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RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE

Reference: Wheat Marketing Amendment Bill 2002

MONDAY, 5 MAY 2003

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Monday, 19 May 2003

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SENATE**RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE****Monday, 5 May 2003**

Members: Senator Heffernan (*Chair*), Senator Buckland (*Deputy Chair*), Senators Cherry, Colbeck, Ferris and O'Brien

Participating members: Senators Abetz, Boswell, Brown, Carr, Chapman, Coonan, Eggleston, Faulkner, Ferguson, Harradine, Harris, Hutchins, Knowles, Lightfoot, Mason, Sandy Macdonald, McLucas, Murphy, Payne, Ray, Santoro, Stephens, Tchen, Tierney and Watson

Senators in attendance: Senators Colbeck, Ferris, Heffernan and O'Brien

Terms of reference for the inquiry:

Provisions of the Wheat Marketing Amendment Bill 2002.

Committee met at 9.05 a.m.

HAMILTON, Dr Graeme, Chief Plant Protection Officer, Department of Agriculture, Fisheries and Forestry

MAXWELL, Mr Stephen Andrew, Director, Levies Revenue Service, Department of Agriculture, Fisheries and Forestry

MORTIMER, Mr David Kenneth, Executive Manager, Field Crops, Wine and Horticulture, Department of Agriculture, Fisheries and Forestry

NEWMAN, Mr Robert Meyrick John, Manager, Grains and International, Food and Agriculture, Department of Agriculture, Fisheries and Forestry

PITTAR, Mr Roland Yorke, Acting General Manager, Field Crops, Wine and Horticulture, Department of Agriculture, Fisheries and Forestry

CHAIR—I declare open the public hearing of the Senate Rural and Regional Affairs and Transport Legislation Committee. The committee is meeting today to continue consideration of the Wheat Marketing Amendment Bill 2002. Public hearings were held in Canberra and Perth on 6, 7 and 10 March. The committee is required to report to the Senate by Wednesday, 14 May 2003. The purpose of the bill is to enable revenue to be raised for the continued operations of the single desk exporter of the Australian wheat crop, the Wheat Export Authority. The revenue will be raised by charging a levy on all exports of wheat, and it is intended that the levy commence in the first half of the year.

Today's hearing is public and open to all. A *Hansard* transcript of the proceedings will be available from the committee secretariat or via the Parliament House Internet home page next week. It should be noted that the committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the order of the Senate of 23 August 1990 concerning the broadcasting of committee proceedings.

Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence given before it. Any act by any person which may operate to the disadvantage of a witness on account of evidence given by him or her before the Senate or any committee of the Senate is treated as a breach of privilege. While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of the evidence to the Senate. The Senate also has the power to order production and/or publication of such evidence. I should add that any decision regarding publication of in-camera evidence or confidential submissions would not be taken by the committee without reference to the persons whose evidence the committee may consider publishing.

I put on the record again the fact that I am a wheat grower—a pretty worn out one—so I have some sort of an interest, which I declare. Mr Mortimer, we had a discussion earlier that we may open the proceedings with some sort of a brief on the wheat streak mosaic virus.

Mr Mortimer—Thank you very much, Mr Chair. Dr Graeme Hamilton, who has responsibility for plant disease within the product integrity division of the department, is available to brief the Senate committee on activity relating to the wheat rust outbreak.

CHAIR—This is a great opportunity for the committee—even though I guess it is well removed from the wheat export levy—to be given an explanation, in a public way, on where we are up to and to give some sort of confidence and comfort to Australia's wheat growers with this wheat streak mosaic virus outbreak. Perhaps you could just give us a bit of a run-down.

Dr Hamilton—Yes, certainly. I will try to keep this brief as an overview and then obviously, if you wish, I can answer any questions that you might have. We have known that we have had wheat streak mosaic virus in Australia for the past month, when it was positively identified in the CSIRO facilities at Black Mountain. On that basis, a quarantine order was put in place on the Black Mountain and Ginninderra farm sites in the ACT and, at that stage, the disease was still considered to be exotic. We instigated a consultative committee on exotic plant pests and diseases even before we knew it was wheat streak mosaic virus, and that committee has met on a regular basis since then to discuss the unfolding situation. The committee instigated a broader survey of other places where, if this virus could be found, it might be found. We were targeting initially wheat breeding institutes because we believe that they pose the greatest chance of finding a continuous supply of the hosts and mites that are required to transfer this virus around.

A week later we had a positive ID at the Waite Institute as part of the University of Adelaide's wheat breeding program, then late last week it was found at the Leslie Research Centre at Toowoomba and other data unfolding over the weekend are yet to be confirmed, which suggests that it is more widespread. We believe these events to be unrelated; they are related to neither the CSIRO incident nor the Waite Institute. They are independent and therefore very strongly suggest that the virus is, in fact, quite widespread, at least on the basis of wheat breeding institutes. We are now looking at samples from the wider wheat belt to see whether we can detect the virus there.

The current situation is that, based on evidence coming to light over the weekend, we will be convening the consultative committee as early as we can this week to make recommendation to what is called the national management group, which is the CEOs of the Commonwealth and state departments, to recommend whether we still consider the virus to be exotic and therefore eradicable or if we consider the virus to be established in Australia and therefore manageable. That decision has not yet been made. We are still in the mode of considering this to be eradicable. We are taking a very conservative step-by-step approach on this and only basing our decisions on what we actually know rather than what the speculation is. So the next 48 hours will be a very challenging and interesting time in terms of making the right decisions.

As far as the current wheat crop is concerned the situation is that, in effect, this current series of incursions of the virus does not change the risk profile for the wheat industry in Australia for this current crop. The risk of wheat streak mosaic virus is no greater nor no less to the industry than it was this time last year, we believe.

CHAIR—There has been speculation that the virus may have been at the Waite Institute for a year or two but that they did not identify what it was. Can you comment on that?

Dr Hamilton—Part of the problem of identifying viruses or any disease in the situation of wheat breeding establishments is that you are forcing the plants to go through a summer breeding, which leads to very distorted and very strange plants showing a wide range of symptoms, some of which could be nutritional and some of which could be entirely a response to growing in hot conditions under long day-length. So they get some very weird looking plants, and the symptoms of disease can be masked in that situation. We are also not sure whether the disease always expresses itself in plant symptoms. It may be that in some varieties it is sitting there quite active but is not displaying the streaking symptoms on the leaves. So it is quite possible that it has been there for a number of years.

We have some plant samples that were taken in 1996 by a researcher at the Waite Institute who at that time very seriously believed that the wheat streak mosaic virus or something akin to it was there. We have the opportunity to retest some of those samples. There is no guarantee that the material will still be in its original form. It may be that the virus has degraded over time. But a positive identification in that material would confirm that the virus has been there at least since 1996.

CHAIR—What became of the evidence that that person came upon some years ago? Was he told to bugger off, or was there some sort of scientific assessment made of his thoughts?

Dr Hamilton—The material was assessed. Some preliminary tests indicated that it was wheat streak mosaic virus. Supplementary tests could not confirm that, and the matter was left there.

Senator O'BRIEN—I think you have partly answered the question I was going to ask. How long is it possible that the virus was present before being discovered in any of those situations?

Dr Hamilton—We only have any sort of evidence really going back to 1996. There is opinion that symptoms first started showing up earlier than that but, again, that is really speculation at this stage. We are hoping that with this 1996 material we may be able to confirm it one way or the other. I must stress: if we are unable to find the virus in that material, it does not mean that the virus was not there in 1996.

Senator O'BRIEN—How widespread has distribution of plant material in any form been from those establishments over the last 12 months?

Dr Hamilton—Basically you could trace forward to possibly several hundred sites in the wheat growing areas from the sites that now currently have the virus. The question really is how long those sites have had the virus, and that is the difficulty for us. As far as CSIRO is concerned, we have only had the symptoms seen since last August. At, say, the Toowoomba centre, we have only just found the virus now; who knows how long it may have been there?

Senator O'BRIEN—So when symptoms appeared last August, what happened? What steps were taken to investigate those symptoms?

