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The Parliament of the Commonwealth of Australia

# Advisory Report on the Wheat Export Marketing Amendment Bill 2012

House of Representatives  
Standing Committee on Agriculture, Resources, Fisheries and Forestry

June 2012  
Canberra

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## Foreword

I welcome the opportunity for the House of Representatives Standing Committee on Agriculture, Resources, Fisheries and Forestry to provide an advisory report to the House on the Wheat Export Marketing Amendment Bill 2012, which seeks to fully deregulate Australia's wheat industry.

A range of views were put forward on the Bill, including concerns that wheat quality and access to supply chain infrastructure would be compromised.

However, there is no clear link between current arrangements and quality assurance. In reality, quality will be more likely assured through market competitiveness, not export accreditation rules. Industry should manage quality and, in fact, the current law reflects this situation.

The Bill will not abolish the 'access test' unless a sufficient voluntary industry code of conduct has been agreed and approved by the Minister. Further, market power over infrastructure will gradually dilute over time as new operators enter the market and competition increases.

Numerous concerns about the implementation of the Bill were considered by the Committee, and the Committee has made a number of recommendations regarding wheat industry issues more generally.

The Committee has recommended the Bill be passed.

The wheat industry has a great potential for growth, and I look forward to seeing the reforms in this Bill assist in achieving this growth.

Hon Dick Adams MP  
Chair





## Membership of the Committee

Chair            Hon Dick Adams MP

Deputy Chair   Mr Alby Schultz MP

Members        Mr Darren Cheeseman MP

Mr Tony Crook MP  
(supplementary member)

Mr Rob Mitchell MP

Mr George Christensen MP

Mr Geoff Lyons MP

Mr Dan Tehan MP

## Committee Secretariat

Secretary	Mr David Brunoro
Inquiry Secretary	Mr Thomas Gregory
Research Officer	Mr Nathan Fewkes
Office Manager	Mrs Dorota Cooley
Administrative Officer	Ms Louise Goss



## List of abbreviations

ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences
ABS	Australian Bureau of Statistics
AGEA	Australian Grain Exporters Association
ACCC	Australian Competition and Consumer Commission
APW	Wheat grade - Australian Premium White
ASW	Wheat grade - Australian Standard White
ASX	Australian Securities Exchange
AWB	Australian Wheat Board
Bill, the	Wheat Export Marketing Amendment Bill 2012
BHC	bulk handling company
CDC	Code of Conduct Development Committee
CWB	Canadian Wheat Board
DAFF	Department of Agriculture, Fisheries and Forestry
GIPSA	Grain Inspection, Packers and Stockyards Administration
GPA	Grain Producers Australia
GTA	Grain Trade Australia

The Minister	Minister for Agriculture Fisheries and Forestry
NSWFA	New South Wales Farmers Association
PC	Productivity Commission
VFF	Victorian Farmers Federation
WAFF	Western Australian Farmers Federation
WEA	Wheat Export Australia
WEC	Wheat Export Charge
WQA	Wheat Quality Australia



# List of recommendations

## 3 Issues raised in evidence

### Recommendation 1

The Committee recommends that the Australian Government work with industry to overcome the uncertainty around Wheat Quality Australia and Grain Trade Australia to develop a single industry-funded entity to deliver industry services in the areas of quality, standards and stock information. The Australian Government and Industry should aim to have the entity in place by October 2014, when full deregulation occurs.

### Recommendation 2

To allay grower concern as to how the voluntary code of conduct will be monitored, the Committee recommends that the Australian Government consider appointing for a five year period an industry-funded “Grains Industry Ombudsman”.

### Recommendation 3

The Committee recommends that, to improve the efficiency of the wheat export market, the Australian Government actively encourage and support the wheat industry in its efforts to improve wheat stocks information sharing, possibly by allocating funding from the proposed Wheat Industry Special Account to develop an industry mechanism, as part of the newly created industry-funded entity.

**Recommendation 4**

The Committee recommends that the House pass the Wheat Export Marketing Amendment Bill 2012.





## Introduction

### Reference of the Bill to the Committee

- 1.1 On 22 March 2012, the House of Representatives Selection Committee referred the Wheat Export Marketing Amendment Bill 2012 (the Bill) to the Committee for inquiry. The Selection Committee gave the following reason for referring the Bill:

Concern that Australia will lose its place as the premium supplier of wheat to our two biggest competitor countries Canada and the USA, both of which have quality assurance processors with exports.<sup>1</sup>

- 1.2 The Bill was introduced into the House of Representatives on 21 March 2012 by the Hon Sid Sidebottom MP, Parliamentary Secretary for Agriculture, Fisheries and Forestry. The Senate also referred the Bill to the Senate Standing Legislation Committee on Rural and Regional Affairs and Transport for a separate inquiry.
- 1.3 This chapter outlines the objectives of the Bill and the inquiry process. Chapter two focuses on the content of the Bill, outlining its key provisions and relevant background information. Chapter three discusses the issues raised during the course of the inquiry, and finishes by providing the Committee's comment and recommendations.

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1 House of Representatives Selection Committee Report No. 49, 22 March 2012, p.3.

## Objectives of the Bill

- 1.4 The Bill aims to facilitate a transition of the bulk wheat export industry into a de-regulated market environment. According to the explanatory memorandum presented with the Bill:

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 from the removal of the costs associated with bulk wheat export market regulation.<sup>2</sup>

- 1.5 Mr Sidebottom told the House:

The Bill reflects the Government's commitment to promoting competition within the wheat export industry. Australian producers are the most innovative and efficient in the world. Passage of the Bill will further develop a wheat-marketing system that rewards this and provides benefits to all industry sectors.<sup>3</sup>

- 1.6 Complete de-regulation, however, is made conditional upon conclusion of a voluntary industry code of conduct. Should this point be reached – and subject the Minister's approval – from 1 October 2014 the industry would become subject to general competition law and the code.<sup>4</sup>

## Inquiry process

- 1.7 The Committee called for submissions through a newspaper advertisement on 4 April 2012 and by directly contacting stakeholders. The Committee also wrote to relevant State, Territory and Federal Ministers, notifying them of the inquiry and calling for submissions.

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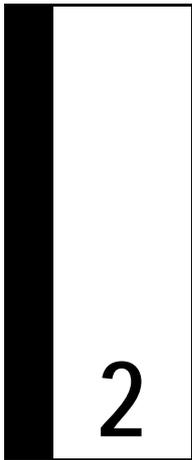
2 'Wheat Export Marketing Amendment Bill 2012: Explanatory Memorandum', p.2.

3 The Hon. Mr Sid Sidebottom, Parliamentary Secretary for Agriculture, Fisheries and Forestry, *House of Representatives Hansard*, 21 March 2012, p.3698.

4 'Wheat Export Marketing Amendment Bill 2012: Explanatory Memorandum', p.2.

- 1.8 The Committee received eighteen submissions, one confidential submission and one supplementary submission, and four exhibits. Details of submissions and exhibits can be found in Appendix A. The Committee held public hearings on 9 and 11 May 2012 in Canberra. Details of the hearings, including witnesses examined, can be found in Appendix B. Certain background documents relating to the development of a voluntary code of conduct for the bulk wheat export industry are in Appendix C.





# Wheat Export Marketing Amendment Bill

## Overview

- 2.1 This chapter has two main sections:
- discussion of its key provisions; and
  - background information relating to the Bill.

## Key provisions of the Bill

- 2.2 The Bill would amend the *Wheat Export Marketing Act 2008* (the principal Act) primarily by:
- the abolition of the *Wheat Export Accreditation Scheme 2008*. Repeal of the enabling provisions in the principal Act causes the legislative instrument to automatically lapse;<sup>1</sup>
  - winding up Wheat Export Australia (WEA) and transferring certain responsibilities to the Department of Agriculture, Fisheries and Forestry;
  - creating a new Wheat Industry Special Account (under the control of the Minister) for unspent funds gathered through industry levies and service fees (no longer required to fund WEA); and
  - removing the 'access test' rules, conditional upon a voluntary code of conduct being agreed to and approved by the Minister.

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1 'Wheat Export Marketing Amendment Bill 2012: Explanatory Memorandum', p.6.

## Abolition of the *Wheat Export Accreditation Scheme 2008*, the Wheat Export Charge, the Special Account and Wheat Exports Australia

- 2.3 Currently, WEA is responsible for the accreditation of bulk wheat exporters. In general terms, eligibility for accreditation is based upon whether a company is 'fit and proper' (depending on whether the company or its executive officers have breached laws or committed offences); passing the 'access test'; and providing WEA with an annual export report and an annual compliance report.<sup>2</sup>
- 2.4 As at 30 June 2011, twenty-six companies were accredited bulk wheat exporters in accordance with the *Wheat Export Accreditation Scheme 2008* (the Scheme).<sup>3</sup> WEA's annual report explains the purpose of the Scheme:
- The objective of WEA is to regulate the export of bulk wheat (i.e. other than in bags and containers) from Australia through the [Scheme] and to inform Government, growers, accredited bulk wheat exporters and industry stakeholders of outcomes. ... The wheat marketing arrangements under the Scheme are intended to increase competition in the bulk wheat export market. The arrangements provide for WEA to accredit exporters which meet the specified 'fit and proper' criteria and for WEA to exercise monitoring and enforcement powers to ensure that a competitive wheat marketing regime is achieved and maintained.<sup>4</sup>
- 2.5 WEA's accreditation responsibilities are funded through the Wheat Export Charge (WEC) and a cost recovery fee regime. The *Primary Industries (Customs) Charges Regulations 2000* current impose a rate of charge of 22 cents per tonne of wheat ('chargeable wheat').<sup>5</sup> Exporters must also lodge a monthly return stating the total amount of wheat exported and the total amount of charge payable for the wheat.<sup>6</sup> An application to grant accreditation as a bulk wheat exporter presently costs \$13,299,<sup>7</sup> which has incidentally 'proved to be insufficient to cover actual costs,' according to WEA.<sup>8</sup> Proceeds are then credited to the WEA Special Account, which WEA uses to fund its work (principal Act clause 59 and 60).

