

The Senate

Rural and Regional Affairs
and Transport
Legislation Committee

Wheat Export Marketing Amendment Bill
2012 [Provisions]

June 2012

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Abbreviations

ABA	Australian Bulk Alliance Pty Ltd
ACCC	Australian Competition and Consumer Commission
ACN	Australian Company Name
AGEA	Australian Grain Exporters Association
AgForce	AgForce Queensland Industrial Union of Employers
ASX	Australian Securities Exchange Limited
AWB	Australian Wheat Board Limited
AWBI	Australian Wheat Board International
BHC	Bulk Handling Company
CBH Group	Co-operative Bulk Handling Ltd
Emerald	Emerald Group Australia Pty Ltd
GPA	Grain Producers Australia
GrainCorp	GrainCorp Operations Ltd
GrainGrowers	Grain Growers Limited
GPSA	Grain Producers SA Limited
GTA	Grain Trade Australia
Scrutiny of Bills Committee	Senate Standing Committee for the Scrutiny of Bills
Special Account	Wheat Exports Australia Special Account
the Act	<i>Wheat Export Marketing Act 2008</i>
the bill	Wheat Export Marketing Amendment Bill 2012
the committee	Senate Rural and Regional Affairs and Transport Legislation Committee
the Department	Department of Agriculture, Fisheries and Forestry
the Scheme	Wheat Export Accreditation Scheme
VFF	Victorian Farmer's Federation Grains Group
Viterra	Viterra Limited
WEA	Wheat Exports Australia
WEC	Wheat Export Charge
WQA	Wheat Quality Australia

Recommendations

Recommendation 1

4.104 The committee recommends that the government consider options to assist industry develop measures enabling the provision of more comprehensive wheat stock information to stakeholders and participants throughout the wheat export supply chain.

Recommendation 2

5.19 The committee recommends that the Senate pass the Wheat Export Marketing Amendment Bill 2012.

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.

-
- 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.

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 2007.¹

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.²

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

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, accessed 21 May 2012.

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

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.⁴

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.⁵ 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

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, 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.

from the removal of the costs associated with bulk wheat export market regulation.⁶

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.⁷

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.⁸

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).

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.⁹

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 2012.¹⁰

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.¹¹

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.¹² 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.¹³

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, 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.¹⁴
- 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.¹⁵
- 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.¹⁶
- 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;

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).¹⁷

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.¹⁸

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.¹⁹

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.²⁰ 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.²¹

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:

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).

... 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.²²

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.²³

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...²⁴

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

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, 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.²⁵

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.²⁶

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.

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 2.²⁷

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.²⁸

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.²⁹

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.

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.³⁰

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*.³¹

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.³²

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.³³

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.

30 Wheat Exports Australia, *Wheat Export Charge*, undated, 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.

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.³⁴

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.³⁵

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.³⁶ 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

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.³⁷ 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.³⁸

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.³⁹

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.

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, accessed 4 June 2012.

Chapter 3

Overview of the Australian wheat industry

Australia's bulk wheat export market

3.1 The Australian wheat industry is heavily exports focused, with around 60–70 per cent of national production per annum being exported to over 50 countries. In 2010-11, 18.5 million tonnes of wheat, from an annual national production of 27.9 million tonnes, was exported to 52 countries for a value of \$5.9 billion.¹ In the same financial year, wheat ranked eighth highest on the top ten list of Australian exports in terms of value (see Figure 1 below).²

3.2 The dominant grades of wheat exported are Australian Premium White and Australian Standard White, which are commonly used by millers to make noodles, Middle Eastern or European style bread, or Chinese steamed bread. In 2010-11, the two grades of wheat accounted for over 55 per cent of all bulk wheat exported.³

3.3 Asian countries form the primary export market for Australian wheat. In 2010-11, the top five wheat export destinations of Indonesia, Vietnam, South Korea, Japan and Iraq collectively accounted for 69.4 per cent of Australian bulk wheat exports (see Figure 2 below).⁴ From 1 October 2011 to 31 March 2012, China and the Philippines replaced Japan and Iraq in the top five wheat export destinations.⁵

3.4 Historically, on average, Australia has been one of the top five major wheat exporting countries. In 2010-11, Australia was the third largest wheat exporting nation, behind the United States and the European Union.⁶

1 Wheat Exports Australia, *Report for Growers 2010–11*, p. 4, www.wea.gov.au/ReportForGrowers.php, accessed 24 May 2012. Of the 18.5 million tonnes exported, 16.3 million tonnes were exported in bulk to 36 countries.

2 Department of Foreign Affairs and Trade, *Composition of Trade Australia 2010–11*, p. 27, www.dfat.gov.au/publications/stats-pubs/cot-fy-2010-11.pdf, accessed 24 May 2012.

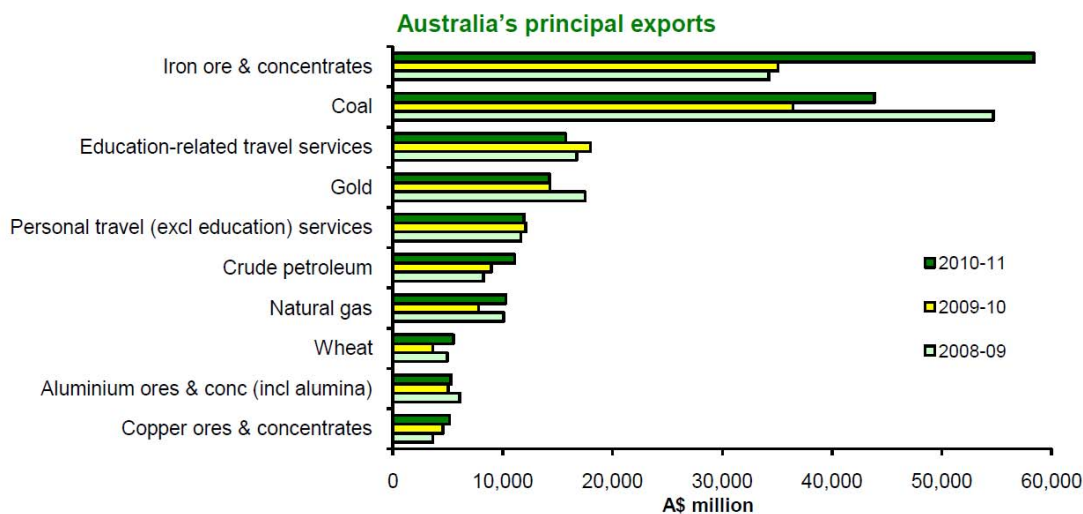
3 Wheat Exports Australia, *Report for Growers 2010–11*, p. 6.

4 Wheat Exports Australia, *Report for Growers 2010–11*, p. 5.

5 Wheat Exports Australia, *Submission 12*, p. 2.

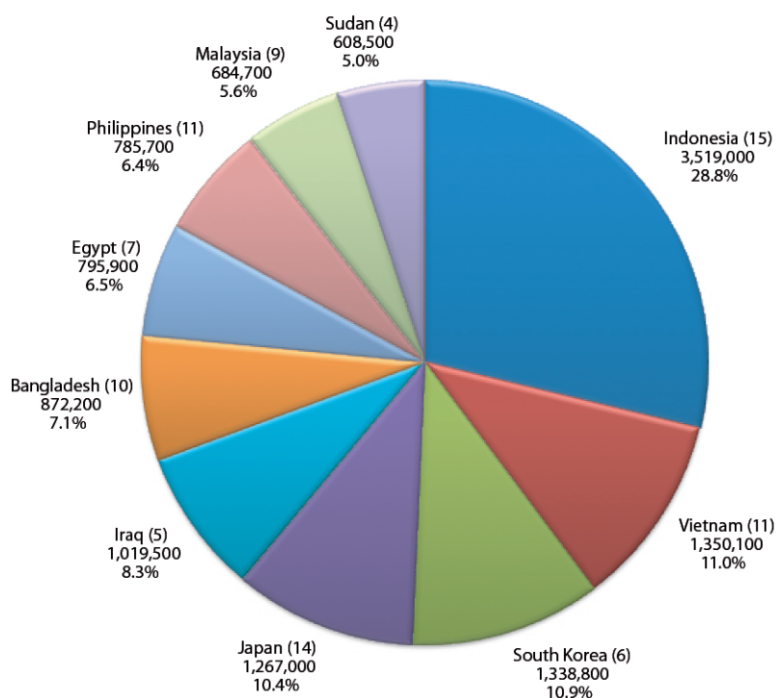
6 Wheat Exports Australia, *Report for Growers 2010–11*, p. 20.

Figure 1—Australia's top ten principal exports⁷



Based on ABS trade data on the DFAT STARS database and ABS catalogue 5302.0.

Figure 2—Top ten export markets for Australian bulk wheat 2010-11 (tonnage and proportion)⁸



Note 1: Figures in brackets represent the number of accredited exporters that shipped to that country
 Note 2: Figures under each country are the tonnages imported
 Note 3: Percentages represent the proportion of the total 12.2 million tonnes shipped to the top 10 countries

Source: ABARES and WEA analysis

⁷ Department of Foreign Affairs and Trade, *Composition of Trade Australia 2010–11*, p. 3.

⁸ Wheat Exports Australia, *Report for Growers 2010–11*, p. 5.

3.5 The first of three phases of 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. Prior to this date, the domestic market for wheat had already been deregulated in 1989, and the non-bulk export market was deregulated in 2007.⁹

3.6 In accordance with the Act, a review was undertaken by the Productivity Commission in 2010, which subsequently recommended that further deregulation should occur, including, among other things:

- abolition of the accreditation Scheme; should be abolished;
- repeal of the Wheat Exports Charge (WEC); and
- dissolution of Wheat Exports Australia (WEA).¹⁰

3.7 In response to the Productivity Commission's recommendations, the Australian Government commenced the second phase of deregulation of the wheat market on 1 October 2011. The second phase of deregulation involved the imposition of a 'lighter-touch' accreditation scheme for exporters of Australian wheat. The third and final phase of deregulation of the wheat market will be implemented with the passage of this bill, which will implement the Productivity Commission's three recommendations above.

3.8 Under current arrangements, WEA is the regulator for the wheat export industry and is responsible for accrediting fit and proper exporters of bulk wheat, monitoring those exporters, and ensuring continuous disclosure of the shipping stem by port terminal service. WEA does not have a role in storage and handling, transport, marketing, publishing industry statistics (other than through its Annual Report and its annual Report for Growers), setting receival standards or classifying wheat varieties.¹¹

3.9 Complementary to WEA's role, two organisations provide industry assistance on the quality of Australian wheat classes and wheat receival standards:

- Wheat Quality Australia (WQA) is a non-for-profit company with primary responsibility for national wheat variety classification and quality reputation of Australian wheat classes;¹² and

9 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.

10 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 2.

