

Chapter 1

Introduction

Conduct of the inquiry

1.1 On 22 March 2012, the Senate referred the provisions of the Wheat Export Marketing Amendment Bill 2012 (the bill) to the Senate Rural and Regional Affairs and Transport Legislation Committee (the committee) for inquiry and report by 18 June 2012.¹

1.2 The reason given for the referral of the bill through the Senate Selection of Bills Committee was to address the concerns of stakeholders.²

1.3 In accordance with usual practice, the committee advertised the inquiry on its website and in *The Australian*. In addition, the committee wrote to relevant organisations inviting submissions. The committee received 18 submissions, of which one was a supplementary submission (see Appendix 1).

1.4 A public hearing for the inquiry was held on 14 May 2012 in Canberra. A list of witnesses who appeared at the hearing can be found at Appendix 2. A copy of the Hansard transcript is available on the internet at the committee website.³

1.5 The committee would like to thank the organisations that made submissions to the inquiry and the representatives who gave evidence at the public hearing.

House of Representatives inquiry

1.6 The bill was also referred to the House of Representatives Standing Committee on Agriculture, Resources, Fisheries and Forestry for a separate inquiry. The House of Representatives' inquiry has no set reporting date. Public hearings for that inquiry were held on 9 and 11 May 2012.⁴

1.7 The committee respects the prerogative of each parliamentary chamber to refer for inquiry whichever bills it sees fit. However, the committee also observes that

1 Commonwealth of Australia, *Journals of the Senate*, 22 March 2012, p. 2352.

2 Senate Selection of Bills Committee, *Report No. 4 of 2012*, Appendix 15.

3 Senate Rural and Regional Affairs and Transport Legislation Committee website, Wheat Export Marketing Amendment Bill 2012, www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_ctte/wheat_export_2012/hearings/index.htm, accessed 21 May 2012.

4 See House of Representatives Standing Committee on Agriculture, Resources, Fisheries and Forestry website, *Wheat Export Marketing Amendment Bill 2012*, www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=arff/wheat/index.htm, accessed 21 May 2012.

the decision by both the Senate and the House of Representatives to refer the Wheat Export Marketing Amendment Bill 2012 for inquiry, combined with each committee's decision to hold public hearings on different dates, resulted in duplication of effort. This duplication created confusion among some witnesses as well as inconvenience for those witnesses who were invited to attend multiple hearings.

Purpose of the bill

1.8 The bill aims to implement the Australian Government's response to the Productivity Commission's 2010 review of wheat export marketing arrangements. If passed, the bill will abolish the Wheat Export Accreditation Scheme (the Scheme) and the Wheat Export Charge (WEC) on 30 September 2012, and wind up Wheat Exports Australia (WEA) on 31 December 2012.⁵

Background to the bill

1.9 In 2008, the Senate Standing Committee on Rural and Regional Affairs and Transport conducted an inquiry into exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008. The report of the inquiry was tabled in the Senate in April that year.⁶

1.10 Up until 2008, there was a monopoly on the export marketing of wheat in bulk through a 'single desk'. Between 1939 and 1999 this occurred through the Australian Wheat Board Limited (AWB), and from 1999 to 2008 it occurred through the AWB's privatised successor, Australian Wheat Board International Limited (AWBI).⁷

1.11 The purpose of the Wheat Export Marketing Bill 2008 was to establish WEA as a statutory entity to regulate the export of bulk wheat from Australia through a wheat export accreditation scheme. Consequential to this bill, the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008 was intended to repeal the *Wheat Marketing Act 1989* with consequential amendments to six other acts and transitional provisions.⁸

5 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 2, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fr4783%22>, accessed 12 April 2012.

6 Senate Standing Rural and Regional Affairs and Transport Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_ctte/wheat_2008/index.htm, accessed 26 March 2012.

7 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 45.