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2 *Wheat Export Marketing Act 2008*, ss. 13-18;

3 WEA Annual Report 2010-11, p.13.; Submission 11, Wheat Exports Australia, p.2.

4 WEA Annual Report 2010-11, p.8.

5 *Primary Industries (Customs) Charges Regulations 2000*, Schedule 14 s. 5.2; *Primary Industries Levies and Charges Collection Regulations 1991*, Schedule 34 ss. 2.2 and 2.4.

6 *Primary Industries Levies and Charges Collection Regulations 1991*, Schedule 34 s. 2.12.

7 *Wheat Export Accreditation Scheme 2008*, Schedule 1.

8 WEA Annual Report 2010-11, p.13.

- 2.6 If the Bill is passed, the Scheme would cease, along with WEA's accreditation function. As such, the need to raise revenue through fees and charges also becomes unnecessary; the explanatory memorandum indicates that the Wheat Export Charge will be abolished 'through amending or repealing' the above-mentioned regulations.<sup>9</sup> In addition, the Bill would repeal provisions relating to the WEA Special Account (Schedule 2 clause 15), although its funds will be transferred to a new account of a similar nature.
- 2.7 The existing WEA Special Account will be 'continued in existence as the Wheat Industry Special Account' to fund measures or programs 'to assist the wheat export industry or a sector of that industry' subject to the Minister's approval (Schedule 2 clause 15). The account will be administered by DAFF in place of WEA (Schedule 2 clause 36).
- 2.8 Divisions 1 to 5 of Part 5 of the Principal Act, pertaining to WEA's establishment, functions, powers and liabilities would be repealed (Schedule 2 clause 14). Schedule 2 of the Bill, which would commence on 1 January 2013, will have the effect of winding up WEA on 31 December 2012. Clauses 23 to 39 of Schedule 2 contain transitional provisions for succession purposes, such as in relation to WEA's assets and liabilities.<sup>10</sup>

## The 'access test' and code of conduct

- 2.9 Currently, eligibility for accreditation as a bulk wheat exporter, in the case of a company or associated entity that is the provider of one or more port terminal services (as defined<sup>11</sup>), is *inter alia* dependent upon passing the 'access test' to the satisfaction of WEA (principal Act clause 13(e)). Part 6 of the principal Act provides that a decision by WEA regarding accreditation may be reviewed by the Administrative Appeals Tribunal. The current access test would be repealed and replaced with a new 'access test', with revised but essentially similar rules.
- 2.10 The purpose of the current and revised 'access test' is outlined in the Bill's explanatory memorandum:

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

10 'Wheat Export Marketing Amendment Bill 2012: Explanatory Memorandum', p.17.

11 Port terminal service is defined in s. 5 of the principal Act as 'A service (within the meaning of Part IIIA of the Trade Practices Act 1974) provided by means of a port terminal facility, and includes the use of a port terminal facility'; A provider, in the context of a port terminal service, is defined as 'the entity that is the owner or operator of the port terminal facility that is used (or is to be used) to provide the service.'

This section is intended to ensure that owners, operators or controllers of port terminal facilities that also export bulk wheat, or have associated entities that do, provide fair and transparent access to their facilities to other exporters. The access test aims to avoid regional monopolies unfairly controlling infrastructure necessary to export wheat in bulk quantities, to the detriment of other bulk wheat exporters. All bulk wheat exporters should have access to these facilities while allowing the operators of the facility to function in a commercial environment.<sup>12</sup>

- 2.11 The revised access test will operate until at least 1 October 2014. After this date, a code of conduct (if approved by the Minister) will take the place of the revised access test and the entire Act would be repealed pursuant to Schedule 3. However, repeal of the Act, along with the revised access test, will not occur unless a code of conduct is approved.
- 2.12 A notable aspect of the revised access test relates to enforcement mechanisms. Whereas the current access test is enforced passively through denial of accreditation (principal Act clause 13(1)(e)), the revised access test relies upon active enforcement via the *Customs Act 1901*. Bulk wheat exports made whilst an exporter is in breach of the access test could be deemed 'prohibited exports' and, under the *Customs Act 1901*, could become liable to forfeiture if an attempt to export them is made.<sup>13</sup> However, a range of lesser regulatory interventions would presumably be pursued before forfeiture was considered, remaining as a last resort.
- 2.13 The Bill stipulates the overall terms that a voluntary code of conduct would need to address and satisfy, as follows (schedule 1 clause 12):
- (1) The Minister may, by notice published in the *Gazette*, approve a code of conduct for the purposes of this section.
  - (2) The Minister must not approve a code of conduct under subsection (1) 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

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12 'Wheat Export Marketing Amendment Bill 2012: Explanatory Memorandum', p.6.

13 *Customs Act 1901*, ss. 112 and 229(1)(n).

(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 [Australian Competition and Consumer Commission – ACCC] relating to voluntary industry codes of conduct.

- 2.14 Unless satisfied that the above criteria have been met, the Minister may not proceed to approve the code of conduct (schedule 1 clause 12).

## Changes to the special account

- 2.15 Clauses 58 to 60 of the principal Act established a special account for depositing fees and levies raised from the industry for the purpose of funding WEA. The explanatory memorandum states that at 31 December 2012:

...the balance of the WEA special account will be transferred to a new Wheat Industry Special Account to be administered by the Department of Agriculture, Fisheries and Forestry.<sup>14</sup>

- 2.16 The purpose of the new special account would be for ‘funding a measure or program’ to ‘assist the wheat export industry, or a sector of that industry’ (schedule 2 clause 60). It is not currently clear how much money would be transferred into the new special account.

## Repeal of the whole Act

- 2.17 The explanatory memorandum states that if the Minister approves the code, ‘the market will move to full deregulation’.<sup>15</sup> If the Minister has approved a voluntary industry code of conduct covering grain export terminal operators, by publishing notice in the *Gazette*, on or before 1 October 2014 (new clause 12),<sup>16</sup> the whole of the principal Act will be repealed. Otherwise, the Act as amended by the Bill will continue in force; albeit unless a future amendment is separately made to change the timing of Schedule 3.

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14 Wheat Export Marketing Amendment Bill 2012: Explanatory Memorandum’, p.17.

15 ‘Wheat Export Marketing Amendment Bill 2012: Explanatory Memorandum’, p.2.

16 ‘Wheat Export Marketing Amendment Bill 2012: Explanatory Memorandum’, p.22.

## Background to the Bill

2.18 Typically, 60% to 70% of Australian grown wheat is exported, mostly from South Australia and Western Australia. Over the ten years prior to 2010-11, Australia has produced on average 20.3 million tonnes of wheat per year. Together, Indonesia, Vietnam, South Korea, Japan and Yemen generally account for 50% to 55% of Australia's bulk wheat exports.<sup>17</sup> Wheat is sold by grade. Most exported wheat is either Australian Premium White (APW) or Australian Standard White (ASW).<sup>18</sup> Eventual uses for Australian wheat include breads, cakes, biscuits, baked goods and noodles.<sup>19</sup> According to Wheat Exports Australia (WEA):

Australian wheat is traditionally well regarded in international markets because it typically has very low screenings, low moisture content and produces white flour. Generally these characteristics produce a higher yield of flour than the red-grained wheats of the northern hemisphere which typically have a higher moisture content.<sup>20</sup>

2.19 Regarding the future for Australian wheat, the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) March quarter commodities outlook estimated:

- High rates of global production will likely lead to a fall in average wheat prices in 2012-13;
- Australian wheat exports are forecast to 'remain relatively high compared to historical averages', although export value is predicted to fall by 9 per cent;
- Over the medium-term, 'Australian production of wheat is expected to increase 1 per cent per year between 2012-13 and 2016-17 to around 26 million tonnes' and 'wheat exports are projected to remain around 20 million tonnes up to 2016-17'; and
- Lastly, ABARES made the general observation that trends for wheat plantation are dependent on prices for other grain crops.<sup>21</sup>

2.20 Until 2008, Australian wheat exports were handled through a 'single desk' arrangement, whereby wheat was centrally marketed and pooled for sale

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17 Wheat Export Australia, 'Report for Growers 2010-11', p.5.

18 Wheat Export Australia, 'Report for Growers 2010-11', p.6.

19 Wheat Export Australia, 'Report for Growers 2010-11', p.16.

20 Wheat Export Australia, 'Report for Growers 2010-11', p.5.

21 ABARES, 'Agricultural Commodities: March Quarter 2012', p.28; p.38; p.46.

through the Australian Wheat Board (AWB). This model was in place since 1948, though progressively revised (such as by de-regulating the domestic market), and was intended to ensure stable returns to growers. In 2008, the *Wheat Marketing Act 1989* was repealed and replaced with the *Wheat Export Marketing Act 2008*, which partially de-regulated wheat exports. The Bill would amend the latter Act (the principal Act) to gradually remove the last tenets of regulation in 2014.<sup>22</sup> Dismantling of the 'single desk' model was the topic of much public debate as the legislation proceeded through the Parliament during winter 2008.<sup>23</sup>

- 2.21 In 2010 the Productivity Commission (PC) produced a report examining the operation of Australia's partially deregulated wheat export marketing arrangements. Clause 89 of the principal Act required the review to commence by 1 January 2010 and the report to be completed by 1 July 2010. The Productivity Commission's report recommended abolition of the *Wheat Export Accreditation Scheme 2008*, Wheat Exports Australia and the Wheat Export Charge from 30 September 2011, discontinuation of the 'access test' from 30 September 2014 and, in its place, utilisation of general competition law and a voluntary code of conduct.<sup>24</sup>
- 2.22 The Government's response accepted these recommendations in-principle, with the exception of delaying the process by one year to 2012. The Government proposed 'a three-stage approach', which it believed would be 'a more effective transition to full market deregulation'. The first stage involved changes to the *Wheat Export Accreditation Scheme 2008*; the second and third stages - which relate to WEA, the WEC, the 'access test' and developing a voluntary code of conduct - are encapsulated in the Bill.<sup>25</sup>
- 2.23 In anticipation of the forthcoming changes, two informal studies have probed the views of Australia's wheat buyers.
- 2.24 Australian Grain Growers Ltd (Grain Growers) consulted with foreign buyers to gauge their views in April 2011. Whilst the findings noted buyers have reasons for valuing Australian wheat (better suited to certain end uses and having low moisture content), areas of concern were found, including:

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22 Wheat Export Australia, 'Report for Growers 2010-11', pp.18-19.