11 Wheat Exports Australia, *Submission 12*, p. 2.

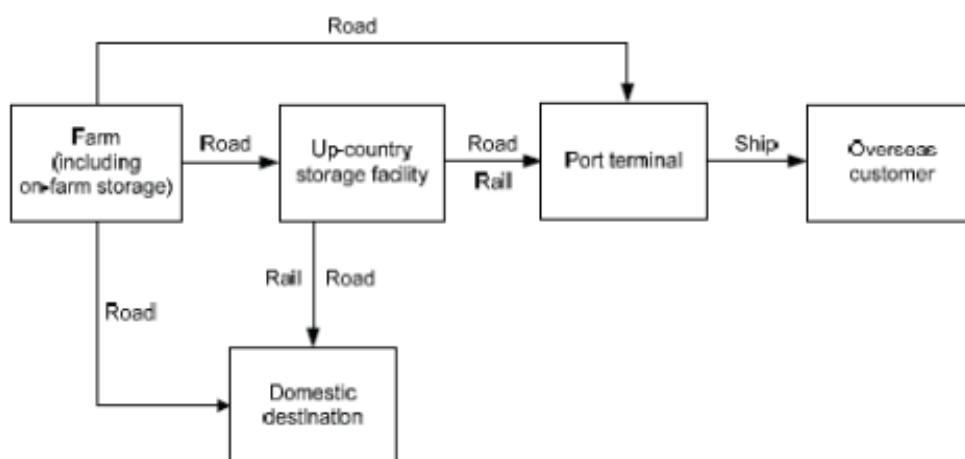
12 Wheat Quality Australia, About Us, www.wheatclassificationcouncil.com.au/info/wheatqualityaustralia/aboutus#role, accessed 24 May 2012.

- Grain Trade Australia (GTA) is an industry body with primary responsibility for setting harmonised trading rules and contracts, including receival standards concerning a grain's physical characteristics, protein content, moisture and related factors.¹³

The supply chain¹⁴

3.10 The majority of Australia's export wheat is supplied through the bulk grain handling system. The network is comprised of 'up-country' receival facilities connected by rail and road transport to population centres and port facilities (see Figure 3 below).¹⁵

Figure 3—Bulk grain supply chain¹⁶



3.11 There are three major regionally based bulk handling companies:

- GrainCorp Operations Limited in New South Wales, Victoria and Queensland;
- Viterro Limited in South Australia; and
- CBH Group in Western Australia.

3.12 In addition, there are two large independent bulk handling companies: Australian Wheat Board Limited (AWB) has operations in South Australia, New

13 Grain Trade Australia, About Grain Trade Australia, www.graintrade.org.au/About_GTA, accessed 31 May 2012.

14 Parts of this section are drawn from the Senate Regional and Rural Affairs and Transport Reference Committee's report on Operational Issues in Export Grain Networks, April 2012, pp 9–12.

15 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 66.

16 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 253–4.

South Wales and Queensland; and Australian Bulk Alliance Pty Ltd (ABA), a wholly owned subsidiary of Emerald Group Australia Pty Ltd, has operations in New South Wales and Victoria. Finally, a number of smaller independent storage and handling facilities complement the larger bulk handlers.¹⁷

3.13 The major bulk handling companies are often vertically integrated, meaning that they tend to operate services along the entire supply chain from bulk receival sites to ownership of export cargo ships. A number of other changes are occurring in the supply chain, due to deregulation, privatisation and competition in both the transport and storage of grain.¹⁸

3.14 Once wheat is harvested it can be stored on farm, delivered to one of about 570 up-country storage facilities by road, or delivered directly to port by road. There is currently a wider range of storage services in the eastern states and parts of South Australia than in Western Australia.¹⁹

3.15 The storage of grain on farms can occur in a number of ways. It can be stored in bags holding between 200 and 220 tonnes of wheat, and filled and emptied using specialised machinery. This method, however, is more common for the domestic wheat market. Wheat can also be stored in sealed grain silos, or sheds or bunkers.²⁰

3.16 From up-country receival facilities export grain is transported either by road or rail, with approximately 75 per cent of this occurring by rail with variability in use according to state. Over time the share of wheat transported by road has increased and the share transported by rail has decreased. The Productivity Commission cites a number of reasons for this change including that:

- the cost efficiency of road compared to rail has improved;
- the flexibility and efficiency of road freight has improved, whereas this is not the case for rail; and
- deregulation of the wheat market has changed the dynamics of the supply chain due to diversified grain requirements, competition amongst exporters, rationalisation and relocation of up-country storage, and changes in the basis of pricing – all of which have favoured road over rail.²¹

17 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 66–7.

18 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 66–7.

19 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 67, 256 and 263.

20 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 255–6.

21 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 263–4.

3.17 All but three of Australia's 19 active export grain terminals in Australia are owned and/or operated by the three major bulk handlers.²² The three exceptions are:

- Melbourne Port Terminals, which is operated by ABA;
- Queensland Bulk Terminals, a wholly owned subsidiary of Wilmar Gavilon Pty Ltd; and
- a joint venture between Louis Dreyfus Commodities Pty Ltd and Mountain Industries Pty Ltd at Kooragang in Newcastle which established an accumulation and storage facility coupled with a non-exclusive arrangement with an independent ship loader.²³

3.18 In relation to containers used for export, there are three main types of fit for purpose cargo vessels used to export Australian wheat:

- Handysize (deadweight of 25 000 to 43 000 tonnes);
- Handymax (deadweight of 43 000 to 55 000 tonnes); and
- Panamax (deadweight of 65 000 to 80 000 tonnes).²⁴

3.19 In addition, the larger Capesize vessels, with a deadweight of 80 000 to 160 000 tonnes, are occasionally used but are subject to port facility restrictions.²⁵

3.20 The following chapter outlines the key issues arising from the bill and the implications for the Australian wheat industry.

22 Wheat Exports Australia, *Report for Growers 2010/2011*, p. 12; and Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 66.

23 Wheat Exports Australia, *Report for Growers 2010/2011*, p. 12.

24 Wheat Exports Australia, *Report for Growers 2010/2011*, p. 25.

25 Wheat Exports Australia, *Report for Growers 2010/2011*, p. 25.

Chapter 4

Key issues

Deregulation of the wheat export market

4.1 The committee received many submissions and comments during the committee hearing in support of, and in opposition to, the bill. While industry structural adjustments were acknowledged by all parties involved with the inquiry, submitters had a range of views on transitional implications to date, as well as the maturity of the wheat export market given recent deregulation.

4.2 Broadly speaking, wheat industry stakeholders can be categorised into three groups – participants who support the bill (primarily exporters and bulk handling companies (BHCs)), participants who are opposed to the bill (primarily grain growers), and industry observers who prefer further consideration and examination of the consequences of the bill.

4.3 The following section assesses the evidence received from these three broad stakeholder groups respectively.

Support for the bill

4.4 A number of organisations commented that the transition to a deregulated market had progressed well, and that introducing the bill would not be premature, but rather, would ensure further efficiency gains by reducing both costs and the regulatory burden.

4.5 For instance the Australian Grain Exporters Association (AGEA), an industry organisation which represents 15 wheat exporters, commented that:

The grains industry has responded positively to the new marketing environment. Australian wheat remains in strong demand globally and growers now have more flexible access to a selection of accredited buyers, offering a variety of marketing options.¹

AGEA believes the amendments will provide a smooth transition to a fully deregulated market by removing, in the short term, those elements that impose costs but do not deliver benefit; and providing a period for industry to put in place the necessary protocols and processes to address those areas where there are still barriers to the efficient operation of the market.²

4.6 Similarly, Emerald Group Australia Pty Ltd (Emerald), an exporter of Australian wheat and other grains, submitted that, over the past 18 months, Australian

1 Australian Grain Exporters Association, *Submission 3*, p. 1.

2 Australian Grain Exporters Association, *Submission 3*, p. 2.

wheat crops have been marketed in a very efficient manner – noting the record volume of Australian wheat exported and a continued increase in buyers for Australian wheat. The deregulation changes have also resulted in an increase in marketing options for growers through strong market liquidity and an increase in the number of grower advisers and brokers providing market assistance services to growers.³

4.7 Emerald further commented that, in relation to the bill:

Emerald Group supports the core principles of the Bill and feels that it is part of the natural evolution of the industry to a fully deregulated market in the same manner as other bulk Australian grains such as barley, canola and sorghum.⁴

4.8 GrainCorp Operations Limited (GrainCorp), a large BHC primarily operating in New South Wales and Victoria, also lent its full support to the bill, stating that the reforms are the next logical step to improving the competitiveness of Australian wheat exports. GrainCorp further highlighted a number of benefits to industry, including:

- allowing flexibility and innovation along the supply chain to meet the changing requirement of overseas consumers;
- greater certainty for exporters who wish to enter into long-term agreements with customers;
- encouraging further investment in the wheat supply chain, by allowing participants to make longer-term commitments for port elevation services; and
- reducing compliance costs and red-tape, which ultimately disadvantage grain growers.⁵

4.9 In particular, GrainCorp highlighted two benefits that would result from passage of the bill, namely longer term contracting arrangements and greater investment certainty. The following discussion took place during the hearing:

Mr Hart: The flexibility that we are looking for, again, is about long-term contracting...I guess what we are looking to do is move towards a system whereby exporters can get long-term certainty around access to ports and enter into long-term agreements.

Senator NASH: How long-term are you saying this access undertaking is? As you say, at the moment it is restricted. What, in your view, is the appropriate time?

Mr Trigg: Planning for rail can be three to five years, whereas the current shipping capacity booking is only for one year...

3 Emerald Group Australia Pty Ltd, *Submission 4*, p. 1.

4 Emerald Group Australia Pty Ltd, *Submission 4*, p. 1.

5 GrainCorp Operations Limited, *Submission 10*, pp 5–7.

Senator NASH: ... apart from the longer term arrangements ... what else would you be able to do under the new arrangements that you cannot do now and are being constrained from doing?

