

**AUSTRALIAN GOVERNMENT RESPONSE**  
**TO THE**  
**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE**  
**REPORT ON**  
***OPERATIONAL ISSUES IN EXPORT GRAIN NETWORKS***

**Introduction**

The Senate Rural and Regional Affairs and Transport References Committee finalised its report in April 2012, which was shortly after the Bill for the *Wheat Export Marketing Amendment Act 2012* was introduced into the Parliament on 21 March 2012. The Rural and Regional Affairs and Transport Legislation Committee conducted a separate inquiry into the Wheat Export Marketing Amendment Bill 2012 (the Bill), which concluded in June 2012. The Bill was passed by the Parliament on 29 November 2012, after several amendments were made in the Senate.

The *Wheat Export Marketing Amendment Act 2012* required the Australian Government to take several actions in relation to wheat marketing. As a result, this response was not concluded before the 2013 election. Following the election, the committee began a related inquiry on *Ownership arrangements of grain handling*. The Australian Government's response on *Operational issues in export grain networks* was further delayed pending finalisation of the committee's report on the *Ownership arrangements of grain handling* inquiry.

The *Ownership arrangements of grain handling* inquiry was overtaken by events and the report does not include recommendations and therefore the Australian Government will not respond formally.

**The *Wheat Export Marketing Amendment Act 2012***

The amendments included delaying abolition of the Wheat Export Charge and the wheat export accreditation scheme, which was administered by Wheat Exports Australia (WEA), from 30 September 2012 until 10 December 2012. WEA was wound-up on 31 December 2012, as per the original provisions of the Bill. The provision removing the requirement for port terminal operators that export bulk wheat, or have associated entities that do, to have access undertakings in place with the Australian Competition and Consumer Commission (ACCC) on 30 September 2014, provided a prescribed industry voluntary code of conduct for bulk grain export terminals is in place by that date, was also amended. The requirement for a voluntary code of conduct was changed to a mandatory code of conduct being in place.

The amendments also included a requirement for the then Minister for Agriculture, Fisheries and Forestry, Senator the Hon. Joe Ludwig, to form a wheat industry advisory taskforce by 5 February 2013.

## Responses to the 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.***

The Australian Government notes that events have overtaken this recommendation.

The committee considered retention of the wheat export accreditation scheme and other possible roles for WEA as part of its inquiry into the Bill. This included the possibility of WEA performing the role of industry ombudsman. The committee recommended that the Bill, which included provisions for the abolition of the scheme and WEA, be passed. The scheme was subsequently abolished on 10 December 2012 and WEA was wound-up on 31 December 2012 under the provisions of the *Wheat Export Marketing Amendment Act 2012*.

With regard to quality assurance, the Wheat Industry Advisory Taskforce, established by the then Australian Government on 1 February 2013, examined relevant supply chain functions that contribute to wheat export quality management practices. In considering the existing delivery mechanisms and industry sector needs, the taskforce determined there was no market failure. However, the taskforce noted the importance of an internationally recognised classification scheme and recommended that it be funded through existing revenue streams. The taskforce also supported development of a central portal for the dissemination of relevant seasonal wheat quality information to customers.

The taskforce's documents are available via the Australian Government Web Archive at <http://webarchive.nla.gov.au/gov/20141215062703/http://www.wheattaskforce.gov.au/>

### *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.***

The Australian Government notes this recommendation.

The committee considered this issue as part of its inquiry into the Bill. It recommended that the Australian 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.

The Wheat Industry Advisory Taskforce has provided options and advice on the most appropriate mechanisms to enable the publication of timely and accurate grain stocks information. The Australian Government is working with industry to establish a reporting mechanism.

## Responses to Senator Xenophon's recommendations

### ***Additional recommendation 3***

***That an independent peak body or regulator, utilising the current expertise of WEA, should be established to oversee the industry in the role of Ombudsman. This regulator should continue activities such as accreditation and monitoring currently undertaken by WEA.***

The Australian Government notes that events have overtaken this recommendation.

The wheat export accreditation scheme was abolished on 10 December 2012 and WEA was wound-up on 31 December 2012 under the provisions of the *Wheat Export Marketing Amendment Act 2012*.

### ***Additional recommendation 4***

***That the industry should move towards implementing a mandatory code of conduct, to be enforced by the new regulatory body, with particular consideration to the publication of aggregated grain data, the classification and grading of grain, and access to port and rail transport facilities.***

The Australian Government notes this recommendation.

In relation to port access, a mandatory code of conduct, the Port Terminal Access (Bulk Wheat) Code of Conduct, was established as an industry code under Part IVB of the *Competition and Consumer Act 2010* on 30 September 2014. The code is monitored and enforced by the Australian Competition and Consumer Commission (ACCC). The *Wheat Export Marketing Amendment Act 2012* contained a provision that repealed the *Wheat Export Marketing Act 2008*, provided a mandatory code was in place by 30 September 2014. Therefore, the code triggered the repeal of the *Wheat Export Marketing Act 2008* on 1 October 2014.

