Hon Gail Gago MLC

SUBMISSION No. 20
Inquiry into Wheat Export Marketing Amendment Bill 2012

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Government of South Australia

Leader of the Government in the Legislative Council
Minister for Agriculture, Food and Fisheries
Minister for Forests
Minister for Regional Development
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Hon Dick Adams MP
Chair
Standing Committee on Agriculture, Resources,
Fisheries and Forestry
PO Box 621
Parliament House
CANBERRA ACT 2600

Dear Mr Adams

I refer to the letter of 29 March 2012 from Mr Alby Schultz, Acting Chair, concerning the referral to the Standing Committee on Agriculture, Resources, Fisheries, and Forestry of the Wheat Export Marketing Amendment Bill 2012 for inquiry and inviting a submission from myself or my Department.

Please find my submission to the inquiry attached, based on the experience of the South Australian decision to deregulate barley export marketing in this State.

Should the Committee secretariat wish to liaise with my department, Primary Industries and Regions South Australia (PIRSA) further on this matter, I nominate Mr Dave Lewis as the contact:

Mr Dave Lewis
Manager, Grain Industry Development

Thank you for writing to me on this important matter.

Yours sincerely

HON GAIL GAGO MLC

16 / 5 /2012

ATTACHMENT
SUBMISSIONS TO THE INQUIRY ON THE WHEAT EXPORT MARKETING ACT AMENDMENT BILL 2012.

The former (South Australian) *Barley Exporting Act 2007* ("the Barley Act") was enacted to assist the South Australian Barley industry change to full deregulation. The Barley Act allowed a staged transition from the former single desk barley export marketing arrangement to the now fully deregulated market following the expiry of the Barley Act on June 30 2010. The Barley Act was intentionally transitory in nature, providing a three-year period in which to gradually open the Industry to market forces, whilst simultaneously providing growers with the security necessary to enable them to embrace deregulation.

The model used by the Commonwealth to transition the wheat bulk export marketing toward deregulation is a similar transition strategy to that used for barley exporting in this State, except that the barley exporting legislation set the arrangement to sunset on 30 June 2010. The Commonwealth chose to review the wheat export marketing arrangements before committing to full deregulation, using the Productivity Commission to conduct the review and make recommendations on the future of the wheat export marketing arrangements.

Prior to the inception of the Barley Act, the South Australian barley industry was regulated by a 'single desk' which controlled the export of bulk barley. Wheat was the only other grain with regulated export marketing, also a 'single desk' prior to changing to an exporter accreditation system in 2008. All other grains are not regulated. The *(SA) Barley Marketing Act 1993* required the export of all bulk barley to be directed through one entity, ABB Grain Export Ltd, a subsidiary of ABB Grain Ltd.

The effect, economically, of a 'single desk' structure was that generally the price received by the grower reflected an average of the sole exporter's sales to a market over a season (known as pooling) and/or an average of sales to various markets minus the costs incurred by that exporter (equalisation). Whilst many growers appeared satisfied with single desk arrangements, national forces toward deregulation and changes in the structure of ABB Grain Ltd from being grower-owned to a commercially run entity heralded the beginning of change.

In 1997 a review by the Centre for International Economics was commissioned conjointly by Victorian and South Australian Governments as required under the National Competition Policy. The review recommended a move towards deregulation, highlighting the need to maintain some form of regulation during a transitional period.

Whilst Victoria let their legislation sunset and moved directly into a deregulated environment, South Australia amended the *Barley Marketing Act 1993* removing the sunset date of the legislation and enacting the requirement for a further review in two years. Pursuant to these amendments, a review was undertaken in South Australia in 2003. The review considered various alternate models, but recommended full deregulation of the Industry, forcing ABB Grain Ltd to be open to competitive challenge through a contestability process. The review also envisaged a licensing authority to oversee this process and to grant export licences where appropriate.

The first legislative proposal responding to the findings of the review lapsed in the South Australian Parliament due to delays caused by the merger of Ausbulk, the bulk handling

corporation, and ABB Grain Ltd. A subsequent review undertaken by a Barley Marketing Working Group established to revisit the deregulation proposal in 2006 highlighted the changes that had already occurred interstate, the pressures of the National reform agenda and the likelihood that changes would also be made to wheat marketing in the not too distant future.

The Barley Marketing Working Group provided seven recommendations in their report that became the embodiment culminating in the creation of the Barley Act in 2007.

The Barley Act established a licensing scheme for barley exporters in order to give growers the opportunity to adjust to a deregulated market. The Essential Services Commission of South Australia (ESCOSA) managed the barley exporting licensing under the Act. The licensing system assessed the suitability of new entrants in the barley export industry. This is similar to the accreditation of wheat exporters as one of the functions of Wheat Exports Australia.

In hindsight, in South Australia the assessment of a barley exporting licence applicant provided at best a qualified assurance of the suitability of the applicant, but could not provide any guarantee on the future prudential status of the licensee.

The Barley Act required the establishment of an Advisory Committee with the function to advise the Minister on the operation of, and any matter arising under, the Barley Act. The committee reported that it did not identify any significant issues either from ESCOSA or industry that were a consequence of the Barley Act since the new arrangements for exporting of barley from South Australia came into being. The Committee ceased to exist when the Barley Act expired.