Dr Hamilton—It is through hindsight that you can say we have been seeing the symptoms since August. It really did not concern CSIRO or raise their concerns until late December to early January, when they thought quite seriously that they may have a virus there that they were unable to identify. They sent samples at that stage to the best diagnostic lab in the world—the AGDIA site in the US. They had the material sampled for eight viruses, one of which was wheat streak mosaic. Those results all came back negative, unfortunately. But at that stage CSIRO did not say, 'We simply just leave it there,' because they were very concerned that it was a virus. They developed their own diagnostic tests which confirmed, probably two to three weeks after they had received the negative from the United States, that they had the virus. As a result of this, we now probably have the best diagnostic ability in the world for this virus.

CHAIR—Is there evidence that it may be out there in, say, a commercial sense at the moment?

Dr Hamilton—There is some preliminary data which we are looking to get confirmed today. But at this stage, until those data are confirmed, all I can say is that people have been seeing symptoms or claim they have been seeing symptoms in the wider wheat belt for several years. As part of our wider sample that we have just done in the past week and a half, samples were taken from commercial wheat production or commercial wheat farms in South Australia in particular and they are the results that we are looking now to confirm.

CHAIR—Would it be unreasonable to say that there may have been a breakdown of the protocols of protection at the Waite Institute, given that all this happened back in 1996? Does it ring an alarm bell anywhere that that could have been identified back there then and that it was just put to bed?

Dr Hamilton—It rings alarm bells and, as part of this exercise, once we have made the immediate decisions—rather than saying what happened in the past, the most important thing is to sort out the present and the immediate future—certainly, as a post mortem to this particular incursion, we will be considering all decisions that were made back through the suspected history of this disease.

CHAIR—In terms of the spread and impact of this upon next year's wheat crop, is there any sort of evidence that you can give the committee of the climatic conditions that assist in the spread of it? Do we have arid zones where it is less likely to spread, where there is less likelihood of the presence of the mite? Is there some peculiarity involved where it is better suited?

Dr Hamilton—The mite itself seems to be quite widespread. The scientist who suspected that the virus was here did a survey in the early 1990s and found the virus all the way from the great southern in Western Australia up to Toowoomba. So he found it through all of the main production areas—in varying degrees, but he did find it present. There is a suggestion that perhaps, under the more intense Mediterranean climates where you get virtually no rain or grass response during the summer period, those situations may not be as conducive to the spread of the disease. But then we appear to be seeing most symptoms in South Australia, and so that counters that particular view. It would appear that the mite itself can survive quite well because there is no way that it could reinvade such a wide area so quickly if it were retreating to small foci of infestations. It is just a question of: as the mite carries through the summer, does it carry the virus to

alternative host plants which then could carry the virus? There could be a break in it there. If we look at the situation in the United States, we see that they do not bother controlling the mite; they look to find ways to break that cycle of susceptible host plants and the virus and the mite.

CHAIR—If an area like the north of New South Wales—where they rely on a soil profile of moisture for the winter crop but which is really in a summer rainfall area and where obviously host plants grow every summer—is to get the moisture profile for the next winter crop, there is a hell of a danger.

Dr Hamilton—If I were to speculate as to where I think this could be a problem, it would be in those areas where you get summer rainfall, summer responsive alternative hosts and perhaps a summer alternative crop in maize. So certainly the northern half of New South Wales and as far up as Central Queensland would be where I would guess it could establish itself.

CHAIR—What about things like lucerne? Is lucerne a host plant?

Dr Hamilton—No; only grasses and, therefore, only cereal crops.

Senator FERRIS—Perhaps an opportunity could be found for you to give us an update tomorrow. I picked up your saying that the next 48 hours would be crucial. Does that mean that by lunchtime tomorrow you would know something more?

Dr Hamilton—I imagine we would be convening the consultative committee either this afternoon or tomorrow morning, depending on when we feel confident we can progress recommendations to the national management group. We are not a decision making body. We are basically technically based and make a recommendation to the CEOs—which body effectively is PISC—as to what action needs to be taken next.

Senator FERRIS—The committee is meeting tomorrow morning on another inquiry in relation to transport and aviation. I just wonder whether at the end of tomorrow's hearings, Chair, it would be possible for Dr Hamilton to come back and update us on this.

CHAIR—Or next Monday.

Senator FERRIS—I would be more interested in doing it tomorrow lunchtime, if possible.

CHAIR—We will give consideration to that.

Senator FERRIS—This is pretty serious in my state of South Australia.

CHAIR—Being an old worn out cocky, I can say that we have bred out stripe rust; we have found varieties that are resistant to stripe rust. Is it possible to get plants that are resistant to this?

Dr Hamilton—If there is any positive out of this—other than the way we have handled the incident in the past month, which I think has been straight up and down the line—it is that inadvertently the Waite Institute might have been breeding varieties that have a resistance to this particular virus, and it may be that we are not seeing the same sorts of effects that they have had in the US simply because of that. They have already managed inadvertently to breed wheat lines which are tolerant to things like high boron and high salinity by looking for other characteristics and at the soils they are growing in. It may be that, under fairly constant pressure from this virus, they may have done the same and may be breeding tolerant varieties. The interesting thing is that the varieties that clearly do not have a long history or could not have a long history with this disease, such as durum varieties, seem to be more heavily affected and clearly show the symptoms more readily. You could look at durum as being almost a sentinel plant for this. Perhaps that is due to a shorter history at the Waite Institute. Likewise, the varieties that show the greatest symptoms at CSIRO were the winter wheats that they are breeding, which again in our situation do not have a long history.

Senator O'BRIEN—In terms of the suspicion that the virus might have been present, which I think you have said was in existence at the beginning of this year, what steps were taken as a precaution against the spread of the disease? Was it isolated to the area of the research institution it was discovered in?

Dr Hamilton—CSIRO took a number of steps quite early in the piece, well before they had confirmed that it was an exotic virus. That was done even to the extent of destroying infected material and limiting the movement of plants—the sorts of things that one would anticipate would have occurred under a formal quarantine order.

Senator O'BRIEN—Did they tell the department about this?

Dr Hamilton—When the results came back from the US and they were negative—this was in early March—they then undertook their own tests. When they started to get results that made them alarmed, they

informed us. So they informed us in late March that they had something they strongly suspected to be an exotic disease and then, one week after that, it was confirmed as wheat streak mosaic virus.

CHAIR—That has been pretty helpful. Obviously, with all the adversities the wheat growers have had with droughts and other things, this is the last thing they need. But, if we are fully informed, at least we know that the powers that be are doing all that can possibly be done to contain this unfortunate outbreak. On behalf of the committee, I thank you very much, Dr Hamilton, for providing us with that update. Mr Mortimer, do you have anything else you would like to add before we go to questions?

Mr Mortimer—No, I have nothing more to add. Dr Hamilton has key responsibility for managing this exercise through his role on the advisory committee.

Senator FERRIS—Chair, can we let the department know that, if possible, we would like to have an update tomorrow?

CHAIR—Yes.

Mr Mortimer—That point has been registered, Senator. We will discuss that in terms of the most useful opportunity.

Senator FERRIS—Thank you very much.

CHAIR—Thank you very much.

Senator O'BRIEN—Mr Mortimer, can you tell me what legal advice was sought about how best to equip the Wheat Export Authority with adequate powers? When this original legislation was drafted, I assume that you or someone in the department would have looked at what powers were required by the new authority to enable it to do its job.

Mr Mortimer—The question you are asking essentially relates to the shape of the legislation and how the legislation came to be the way it is. That was essentially done on the basis of the cabinet decision and the government's considerations about how to restructure the Wheat Board, the establishment of the new AWB Ltd as a private company and the establishment of the appropriate monitoring arrangements through the WEA—indeed, its creation. I am not aware of any specific advising at that point on the issue of what might or might not be the appropriate powers for the Wheat Export Authority. My expectation is that it would have been done on the basis of the decision about establishing a WEA and that it would monitor the operation of the wheat export monopoly, as set out in the legislation. The issue would have been traversed, I guess, in the drafting instructions that would have been sent to the Office of Parliamentary Counsel, who would have prepared the amended bill and that would have resulted in the legislation being the way it is.

Senator O'BRIEN—So no legal advice; a decision of the minister?

Mr Mortimer—I am not aware—and we have looked as far as we can—of anything specific on this matter. It was not perceived, as far as I can tell, as an issue that warranted special legal advice at that point in time.

Senator O'BRIEN—So no legal advice was sought or received in relation to section 5(2) of the act?