Mr Trigg: We see that the current arrangements are also a significant disincentive to invest...⁶

4.10 The other two major BHCs in Australia, Viterra Limited (Viterra) and CBH Group, both strongly and fully support the bill. Viterra submitted that there is compelling evidence demonstrating the success of wheat marketing reform to date, and that the industry is well positioned to manage wheat exports as it does with the exports of other agricultural commodities.⁷ Additionally, Viterra indicated that:

Viterra will not support any proposal to reconstitute WEA or expand the coverage of existing legislation to non-prescribed commodities, such as barley, pulses or canola. Retaining WEA beyond 30 September 2012 would only serve to impose an excessive and unnecessary regulatory burden on the industry, whilst the associated compliance costs would ultimately be passed back to Australian growers.⁸

4.11 CBH Group made a submission in line with the other BHCs and also emphasised the advantages of lower cost to industry participants and greater efficiency gains from deregulating the wheat market. CBH Group submitted that, in fact, industry has been positioning itself to take advantage of these pending efficiencies:

It is evident from the increased number of industry participants now successfully exporting bulk wheat via Australian grain ports to a growing number of international markets that there is undoubted confidence and competition in the Australian grains industry. There is also broad industry expectation that progress towards a normal market place will continue which is further illustrated through the level of corporate activity and investment in infrastructure since the deregulation process commenced in 2008.⁹

4.12 In addition to the support for the bill by exporter organisations and BHCs, there was also some support from growers. For example, the Pastoralists and Graziers Association of WA (Inc), a non-profit industry organisation which represents the interests of primary producers in Western Australia, fully supported the bill, including the implementation timeframes between 30 September 2012 and 1 October 2014.¹⁰

6 Mr Nigel Hart, Group General Manager, Storage and Logistics Group, GrainCorp Operations Limited, and Mr Angus Trigg, Director, Media Relations, GrainCorp Operations Limited, *Committee Hansard*, 14 May 2012, p. 12.

7 Viterra Limited, *Submission 13*, p. 5.

8 Viterra Limited, *Submission 13*, p. 7.

9 CBH Group, *Submission 14*, p. 1.

10 Pastoralists and Graziers Association of WA (Inc), *Submission 15*, p. 1.

4.13 Grain Growers Limited (GrainGrowers), a national member-based organisation also supported further deregulation of the wheat export market and argued that further dialogue between industry and government is necessary to ensure the profitability and sustainability of the wheat industry is enhanced.¹¹

4.14 In contrast with these views, the majority of grower groups strongly oppose the bill, and those views are canvassed in the following section.

Opposition to the bill

4.15 Opposition to the bill has also been widely expressed by individual growers and grower groups. Contrary to the views expressed by exporters and BHCs, the majority of grower groups submitted that the promised efficiency gains and costs savings from deregulation have not been achieved, and that further deregulation would be premature in a market that is still adjusting to major deregulatory changes.

4.16 Broadly speaking, the majority of submissions opposing the bill highlighted that deregulation would leave the following grower concerns unresolved:

- inequality of access to wheat stocks information, resulting in inefficiencies in market pricing and leaving growers at a disadvantage;¹²
- monopoly control over the export grains supply chain by three BHCs leading to anticompetitive outcomes and port access issues;¹³
- premature deregulation of the wheat export market, leading to inefficiencies and loss of fair value for growers;¹⁴ and
- that the quality and reputation of Australian wheat would be jeopardised in international markets without a recognised statutory authority.¹⁵

4.17 Consequently, the majority of submissions on behalf of growers advocate for retaining WEA or recasting the role of WEA to provide appropriate regulatory oversight of the wheat industry. Most of these submissions also recommend retaining the Wheat Export Charge (WEC) to fund WEA.

4.18 For example, Grain Producers Australia (GPA), the peak body representing grain growers, does not support the bill. In its submission, GPA stated that its

11 Grain Growers Limited, *Submission 8*, p. 3.

12 For example, South Australian Farmers Federation, *Submission 5*, p. 1, Grain Producers Australia, *Submission 6*, p. 15 and NSW Farmers' Association, *Submission 11*, pp 10–11.

13 For example, NSW Farmer's Association, *Submission 11*, pp 12–13, Victorian Farmers Federation Grains Group, *Submission 9*, p. 3 and Grain Producers South Australia, *Submission 17*, p. 2.

14 For example, Grain Producers Australia, *Submission 6*, pp 1–2 and Grain Producers South Australia, *Submission 17*, p. 1.

15 For example, Grain Producers Australia, *Submission 6*, pp 13–14, Victorian Farmers Federation Grains Group, *Submission 9*, p. 3 and NSW Farmers' Association, *Submission 11*, pp 7–9.

members support retention of a 'lighter-touch' accreditation scheme, administered by a statutory body funded by the WEC.¹⁶

4.19 GPA's opposition to the bill is based on there being no evidence to suggest current marketing arrangements have delivered promised benefits of maximising returns for growers, that the export wheat supply chain is not currently mature enough to self-regulate, and that there needs to be a monitoring role of export cargoes to provide assurance to purchasers on the quality and varietal integrity of wheat exports.¹⁷ As a result, GPA asserts that proceeding with deregulation would pose significant threats to the efficient and fair operation of the wheat export supply chain.¹⁸

4.20 Of principal concern to GPA, it was argued that:

In contrast to the Government's current policy position there is strong evidence to support the continuation of statutory oversight of the wheat export market with a modified charter to preserve the integrity of wheat quality systems and oversee the compliance of all export wheat pathways with a modified accreditation scheme that can ensure that the current obstruction of information is managed to provide confidence in unbiased stocks intelligence to the supply chain.¹⁹

4.21 During the committee's public hearing, Mr Peter Mailler, Chairman of GPA, further elaborated on GPA's position, highlighting that:

... the integrity of the quality of the crop is being undermined through the current system, which is eroding our value capture. We are also seeing now some contraction of the competitive force within some of these regions. That is a major issue, and we are not measuring it well ... [t]hat is why confidence in the next step—further liberalisation of the market—is not there.²⁰

4.22 Along similar lines, the South Australian Farmers Federation (SAFF), the peak lobbying body for farmers in South Australia, articulated its members' concerns for information transparency relating to wheat stocks:

... a monopoly has continued to flourish in the grains industry supply chain for the export of grain from South Australia to the detriment of grain growers. Monopoly control of the export grains supply chain has increased the risk for the execution of grain sales for all participants in the industry.²¹

16 Grain Producers Australia, *Submission 6*, p. 2.

17 Grain Producers Australia, *Submission 6*, pp 2–3.

18 Grain Producers Australia, *Submission 6*, p. 1.

19 Grain Producers Australia, *Submission 6*, p. 15.

20 Mr Peter Mailler, Chairman, Grain Producers Australia, *Committee Hansard*, 14 May 2012, p. 32.

21 South Australian Farmers Federation, *Submission 5*, p. 2.

4.23 Lending support to grower groups opposing the bill, Grain Producers SA Limited (GPSA) – a not-for-profit organisation with the objective of advocating for policy in support of the South Australian grains industry and wider economic and environmental sustainability – stated that it does not consider the grain marketing industry in Australia has matured sufficiently to justify further deregulation, and emphasised the unequitable situation between BHCs and grain producers.²²

4.24 AgForce Queensland Industrial Union of Employers (AgForce) expressed a similar sentiment concerning the immaturity of the wheat export market. Mr Wayne Newton, President of AgForce, stated in his opening statement that:

We would go on to say that even the most fully developed, sophisticated markets that we see in Australia—for instance, the Australian stock exchange and the Australian banking industry—all have an oversight body that looks over the operation of these industries and, in some cases, actually takes action against misbehaviour in those industries. We are saying that the wheat export business is too immature yet to have total deregulation, and some ongoing oversight over those exports arrangements is required.²³

4.25 The Victorian Farmer's Federation Grains Group (VFF), an industry body representing more than 60 per cent of Victorian grain growers, strongly criticised the bill, stating that its members:

... believe 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 through state legislation. It will further erode market confidence; result in continued complaint from the grower sector; erode Australia's international export reputation; fails to address the need for public/industry good services; and exacerbates market concerns around lack of transparency, port access, and competition.

4.26 During the hearing, Mr Andrew Weidemann, President of the VFF, elaborated on growers' concerns that the bill fails to adequately address port access competition issues, commenting in his opening statement that:

The VFF are concerned that the wheat marketing bill fails to achieve improved competition ... [t]here are five key industry problems or market failure issues that we see: the ability to undertake industry good functions such as varietal classification and biosecurity all require funding; the lack of market transparency of stocks and quality information by port, zone and grade; the lack of international market confidence in Australian exports on the back of that previous statement; and consumer protection for Australia's 25,000 farm businesses ... [i]n short, the bill fails to achieve its competition objectives. The act offers an opportunity to address all these issues using

22 Grain Producers SA Limited, *Submission 17*, p. 1.

23 Mr Wayne Newton, President, AgForce Queensland Industrial Union of Employers, *Committee Hansard*, 14 May 2012, p. 27.

the wheat export charge to fund them and legislation to provide the vehicle.²⁴

4.27 The NSW Farmers' Association (NSWFA) was in agreement with this position, commenting that:

... the proposed move away from a regulated port access to a 'non-prescribed voluntary industry code of conduct' will result in behaviour from those operating port terminals [which] will lead to sub-optimal competition and reduced reliability of shipping movements to customers. This in turn will reduce value which would otherwise flow to all segments of the market.²⁵

4.28 Submissions from a consulting agency and a wheat farmer also reflected the position of the above grain grower groups. Mr Graeme Foote, Managing Director of McCaulay Dalton & Company, an agricultural business consultancy, submitted his assessment that:

... consolidation has resulted in a polarization of the industry with the Bulk Handling Companies (BHC's) at one end of the spectrum and the multinationals at the other ... [t]he proposal to abolish WEA without any reference to the role it plays and in turn how it can be revamped to provide the industry with a tangible monitoring process over quality is inviting disastrous consequences for our industry and not just in wheat. If we sit back and assume the system can police itself then we are sadly mistaken!²⁶

4.29 Similarly, Mr Ron MacPherson, an independent wheat grower, expressed his support for the retention of WEA. Mr MacPherson noted that WEA ensured some measure of protection against overseas competition and that the wheat industry needed such protection.²⁷

4.30 Notably, a range of submissions from grower groups explored the possibility of recasting the role of WEA to maintain a national oversight role of the wheat industry. These issues are canvassed later in this chapter of the report.

Other views

4.31 The Australian Securities Exchange Limited (ASX) did not indicate support or opposition to the bill, but instead raised issues that warranted further consideration, including access to wheat stocks information. Further examination of the issues canvassed in the ASX's submission is provided later in this chapter of the report.

24 Mr Andrew Weidemann, Grains Group President, Victorian Farmer's Federation, *Committee Hansard*, 14 May 2012, p. 27.

25 NSW Farmers' Association, *Submission 11*, p. 12.

26 Mr Graeme Foote, McCaulay Dalton and Company, *Submission 1*, p. 1.

27 Mr Ron MacPherson, *Submission 7*, p. 1.

4.32 WEA also made a submission which did not indicate a position on the bill. Rather, in its submission, WEA commented that the transition from the previous highly regulated wheat export market to the current more competitive environment has been relatively smooth.²⁸ Additionally, WEA commented that Asian millers trusted Australian wheat, but recent deregulation had caused concern that Australia did not have official wheat export standards similar to the United States and Canada.²⁹

4.33 During the hearing, WEA further highlighted that the Australian wheat industry faces critical infrastructure and competitive challenges, including increasing competition from overseas competitors such as the United States.³⁰

Voluntary Code of Conduct

4.34 It is proposed that the bill will repeal the Act, in full, from 1 October 2014 provided the Minister has approved a voluntary industry code of conduct by this time. The Explanatory Memorandum states that:

... the market will move to full deregulation from 1 October 2014. All aspects of the industry will be subject to general competition law administered by the Australian Competition and Consumer Commission (ACCC) and complemented by the code. If a code is not approved [by the Minister for Agriculture], the access test will continue.³¹

4.35 In anticipation of repeal of the Act, the committee understands that current industry efforts to establish a voluntary code of conduct extends to addressing operation of port terminal facilities, but not the sharing of wheat stocks information. This work is being led by the Code Development Committee, comprised of 12 representatives from grower groups, exporters and BHCs, and convened by Grain Trade Australia (GTA).³²

4.36 Broadly speaking, the committee received submissions from BHCs expressing their confidence in reaching an agreed voluntary code of conduct for industry participants, while grower groups expressed views to the contrary.

