

# Chapter 2

## Key provisions

### Overview of the bill

#### *Objective*

2.1 Deregulation of the bulk wheat export market commenced on 30 June 2008, when the *Wheat Export Marketing Act 2008* (the Act) and the *Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008* commenced. The domestic market for wheat had been deregulated in 1989 and the non-bulk export market was deregulated in 2007.<sup>1</sup>

2.2 The bill was developed to give effect to the Government's response to the Commission's 2010 inquiry into wheat export marketing arrangements. The primary objective of the bill is to implement the Commission's recommendations relating to the Act, and it is proposed that the industry will transition to a full deregulated bulk wheat export market in three stages.<sup>2</sup>

2.3 As noted by the Department of Agriculture, Fisheries and Forestry (the Department), the Government is:

... conscious of some industry concerns, as acknowledged by the Commission, that the supply chain is not yet of a structure that provides for an efficient and effective model in a commercial environment. 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 the new arrangements that the Commission subsequently reviewed.

The government therefore believes a three staged approach to implement the changes suggested by the Commission will provide a more efficient

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1 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.

2 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](http://www.daff.gov.au/agriculture-food/crops/wheat/government-response-to-the-productivity-commission-recommendations-on-wheat-export-marketing-arrangements), accessed 21 May 2012.

transition to full market deregulation and help ensure that the full advantages of the 2008 changes are realised.<sup>3</sup>

2.4 The first of three stages involved a 'lighter-touch' accreditation scheme that required less detailed reporting from companies and has operated since 1 October 2011. The bill implements the second and third stages to take effect through a phased approach commencing from 30 September 2012 to full deregulation on 1 October 2014.

2.5 The bill was introduced in the House of Representatives on 21 March 2012 by Mr Sid Sidebottom MP, Parliamentary Secretary for Agriculture, Fisheries and Forestry. In his second reading speech, Mr Sidebottom stated that the bill:

... reflects the government's commitment to promoting competition within the wheat export industry. Australian producers are the most innovative and efficient in the world. Passage of the bill will further develop a wheat-marketing system that rewards this and provides benefits to all industry sectors.<sup>4</sup>

2.6 The Explanatory Memorandum clarifies the purpose of the bill, stating that the wheat market will become fully deregulated from 1 October 2014, with all aspects of the industry subject to general competition law administered by the Australian Competition and Consumer Commission (ACCC), subject to the approval of a non-prescribed voluntary industry code of conduct.<sup>5</sup> The issue of an industry voluntary code of conduct is examined in Chapter 4 of this report.

2.7 The Explanatory Memorandum provides the following policy rationale for full deregulation of the wheat market:

This Bill will bring the bulk wheat export market into line with other agricultural commodity markets and promote further competition in the wheat industry leading to increased productivity and profitability. It will mean that more buyers will be competing for wheat, helping growers to get prices that reflect market value. The Bill is expected to drive further marketing innovation and improve the services that marketers provide to secure supplies of wheat. It is expected that the industry will also benefit

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3 Department of Agriculture, Fisheries and Forestry, *Productivity Commission Report into Wheat Export Marketing Arrangements – the Government Response – Frequently Asked Questions*, 30 September 2011, p. 2, [www.daff.gov.au/data/assets/pdf\\_file/0016/2021713/faqs.pdf](http://www.daff.gov.au/data/assets/pdf_file/0016/2021713/faqs.pdf), accessed 22 May 2012.

4 Mr Sid Sidebottom MP, Parliamentary Secretary for Agriculture, Fisheries and Forestry, Second Reading Speech, Wheat Export Marketing Amendment Bill 2012, House of Representatives *Hansard*, 21 March 2012, pp 3697–3698, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?query=Id%3A%22chamber%2Fhansard%2Fcd08e91c-1ffc-4955-a61a-1a9087358780%2F0040%22>, accessed 21 May 2012.

5 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 2.

