

Joint Dissenting Report by Senators for the Coalition and the Australian Greens

Key issues

1.1 In this joint dissenting report, Senators for the Coalition and the Australian Greens (Dissenting Senators) express their objection, in the strongest possible terms, to the recommendations in the majority report. The recommendations made in the majority report fail to adequately consider and address the valid concerns raised by grower groups and acknowledged as significant by a wide range of other industry stakeholders.

1.2 Dissenting Senators wish to draw attention to the fact that, since the removal of the single desk system under the Australian Wheat Board, transition to a more deregulated market has been ably assisted through the support of Wheat Exports Australia (WEA) and its accreditation system for suitable exporters. The Wheat Export Marketing Amendment Bill 2012 (the bill) proposes to unravel, if not reverse, the important gains achieved for the Australian wheat industry under WEA's supervision and guidance.

1.3 Dissenting Senators are acutely aware, through evidence before the committee as well as extensive direct consultation with grower groups and other stakeholders, that a number of significant issues remain to be addressed before further deregulation of the wheat export market should proceed.

1.4 The key issues requiring the immediate consideration and focussed attention of all industry stakeholders include:

- fair and equal access to wheat stocks information for all industry participants;
- management of the wheat export supply chain and port capacity information;
- port access issues including regional monopolisation of port terminals by bulk-handling companies (BHCs);
- the effectiveness of a voluntary code of conduct to manage supply chain issues (noting that the agricultural sector does not have a precedent for management of such issues through a voluntary code);
- the reputation and integrity of Australian grain exports as a whole, including the need to regulate containerised wheat exports; and
- the record and success of WEA accreditation system, and the consequences of complete dissolution of WEA.

1.5 Until these issues are addressed, it would be imprudent for the government to proceed with full deregulation of the wheat export market. The risks of further

structural adjustment caused by full deregulation at this point threaten to erode any gains achieved to date in competitive pricing and value for growers. The following sections of this report discuss four primary areas of concern.

Premature full deregulation

1.6 It was keenly observed throughout the committee's inquiry that grower groups hold grave concerns over the future uncertainty of the premature full deregulation of the wheat market. These concerns were widely expressed in grower group submissions. For example, the Victorian Farmers Federation Grains Group submitted:

... the current Bill being considered by Government not only fails to address the existing flaws and inefficiencies in the industry, but actually exacerbates them and may also have unintended consequences ... [i]t will further erode market confidence; result in continued complaint from the grower sector; erode Australia's international export reputation; [it] fails to address the need for public/industry good services; and exacerbates market concerns around lack of transparency, port access, and competition.¹

1.7 These concerns can be largely attributed to the fact that deregulatory changes to the wheat industry are only three years old, and that there is a continuing need for national oversight of the wheat export market. It was noted in evidence that, by way of comparison, other more mature industries in Australia, such as the banking and financial industries, are subject to oversight by national regulatory bodies.²

1.8 The committee further noted that growers in Western Australia were represented throughout this inquiry by both the Pastoralists and Graziers Association of WA (Inc) as well as CBH Group – a BHC with ownership of port and transport infrastructure and significant marketing assets – which is still owned by grain producers. Dissenting Senators note that while CBH Group supports the bill, the option to corporatise CBH Group has been discussed recently and remains an option to the members of CBH Group.

1.9 Dissenting Senators agree with the evidence provided to the committee that it is too early to consider further deregulation. A range of issues have surfaced since deregulation commenced in 2008 and it is vital that these issues be settled before the industry is required to adjust to further legislative changes.

1.10 It should be noted that the function and operations of WEA, through a challenging deregulatory period to date, is generally supported by industry stakeholders. Moreover, the cost of sustaining WEA through the Wheat Exports Charge (WEC), currently being \$0.22 per tonne of exported wheat, was not criticised by industry stakeholders as being expensive. Rather, one submission called for raising

1 Victorian Farmers Federation Grains Group, *Submission 9*, p. 4. See also South Australian Farmers Federation, *Submission 5*, p. 1; Grain Producers Australia, *Submission 6*, p. 15.