Mr Mortimer—As I said, my expectations are that section 5 would have been drafted consistent with the government's decision about how it wanted to reframe the legislation. There is a well worn process for that which effectively revolves around the department advising the Office of Parliamentary Counsel, through drafting instructions, what the government's intention is and then the Office of Parliamentary Counsel does up a draft. There might well have been discussions around that in terms of what the intent of the government's decision was. But my expectation is that that is how it would have been done at that time.

Senator O'BRIEN—Can the committee be supplied with a copy of the relevant drafting instruction from that time?

Mr Mortimer—Drafting instructions are typically cabinet-in-confidence. I would have to check on that, if that is okay.

Senator O'BRIEN—They have been supplied at other times; indeed, I can recollect very recently being given access to drafting instructions.

Mr Mortimer—We will certainly see if we can do that.

Senator O'BRIEN—During hearings on 6 March I asked about regulations associated with this bill and I was advised that three regulations were required and that these regulations had not been prepared. We were further advised that the regulations would be finalised after the form of the legislation had been settled. But,

in answer to question No. 5, you told us that the drafting instructions for these regulations were issued on 19 December last year. Drafting instructions have now been with the drafter for four months. What is the form of the regulations sought through these drafting instructions?

Mr Mortimer—I think in that previous hearing I commented later on, in consultation with Mr Newman, that instructions for the regulations to be drafted had been issued; that is my memory of it. In terms of the specific issue that you are asking about now, the regulations are now in draft. Is that fair to say, Mr Newman?

Mr Newman—That is correct.

Mr Mortimer—They will go to the minister shortly so that, when the legislation is considered and hopefully passed by parliament, the minister will then be in a situation to sign off on them so that they can go to Exco and complete the process of parliamentary approval.

Senator O'BRIEN—So the minister has them now?

Mr Mortimer—No, the minister has not got them now. We expect the minister to get them in a week or so.

Senator O'BRIEN—Is it possible for the committee to see those drafts?

Mr Mortimer—I would have to get advice from the minister on that. Certainly I do not think it would be appropriate for the committee to see them before the minister has seen them and, as I said, he has not as yet got them.

Senator O'BRIEN—But we often see things before the minister sees them, apparently.

Mr Mortimer—We do our best to follow due process. But, after that, as I said, it depends on the minister's decision.

Senator O'BRIEN—In relation to the detail of the levy, we were told last time that matters such as the collection point of the levy had not yet been settled but would need to be finalised to enable the drafting of the regulations to be concluded. What collection point is contemplated in the drafting instructions that were provided on 19 December last year?

Mr Newman—The collection point envisaged was collection at the point of export.

Senator O'BRIEN—Does that mean AWB would collect or simply remit—

Mr Newman—The levy would be collected by the exporter and remitted back to the department, yes.

CHAIR—Who would the exporter collect that off?

Mr Newman—The levy is on the actual exporter who is exporting wheat.

CHAIR—So he will not pass the costs back to the grower?

Mr Newman—The cost of that would be a final decision for AWBI, but we would see it as being a cost to the pool, similar to other export charges such as AQIS.

CHAIR—So it would be spread across the heap, as you see it?

Mr Newman—Correct assumption, yes.

Senator O'BRIEN—I go to the written answer to question No. 1, which is a question on notice from 6 March. During the hearings on 6 March we were told that the Wheat Export Authority and the government agreed on the reporting process—that is, a comprehensive report to the minister and a summary document to growers. We were further advised that essentially a decision taken by Mr Truss was to not release the detailed report. That is still accurate, I assume.

Mr Mortimer—Essentially I said that there was a process of discussion between the relevant parties about the reporting arrangements. Then my memory is that you asked the question whether the reporting mechanism had been determined by the minister, and I reference page 3 of the transcript—

Senator O'BRIEN—So was the question: did the minister request the report in that form?

Mr Mortimer—You asked the question, yes. I commented that essentially it was done on the basis of all the information. To put it at its simplest, what happened was that the Wheat Export Authority, in developing its reporting arrangements, had to consider how it could best report within the constraints upon it and, indeed, meet its parliamentary requirements, and there were discussions that we have referred to. That was settled and then put to the minister and, I guess it is fair to say, the minister accepted those arrangements.

Senator O'BRIEN—The form of the Wheat Export Authority report was developed, as you say in your answer, by a working group consisting of the AWBI, the Grains Council of Australia and AFFA. When was that working group established and who gave it its brief? I assume the minister gave the working group its brief.

Mr Mortimer—The minister has certainly agreed that AFFA would convene a high-level group with the WEA, AWBI Ltd and GCA to consider this issue. I do not have the specific terms of reference for that, and I am not sure whether there is anything more specific than the agreement that the working party be established to sort out the issue and come up with a practicable solution.

Senator O'BRIEN—Can you check that for us?

Mr Mortimer—Yes, I certainly will.

Senator O'BRIEN—You say that that group developed both the performance monitoring indicators and the revised consent arrangements. Who was involved in that group? Who were its members—not just the organisations but the people?

Mr Mortimer—Are you asking for the actual names of the people?

Senator O'BRIEN—Yes.

Mr Mortimer—I do not have that information with me. Mr Newman, do you know that off the top of your head, or would you rather take it on notice?

Mr Newman—I would probably prefer to take it on notice because the names have changed a bit over the period.

Senator O'BRIEN—There was a change in the composition of the representation on that group. Is that what you are saying?

Mr Newman—Correct. I know, for example, from AFFA that Mr Kelly was originally on that group; I am now on it and there have been some other changes over the period.

Mr Mortimer—I guess you are really asking who the members were at that point in time, which essentially is 2001. If that is the thrust of your question, we can get an answer to that.

Senator O'BRIEN—This group considered the format for the report to both the minister and the growers. Is that correct?

Mr Mortimer—Yes, I think that is a fair comment.

Senator O'BRIEN—We are also advised that the authority decided that, due to the commercially sensitive nature of the contents of the first 2001 performance monitoring report, it should only be distributed to the minister and the board of AWBI. How does that fit with your advice that it was a decision of the minister to control the distribution of the comprehensive report?

Mr Mortimer—If I said the minister controlled the distribution, I was mistaken. I was not aware that I actually did say that.

Senator O'BRIEN—Maybe that is my interpretation. But ultimately the minister had the final say, didn't he?

Mr Mortimer—I guess that is consistent with a comment I made earlier, that the minister charged a working group to develop the arrangements. The working group came up with arrangements which sought to resolve the issues—

Senator O'BRIEN—Which the minister ticked.

Mr Mortimer—Yes, the minister agreed with those arrangements.

Senator O'BRIEN—Did he have the ability to disagree with those arrangements?

Mr Mortimer—I expect the minister would have disagreed, if he had wished to.

Senator O'BRIEN—I am now interested in your answer to question No. 2. You say, 'The arrangements for the presentation of the performance monitoring reports were concluded after the 1998 legislation to amend the Wheat Marketing Act was passed.' Did you mean in that answer that they were concluded in 2001?

Mr Mortimer—Yes.

Senator O'BRIEN—That is a fairly general answer. Were you asking us to conclude that 'after' meant some time between 1998 and 2003?

Mr Mortimer—There is a whole pile of iteration in terms of dealing with the issue. You asked the question at the time and I gave the answer, which I believe was accurate. There seemed no need for any greater detail at the time, to be frank.

Senator O'BRIEN—Were the reporting arrangements put in place in 2001?

Mr Mortimer—Yes.

Senator O'BRIEN—Three years elapsed between the passage of the legislation and having those arrangements put in place?

Mr Mortimer—Yes. I point out that a number of things happened in between, and there were priorities. It is fair to say that the NCP review happened after the legislation was finalised, and the Wheat Export Authority came to grips with the issue in front of it. My expectation is that at the time they would have been dealing with those issues.

Senator O'BRIEN—Were those reporting arrangements the subject of any legal advice?

Mr Mortimer—I commented on that earlier. I am not aware of any advice in particular. My expectation was that the priority on the day would have been to establish the legislation for the new arrangements for wheat export and monitoring and the operation of the WEA, and the legislation was modified. Essentially, the old Wheat Marketing Act 1989 was largely stripped of a whole pile of requirements consistent with the AWB becoming a privatised body, and there was a residual piece of legislation which was designed to cover only the key major points necessary in the new arrangements.

Senator O'BRIEN—So no legal advice was specifically sought by the department or the minister with regard to the reporting arrangements that were put before the minister by the working group that you refer to in your answer to question No. 1?