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from the removal of the costs associated with bulk wheat export market regulation.<sup>6</sup>

### ***Effect of the bill***

2.8 It is proposed that the bill will achieve five major outcomes, each to come into effect over the period 30 September 2012 to 1 October 2014. The proposed new legislation will:

- abolish the Wheat Export Accreditation Scheme (the Scheme) on 30 September 2012;
- abolish the Wheat Export Charge (the WEC) on 30 September 2012;
- wind-up Wheat Exports Australia (WEA) on 31 December 2012;
- impose modified access test requirements for grain port terminal operators between 1 October 2012 and 30 September 2014; and
- repeal the Act, including repeal of the modified access test requirements, on 1 October 2014 (on the condition that a non-prescribed industry voluntary code of conduct covering grain export port terminal operations has been approved by the Minister before that date).

2.9 The bill also provides for consequential amendments to the *Criminal Code Act 1995*, including abolishing offences committable by providing false or misleading offences in relation to an application for accreditation under the Scheme.<sup>7</sup>

2.10 Transitional provisions are also specified in the bill to allow for the transfer of assets, liabilities and records from a dissolved WEA to the Commonwealth.<sup>8</sup>

### ***Commencement***

2.11 The bill has been structured so that it commences upon Royal Assent with the exception of three schedules. These schedules will commence in line with a phased approach to achieving the five outcomes as follows:

- Schedule 1 relates to the abolition of the Scheme and the imposition of a requirement to pass the access test, commencing on 1 October 2012;
- Schedule 2 relates to the abolition of WEA, commencing 1 January 2013; and
- Schedule 3 relates to the repeal of the Act, which includes abolition of access test requirements, commencing on 1 October 2014 (subject to the Minister's approval of the voluntary code of conduct).

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6 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 2.

7 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 16.

8 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, pp 19–22.

2.12 While abolition of the WEC on 30 September 2012 has not been specified in the bill, it is intended that cessation of the WEC will be addressed through repeal of the relevant regulations.<sup>9</sup>

2.13 The committee appreciates that passage of the bill in the Winter 2012 sittings would allow industry time to adjust to the changed operating environment for the 2012-13 wheat marketing year, which begins on 1 October 2012.<sup>10</sup>

## **Provisions of the bill**

### ***Abolition of the Wheat Exports Accreditation Scheme***

2.14 Schedule 1 of the bill will abolish the Scheme and replace it with access test requirements for port terminal service operators which also undertake wheat export activity. The provisions in Schedule 1 commence on 1 October 2012.

2.15 By way of background, Part 2 of the Act gives WEA the power, through legislative instrument, to establish the Scheme and sets parameters for eligibility – conditions such as lodgement of annual reports, cancellation of accreditation, the duration of accreditation, compliance and other administrative issues.<sup>11</sup>

2.16 Subsection 7(1) provides that a person must not export wheat if that person has not received accreditation. Companies are also covered under subsection 8(1) of the Act.

2.17 Subsection 7(4) of the Act further provides that:

(4) A person must not:

- (a) aid, abet, counsel or procure a contravention of subsection (1); or
- (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
- (d) conspire with others to effect a contravention of subsection (1).

2.18 Contravention of subsections 7(1) and 7(4) attract a pecuniary penalty.<sup>12</sup> If a resulting civil penalty order is made by the Federal Court against the contravening person, WEA may exercise its power to cancel accreditation of that person.<sup>13</sup>

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9 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 18.

10 Department of Agriculture, Fisheries and Forestry, *Productivity Commission Report into Wheat Export Marketing Arrangements – the Government Response – Frequently Asked Questions*, 30 September 2011, p. 3, [www.daff.gov.au/\\_data/assets/pdf\\_file/0016/2021713/faqs.pdf](http://www.daff.gov.au/_data/assets/pdf_file/0016/2021713/faqs.pdf), accessed 22 May 2012.

11 *Wheat Export Marketing Act 2008*, subsection 8(2).

12 *Wheat Export Marketing Act 2008*, subsection 7(5) and Part 8.