8 Senate Standing Rural and Regional Affairs and Transport Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, p. 1.

1.12 The committee reported on a number of issues that were raised by witnesses during the 2008 inquiry. The issues included the desirability of collective marketing, the security provided by the single desk arrangements, and the importance of 'industry good' functions such as market development and promotion and plant breeding.⁹ Submitters also raised concerns that individual growers would not be able to access market information, providing the integrated grain handling companies with a significant advantage over other exporters.

1.13 Having considered these and other issues, the committee recommended that the bills should proceed and be passed by the Senate. The committee also recommended that the bills should address a number of issues raised during the inquiry, including:

- the role and operation of the proposed WEA;
- exporters' access to bulk storage and infrastructure;
- legislative provision for review of the legislation; and
- provision of transitional education and counselling for existing producers.¹⁰

1.14 The bills that were subsequently introduced and passed by the Senate incorporated some of the matters raised by the committee. For example, they included a provision for review of the legislation.¹¹

Deregulation of the bulk wheat export market

1.15 The *Wheat Export Marketing Act 2008* (the Act) and the *Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008* were given Royal Assent by the Governor General on 30 June 2008. This marked the commencement of the deregulation of the bulk wheat export market in Australia.¹²

9 Senate Standing Rural and Regional Affairs and Transport Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, pp 5–11.

10 Senate Standing Rural and Regional Affairs and Transport Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, pp 57–58. Liberal party senators agreed with the report's recommendations but made additional comments whereas National Party senators and the Country Liberal Party senator for the Northern Territory dissented from the report's recommendations.

11 Senator the Hon Nick Sherry, Minister for Superannuation and Corporate Law, Second Reading Speech, *Wheat Export Marketing Bill 2008 and Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, *Senate Hansard*, 16 June 2011, pp 2130–5.

12 The Allen Consulting Group, *Competition in the export grain supply chain: access and information asymmetries*, Report to AWB Limited, March 2008, p. 19 and Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 44.

Accreditation

1.16 By abolishing the single desk, the Government enabled wheat growers to sell to accredited exporters of bulk wheat. The accreditation of exporters was made the responsibility of a new Commonwealth Government agency, WEA, which administers the Scheme. The export of bulk wheat without accreditation from WEA was prohibited by an associated amendment to the Customs (Prohibited Exports) Regulations 1958.

1.17 The Scheme established an export accreditation system for regulating bulk wheat exports from Australia, with exporters of bulk wheat required to be accredited under the Scheme in order to export. WEA can issue accreditation for up to three years. During this period the exporter may apply for a variation of conditions. A register is maintained on the WEA website listing the name and Australian Company Name (ACN) of each accredited exporter and their conditions of accreditation.¹³ As at 21 May 2012, there were 26 exporters accredited by WEA.¹⁴

1.18 The eligibility criteria considered by WEA in assessing an applicant under the Scheme include requirements that:

- the applicant is a company or co-operative and a trading corporation;
- WEA is satisfied the company is 'fit and proper' in relation to financial resources, risk management arrangements, business record, trust and candour, experience and ability of executive officers, compliance with applicable Australian and foreign laws, compliance with designated sanitary and phytosanitary measures, and compliance with applicable United Nations sanctions provisions; and
- the applicant is not under external administration.¹⁵

1.19 Where a port terminal service is provided by the applicant or associated entities, a port terminal access undertaking must have been accepted by the Australian Competition and Consumer Commission (ACCC) and the applicant must comply with continuous disclosure rules.¹⁶

Access undertakings

1.20 As discussed above, if an exporter, or an associated entity of an exporter, is the provider of one or more port terminal services, WEA must be satisfied that they pass the access test in order for the exporter to be eligible for accreditation. The test is set out in section 24 of the Act.

13 Wheat Exports Australia, *Report for Growers 2010/11*, p. 28.

14 Wheat Exports Australia, Register of Accredited Exporters, www.wea.gov.au/wheatexports/RegisterOfAccreditedWheatExporters.htm, accessed 21 May 2012.

