** of the bill for renewal of accreditation. The WGA WA and the WAFF submitted that it is not clear if the accreditation scheme is to include a process of renewal. They stated that if the bill does envisage a process of renewal of accreditation, there must be a demonstrable benefit flowing from such a process to justify the costs associated with it.[13]

Committee view

3.43 The committee considers that consideration should be given to clarifying the range of powers available to WEA under the bill. In particular, the committee suggests that, in addition to the ability to vary a condition, there may be merit in providing WEA with the ability to impose new conditions on an accredited exporter. However, the committee considers that the bill should provide clear guidance to WEA regarding the exercise of such a power. The committee considers that the WEA should not impose new conditions on an accredited exporter without following due process.

3.44 The committee therefore favours a simple renewal process and considers that provision of clear direction regarding the renewal process within the bill should provide greater certainty to accredited exporters.

---

11 Submission 28, Grain Growers Association, p. 8.

12 Submission 10, Wheat Growers Association Western Australia, p. 11.

13 Submission 10, Wheat Growers Association Western Australia, p. 11.

Eligibility for accreditation

3.45 The committee notes that there was broad support for the proposed accreditation process. Submitters observed that the proposed changes presented welcome opportunities to many in the industry. The Flour Millers' Council of Australia (FMCA) submitted that the changes were well received by its member companies. The FMCA said that:

> In the past member companies, especially those with milling activities in other countries have sought to export bulk Australian wheat for delivery to overseas affiliate companies. The provision of the new legislation would make this possible, within the criteria of accreditation for the purpose.[14]

3.46 The committee also received evidence in support of the accreditation of cooperatives and of individual growers who may wish to export the wheat they produce on their own properties. However, the bill provides that to be accredited as a wheat exporter, an applicant must be registered as a company under the *Corporations Act 2001* and must be a 'trading corporation' to which paragraph 51(xx) of the Australian Constitution applies.

3.47 The Grain Growers Association (GGA) submitted that such entities are common in agriculture and the grains industry and should be entitled to apply for export accreditation, subject to compliance with relevant corporations legislation.[15] The WGA WA and the WAFF expressed concern that the definition of an accredited wheat exporter does not appear to reflect the government's pre-election commitment that growers will be able to directly participate in bulk exports through grower co-operatives and/or alliances.[16]

3.48 The committee also received evidence that individual growers who wish to bulk export wheat grown on their own properties should be exempt from the accreditation requirements. It was argued that such growers should also be afforded equal access to storage, handling and ship loading facilities.[17]

3.49 PGA WG expressed concern that an overly literal reading of **Clause 11** might limit the opportunity for niche marketing opportunities.[18] PGA WG also submitted that the accreditation scheme should allow WEA to distinguish between an accredited exporter who is seeking to export millions of tonnes to multiple destinations, a niche marketer seeking to export to a single destination and a group of growers seeking to export their own wheat. PGA WG considers that the term 'fit and proper' needs to be read differently in each case given the differences in risk profile in each circumstance

---

14 Submission 20, Flour Millers' Council of Australia, p. 2.

15 Submission 28, Grain Growers Association, p. 8.

16 Submission 10, Wheat Growers Association Inc, p. 2.

17 Submission 9, The Hon. Wilson Tuckey, MP.

18 Submission 29, PGA Western Graingrowers, p. 7.

and that WEA should have clear instruction on how to interpret its role in such circumstances.[19]

3.50 The Department of Agriculture, Fisheries and Forestry advised the committee that it was examining the possibility of allowing other entities to become accredited. Mr Russell Phillips said:

> At the moment, it has been drafted so that the accreditation process will be applicable to companies that are subject to Australian law. That has been done for two major reasons. The first is to ensure the enforceability of the act by making sure that whoever has accreditation has a presence in Australia and is subject to Australian law. The second is that, in drafting the legislation, we were relying on certain constitutional powers for the right of the Commonwealth government to make laws in this area. It has been drafted around two arms: the export powers arm and the corporations powers arm. Some of the other legal entities in Australia, such as cooperatives, are not actually under Commonwealth Corporations Law; they are under state laws.

3.51 Mr Phillips observed that the legislation would not necessarily prevent entities such as co-operatives from seeking accreditation, as many of them, such as Co-operative Bulk Handling Limited (CBH) have corporations as subsidiaries. Mr Phillips told the committee that CBH had applied for its permits to export wheat to Indonesia in the name of AgraCorp, one of its corporations.[20]

3.52 The committee also received evidence which suggested that growers were not averse to setting up trading companies. Mr Halbert told the committee:

> It's not something I have given a great deal of thought to at the moment, but I would have no trouble setting up a trading company and operating that way. It is a lot safer system. There are already a couple of groups, like the Mingenew-Irwin Group, which I am part of, which are setting up companies and intend to export wheat in some form. Yes, I would be quite prepared to be part of that. I do not have any great trouble with the requirement that it needs to be a company that undertakes that.[21]

Committee view

3.53 The committee notes that DAFF has sought advice on the ability to amend the legislation to permit non-incorporated bodies to seek accreditation. The committee considers that there are benefits for the industry in promoting a competitive environment. In particular, the committee considers it desirable that the accreditation scheme supports increased choice for growers in marketing their wheat. The committee believes that in the interests of maximising competition and choice it is

19 Submission 29, PGA Western Graingrowers, p. 6.

20 Mr Russell Phillips, *Committee Hansard*, 27 March 2008, p. 14.

21 Mr Halbert, *Committee Hansard*, 31 March 2008, p. 4.

desirable that provision to permit the accreditation of co-operatives be included in the legislation subject to constitutional validity.

Formulation of the wheat export accreditation scheme

3.54 The proposed wheat export accreditation scheme was the subject of a significant amount of evidence before the committee. In general, there appeared to be broad support for the scheme as currently drafted. However, some submitters saw benefits in a simpler accreditation scheme and cautioned that a heavy-handed accreditation scheme may have unintended consequences for the industry.[22] The committee heard that:

> The less bureaucratic that body can be kept, the less chance it has of becoming political and restrictive and full of red tape. I think there are just four or five key points that need to be met for people to get a licence to export. They need to be able to pay for it, they need not to be criminals and there needs to be a market. Anything outside that becomes restrictive.[23]
>
> It would concern me personally if it became overly complicated. I just think the legislation needs to set out some clear, concise, minimal guidelines and let industry do the rest of it.[24]

3.55 AWB noted that the proposed scheme is based on the barley accreditation scheme introduced in South Australia in mid 2007.[25] AWB argued that the South Australian model fulfils all the good public policy principles of simplicity, transparency, neutrality and low cost and provides a positive model for the Wheat Export Marketing Bill.[26]

3.56 However, AWB, like a number of other submitters, considers that the proposed bill, as currently drafted, is significantly more detailed than the South Australian legislation and argued that there are risks and costs associated with this.

3.57 AWB believes that there is a lack of clarity about the role of WEA in the accreditation process, and questioned whether they are to simply administer the approval process or whether they are to have an ongoing investigative or monitoring role.