4.37 For instance, Emerald submitted that while there are unresolved issues, those issues could be most appropriately addressed through a voluntary code of conduct:

Port access remains an important industry issue however we believe that this is best managed through the immediate development of a voluntary

28 Wheat Exports Australia, *Submission 12*, p. 9.

29 Wheat Exports Australia, *Submission 12*, Attachment B, p. 1.

30 Mr Peter Woods, Chief Executive Officer, Wheat Exports Australia, *Committee Hansard*, 14 May 2012, p. 2.

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

32 Grain Trade Australia, *Port Access Voluntary Code of Conduct*, www.graintrade.org.au/node/499, accessed 30 May 2012.

code of conduct developed collaboratively across all sectors of the industry and implemented as soon as possible but at latest by 31 December 2012.³³

4.38 Similarly, Viterra expressed confidence in GTA's capacity to lead and facilitate discussion on establishing a voluntary code of conduct:

The Australian grain industry is maturing after a period of significant reform and bodies, such as Grain Trade Australia ("GTA"), are helping to facilitate trade and establish new standards for the industry. Viterra welcomes the leadership role that GTA has assumed in convening the Industry's Code Development Committee, established to develop the voluntary port code of conduct. ... Viterra believes the transition to a voluntary port code of conduct is the most appropriate pathway for full deregulation of the Australian wheat export industry by 2014.³⁴

4.39 CBH Group likewise stated that it is confident that a voluntary industry code for port access will be achieved, and that the code will provide fair and reasonable access to exporters.³⁵

4.40 In contrast, grower groups submitted that it was unlikely that a voluntary code would address all issues of concern, and even if a code is established, there is no guarantee that BHCs would be held accountable to that code or if that code would generate increased returns.

4.41 For example, the VFF submitted that:

VFF do not consider voluntary codes of conduct will be binding in the long term. The intent of BHCs is demonstrated in existing submissions to the ACCC which already openly dispute the regulation of ports. This only undermines market confidence in BHC's intent to adhere to voluntary codes. The Bill, if adopted, will create an environment where only those select corporates or multi-nationals with deep enough pockets to take an issue of dispute through the ACCC will be able to compete. This in itself acts as a barrier to competition to all.³⁶

4.42 The NSWFA commented in similar terms, stating that it is concerned about a change in behaviour of port terminal operators under a voluntary code of conduct, which will lead to sub-optimal competition and reduce overall value across all market segments.³⁷

33 Emerald Group Pty Ltd, *Submission 4*, p. 1.

34 Viterra Limited, *Submission 13*, pp 6–7.

35 CBH Group, *Submission 14*, p. 2.

36 Victorian Farmers Federation Grains Group, *Submission 9*, p. 4.

37 NSW Farmers' Association, *Submission 11*, p. 12.

4.43 During the committee hearing, it was acknowledged that there was no precedent for an industry code of conduct for the agricultural sector. The following exchange occurred between the committee and representatives from GrainCorp:

Senator EDWARDS: So you are not working on any kind of a model of a voluntary code of conduct that has been successful in the past, whether it has been involved in the horticulture industry or any other grower industry where you are looking to rely on a voluntary code of conduct? ... [p]oint me to a model that is successful in this country and which fulfils the charter in which it has been established.

Mr Trigg: The advice that we were provided with, at one of the draft code development committee meetings, from the ACCC was that there were many examples of industry codes of practice. I think there is a general insurance code of practice, for instance. There are a number of them that they [the ACCC] have referred to as part of their advice to that code development committee.

Senator EDWARDS: Let us talk about the [agricultural] sector, shall we, because we are not talking about the finance industry here; we are talking about commodities and production ... Still no successful voluntary code of conduct in the agriculture sector that you can think of off the top of your head?

Mr Hart: No, not that we are aware of.³⁸

4.44 Evidence provided by the NSWFA supported this view:

Unfortunately our industry is not very good at voluntary code[s] of conduct and there are no shining lights of voluntary codes of conduct in our industry.³⁹

4.45 The committee also received evidence along similar lines from the ACCC during the hearing. The ACCC commented that it has a role in providing advice to the Minister when the industry code is ready to be presented for the Minister's consideration, but noted that, to date, there weren't any codes in the agricultural sector that would be regarded as a successful precedent.⁴⁰

4.46 The committee also posed the question of voluntariness in a code of conduct to the ACCC. In response to the committee's questions, the ACCC noted that it would be highly unusual for the ACCC, as an independent statutory government agency, to be part of a voluntary code as a dispute resolution body.⁴¹ The ACCC also advised

38 Mr Nigel Hart, Group General Manager, Storage and Logistics Group, GrainCorp Operations Limited, *Committee Hansard*, 14 May 2012, pp 15–16.

39 Ms Fiona Simson, President, NSW Farmers' Association, *Committee Hansard*, 14 May 2012, p. 29.

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

41 Mr Mark Pearson, Deputy Chief Executive Officer, Regulation, Australian Competition and Consumer Commission, *Committee Hansard*, 14 May 2012, p. 52.

that it is not involved in the port access code of conduct drafting process as a participant, but rather, as an observer on the Code Development Committee.⁴²

4.47 During the committee hearing, the ACCC took a question on notice in relation to relevant guidance that the ACCC provides on drafting voluntary codes. In response, the ACCC advised that:

The ACCC's *Guidelines for developing effective voluntary industry codes of conduct* (available on the ACCC website) set out what the ACCC regards as characteristics of an effective voluntary code, including:

- a clear statement of objectives
- a code administration committee and transparent administration processes, such as the preparation of an annual report
- a complaints handling procedure (with an appeal mechanism)
- clear, unambiguous and enforceable obligations for signatories to the code
- commercially significant sanctions for non-compliance enforced by the code committee.

Effective voluntary codes also typically have wide industry coverage and include provisions for data collection.

The ACCC does not have a role in approving or endorsing voluntary codes and in many cases, may not be privy to the final version of codes that have been developed.⁴³

4.48 Notably, when the committee extended the question of voluntariness to the ASX, the representative from the ASX stated that it would be desirable to include, in any future voluntary code of conduct, a component that recognises the provision of wheat stock information throughout the supply chain. The ASX emphasised the importance of this element to develop market certainty:

Mr Hunter: With regard to the voluntary code of conduct, ASX has not been involved in any discussions on the provision of more transparent stock information, the point previously made by both CBH and GrainCorp. The voluntary code of conduct is focused on port access undertakings. ASX would like to see the industry discuss this and come to an arrangement with regard to the provision of this stock information. The industry has not had that debate, and this is the forum in which this issue has been raised.

Senator NASH: And that is the point: with the voluntary code focusing on the port access, there is nothing dealing with the broader issues of stock information, management of the supply chain, port capacity information, which WEA brought up, varietal integrity—those issues simply are not being addressed, are they?

42 Mr Mark Pearson, Deputy Chief Executive Officer, Regulation, Australian Competition and Consumer Commission, *Committee Hansard*, 14 May 2012, p. 50.

43 Australian Competition and Consumer Commission, answers to questions on notice, pp 1–2.

Mr Hunter: As I am not involved with the voluntary code of conduct, I cannot comment on what is in and out. From an ASX perspective, I can say that if we are looking to develop a market with certainty, building it on a voluntary code under which bulk handler ownership has changed in the past and will continue to change into the future is not an ideal situation.⁴⁴

4.49 The ASX also mentioned that, in general, voluntary codes of conduct were 'less than ideal', noting that the industry regime under the United States Department of Agriculture and the Canadian Grain Commission are mandatory.⁴⁵

Committee comment

4.50 The committee recognises that structural adjustment in the wheat industry has been significant since deregulation commenced in July 2008. The fortitude and resilience of all industry stakeholders and participants during these changes, and in preparation for further changes, is to be commended.

4.51 The committee accepts that there are some unresolved issues, such as information asymmetries, facing grain growers and exporters, but that there will be advantages gained through implementation of the bill.

4.52 The committee is of the view that, on balance, the evidence provided to this committee and the conclusions reached in the Productivity Commission's 2010 report show that a phased process of deregulation is in the broader interest of the industry and the Australian economy. In the interest of grain growers, the committee is reassured that the bill provides the safeguard that a voluntary code of conduct, agreed by industry representatives, must be approved by the Minister before the Act is repealed. This enables concerns raised by grower groups and exporters to be mitigated, if not settled, between industry participants before deregulation is completed.

4.53 While the committee accepts that there is no precedent for an agricultural industry code of conduct, the committee is of the view that there are established principles in the formation of voluntary codes of conduct – including through relevant guidance issued by the ACCC – that would assist industry to design a successful code.

4.54 The committee therefore encourages industry stakeholders to engage in robust bona fide discussions with a view to establishing an agreeable voluntary code of conduct that addresses each issue of concern raised by different parts of industry.

44 Mr Dougal Hunter, Manager, Agricultural Derivatives, Australian Securities Exchange Limited, *Committee Hansard*, 14 May 2012, p. 22.

45 Mr Dougal Hunter, Manager, Agricultural Derivatives, Australian Securities Exchange Limited, *Committee Hansard*, 14 May 2012, p. 29.

4.55 The committee also encourages the ACCC and the Department to continue to support the development of a voluntary code of conduct which has broad backing across the wheat export supply chain.

Availability and access to wheat stocks information

4.56 The committee received evidence on the importance of wheat stocks information as a mechanism to determine pricing levels throughout the wheat export supply chain. Many submissions from growers and exporters stated that there is an imbalance in the availability of information to different stakeholders in the wheat industry, resulting in dissatisfaction among grower groups, market and price discovery inefficiencies, and an inability for growers to make informed decisions on what crops to grow.

4.57 While acknowledging that systemic improvements can be made, BHCs broadly contended that a significant amount of information had already been provided to industry and the release of further information required justification.