- 2.19 In addition, WEA must cancel accreditation of a company if:
- the company is not registered under Part 2A.2 of the *Corporations Act 2001* (which concerns the processes for registration of a company with the Australian Securities and Investments Commission, including addressing issues such as directorships and jurisdiction);
  - if the company is not a trading corporation to which paragraph 51(xx) of the Constitution applies;
  - if WEA is satisfied that the company is not a fit and proper company on specified grounds, such as a company's financial resources and risk management arrangements;
  - if the company, being a provider of one or more port terminal services, fails the access test in relation to those services; or
  - if the Scheme specifies other grounds for mandatory cancellation.<sup>14</sup>
- 2.20 There are two exceptions to wheat exports without accreditation:
- exports of wheat by an individual producer who has produced the wheat to be exported; and
  - exports of wheat in a bag or a container capable of holding no more than 50 tonnes of wheat.<sup>15</sup>
- 2.21 Besides the above exceptions, the effect of the Act is to establish a regulatory regime where exporters are required to apply for, and be granted, accreditation from WEA as a necessary requirement for the bulk export wheat from Australia.
- 2.22 Schedule 1 of the bill repeals:
- a number of definitions in the Act relating to the Scheme;
  - the statutory definition of when a person will be in contravention of the Act; and
  - Part 2 of the Act, with the effect of abolishing the Scheme on 30 September 2012, and substituting provisions which will retain an amended access test arrangement for port terminal service providers.<sup>16</sup>
- 2.23 Schedule 1 also inserts provisions in a new Part 2 of the Act. Broadly, these provisions:
- set out the criteria for a person to pass the access test;

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13 *Wheat Export Marketing Act 2008*, subsection 20(2).

14 *Wheat Export Marketing Act 2008*, section 19.

15 *Wheat Export Marketing Act 2008*, subsections 7(1A) and 7(2).

16 Explanatory Memorandum, *Wheat Export Marketing Amendment Bill 2012*, p. 6.

- impose a requirement on certain port terminal facility owners or controllers to pass the access test;
- transfer certain responsibilities and information gathering powers from WEA to the Department; and
- abolish the access test on 30 September 2014 (subject to the Minister approving a code of conduct covering grain export port terminal operators).<sup>17</sup>

*Requirement to pass the access test*

2.24 The requirement to pass the access test applies to a provider of a port terminal service if:

- the provider of that service also exports wheat using the port terminal service; or
- the provider of that service is an associated entity of a person who exports wheat using the port terminal service.<sup>18</sup>

2.25 The Explanatory Memorandum states that the requirement to pass the access test is intended to:

... ensure that owners, operators or controllers of port terminal facilities that also export bulk wheat, or have associated entities that do, provide fair and transparent access to their facilities to other exporters. The access test aims to avoid regional monopolies unfairly controlling infrastructure necessary to export wheat in bulk quantities, to the detriment of other bulk wheat exporters. All bulk wheat exporters should have access to these facilities while allowing the operators of the facility to function in a commercial environment.<sup>19</sup>

2.26 Notably, requirements to pass the access test do not apply to wheat exports in bags or containers of not more than 50 tonnes of wheat.<sup>20</sup> Additionally, the Secretary of the Department is also given the discretion to, in writing, determine that the requirement does not apply in relation to a specific provider and to a specified period if there are special circumstances justifying exercise of the discretion.<sup>21</sup>

2.27 Proposed section 9 of the Act would provide provides two methods for passing the access test. As described in the Explanatory Memorandum, the first method requires that:

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17 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, pp 6–15.

18 Wheat Export Marketing Amendment Bill 2012, Schedule 1, Part 2, proposed subsection 7(1).

19 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 6.