> One of the risks is that, the more specifics that are included in the legislation, the more compliance and technical breaches will occur. What is unclear at the moment in this legislation is which way it wants to go. … I think that at the moment there is uncertainty within the industry and within the regulator in particular about what exactly their role is, particularly

---

22 See, for example, Mr Alick Osborne, AGEA, *Committee Hansard*, 27 March 2008, p. 42.

23 Mr Jeff Fordham, *Committee Hansard*, 31 March 2008, p. 2.

24 Mr Gary Peacock, *Committee Hansard*, 31 March 2008, p. 7.

25 Submission 2, AWB Limited, p. 1.

26 Mr Robert Hadler, *Committee Hansard*, 27 March p. 1.

> around things like the monitoring and investigative role – that is whether they are simply there to give initial approval and then, it is up to each individual company as to how they can conduct their business.[27]

3.58 The Department of Agriculture, Fisheries and Forestry advised the committee that while there are similarities between the South Australian legislation and the proposed bill, the two pieces of legislation have different intended outcomes. Mr Russell Phillips told the committee that:

> The South Australian system was set up as a stepping stone to full deregulation of the barley industry. It is being administered by the Essential Services Commission of South Australia with that in mind. The arrangements we have here are not seen as that. But, if you like, the essential basis of the test in both instances is similar – that is 'Is the person fit and proper to be accredited?' Our legislation spells out a few more of the things that must be included in that assessment process. There is scope in the South Australian legislation for it to be as fulsome – if not more fulsome – if they chose to administer their system in that way. Our draft legislation has the same fit-and-proper test and spells out in more detail some of the things that must be taken into account by the regulator.[28]

3.59 CBH does not consider that the accreditation process is too onerous. Mr David Woolfe told the committee:

> It is important in the legislation that only companies which are appropriately qualified, have the appropriate expertise, credentials and so on are accredited to become exporters. It should be open to all organisations which are able to prove those certain thresholds. By and large, we have no great problem with the accreditation criteria, save a couple of things we put in our submission.[29]

3.60 At the other end of the spectrum, the Institute of Public Affairs submitted that the bill should be amended to remove all of the criteria for accreditation and that **Clause 17** should be replaced with a requirement that WEA licenses applicants who meet the single criterion of being a corporation under Australian law.[30]

Fit and proper company – Clause 11(1)(c)

3.61 The committee received a range of evidence in relation to the considerations that WEA should have regard to in determining whether an applicant company is a fit and proper company. The committee received suggestions from a number of sources about the role that the accreditation criteria could play in providing a degree of protection to growers.

---

27 Mr Sasha Grebe, *Committee Hansard*, 27 March 2008, p. 11.

28 Mr Russell Phillips, *Committee Hansard*, 27 March 2008, p. 14.

29 Mr David Woolfe, *Committee Hansard*, 31 March 2008, p. 12.

30 Submission 22, Institute of Public Affairs, p. 8.

3.62 The Grain Growers Association (GGA) noted that the accreditation process only provides for consideration of the components of an applicant company which relate directly to its bulk wheat export business. The GGA considers that it is likely that participants in the trade of wheat will also participate in other areas of the wheat market: domestic, container and bulk export. Participants may well also be involved in trading a wider range of commodities. The GGA suggested that, in the interests of procedural fairness, all elements of an applicant's business should be subject to the same level of scrutiny. The GGA argued that without this, the bill would offer no protection to growers from potential exposure to rogue elements in the non-bulk components of the grain trade.[31]

3.63 Mr Andrew McMillan, from the WAFF also expressed concern that without a robust accreditation process there were risks to the financial security of growers. He said:

> It is my view that bankers will have a lot of trouble coming to terms with who is a reliable marketer and who is not a reliable marketer given the very skinny accreditation process and the lack of call they will have on the financial security of these marketers.[32]

3.64 The Grains Council supported probity tests as a component of the accreditation process, however it cautioned against relying on the accreditation process to provide a guarantee of security of payment to growers. The Grains Council submitted that in communicating these changes to growers, the Government should highlight that the role of WEA does not remove the individual grower's responsibility to perform their own due diligence on the companies they are considering trading with.[33]

3.65 The CBH Group argued that **Clause 11** of the bill should be modified to require WEA be required to 'consider a company's record in supporting the management of quality and development of Australian wheat and other grains in order to enhance the quality and reputation of the Australian grain industry'.[34] CBH also expressed the view that any accredited wheat exporter should be obliged to provide evidence of their ability to appropriately meet their customers' needs in relation to the support for the production of quality Australian wheat. CBH further argued that the reputation of, and premium return on, bulk Australian wheat will only be maintained through the careful targeting of wheat varieties to customer's needs.[35]

3.66 The Australian Grain Exporters Association (AGEA) submitted that maintenance of National Agricultural Commodity Marketers Association (NACMA)

---

31 Submission 28, Grain Growers Association, p. 7.

32 Mr Andrew McMillan, *Committee Hansard*, 31 March 2008, p. 36.

33 Submission 25, Grains Council of Australia, pp 18-19.

34 Submission 3, CBH Group, p. 2.

35 Submission 3, CBH Group, p. 2.

membership should be considered as an important assessment criteria under **Clause 11**. AGEA stated that NACMA requires each member to comply with the NACMA code of conduct. The code requirements include:

- compliance with laws and regulations relating to the merchandising, inspection, grading, weighing, storing and handling of grain and other commodities;
- maintenance and promotion of high ethical standards and procedures in the transaction of business;
- fair and honest dealings with the public and employees; and
- consideration to the best interests of the agricultural industry and the public in sales, purchases, promotional practices and other transactions.

3.67 AGEA also stated that failure to comply with the code results in the cancellation of NACMA membership.[36]

3.68 Other submitters expressed concern regarding the potential for WEA to duplicate regulation currently undertaken by other agencies. The Grains Policy Institute (GPI) expressed concern that there is significant scope within **Clause 11** for replication of regulation currently undertaken by ASIC. The GPI argued that this was particularly true of those criteria which go to corporate governance and prudential management of a corporation. The GPI also raised concerns that WEA will not have the requisite expertise to make judgements on such matters.[37] It was suggested that the potential for duplication could be avoided if provision were made within the legislation for consultation between WEA and ASIC on such matters.[38]

3.69 WAFF also expressed concern about WEA's capacity to administer the accreditation process successfully. Mr Andrew McMillan told the committee:

> The biggest issue that we have with the draft legislation, I guess, is the uncertainty surrounding the accreditation process. History has shown that the Wheat Export Authority and these bodies that are appointed to advise government, manage legislation or whatever are generally grossly underfunded, so where they are going to find the expertise and the resources physically to be able to do the required level of due diligence to satisfy growers is clearly not evident in the legislation.[39]

3.70 Mr Peter Woods told the committee, in the context of a question about consideration of a company's risk management, that there are areas within the

---

36 Submission 23, Australian Grain Exporters Association, pp 6-7.

37 Submission 21, Grains Policy Institute, pp. 4-5.

38 Submission No. 21, Grains Policy Institute, p. 5.

39 Mr Andrew McMillan, *Committee Hansard*, 31 March 2008, p. 36.

accreditation process where it would be clearly better for WEA to seek the assistance of professionals to assess aspects of applications and advise the commissioners.[40]

3.71 In the opinion of WGA WA and WAFF, an exporter should not be able to include in their contract with a grower, an extension of prohibition clause 17 of the Grain and Feed Trade Association General Contract for Feedingstuffs in Bags or Bulk FOB Terms (no:119).

3.72 WGA WA and WAFF proposed that **Clause 11(1)(c)** should be amended to require WEA to have regard to:

- ASIC and Australian Prudential Regulation Authority (APRA) enforceable undertakings; and
- the contract terms and conditions on which the accredited wheat exporter purchases wheat for export.

3.73 The committee also heard that it is important that the accreditation process is fair to both large and small traders. Mr Kim Packer, of Tamma Grains told the committee that:

> … as a small trader at this point in time, I would like to think that we would be given some sort of consideration for a track record that we have had in the past, because we have been doing what we are doing since 1986.[41]

3.74 AWB expressed concern at the discretion provided to WEA to take account of other matters it considers relevant (**Clause 11(1)(c)(xvii)**) and to specify additional eligibility requirements (**Clause 11(1)(f)**). AWB argued that the basis for determining eligibility should be clear and objective. AWB suggested that the rules upon which accreditation is to be granted should be set by Parliament in the primary legislation and not in a legislative instrument created by the body charged with administering the scheme.[42]

3.75 AWB told the committee of its concerns about the interpretation of the bill in subsequent regulation. Mr Hadler told the committee:

> The legislation basically gives carte blanch to the current Export Wheat Commission to determine all regulations for how the system will work in practice around accreditation and revocation of accreditation.
>
> …
>
> I think the intent of the bill is quite light touch but there is potential for that to be unwound through regulatory development.[43]