2 AgForce Queensland Industrial Union of Employers, *Submission 2*, p. 1. See also Grain Producers Australia, *Submission 6*, p. 2; Grain Producers SA, *Submission 17*, p. 1.

the WEC to \$0.30 per tonne, suggesting that it was a 'small price to pay, as the charge is less than 1% of the pipeline margin of \$35 per tonne...'³ Dissenting Senators assert that, if industry – in particular, grower groups – are willing to fund the continual operation of WEA, then it seems perverse for the government to decide that WEA should cease to exist.

1.11 In fact, it would seem unwise and short-sighted to have invested the physical, intellectual and network capital of the wheat industry in WEA, only to have it dissolved despite its effectiveness. The WEA's role should continue, and be modified, to ensure that the wheat industry is adequately supported.

1.12 Dissenting Senators further note that the majority report refers to Single Vision Grains Australia (SVGA) – a prior government-sponsored initiative to support increased information flow and efficiency throughout the wheat export supply chain – as being unsuccessful because of lack of industry cooperation. It is known that, historically, participants in the industry have encountered difficulties in driving such initiatives amongst themselves and there has been no new evidence presented to suggest that a voluntary code of conduct would succeed where SVGA failed. Rather than being a reason to dissolve the WEA, the SVGA highlights the need for intervention through a statutory body to resolve the issues within the industry and continue to support the maturation of this market.

Voluntary code of conduct

1.13 Dissenting Senators are not confident or convinced that industry issues can be resolved through a voluntary code of conduct. While it is acknowledged that measures are currently being taken through the Grain Trade Australia Code Development Committee (GTA Code Development Committee) to establish a voluntary code of conduct for port access, it remains uncertain whether consideration will extend to access to wheat stocks information and other issues. Dissenting Senators note the membership of the GTA Code Development Committee is heavily weighted in favour of exporters and port owners by virtue of the composition of membership – two nominations for grain producers and seven nominations for exporters, marketers and port owners.⁴

1.14 It should be noted that the committee received evidence from witnesses which was less than reassuring in relation to the future operation of a voluntary code of conduct and whether the Australian Competition and Consumer Commission (ACCC) would play an effective role. Mr Andrew Weidemann, President of the Victorian Farmers Federation Grains Group commented that:

3 Grain Producers SA, *Submission 17*, p. 2.

4 Grain Trade Australia, *Terms of Reference for the Code Development Committee relating to the Port Access Voluntary Code of Conduct for Australian Bulk Wheat Shipments*, <http://www.graintrade.org.au/sites/default/files/file/Port%20Access%20Code%20of%20Conduct/Terms%20of%20Reference%20-%20March%202012.pdf>, p. 1, accessed 21 June 2012.

... expertise is essentially something that would be required, and we do not see that as being fundamentally in the ACCC at the moment. One of the other things that became very obvious in the meeting the other day in regard to port access is the clarity around exactly what will happen post-2014, because it would seem that, at the moment, if a voluntary code—and I stress 'a voluntary code'—is established, what is the caveat post-2014, for that bulk handler to remain a part of that? That seems to be quite unclear at the moment as well.⁵

1.15 While ministerial approval of the voluntary code was referred to as a 'safeguard' in the majority's report, scant regard seems to have been paid to the consequences of non-compliance with the 'voluntary' code. From the ACCC's own evidence, referred to in the majority report, it was acknowledged that the ACCC is highly unlikely to be a party to the voluntary code as a dispute resolution body, let alone having regulatory and enforcement responsibilities in relation to the code.⁶

1.16 Dissenting Senators believe that the best and most secure safeguard is to not impose further deregulatory changes and uncertain accountability mechanisms on industry. Instead, the industry should be allowed further time to resolve issues through the existing and proven mechanisms, including continued oversight by WEA.