23 *Australian*, 'Angry Farmers Rally to Battle Wheat Sales Law', 17 June 2008, p.6; *Canberra Times*, 'Farmers Rally to Save the Single Desk', 17 June 2008, p.6.

24 Productivity Commission, 'Wheat Export Marketing Arrangements', Inquiry Report No.51, 1 July 2010, pp.27-33.

25 DAFF, 'Australian Government Response to the Productivity Commission Recommendations on Wheat Export Marketing Arrangements', September 2011

- consistency of supply, related to food security concerns;
  - levels of screening required to detect foreign objects, 'seen to be increasing';
  - preference for North American wheat to make bread in Asia;
  - inadequate crop information;
  - issues surrounding grade and quality, 'threatening the overall reputation of Australian wheat' and the lack of a single point of contact to direct complaints and concerns; and
  - insufficient technical support to processors compared to that provided by the US and Canada.<sup>26</sup>
- 2.25 In general, Grain Growers found that 'across Asian and Middle-Eastern markets Australian standards appear to be slipping.'<sup>27</sup>
- 2.26 During September 2011, Wheat Exports Australia conducted a similar process and reported its findings in the 2010-11 Report to Growers. Similar themes were raised with WEA as were raised with Grain Growers:
- shipping and handling costs and delays;
  - a preference to source wheat from countries with official wheat export standards, such as Argentina, Canada and the US;
  - compromised flour and dough performance due to the blending of wheat varieties to meet ASW or APW grade;
  - improved access to general information about Australian wheat stock levels; and
  - a 'substantial gap in technical support provided by Australia compared to the USA and Canada'. WEA observed that the US has been offering technical services to mills receiving Australian wheat, 'a clear example of the USA seeking to increase its market share.'<sup>28</sup>
- 2.27 The Senate Standing Committee on Rural and Regional Affairs and Transport also reported on *Operational Issues in Grain Export Networks* in April 2012. Findings of the Committee included:

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26 Australian Grain Growers Ltd, 'What the World Wants from Australian Wheat', April 2011, p.4.

27 Australian Grain Growers Ltd, 'What the World Wants from Australian Wheat', April 2011, p.5.

28 Wheat Export Australia, 'Report for Growers 2010-11', p.17; Submission 11, Wheat Exports Australia, Attachment B.

- Following the discontinuation of the single desk model, ‘the industry was left with natural monopolies or near monopolies centred on different geographical areas;’<sup>29</sup>
  - Uncertainty surrounding the development of a future voluntary code of conduct, in terms of its adequacy and scope, based on evidence provided by the ACCC;<sup>30</sup>
  - Evidence from Viterra, which pointed out that a shortage of transport infrastructure at peak times ‘has meant an escalation in road freight prices as marketers endeavour to get grain from up-country to port’;<sup>31</sup>
  - Variation of storage costs charged by exporters, which some witnesses attributed to concentrated market power.<sup>32</sup>
- 2.28 The Senate Committee also raised the idea of appointing an industry ombudsman.<sup>33</sup>
- 2.29 A South Australian parliamentary committee is currently inquiring into the grain handling industry. In a submission to this Committee, Chairman Geoff Brock MP stated that although the committee had yet settled upon recommendations, ‘the principles that underpin deregulation of wheat export markets are generally supported’. However, the submission also stated that evidence indicates support for retaining WEA and ‘we are not convinced that the proposed legislation provides sufficient control of access to port facilities and services.’<sup>34</sup>

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29 Senate Standing Committee on Rural and Regional Affairs and Transport, ‘Operational Issues in Export Grain Networks’, April 2012, p.35.

30 Senate Standing Committee on Rural and Regional Affairs and Transport, ‘Operational Issues in Export Grain Networks’, April 2012, p.43.

31 Senate Standing Committee on Rural and Regional Affairs and Transport, ‘Operational Issues in Export Grain Networks’, April 2012, p.70.

32 Senate Standing Committee on Rural and Regional Affairs and Transport, ‘Operational Issues in Export Grain Networks’, April 2012, pp.80-81.

33 Senate Standing Committee on Rural and Regional Affairs and Transport, ‘Operational Issues in Export Grain Networks’, April 2012, p.xi

34 Submission 3, Select Committee on the Grain Handling Industry, p.1 and p.3.



## Issues raised in evidence

### Overview

3.1 The Committee received submissions and heard evidence both in favour and against the Bill. In summary, evidence tended to relate to the following:

- Concerns that the Bill will lead to lower wheat quality. However, the Committee heard evidence that the current Act has no direct influence on quality;
- Concern about the abuse of market power by the bulk handling companies, if the access test is abolished;
- The need for information to be available to assist with strategic crop decisions and efficient market operations. This does not form part of the Bill *per se*, but the Committee was informed that a competitive deregulated market will be dependent on access to grain stocks information; and
- General interest in the need for continued statutory oversight, including the burden of regulation and the provision of 'industry good' functions and services.

This chapter will cover these four areas, consider a number of minor technical matters, and provide the Committee's findings and recommendations.

## Quality assurance

- 3.2 As noted in Chapter 1, when it referred the Bill for inquiry, the Selection Committee noted the link between Australia's competitiveness and quality assurance.<sup>1</sup> This was not disputed in submissions or evidence; the quality, characteristics and performance of wheat were universally accepted as integral.
- 3.3 Wheat classifications and standards provided by Grain Trade Australia (GTA) and Wheat Quality Australia (WQA) are currently used as points of reference by exporters and customers. GTA's grain standards form the basis of trade for domestic and export contracts (for ascertaining 'receival standards') while WQA maintains a wheat classification system (for determining varieties and end-product performance requirements). GTA and WQA are not government entities; rather they are organised and mostly funded by industry.<sup>2</sup>
- 3.4 Mr Allen Grant (Department of Agriculture, Fisheries and Forestry - DAFF) said that as quality is presently managed within the industry, coupled with the Productivity Commission's finding that government has no role to play, the Bill would not affect current quality control arrangements.<sup>3</sup> He told the Committee:
- The Productivity Commission looked in quite some detail at the provision of industry services, including delivery of quality standards, and basically concluded that this was an issue that the industry needed to resolve to its own agreement and support.<sup>4</sup>
- 3.5 He concluded by saying:
- ...the current arrangements do not have any involvement by the government in certifying wheat export quality standards, and the changes to the Bill will not change that arrangement at all.<sup>5</sup>
- 3.6 The Western Australian Department of Agriculture and Food's submission gave a different viewpoint:
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1 House of Representatives Selection Committee, Report No. 49, 22 March 2012, p.3.

2 Wheat Quality Australia, 'About Wheat Quality Australia', at <http://www.wheatquality.com.au/info/wheatqualityaustralia/aboutus> [accessed 16 May 2012]; Grain Trade Australia, 'About Grain Trade Australia Ltd', at [http://www.graintrade.org.au/sites/default/files/file/GTA\\_Brochure\\_July09.pdf](http://www.graintrade.org.au/sites/default/files/file/GTA_Brochure_July09.pdf) [accessed 16 May 2012].

3 Mr Allen Grant, DAFF, *Proof Committee Hansard*, 9 May 2012, p.1.

4 Mr Allen Grant, DAFF, *Proof Committee Hansard*, 9 May 2012, p.1.

5 Mr Allen Grant, DAFF, *Proof Committee Hansard*, 9 May 2012, p.1.

The United States and Canadian quality systems are similar to that of Australia in that core elements include varietal registration and functional performance, grading systems, uniformity, cleanliness and safety.<sup>6</sup>

3.7 The submission added:

The major difference is that the USA and Canadian systems are currently less fragmented, possibly allowing these competitors to convey a message that their systems are much stronger.<sup>7</sup>

3.8 The Department also emphasised the linkage between quality assurance and the competitiveness of Australian wheat:

Quality assurance processes are one of a number of industry good functions that could be improved to ensure Australian wheat remains valued in a highly competitive world market.<sup>8</sup>

3.9 The NSW Farmers Association (NSWFA) submitted that performance and grain functionality should be the yardsticks used for accreditation, as export standards directly relate with reputational status.<sup>9</sup> The NSWFA also commented that containerised wheat exports (not subject to regulation) have become 'a high risk to Australia's reputation'. Furthermore, according to NSWFA, 'the [Productivity Commission] failed to adequately weight the importance of wheat functionality to the value of Australia's export trade.'<sup>10</sup>

3.10 Grain Producers Australia (GPA) similarly submitted that accreditation should be based on performance rather than character.<sup>11</sup> According to GPA, wheat may be contractually compliant in terms of specification but fail to meet the end user's functional requirements:

The US operates the Federal Grains Inspection Service and Canada operated the Canadian Grain Commission to provide oversight and compliance monitoring on export cargoes. These independent statutory structures provide a high degree of confidence amongst end users and a clear accountability of the trade.<sup>12</sup>

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6 Submission 6, Western Australian Department of Agriculture and Food, p.2.

7 Submission 6, Western Australian Department of Agriculture and Food, p.2.

8 Submission 6, Western Australian Department of Agriculture and Food, p.4.

9 Submission 9, New South Wales Farmers Association, p.5 and p.7.

10 Submission 9, New South Wales Farmers Association, p.7.

11 Submission 2, Grain Producers of Australia, p.3.

12 Submission 2, Grain Producers of Australia, p.14.

- 3.11 The Committee notes that in December 2011, the Canadian Parliament passed legislation to disband the Canadian Wheat Board's (CWB) monopoly powers. The *Marketing Freedom for Grain Farmers Act* will cause the CWB to be either dissolved or privatised within five years. This process in Canada mirrors the course in Australia, whereby the former AWB's monopoly powers were repealed. The resulting Canadian regulatory situation would presumably be somewhere between the current Australian regime and the full deregulation proposed in the Bill.
- 3.12 In the United States, the Federal Grains Inspections Service (part of the Grain Inspection, Packers and Stockyards Administration within the US Department of Agriculture) facilitates the marketing of US grain and related agricultural products by establishing standards for quality assessments, regulating handling practices, and managing a network of Federal, State, and private laboratories that provide impartial, user fee funded official inspection and weighing services.<sup>13</sup>
- 3.13 The Western Australian Farmers Federation (WAFF) similarly submitted that 'both bulk and non-bulk' export cargoes should be monitored.<sup>14</sup> Mr Graeme Foote, an agricultural marketing consultant, submitted:
- Australia's major competitors have cooperation amongst trade and government to ensure that quality standards are maintained ensuring constituency of grade is a paramount requirement.<sup>15</sup>
- 3.14 On the other hand, some submissions believed the absence of accreditation would have a neutral effect on quality issues, and that government regulation of quality would be difficult. GrainCorp submitted:
- The industry is in the best position to manage quality and should be encouraged to address remaining quality control issues of its own accord.<sup>16</sup>
- 3.15 GrainCorp stated that the 'perception of a decline' could be attributable to several factors:
- Deterioration and variability of grain quality shipped in containers, usually by small container packers that do not have sophisticated assets and quality systems. ...