---

40 Mr Peter Woods, *Committee Hansard*, p. 12.

41 Mr Kim Packer, *Committee Hansard,* pp 66-67.

42 Submission 2, AWB Limited, p. 1

43 Mr Robert Hadler, *Committee Hansard*, 27 March 2008, p. 6.

3.76 The Emerald Group submitted that it broadly agrees with AWB's comments on WEA's discretion to vary the accreditation scheme. However, the Emerald Group does not believe that the nature and conditions of the scheme need to be spelt out in legislation. In its submission, the Emerald Group stated that it:

> … is of the opinion that complete WEA discretion could be avoided using a legislative instrument where Ministerial approval and industry consultation must be sought before conditions to the scheme could be changed.[44]

3.77 The PGA Western Graingrowers group suggested that the bill should explicitly provide for WEA to demonstrate why an applicant has been denied accreditation.[45]

3.78 Mr Gary McGill, from PGA Western Graingrowers, expressed confidence that the proposed accreditation process is sufficiently rigorous to protect growers and guard against possible defaults of payment.[46]

Consultation in the formulation of the accreditation scheme

3.79 The committee was interested to understand the extent to which the industry would be consulted in the formulation of the accreditation scheme. The committee notes that the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008 provides the Export Wheat Commission with the authority to undertake consultation with potentially affected parties to ensure that the accreditation scheme is ready by 1 July 2008. The notes to the bill also state that, under the *Legislative Instruments Act 2003*, consultation on the development of legislative instruments is mandatory.[47]

3.80 The committee notes that the Export Wheat Commission has commenced consultation on the accreditation process. Mr Woods told the committee that the EWC had begun meeting with a wide range of industry groups. He said:

> Over the course of the week we did meet with all the growers as far as grower groups are concerned. It is very difficult to meet with all growers as such. We had, from memory, 14 grower groups represented either by teleconference or in person on Monday last week. On Tuesday we had the bulk storage and handling providers, who also have ports and port access issues, so that we could have the ACCC there to discuss issues there. We also spoke with industry representatives, advisers and consultants, and then with Australian and multinational exporters.[48]

---

44 Emerald Group Australia, Answers to questions on notice, 23 April 2008, p. 2.

45 Submission 29, PGA Western Graingrowers, p. 6.

46 Mr Gary McGill, *Committee Hansard*, 31 March 2008, p. 29.

47 Wheat Export Marketing bill 2008, Explanatory Notes, http:/www.daff.gov.au/agriculture-food/what-sugar-crops/wheat-marketing/legislation, p. 3.

48 Mr Peter Woods, *Committee Hansard*, 26 March 2008, pp 4-5.

Committee view

3.81 The committee agrees that the accreditation process should be clear and objective and that clear policy guidance as to its formulation and implementation should be set out in the primary legislation.

3.82 The committee notes the calls for a 'light touch' accreditation scheme based on clear criteria contained in the primary legislation on the one hand, and for a rigorous assessment process capable of weeding out 'rogue elements' on the other. The committee considers that it is critical that in formulating the scheme an appropriate balance is struck between these different interests. The committee considers that once the legislation has operated for a number of years it would be appropriate to review whether the regulatory balance is right or whether a lighter or heavier touch is needed.

Conditions of accreditation

Conditions of accreditation – Clause 12

3.83 The Grains Policy Institute (GPI) submitted that **Clause 12** of the bill should be amended to provide for mutual recognition of equivalent export accreditation or licensing schemes operated under state jurisdictions. The GPI considers that such recognition would be consistent with National Competition Policy provisions for mutual recognition of complementary state and Commonwealth legislation and may speed the initial assessment of applications for accreditation.[49]

Annual reports

3.84 **Clause 13** of the bill provides that an accredited wheat exporter must give WEA a written report each year setting out the quantity of wheat exported by the accredited wheat exporter during that year. The report is required to be broken down by grade and country of destination; and note the terms and conditions on which the accredited wheat exporter acquired wheat from growers during that year.

3.85 Wheat Growers Association WA (WGA WA) would like to see a requirement for annual export reports to also include the following details: the wheat variety, seasons of production, acquisitions by regions, shipping port, and number of shipments. The WGA WA submitted that the annual export report should also disclose the terms and conditions on which wheat was acquired from non-grower sources for export, in addition to the quantity of wheat bought for export from growers and non-growers.[50]

3.86 CBH noted that **Clause 70** of the bill provides that the information contained in a report given to WEA under the wheat export accreditation scheme will be

---

49 Submission 21, Grains Policy Institute, p. 5.

50 Submission 10, Wheat Growers Association WA, Appendix, Notes on the Wheat Export Marketing Bill 2008, p. 16.

protected confidential information if the person who provides the report claims the information to be 'commercial-in-confidence'.

3.87 CBH submitted that the bill should be amended to provide that reports submitted by a wheat exporter pursuant to **Section 13** be deemed to be protected confidential information, without the requirement to claim that the information is 'commercial in confidence'.[51]

3.88 WGA WA argued that **Clause 14** of the bill should be amended to ensure that, in preparing the annual compliance report, an accredited wheat exporter is required to report on compliance in relation to the broader range of business activities specified in **Clause 11** – in particular those specified in **Clause 11(1)(c)(ix)** and **Clause 11(1)(c)(xvi)**.[52]

Committee view

3.89 The committee notes that views discussed earlier in relation to **Clause 8 and Clauses 17 and 18** are relevant here. There may be circumstances where it would be desirable, and in the best interests of growers and others in the industry, for WEA to have the power to impose new conditions on an accredited exporter. In particular, the committee accepts that in certain circumstances it may be preferable for WEA to impose new conditions in preference to cancellation or suspension of an exporter's accreditation. However, the committee considers that this is not a step that should be taken without due process.

3.90 The committee also notes the support for mutual recognition of complementary state and commonwealth legislation in the formulation of the accreditation scheme. A similar point was also made in the context of the access test provided for in **Clause 20** of the bill. As a general principle, the committee considers that it is desirable to avoid duplication of regulation.

Register of accredited wheat exporters

3.91 The WGA WA would like to see the register of accredited wheat exporters provided for in **Clause 19** include the conditions of the respective accreditations and the name in which every accreditation is made. The WGA WA emphasised that the register should be made available for inspection free of charge.[53]

51 Submission 3, CBH Group, p. 6.

52 Submission 10, Wheat Growers Association WA, Appendix, Notes on the Wheat Export Marketing Bill 2008, p. 17.

53 Submission 10, Wheat Growers Association WA, Appendix, Notes on the Wheat Export Marketing Bill 2008, p. 17.

Committee view

3.92 The committee considers that the availability of a register of accredited exporters would be of great benefit to the wheat industry, particularly to growers. The committee considers that the register should be freely and easily accessible and should clearly state the name of the accredited exporter and the conditions under which accreditation has been granted.

Access to bulk storage and handling facilities

3.93 A number of witnesses before the committee expressed concern about the role and potential market power of bulk handling companies under the proposed changes. It was argued that bulk handling and storage facilities throughout Australia are owned and controlled by a limited number of companies. Concerns were raised that, in the event that some or all of these companies became accredited exporters under the proposed legislation, they may be in a position to limit access to these facilities by other exporters.

Ownership of bulk grain storage and handling facilities

3.94 There are three state-based storage and handling operators, CBH Group in Western Australia, ABB in South Australia and GrainCorp in New South Wales, Victoria and Queensland.

3.95 In Western Australia there are four export grain terminals at Kwinana, the Port of Geraldton, the Port of Albany and the Port of Esperance, all managed by CBH. In South Australia there are seven grain export terminals located in Port Adelaide, Port Lincoln, Port Giles, Port Pirie, Ardrossan, Thevenard and Wallaroo, all owned and operated by ABB. In Victoria there are three grain terminals. The terminals at the Port of Geelong and Portland are owned by GrainCorp and the terminal at the Port of Melbourne is jointly owned by AWB GrainFlow and ABA (which is a joint venture between ABB and Japanese trading house Sumitomo). In New South Wales there are two export terminals for field grains at the Port of Newcastle and Port Kembla, both of which are owned and operated by GrainCorp. In Queensland there are three grain terminals at Fisherman Islands, Gladstone and Mackay, all operated by GrainCorp.