Mr Mortimer—As I said earlier, there is no specific legislation that I am aware of in terms of getting legal advice by the department on that matter. I expect it was done as part of preparing the new legislation. In terms of the actual legal advice on the operations of the reporting arrangements, I think you have heard elsewhere from the WEA that they sought legal advice on that matter, but that is something that they instigated.

Senator O'BRIEN—We will leave the WEA for the moment. There were no reporting arrangements in place at all until the working group made its recommendations?

Mr Mortimer—That is my understanding.

Senator O'BRIEN—Are you able to tell us whether they sought any specific legal advice, or can you confirm that they did not?

Mr Mortimer—I cannot confirm that they did not. That would be a bit more than I could say. But, as I commented earlier, I am aware that the WEA as an authority sought legal advice itself on that matter.

Senator O'BRIEN—Did the working group look at the legal authority of the Wheat Export Authority in terms of what it could request from AWBI, what it could report and who it could report to? Mr Newman may be able to answer that.

Mr Newman—I am afraid I cannot answer that because it was before the time I was on the group, but we could certainly take that on notice.

Senator O'BRIEN—How long were you on the group, Mr Newman?

Mr Newman—From approximately late last year.

Senator O'BRIEN—So you were not on the working group when it made these recommendations?

Mr Newman—No, the TWG report was made back in July 2001.

Mr Mortimer—We are in the situation where none of the officers at the table was part of the working group at the time. None of us was working on this issue at that stage.

Senator O'BRIEN—Is it possible to find out whether that working party had a look at the legal authority of the Wheat Export Authority: what it could request from AWBI, what it could report and who it could report to?

Mr Mortimer—We can certainly check the records on that matter.

Senator O'BRIEN—I will give you some additional questions that you can take on notice in that context and come back to us on. If the working party did not look at the legal authority of the WEA—what it could request from AWBI, what it could report and who it could report to—did it simply form a collective view

about what the performance indicators should look like and how the work of the Wheat Export Authority should be reported, rather than taking legal advice? If it did take legal advice, can you advise the committee what legal advice the working group looked at and whether it considered legal advice which had been provided to the Wheat Export Authority, particularly in March 2000? That is the time the advice was provided to the Wheat Export Authority.

Mr Mortimer—Yes, we will examine that question, Senator.

Senator O'BRIEN—Did the Wheat Export Authority—and this is something you will probably need to take on notice as well—discuss at this working group whether the issue of access to information from AWBI and AWB Ltd posed it problems in the process of preparing material for reporting?

Mr Mortimer—Again, I cannot give an answer on that here and now. We will see whether there is anything available from the files.

Senator O'BRIEN—When did the minister become aware that the Wheat Export Authority knew it had a problem with regard to the powers to gain access to information held by AWBI and AWB Ltd?

Mr Mortimer—As I understand it, when the WEA was examining how to prepare its reports, it dealt with that issue amongst others. I think the Wheat Export Authority has spelt out elsewhere in the transcript that it developed an agreement with the AWBI to get information, which would allow it to do its job. When that agreement was reached with AWBI, that effectively became part of the arrangements for allowing the WEA to meet its reporting and monitoring requirements. It was accepted and the Wheat Export Authority then progressed to do its job.

Senator O'BRIEN—When did the minister become aware of that process? At what point in the process of the Wheat Export Authority's dealing with the problem did the minister become aware that the process was being undertaken and that the Wheat Export Authority had some 'issues'—if I can put it that way—about how it accessed information that it thought it was entitled to, or needed to see under the legislation, to fulfil its functions?

Mr Mortimer—I do not have any dates in front of me for that sort of detail. We would have to examine the files to see what the nature of correspondence might have been on that.

Senator O'BRIEN—We have a critical review coming up under the legislation, with a reporting date to the minister in June next year, I think. This is fairly fundamental to the authority's ability to carry out its task under the legislation. I am assuming that the minister would have wanted to be kept completely informed about these issues. Is that a fair assumption?

Mr Mortimer—Yes, that is a fair assumption.

Senator O'BRIEN—How long has the department been apprised of the difficulties—if I can call them difficulties—that the Wheat Export Authority had in terms of access to information for the purpose of carrying out its functions?

Mr Mortimer—I need to comment on the use of the word 'difficulties'. The Wheat Export Authority has entered into an arrangement with the AWBI, under which it gets the information necessary to do its job. Whether that creates difficulties, and the extent of those difficulties, is something that the WEA is best equipped to comment on, but at this stage, as I understand it, the WEA is confident that it can do its job and is using those arrangements to help it do that.

Senator O'BRIEN—It may have that view, but I feel that a number of senators would find it hard to accept that it could substantiate that view. I am really asking, given the minister is in control of the legislation and not the WEA, when the minister or the minister's department was aware of the problem. I presume that, if the department were aware of the problems, the minister would be advised of the problems—or difficulties; however you wish to describe them—as expeditiously as possible. That is the question.

Mr Mortimer—That is a fair comment. Indeed, on the issue, the department also would have been very much influenced by the view from the Wheat Export Authority about whether it was confident it had the information, or access to the information, that was necessary to do its job.

Senator O'BRIEN—This is fairly significant legislation, putting in the hands of a private company what is effectively close to an export monopoly, with a safeguard put in place—which is the Wheat Export Authority—to oversee that. Some would say that the Wheat Export Authority rather than AWBI held the single desk, but let us not debate that at the moment. I am finding it hard to believe that the Wheat Export Authority would not have told the department or the minister as soon as possible that they had some

difficulties that they were working through with AWBI. If they did not, that would reflect on the capacity of that organisation, wouldn't it?

Mr Mortimer—I expect that the WEA would have discussed the issue of what it is doing in terms of establishing its monitoring and reporting arrangements with the department. Indeed, we have talked about the arrangements that are in place to facilitate that. So, yes, that is a fair comment.

Senator O'BRIEN—But you cannot tell me when the information came to the department which would have—I would have thought—caused the department to have a look at the legislation and any difficulties with the legislation with a view to advising the minister what needed to be done?

Mr Mortimer—You are effectively asking for a chronology and the interactions of the operations of the working group at the time.

Senator O'BRIEN—No, I am asking about the department even before the working group.

Mr Mortimer—Okay, that is fine. I simply do not have that chronology in front of me. I would have to get the papers, the files, examined with a view to seeing what was reported there and what can be said.

Senator O'BRIEN—Who would have been responsible for this area of the department's operation in the period since the legislation was passed? Has that changed through a number of people?

Mr Mortimer—Yes, it has.

Senator O'BRIEN—How many people were involved? How many changeovers occurred?

Mr Mortimer—I suppose you are aware that I was responsible for the wheat marketing arrangements until about the end of 1997 and early 1998, after which Ian Thompson was the branch head responsible. I have to say that I cannot remember after that—my memory fails me.

Senator O'BRIEN—For how long was Mr Thompson the responsible officer?

Mr Mortimer—Not all that long; a couple of years at the most. I am not sure when it became Dr Samson, who followed after that. There has been some change of responsibilities in the department and I do not have the exact knowledge in my head.

Senator O'BRIEN—But the people involved are still with the department, so we would not have a problem getting information, would we?

Mr Mortimer—No. I trust their memories are also very sound. But the essential thing is to actually check the files and see what is documented.

Senator O'BRIEN—In your answer to question No. 3 you addressed the issue of consultation. The first meeting with the industry about Wheat Export Authority funding was with the Grains Council in April 2001 at Grains Week. Other than the meeting with the Grains Council, there appears to have been a letter from the minister to Premium Grain Handlers in response to a letter from that organisation and a letter to the Pastoralists and Graziers Association of Western Australia from the minister in response to a letter from that organisation. You referred in your answer to consultation on consent application fees; effectively the only consultation was with the Grains Council and not with bodies which would be paying the fees, wasn't it?

Mr Mortimer—No, that is not quite the case. My memory is that I did comment that there were formal letters to GCA and AWBI and that the minister used Grains Week to flag the issue and initiate a discussion. Clearly, following that these organisations, as you have referenced, have written to the minister and given their views.

Senator O'BRIEN—Did the consultation at Grains Week consist of the minister making a speech?

Mr Mortimer—Yes, that is right.

Senator O'BRIEN—Was there any subsequent opportunity for a forum discussion with industry representatives which involved the department?

Mr Mortimer—There was no formal forum as such.

Senator O'BRIEN—Were there informal forums?

Mr Mortimer—Not that I am aware of.

