

23 April 2008

Ms Jeanette Radcliffe
Committee Secretary
Senate Standing Committee on
Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Radcliffe,

RE: Additional submission on Wheat Export Marketing Bill 2008 and Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008

The Emerald Group is pleased to provide a response to the Committee as requested at the Senate Committee hearings on 22 April 2008. The response relates to the Committee's request for Emerald to respond to the AWB Ltd's submission and proposed legislative amendments to the existing draft bill.

The Emerald Group was also asked to take on notice a question by Senator Joyce which is included in this submission.

Yours sincerely



Mike Chaseling
Deputy Chairman

Emerald Group - Additional Submission

*Senate Standing Committee on
Rural and Regional Affairs and Transport on Inquiry into the Wheat Export
Marketing Bill 2008 and Wheat Export Marketing (Repeal and Consequential
Amendments) Bill 2008*

In this submission the Emerald Group has responded to the AWB's submission, as dated 26 March 2008, and headed 'AWB comments on Draft Wheat Export Marketing Bill 2008'.

We have also provided comment on specific changes following consultations with AWB in relation to their submission on amendments following the hearing which can be found at Schedule 1.

1. Content of accreditation scheme and variation

The Emerald Group broadly agree with the AWB on this issue however in response to AWB's comment in their submission:

"WEA to be given complete discretion over the conditions it may impose (see clause 12(c)) Do not believe that the nature of the conditions should be spelt out in the legislation or at least spelt out in the scheme."

The Emerald group do not necessarily believe the nature and conditions of the scheme have to be spelt out in the legislation.

The Emerald Group 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.

2.1 Definition of "designated sanitary or phytosanitary measure"

The Emerald Group agrees with these proposed changes however would like to see additional consideration given to the situation where the bulk handling company (BHC) is a service provider for loading exports.

A BHC will be responsible for loading and testing of exports including meeting any designated sanitary or phytosanitary measure. Provision should be made for BHC's to accept contractual or legislative liability for failure to meet these requirements.

2.2 Access test - section 20(1)

The AWB Ltd provided the Emerald Group with further detail on the proposed change to the Fair Access Amendment which has been addressed in detail in Schedule 1.

Generally the Emerald Group agrees with the AWB's sentiments in this area of the draft legislation as outlined in the Emerald submission to the Committee.

The two important issues to Emerald are:

1. Up-country access
2. The relationship that BHC's have with their in-house marketing companies and the ability to create uncompetitive advantages over other marketers.

Information flow is also a very important issue and central to accessibility and transparency and the Emerald Group agree with the AWB's proposed changes in this area however would add two important amendments:

1. Grade as well as grain type needs to be included in the monthly stock data gathered
2. That the WEA audit, monitor and report to the Minister the prices that BHCs are charging their own in-house marketing companies compared to other marketers to ensure that prices are comparable and there is no uncompetitive behaviour going on.

3. Who may apply for a review of decisions

The Emerald Group agrees with this amendment as proposed in the AWB submission

4. Define "export"

The Emerald Group agrees with this amendment as proposed in the AWB submission

6. Clarify that only foreign laws which apply to the company or an executive officer are relevant.

The Emerald Group agrees with this amendment as proposed in the AWB submission

7. Application Fees

The Emerald Group agrees with this amendment as proposed in the AWB submission

8. Obligation to report on notifiable matters

The Emerald Group agrees with this amendment as proposed in the AWB submission

9. Look back period for convictions and contraventions

The Emerald Group has no view on this proposal as it is not applicable to our business

Question on Notice from Senator Joyce

At the time of this submission the Emerald Group was still waiting for clarification on the exact question which was asked by Senator Joyce as hansard records were not yet available however it related to the Trade Practices Act and amendments to the Wheat Marketing Legislation.

The Emerald Group believes that access to essential infrastructure is crucial for a competitive grain marketing environment in Australia. Adequate legislative provision either through the Wheat Marketing legislation or Trade Practices Act is crucial for ensuring fair and equal access to essential infrastructure.

Schedule 1: Emerald Group's Specific Response to AWB's Fair Access Amendments

AWB Ltd have consulted with Emerald Group following the Senate Inquiry hearings on 22 April and provided the following text on proposed changes to the draft Wheat Marketing Legislation.

While Emerald broadly agrees with the changes, specific comments have been made in areas where we strongly agree with the AWB and fully support their amendments.

Wheat Export Marketing Bill 2008

Fair Access Amendments

Part A - Technical amendments

The following technical and definitional amendments give effect to the legislation and ensure that the intent of the legislation is realised and that the fair and open access objective of the legislation is achieved.