Access to port terminal facilities

3.96 **Clause 20** of the bill is intended to guarantee port terminal access to all exporters. It sets out the access test and conditions to be applied in the case of bulk handlers who also operate grain and storage facilities at ports. The notes to the bill state that the intent is to guarantee port terminal access to all accredited exporters while at the same time not restricting the ability of port terminal operators to function in a commercial environment. The notes to the bill also state that while bulk handlers currently provide port terminal access to other exporters, some industry stakeholders

have raised the possibility that, in a competitive environment, these bulk handlers may limit access to their port terminal facilities.[54]

3.97 As noted in paragraph 3.12, the access test provides for a different level of assessment depending on whether the company involved passes the accreditation test before or after 1 October 2009. Prior to 1 October 2009, a company will pass the test if it has published a statement on its internet site to the effect that it is willing to provide accredited wheat exporters with access to port terminal services for the export of wheat. The statement must include the terms and conditions of such access. After 1 October 2009, a company will pass the access test if they have entered into an access undertaking that has been approved by the ACCC under Division 2A of Part IIIA of the *Trade Practices Act 1974*.

3.98 The committee sought clarification of the reason for this watershed date in the legislation and the degree to which access arrangements would be vetted prior to 1 October 2009. Mr Russell Phillips (DAFF) told the committee that in the first year of operation of the legislation there would be no requirement for anyone to vet access arrangements.

> That is the situation because it is not possible for the ACCC to accept any access undertakings and go through all of the steps outlined in the Trade Practices Act prior to 1 October this year.
>
> …
>
> The check and balance will be the greater transparency under the terms and conditions that they are required to publish. I am sure that if they are unreasonable we will be hearing very quickly about that. [55]

3.99 Mr Phillips explained that state based legislation would also provide a check and balance in relation to port access.

> There are requirements in, say, the Western Australian legislation for CBH to grant access. … The ports in Victoria are also subject to potential scrutiny by the Essential Services Commission in Victoria. There are some other arrangements in place.[56]

3.100 The evidence the committee received in relation to the access provisions was split between those who considered that the proposed arrangements were onerous and unnecessary and those who favoured an expansion of the provisions to include access to upcountry storage.

---

54 Wheat Export Marketing Bill 2008, Explanatory Notes, http://www.daff.gov.au/agriculture-food/wheat-sugar-crops/wheat-marketing/legislation, p. 5.

55 Mr Russell Phillips, *Committee Hansard*, 27 March 2008, p. 22.

56 Mr Russell Phillips, *Committee Hansard*, 27 March 2008, p. 23.

Arguments for a less interventionist approach to terminal access

3.101 A number of submitters presented evidence to the committee which suggested that the proposed access test was an unnecessary level of regulation and could have unintended consequences for the wheat export industry. The Institute of Public Affairs (IPA) argued that mandating an access regime for port infrastructure owners who also want to become accredited wheat exporters is flawed. The IPA stated that while in the short term this may result in lower access prices, in the longer term it has the potential to stymie incentives for additional investment to either expand grain handling facilities or to upgrade them to achieve greater efficiencies. The IPA illustrated this point by reference to infrastructure development at BHP's Hay Point coal terminal, which is not subject to access undertakings, and at the multiple-user regulated facilities at Dalrymple Bay and Port Waratah. In the IPA's opinion, delays in the expansion of the latter two facilities can be attributed to the level of regulation applied and required regulatory intervention.[57] The IPA also warned that mandating infrastructure access undertakings may result in underinvestment in port facilities which over time may lead to inefficiency and a lack of international competitiveness.[58]

3.102 Mr Donald Taylor[59] also observed that increased regulation has the potential to impede investment in the development of infrastructure. He said:

> If you look in Queensland at recent experience, especially in the coal industry, where they had extensive regulation to a monopoly holder of the Dalrymple port facilities and where the Queensland government put in place essential service regulations, it effectively delayed capital expenditure and slowed down the port. Part of the bottleneck we see now is the result of that government intervention, which had no real tangible benefits to the industry; in fact, it has been quite counterproductive.[60]

3.103 While it endorses the access test, PGA WG would also prefer to see a less interventionist approach to access to infrastructure. PGA WG favours a system which allows commercial arrangements to govern access to storage, handling and port facilities. It was argued that bulk handling companies will face significant commercial pressures, which should ensure they seek to maximise throughput in their facilities.[61] In PGA WG's view, it is a legacy of past public policy that a large percentage of storage, handling and port facilities are in the hands of three regionally-based entities: CBH in Western Australia, GrainCorp in the east and ABB in South Australia. PGA WG argued that such companies will face much greater pressure to maintain good

57 Submission 22, Institute of Public Affairs, p. 8.

58 Submission 22, Institute of Public Affairs, p. 2.

59 Mr Taylor is Chairman of GrainCorp and a shareholder GrainCorp, AWB and ABB. Mr Taylor appeared before the committee as wheat grower from Queensland.

60 Mr Donald Taylor, *Committee Hansard*, 31 March 2008, p. 75.

61 Submission 29, PGA Western Graingrowers, p. 8.

commercial practice than a company operating under a commercial monopoly protected by Government legislation.

> Already we have seen evidence of this. CBH developed and began to communicate its proposed access regime (Grain Express) prior to the release of the draft Bill. CBH has done this in recognition that throughput of its facilities in a competitive grains market will require them to operate on commercial terms within the wider industry.[62]

3.104 The evidence received from bulk handling companies echoed these concerns. GrainCorp, CBH and ABB all recognised the need for all exporters to have access to storage and handling facilities. However, the three companies expressed concerns about the form of the access requirements in the proposed bill. They submitted that the requirements in the bill imposed an unnecessary level of regulation, would introduce additional costs and would provide a disincentive to investment.[63]

3.105 In particular, CBH argued that access undertakings under part 111A of the Trade Practices Act in different industries have also involved heavy price regulation, and such an approach is likely to provide a disincentive to investment.[64] CBH further argued that there is no evidence of abuse of market position by bulk handling companies to date. CBH suggested that before introducing what it described as heavy handed price regulation, the situation should be monitored over the next 18 to 24 months. Mr David Woolfe told the committee that, in the event that there is abuse of market powers, there are existing remedies in the Trade Practices Act.[65]

3.106 Mr David Ginns, representing GrainCorp also told the committee that there is no issue regarding access to bulk handling and storage facilities. He said:

> I think one of the key issues that has been missed in all of the discussion about access to ports and up-country infrastructure is the establishment of the need for additional regulation. The commercial arrangements that were in place yesterday, are in place today and will be in place tomorrow will continue. There is a high degree of transparency with regard to charges imposed on the use of up-country infrastructure and ports. If you go to any of the websites of the major infrastructure providers, you will see the standard terms and conditions under which they offer their services. We have seen, I think, to some degree, the building up of an issue that is not an issue.[66]

---

62 Submission 29, PGA Western Graingrowers, p. 7.

63 See, for example, Submissions 3 and 3A, CBH; Submission 24, GrainCorp; and Submission 39, ABB.

64 Submission 3, CBH, pp 3-4.

65 Mr David Woolfe, *Committee Hansard,* 31 March 2008, p. 15.

66 Mr David Ginns, GrainCorp, *Committee Hansard*, 22 April 2008, p. 88.

3.107 CBH argued that **Clause 20** should be amended to provide that bulk handling companies must not unfairly or unreasonably deny access to, or discriminate between, accredited wheat exporters who seek access to port facilities following the introduction of the proposed bills. CBH suggested that this could either be drafted into the legislation, or bulk handling companies could be required to provide an undertaking to the ACCC. CBH further suggested that such an undertaking could be modelled on the simple form of undertaking provided by ABB to the ACCC in relation to the Ausbulk merger or that provided by GrainCorp to the Victorian Essential Services Commission.