4.58 Of great assistance to the committee's investigation, evidence provided by the ASX explored the importance of wheat stock information for the Australian wheat futures market and the vital flow of such information in order to achieve optimal outcomes.⁴⁶

Australian Securities Exchange views

4.59 Besides its share market service functions, the ASX is the operator for the grain futures and options market for Australian grain and oilseed. The ASX made a submission in that capacity without indicating support or opposition to the bill. In assisting the committee's deliberations, the ASX commented that if the bill proceeds in its current form, it would be likely that a sub-optimal outcome would be reached for the Australian grain industry.⁴⁷

4.60 Since the inception of the Grains Market in May 2003 to the end of April 2012, over 38 million tonnes of Australian grain and oilseed has been traded and more than 2.5 million tonnes has been delivered. While trade volumes increased since the liberalisation of the bulk wheat export market in July 2008 (see Figure 4 below), the ASX commented that trade volume is relatively modest when compared with grains futures markets in Chicago, Minneapolis and Paris.⁴⁸ Notably, over recent

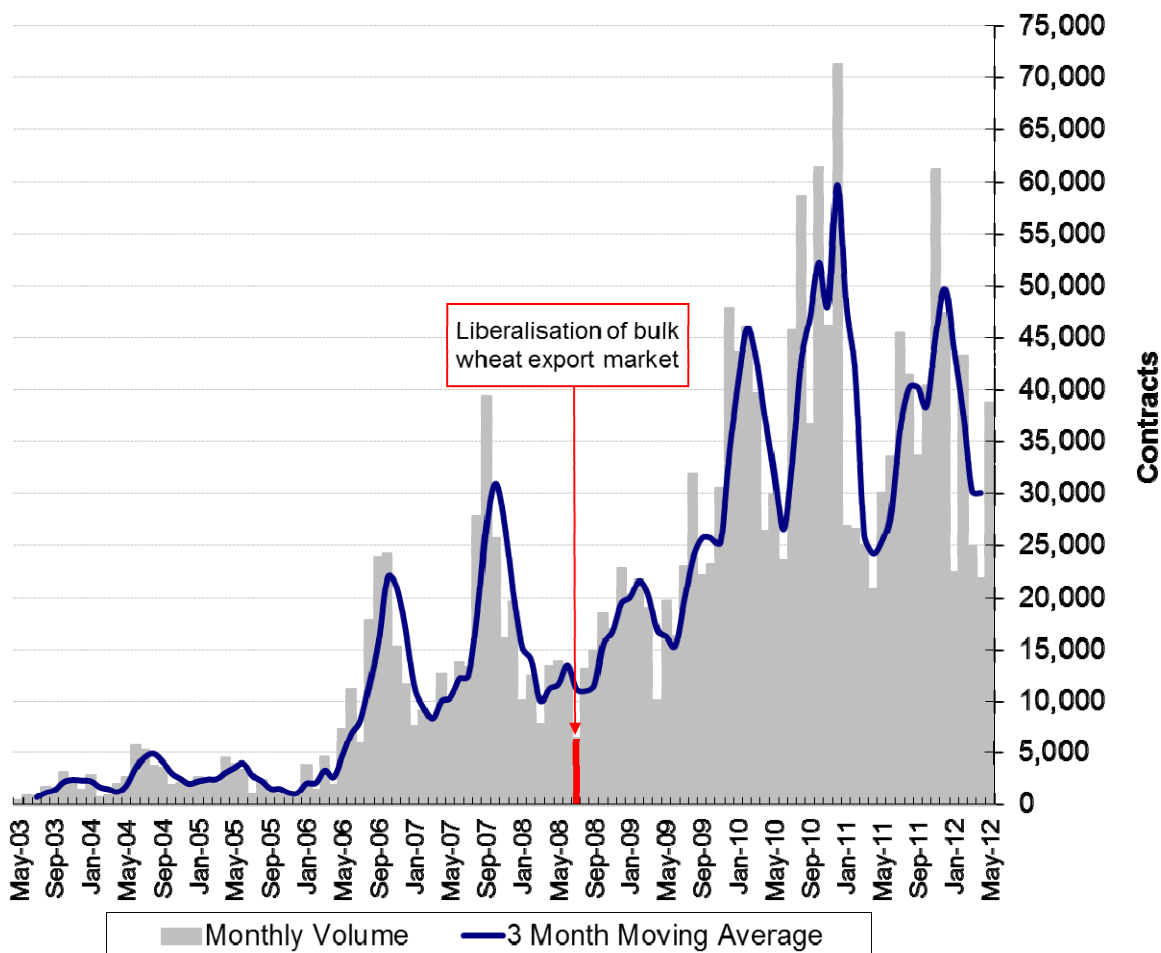
46 Australian Securities Exchange Limited, *Submission 16* and Mr Dougal Hunter, Manager, Agricultural Derivatives, Australian Securities Exchange Limited, *Committee Hansard*, 14 May 2012.

47 Australian Securities Exchange Limited, *Submission 16*, p. 1.

48 Australian Securities Exchange Limited, *Submission 16*, p. 8.

years, New South Wales and Western Australian wheat contracts comprised over 85 per cent of total volume traded on the grains futures market.⁴⁹

Figure 4—ASX Grains Futures and Options: Monthly Traded Volume⁵⁰



4.61 In its submission, the ASX highlighted the importance of availability of accurate and timely information on grain stocks and grain production for an efficient market – information that may not be voluntarily disclosed by BHCs.⁵¹ Furthermore, the ASX contended that if there is an asymmetric distribution of information, caused by the existence of regional monopolies, industry stakeholders and participants in the entire supply chain could be negatively affected.⁵²

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

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

51 Australian Securities Exchange Limited, *Submission 16*, p. 13 and Mr Dougal Hunter, Manager, Agricultural Derivatives, Australian Securities Exchange Limited, *Committee Hansard*, 14 May 2012, p. 20.

52 Australian Securities Exchange Limited, *Submission 16*, p. 2.

4.62 While exploring this issue during the committee hearing, the following exchange highlighted the ASX's concerns:

Senator NASH: In your view, if we go down this road [of deregulation], what is the suboptimal outcome, which you referred to, going to be?

Mr Hunter: You can compare the Australian market with the North American market, which is the most liquid wheat futures market in the world. ... [the ASX] is in a position to tap into the global network of trading interests, be they in Singapore, Geneva, London, Paris, New York, Chicago or wherever else. The issue Australia has to face is that we only have three major bulk-handling networks, and when you include AWB, GrainFlow and ABA, that makes five as far as the ASX is concerned. We do not have any transparent stock provision which is suitable for the futures market. ...

Senator HEFFERNAN: I would have thought that the advantage that you would have as a trader in knowing everything that is in one market and having a secret about what is in your market and then taking a position would have the capacity to be interpreted as insider trading.

Mr Hunter: ... [w]e would like to see transparent stock information to nip that one in the bud, to get the right perception out to the market. And when I say the market, it is the entire chain: growers, traders, bulk handlers and, just as importantly, our consumers.⁵³

4.63 The ASX argued that to resolve information transparency issues and encourage continued growth and development of a liquid Australian grains futures market, a robust and independent reporting regime for grains data is necessary:

... the Australian grain industry needs to be:

- improved both in terms of data quality and data quantity;
- managed and facilitated by an independent government authority that is adequately equipped and supported by way of legislative amendments; and
- appropriately funded through existing levy arrangements and infrastructure.⁵⁴

4.64 Finally, the ASX commented that while it is unclear how current shortcomings on stock transparency will be addressed after dissolution of WEA, deregulating the Australian wheat export market can nevertheless be a successful experience if the industry framework facilitates improved information reporting.⁵⁵

53 Mr Dougal Hunter, Manager, Agricultural Derivatives, Australian Securities Exchange Limited, *Committee Hansard*, 14 May 2012, p. 22.

54 Australian Securities Exchange Limited, *Submission 16*, p. 11. See also Mr Dougal Hunter, Manager, Agricultural Derivatives, Australian Securities Exchange Limited, *Committee Hansard*, 14 May 2012, p. 20.

55 Australian Securities Exchange Limited, *Submission 16*, p. 15.

Growers' views

4.65 Grain grower groups strongly advocated for greater availability and transparency of information on wheat stocks. The broad sentiment reflected in a number of submissions highlighted a concern that wheat stocks information does not adequately flow through the wheat export supply chain, reducing the financial return obtainable by grain producers.⁵⁶

4.66 For example, GPA submitted that:

The system is crippled by a lack of information and accurate description of the crop as it is harvested and delivered into the central storage systems. The bulk handling companies (BHCs) effectively operate regional monopolies and restrict and control the intelligence around up country stocks quantity and quality. This lack of transparency severely impacts the ability of producers and traders to make informed decisions in delivery and compete in the aggregation of cargoes.⁵⁷

4.67 In particular, GPA submitted that the type of information required by wheat farmers, in real-time, include: the provision of stocks information, details on individual stack descriptions, disclosure of inventory levels and statistics on grain crop deliveries into central handling systems.⁵⁸

4.68 Supporting GPA's call for greater disclosure by BHCs, the NSWFA the SAFF respectively commented that:

NSW Farmers does not believe that any administrative costs on behalf of those required to provide the information will be excessive. This is on the basis that it is well known that bulk handling companies already have this information readily on hand for stocks within their storage and logistics systems.⁵⁹

Currently there is an inequality of access to wheat stocks information, which disadvantaged growers and results in significant marketing advantages for the exporter of the associated bulk wheat handling company. Clearly no market can function properly with incomplete or one-sided information – and failure to provide that information is currently leading to market failure. What is required is information on commodity, grade, quality and tonnage of grain ... [t]his needs to be provided in real time free of charge to the market.⁶⁰

56 For example South Australian Farmers Federation, *Submission 5*, pp. 1–2, Grain Producers Australia, *Submission 6*, p. 13, Grain Growers Limited, *Submission 8*, p. 4, Victorian Farmers Federation Grains Group, *Submission 9*, pp. 2–3, NSW Farmers' Association, *Submission 11*, pp. 11–12 and Grain Producers SA, *Submission 17*, p. 1.