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13 Grain Inspection, Packers and Stockyards Administration, 'About GIPSA', at <http://www.gipsa.usda.gov/about.html>

14 Submission 10, Western Australian Farmers Federation, p.2.

15 Submission 15, Graeme Foote, p.1.

16 Submission 8, GrainCorp, p.4.

- Grain exporters shipping bulk wheat much closer to contracted quality specification to the overseas customers than previously occurred. ... In a competitive grain export market, grain exporters cannot afford to over-deliver grain against the contracted minimum quality specification.
- Recent seasonal factors have affected wheat quality, for example, the severe wet weather experienced during the 2010-11 harvest....<sup>17</sup>

3.16 Evidence from Dr Kenneth Quail (Grain Growers Ltd) resonated the above view:

...growers should be paid for the quality they are producing and that that price needs to be driven all the way through to the market. That is not happening adequately at the moment, but I do not see how regulation will achieve that. It really has to be a market driven solution, and there are ways to achieve that. I think that the industry is still going through a lot of change and that we are probably working towards some of those solutions, but I do not understand how regulation would force buyers to pay for certain qualities or how regulation would even identify those qualities.<sup>18</sup>

## Access test and code of conduct

3.17 As discussed in Chapter 2, the access test has been used to prevent anti-competitive practices by integrated export companies that also have monopoly control of key port infrastructure. The Bill proposes to abolish the access test and offset its absence with a voluntary code of conduct to provide for, amongst other things, port access. Documents relating to the development of a code of conduct are included at Appendix C.

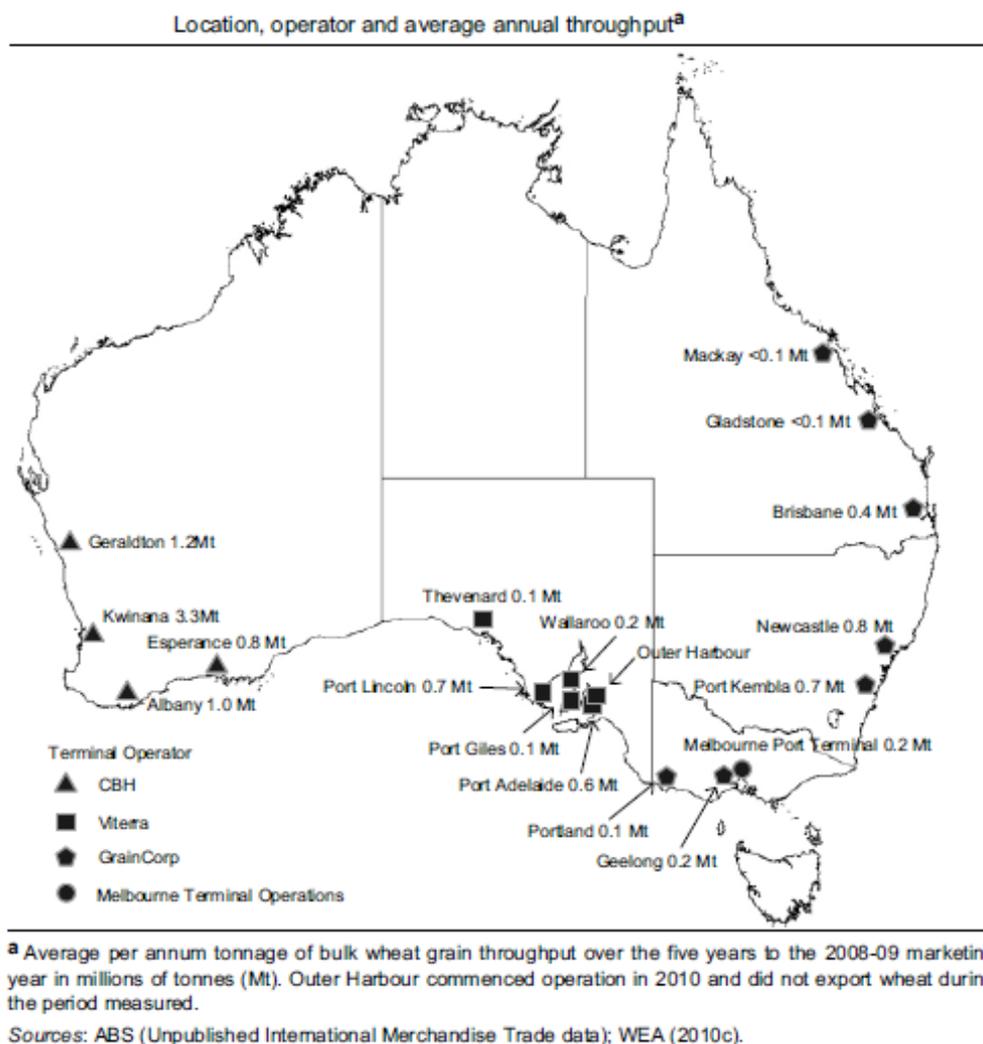
3.18 In its 2010 review, the Productivity Commission published the following map to explain bulk wheat throughput by location. As shown below, terminal operators are concentrated around regions of Australia.

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17 Submission 16, GrainCorp, p.16.

18 Dr Kenneth Quail, Grain Growers Ltd, *Proof Committee Hansard*, 11 May 2012, p.17.

Figure 1 Australian Bulk Wheat Terminals (2010)



Source Productivity Commission, 'Wheat Export Marketing Arrangements', report no. 51, July 2010, p.71.

3.19 Mr Pete Mailler (GPA) likened the supply chain infrastructure to supermarket shelves, whereby bulk handling companies control access to port infrastructure in the same way major supermarkets control access to shelf space. 'If you are a grain trader or an exporter and ultimately grow reliant on this system you have to gain access to port terminals to get your product to market,' he said. Mr Mailler explained that the bulk handlers, like supermarkets, have their own 'house brands'. While they may pay the parent company for access to port infrastructure, in his view, 'it is not really a competitive process.'<sup>19</sup>

19 Mr Peter Mailler, GPA, *Proof Committee Hansard*, 11 May 2012, p.2.

3.20 CBH Group made a submission criticising some other evidence to the inquiry:

There have been several submissions to this enquiry which have directly accused Bulk Handling Companies, and by association the CBH Group, of providing information on grain stocks, grain quality and grower warehousing stocks unfairly to their associated marketing arms. These allegations, in the case of the CBH Group, are unfounded and no such submission has provided any verification of their claims. Disappointingly Wheat Exports Australia has also adopted this approach of making allegations without evidence.<sup>20</sup>

3.21 The Australian Grain Exporters Association (AGEA) agreed that port access is an area 'where the industry is not operating as efficiently as possible.'<sup>21</sup>

3.22 On the other hand, the access test was criticised for creating costs for no benefit. GrainCorp submitted:

...the benefits of the access test are diminishing and these arrangements are now adding cost, as the Productivity Commission pointed out in its recent report on the industry. To our knowledge, Australian bulk grain port elevators are the only grain terminals regulated in this manner in the world. Port terminals that service other commodities (such as coal and iron ore) are not subject to the same constraints.<sup>22</sup>

3.23 WAFF submitted:

...sufficient arrangements have been put in place... and as such the access test should be abolished on 30 September 2014, contingent on a non-prescribed voluntary code of conduct being put in place.<sup>23</sup>

3.24 According to GPA:

The decision to abolish the access test should be dependent on the confidence and assurance that the ACCC can manage the assessment of port access arrangements in a way that provides at least an equal comfort as the access test.<sup>24</sup>

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20 Submission 18, Cooperative Bulk Handling Ltd, p.10.

21 Submission 4, Australian Grain Exporters Association, p.3.

22 Submission 8, GrainCorp, p.5.

23 Submission 10, Western Australian Farmers Federation, p.5.

24 Submission 2, Grain Producers of Australia, pp.9-10.

3.25 Mr Peter Mailler (GPA) said that growers have ‘a very low level of confidence’ in terms of how the code would develop as well as the consequences for not being a signatory to the code.<sup>25</sup> The NSWFA agreed:

...the proposed move away from regulated port access to a ‘non-prescribed voluntary industry code of conduct’ will result in behaviour from those operating port terminals [that] will lead to sub-optimal competition and reduced reliability of shipping movements to customers.<sup>26</sup>

3.26 A code development committee (CDC) has been formed to coordinate discussions (see Appendix C). According to Grain Trade Australia’s website, which is currently hosting information for participants involved in developing the voluntary code of conduct, the CDC will ‘liaise closely’ with both DAFF and the ACCC:

The CDC will undertake a thorough examination of all the issues in relation to the current port access requirements and will liaise closely with key stakeholders, [DAFF] and the [ACCC] throughout the development process.<sup>27</sup>

3.27 The ACCC provided the Committee with additional information about its role in the development of codes of conduct:

The ACCC provides general guidance to industry associations (or groups of traders) seeking to develop voluntary industry codes of conduct intended to address competition or consumer-related issues within their industry.

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.

3.28 The ACCC also provided the Committee with information about its Guidelines for developing effective voluntary codes of conduct. These Guidelines call for:

- a clear statement of objectives
- a code administration committee
- a complaints handling procedure (with an appeal mechanism)
- commercially significant sanctions for non-compliance.