20 Wheat Export Marketing Amendment Bill 2012, Schedule 1, Part 2, proposed subsection 7(2).

21 Wheat Export Marketing Amendment Bill 2012, Schedule 1, Part 2, proposed subsection 7(4).

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... a person must have a formal access undertaking, accepted by the ACCC under Division 6, Part IIIA of the *Competition and Consumer Act 2010* which relates to access to the port terminal services for the export of wheat. The person must also comply with the continuous disclosure rules. ... The access test is passed once the ACCC approves an undertaking. This has been done to eliminate the possibility of a third party delaying a port terminal service provider from passing the access test through vexatious use of the legal process.<sup>22</sup>

2.28 A formal access undertaking is a document, lodged with the ACCC, which sets out the terms and conditions that a port terminal service provider is willing to offer or negotiate, with an access seeker, to services provided by an essential facility. As such, an undertaking may include issues such as conditions of access to the service, procedural issues, and obligations on the access seeker and the provider. The purpose of the undertaking is to give owners or operators of facilities the opportunity to remove uncertainty surrounding what conditions are applicable to the service by securing agreement, in advance, on certain access arrangements.<sup>23</sup>

2.29 In relation to the second method, the Explanatory Memorandum notes that:

The access test may also be satisfied...if a state or territory access regime in relation to port access has been declared to be effective under the *Competition and Consumer Act 2010*. However, the Department of Agriculture, Fisheries and Forestry must be satisfied that the regime declared to be effective covers the full port terminal facility. The provider must also comply with the continuous disclosure rules...<sup>24</sup>

2.30 The continuous disclosure rules in relation to port terminal service providers are set out in proposed subsection 9(4) and include disclosures such as:

- making available on a person's website a current statement setting out the person's policies and procedures for managing demand for the port terminal service;
- making available on a person's website a current statement setting out the name of each ship scheduled to load grain using the port terminal service;
- including in each loading statement disclosure of a range of details, including the time when a ship is nominated to load grain, the estimated time when a ship will arrive at the port terminal service, and the name of the exporter of the grain;
- updating the loading statement each business day; and

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22 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, pp 8–9.

23 Australian Competition and Consumer Commission, *Access Undertakings*, undated, [www.accc.gov.au/content/index.phtml/itemId/827944](http://www.accc.gov.au/content/index.phtml/itemId/827944), accessed 22 May 2012.

24 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 9.

- providing the ACCC a copy of the most recently updated loading statement.

2.31 To enforce compliance with the continuous disclosure rules, and therefore overall compliance with access test requirements, the bill gives the ACCC power to obtain information and documents to monitor a person's compliance with continuous disclosure rules.<sup>25</sup>

2.32 As a result of repealing the Scheme and inserting new access requirements, WEA ceases to have oversight of wheat exporters and this responsibility transfers to the ACCC.

2.33 In addition to the ACCC's oversight, the bill also gives the Department a role in monitoring compliance with the access test. The bill gives the Secretary of the Department the power to, through written notice, request information from a person that is relevant for determining whether a person is required to pass the access test, or has passed the access test at a particular time.<sup>26</sup>

2.34 The committee notes that the ACCC and the Department will have important roles to play during the transitional period between 1 October 2012 and 30 September 2014 to ensure that an appropriate level of competition in the wheat industry is not assuaged by repeal of the Scheme.

2.35 Notably, the new access test requirements apply from 1 October 2012 to 30 September 2014, and will be repealed when the Act as a whole is repealed on 1 October 2014, subject to the Minister approving the voluntary code of conduct. Further details on repeal of the Act are set out in paragraphs 2.49 to 2.51 below.

### ***Abolition of Wheat Exports Australia***

2.36 Schedule 2 of the bill concerns abolition of WEA, commencing on 1 January 2013. The bill repeals the functions, powers and operation of WEA, and transfers assets, liabilities and other responsibilities to the Commonwealth upon WEA's dissolution.

2.37 Part 5 of the Act establishes WEA and sets parameters in relation to, among other things, its constitution, the appointment of its members, remuneration entitlements, engagement of staff, and WEA's reporting obligations. Part 4 of the Act gives WEA authority to conduct investigations, as directed by the Minister, on suspected contraventions of the Scheme and to provide written reports of that investigation.

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25 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 13, see also new Division 2 in Part 3 of Schedule 1.

26 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 12. See also Division 1 in Part 3 of Schedule 1.