1.17 If any code of conduct is to be developed, Dissenting Senators are of the view that, in line with the committee's view in the *Operational issues in export grain networks report*, the code should be mandatory.⁷

Access to information

1.18 There are real industry concerns that the dominant market positions occupied by BHCs have allowed the trading arms of those BHCs to appear to have preferential use of wheat stocks information that is not otherwise accessible by other traders or grain growers. After deregulation of the wheat market, there would be little to prevent BHCs using this information in an anti-competitive manner to the commercial detriment of other exporters and grain growers.⁸

5 Mr Andrew Weidemann, Grains Group President, Victorian Farmer's Federation, *Committee Hansard*, 14 May 2012, p. 27. See also Mr Graeme Foote, McCauley Dalton and Company, *Submission 1*, p. 2; Mr Dougal Hunter, Manager, Agricultural Derivatives, Australia Securities Exchange Limited, *Committee Hansard*, 14 May 2012, p. 22.

6 Mr Mark Pearson, Deputy Chief Executive Officer, Regulation, Australian Competition and Consumer Commission, *Committee Hansard*, 14 May 2012, p. 51.

7 Senate Rural and Regional Affairs and Transport References Committee, *Operational issues in export grain networks*, April 2012, p. 101.

8 For example, Australian Grain Exporters Association, *Submission 3*, p. 3; NSW Farmers' Association, *Submission 11*, pp 7–9; Australian Securities Exchange Limited, *Submission 16*, p 9; Mr Dougal Hunter, Manager, Agricultural Derivatives, Australia Securities Exchange Limited, *Committee Hansard*, 14 May 2012, p. 22.

1.19 Through direct consultation with grower groups, Dissenting Senators have been informed that some grower groups advocate for delaying the commencement of the provisions in the bill by up to two years, to enable development of an appropriate framework to ensure a competitive wheat export market for growers and other market participants.⁹ Similarly, other growers have emphasised the importance of ensuring that the wheat industry is not left to operate without a statutory body to enforce a minimum standard of behaviour and have indicated a strong preference to retain WEA until such time as it can be reformed or replaced with another oversight body.¹⁰

1.20 Dissenting Senators are of the view that open, transparent and timely disclosure of information is essential for the wheat market to function effectively. This view was shared by the Australian Securities Exchange Limited.¹¹

1.21 Dissenting Senators reject the assumption that access to wheat stocks information and port capacity information will be fairly and equally made available to all participants in the supply chain without national oversight and enforceable consequences for non-compliance.

International reputation of Australian wheat

1.22 The committee received wide-ranging evidence that the international reputation of Australian wheat, in terms of its quality and consistency, is being eroded without a national oversight body and would be further eroded by the removal of WEA as demonstrated by the experience with containerised wheat exports which are completely deregulated. Evidence presented to the committee also referred to the role of national oversight bodies in competitor countries such as the United States and Canada.¹²

1.23 During the hearing, a range of evidence opposed the dissolution of WEA given its capacity and expertise to regulate the quality of Australian wheat. The competitive forces in world wheat markets would effectively leave Australia behind if prospective buyers are not convinced that the quality of Australian wheat is assured to recognised international benchmarks. For example, one submission stated that:

Australia's major competitors have co-operation amongst trade and government to ensure that quality standards are maintained ensuring consistency of grade is a paramount requirement. The U.S via the Federal Grain Inspection Service (FGIS) and U.S Wheat Associates have embraced the "world" standard that was so rigorously practiced by AWB – AWB may

9 For example, NSW Farmers' Association, *Supplementary Submission 11a*, p. 1.

10 For example, Grain Producers Australia, *Submission 6*, p. 14; Victorian Farmers Federation Grains Group, *Submission 9*, p. 4; NSW Farmers' Association, *Submission 11*, p. 12.