1. *Objects clause*

AWB believes that the Bill should contain an objects clause after section 2 which sets out the intention of the legislation.

Insert an objects clause as follows:

"Principles and objectives of the legislation.

The object of this Act is to improve the efficiency of Australia's wheat industry and the benefits delivered to wheat growers and national economy through the promotion of competition in Australia's wheat marketing arrangements.

This Act promotes effective competition in the marketing and export of wheat by improving the efficiency of Australia's wheat industry and by ensuring fair and open access to infrastructure essential to the export of wheat, and thereby increase the benefits delivered to wheat growers and the national economy."

2. *Definitions*

Section 4 will also need to be amended to include the following definitions:

- (i) *"related body corporate": a body corporate or company is deemed to be a related body corporate of another body corporate or company where:*
 - a) *one of the bodies is a holding company or subsidiary of the other;*
 - b) *one of the bodies is a subsidiary of a holding company of another body corporate; or*
 - c) *one of the bodies can control, or influence materially, the other body's activities or internal affairs."*

Emerald Group comment: Strongly agree with this proposed change

(ii) *Shipping Stem*

Amend;

Part 1 Section 4 Definitions

port terminal service means a service (within the meaning of Part IIIA of the Trade Practices Act 1974) provided by means of a port terminal facility, and includes the use of port terminal facility including access by all relevant traders to a timely, accountable and transparent shipping stem coordinated by the regulator through the undertakings given meaning by subsection (20) Access test.

“shipping stem” means the daily and online publication by a company or a related body corporate providing port terminal services of the following information:

- a) Port name;*
- b) Vessel Name;*
- c) Date when vessel was nominated;*
- d) Date when load slot allocated to each vessel (start date and completion date);*
- e) Commodity type, volume and grade;*
- f) Receival type;*
- g) Maximum tonnage to be loaded;*
- h) Updated percentage accumulated;*
- i) Shipper name; and*
- j) Stem manager contact details.”*

"wheat storage and handling export service" means any of the following services:

- a) a port terminal service;*
- b) a receival service;*
- (c) a storage service;*
- (d) a handling service;*
- (e) an outturn service; or*
- (f) a rail or road transport service, provided in connection with the export of wheat.”*

Emerald Group comment: Strongly support this proposed change

(iii) *Effective access*

Amend;

Part 1 Section 4 Definitions

Effective access regime to include; Approved model terms and conditions and standard access obligations that ensure fair commercial terms, non-discriminatory conditions and competitive neutrality for an access undertaking as given meaning under section (20).

Emerald Group comment: Strongly support this proposed change

(iv) *Access statement*

Amend;

Part 1 Section 4 Definitions

Statement to cover access terms and conditions as given meaning by section 20 and as prescribed by the Minister from time to time.

Emerald Group comment: Strongly support this proposed change

3. Economic Efficiency criteria.

Amend Division 8 – access test, 20 Access test

(1) The access to have regard to economic efficiency criteria that

(ii) Encourage economically efficient use of infrastructure, and

(ii) Encourage economically efficient investment in infrastructure”

Emerald Group comment: Agree generally with the principle of economic efficiency

4. Compliance with industry standards

Amend;

Part 2 Division 5 – Cancellation of accreditation, 17 – Cancellation of accreditation

Discretionary cancellation

(2) (c) adherence to appropriate industry standards as prescribed by the Minister from time to time.

Emerald Group comment: Strongly agree with this proposed change

5. Access test

Amend;

Part 2 Division 8, 20 Access test;

Objects of Part

The objects of this Part are to:

(a) promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and

(b) provide a framework and guiding principles to encourage a consistent approach to access regulation in the wheat export industry.

Emerald Group comment: Strongly support this proposed change and request that this be amended further to include the WEA auditing, monitoring and reporting to the Minister the prices being charged to BHC in-house marketing companies and other marketers to ensure parity pricing.

6. Port access

For consistency between section 11 and section 20, at subsection 11(1)(e) AWB recommends the following amendments:

(a) replace the phrase “port terminal service” with “wheat storage and handling export service”.

The definition of “wheat storage and handling export service” is, as noted above, to be included in section 4.

(b) replace the phrase “-WEA is satisfied that” with “and”.

Emerald Group comment: Strongly support this proposed change

Part B - Further amendments

Information asymmetry

Emerald Group comment: As stated in the Emerald Group submission the provision of information on stocks and exports is required under the draft legislation.

The Emerald Group strongly supports the AWB proposed changes in this area also however request that stock information also be gathered from all storage sites, not just by port zone as proposed by AWB, and be provided in aggregate form to the market via the relevant authority.