Senator O'BRIEN—In your answer to question No. 4, you advised that Mr Truss wrote to the Prime Minister about the application of an export charge and consent application fees on 8 July last year and again on 31 October. The Prime Minister agreed to the proposal on 26 November. From information provided in the answer to question No. 3 we now know that the Wheat Export Authority appears to have raised the issue with

the minister on 11 September 2000, and there was a meeting between the minister, the Wheat Export Authority and AFFA on 3 October 2000. Why did it take from early September 2000 until 12 December 2002 to introduce legislation and then until 27 March, 18 sitting days into this parliamentary year, to bring on the second reading debate?

Mr Mortimer—It reflected the fact that the minister was considering the different options and dealing with the issue in a systematic way.

Senator O'BRIEN—As time ran out. What was the imperative about money? When was the minister aware that funds would run out in about September this year?

Mr Mortimer—I cannot say exactly when the minister became aware of that, but the Wheat Board's expenditure pattern is relatively straightforward and clear—there is no scope for major variations in it. The real issue is that the minister put a definite proposition on the table at Grains Week in April 2002, in a situation where there was expected to be funding for the latter part of 2003. It would have seemed reasonable that that gave sufficient time for discussion and for the legislation to be prepared and to pass through parliament.

Senator O'BRIEN—It has always been known that the funding provided was finite. I would have thought, three years before the funding was due to run out, that the minister would have had a good idea of when it would run out, yet this committee is being told that it has a very finite time in which it needs to deal with this legislation or the authority will run out of money. I suggest to you that the minister has not exactly exercised the appropriate degree of expedition to make sure that that pressure was not applied.

Mr Mortimer—I think that is somewhat unreasonable. At one level, one could have said right at the very beginning, when the WA was established, that one would have had a reasonable idea of when the money, if it were not supplemented, would have run out.

Senator O'BRIEN—I think if I had asked the question at that time, you would have said I was being unreasonable to suggest that we could see into the future.

Mr Mortimer—I will not comment on that! All I can say is that in April last year there were a good 18 months to settle the issue and to get parliamentary agreement. Given the processes of parliament, that would not seem unreasonable.

Senator O'BRIEN—But nine of those months went before the legislation hit the parliament.

Mr Mortimer—Sorry?

Senator O'BRIEN—You said at that time there were 18 months. If the legislation had hit the parliament then, I would agree with you; but it basically took another nine months for the legislation to hit the parliament.

Mr Mortimer—I am not sure I can really say much more on that.

Senator O'BRIEN—I have only a few more questions, Mr Chair, and then I will conclude. Thank you for your forbearance. During the hearings on 6 March, Mr Walter referred to the issue of borrowing funds to deal with the possible lumpiness of the levy collections and the funding needs of the Wheat Export Authority. Has that matter now been looked at by the department?

Mr Mortimer—Yes, it has.

Senator O'BRIEN—What views has the department taken of what Mr Walter put to the hearing?

Mr Mortimer—We are having discussions within the department and with relevant Commonwealth agencies as to what may be required if that needs to be done.

Senator O'BRIEN—Is it possible that would need a legislative prescription?

Mr Mortimer—My expectation is that it would not.

Senator O'BRIEN—Does that mean it is possible but you are not sure yet?

Mr Mortimer—No; I am sure. The legislation gives the Wheat Export Authority the capability to borrow where agreed by the minister. That is within the act. The question would simply be a matter of process mechanics and what needs to be done in terms of pursuing those borrowings.

Senator O'BRIEN—Thank you.

CHAIR—As there are no further questions, could I sincerely thank the representatives from the department today for their attendance today, and the forthright manner in which they presented.

Mr Mortimer—Thank you very much.

[10.05 a.m.]

MACNEIL, Mr Angus, Chairman, Grains Committee, NSW Farmers Association; and New South Wales Farmers Association Delegate to the Grains Council of Australia

ROBERTS, Mr Hugh George, Member, Executive Council, Grains Committee, NSW Farmers Association; and New South Wales Farmers Association Delegate to the Grains Council of Australia

CHAIR—Welcome. You have made a presentation to us which has been accepted as a public document for publication. Would you like to make an opening statement before we proceed to questions?

Mr Macneil—I apologise on behalf of Fiona McCreedy, who is the Executive Officer of the Grains Committee, because she is otherwise committed and could not get here today.

These brief notes are probably not a formal submission; they are basically briefing notes that were given to me before coming here. I think they touch on the major issues that we see and have concerns about. I start by saying that the opening sentence encapsulates the New South Wales farmers' point of view, in that we do strongly support the single desk. Our objective is to make sure it is effective and efficient and returns maximum benefits to growers.

Under the first heading it says that we were not in favour of the Senate committee expanding its role to look at things other than the funding of the Wheat Export Authority on the basis that there are a number of things happening in the grains industry at the moment and we were not really in a position, I do not think, to clearly enunciate any changes that we might ultimately think were necessary. Perhaps it was a bit premature. Bearing that in mind and for some time having looked through the *Hansard* records of what has transpired in previous hearings, I thought it necessary that we come and make a presentation. The decision was made only in the last few days, which is why we do not have a more detailed submission to place before you. But I understand where you senators are coming from, because, if you were going to approve the raising of a levy, you would want some assurances that the levy is going to be wisely spent to achieve the objectives it is set out to do.

Following those brief words, I will add a couple of other things to perhaps highlight some of the dot points. I am more than happy to answer a series of questions that I am sure the points will raise. We believe that the Wheat Export Authority does have an extremely important role in ensuring that the single desk—and, as Senator O'Brien has been inferring, the Wheat Board, with its virtual monopoly—performs in a commercial and sensible manner. Obviously the Wheat Export Authority was set up for that purpose and we want to ensure that it is able to do it.

I note that quite a few questions have been raised during the inquiry about the interpretations of the Wheat Export Authority's powers—under section 5(2), I seem to recall. There is a bit of a divergence of opinion as to how that particular clause should be interpreted. At this stage we do not see a need for those powers to be extended. We believe that the main whip or main incentive the Wheat Export Authority has to make sure that they get the information they require from the Wheat Board is, in fact, a bad report in 2004—an indictment of the Wheat Board. That is enough incentive for them to give the information that is needed. To come down and say, 'We couldn't report adequately because we couldn't get the information,' is, as I said, enough incentive for the Wheat Board to give them what they need.

You will note that we have seen a major change in the attitude of the Wheat Board. We also just heard Senator O'Brien's questioning of the departmental people. The level of confidence we have in the Wheat Export Authority has improved markedly since we first had consultations with them. They do seem to be able to report and seek much more rigour than perhaps they did initially. It has taken a while, I think, for both the Wheat Export Authority and the AWB to understand the relationship—for the Wheat Board to have trust and faith in the Wheat Export Authority and be prepared to give them commercial-in-confidence information. I think that is reflected in the confidence with which the Wheat Export Authority has reported to the Grains Council. I am aware that they give a much more detailed report to the minister and to the chairman and the Chief Executive of the Grains Council.

I will touch on a couple of other points that I noted when I read through the voluminous *Hansard* record of the meeting. I took exception to a couple of points. There was an inference that there was a bit of an oligarchy in the grains industry leadership, that it really was a cosy little network and that no-one was prepared to upset anybody else. That is not the case. I think the Grains Council of Australia does question the Wheat Board and

the Wheat Export Authority with great rigour. The New South Wales Farmers Association certainly does. So I do not think that is the case.

One of the explanations as to why there is a small group of people at the head of the grains industry is that there are not many contenders. I am sure senators present are involved in communities which have difficulty in getting people to put their hands up to take on jobs, and the grains industry is no different. Therefore, the people who are prepared to work their way through the industry to get to these positions comprise a very small field indeed, but that does not prevent us questioning and criticising some of those people where necessary. That is all I can think of at the moment, Chair. I do not know whether Mr Roberts would like to add anything.

Mr Roberts—No, I think that is a fair summary of our position.

Mr Macneil—At the back of the submission there is a motion that the New South Wales Farmers Association passed at our executive council meeting last week.

CHAIR—I was going to ask you a question about that, and the discussions surrounding it. Mr Macneil, obviously you have a view which has now been put to this committee that there needs to be some separation between International and Ltd, and that is reflected in this motion. Would you like to expand on that?