57 Grain Producers Australia, *Submission 6*, p. 13.

58 Grain Producers Australia, *Submission 6*, p. 11.

59 NSW Farmers' Association, *Submission 11*, p. 12.

60 South Australian Farmers Federation, *Submission 5*, pp 1–2.

4.69 In addition to increased information availability, GPA further asserted the need to retain statutory oversight:

It is fair to say that all markets have some form of regulation. Arguably the most efficient market in Australia, the ASX, is heavily regulated. GPA considers carefully constructed statutory oversight of the wheat market to augment trade, foster effective competition and provide clear market signals for an efficient supply chain is appropriate at this time.⁶¹

4.70 GrainGrowers also supported the push for greater information availability and transparency, adding that recent overseas research has found that effective dissemination of market information reduces the fluctuation and variability of prices and quantities of within markets.⁶²

Recasting the role of Wheat Exports Australia

4.71 The committee also considered a range of evidence from growers calling for a recasting of the role of WEA to ensure there is some measure of regulatory oversight on the provision of wheat stocks information. The sentiment expressed in some of these submissions and supporting comments suggested that the ACCC would not have the immediate expertise or skills to provide effective oversight of the wheat market once WEA was wound up.⁶³

4.72 Rather, a number of submissions proposed that the role of WEA be modified. For example, the committee received the following comments in a range of submissions:

- The deregulated wheat export market is really only 3 years old, and there is a real need for oversight of the export market. There are many other industries that most would consider to be very mature, for example the ASX and the banking industry, which have regulatory bodies.⁶⁴
- ... at the moment, it is far too soon to be winding up WEA. In fact, at this stage, WEA charter needs to be expanded:
 - to play a role in protecting industry from market dominance of bulk grain handlers in each State, and
 - to oversee the transparent release of wheat stocks information.⁶⁵

61 Grain Producers Australia, *Submission 6*, p. 3.

62 Grain Growers Limited, *Submission 8*, p. 4.

63 For example, Grain Producers Australia, *Submission 6*, pp 9–10, Mr Andrew Weidemann, Grains Group President, Victorian Farmers Federation, *Committee Hansard*, 14 May 2012, p. 28 and Mr Mark Pearson, Deputy Chief Executive Officer, Regulation, Australian Competition and Consumer Commission, *Committee Hansard*, 14 May 2012, p. 49.

64 AgForce Queensland Industrial Union of Employers, *Submission 2*, p. 1.

65 South Australian Farmers Federation, *Submission 5*, p. 1.

- ...Wheat Exports Australia presents a viable and stable vehicle to facilitate a range of industry good functions with an established funding stream. ... [t]he Wheat Export Charge should be retained and applied to Wheat Exports Australia to facilitate a range of industry good functions with an established funding stream.⁶⁶

4.73 A number of submissions also referred to the United States Federal Grain Inspection Service and the Canadian Grain Commission as examples of national grain regulatory bodies that should be emulated in Australia, and without which the Australian wheat industry would be at a competitive disadvantage internationally. For example, a submission from a consulting company 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 be gone but its adherence to quality and world's best practice will not long be forgotten.⁶⁷

4.74 Other submitters agreed with this view, stating that the role of WEA does not need to be as expansive as the United States or Canadian bodies, but that it should include activities such as random audits of grain to ensure that contract specifications are met.⁶⁸

4.75 In terms of funding the continuation of WEA, a grower group suggested that:

WEA would be funded through the existing Wheat Export Charge, renamed Grain Export Charge to cover all grains. The charge should be raised to 30 cents per tonne paid by the exporters, which is inevitably passed back to growers. This would ensure there is no cost to Government to run such a body. Also 30 cents per tonne is a small price to pay, as the charge is less than 1% of the pipeline margin of \$35 per tonne generated by the South Australian BHC in the calendar year 2011.⁶⁹

4.76 WEA's position on this issue was examined during the hearing, and the following exchange took place:

Senator SIEWERT: Regarding the integrity of grain exports, and the Canadian example you quote, a number of other submissions quote that, and the US example. Can you expand on that and how you foresee that process happening? Do you see a hole here in terms of that in Australia?

66 Grain Producers Australia, *Submission 6*, p. 8.

67 Mr Graeme Foote, McCauley Dalton and Company, *Submission 1*, p. 2.

68 AgForce Queensland Industrial Union of Employers, *Submission 2*, p. 2.

69 Grain Producers SA Limited, *Submission 17*, p. 2.

Mr Woods: One of the things that WEA made public last December in our report for growers was that one of the board members and I were in South-East Asia visiting mills and, very clearly, they were concerned that Australian wheat was not performing and they believed that it was because of lack of varietal integrity, probably because of blending. There is not a problem with blending; that is fine; it has always been done. But it is when blending occurs across varietal grades that there is an issue. So there needs to be perhaps something along those lines to fix that problem. Again, it is not up to WEA. All we have done is identify the situation as one of a few things that the industry need to be discussing. A lot of people were asking for views which we cannot give, but in our submission we made it very, very clear that in Canada and the US they do have ways of looking at this.⁷⁰

4.77 While not forming a firm view on this issue, the Productivity Commission acknowledged that, if an industry-led body were to replace WEA, the effectiveness of that body in assisting Australian wheat compete internationally would depend on the credibility of that industry-led body as well as the unified support of the entire industry behind that body.⁷¹

Exporters' views

4.78 Broadly, exporters agreed with the need for greater availability of wheat stocks information. In its submission to the committee, AGEA commented that, while deregulation has delivered positive outcomes for competition in the industry, further efficiency gains could be achieved through removing barriers to industry performance:

Transparency and access to information is important to ensuring that markets operate efficiently. Access to information regarding the available (i.e. unsold) volume of grain type by port zone and information on grain quality by type by storage location will facilitate more efficient assembly of cargos to meet customer requirements and aggregate information relating to grower-owned stocks will significantly enhance competition for growers' unsold grain. Currently this information is only accessible to integrated companies with port terminal operations, thus restricting access by other exporters.⁷²

4.79 AGEA further commented that a more informed and competitive market could be achieved through disclosure of stock quality and quantity held by commercial storage providers across Australia.⁷³

70 Mr Peter Woods, Chief Executive Officer, Wheat Exports Australia, *Committee Hansard*, 14 May 2012, p. 3.

71 Ms Angela MacRae, Commissioner, Productivity Commission, *Committee Hansard*, 14 May 2012, p. 42.

72 Australian Grain Exporters Association, *Submission 3*, p. 3.

73 Australian Grain Exporters Association, *Submission 3*, p. 4.

BHCs' views

4.80 While BHCs acknowledged the importance of information flow throughout the supply chain and recognised that there is room for improvement, the three major BHCs all expressed the view that a significant amount of information is already provided publicly to industry, and that further disclosures would require justification.⁷⁴

4.81 For instance, GrainCorp stated that:

... a substantial amount of information is already made available to the grain market by GrainCorp and other organisations.

While remaining open to discussion of workable and equitable solutions that have a clear market benefit, GrainCorp is concerned that no clear case has been made for the provision of additional stocks information. Further, the primary beneficiaries of such a move would be the large multinational grain traders, who already enjoy a substantial information advantage from their international operations.

GrainCorp acknowledges it does generate certain information in the course of operating its business; however this information is proprietary, in the same manner as that generated by any other business. ... GrainCorp does not have the ability to leverage any substantive market position in grain trading or downstream processing from the information it generates.⁷⁵

4.82 GrainCorp further specified that the information it currently provides includes:

- weekly grain receipts during harvest and monthly wheat country stocks (to the Australian Bureau of Statistics);
- posted cash prices at GrainCorp silos;
- daily shipping stem volumes by port and grain type and weekly disclosure of stocks at port;
- total grain metrics (from investor publications);
- quality reports to owners of grain at a particular site of the average grain quality at that site, by grade, pest control and other data for assist customers with their grain execution; and
- annual crop report on the eastern Australian harvest that provides information on grain properties, end use performance and major varieties included in grades.⁷⁶

74 GrainCorp Operations Limited, Submission 10, pp 22–25; Viterro Limited, *Submission 13*, pp 8–9; CBH Group, *Submission 14*, pp 9–10.

75 GrainCorp Operations Limited, *Submission 10*, p. 4.

76 GrainCorp Operations Limited, *Submission 10*, p. 23.

4.83 GrainCorp also submitted that it has provided tools for growers to 'opt in' their warehousing information into the public domain, which allows growers to disclose their grain stock to the market, through CLEAR, should they wish to do so.⁷⁷

4.84 Similarly, CBH Group stated that it already releases a significant amount of information on deliveries to its grain storage and handling network, and is concerned that releasing more detailed information could, among other things, result in growers receiving lower prices and affect CBH Group's ability to gather information required for managing harvest receival planning.⁷⁸

4.85 Information that is currently provided by CBH Group includes:

- Monthly wheat stocks held in the CBH system broken down into feed and milling grades. This is currently given to the Australian Bureau of Statistics on the first business day after the end of the month and is published by the ABS approximately 3 weeks later.
- Weekly harvest reports showing total grain receivals by port zone.
- A daily list of all bulk cargo departures from CBH ports by either bulk wheat or non-bulk wheat, tonnage and exporter via the Shipping Stem on the CBH Group website.
- Updates throughout the growing season and harvest on CBH Operations forecasts for total grain production in Western Australia.⁷⁹

4.86 When the committee examined CBH Group's assertion that release of further information could be detrimental to growers, the following exchange occurred:

Senator BACK: ... in your submission you pick up on the wheat stockpile information, which is obviously contentious. You make some points about the fact that it might not be growers' benefit to have this information released. In your submission you say:

- It could create incentives to store grain outside of the ... system ...
- It contains information that is relevant to CBH's core business of storage and handling and which may be detrimental to CBH if it were released. CBH is subject to potential competition from other storage providers ...

And that it does not 'erode Australia's competitive advantage by releasing information'. Could you explain to the committee specifically why open access to information is bad? We have had an Australian Stock Exchange submission, and a lot of other submissions, saying that the more information the better. ...

Mr Crane: Our basic contention is: better for whom? I can understand the call by many for the release of wheat stock information. It would be

77 GrainCorp Operations Limited, *Submission 10*, p. 23. [CLEAR is an independent grain exchange owned by the New Zealand Stock Exchange].

78 CBH Group, *Submission 14*, p. 9.

79 CBH Group, *Submission 14*, p. 9.

incredibly useful for overseas buyers and those bidding for grain from growers to understand how long or short growers are. We do not believe that it is in our growers' interest that their stock positions, and sold and unsold portions, are consolidated by virtue of that and that there is a single system...produced to the world.⁸⁰

4.87 Finally, Emerald supports the wider BHC position that efforts are being made to disclose more information to growers and other stakeholders. In its submission, Emerald stated:

We are committed to developing our own policies to provide monthly commodity and quality information in regards to stocks held within our storage system to industry participants, be it either growers, traders or consumers to enhance market information. We believe that other storage companies are also considering similar improvements to market price transparency and that these can be achieved by industry collaboration over coming months.⁸¹

Other views on information dissemination

4.88 In its submission, WEA canvassed similar concerns to grower groups, stating generally that '[i]ndustry requires detailed and timely information to facilitate accurate pricing and competitive tendering for international contracts.'⁸²

4.89 During the hearing, WEA provided further clarification on the need for information availability from a grower's perspective:

Senator BACK: ...When we say that industry will benefit from more timely, more updated, more current, better information, who in industry is actually the beneficiary of this, in the main?...