11 Australian Securities Exchange Limited, *Submission 16*, p 9.

12 For example, Mr Peter Woods, Chief Executive Officer, Wheat Exports Australia, *Committee Hansard*, 14 May 2012, p. 3; Victorian Farmers Federation Grains Group, *Submission 9*, p. 3; NSW Farmers' Association, *Submission 11*, pp 7–9.

be gone but its adherence to quality and world's best practice will not long be forgotten.¹³

1.24 It was further noted by the committee that some growers expressed concerns that end user dissatisfaction with milling properties and other quality problems may incur a market response in the form of price discounting, and that this would negatively impact the reputation of Australia's wheat export market as well as reducing returns to individual growers. For instance, Grain Producers Australia noted in its submission that:

... there is anecdotal evidence that the varietal classification system that is used to describe the milling functionality of Australian wheat is also being undermined with cross grade blending becoming prevalent...[a]s a result, cargos may comply on specification but fail to meet the functional requirements of the end user.¹⁴

1.25 Dissenting Senators believe that the reputation of Australia's export dependent wheat market is paramount, and the views of grower groups must not be overlooked. Wheat ranks consistently in the top ten yearly Australian exports by value, and to lose the confidence of international buyers of Australian wheat would be disastrous for grain growers, the wider wheat export supply chain and the national economy as a whole.

Conclusion

1.26 Dissenting Senators reject the conclusions of the majority report and are strongly of the view that it is imperative for the outstanding issues outlined in this dissenting report to be resolved before additional instability, through dissolution of WEA and further deregulation of the wheat export market, is forced on the Australian wheat industry. Rather, industry participants must be given more opportunity to satisfactorily address these issues, so that the market is at a mature and proper stage before it is required to assimilate further deregulation.

1.27 Dissenting Senators note the strong support of grain growers and their representative bodies for the issues raised in this dissenting report, and their support for amendments to the bill as contained in the following recommendations.

13 Mr Graeme Foote, McCauley Dalton and Company, *Submission 1*, p. 2. See also Grain Producers Australia, *Submission 6*, pp 13–14.

14 Grain Producers Australia, *Submission 6*, p. 14.

Recommendation 1

1.28 Dissenting Senators recommend that the code of conduct, agreed to by industry participants, be mandatory and prescribed.

Recommendation 2

1.29 Dissenting Senators recommend that the bill be amended to allow for the continued funding and existence of Wheat Exports Australia in order to:

- (a) provide national oversight for the wheat industry;**
- (b) provide national oversight for all wheat exported from Australia;**
- (c) ensure grain quality standards for wheat certifying its quality as accurately as practical, including, but not limited to:**
 - (i) defining uniform and accepted descriptive terms to facilitate trade;**
 - (ii) offering users of such standards the best possible information from which to determine end-product yield and quality;**
 - (iii) providing the framework necessary for markets to establish grain quality improvement incentives;**
 - (iv) reflecting the economic value-based characteristics in the end uses of grain;**
 - (v) accommodating scientific advances in testing and new knowledge concerning factors related to, or highly correlated with, the end use performance of grain;**
- (d) have oversight of shipping slot allocations and auctions;**
- (e) have audit powers over major industry stakeholders;**
- (f) publish timely and accurate grain stocks information; and**
- (g) provide domestic and international advocacy for the Australian wheat industry, including:**
 - (i) facilitating the creation and handover of these responsibilities and funding arrangements to a suitably constituted, representative industry body.**

Recommendation 3

1.30 Dissenting Senators recommend that Recommendations 1 and 2 should be implemented as soon as practicable with agreement from industry, but no later than 30 September 2014. If these recommendations are not agreed to and implemented, then the bill should be opposed.

**Senator the Hon Bill Heffernan
Deputy Chair
Liberal Senator for New South Wales**

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

**Senator Sean Edwards
Liberal Senator for South Australia**

**Senator Chris Back
Liberal Senator for Western Australia**

**Senator Rachel Siewert
Australian Greens Senator for
Western Australia**