2.38 With one exception relating to the Wheat Exports Australia Special Account (Special Account) which is discussed below, Schedule 2 repeals both Parts 4 and 5 of the Act.

2.39 Schedule 2 also makes a number of transitional arrangements, including:

- vesting the assets of WEA in the Commonwealth;
- vesting the liabilities of WEA in the Commonwealth;
- transferring the acts of WEA to be acts of the Commonwealth;
- substituting the Commonwealth as a party to court or tribunal proceedings where WEA was a party;
- transferring records or documents in WEA's possession to the Commonwealth;
- transferring Ombudsman investigations into actions taken by WEA to the Commonwealth;
- acquisition of property by the Commonwealth on just terms if required by the operation of Part 2 of Schedule 2.<sup>27</sup>

2.40 Notably, if information was provided to WEA confidentially prior to the commencement of Schedule 2, Item 35 provides that confidentiality continues to apply to that information as if it secrecy provisions in the Act were not repealed.<sup>28</sup>

2.41 The committee welcomes these transitional provisions and is of the view that these provisions will provide a smooth exit for WEA and assignment of responsibilities to the Commonwealth.

2.42 While the Scheme will cease on 30 September 2012, WEA will continue its operations until 31 December 2012, in order to complete remaining tasks such as preparing its final Annual Report and the Report for Growers.<sup>29</sup>

### ***Abolition of the Wheat Exports Charge***

2.43 Sections 58 to 60 of the Act establish the Special Account. The purpose of the Special Account is to discharge the costs and expenses incurred for the operation of WEA, including payment of remuneration and other allowances to WEA staff. The Special Account is credited via various means, including through the WEC charge and amounts received by the Commonwealth.

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27 Wheat Export Marketing Amendment Bill 2012, Schedule 2, Items 24, 25, 30, 31, 32, 33 and 37 and Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, pp 17– 21.

28 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 21.

29 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 5.

2.44 Section 5 of the Act provides a definition, and authority, for amounts charged under the WEC as follows:

*wheat export charge amounts* means:

- (a) amounts of charge imposed by Part 5 of Schedule 14 to the *Primary Industries (Customs) Charges Regulations 2000*; and
- (b) amounts payable under section 15 of the *Primary Industries Levies and Charges Collection Act 1991* in relation to that charge.

2.45 The current WEC of \$0.22 per tonne of wheat is payable to the Department by all exporters of Australian wheat. The compulsory charge must be paid within 28 days after the end of the month in which the wheat was exported.<sup>30</sup>

2.46 The cessation of the WEC is a natural consequence of winding up WEA. While the bill has not included provisions relating to the repeal or amendment of the WEC, the Explanatory Memorandum notes that:

The Wheat Export Charge which primarily funded the operations of WEA will be abolished on 30 September 2012 through amending or repealing Part 5 of Schedule 14 of the *Primary Industries (Customs) Charges Regulations 2000* and Part 2 of Schedule 24 of the *Primary Industries Levies and Charges Collection Regulations 1991*.<sup>31</sup>

2.47 Schedule 2 of the bill inserts amending provisions in relation to the Special Account. Under the new provisions, the Special Account will be renamed the Wheat Industry Special Account with the purpose of funding, with the Minister's approval, being a measure or program to assist the wheat export industry, or a sector of that industry.<sup>32</sup>

2.48 The committee notes that the Primary Industries (Customs) Charges Amendment Regulation 2012 (No. 1) was made on 10 May 2012, giving effect to the Government's intention to cease the WEC. The amendment commences on 18 May 2012 and provides that the amended charge per tonne of wheat is nil.<sup>33</sup>

2.49 The committee further notes that, as at the date of publication of this report, the Government has not introduced an amendment to the *Primary Industries Levies and Charges Collection Regulations 1991* to effect repeal of the WEC.

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30 Wheat Exports Australia, *Wheat Export Charge*, undated, [www.wea.gov.au/wheatexports/WheatExportCharge.htm](http://www.wea.gov.au/wheatexports/WheatExportCharge.htm), accessed 23 May 2012.