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25 Mr Peter Mailler, GPA, *Proof Committee Hansard*, 11 May 2012, p.3.

26 Submission 9, New South Wales Farmers Association, p.12.

27 Grain Trade Australia, ‘Port Access Voluntary Code of Conduct’, at <http://www.graintrade.org.au/node/499>.

- 3.29 The ACCC indicates that it has ‘provided general guidance on more than 50 voluntary codes to date.’<sup>28</sup>
- 3.30 Mr Peter Ottesen (DAFF) noted that the chance to shed regulation is ‘a big incentive’ for bulk handlers to reach agreement on a code of conduct.<sup>29</sup>
- 3.31 Some bulk handlers, however, were confident that a voluntary code of conduct could be agreed upon<sup>30</sup> and that it would be an appropriate ‘pathway’ to deregulation.<sup>31</sup> However, Mr Mitchell Morison (AGEA) pointed out that if a code is approved, but subsequently a signatory elects out of the code, ‘it is unclear as to what regulatory environment a port terminal would exist in.’<sup>32</sup>
- 3.32 Viterra’s submission stated that the pre-conditions within the Bill for the Minister to follow before approving the voluntary code of conduct are not understandable.<sup>33</sup>

This is likely to create substantial difficulty, both for the industry in developing a code of conduct and for the Minister in determining whether or not to approve any code of conduct.

...

In order to facilitate the development and introduction of a code of conduct, Viterra submits that the proposed criterion in section 12(2)(c) of the Bill... should be amended so that it focuses on efficient outcomes in relation to the provision of port terminal services and not on matters that may well be outside the influence of the relevant code of conduct (i.e. industry profitability and the operation or competitiveness of other parts of the supply chain).<sup>34</sup>

- 3.33 The possibility of including within the code of conduct rules pertaining to the provision of market information was raised with the Committee; this is discussed in the next section.

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28 Submission 19, Australian Competition and Consumer Commission, pp.1-2.

29 Mr Peter Ottesen, DAFF, *Proof Committee Hansard*, 9 May 2012, pp.3-4.

30 Submission 18, Cooperative Bulk Handling Ltd, p.2.

31 Submission 12, Viterra, p.7.

32 Mr Mitchell Morison, AGEA, *Proof Committee Hansard*, 11 May 2012, p.21.

33 Submission 12, Viterra, p.11.

34 Submission 12, Viterra, p.11.

## Market information

- 3.34 The Committee was informed that the wheat trade in Australia is currently constrained by the insufficient information available to the market, such as the quantities, qualities and location of wheat, to assist with strategic decision making and forward planning.
- 3.35 Presently, sources of information on wheat include:
- The Australian Bureau of Statistics (ABS) monthly data on wheat stocks and exports;<sup>35</sup>
  - ABARES' monthly crop reports (production and yield); quarterly agricultural commodities (trends and forecasts); monthly wheat supply and exports;<sup>36</sup>
  - Wheat Exports Australia report for growers; and
  - Information released by bulk handling companies, such as a daily ship roster (shipping stem), elevation capacity and stocks at port (note, however, that information available can vary depending on the company).<sup>37</sup> According to a recent press release from the Emerald Group, it intends to 'make comprehensive grain stock information available to the entire industry.'<sup>38</sup>
- 3.36 According to NSWFA, 'The asymmetry of this information increases the market power held by the three major bulk handling companies within the Australian market.'<sup>39</sup> The Victorian Farmers Federation (VFF) submitted that inventory or stocks information is currently 'lacking' and is limited to 'a few regional monopoly providers who are custodians of the information but do not own it.'<sup>40</sup> Mr Andrew Weidemann (President, VFF Grains Group) explained:

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35 ABS, 'Wheat Stocks and Exports', February 2012, 7307.0.

36 ABARES, 'Publications', at <http://www.daff.gov.au/abares/publications>.

37 CBH Group, 'Daily Shipping Roster', at [https://www.cbh.com.au/media/93926/external\\_ship\\_roster.pdf](https://www.cbh.com.au/media/93926/external_ship_roster.pdf); GrainCorp, 'Storage and Logistics', at <http://www.graincorp.com.au/storage-and-logistics/ports-and-shipping/shipping#stem>; Viterra, 'Port Access and Shipping Stem', at [http://www.viterra.com/portal/wps/portal/australia/au/grainstorage\\_shipping/ports\\_shipping/post\\_access\\_shipping\\_stem](http://www.viterra.com/portal/wps/portal/australia/au/grainstorage_shipping/ports_shipping/post_access_shipping_stem) [accessed 17 May 2012].

38 Exhibit 1, 'Emerald Takes Lead in Grain Stock Information Provision', 10 May 2012.

39 Submission 9, New South Wales Farmers Association, p.9.

40 Submission 7, Victorian Farmers Federation, p.2.

Through the supply chain, we need to have transparency around information, because no market really trades anywhere in the world without information. Again, I will go back to the analogy of the share market and US Wheat Associates: they all have some form of regulatory approach and information so the market knows exactly what is there and where it is from.<sup>41</sup>

- 3.37 Mr Peter Mailler (GPA) said that the invisibility of information in the possession of bulk handlers disadvantages growers:

Ultimately, because they withhold information and there is a lot of obscuring of stocks information and market signals from end-users back through the supply chain as well as a lot of hidden charges and issues around where the efficiencies lie in ports and loading and how the system works, growers are not seeing the correct market signals. This means we are unable to take a position effectively in the market ourselves.<sup>42</sup>

- 3.38 He separately added that 'We do not want to regulate the market, we want to regulate the provision of information and the transparency,' which he said 'is one of the things stifling competition.'<sup>43</sup> The Australian Securities Exchange (ASX)'s submission stated:

The existence of regional monopolies with inherent information advantages inhibits the development of open markets and challenges efficient price discovery. The current stock reporting framework needs to be revised to address market perception concerns and avoid inherent dangers associated with asymmetric market information. Improved market information will help inform industry stakeholders and participants throughout the entire supply chain.<sup>44</sup>

- 3.39 ASX's submission provided further details in relation to the type of information that might be collected.<sup>45</sup> Furthermore:

...if the WEA is disbanded as proposed without the inadequacies of stock reporting being addressed then this will result in a suboptimal outcome for the industry.

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41 Mr Andrew Weidemann, VFF, *Proof Committee Hansard*, 11 May 2012, p.11.

42 Mr Peter Mailler, GPA, *Proof Committee Hansard*, 11 May 2012, p.2.

43 Mr Peter Mailler, GPA, *Proof Committee Hansard*, 11 May 2012, p.5.

44 Submission 17, Australian Securities Exchange, p.3.

45 Submission 17, Australian Securities Exchange, pp.11-13.

While ever there remains information asymmetry, there will be a perception that the three major BHCs have a market advantage and it may remain challenging to attract new competition to the market place.<sup>46</sup>

3.40 WAFF was less concerned; Mr Kim Simpson said:

I think most farmers understand well enough the quality of the wheat they are growing. I would be surprised if any farmer did not understand where his wheat fitted in the marketing scheme of things. Just how much demand is out there for certain qualities of wheat might be something we do not know all the time, but then, as I said, that is part of the system.<sup>47</sup>

3.41 However, he explained that the state of the market in Western Australia is not the same as the Australian east coast:

In this state, virtually half the grain is sold through the state cooperative. So farmers here probably do not fear the vagaries of the free market quite as much as the eastern states because we have an option here which is basically an honest one. Over there, you are in the grip of what people call a 'free market', and you can get screwed by anybody.<sup>48</sup>

3.42 WAFF's submission, however, stated:

The release of timely supply and demand information would provide clearer market signals for growers and therefore make an important contribution to their marketing decisions accordingly.<sup>49</sup>

3.43 By contrast, GrainCorp's submission argued that there is no reason to disclose more information:

The provision of additional stocks information would not improve the efficiency of the grain market, nor would it improve grower returns.

3.44 GrainCorp added that 'a substantial amount of information is already made available to the grain market' and also observed: 'this information is proprietary, in the same manner as that generated by any other business.'<sup>50</sup>

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46 Submission 17, Australian Securities Exchange, p.15.

47 Mr Kim Simpson, WAFF, *Proof Committee Hansard*, 11 May 2012, p.13.

48 Mr Kim Simpson, WAFF, *Proof Committee Hansard*, 11 May 2012, p.13.

49 Submission 10, Western Australian Farmers Federation, p.4.

50 Submission 8, GrainCorp, p.4.

- 3.45 Dr Kenneth Quail (Grain Growers Ltd) suggested that the supply of stocks information could be included as part of the voluntary code of conduct.<sup>51</sup> He added:

My understanding is that the supply of stocks information has been volunteered as part of the code of conduct. ... I think government has a role to play in negotiating that and helping that code of conduct form. If that information is included in the voluntary code of conduct, it will largely become available and continue to be supplied. The point is that it is voluntary, and that is why it needs industry and government to work together in the future.<sup>52</sup>

- 3.46 AGEA said there would be practical matters to be resolved, but believed agreement could be found. Mr Mitchell Morison said:

The vast majority of stock actually sits out in the network that supplies to the ports, and really the key issue that I think you are hearing from grower representatives, and you would probably also hear it from the consumer sector of the industry, is around the supply and demand situation—how much stock exists in country, not necessarily just in the port. So it may not be appropriate for the code to try and sort out the issue around stock information.<sup>53</sup>

- 3.47 However, he observed that the need for information services is not expressly contained in clause 12 of the Bill, and is therefore 'outside the remit of the code committee.'<sup>54</sup> Besides this issue, Ms Rosemary Richards (AGEA) explained that not all relevant stakeholders are involved with the code's development:

Even if the code committee looks at it and comes up with some recommendations...the signatories to that code are not going to capture everyone who would have to be part of providing that information, so I think we would need a broader mechanism that would capture, in an implementation sense, people who would need to be a signatory to the code and supply the information.<sup>55</sup>

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51 Dr Kenneth Quail, Grain Growers Ltd, *Proof Committee Hansard*, 11 May 2012, p.18.