3.108 Mr Stephen Bartos, on behalf of AWB,[67] also told the committee that the access requirements that have been put in place in Victoria and South Australia could provide a good model for port access.

> … we suggest that some of the models would include basing it on the voluntary undertakings that have been put in place in Victoria and South Australia in particular for the handlers, the south Australian system being a good model. Voluntary undertakings under the Trade Practices Act are, in a sense, a slightly weak instrument, but they are enforceable in the courts – they are disclosable…[68]

3.109 However, Mr Bartos also emphasised that access to information was just as crucial to physical access to ports. He noted in particular:

> … this whole question of information that is held, particularly at ports, in relation to arrivals and departures of ships and their location with respect to the grain. That information is absolutely critical, and we are suggesting in this report that the solution there is a much better regime of transparency about that information, including regular publication, at least weekly, of some of that key information.[69]

3.110 CBH contended that as it is already required to provide open access to its port facilities and equipment under the Western Australian *Bulk Handling Act 1967*, the access test in **Clause 20** is unnecessary. CBH told the committee that Section 20 of the Bulk Handling Act requires CBH to:

> … allow a person, on payment of the prescribed charges, the use of any bulk handling facilities and equipment controlled by it at ports in the State.[70]

---

67 Mr Stephen Bartos is a Director of the Allen Consulting Group who were commissioned by AWB to prepare reports on *Competition in the export grain supply chain*, March 2008 and *Industry Good Services – Wheat Rationale and future options*, March 2008.

68 Mr Stephen Bartos, *Committee Hansard*, 27 March 2008, p. 7.

69 Mr Stephen Bartos, *Committee Hansard*, 27 March 2008, pp 7-8.

70 Submission 3, CBH, p. 3.

3.111 Section 42(1) of the same Act requires CBH to receive all grain that is tendered to it in bulk. CBH would welcome an amendment to **Clause 20** to provide for the recognition of state or territory legislation.[71]

> **Senator MURRAY**—Just a clarification question please, Mr Woolfe. As a general principle, avoiding duplicate or overburdensome regulation is a good idea. The government is rightly focused on that. Would you accept an alternative to your view that section 20, I think it is, should not apply, which is the view that perhaps it would apply in the absence of any state legislation which already had the same effect? That would allow you just to abide by one regime which has the same effect as the other.
>
> **Mr Woolfe**—That does not sound like an unreasonable proposition. What we have also said in our submission is that, rather than having this access undertaking regime in part IIIA, which would, as I said, in our understanding involve very heavy regulatory burden, perhaps the concern could be addressed by the legislation simply stating that bulk-handling companies such as ourselves may not unfairly or unreasonably discriminate between marketers or prevent access. It could be dealt with very, very simply rather than through heavy regulatory oversight.[72]

3.112 In the event that the proposed access test in remains in the bill, CBH submitted that **Clause 20(1)** and **20(2)** be amended to provide a third option:

> (c) … at that time there is in force a regime established by a State or Territory for access to the port terminal service and that regime is legislatively enshrined.[73]

Current operation of port facilities

3.113 The committee was keen to understand the extent to which an increase in the number of wheat exporters needing to use port facilities would impact on the efficient operations of ports. In particular, the committee was interested to know how competing wheat exports would be prioritised within the port environment.

3.114 GrainCorp told the committee that it currently manages access to port facilities. It also manages the logistics of receiving, storing and loading grain with AWB in relation to wheat; and provides a range of service users for barley, sorghum and for oilseeds. Mr David Ginns[74] told the committee that the only limitation on ports is the physical capacity of each port. Each port has different infrastructure and different processes of accumulating grain depending on the size of the ships that can be outloaded, the outloading rates and the storage capacity to accumulate cargoes at port. Mr Ginns was confident that the logistics of managing this task and the complex

---

71 Submission 3A, CBH, p. 1.

72 Mr David Woolfe, CBH, *Committee Hansard* 31 March 2008, p. 21

73 Submission 3A, CBH, p. 1.

74 Mr David Ginns is the Chief Executive of the Grains Policy Institute and appeared before the committee on behalf of both the GPI and GrainCorp Operations Ltd.

prioritisation and cargo accumulation protocols, are being successfully managed under the current arrangements and that this would continue under the proposed arrangements.[75]

> … there are protocols for the booking of ships and berth space and for the accumulation of cargoes for all of the three infrastructure owners. Those protocols are publicly available in that there are lead times for booking ships and accumulating cargo. It is a very complex business. That works currently for all other grains, and the same processes will work for wheat. There will be no shifting around of prioritisation simply because you have limitations on the volume and the speed at which grain can be accumulated at a port, stored and then outloaded.[76]

3.115 Mr Ginns also told the committee that an increase in the number of exporters using port facilities will not alter the size of the export task 'because you are still going to be managing the same cubic volume of wheat'.

Expansion of access test

3.116 The committee heard equally strong arguments from other witnesses in favour of an expansion of the access test. AWB told the committee that, given the natural regional monopolies of each of the three bulk handling companies, the proposed access provisions in the bill are essential.[77] AWB would like to see significantly greater detail in the legislation about the terms and conditions to be provided under **Clause 20(1)(a)(ii),** particularly in respect to price, identification of wheat stored and its location and the allocation of loading times.[78]

3.117 This position appears to be supported by Consolidated Grain Industries Ltd (CGI). CGI expressed concern that as the internal logistics of grain movement are controlled by the grain handling companies, there is potential for a grain handler to use this to frustrate a competitor's access to a terminal or the timely loading of a competitor's grain. CGI submitted that the definition of access should include a requirement that the first vessel to be presented is the first loaded. It was also argued that grain handling companies should be required to ensure that the competitor's stocks are positioned on a timely basis to ensure the smooth loading of the exporter's vessel.[79]

---

75 Mr David Ginns, *Committee Hansard*, 26 March 2008, pp 30-31.

76 Mr David Ginns, *Committee Hansard*, 26 March 2008, p. 31.

77 Mr Robert Hadler, *Committee Hansard*, p. 2.

78 Submission 2, AWB, pp 2-5.

79 Submission 12, Consolidated Grain Industries Pty Ltd, p. 1.

3.118 The committee also received evidence that the access arrangements in the bill are essential and should be expanded to include access to the point of receival at upcountry storage and handling facilities.[80]

3.119 The committee heard that, in addition to controlling the nine grain handling ports, over 600 upcountry silos are owned and operated by the three main grain handling companies and a further 22 upcountry silos are owned by AWB.[81] The committee also heard that many wheat growers only have access to one storage and handling facility, unless the grain is transported long distances by road.[82]

3.120 The committee also received evidence that suggested that access to rail freight services should be subject to the access test.[83] AWB told the committee that the there should be a legislative prohibition on vertical integration right through the supply chain.[84] AWB submitted that:

> … the up-stream supply chain is inextricably linked to at-port services and is vital to traders' ability to safely and reliably receive, transport and outturn grain via [bulk handling companies] in the quantity, quality and condition that traders require.[85]

3.121 AWB proposed that bulk handling companies should be subject to much tighter requirements in relation to: the publication of terms and conditions, the movement of grain, performance obligations in relation to railway car uploading (upcountry) and discharge (at port) and notification of up-country site availability.[86]

3.122 The committee sought clarification from DAFF as to why the proposed access requirements do not apply to upcountry facilities. Mr Phillips told the committee that the proposed requirements address perceived bottlenecks in the infrastructure. He said:

> In the case of the up-country storage and also the up-country transport, they were not seen as being the same bottlenecks in the system that may be able to lead to a restriction of competition. As was pointed out by Mr Bartos, on the transport side of things, rail is substitutable for road and vice versa – maybe not perfectly, but they are substitutes. Up-country storage does not have the same barriers to entry as port terminal facilities. For example, there is adequate land. The cost to build up-country storage facilities is not as great as what it is at, say, port terminals. The legislation focuses on

---

80 See, for example, Submission 35, NSW Farmers Association, p. 4.

81 Mr Robert Hadler, *Committee Hansard*, 27 March 2008, p. 2.

82 Submission 26, Mr Ralph Billing, p. 2.

83 Submission 26, Mr Ralph Billing, p. 2.

84 Mr Robert Hadler, *Committee Hansard*, 27 March 2008, p. 9.

85 Submission 2, AWB Limited, p. 5.

86 Submission 2, AWB Limited, p. 5.

> where there is the perception that there may be a bottleneck that could potentially restrict competition.[87]

3.123 GrainCorp does not accept that there is a monopoly in storage and handling as growers have other options for storage of their grain, including on-farm storage.[88] GrainCorp emphasised that the current excess capacity in storage and handling on the east coast would ensure access to such facilities.