31 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 18.

32 Wheat Export Marketing Amendment Bill 2012, Schedule 2, Item 15.

33 *Primary Industries (Customs) Charges Amendment Regulation 2012 (No. 1)*, clause 1 and Schedule 1.

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## **Repeal of the Act**

2.50 Schedule 3 of the bill repeals the entire Act, including access test compliance requirements, commencing on 1 October 2014. As a condition of the repeal taking effect, the Minister is required to have published, before 1 October 2014, a notice in the *Gazette* that the Minister gives his or her approval for a code of conduct covering grain export terminal operations in accordance with specified criteria.<sup>34</sup>

2.51 Schedule 2 also provides that a Minister has the discretion to approve a code of conduct. However, in the exercise of that discretion, the Minister must not approve a code of conduct unless the Minister is satisfied that:

... the code of conduct:

- (a) deals with the fair and transparent provision to wheat exporters of access to port terminal services by the providers of port terminal services; and
- (b) requires providers of port terminal services to comply with continuous disclosure rules; and
- (c) is consistent with the operation of an efficient and profitable wheat export marketing industry that supports the competitiveness of all sectors through the supply chain; and
- (d) is consistent with any guidelines made by the ACCC relating to voluntary industry codes of conduct.<sup>35</sup>

2.52 Consequently, repeal of the Act and the resulting deregulation of the wheat industry will only eventuate if a voluntary code of conduct has been agreed to by industry participants, and approved by the Minister. Witnesses at the committee hearing on 14 May 2012 noted that negotiations on a voluntary code of conduct were currently underway across industry, but that a range of issues had yet to be resolved.<sup>36</sup> Chapter 3 of this report examines issues on the voluntary code of conduct in greater detail.

## **Legislative and administrative compliance**

2.53 The Explanatory Memorandum states that implementation of the bill is not expected to have significant resource implications from a budgetary perspective.

2.54 In addition, the committee notes that the bill has complied with the requirement that the introduction of the bill be accompanied by a statement of

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34 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 22.

35 Wheat Export Marketing Amendment Bill 2012, Schedule 1, proposed subsection 12(2).

36 See for example Mr Angus Trigg, Director, Government and Media Relations, GrainCorp, *Committee Hansard*, 14 May 2012, p. 16; Mr Richard Codling, General Counsel, CBH Group, *Committee Hansard*, 14 May 2012, pp 18–19; Ms Fiona Simson, President, NSW Farmers' Association, *Committee Hansard*, 14 May 2012, p. 26.

compatibility with human rights.<sup>37</sup> The statement of compatibility has been incorporated in the explanatory memorandum and concludes that the bill is compatible with human rights, noting that the introduction of civil penalties and a power to obtain information is justified for necessary enforcement of the intended effect of the bill.<sup>38</sup>

2.55 The Explanatory Memorandum further states that the Regulation Impact Statement for the Government response to the Productivity Commission's review was approved by the Office of Best Practice Regulation on 15 August 2011.

2.56 The committee notes that the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) has made several comments in relation to the bill, including:

- delayed commencement of different schedules of the bill;
- broad delegation of powers to the Secretary of the Department concerning the access test;
- reversal of the onus of proof where a person is required to show, as an exception to the offence of exporting wheat without accreditation, that wheat is exported in a bag or container of not more than 50 tonnes; and
- delegation of legislative power to modify the operation of primary legislation in order to deal with transitional matters.<sup>39</sup>

2.57 The Scrutiny of Bills Committee has written to the Minister seeking further explanation on some of the above issues. As at the date of drafting this report, a reply from the Minister is yet to be published.

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37 *Human Rights (Parliamentary Scrutiny) Act 2011*, section 8.

38 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, pp 3–4.

39 Senate Standing Committee for the Scrutiny of Bills, Alert Digest No. 5 of 2012, 9 May 2012, pp 37–39, [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=scrutiny/alerts/2012/d05.pdf](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=scrutiny/alerts/2012/d05.pdf), accessed 4 June 2012.