15 Wheat Exports Australia, *Report for Growers 2010/11*, p. 28.

16 Wheat Exports Australia, *Report for Growers 2010/11*, p. 28.

1.21 In late September 2009, the ACCC accepted port terminal access undertakings from the following bulk handling companies (BHCs): CBH Group, AusBulk Ltd (now Viterra Ltd), and GrainCorp Operations Ltd (GrainCorp). Revised undertakings from these companies, together with an undertaking from Australian Bulk Alliance Pty Ltd were accepted in 2011.

The Productivity Commission's review of wheat export marketing arrangements

1.22 Under the Act, a review of the new arrangements was required to commence by 1 January 2010. Accordingly, on 29 September 2009, the Assistant Treasurer referred the matter to the Productivity Commission. The Commission was required to report before 1 July 2010. The report was presented to the minister on that date and was tabled in the Senate on 16 November 2010.¹⁷

1.23 The Commission's report identified a number of key points including:

- The transition to competition in the exporting of bulk wheat has progressed relatively smoothly, particularly given difficult international trading conditions—a pronounced commodity price cycle, the global financial crisis, and exchange rate appreciation.
- The regulatory arrangements for marketing bulk wheat exports have been beneficial during the transitional phase since deregulation. They have given growers confidence in adjusting to deregulation and facilitated the rapid entry of 28 accredited traders, with 12 million tonnes exported to 41 countries in the first year after deregulation.
- A range of marketing options have become available since deregulation. However, some growers prefer the previous single desk arrangements.
- The benefits of accreditation of traders will rapidly diminish in the post-transitional phase, leaving only the costs. The accreditation scheme, WEA and the WEC should be abolished on 30 September 2011.
- The port terminal access test has provided greater certainty for traders and made access easier, timelier and less costly than it could have been by relying on potential declaration under Part IIIA of the *Trade Practices Act 1974*.¹⁸
- There are still some transitional issues associated with port access and contestability in the logistics supply chain. The access test accordingly should remain a condition for port operators to export bulk wheat until 30 September 2014.

17 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp iv–v, www.pc.gov.au/projects/inquiry/wheatexport accessed 26 March 2012; and *Journals of the Senate*, No. 9, Tuesday 16 November 2010, p. 294.

18 The *Trade Practices Act 1974* has been replaced by the *Competition and Consumer Act 2010*.

- The benefits of the access test will diminish and could become costly in the long term without the checks and balances of Part IIIA of the *Trade Practices Act 1974*. From 1 October 2014, regulated access should rely on Part IIIA, with continuation of mandatory disclosure, supplemented by a voluntary code of conduct by all port terminal services operators.
- There is evidence that increasing on-farm storage, and competition between road and rail, are leading to improvements in supply chain efficiency. However, it is important that the regulatory arrangements enhance efficiency in the transport and storage market by facilitating contestability.
- The Commission supports the decision by the ACCC to review the exclusive dealing notification in relation to Grain Express in Western Australia.
- The level and allocation of investment in road and rail infrastructure by governments should be based on rigorous cost-benefit analysis, with a focus on developing economically and socially efficient logistics chains.
- Monthly information by state on stocks, exports and domestic uses facilitates an efficient wheat market. Industry should consider funding its continuation.
- The provision of most other 'industry good' functions is best left to the industry.¹⁹

1.24 The recommendations contained in the Productivity Commission's report can be found at Appendix 3.

Government response to the Productivity Commission's report

1.25 The Government responded to the Productivity Commission's recommendations on wheat export marketing arrangements on 23 September 2011. The Government agreed in principle with the Productivity Commission's recommendations to abolish the Scheme, WEA and the WEC on 30 September 2011, and remove the access test requirements for grain port terminal operations on 30 September 2014.²⁰

1.26 However, while expressing in principle support for these recommendations, the Government was of the view that 'the supply chain is not yet of a structure that

19 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 2. The Productivity Commission report and the government response can be found at www.pc.gov.au/projects/inquiry/wheatexport.