Mr Macneil—The purpose of the motion was to give myself, as a delegate to the Grains Council, room to say that we are not casting in concrete any particular position. We are more than happy, by and large, with the way the Wheat Board and the Wheat Export Authority are working now, but that does not mean that, in discussions over the next six months, there may not be issues raised which mean that we would say, ‘Yes, there needs to be greater separation between AWBL and AWBI.’ The Wheat Export Authority may need a board with more teeth, particularly in light of the fact that the Grains Council has already undertaken a preliminary study into the relationships, and there is an intention that a further study will be undertaken. In light of the findings of that study, I wanted the freedom to be able to say, ‘This is perhaps a step forward,’ without throwing the baby out with the bathwater.

I was peripherally involved in the grains industry during the privatisation of the Wheat Board and the drawing up of its constitution. The industry went to enormous lengths to develop a structure that we thought would fulfil the role it had to play under its new privatised position, while at the same time maintaining this single desk power. It was an extremely exhaustive process and we looked at every possible alternative. What we finally came up with is fairly pertinent for today. It may need a bit of tweaking here and there, but we think it is pertinent and that it has performed its role extremely well. We certainly do not want to see the baby thrown out with the bathwater. We think that, by and large, the structure is right; the Wheat Export Authority’s role is right; there may just need to be a bit of a tweak here and there.

CHAIR—With respect to the plant breeding and variety classification issue that you raised in your paper, the issue has been raised with this committee by several witnesses. It is a no-brainer, in my view, that there is some sort of conflict there, and that has been expressed by the Grains Council and the Wheat Export Authority, but nothing appears to have happened.

Mr Macneil—I asked that question at the AWB’s annual meeting in Melbourne in February. I note in the *Hansard* report Andrew Lindbergh said there had been a two-day seminar encompassing all the participants in the wheat breeding industry. I am not absolutely certain what the outcome of that was. I have made some inquiries recently as to what the solution was, because when I asked the question at the annual meeting he said, ‘Yes, that’s in hand,’ or words to that effect. Certainly, we will pursue that matter because we believe there is a conflict. We can give examples to show where there is a conflict. The New South Wales Farmers Association is working through that.

CHAIR—I would have thought that it would have taken a 10-second seminar, not a two-day seminar, to figure all that out. With regard to international marketing, what is the New South Wales Farmers Association’s understanding of the process when, for instance, the Geneva desk or the AWB sells Indian wheat to Indonesia and Pakistani wheat to Egypt, when that is not in the best interests of Australia and there is still wheat in the Australian pool unsold? What is your understanding of the tick-offs and safety precautions that are taken before the best interests of the growers?

Mr Macneil—As I understand it, the process is that the pool is given the first opportunity when there is a market available. If the pool says, ‘No, we don’t have that particular grade of wheat,’ or, ‘We can’t fit that spec,’ the Geneva office goes out into the market and endeavours to source it. Having sourced that grain they then go back to the pool and say, ‘We have some Indian wheat to go to Indonesia of this spec at this price.’

Can you match or beat that?' So they give them first and last bite of the cherry. I have no reason to doubt that that procedure is not performed. Therefore, if that is the case, I am reasonably happy with that.

CHAIR—Have you ever taken the precaution of seeing evidence of that happening?

Mr Macneil—Only that I have spoken to members of the Wheat Board about it, and they have given me that assurance—that that is the process and that is the way that it works.

CHAIR—Is there a paper trail to that effect?

Mr Macneil—I would be very surprised if there were not.

CHAIR—You have not seen it?

Mr Macneil—No, I have not.

CHAIR—Thank you very much.

Senator O'BRIEN—I suspect that you are shareholders of AWB.

Mr Macneil—I am a shareholder of AWB, correct.

Senator O'BRIEN—Whether anything turns on it, it should probably be on the record.

Mr Macneil—I do not exactly make a fortune out of it, mind you.

Senator O'BRIEN—I do not want to reflect on the profitability of AWB. That is not what we are here for today. Has the New South Wales Farmers Association recently changed its view on the issue of independent directors?

Mr Macneil—The formulation of policy is an evolving process and we have been discussing this issue for probably 12 months. I wanted to get it formally passed through our executive council, which is our principal policy-making body, so that when I went back and said, 'We have done this or that,' I do not get belted over the ears.

Senator O'BRIEN—Very prudent! So, essentially the resolution that you put to us today is the coming together of a view that has been evolving over 12 months.

Mr Macneil—Correct.

Senator O'BRIEN—Thank you for that. If the Wheat Export Authority had the view that it had difficulties in accessing the necessary information from AWB Limited or AWBI to perform its functions and to correctly report to the minister and growers, should it have reported that information quickly to the minister?

Mr Macneil—It certainly should have. As I said, it has been an evolving process. We certainly got the feeling early in the existence of the Wheat Export Authority that they were not happy. As you are probably aware, we have consultations with them from time to time. Prior to the last report they were pretty happy. In the report that they gave at Grains Week only a month ago, they were happy that they were getting all the information that they thought was needed.

Senator O'BRIEN—Given that growers effectively fund the Wheat Export Authority now—and it is proposed under this legislation that they fund it in the future—when should the Wheat Export Authority have reported to growers that it was having difficulty accessing the information it needed to perform its function?

Mr Macneil—The picture was there 18 months ago that things were not all that might be expected.

Senator O'BRIEN—Is that to you or to growers?

Mr Macneil—That was to the Grains Council, which is a representative body of the grain growers. But they certainly indicated at that stage that it was not mortal, they were working on it and they were working on it together. As I say, it has come to fruition that they believe that the information that they are getting is adequate.

Senator O'BRIEN—Do you think that the Wheat Export Authority, when it reported other things to growers, should have mentioned the difficulties in the process to growers, given that they fund it?

Mr Macneil—I think we were all aware that—

Senator O'BRIEN—All growers?

Mr Macneil—Anybody who read the initial report would have found it a little superficial. The subsequent report was better. I think that you could read between the lines that perhaps they were not getting—

Senator O'BRIEN—But that is the point, isn't it? You are saying that the growers should read between the lines. I am asking you whether the Wheat Export Authority should have deliberately reported that matter to growers, given that they were funding the Wheat Export Authority to do a job ultimately to give the growers assurance that they were getting the best possible deal out of this model.

Mr Macneil—I think it is a matter of degree. I think that, while maybe at the time they were not getting all that they wanted, they believed that in the end, through negotiations with the Wheat Board, they would. I do not think that they thought that it was totally flawed; I think they thought, 'Just give us time to work on this relationship and we will get all we need'—and that, as I said, has come to fruition.

Senator O'BRIEN—Perhaps.

Senator FERRIS—Mr Macneil, you said that you were unhappy in the beginning with some aspects of the operation of the WEA but that now you are happy. I think you used the words 'a little bit of tweaking might still be required'. How could it be that you are essentially happy with the operation of the WEA, when the VFF Grains Group—which I understand is still part of the Grains Council of Australia—can say that they are significantly unhappy with six aspects of the operation of the WEA—quite important ones—and yet be members of the Grains Council. How can it be that a mystical border between New South Wales and Victoria can see a group of grain growers, who are still part of a national body, taking such a fundamentally different approach to the same organisation?

Mr Macneil—I think you will find that in any group of people there is a divergence of views. It is the way that you interpret what is before you. Obviously, the VFF interpret the information that they are getting separately. That is all I can say. Whether they have information that we do not have, I am not privy to, but certainly around the table at the Grains Council there is a whole range of views.

Senator FERRIS—Let us just run through a couple of the things in the submission, which is now public; I am sure the secretary will be able to arrange for you to have a copy of it. The first point that they make is:

- WEA report on the performance of AWB in arrears. It may take up to 18 to 24 months before the WEA reports on such performance, be it good, bad, or indifferent. This time frame does not provide timely information to Government or growers.

It says 'growers', importantly. Is that what you would call 'tweaking'?

Mr Macneil—When I was referring to tweaking, I was referring more to the AWB than the WEA.

Senator FERRIS—Do you consider the fact that it could be two years behind to be an important issue?

Mr Macneil—I certainly would if it were two years behind, but I do not believe that it is that far in arrears.

Senator FERRIS—Eighteen months behind? To be fair, they say 18 to 24 months.

Mr Macneil—I could not be precise, but certainly during the consultations with us they are not reporting anything like 18 to 24 months in arrears of what has taken place.

Senator FERRIS—So, in New South Wales, you are happy with the time period in which the WEA report?