> Along the east coast of Australia there is a capacity to store 40 million tonnes of grain, and only half is owned by GrainCorp. Owners of up-country silos are subject to considerable competition from temporary storage, such as silo bags and on-farm silos, and competitors in the form of local grain traders and merchants and AWB GrainFlow. Grain export ports are running well below capacity. In the case of GrainCorp those ports running at about 30% capacity, while every year GrainCorp has to carry the total cost of that infrastructure.[89]

3.124 GrainCorp and CBH emphasised that grain storage and handling infrastructure is a tonnage throughput business. GrainCorp told the committee that every tonne that bypasses a GrainCorp silo or port is revenue lost to the company:

> GrainCorp, CBH and ABB are in the business of encouraging use of their infrastructure – excluding companies just does not make commercial sense.[90]

3.125 This view was echoed by evidence provided by officers from DAFF:

> **Mr Mortimer –** What Senator Nash was asking about was access and enforceable access to receival points up country. I draw a link there between the information that Dr Sheales gave earlier about the nature of transactions that farmers have when they make a decision to grow their wheat. Clearly a lot of wheat is being sold to people other than AWB. There is a real question as to whether there would be a need for legislation to deal with arrangements around those receival points.
>
> **Senator NASH** – Sorry, can you just say that again. Did you say that you think there is a need for legislation?
>
> **Mr Mortimer –** No, I did not say that actually; I said rather the opposite. I said that the information that Dr Sheales put on the table observed behaviours of wheat sales by growers, which was essentially showing that in many parts of Australia not much actually does go to AWB, would raise a serious question as to whether you would need to have a new legislative arrangement there for a system that currently operates in a non-legislated

87 Mr Russell Phillips, *Committee Hansard*, 27 March 2008, p. 14.

88 Mr David Ginns, *Committee Hansard*, 26 March 2008, p. 22.

89 Mr David Ginns, *Committee Hansard,* 26 March 2008, p. 20.

90 Mr David Ginns, *Committee Hansard*, 26 March 2008, p. 21.

> way perfectly reasonably. There is no legislation around those receival points here and now.[91]

Abuse of market power - the role of the Trade Practices Act and the ACCC

3.126 The committee heard evidence from a range of witnesses and submitters regarding the degree of protection available to growers and others in the industry from anti-competitive practices and abuses of market power.

3.127 Views on the effectiveness of existing powers under the *Trade Practices Act 1974* (the TPA) varied greatly. For example, AWB told the committee that the Companies Act and the TPA would provide sufficient protection for wheat growers from market power.[92]

3.128 AGEA also expressed a preparedness to pursue remedies under the TPA and to work closely with the ACCC with regard to access undertakings. Mr Alick Osborne told the committee:

> We will work closely with the ACCC when they are ready to get going past September 2009 to make sure that issues such as access to up-country storage are not used as another way of restricting competition. We are strongly of the view that the removal of a national monopoly should not be replaced by a regional monopoly. We note the ACCC are going to administer a scheme out there. We have a number of Clauses that we would look to take up with the ACCC, specifically that exporters cannot be given access to the port but denied access to the up country. That would be an issue I think of third-line forcing or bundling of services, but I think those are already covered in the Trade Practices Act. We would look for those to be incorporated in the access regime administered by the ACCC.[93]

3.129 However, the committee notes that not all in the industry share this confidence that the provisions of the TPA will adequately address the competition issues they perceive. For this reason, the committee sought clarification from the ACCC regarding the extent to which it provides an effective remedy to abuses of market power.

> **Senator HURLEY** —I know you have had a look at this draft bill. Are the means to regulate posed in the bill potentially strong enough to ensure proper competition in terms of access and regulation?
>
> **Mr Dimasi**—The draft bill requires that a vertically integrated facility which controls bulk-handling facilities provide non-discriminatory access to those through an access undertaking to the ACCC. Now the access undertaking is a provision which is well understood—at least by us—and which can provide for price and non-price terms and conditions which can

91 *Committee Hansard*, 27 March 2008, pp 23-24.

92 Mr Robert Hadler, *Committee Hansard,* 27 March 2008, p. 5.

93 Mr Alick Osborne, *Committee Hansard*, 27 March 2008, p. 46.

> be arbitrated by the ACCC if there were disputes. It is, in the array of tools that we have to deal with those circumstances, a conventional tool that can be used to deal with the power that could exist.[94]

3.130 The committee notes the concerns of smaller exporting companies and some farmers that the TPA processes are too lengthy and costly to provide adequate protections and may be out of the reach of some companies and individuals. Mr Joe Dimasi, on behalf of the ACCC told the committee:

> Generally I would agree that under Part IIIA, or indeed other provisions of access, all the players vigorously pursue their interests and take all options available to them. Yes, gaining access can sometimes take a substantial amount of time.[95]

3.131 The ACCC was also asked what it its view would be if only one part of the market was open to competition and other parts of the market continued to be controlled by monopolies. Mr Dimasi told the committee:

> Again that depends on a whole range of circumstances. We have a number of areas where competition is introduced but there is monopoly provision, for example of infrastructure. That is where you have arrangements like part IIIA or part XIC, to deal with those matters. That is what happens in other sectors.[96]

3.132 The committee also noted that the ACCC does not agree that vertical integration is necessarily anti-competitive. Mr Dimasi told the committee:

> No, we would not necessarily agree with that, and the ACCC has made it clear that there are circumstances where vertical integration can provide benefits that exceed any anti competitive detriments.[97]

3.133 In answer to a question on notice, the ACCC stated that:

> The ACCC understands that the proposed legislation would allow for the vertical integration of bulk handling companies into wheat export marketing. If control of bulk handling facilities is a source of market power then it may be the case that the bulk handlers are in an advantageous position to compete in wheat export marketing. However, whether the bulk handling companies have the ability and incentive to act anti-competitively in the area of wheat export marketing would need to be considered on a case-specific basis.

3.134 The committee received a range of evidence about the potential benefits and risks of an initiative such as CBH's Grain Express proposal. The committee notes that CBH characterise Grain Express as an attempt "to set up a coordinated approach to the

---

94 Mr Joe Dimasi, *Committee Hansard*, 22 April 2008, p. 26.

95 Mr Joe Dimasi, *Committee Hansard*, 22 April 2008, p. 24.

96 Mr Joe Dimasi, *Committee Hansard*, 22 April 2008, p. 26.

97 Mr Joe Dimasi, *Committee Hansard*, 22 April 2008, p. 26.

movement of grain, the accumulation of grain, the shipping of grain and access to terminals."[98] The committee notes that Grain Express has received support from some quarters of the Western Australian industry. However, the committee also received evidence regarding the potential risks associated with this type of proposal.[99]

3.135 The committee was therefore interested to understand how the ACCC would deal with a situation like that proposed by CBH in its Grain Express proposal. The ACCC confirmed that exclusive dealing conduct may raise issues under the TPA but that such conduct must be considered within the context of the particular circumstances and balanced against any benefit to the public. The ACCC confirmed that it had not received an application for authorisation or an exclusive dealing notification from the CBH group in relation to the Grain Express proposal.[100]

Supply Chain Code of Conduct

3.136 In supplementary submissions to the inquiry, GrainCorp, CBH and ABB provided the committee with a draft Supply Chain Code of Conduct. The three bulk handling companies stated that the draft code has been prepared to provide a commercially based solution to guaranteeing new bulk wheat exporters access to both port terminals and upcountry grain accumulation facilities. The companies proposed that the code would become an integral part of the accreditation scheme, would be enacted with the agreement of all signatories and subject to the final approval of the minister. The three companies accept that under this type of model, a breach of the code could lead to removal of accreditation.[101]

3.137 The committee was keen to understand what would happen in the event that an access problem arose under a voluntary code of conduct. Mr Joe Dimasi, from the ACCC, told the committee that the ACCC could see a lot of issues in relation to the proposed code of conduct.