The Wheat Industry Advisory Taskforce has provided advice on mechanisms to enable the publication of timely and accurate grain stocks information. The Australian Government will be guided by this advice as it works with industry to implement a system for collecting stocks information.

The taskforce also considered the supply chain functions that contribute to wheat export quality management practices, including existing delivery mechanisms and industry sector needs. The taskforce found no market failure with respect to the classification and grading of grain and that there is no need for additional government intervention.

Issues relating to access to below-rail transport facilities (ie rail tracks and associated infrastructure) are covered by the existing provisions in the *Competition and Consumer Act 2010* as well as state and territory access regimes, and monitored and enforced by the ACCC and/or state and territory economic regulators.

***Additional recommendation 5***

***That the new regulator and relevant agencies should closely monitor the industry in South Australia, given the recent takeover of Viterra by Glencore and the impact of its market share on competition and related issues.***

The Australian Government notes this recommendation.

As outlined in the response to recommendation 1, the committee subsequently supported a Bill that included provisions for the abolition of the WEA. The ACCC continues to monitor and investigate complaints regarding competition in the grains industry under the *Competition and Consumer Act 2010*, including Viterra's compliance with the Port Terminal Access (Bulk Wheat) Code of Conduct.

***Additional recommendation 6***

***That the new regulator undertake an assessment to consider the benefit of a consistent auction system across all relevant Australian ports.***

The Australian Government notes that events have overtaken this recommendation.

As outlined in the response to recommendation 1, the committee subsequently supported a Bill that included provisions for the abolition of the WEA. However, the mandatory code of conduct for grain export terminals covers access by bulk wheat exporters to port facilities. The code includes requirements for ACCC approval of systems used for the allocation of shipping capacity. The code is prescribed under Part IVB of the *Competition and Consumer Act 2010*.

***Additional recommendation 7***

***That a review should be undertaken by the appropriate body into the condition of lines for rail freight transport in Australia, with particular attention to a cost/benefit analysis of rail versus road transport and the benefits of implementing an auction-based system similar to the one currently operating in the US.***

The Australian Government notes the recommendation. The Australian Government is currently developing a White Paper on Agricultural Competitiveness and is also expected to receive an audit of Australia's nationally significant infrastructure by Infrastructure Australia. If further analysis is required it would be considered in the context of the Australian Government's responses to those initiatives and would also be informed by State Government freight strategies.

***Additional recommendation 8***

***That the ACCC undertake an investigation into certain commercial arrangements by the BHCs [bulk handling companies] that may restrict access to rail transport, and recommend any necessary legislative changes to ensure these issues are addressed.***

The Australian Government does not support this recommendation.

The *Competition and Consumer Act 2010*, which is monitored and enforced by the ACCC, prohibits a range of anti-competitive trade practices. Depending on the circumstances, conduct amounting to a restriction of access to rail transport could be prohibited.

For example, on 19 April 2013, the Australian Competition Tribunal affirmed the ACCC's decision of June 2011 to revoke Co-operative Bulk Handling Limited's (CBH's) exclusive dealing notification, which allowed CBH to require Western Australian grain growers and marketers that use its 'up-country' storage facilities to also use its transport services to deliver grain to port for export. The decision does not affect CBH's ability to continue to offer Western Australian growers a bundled storage and transport option through 'Grain Express'. However, CBH is now required to also offer Western Australian growers and marketers an unbundled storage and handling service, where a non-CBH transport provider can be used.

***Additional recommendation 9***

***That this Committee undertake an inquiry into the outcomes of Recommendation 7 within the next two years.***

The Australian Government does not support this recommendation. See response to Recommendation 7.

***Additional recommendation 10***

***That the ACCC examine how the Competition and Consumer Act 2010 operates in relation to up country issues through access undertakings and redelivery fees, and make any recommendations for legislative change that would ensure these issues can be appropriately addressed.***

The Australian Government notes that events have overtaken this recommendation.

A review of the mandatory code of conduct for grain export terminals, Port Terminal Access (Bulk Wheat) Code of Conduct, must start within three years after its commencement on 30 September 2014. This review will examine a number of issues including the effectiveness of, and level of competition existing under, current arrangements for the transport, storage and distribution of wheat in contributing to a sustainable supply chain from farm gate to export load port.

***Additional recommendation 11***

***That the Committee's inquiry into the Wheat Export Marketing Amendment Bill 2012 should consider pool products and whether they should be classified as financial products, and make recommendations accordingly.***

The Australian Government notes that events have overtaken this recommendation.

The committee's report from its inquiry into the Wheat Export Marketing Amendment Bill 2012 was tabled on 18 June 2012. The Australian Government notes that the Wheat Industry Advisory Taskforce has provided options and advice on the provision and oversight of pools as financial products.

The taskforce's documents are available via the Australian Government Web Archive at <http://webarchive.nla.gov.au/gov/20141215062703/http://www.wheattaskforce.gov.au/>