Mr Macneil—Certainly with their verbal reports. Their printed reports are more behind, but their verbal reports to the Grains Council are much more up to date than 18 to 24 months.

Senator FERRIS—I do not propose to go through all six of these issues, but let me just mention a couple which have been raised with this committee during previous hearings. For example:

There is currently no transparency in the operations and activities of either the WEA or AWB (International) Limited.

Are you happy with the extent of transparency?

Mr Macneil—No, we are not. You will note in those points that that is one of the areas where we believe there is room for improvement. At this stage, we are waiting until we get a consultant's report to have more detail. Certainly there is a concern out there amongst the wheat-growing community that there is an opportunity for things that would be undesirable. Transparency would certainly make it clearer to people and clearer to the growers in the Wheat Export Authority.

Senator FERRIS—Who is doing the consultancy, and how soon will that report be available?

Mr Macneil—The initial report was done by Ron Storey.

Senator FERRIS—Is that the report that was done as part of Grains Week?

Mr Macneil—Yes, it was; that is correct. The second report has not yet been commissioned but the target is the end of October.

Senator FERRIS—That is another six months away.

Mr Macneil—That is correct—which is why this process was a bit premature for us, because we had not got to the point where we were comfortable to say, ‘This is what needs doing, and that is what needs doing, and that’s okay.’

Senator FERRIS—Do you have a concern about the 77 services that are exchanged by AWB and AWBI? Is that where the transparency issue arises for you?

Mr Macneil—Certainly there are a lot of services provided between the two and, yes, we would feel more comfortable if they were more transparent. Given that we have questioned the Wheat Board on those and that we have the opportunity to question them, by and large we are happy that there are checks and balances in place to make sure that those services are provided efficiently and cost effectively. But, by the same token, justice not only has to be done; it has to be seen to be done. When there is a lack of transparency there, the doubt can always be raised that perhaps it is not all it should be.

Senator FERRIS—One of the other areas that members of the grain-growing community have raised with this committee relates to the determination of the powers under section 5(2) and whether or not the WEA is exercising those powers to the extent to which it may be able to, given that it appears to be a sweeping power. Are you confident that the WEA is using those powers of scrutiny to the extent that some people think it should?

Mr Macneil—There certainly seems to be, as I said, a difference in interpretation. The Wheat Export Authority does seem to be taking a more conservative view.

Senator FERRIS—Would you like them to take a stronger one?

Mr Macneil—Certainly. If they thought they were not getting what they wanted, then most definitely.

Senator FERRIS—Do you think that they are getting what they need to get?

Mr Macneil—From my reading of the report that we have had from Mr Walter and the Wheat Export Authority, I think they are. If there is a reserve power by which they can be more vigilant if they so desire, that may be a good enough stick to ensure that things are given to them without the need for them to actually use it. At this stage we are comfortable with what is happening, but if there were greater powers in reserve I would see no problem in that.

Senator FERRIS—I have a question in relation to some of the infrastructure which is now being constructed in regional New South Wales; I think Stockinbingal is an example. In my own state of South Australia, there is Crystal Brook. A number of growers in South Australia have raised with me concerns about the cost of duplication of infrastructure—after all, at the end of the day it still comes from the same growers—and, particularly this year given the shortfall in the harvest, the extent to which the storage facilities are going to be needed. Do the New South Wales farmers have any concern in relation to the duplication and expansion of infrastructure and the costs of that?

Mr Macneil—By and large, no. From my experience in the grains industry, I believe that the Grain Handling Authority of New South Wales has left the door open for the Wheat Board to do the very thing that they are doing. They charged a monopoly rent on the almost monopoly service they provided, and they did not, I do not think, keep pace with the demands of the growing community to increase the inloading capacity and a number of other things. Their facilities were not state of the art, yet I think they charged a monopoly type rent on them, which therefore opened the door for the Wheat Board to come in. It certainly has driven down the charges now. I know that people say it a lot, but why do we have the two major supermarket chains locating their supermarkets next-door to each other? Because they drive the price down.

Senator FERRIS—But they are not funded by the same pool, are they?

Mr Macneil—They are all funded by the consumer.

Senator FERRIS—But the consumer has a choice about that. Do you think that the expansion of the infrastructure facilities has truly resulted in, firstly, true competition for growers; secondly, an overall reduction in the price that growers are charged for transport and handling; and, thirdly, an increased return through the pool? It is the same wallet, isn’t it?

Mr Macneil—Certainly, it is the same wallet but there is nothing like competition to drive a benefit or a reduction in costs. I believe it has. In spite of the duplication and the concern about overcapitalisation I believe that it has returned a benefit to New South Wales growers.

Senator FERRIS—Notwithstanding the multimillion dollar outlay?

Mr Macneil—Notwithstanding the multimillion dollar outlay. I am assured by the Wheat Board that they are returning a profit and that unfair competition is not being used—they are not using their position in the negotiation of rail freights to give themselves an unfair advantage. That is one accusation that is thrown around quite frequently. We have done a lot of work to get to the bottom of some of the claims that are made on that basis in, say, the censure report, and we have difficulty in identifying the sorts of savings that they claim are available by putting more competition into the freight area. We do not believe that the Wheat Board are unfairly using their powers.

Senator FERRIS—I suggest that you sit next to the VFF delegate to the Grains Council at the next meeting. Is there anything that you would like to add to the information that you heard from the department in relation to mosaic rust? Given that you are a grower and you are here, is there anything that you would like to add?

Mr Macneil—I will make a couple of comments and then I will hand over to Mr Roberts, who is more involved in seed breeding than I am. The Grains Council went to enormous lengths once this became apparent. As a Grains Council member, we have had two or three phone link-ups to keep up to date with what is happening and to make our input. We get almost daily emails updating us on the latest developments. It certainly is a serious issue for the grains industry, and the Grains Council of Australia is treating it in that way.

Senator FERRIS—I asked the question of you not as a member of the Grains Council but as a grower. Are you satisfied with the way in which the issue is being handled? How do you feel about the way in which it has spread through the research community?

Mr Macneil—Obviously, with great alarm. As we are aware, it was identified in Toowoomba today or yesterday. Yes, I am alarmed. I am happy with what has been done but Mr Roberts has more detailed knowledge of those sorts of things so I might hand over to him.

Senator FERRIS—Before you do, how did you feel about the comment that was made this morning that this was identified in 1996?

Mr Macneil—I have read a bit about that in the past few weeks. It is a microscopic insect and it is very hard to identify. It has been claimed that it has been here before. I am not close enough to know whether that is true, and it certainly would alarm me if that were the fact. Once again, I will defer to Mr Roberts.

Mr Roberts—There are no experts in this game; it is all new. I have a trial on my farm that is yet to be sprayed out because it has not come up. I believe that there are 14 such trials in New South Wales. The first occasion that I knew about it was when Dr Richards from the CSIRO rang me and said, ‘We are going to spray at your trial because of this, this and this.’ He went through the whole story. There is a one in 10,000 chance that it is seed-borne and insecticide will be used around the perimeter of the trial site in case the mites are there, bearing in mind that they need a green bridge through the last summer. I farm very close to Senator Heffernan and there has not been much of a green—

Senator FERRIS—There are no green bridges in Senator Heffernan’s area!

Mr Roberts—I believe that they have done the very best that they could, and way beyond what I would have expected for that to happen.

CHAIR—If you had heard in 1996 a whisper that it was in Waite, wouldn’t you have rung the alarm bell?

Mr Roberts—Yes. I believe it manifests itself spasmodically through the growing year and it is very hard to get a handle on it. But I am a farmer with a leaving certificate; I am not an expert in pathology.

CHAIR—On the trading by the Wheat Board of other countries’ wheat, you talked about how you get the first and last opportunity—do you think hearsay or word of mouth is a good enough way to prove that to you? Don’t you think there ought to be—

Mr Macneil—One of the things that I think a lot of people overlook in this situation is that a majority of the directors on AWB are A-class directors and they are farmers. I know their responsibility is to maximise pull returns and returns to shareholders but they are first and foremost growers. Now I have some faith in them—

Senator O’BRIEN—Not on the board, they are not.

Mr Macneil—to monitor and make sure that we are not being duded. If I have not got that faith, I will make sure they get kicked out next year.

Senator O’BRIEN—They cannot be.

CHAIR—But there ought to be something you can put on the table to prove it.

Mr Macneil—Well I am not sure—I mean I have seen—

CHAIR—Well I am just amazed that you are not sure.