Mr Woods: ... From a grower perspective, whether the market is rising or falling, whether there is little grain because of a drought or a lot because of a wonderful season, aren't you better off knowing that you are holding the only stocks of that grain in Australia or that you are sitting on stocks where there is 20,000 or 30,000 tonnes of it? You are then making an informed decision whether you want to sell or hold. From an exporter's point of view, if they do not have access to information, stocks, what is there, where it is and the quality availability, how do they put in tenders for international contracts?⁸³

80 Mr Andrew Crane, Chief Executive Officer, CBH Group, *Committee Hansard*, 14 May 2012, p. 14.

81 Emerald Group Australia Pty Ltd, *Submission 4*, pp 1–2.

82 Wheat Exports Australia, *Submission 12*, p. 5.

83 Mr Peter Woods, Chief Executive Officer, Wheat Exports Australia, *Committee Hansard*, 14 May 2012, pp 6–7.

4.90 The committee acknowledges that increasing the availability of information would benefit the industry as a whole.

Government views

4.91 Representatives of the three government agencies that appeared at the committee hearing (the Department of Agriculture, Fisheries and Forestry, the Productivity Commission and the ACCC) confirmed that the government is conscious of industry concerns on the limited availability of wheat stock information.

4.92 The Productivity Commission was of the opinion that the most appropriate avenue through which to facilitate dissemination of wheat stocks information is to have industry agreement on the type of information required and the timeliness of that information. In supporting a balanced user-pays approach rather than a regime of compulsory disclosure, the committee received the following comments from Ms Angela MacRae, Commissioner of the Productivity Commission:

We have heard a lot of discussion today on market information. We agree that information is critical to an efficient market for wheat. Historical information is useful for long-term policy purposes, but we also heard a lot about the need for more detailed, frequent, and up-to-date information. We saw merit in continuing to provide stocks information monthly, by state, but we felt that it was necessary for the industry to come together to decide whether it did really want that information and, if it did, it could through a compulsory payment mechanism, such as an industry levy, have that information provided. We are aware, and we heard earlier, that many want even more detailed information on stocks, such as by grade or by port zone. We do not propose that this information be compulsorily made available, but recognise the value of this information for the efficient operation of domestic and export wheat markets.⁸⁴

4.93 Ms MacRae also reiterated some concerns expressed by BHCs, that if information is available domestically, then Australia's international competitors such as operators in the United States or Canada would also have access to that information.⁸⁵

4.94 In discussions on a voluntary code of conduct during the hearing, the ACCC advised the committee that any industry code of conduct should encompass the concerns of each major part of the sector along the entire supply chain. While it is theoretically possible for a code of conduct to be developed without reference to wheat stocks information, the ACCC suggested that a more effective code of conduct

84 Ms Angela MacRae, Commissioner, Productivity Commission, *Committee Hansard*, 14 May 2012, p. 41.

85 Ms Angela MacRae, Commissioner, Productivity Commission, *Committee Hansard*, 14 May 2012, p. 43.

should incorporate provisions that address industry concerns on the flow of wheat stocks information to all industry stakeholders.⁸⁶

4.95 During the hearing, the Department stated the government's preference for an industry-led solution to information flow issues, including that industry should fund its own information distribution methods:

... I must be clear that Wheat Exports Australia does not perform any of these industry good functions and the government does not believe that Wheat Exports Australia is the appropriate body to deliver those industry services. The Productivity Commission in its evidence saw value in the provision of market information but concluded that if the industry wants this information it should pay for it—and the government has indicated on a number of occasions, including in the second reading speech on the bill, that the government is willing to assist the industry in coming to a solution in these industry services. ...⁸⁷

4.96 The committee also noted the following comments made by the Department of Agriculture, Fisheries and Forestry (the Department) in response to a question taken on notice:

The government is aware of the concerns of some industry sectors that a lack of access to market information may be negatively affecting competitiveness. As described in the second reading speech associated with the Wheat Export Marketing Amendment Bill 2012, the government is committed to assisting industry identify potential solutions to this issue.

[The Department] is engaged with industry on this matter and has commissioned independent advice on market information needs across the supply chain to help industry identify potential solutions. The department is also aware of the announcement made by Emerald on 10 May 2012 to make available [stock] average quality details by commodity and location for each of ABA country storage site on a monthly basis.⁸⁸

Committee comment

4.97 The committee recognises the concerns raised by the ASX, exporters and grain grower groups in relation to the provision of wheat stock information. There is justification for further examination on how these concerns can be resolved, including through incorporating information disclosure provisions in a voluntary industry code of conduct.

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

87 Mr Allen Grant, First Assistant Secretary, Agricultural Productivity Division, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, p. 56.

88 Department of Agriculture, Fisheries and Forestry, answers to question on notice, p. 4.

4.98 In particular, the committee acknowledges that asymmetry of wheat stock information will disadvantage grain growers and threaten the efficiency of Australian grains futures markets. Availability of information is crucial for managing expectations as well as allowing traders, purchasers, sellers and other stakeholders to engage in commercial activity with confidence.

4.99 The committee also notes the views of grain groups and industry observers on the importance of the role of WEA or a similar national oversight body, especially if Australian wheat is to compete effectively with international competitors.

4.100 The committee notes the concerns raised by BHCs in relation to information disclosure and the potential use of that information by overseas competitors. Nevertheless, the committee appreciates the initiative taken by BHCs thus far in sharing wheat stocks information with wider industry stakeholders. This represents a good first step in greater information transparency and continual development of the Australian wheat market (through further information disclosure) is to be encouraged.

4.101 The committee notes that between 1 July 2005 and 30 June 2007, a prior endeavour to coordinate and improve efficiencies along the supply chain was attempted through Single Vision Grains Australia (SVGA). The strategic purpose of SVGA was to lead and unite the Australian grains industry on challenges including infrastructure, biotechnology and communications as identified in the 2004 Australian Grains Industry Strategy.⁸⁹ The Grains Research and Development Corporation (GRDC), a statutory organisation under the Department's portfolio, provided \$2 million in seed funding for SVGA over an initial two-year period, with the expectation that the SVGA would be industry-funded from 1 July 2007. The transition however was not successful and SVGA ceased operation on 30 June 2007. The committee notes that, if further industry assistance is provided in response to the industry concerns on access to wheat stock information, the expectation would be that industry would be strongly united in supporting any future endeavour.

4.102 While the committee understands that these concerns have currency and are significant, the committee notes that these issues are outside the scope of the bill and would be better addressed through industry negotiations on the voluntary code of conduct. The committee encourages all industry participants and government stakeholders to continue engaging in robust discussions on how to best resolve information access and information flow barriers, with a view to developing a broader code of conduct to address these issues.

4.103 Finally, the committee notes that 'the government is willing to help industry find a solution' to a perceived lack of access to market information on stocks and flows of grains which is impacting competitiveness. In this regard, the committee notes that the government has committed to reinvest surplus funding from the WEA

89 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 371.

Special Account 'in the wheat industry after consultation with relevant stakeholders.'⁹⁰ The committee is of the opinion that committing part of these surplus funds to the production of wheat market information into the future would be a positive outcome for the industry.

Recommendation 1

4.104 The committee recommends that the government consider options to assist industry develop measures enabling the provision of more comprehensive wheat stock information to stakeholders and participants throughout the wheat export supply chain.

90 The Hon. Mr Sid Sidebottom MP, Parliamentary Secretary for Agriculture, Fisheries and Forestry, Second Reading Speech, *House of Representatives Hansard*, 21 March 2012, p. 3697.

Chapter 5

Conclusions

Overview

5.1 This inquiry examined the provisions of the Wheat Export Marketing Amendment Bill 2012 (the bill), which aims to fully deregulate the wheat export market by 1 October 2014, and its implications for industry. This report concludes the committee's detailed consideration of the wheat export industry reforms, which was first brought before the committee in 2008.¹

5.2 The committee received 18 submissions from a range of industry groups, including grain growers, exporters and bulk-handling companies (BHCs). The committee held a full day public hearing on 14 May 2012 at which representatives from a number of submitting parties, as well as representatives from government organisations and industry observers, provided evidence.

5.3 The committee acknowledges that the wheat export industry has been rapidly adjusting to changes since the government's original decision to deregulate the wheat export market in 2008. The committee commends all industry stakeholders for their resilience in the face of change, as well as the initiatives undertaken by various parties to negotiate through remaining concerns.

5.4 A range of issues were examined during this inquiry. In particular, in anticipation of the deregulatory impacts resulting from the bill, grower groups raised concerns in relation to the development of an effective industry voluntary code of conduct as well as wider industry access to wheat stocks information.

5.5 The committee thanks industry participants and observers for the relevant and highly informative submissions to this inquiry and for answering the committee's questions during the hearing.

Voluntary code of conduct

5.6 In anticipation of repeal of the Act, the committee understands that industry stakeholders are currently in discussions, through the Code Development Committee convened by Grain Trade Australia (GTA), to develop a voluntary code of conduct on port access. The committee commends all participants and observers taking part in this process on their initiative to adjust and adapt to deregulation of the wheat export market.

1 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008 and Senate Rural and Regional Affairs and Transport References Committee, *Operational Issues in Export Grain Networks*, April 2012.

5.7 Through assessment of the evidence received in the course of this inquiry, the committee is of the view that the process to establish a port access voluntary code of conduct has the potential to encompass other important issues such as access to wheat stocks information. The committee encourages participants to broaden the mandate of the GTA Code Development Committee to consider incorporating other important industry issues into the voluntary code of conduct.

5.8 The committee notes that the guidance provided by the Australian Competition and Consumer Commission (ACCC) on the development of industry codes of conduct is a particularly useful document, and that effective codes of conduct should have provisions that address the interests and concerns of all involved in the drafting process. It is in this light that the committee recognises more can be achieved through the current GTA Code Development Committee consultation process to address the widely expressed concerns on access to wheat stocks information.

5.9 Although the committee did not receive conclusive views from witnesses on whether the code of conduct should be mandatory, the committee notes that accountability mechanisms should be drafted into the code of conduct to ease grower concerns on the degree of commitment expected of each participating party.

5.10 The committee appreciates that the Minister will ultimately be required to approve the code of conduct before full repeal of the Act can take place, thereby providing the committee with an assurance that the protections currently afforded under the access test will remain until industry concerns are more fully settled.

Access to wheat stocks information

5.11 The committee received numerous comments, through submissions and during the hearing, on the importance of having access to information on wheat stocks in order to make informed commercial decisions. The committee agrees with evidence from market participants and observers, including the Australian Securities Exchange (ASX) and the Productivity Commission, that access to such information is crucial for the operation of an efficient market.

5.12 The committee notes that the predominant market positions occupied by many BHCs have resulted in the trading operations of certain BHCs appearing to have exclusive or preferential use of detailed wheat stocks information that is not accessible by other traders or growers. This situation has generated significant concern among grower groups that wheat producers are not able to access the best price for their wheat stocks or to commercially plan which crops to grow.

5.13 The committee commends certain BHCs for their initiative to voluntarily disclose a greater amount of information on wheat stocks to participants throughout the supply chain. The committee encourages BHCs, grower groups and exporters to continue discussions through industry forums, including through the GTA Code Development Committee, to develop agreed expectations and methods to address information flow concerns, including through the publication of de-identified aggregated data.