52 Dr Kenneth Quail, Grain Growers Ltd, *Proof Committee Hansard*, 11 May 2012, p.18.

53 Mr Mitchell Morison, AGEA, *Proof Committee Hansard*, 11 May 2012, p.21.

54 Mr Mitchell Morison, AGEA, *Proof Committee Hansard*, 11 May 2012, p.23.

55 Ms Rosemary Richards, AGEA, *Proof Committee Hansard*, 11 May 2012, p.23.

3.48 Mr Morison said:

Cargill, for example, operate through storage and handling in excess of three million tonnes of grain but we operate no ports. Unless we built or bought a port, we would not expect to be a code signatory, yet we do have in our storage system up to three million tonnes of grain at any given time. We would not necessarily be captured by the code in that respect – it depends on how it is drafted.<sup>56</sup>

3.49 Mr Peter Woods (CEO, WEA) said:

If you look at what happens with the futures markets and with most other markets there is a full transparency of information. The futures markets and the ASX market operate through a system where you cannot declare something to someone else until you do it through a centralised system so that everyone has equal access to the information. That is not happening at the moment. How it should happen is not up to me, but this is not about three bulk handlers. This is about the industry. Whether the debate stretches down to the farm level or, as suggested in John Crosby's submission, down to anyone who stores 10,000 tonnes of grain for a fee – and have that as the cut-off – that is the debate that needs to happen, as well as to who does it. But transparency of information will not disadvantage anyone.<sup>57</sup>

3.50 WAFF's submission suggested that a website might be established for this purpose of hosting relevant information.<sup>58</sup>

## **Statutory oversight**

3.51 The Committee heard divergent views on the desirability of WEA continuing to fulfil its present role as well as maintaining funding through the WEC.

3.52 Mr Peter Woods (CEO, WEA) summarised WEA's role as being:

...to accredit fit and proper exporters of bulk wheat, monitor those exporters and ensure continuous disclosure of the shipping stem at wheat export terminals.<sup>59</sup>

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56 Mr Mitchell Morison, AGEA, *Proof Committee Hansard*, 11 May 2012, p.23.

57 Mr Peter Woods, WEA, *Proof Committee Hansard*, 11 May 2012, pp.28-29.

58 Submission 10, Western Australian Farmers Federation, p.4.

3.53 Mr Woods added:

WEA has no role in storage and handling, transport, marketing, publishing statistics – other than in our annual reports and growers reports – setting receival standards or classifying wheat varieties.<sup>60</sup>

3.54 The ACCC clarified that in the future, if the Bill becomes law, its oversight would be minimal compared to WEA. Mr Mark Pearson said:

Our role is going to be a lot simpler – nowhere near as broad or as in depth as the WEA role is or has been with the reports they are putting out and the fit and proper kind of role and assessment that they have.<sup>61</sup>

3.55 WEA has anticipated that its activities will shortly cease. Mr Woods said:

WEA is in the process of winding up. This involves employee assistance with career coaching and career progression; contingency plans for the loss of employees, staff redeployments and redundancies; transferring the monitoring of the shipping stem to the ACCC; disposal of assets; and storing and archiving material in accordance with the national archive requirements.<sup>62</sup>

3.56 Mr Woods also provided the following commentary on the process to date:

WEA believes the deregulation process has proceeded relatively smoothly, and, pleasingly, no accredited exporter has experienced financial or other difficulties adversely impacting on its relationship with industry stakeholders, particularly growers. Nevertheless, the Australian wheat industry continues to face a number of critical infrastructure and competitive challenges.<sup>63</sup>

3.57 Whilst not stating a position in favour or against deregulation, in addition Mr Woods advised of ‘key areas requiring attention’ in the view of WEA:

These are: unequal access to wheat stocks information; port access; management of the supply chain and port capacity information; and integrity of Australian grain exports.<sup>64</sup>

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59 Mr Peter Woods, WEA, *Proof Committee Hansard*, 11 May 2012, p.27.

60 Mr Peter Woods, WEA, *Proof Committee Hansard*, 11 May 2012, p.27.

61 Mr Mark Pearson, ACCC, *Proof Committee Hansard*, 11 May 2012, p.7.

62 Mr Peter Woods, WEA, *Proof Committee Hansard*, 11 May 2012, p.27.

63 Mr Peter Woods, WEA, *Proof Committee Hansard*, 11 May 2012, p.27.

64 Mr Peter Woods, WEA, *Proof Committee Hansard*, 11 May 2012, p.28.

3.58 Several submissions recommended that statutory oversight of wheat exports needs to continue, either by Wheat Exports Australia or a similar entity. GPA, for example, recommended

that statutory oversight of the export wheat market should be maintained and that the WEC should be maintained and deployed to fund this activity.<sup>65</sup>

3.59 GPA also added that 'abolition of all statutory oversight is premature'.<sup>66</sup> Mr Peter Mailler (Chairman, GPA) said: 'Overwhelmingly, growers are very concerned and uneasy about further deregulation of the wheat market at this time.'<sup>67</sup>

3.60 The VFF indicated its disapproval of the Bill, principally because of 'the need for a national industry authority'.<sup>68</sup> VFF viewed the transfer of certain functions to DAFF as being a move away from the independence of WEA.<sup>69</sup> The VFF's submission stated:

All efficient competitive markets... have government-backed regulatory oversight. This oversight addresses any market failings and creates the environment for market confidence to facilitate competition and ongoing investment in their industries. They also afford their market participants a degree of consumer protection within the market. VFF consider the Government is obligated to ensure a similar level of regulatory oversight and market facilitation is retained with the Australian grains industry.<sup>70</sup>

3.61 NSWFA's submission explained that market regulation protects market participants with unequal market power, in this instance, 'the market participants with the least market power are grain farmers'.<sup>71</sup>

3.62 DAFF told the Committee that market forces would serve as the best safeguard. Mr Allen Grant said:

We think that, in the end, the market will provide those safeguards. People will not sell their grains to companies or exporters when they think they are being charged for services that are not being delivered or they are charged for services that are too

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65 Submission 2, Grain Producers of Australia, p.2.

66 Submission 2, Grain Producers of Australia, p.2.

67 Mr Peter Mailler, GPA, *Proof Committee Hansard*, 11 May 2012, p.1.

68 Submissions 7, Victorian Farmers Federation, p.1.

69 Submission 7, Victorian Farmers Federation, p.3.

70 Submission 7, Victorian Farmers Federation, p.4.

71 Submission 9, New South Wales Farmers Association, p.9.

costly. They will take their grain somewhere else because the competition is there and that will put a fixed price on their ability to compete on administration and on service. If you get those cases – and they are reported in the media – then people will vote with their feet in some senses, or if they are breaking the law then people have got the option of going to the ACCC... and they will take action through the courts.<sup>72</sup>

3.63 Mr Grant also noted that in the event deregulation does not work, a future government could intervene and re-establish regulation over the market.<sup>73</sup> Further, Mr Peter Ottesen (DAFF) said that the proposed voluntary code of conduct 'will also be an important determinant of behaviours.'<sup>74</sup>

3.64 The Queensland Department of Agriculture, Fisheries and Forestry submitted while it 'supports the deregulation of domestic and international marketing arrangements':<sup>75</sup>

...it is premature to dismantle WEA and its funding mechanism, the WEC... DAFF Queensland further submits that the WEA should be retained with some enhanced functions and that its operations should continue to be funded by the WEC.<sup>76</sup>

3.65 The option of deregulation and retaining statutory oversight was not endorsed by DAFF. Mr Allen Grant told the Committee that 'if you are deregulating then Wheat Exports Australia is not the body that you would ask to provide other industry services.'<sup>77</sup>

3.66 According to Dr Michael Southan (Grain Growers Ltd):

Wheat Exports Australia has performed a very good role over the transition period from the single desk in the last four years in that it has provided due diligence for growers in making sure that the organisations who are out there buying their grain and selling it on their behalf stand up to certain financial tests. That has happened very well, to the point where we have seen record sales of grain to new markets internationally and no major collapse of any of those accredited exporters.<sup>78</sup>

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72 Mr Allen Grant, DAFF, *Proof Committee Hansard*, 9 May 2012, pp.2-3.

73 Mr Allen Grant, DAFF, *Proof Committee Hansard*, 9 May 2012, p.4.

74 Mr Peter Ottesen, DAFF, *Proof Committee Hansard*, 9 May 2012, p.4.

75 Submission 16, Queensland Department of Agriculture, Fisheries and Forestry, p.1.

76 Submission 16, Queensland Department of Agriculture, Fisheries and Forestry, p.1.

77 Mr Allen Grant, DAFF, *Proof Committee Hansard*, 9 May 2012, p.5.

78 Dr Michael Southan, Grain Growers Ltd, *Proof Committee Hansard*, 11 May 2012, p.16.

3.67 He continued:

However, four years has gone by now, and that has provided growers with time to get to know the market, to build their confidence and to get some experience in selling grain to new players in the market. As a result, the system now, where we have a regulatory body, provides costs to growers. Even though the exporters pay the costs, those costs are moved back down the chain to growers. They are expenses to growers that they would like to have reduced.<sup>79</sup>

3.68 Submissions and evidence from agribusiness expressed support for deregulation. AGEA submitted:

The objective of increased competition in acquisition and marketing of grain has been achieved and the current accreditation arrangements are simply adding cost, without creating any benefit.<sup>80</sup>

3.69 Viterra positively asserted its support for the Bill, describing current regulation as 'heavy-handed';<sup>81</sup> and noted:

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.<sup>82</sup>

3.70 Viterra's submission stated:

In line with the findings of the Productivity Commission, Viterra considers that there is compelling evidence which demonstrates the success of wheat marketing reform, and that the industry is well positioned to manage wheat exports in the same way that it manages the competitive and efficient export of other agricultural commodities.<sup>83</sup>

3.71 GrainCorp indicated its support for deregulation:

Current regulation acts as a significant disincentive for market participants to invest in improving port performance. Any investment in additional capacity is immediately effectively 'nationalised' and is open to all market participants... No

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79 Dr Michael Southan, Grain Growers Ltd, *Proof Committee Hansard*, 11 May 2012, p.16.