> **CHAIR**—Before we go, Mr Dimasi, you just mentioned that you see a lot of issues in that code of conduct. Would you like to expand on that?
>
> **Mr Dimasi**—We very recently received it, and the only comment I would make about it is that it looks like a voluntary set of arrangements which provides for compulsory conciliation. That sort of arrangement can be useful in some circumstances. But, if you believe you have an access problem where there are a number of players that you deal with, these bilateral voluntary arrangements may have some difficulties in resolving your—

98 Mr Imre Mecshelyi, *Committee Hansard*, 31 March 2008, p. 14.

99 See, for example, Mr Joe Dimasi, *Committee Hansard,* 22 April 2008, p. 30; Mr Sasha Grebe, *Committee Hansard,* 22 April 2008, p. 49 and Mr Robert Hadler, *Committee Hansard*, 22 April 2008, p. 51.

100 ACCC, Answers to Questions on Notice, 23 April 2008.

101 Submission 24A, GrainCorp, Attachment 1, p. 1; ABB Grain Limited, Answer to Question on Notice, 24 April 2008.

…

Mr Dimasi—By this arrangement, we would have no involvement whatsoever.[102]

3.138 Mr Ginns clarified for the committee that the code of conduct was not being offered as a voluntary code but as an integral part of Section 11 of the accreditation regime.[103] He told the committee that:

> So, if you are an infrastructure owner—here we are talking about ports or up-country storage—and you own a significant amount of infrastructure and you want to be an accredited bulk wheat exporter, then you would have this code of conduct in place and attached to section 11. It would be overseen by Wheat Exports Australia. Sanctions would apply if you did not adhere to the provisions under the code as an infrastructure service provider and a bulk wheat exporter. The regulator of the act, Wheat Exports Australia, would come in and take your accreditation away if it was proved that there were breaches of the code.[104]

3.139 AWB told the committee that the supply chain code of conduct appeared superficially attractive because:

> … it applies an industry self-regulatory approach and it applies to up-country as well as port facilities. In fact, there is no barrier to having a voluntary code of conduct under the current trade practices agreement, and we would encourage all members of the industry to look at a voluntary code of conduct dealing with not only port issues and up-country issues but a whole range of issues that would give greater transparency and greater certainty for growers in how wheat is priced, stored, shipped and exported.[105]

3.140 However, AWB expressed concern that definitional issues within the code of conduct may lead to legal dispute. Mr Hadler noted the following particular concerns:

> … under this proposed code of conduct access would only be provided to other traders where there was surplus capacity. It is not clear who would determine what the surplus capacity was and when it would be available. One of the other definitional issues in here is that it would only forbid 'unreasonable' discrimination. Who would define what is unreasonable? I have no confidence at this stage that this would be an adequate set of arrangements that would provide fair access to all members of the grains industry.[106]

---

102 Mr Joe Dimasi, *Committee Hansard*, 22 April 2008, p. 28.

103 Mr David Ginns, *Committee Hansard*, 22 April 2008, p. 90.

104 Mr David Ginns, *Committee Hansard*, 22 April 2008, p. 90.

105 Mr David Hadler, *Committee Hansard*, 22 April 2008, p. 50.

106 Mr David Hadler, AWB, *Committee Hansard*, p. 50.

Committee view

3.141 The committee notes the serious concerns raised during this inquiry in relation to the access provisions in the bill. In particular, the committee notes the concerns that access arrangements should apply to all points of the supply chain and that consideration needs to be given to ensuring an adequate level of regulatory oversight of protocols relating to the accumulation, movement and loading of wheat for export.

3.142 The committee also notes that access arrangements applied to accredited exporters will not address access issues that may arise in the event that grain handling companies do not seek accreditation. The committee notes the arguments presented to suggest that market forces should mitigate against discriminatory access in such circumstances. However, the committee considers this issue requires close consideration.

3.143 The committee considers that a consistent set of access requirements should be applied to all owners of bulk handling and storage facilities, whether they are located at port terminals or at the up-country point of receival.

3.144 While the committee notes that provisions exist under the TPA to address anti-competitive practices, careful consideration needs to be given to the extent to which these provisions offer practical remedies to the concerns raised during this inquiry.

3.145 The committee welcomes the attempt by the three bulk handling companies to arrive at an alternative solution to the complex question of appropriate regulation of access to bulk handling and storage facilities. In particular, the committee notes the preparedness of the proponents of the Supply Chain Code of Conduct to have the code embedded in the legislation. The committee considers that a Code of Conduct may be an acceptable alternative to the access provisions of the draft bill subject to the following qualifications:

- The legislation should be amended to require exporting companies to comply with an 'industry code' as a requirement of accreditation. Industry would be given a set period of time to come up with such a code.
- The Code would apply to those companies which have obligations under the Code and would not be limited to Bulk Handling Companies.
- The Code would be registered by the ACCC under the Trade Practices Act 1974 and subject to acceptance by Wheat Exports Australia.
- The legislation should require the Code to recognise and address the following principles:
    - (a) Access to ports and up-country infrastructure on 'fair and reasonable commercial terms';
    - (b) An arbitration process that is binding on the parties; and
    - (c) Publication of standard terms and conditions of access.

- The legislation should provide powers to Wheat Exports Australia to revoke accreditation if the Code is breached.
- The access undertakings requirement currently spelled out in the legislation would remain but apply only to those companies which choose not to comply with the Code. The alternative option for companies that do not wish to comply with the provisions of the Code is the current requirement to negotiate an access undertaking with the ACCC.

3.146 The committee supports the current provisions relating to access at ports. The committee believes there is a need to ensure effective competition in relation to access to up-country infrastructure. The committee supports additional measures in relation to up-country infrastructure such as a mandatory code of conduct.

Review of decisions

3.147 AWB submitted that **Clause 66** of the bill should be amended to clarify who can seek a review of a decision by the WEA. AWB submitted that it is not clear whether persons other than the applicant for accreditation or an accredited export holder can apply for review. AWB submitted that it is not desirable for a person other than the person who is the direct object of the decision to apply for reconsideration. In particular, AWB submitted that it would not be appropriate for a competitor to the applicant for accreditation to be able to seek a review.[107]

Committee view

3.148 The committee considers that some clarification of the process for review of decisions would be appropriate.

Review of the legislation

3.149 The committee notes that there was broad support for a review of the legislation in 2010. PGA WG endorsed a review of the legislation in 2010 and encouraged the minister to restate his commitment to an independent economic review, with an analysis based on the costs and benefits of the system.

3.150 The Grain Growers Association (GGA) and the Grain Exporters Association also support a review of the legislation. The GGA suggested that such a review should consider:

(a) whether or not the legislation and regulation are providing appropriate controls to ensure a fully functional and competitive marketplace;

(b) any changes that may be required to ensure appropriate functionality for the marketplace; and

107 Submission 2, AWB Limited, p. 5.

(c) the timeframe for continuance of the arrangements and the future review periods.[108]

3.151 The GGA also supported a review of both the operation of the accreditation scheme and the access test.

3.152 The GCA also suggested that the review should also include a review of the transfer of responsibility for the provision of industry good functions. The GCA favoured explicit provision for review within the legislation itself and suggested that the minister be required to table a report of the review. [109]

3.153 Mr Russell Phillips confirmed that the government's policy includes a review of the legislation in 2010 to assess its effectiveness. Mr Phillips also confirmed that the review will be mentioned in the Second Reading Speech for the bill, but not provided for within the legislation itself.[110]

Committee view

3.154 The committee considers that provision for the review of the legislation is essential and that it is desirable for the minister to be required to table the report of such a review before the Parliament.