The Barley Act also required a review of barley exporting be conducted within the first two years of its operation and the results of the review be reported. The report recommended that the Barley Act be allowed to expire on the 30 June 2010, the third anniversary of its establishment. The report made recommendations on other issues of concern, but of particular relevance to this inquiry on the proposed legislative changes for wheat marketing:

- the availability of market information to ensure a transparent and effective barley market and
- the perceived market powers of bulk handling companies particularly related to provision of fair access to grain exporting services at ports.

However, it was apparent that both of these issues are common to all grains regardless of export regulation status including unregulated grains like pulses, canola and oats, as well as barley. Supporting this view was the Productivity Commission Review which identified these same issues as concerns in the Wheat Marketing Arrangements.

The barley review report identified the risk of exploitive behaviours of grain exporters with dominant or monopolistic ownership of grain exporting infrastructure in ports, without identifying any supportive evidence of any actual occurrences. However, the review recommended that this could be dealt with by the Ports Access Test required under the Commonwealth wheat marketing arrangements being retained and the scope extended to cover all grains.

The review of the Barley Act reported that the licensing system had served its purpose and was no longer necessary. It was stated that the absence of the Act would not change the conduct of the industry. Most submissions to the review suggested that the industry was ready for deregulation and the licensing provisions had become superfluous. One barley industry stakeholder went as far as to say, 'Given that other grains in South Australia and barley in New South Wales, Victoria and Queensland do not require the exporter to be licensed and with no issues evident in these markets, one could conclude that there is no evidence that the licensing of South Australian barley exporters is providing any benefit to the Barley grower.'

Responders to the review of the Barley Act suggested that whilst the Barley Act was successful as a transitional tool, the sophistication of the industry has made the need for future licensing redundant. Growers submitted that they had been given adequate opportunity to become familiar with the major players in the market and were best able to discern for themselves who they should sell their produce to and on what terms. South Australian barley grower consensus was to allow the Act to expire allow the barley industry in South Australia to move to complete deregulation.

Accredited wheat exporters with significant in-port grain exporting infrastructure are required to pass an "Access Test". This test demonstrates how the grain port terminal operator provides fair and reasonable access for all wheat exporters to the exporting facilities at port. Non compliance with the Access Test results in the grain port terminal operator losing its wheat exporting accreditation. The Access Test takes the form of an Access Undertaking that is agreed to by the Australian Competition and Consumer Commission (ACCC) that in turn is compliant with Part IIIA of the Commonwealth *Competition and Consumer Act 2010*.

In practice, at least in South Australia, the requirement for an Access Test to provide for fair access to port grain exporting services for wheat also established the same standard protocol for the export for all other grains.

The Productivity Commission report recommended removing the Access Test requirements for grain port terminal operators on 30 September 2014. If the requirement for the Access Test is allowed to lapse with the expiry of the Wheat Marketing arrangements, it remains to be seen what consequences will occur for fair access to grain exporting services for the export of all grains. However, this is dealt with by the proposal to maintain the Ports Access to 2014. I understand that, a voluntary code of conduct is proposed to replace the Ports Access Test requirement, to be developed and implemented by 30 September 2014 to come into effect from 1 October 2014.

The code is proposed to include continuous disclosure rules for port terminal operators that export wheat. The draft code will provide assurance of continuance of an equivalent arrangement to the Access Test. The voluntary code of conduct would complement general competition law, improve transparency within the industry and provide security and certainty in the longer-term. The code is required to meet the needs of both growers and exporters, comply with ACCC standards and include continuous disclosure rules. The voluntary code and access issues will be governed by general competition law (under Part IIIA of the *Commonwealth Competition and Consumer Act 2010*) if these provisions are implemented in line with the Productivity Commission recommendations.

While the provisions of the code are required only for wheat, it could be envisaged that as in the current arrangements, wheat would not be treated separately to other grain exports; the code would be applied consistently across all grains. However, for sake of completeness, the expansion of scope of the code to cover all grains would provide greater confidence that access to grain exporting services amongst grain exporters and growers would remain fair and reasonable.

The South Australian position is that industry should be given the opportunity to self regulate with Government monitoring and reviewing developments post full deregulation. The issues Government might monitor closely after the 2014 expiry of current provisions is the fair access to port grain exporting services, testing whether industry has developed a viable voluntary code. The provision of an agreed system for the appropriate level of disclosure of grain market information could be dealt with similarly. Industry should also be given the opportunity to respond to market signals for branding and quality management of wheat and other grains by establishing structures and processes to deal with such industry good issues. Government intervention with reregulation is a risk to the development of functional markets if not properly considered. These are matters in my view that industry should be given the time to resolve, before Government considers intervening.

In summary, the South Australian experience in transitioning from a regulated single desk barley exporting arrangement to full deregulation was without controversy. Barley growers in South Australia now have had access to a fully contestable market for barley for five seasons with the past two season's market being fully deregulated. In that time grain growers have realised more opportunities, have access to greater diversity of barley marketing options offered by exporters and no downsides apparent or emerging. Ensuring a carefully considered position of availability of grain market information and fair access for all grain exporters to grain exporting services are the only significant reservations that emerged from the deregulation of barley in South Australia. However, these issues are common to all grains and not an artefact of deregulation. The Commonwealth may take comfort from the experiences of the South Australian barley industry deregulation in its considerations for the future of the current wheat export marketing arrangements.

HON GAIL GAGO MLC
MINISTER FOR AGRICULTURE, FOOD & FISHERIES
GOVERNMENT OF SOUTH AUSTRALIA