80 Submission 4, Australian Grain Exporters Association, p.2.

81 Submission 12, Viterra, p.6.

82 Submission 12, Viterra, p.7.

83 Submission 12, Viterra, p.7.

organisation will invest if they do not retain property rights over that investment or if regulation takes away its right to use the property or investment.<sup>84</sup>

3.72 GrainCorp's submission commented that it 'does not agree with proposals for the creation of an industry ombudsman'.<sup>85</sup>

## Comments specific to individual clauses and details

3.73 Some submissions provided the Committee with suggestions and recommendations to amend specific clauses within the Bill to improve its operation, as follows:

- Making the Bill applicable to any and all wheat bulk port terminals; two ports were named as being exempt.<sup>86</sup>
- Retaining clause 86A in the principal Act, which relates to State and Territory laws;<sup>87</sup>
- Broadening the objectives of the Bill, by adding the words 'and advances the needs of wheat growers' into clause 3(a).<sup>88</sup> Alternatively, one submission was of the view that the objective in clause 3(a) serves no purpose;<sup>89</sup>
- Revising clause 9(4)(c), pertaining to access test rules, to make the rules in the Bill consistent with or the same as those currently in force under the principal Act.<sup>90</sup>
- Keeping continuous disclosure rules the same, particularly by omitting clauses relating to a 'loading statement';<sup>91</sup>
- Changing clause 24, to make the objective of the special account read instead: 'improve and promote Australian wheat quality.'<sup>92</sup>

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84 Submission 8, GrainCorp, p.7.

85 Submission 8, GrainCorp, p.8.

86 Submission 8, GrainCorp, p.10.

87 Submission 7, Victorian Farmers Federation, p.2.

88 Submission 9, New South Wales Farmers Association, p.18.

89 Submission 12, Viterra, p.11.

90 Submission 8, GrainCorp, p.10.

91 Submission 12, Viterra, p.9.

92 Submission 8, GrainCorp, p.10.

## Committee comment

- 3.74 The Committee is aware of the considerable potential in the Australian wheat industry. Australian wheat has a good reputation overseas, and Australia continues to export the vast majority of wheat it grows. Australian farmers contribute daily to the global task of feeding billions of people. There are numerous examples of Australian producers developing new foreign markets for previously unused wheat products, broadening demand for Australia's agricultural produce. All submissions to the inquiry share the Committee's concern for keeping the Australian wheat industry strong, profitable and responsive to its customers' needs.
- 3.75 As noted in the overview of this chapter, the Committee received a number of opposing views about different aspects of the Bill, as well as varied opinions about the desirability of the Bill as a whole.
- 3.76 In respect of quality assurance, the Committee has not discerned any particular link between the current system of accreditation and quality assurance. No substantial quality monitoring is currently provided by government – be it WEA or Customs - and it is hence not clear how the abolition of the accreditation system could have a negative impact on the quality of bulk export wheat. In the Committee's view, it is much more likely that a deregulated market will provide the competitive pressures necessary to give customers an assurance of quality.
- 3.77 Any rogue operators exporting substandard wheat should be quickly identified by both their customers and competitors. In a competitive industry, others will be able to exploit the dissatisfaction of a rogue operators' customers, and fill their orders. Particular standards relating to wheat functionality, variety and quality can and should be matters for contracts between exporters and their customers. This can be supported by certification systems, such as those provided by WQA and GTA.
- 3.78 However, concerns about quality in part may be a result of Wheat Quality Australia and Grain Trade Australia having an uncertain role in a deregulated wheat market.

## Recommendation 1

**The Committee recommends that the Australian Government work with industry to overcome the uncertainty around Wheat Quality Australia and Grain Trade Australia to develop a single industry-funded entity to deliver industry services in the areas of quality, standards and stock information. The Australian Government and Industry should aim to have the entity in place by October 2014, when full deregulation occurs.**

- 3.79 Turning to the access test and the proposed code of conduct, the Committee is aware that the current market is geographically fragmented and dominated by three major players. However, it is not clear that delaying deregulation will substantially improve any of these conditions; indeed, the entrance of new players into the market could be aided by deregulation and the abolition of accreditation.
- 3.80 There are considerable expectations placed on the proposed code of conduct, and the Committee is aware that negotiating a viable code of conduct will be a considerable challenge for the industry. Numerous concerns raised by various submitters to the inquiry have highlighted the complexity of developing and assessing any code of conduct. Many of the concerns discussed in this report will be matters for the Minister to consider when assessing the suitability of any code of conduct.
- 3.81 One suggestion put forward was that the Government consider appointing a Grains Industry Ombudsman to oversee the code. The Telecommunications Industry Ombudsman was suggested as an industry-funded model that the Grains Industry Ombudsman could be modelled on.

## Recommendation 2

**To allay grower concern as to how the voluntary code of conduct will be monitored, the Committee recommends that the Australian Government consider appointing for a five year period an industry-funded "Grains Industry Ombudsman".**

- 3.82 Coming to market information, the Committee sees great potential for the wheat industry – and grains production more generally – in developing an industry-based information publication system. As noted by many submissions, information about grain stocks and flows is limited and of

variable detail. The submission from the ASX noted the inadequacy of current information to support the wheat industry growing to its full potential. An information publication system should ideally be granulated to the level of regional wheat stocks, not just port information, and should be freely available.

- 3.83 The Committee believes that this should not be a government-led process. However, the Committee also believes that the unspent WEC funds – to be placed in a new Wheat Industry Special Account – could provide ‘seed money’ to commence work on the development of a wheat stocks information system. Any support should take into account – and possibly seek contributions from – state-based grains trust funds or other industry funds.

### Recommendation 3

**The Committee recommends that, to improve the efficiency of the wheat export market, the Australian Government actively encourage and support the wheat industry in its efforts to improve wheat stocks information sharing, possibly by allocating funding from the proposed Wheat Industry Special Account to develop an industry mechanism, as part of the newly created industry-funded entity.**

- 3.84 The Committee also received considerable evidence regarding the general desirability or otherwise of statutory oversight of the wheat industry. However, much of the evidence in support of regulation did not specify particular functions, roles or aims for such oversight.
- 3.85 However, regulation will be continued through the ACCC’s role. The Committee feels that the ACCC should be adequately resourced to undertake any additional functions regarding their oversight of the wheat industry in a deregulated market.
- 3.86 The Committee believes that all regulation should be targeted to particular ends, and other means of reaching such ends should be examined before regulation is adopted. In this case, the Committee has not received any compelling argument not to continue with deregulation as proposed by the Bill. However, full deregulation should only proceed if a truly workable, comprehensive and viable code of conduct, with strong and sustainable support from industry is developed and approved by the Minister.

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**Recommendation 4**

**The Committee recommends that the House pass the Wheat Export Marketing Amendment Bill 2012.**

Hon Dick Adams MP  
Committee Chair

5 June 2012.





## Appendix A – Submissions and Exhibits

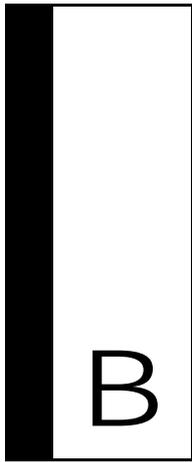
### Submissions

- 1 *name withheld*
- 2 Grain Producers Australia
- 3 Parliament of South Australia
- 4 Australian Grain Exporters Association
- 5 Grain Growers
- 6 WA Department of Agriculture and Food
- 7 Victorian Farmers Federation
- 8 GrainCorp Limited
- 9 NSW Farmers' Association
- 10 The Western Australian Farmers Federation (Inc)
- 11 Wheat Exports Australia
- 12 Viterro Ltd
- 13 Pastoralists and Graziers Association of Western Australia
- 13.1 Pastoralists and Graziers Association of Western Australia  
SUPPLEMENTARY (to Submission No. 13)
- 14 *confidential*
- 15 McCaulay Dalton
- 16 Queensland Department of Agriculture, Fisheries and Forestry
- 17 Australian Securities Exchange

- 18 CBH Group
- 19 Australian Competition and Consumer Commission
- 20 Government of South Australia

#### Exhibits

- 1 Emerald Group Australia Ltd - 'Emerald takes lead in grain stock information provision'
- 2 Wheat Exports Australia & Emerald Group Australia Ltd - 'Emerald commits to further improvements in its wheat pool management systems, processes and disclosure'
- 3 Wheat Exports Australia - 'Report for Growers 2010/11'
- 4 Wheat Exports Australia - 'Q&A with Rod Sims'



## Appendix B – Public Hearings

### Wednesday, 9 May 2012 - CANBERRA

#### Department of Agriculture, Fisheries and Forestry

Ms Roxanna Auld, Policy Officer, Crops, Horticulture and Wine Branch,  
Agricultural Productivity Division

Mr Allen Grant, First Assistant Secretary, Agricultural Productivity  
Division

Ms Stephanie Helm, Policy Officer, Crops, Horticulture and Wine Branch,  
Agricultural Productivity Division

Mr Peter Ottesen, Assistant Secretary, Crops, Horticulture and Wine  
Branch, Agricultural Productivity Division

Mr Jammie Penm, Assistant Secretary, Agricultural Commodities and  
Trade Branch, ABARES

### Friday, 11 May 2012 - CANBERRA

#### Australian Competition & Consumer Commission

Mr Mark Pearson, Deputy Chief Executive Officer

Mr David Salisbury, Deputy General Manager, Fuel, Transport & Prices  
Oversight Branch

Ms Rose Webb, Executive General Manager, Mergers and Adjudication

**Australian Grain Exporters Association**

Mr Mitchell Morison, Member company - Cargill Australia

Ms Rosemary Richards, Executive Officer

**Grain Growers Ltd**

Mr John Eastburn, Chairman

Dr Kenneth Quail, General Manager, Technical Services

Dr Michael Southan, Acting Chief Executive Officer

**Grain Producers Australia**

Mr Pete Mailler, Chair Grain Producers Australia

**The Western Australian Farmers Federation (Inc)**

Mr Kim Simpson, President, Grains Section

**Victorian Farmers Federation**

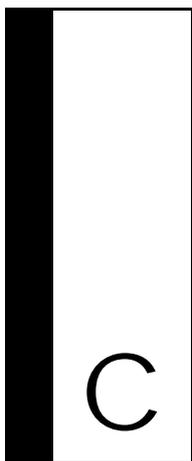
Mr Andrew Weidemann, President, VFF Grains Group

**Wheat Exports Australia**

Mr Hugh Cooke, Senior Manager Corporate Services

Mr Jason Lucas, Senior Manager Operations

Mr Peter Wood, Chief Executive Officer



## Appendix C – Code of Conduct Committee documents





# GRAIN TRADE AUSTRALIA

## Code of Conduct Development Committee

**To oversee the process, a Code Development Committee (CDC) will be established and report to the Minister for Agriculture, Fisheries and Forestry. All major stakeholders will be represented on the Committee.**

The CDC will be convened by an independent chairman, who will be an individual of significant standing in the Australian grain industry and accepted by members of the CDC to be independent of commercial conflict for the purpose of the Code.