108 Submission 28, Grain Growers Association, p. 6.

109 Submission 25, Grains Council of Australia, pp 26-27.

110 Mr Russell Phillips, *Committee Hansard*, 27 March 2008, p. 28.

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 receival. 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

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, WA Farmers', 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.

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
- rhe 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.

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.

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.

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

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.

Appendix 1

List of Submissions

1. Mr Alan Hunter
2. AWB Limited
3. CBH Group
3A. CBH Group
4. Brocklesby Growers Group
5. Mrs Barbara Carmichael
6. Mrs Marion Billing
7. Mr Terry Fishpool
8. Mr Malcolm McLeod
9. Hon Wilson Tuckey MP
10. Wheat Growers Association Inc
11. Mr Rod Hatty
12. Consolidated Grain Industries Pty Limited
13. Mr Jim Alexander and Mr Jeff Murray
14. Shire of Beverley
15. Proforma letter signed by wheat growers in Western Australia
16. Mr Mark Hoskinson
17. Callum Downs Commodity News Pty Ltd
18. The Western Australian Farmers Federation (Inc)
19. Grains Research & Development Corporation
20. Flour Millers' Council of Australia
21. Grains Policy Institute Pty Ltd
21A Grains Policy Insitute Pty Ltd
22. Institute of Public Affairs
23. Australian Grain Exporters Association
24. GrainCorp Operations Limited
24A GrainCorp Operations Limited
25. Grains Council of Australia Ltd
26. Mr Ralph Billing
26A Mr Ralph Billing

27. Mr Darryl Kitto

28. Grain Growers Association

29. PGA Western Graingrowers

30. George & Barbara Johnston

31. Mr Barwon Staggs

32. Mr Alan Malcolm

33. Mr Philip Gardiner

34. Mr Bill Burke

35. NSW Farmers' Association

36. Mr Malcolm Williams

37. Mr Stewart Day

38. Chandada Farmers Group

39. ABB Grain Ltd

40. ASX Limited

41. Emerald Group Australia Pty Ltd

42. Southern Quality Produce Co-operative Ltd

43. Bruce and Penny Black

44. Mrs Kay Hull MP

45. Mr Mark Dwyer

46. Mr Lachlan Macsmith

47. Mr Peter Mooney

48. Mr Graham McDonald

Appendix 2

Witnesses who appeared before the Committee at the public hearings

Wednesday, 26 March 2008
Parliament House
CANBERRA

Export Wheat Commission
Mr Peter Woods, Acting Chief Executive Officer

Grains Policy Institute Pty Ltd and GrainCorp Operations Ltd
Mr David Ginns, Chief Executive Officer, Grains Policy Institute; and Representative, GrainCorp Operations Ltd

Mr Ron MacPherson, Private capacity

Mr Brian Curry, Private capacity

Mr Anthony Drum, Private capacity

Mr Lance Drum, Private capacity

Mr Hugh Hart, Private capacity

Mr Michael O'Hare, Private capacity

Mrs Velia O'Hare, Private capacity

Mr Brian Packer, Private capacity

Grain Growers Association of Australia
Mr Bryan Clark, Industry Development Manager

Mr Alan Malcolm, Private capacity

Mr Barry Bishop, Private capacity

Mr Gary Bibby, Private capacity

Mr Andrew Broad, Private capacity

Mr Neil Simpson, Private capacity

Condamine Growers Group
Mr Rowell Walton
Mr Rodney Hamilton

Thursday, 27 March 2008
Parliament House
CANBERRA

AWB Ltd
Mr Sasha Grebe, Trade Advocacy and Government Relations Manager
Mr Robert Hadler, General Manager, Corporate Affairs

Allen Consulting Group
Mr Stephen Bartos, Director

Department of Agriculture, Fisheries and Forestry
Mr David Mortimer, Executive Manger, Food and Agriculture Division
Dr Terence Sheales, Chief Commodity Analyst and Manager, Agriculture Branch, Australian Bureau of Agricultural and Resource Economics
Mr Russell Phillips, General Manager, Wheat, Sugar and Crops Branch

Wheat Industry Expert Group
Mr John Crosby, Chairman

Brocklesby Growers Group
Mr Patrick Drum
Mr Philip Gollasch
Mr James McDonnell

Australian Grain Exporters Association (AGEA)
Mr Alick Osborne, Director

Grains Council of Australia
Mr Jamie Smith, Board Director, Policy Council
Dr Benjamin Gursansky, Consultant

Monday, 31 March 2008
Legislative Council Committee Office
Parliament Place
WEST PERTH

Mr Jeffrey Fordham, Private capacity

Mr Kim Halbert, Private capacity

Mr Gary Peacock, Private capacity

Co-operative Bulk Handling Limited
Mr Imre Mencshelyi, Chief Executive Officer
Mr David Woolfe, General Manager, Secretarial and Legal Division

PGA Western Graingrowers
Mr Leon Bradley, Chairman
Mr Richard Wilson, Vice-Chairman
Mr Slade Brockman, Policy Director
Mr Gary McGill, Member

Western Australian Farmers' Federation
Mr Andrew McMillan, Director of Policy
Mr John Hassell, Transport Portfolio Vice-President
Mr Paul Southam, Senior Vice-President, Young Farmers Section
Mr Desmond Seymour, Grains Council Milling Representative

Wheat Growers' Association Inc.
Mr Bob Iffla, Chairman
Mr Peter Wells, Adviser
Mrs Jane Fuchsbichler, Committee Member
Mr Philip Gardiner, Committee Member

WA Grain Group
Mr Douglas Clarke, Chairperson
Mr Raymond Marshall, Vice-Chairman
Mr Robert Doney, Committee Member

Mr Kimberley Packer, Private capacity

Mr Jeffrey Murray, Private capacity

Mr Donald Taylor, Private capacity

Shire of Beverley
Councillor James Alexander, President

Tuesday, 22 April 2008
Parliament House
CANBERRA

Eastern Wheat Growers
Mr Chris Kellock
Mr Mark Johns
Mr Justin Brennan
Mr Angus McLaren

NSW Growers Group
Mr Jock Munro
Mr Hugh Hart

Export Wheat Commission
Mr Peter Woods, Acting Chief Executive Officer

Australian Competition and Consumer Commission (ACCC)
Mr Joe Dimasi, Executive General Manager, Regulatory Affairs Division
Mr Bruce Cooper, General Manager, Corporate and Regulatory Unit
Mr David Salisbury, Director, Transport and Prices Oversight Branch
Mr Scott Gregson, General Manager, Enforcement

Wheat Export Marketing Alliance
Mr Graham Blight, Chairman [Via Teleconference]
Mr John Ridley
Mr Mark Hoskinson

AWB Limited
Mr Sasha Grebe, Trade Advocacy and Government Relations Manager
Mr Robert Hadler, General Manager, Corporate Affairs

PGA Western Graingrowers [Via Teleconference]
Mr Leon Bradley, Chairman
Mr Slade Brockman, Policy Director

WA Grain Group [Via Teleconference]
Mr Douglas Clarke, Chairperson
Mr Robert Doney, Committee Member
Mr Raymond Marshall, Vice-Chairman

NSW Farmers' Association
Mr John Ridley, Chairman, Grains Committee
Mr Mark Hoskinson, Executive Councillor, and Member, Grains Committee
Mr Jock Munro, Executive Councillor, and Member, Grains Committee

Emerald Group Australia Pty Ltd
Mr Michael Chaseling, Deputy Chairman

Department of Agriculture, Fisheries and Forestry
Mr David Mortimer, Executive Manager, Food and Agriculture Division
Dr Terence Sheales, Manager, Agriculture Branch and Chief Commodity Analyst, Australian Bureau of Agricultural and Resource Economics
Mr Russell Phillips, General Manager, Wheat, Sugar and Crops Branch, Food and Agriculture Division

GrainCorp Operations Ltd
Mr David Ginns, Manager Corporate Relations