5.14 The committee also received evidence from grain grower groups that, rather than dissolving Wheat Exports Australia (WEA), the organisation should be given a revised monitoring or advocacy role by government. The sentiment expressed in a number of submissions by grower groups was the concern that Australia's main wheat export competitors – the United States and Canada – both have national regulatory bodies to ensure the quality of exported grain and undertake international advocacy efforts to increase trade. Without an equivalent body in Australia, grain growers submitted that the Australian wheat industry could be left at a considerable disadvantage.

5.15 The committee recognises the valuable work carried out by the WEA under challenging and changing industry conditions, especially in light of the phased deregulation of the wheat export market. The committee acknowledges that a national oversight mechanism or body for the industry could be beneficial, and that, in the first instance, this issue should be considered and agreed upon by industry participants.

5.16 The committee is of the opinion that the role of government in supporting industry discussions is crucial. While the intention of government is to deregulate the wheat export market, it is imperative that the government remain active in assisting and facilitating industry dialogue, as well as fulfilling an attentive observer role.

5.17 The committee notes that Single Vision Grains Australia (SVGA), a prior government-sponsored initiative to support increased information flow and efficiency throughout the wheat export supply chain, was unsuccessful because of lack of industry cooperation on the future of SVGA. The committee urges all industry participants to take greater ownership of any industry-led initiatives in the future, including through broad financial support from industry participants.

5.18 The committee notes that the government has committed to reinvest surplus funding from the WEA Special Account back into the wheat industry after consulting industry participants and relevant stakeholders. The committee commends the government's intention to use the excess funds in such a manner, and encourages the government to consider investing part of these surplus funds to the production of wheat market information for industry.

Recommendation 2

5.19 The committee recommends that the Senate pass the Wheat Export Marketing Amendment Bill 2012.

**Senator Glenn Sterle
Chair**

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**

Appendix 1

Submissions Received

Submission

Number

Submitter

1	McCaulay Dalton Agricultural Marketing Consultants
2	AgForce Queensland Industrial Union of Employers
3	Australian Grain Exporters Association
4	Emerald Group Australia Pty Ltd
5	South Australian Farmers Federation
6	Grain Producers Australia
7	Mr Ron MacPherson
8	Grain Growers Limited
9	Victorian Farmers Federation
10	GrainCorp Operations Limited
11	NSW Farmers' Association
12	Wheat Export Australia
13	Viterra Ltd
14	CBH Group
15	Pastoralists and Graziers Association Western Graingrowers
16	Australian Securities Exchange Ltd
17	Grain Producers SA Ltd

Additional Information Received

- Received on 25 May 2012, from the Australian Competition and Consumer Commission (ACCC). Answers to Questions taken on Notice on 14 May 2012;
- Received on 28 May 2012, from the Department of Agriculture, Fisheries and Forestry (DAFF). Answers to Questions taken on Notice on 14 May 2012;
- Received on 28 May 2012, from CBH Group. Answers to Questions taken on Notice on 14 May 2012.
- Received on 13 June 2012, from the Productivity Commission. Answers to Questions taken on Notice on 14 May 2012.

TABLED DOCUMENTS

- Tabled by Mr Dougal Hunter, Manager, Agricultural Derivatives, Australian Securities Exchange Limited on 14 May 2012 in Canberra. Opening statement;
- Tabled by Mr Andrew Weidemann, President, Victorian Farmers Federation on 14 May 2012 in Canberra. Media release;
- Tabled by Ms Angela MacRae, Commissioner, Productivity Commission on 14 May 2012 in Canberra. Opening statement;
- Tabled by Mr Allen Grant, First Assistant Secretary, Agricultural Productivity Division, Department of Agriculture, Fisheries and Forestry on 14 May 2012 in Canberra. Opening statement.

Appendix 2

Public Hearings and Witnesses

14 May 2012 – Canberra, ACT

- AULD, Ms Roxanna, Policy Officer, Crops Policy Section, Crops, Horticulture and Wine Branch, Department of Agriculture, Fisheries and Forestry
- CODLING, Mr Richard, General Counsel, Cooperative Bulk Handling Group
- COOKE, Mr Hugh, Senior Manager, Corporate, Wheat Exports Australia
- CRANE, Mr Andrew, Chief Executive Officer, Cooperative Bulk Handling Group
- CROSBY, Mr Justin, Policy Director, New South Wales Farmers Association
- GRANT, Mr Allen, First Assistant Secretary, Agricultural Productivity Division, Department of Agriculture, Fisheries and Forestry
- HART, Mr Nigel Phillip, Group General Manager, Storage and Logistics, GrainCorp
- HELM, Ms Stephanie, Policy Officer, Crops Policy Section, Crops, Horticulture and Wine Branch, Department of Agriculture, Fisheries and Forestry
- HUNTER, Mr Dougal Herbert, Manager, Agricultural Derivatives, ASX Limited
- LUCAS, Mr Jason, Senior Manager, Operations, Wheat Exports Australia
- MacRAE, Ms Angela, Commissioner, Productivity Commission
- MAILLER, Mr Peter James, Chairman, Grain Producers Australia Ltd
- NEWTON, Mr Wayne, President, AgForce Queensland Industrial Union of Employers

- OTTESEN, Mr Peter, Assistant Secretary, Crops, Horticulture and Wine Branch, Department of Agriculture, Fisheries and Forestry
- PEARSON, Mr Mark, Deputy Chief Executive Officer, Regulation, Australian Competition and Consumer Commission
- PENM, Dr Jammie, Assistant Secretary, Agricultural Commodities and Trade Branch, Australian Bureau of Agricultural and Resource Economics and Sciences
- RANSOM, Ms Jodie, Supply Chain Manager, Cooperative Bulk Handling Group
- SALERIAN, Dr John, Assistant Commissioner, Carbon Policy Analysis Branch, Productivity Commission
- SALISBURY, Mr David, Deputy General Manager, Fuel, Transport and Prices Oversight Branch, Australian Competition and Consumer Commission
- SCOTT, Mr Paul, Government Relations Manager, Cooperative Bulk Handling Group
- SHERIDAN, Mr Stephen, Manager, Grains Group, Victorian Farmers Federation
- SIMSON, Ms Fiona, President, New South Wales Farmers Association
- TRIGG, Mr Angus, Director, Government and Media Relations, GrainCorp
- WEBB, Ms Rose, Executive General Manager, Mergers and Adjudication, Australian Competition and Consumer Commission
- WEIDEMANN, Mr Andrew Noel, Grains Group President, Victorian Farmers Federation
- WOODS, Mr Peter, Chief Executive Officer, Wheat Exports Australia

Appendix 3

Recommendations of the Productivity Commission Report on Wheat Export Marketing Arrangements¹

RECOMMENDATION 4.1

The Wheat Export Accreditation Scheme 2008 should be abolished on 30 September 2011. This timing would coincide with the end of the 2010-11 marketing year and give the Australian Government sufficient time to put the required legislative changes in place.

RECOMMENDATION 4.2

Regulation 9AAA of the Customs (Prohibited Exports) Regulations 1958, which prohibits bulk exports of wheat unless exported by an accredited wheat exporter, should be repealed effective 30 September 2011.

RECOMMENDATION 4.3

Wheat Exports Australia should be abolished on 30 September 2011.

RECOMMENDATION 4.4

The Wheat Export Charge should be abolished on 30 September 2011.

RECOMMENDATION 4.5

If the Australian Government decided not to abolish accreditation, a system similar to that administered by ESCOSA for bulk exports of barley in South Australia would be the next best alternative.

- *A less attractive alternative would be to amend the Wheat Export Accreditation Scheme 2008. As outlined in this report, this would include streamlining the level of assessment employed by Wheat Exports Australia and more clearly defining its role to ensure that its powers do not extend into matters of competition policy.*

1 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 27–33.

If the Australian Government decided not to abolish accreditation, the application fees and the Wheat Export Charge would need to be reviewed. A Cost Recovery Impact Statement should be formulated, in line with the Australian Government Cost Recovery Guidelines. The Wheat Export Charge should no longer be levied on exports of wheat in bags and containers, as they are not covered by the accreditation scheme.

Any new or amended arrangements put in place by the Australian Government should be reviewed after no more than five years.

RECOMMENDATION 5.1

The Australian Government should proceed with the scheduled independent review of the National Access Regime. This review should commence no later than 31 December 2011.

RECOMMENDATION 5.2

The requirement for grain port terminal operators to pass the access test contained in the Wheat Export Marketing Act 2008 (continuous disclosure requirements and an ACCC accepted port access undertaking) as a condition for exporting bulk wheat should remain in place until 30 September 2014. Responsibility for determining if the access test is met (including the continuous disclosure requirements component) should rest solely with the ACCC beyond 30 September 2011, whether or not accreditation continues past that date.

Ideally, grain port terminal operators not subject to the access test between 30 September 2011 and 30 September 2014 would voluntarily publish their shipping stem and port access protocols.

The requirement for port terminal operators to pass the access test as a condition for exporting bulk wheat should be abolished on 30 September 2014.

The requirement for continuous disclosure should continue after 30 September 2014, although this should no longer be a condition for exporting bulk wheat. From this date, the continuous disclosure rules should be applied to all grain port terminals, regardless of ownership. Responsibility for monitoring compliance with continuous disclosure rules should remain with the ACCC after 30 September 2014.

From 1 October 2014, access disputes (other than those relating to the continuous disclosure requirements) should be dealt with by the National Access Regime under Part IIIA of the Trade Practices Act.

Ideally, port terminal operators would supplement these arrangements with a voluntary code of conduct from 1 October 2014.

Should the access test continue beyond 30 September 2014, it should be reviewed after no more than five years.

RECOMMENDATION 6.1

The ACCC has announced that it will review the exclusive dealing notification granted to CBH, regarding the use of Grain Express. In light of market developments and concerns over the contestability of CBH's supply chain, the Commission endorses the decision by the ACCC to review Grain Express. The Commission recommends that the ACCC makes its determination as soon as practicable.

RECOMMENDATION 6.2

When considering investment in road and rail infrastructure for the transportation of grain, decisions should be based on thorough cost-benefit analysis, including both economic and social costs and benefits. Where possible, the analysis should consider the benefits that can be obtained throughout other parts of the grain supply chain.

RECOMMENDATION 7.1

The Commission sees value in the provision of stocks information by state to support the effective operation of the domestic and export wheat markets. However, if the industry wants this information, it should pay for it. The most efficient approach to funding this information would be via an existing compulsory industry levy. Specifically, the GRDC levy collection framework appears to be the most practical and cost-effective option for funding stocks information by state.

RECOMMENDATION 8.1

Reforms and initiatives to improve the collection and enforcement of End Point Royalties, such as those recommended by the Advisory Council on Intellectual Property's Review of Enforcement of Plant Breeders Rights, should be implemented expeditiously.