Membership of the CDC will comprise representatives of key stakeholders, and include nominees appointed on behalf of the following organisations:

- Established port owners;
- Major users;
- Production sector;
- Industry sector.

Representatives of Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Competition and Consumer Commission (ACCC) may attend Committee meetings as observers and provide advice where necessary.

The CDC will be required to consult widely and undertake a thorough examination of the issues by stakeholders in formulating the Code, which will be release for public prior to finalization.



Name	Company	Representing
Tom Keene	GTA	Chairman
Chris Aucote	Bunge	AGEA
Mitch Morison	Cargill	AGEA
David Mattiske	Glencore	AGEA
Paul Scott	CBH	CBH
Richard Codling	CBH	CBH
Caroline Rhodes	Viterra	Viterra
Neil Johns	GrainCorp	GrainCorp
Andrew Weidemann	GPA	GPA
Pete Mailer	GPA	GPA
Paula Fitzgerald	GGL	NFF
Geoff Honey	GTA	Industry
John Warda	Emerald	Emerald
Peter Ottersen	DAFF	Observer
Des Naughton	DAFF	Observer
Roxy Auld	DAFF	Observer
Lyn Camilleri	ACCC	Observer
Richard Weksler	ACCC	Observer
Kim Parker	ACCC	Observer
Ben Smith-Stubbs	Minister's Office	Observer
Rosemary Richards	AGEA	Observer
Sean Flanery	GTA	Secretariat



GRAIN TRADE AUSTRALIA

**Tuesday 3 April 2012**

**MEDIA RELEASE**

## **PORT ACCESS VOLUNTARY CODE OF CONDUCT**

In accordance with the recommendations contained in the Productivity Commission Report into Wheat Export Marketing Arrangements, the requirement for port terminal operators to pass an Access Test as a condition for exporting bulk wheat requirement will cease on 30 September 2014.

The legislation to enable these changes has been introduced by the Australian Government and will transition the wheat export market to full deregulation.

From 1 October 2014, access to port terminal services will be governed by a voluntary industry code of conduct (the Code) and general competition law, subject to the Code meeting legislative requirements and the approval of the Australian Government. Recognising the need to coordinate industry to develop a Code, Grain Trade Australia (GTA) in its capacity as the secretariat, has formed an industry driven Code Development Committee (CDC).

The CDC consists of established port owner/operators, Australian Grain Exporters Association (AGEA), Grain Producers Australia (GPA), National Farmers' Federation (NFF) and Grain Trade Australia (GTA). Mr Tom Keene, the GTA Chairman, has been appointed as the Chairman of the CDC.

The CDC will develop a non-prescribed voluntary code of conduct for port terminal access for the export of bulk wheat and will report directly to the Minister for Agriculture, Fisheries and Forestry the Hon. Joe Ludwig.

Mr Keene commented that, "The successful implementation of the Code will require the participation of infrastructure owners which will ensure coverage of all bulk grain export terminals in Australia in meeting the Codes objectives."

The CDC will undertake a thorough examination of all the issues in relation to the current port access requirements and will liaise closely with key stakeholders, Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Competition and Consumer Commission (ACCC) throughout the development process.

"The Code must remain consistent with ACCC guidelines for developing effective voluntary codes of conduct and include continuous disclosure rules." Mr Keene further noted that "The Code will ensure that Australian grain producers will enjoy maximum competition with exporters enjoying the surety of access to port facilities."

### **Further information:**

Geoff Honey – Grain Trade Australia, 02 9235 2155

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**Grain Trade Australia** develops the grain standards and contracts that are used across the Australian grain industry and has over 250 member organisations ranging from regional family businesses to large national and international trading/storage and handling companies.

Members operate within all sectors of the grain industry in Australia. Organisations involved in related commercial activities such as banking, communications, grain advisory services and professional services (solicitors and accountants) are also members.

**Terms of Reference**  
**CODE DEVELOPMENT COMMITTEE**  
**Relating to the**  
**PORT ACCESS VOLUNTARY CODE OF CONDUCT**  
**For**  
**AUSTRALIAN BULK WHEAT SHIPMENTS**

The Australian Government has announced its policy intent to transition the wheat export market to full deregulation, in accordance with amendments to the *Wheat Export Marketing Act 2008* to be introduced to Parliament in 2012. From 1 October 2014, the market will be fully deregulated and access to port terminal services will be governed by a voluntary industry code of conduct (the Code) and general competition law.

To oversee this process, a Code Development Committee (the CDC) will be established and report to the Minister for Agriculture, Fisheries and Forestry (the Minister). All major stakeholders will be represented on the Committee.

The CDC will be convened by an Independent Chairman, who will be an individual of significant standing in the Australian grains industry and accepted by members of the CDC to be independent of commercial conflict for the purpose of the Code.

Membership of the CDC will comprise representatives of key stakeholders, and include nominees appointed on behalf of the following organisations:

- Established port owners - CBH, GrainCorp, Viterra and ABA (Emerald). (4 nominations)
- Major users - Australian Grain Exporters Association (AGEA) (3 nominations)
- Production - Grain Producers Australia (GPA) (1 nomination)
- Production - National Farmers' Federation (NFF) (1 nomination), and
- Industry - Grain Trade Australia (GTA) (1 nomination).

Representatives of Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Competition and Consumer Commission (ACCC) may attend Committee meetings as observers and provide advice where necessary.

The CDC will be required to consult widely and undertake a thorough examination of the issues raised by stakeholders in formulating the Code, which will be released for public comment prior to finalisation. All submissions will be made publicly available on the GTA website.

The CDC is required to commence its work by 22 February 2012 and report to the Minister for Agriculture, Fisheries and Forestry no later than June 2012.

## **Context**

The *Wheat Export Marketing Act 2008* establishes an 'Access Test' relating to the provision of port terminal services to accredited bulk wheat exporters. The requirement for port terminal operators to pass the Access Test as a condition for exporting bulk wheat will remain in place until 30 September 2014.

The CDC will be responsible for the development of a non-prescribed voluntary code of conduct for all grain export terminals. The Code should meet the needs of both growers and exporters, be consistent with ACCC guidelines for developing effective voluntary codes of conduct and include continuous disclosure rules.

The Australian Government has signalled in its policy that abolishment of the Access Test in 2014 will be conditional on the Code being implemented by 30 September 2014.

## **Scope of the Code**

The scope of the Code will include the following matters relating to port terminal access:

1. Cover all bulk port terminals involved with the shipment of bulk wheat;
2. Obligations on port terminal operators not to discriminate or hinder access in the provision of port terminal services to third parties;
3. Obligation to publish port loading protocols for managing demand for port terminal services;
4. Obligation on port terminal operators to provide port terminal services on standard terms and prices to third parties and provide third parties with a framework to negotiate non-standard terms and prices and the requirement to publish a shipping schedule in accordance with the 'continuous disclosure' obligations of the Access Test and other information
5. The Code will not specify the commercial terms required to be contained in port loading protocols or the standard terms and prices. Dispute resolution will be limited to the compliance with the Code and not relate to matters of a commercial or operational nature which shall be governed by each party's respective contractual relationship.

## **Role of the Code Development Committee**

The CDC is established to develop a non-prescribed voluntary code of conduct for port terminal access relating to the export of bulk wheat, in accordance with the:

- Australian Government's response to the Productivity Commission recommendations on wheat export marketing arrangements
- Access Test provisions of the *Wheat Export Marketing Act 2008*, as amended
- ACCC guidelines for developing effective voluntary industry codes of conduct, and
- the *Competition and Consumer Act 2010*.

The CDC will give consideration to issues relevant to the development of the Code, including but not limited to:

- Specific standards of conduct for the Australian wheat export industry in relation to port terminal access.
- Continuous disclosure rules, including the publication of the 'shipping stem' for each port terminal service.
- Data collection and publication of key port terminal information and performance indicators.
- Compliance and accountability, including sanctions for non-compliance.
- Code administration arrangements, including industry awareness and education initiatives, compliance monitoring and Code review procedures.
- An effective system of complaints handling.
- An appropriate dispute resolution mechanism
- Consideration of funding and resource allocation required to administer the Code.
- Any other factors required by the Access Test provisions in gaining Ministerial approval for the implementation of the Code.

The successful implementation of the Code will require the direct participation of infrastructure owners and coverage of all bulk grain export terminals in Australia, in meeting the objectives of:

- Promoting the development of a bulk wheat export marketing industry that is efficient, competitive and responsive to the needs of wheat growers; and
- Providing an industry framework to allow exporters to access services at all port terminal facilities within Australia that export bulk wheat.

The CDC should aim to reach decision by consensus wherever possible.

### ***Consultation***

In developing the Code, the CDC will consult widely with key industry stakeholders, including growers and their representative groups, industry bodies, companies and government agencies. The draft Code will be published for public consultation with a **[No.]** week period to respond, with further rounds of public consultation as deemed necessary by the CDC in achieving a high level of engagement.

The CDC will accept written submissions from interested parties at any time:

Email    cdc@graintrade.org.au  
Mail      Secretariat – Port Access CDC  
            Grain Trade Australia  
            PO Box R1829  
            Royal Exchange NSW 1225

***Secretariat***

DAFF will assist GTA with secretariat services for the purposes of developing the Code.

***Tenure***

The CDC will cease operations on completion of its role under these Terms of Reference.

For further information please contact Grain Trade Australia, Secretariat, on +61 2 9235 2155.