20 Australian Government, *Australian Government response to the Productivity Commission recommendations on wheat export marketing arrangements*, 23 September 2011, Minister for Agriculture, Fisheries and Forestry Senator the Hon. Joe Ludwig, p. 1, www.daff.gov.au/agriculture-food/crops/wheat/government-response-to-the-productivity-commission-recommendations-on-wheat-export-marketing-arrangements, accessed 8 March 2012.

provides for an efficient and effective model in a commercial environment'. The Government stated that:

... this is not surprising given that bulk wheat exports are coming from a highly regulated environment that had been in place for more than 60 years until the changes in 2008 that introduced new arrangements that the Commission subsequently reviewed.²¹

1.27 The Government outlined that it would take a three stage approach since:

... [it] will be a more effective transition to full market deregulation and will help ensure that the full advantages of the 2008 changes are realised.²²

1.28 The three stages outlined were:

- introduction of a 'lighter touch' accreditation scheme, operating under existing legislation from 1 October 2011 until 30 September 2012;
- the accreditation scheme, WEA and the WEC will be removed from 1 October 2012, the access test will be maintained until 30 September 2014 (a voluntary code of conduct which includes continuous disclosure rules for port terminal operators that export wheat will be developed and implemented by 30 September 2014); and
- from 1 October 2014, full market deregulation, access issues governed by general competition law and voluntary code of conduct in effect.²³

1.29 The Government explained that the rationale for this staged transition is that:

In the short term, accreditation and a linked access test provide comfort to growers and customers, while reducing the level of investigation and compliance activities to bring these arrangements more in line with those for other agricultural commodities.²⁴

1.30 The Government has stated that the removal of the accreditation scheme will increase competition within the wheat marketing industry and provide benefits to growers including:

21 Department of Agriculture, Fisheries and Forestry, *Frequently Asked Questions–Wheat Export Marketing Arrangements, Productivity Commission Report into Wheat Export Marketing Arrangements – the Government Response*, 30 September 2011, p. 2, www.daff.gov.au/_data/assets/pdf_file/0016/2021713/faqs.pdf, accessed 21 March 2012.

22 Australian Government, *Australian Government response to the Productivity Commission recommendations on wheat export marketing arrangements*, 23 September 2011, Minister for Agriculture, Fisheries and Forestry Senator the Hon. Joe Ludwig, p. 1.

23 Australian Government, *Australian Government response to the Productivity Commission recommendations on wheat export marketing arrangements*, 23 September 2011, Minister for Agriculture, Fisheries and Forestry Senator the Hon. Joe Ludwig, p. 1.

24 Australian Government, *Australian Government response to the Productivity Commission recommendations on wheat export marketing arrangements*, 23 September 2011, Minister for Agriculture, Fisheries and Forestry Senator the Hon. Joe Ludwig, p. 1.

- more buyers competing for wheat will help growers to get prices that reflect market forces;
- marketers will be forced to improve the services they provide to secure supplies of wheat and drive marketing innovation; and
- after 30 September 2012, growers will no longer pay the 22 cents per tonne wheat export charge on bulk and container exports that was used to fund the WEA.²⁵

Inquiry into grain export networks

1.31 The conduct of this inquiry into the Wheat Export Marketing Amendment Bill 2012 overlapped in part with an inquiry into operational issues in grain export networks conducted by the Senate Rural and Regional Affairs and Transport References Committee (the References Committee).²⁶ That inquiry was referred on 23 March 2011 and reported on 16 April 2012. The terms of reference of the inquiry were directly relevant to the current inquiry:

Operational issues arising in the export grain storage, transport, handling and shipping network, with particular reference to:

- any risks of natural, virtual or other monopolies discouraging or impeding competition in the export grain storage, transport, handling and shipping network, and any implications for open and fair access to essential grains infrastructure;
- the degree of transparency in storage and handling of grain and the appropriateness of any consequent marketing advantages;
- equitable access to the lowest cost route to market, including transport options;
- competition issues arising from the redelivery of grain;
- the absence of uniform receipt, testing and classification standards and practices and any implications for growers and/or for Australia's reputation as a quality supplier;
- equitable and efficient access to the shipping stem; and

25 Department of Agriculture, Fisheries and Forestry, *Frequently Asked Questions – Wheat Export Marketing Arrangements, Productivity Commission Report into Wheat Export Marketing Arrangements – the Government Response*, 30 September 2011, www.daff.gov.au/agriculture-food/crops/wheat/government-response-to-the-productivity-commission-recommendations-on-wheat-export-marketing-arrangements/frequently_asked_questions, accessed 28 March 2012, p. 4.

26 Senate Rural and Regional Affairs and Transport References Committee, *Operational issues in export grain networks*, April 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_ctte/grains_2011/index.htm, accessed 16 May 2012.

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- any other related matters.²⁷

1.32 The References Committee received 26 submissions and held four public hearings. During the course of the inquiry, there were a number of developments in the process of deregulating the bulk wheat export market. These developments included changes to the way the BHCs do business – for example, the new access undertakings of each BHC which were accepted by the ACCC in 2011. The Government also provided a response to the report by the Productivity Commission (discussed above) culminating in the introduction of a bill in the final days of the inquiry.

1.33 The report into grain export networks concluded that, among other things:

- there was an emerging trend towards increasing vertical integration of supply chains;
- the role of the WEA has provided a useful safeguard during deregulation;
- issues relating to access to wheat stocks information warranted further exploration; and
- quality assurance standards and an industry code of conduct should be further considered.²⁸

1.34 The References Committee made the following recommendations:

Recommendation 1

The committee recommends that, in recognition of the critical role that Wheat Exports Australia is playing in the deregulation of the Australian bulk wheat export market, a continuing and enhanced role for Wheat Exports Australia be further investigated in the inquiry into the Wheat Export Marketing Amendment Bill 2012. This role may include, but not be limited to:

- accreditation of exporters;
- quality assurance to protect Australia's reputation as a quality wheat exporter; and
- performing the role of industry Ombudsman.

27 Senate Rural and Regional Affairs and Transport References Committee, *Operational issues in export grain networks*, April 2012, p. 1, www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_ctte/grains_2011/index.htm, accessed 16 May 2012.

28 Senate Rural and Regional Affairs and Transport References Committee, *Operational issues in export grain networks*, April 2012, pp 97 –101, www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_ctte/grains_2011/index.htm, accessed 16 May 2012.

Recommendation 2

The committee recommends that a mechanism for making wheat stockpile information available in an equitable manner to all participants in the bulk wheat export industry be further considered in the inquiry into the Wheat Export Marketing Amendment Bill 2012.²⁹

1.35 The committee notes that, as at the date of drafting of this report, the Government has not provided a response to the above recommendations.

Structure of this report

1.36 The report is structured as follows:

- Chapter 2 provides an overview of the bill, including the main provisions and the bill's operational impact if it is passed;
- Chapter 3 provides an overview of the Australian wheat industry, including major trading partners and the wheat export supply chain;
- Chapter 4 discusses the key issues resulting from the bill's impact on the wheat industry, including the dissolution of WEA, a voluntary code of conduct, and industry concerns on access to timely wheat stocks information; and
- Chapter 5 outlines the committee's conclusions and recommendations.

Note on references

1.37 References to the committee *Hansard* are to the proof *Hansard*, and as such, page numbers may vary between the proof and the official (final) *Hansard* transcript.

29 Senate Rural and Regional Affairs and Transport References Committee, *Operational issues in export grain networks*, April 2012, p xi, www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=rrat_ctte/grains_2011/index.htm, accessed 16 May 2012.