Mr Macneil—I have seen your comments in the *Hansard*—your questions on this issue—and I have not followed it through to know whether there is a paper trail.

CHAIR—But I think they are reasonable questions to ask. What would your view be if someone came along and offered AWB Ltd a share price that was 1½ times the market, or double the market—which could happen; what would your advice to an A-class shareholder be?

Mr Macneil—Not to sell their shares, depending on who they were. We are certainly paranoid about—

CHAIR—What would be the advice of the directors, do you think? What would be the obligation of the directors—on behalf of the shareholders and not the growers?

Mr Macneil—They are left between a rock and a hard place.

CHAIR—Well doesn't that say something?

Mr Macneil—Yes, I have seen you ask this question also in *Hansard* before. No. 1, it is hypothetical.

CHAIR—No, it is not hypothetical, because within a year or two—when you drop dead and your AWB shares—

Senator FERRIS—We hope that it will be more than a year or two.

Mr Macneil—Senator Heffernan, I know how old you are and I know how old I am too—we will be walking down that path together.

CHAIR—I will put it into a better context: when I drop dead or a typical farmer drops dead and the farm gets divvied up amongst the family and the shares go to a daughter or go to somewhere or get sold for the equity for whatever, things will change. Within five years or a certain time, it will not be a fact that the majority of AWB shareholders will be growers. They will be just anybody out there in the financial world, and these arguments will break down dramatically when that happens.

Mr Macneil—Are you aware of the reserve powers that the A-class shareholders have?

CHAIR—I am.

Mr Macneil—Well, as I say, when the constitution was formulated, this was not a new issue either. The same concerns we have now were about then, and that is why the powers were bestowed on the A-class shareholders, and the B-class shares—which are the ones that will be traded in all the institutions alone—are the ones that have not got the power.

CHAIR—Yes, but they have got the value. And there is an obligation on the directors to maximise the benefit for the shareholders and at the same in this rock and hard place situation look after the interests of growers. I was just curious as to what the New South Wales Farmers Association's thought processes on things like a takeover would be. If there is an opportunity for a one-off capital profit, do you knock it back?

Mr Macneil—Well, as I say, I have faith in the structure of the constitution that, irrespective of who owns the B-class shares—and I would certainly be more comfortable if they were not owned by an international trader—but—

CHAIR—But 10 per cent can be owned by anybody.

Mr Macneil—Yes, the maximum is 10 per cent. I have faith in the structure of the constitution—that we will retain the major control and it would make it an unattractive buy, because whoever bought it could not control it. These multinational companies buy a company and they want to control it, and I do not know that they would be interested in buying a company they could not really control.

CHAIR—Anyhow, that is hypothetical, as you say. Thank you very much.

Mr Macneil—A pleasure. Thank you for the opportunity, and I wish you well in your deliberations.

Proceedings suspended from 10.34 a.m. to 10.56 a.m.

HASTINGS, Mr Ian, President, Victorian Farmers Federation Grains Group

HUNTER, Mr Ian, Executive Director, Victorian Farmers Federation Grains Group

NALDER, Mr Geoffrey Lloyd, Deputy President, Victorian Farmers Federation Grains Group

CHAIR—I welcome to the table the poor old drought-stricken Victorian farmers. Do you have any additional comments on the capacity in which you appear?

Mr Hastings—I would like to declare that I have some interest in shares in AWB.

Senator FERRIS—And presumably in GrainCorp.

Mr Hastings—Yes, I also have some GrainCorp shares—very small holdings in both cases.

Mr Nalder—I also have shares in AWB and GrainCorp.

Mr Hunter—I hold E class shares in AWB Ltd.

CHAIR—Would you like to make an opening statement before questions?

Mr Hastings—Yes, we would like to make a statement to open it up. The VFF believes that the wheat export single desk delivers considerable benefits to Australian wheat growers. The benefits have been demonstrated in many studies undertaken over the years and reinforce the need to ensure that the single desk selling of wheat remains indefinitely. We do not question the worth of this very powerful mechanism. Whilst many growers are unaware of the details of the role that the WEA plays in the wheat industry, they are reassured that there is an independent body monitoring the actions of the custodian of the single desk.

WEA, as the watchdog of the single desk, has immense responsibility, but we believe that its role needs to be expanded to ensure growers have a better understanding, and thus a more transparent view, of the details behind the AWBI's management of the single desk so that the current support is not eroded because of perceptions that management practices are not in their best interests. To do this, we feel that the WEA needs to determine what expertise it needs to better understand all the issues in its role and then therefore have the ability to ask the right questions of the single desk manager as to the appropriateness of its actions. Once it is determined what expertise is needed, then and only then can accurate costing and structure be put in place as to the funding arrangements needed. The WEA needs to include real-time monitoring of the single desk custodian with the power to enforce changes in management practices in extreme situations, and it needs to be charged with the responsibility of reporting in a more detailed manner to the wheat growers of Australia. We see this as a way of maintaining and increasing support for the single desk by eliminating doubt through increased transparency.

In regard to the funding of WEA, we support the GCA's position in that there is a community benefit derived from the single desk, and we believe that the funding of WEA should be part government based and part production based, regardless of whether the grain is exported or consumed domestically. We are satisfied that both WEA and AWB have been and are fulfilling the initial roles that they were given five years ago, but the industry has changed over that period and it is time now, with the benefit of hindsight, to redefine some of these roles. Some of the changes that have occurred within AWB and the pool which were not considered at the time are: the payment from the pool to AWB of an outperformance fee; the removal of all employees from AWBI Ltd, the pool, leaving no staff to act exclusively for the pool; the establishment of AWB Ltd, a non-Australian origin grain trading operation in Geneva; the linking of AWB Ltd executive staff incentive payments to the performance of AWB's share price, not pool returns; the establishment of LongReach Plant Breeders, the AWB-Syngenta joint venture; the establishment of a number of subsidiary companies, most of which have some financial link with nominated company B. Although it appears from these dot points that we are being critical of the custodian of the single desk, we hope that this is seen as constructive, because we are deeply concerned that the single desk will be at risk unless greater transparency and rigor are applied to the WEA's activities.

CHAIR—Does that conclude your presentation?

Mr Hastings—Yes.

CHAIR—Could I just say that your submission has been published by agreement of the committee.

Senator O'BRIEN—With reference to the six dot points that commence at the bottom of page one of your submission, are you suggesting that growers receive quarterly reports from the Wheat Export Authority, as is currently the case for the minister, Mr Truss?

Mr Hastings—We have not discussed what the timing should be, just that they should be more regular—I would suggest probably six-monthly or something of that nature.

Senator O'BRIEN—The committee has not seen the detailed report that is provided to the minister. I understand, from information the department has supplied, that arrangement was put in place by a working group which AWBI participated in. Doesn't that give some insight into the power of AWBI over the operation of the Wheat Export Authority and isn't that a matter that the committee should pursue further?

Mr Hastings—I believe our answer to that would be yes.

Senator O'BRIEN—The second dot point goes to the issue of who gets priority under this model—A class or B class shareholders. It is argued in some quarters that A class shareholders get priority via the constitution of AWB Ltd and AWBI. Does the VFF have legal advice that supports the supremacy of B class shareholders?

Mr Hunter—At this stage we do not have such legal advice. It is something that we are currently exploring, but at this point we have not received that information.

Senator O'BRIEN—So it is your view but you are seeking to support it with legal advice.

Mr Hunter—That is correct. It is our general understanding that Corporations Law overrides the constitution of any organisation. But, not being a lawyer, I could not comment further.

Senator O'BRIEN—The next two dot points seem to meld together. I draw your attention to the repeated statements by the Chairman of the Wheat Export Authority that that authority only monitors and reports. In your next dot point, what sorts of powers are you suggesting the Wheat Export Authority should be given in relation to the operation of the AWB group?

Mr Hastings—Our concerns all along have been that we believe the ability of WEA should be expanded so that they are able to monitor in real time what is happening with the management of the pool and to report back any concerns that they might have to the minister and the growers.

Senator O'BRIEN—Do you have a particular view about specific powers which do not exist now but which ought to be present?

Mr Hunter—As it stands the WEA does not have the power to set any guidelines—be they operational or other—for AWBI. As the owner, we think it would be more appropriate for them to do exactly that. Currently, we have the situation where AWBI, via its board structure, can implement pretty much any form of activity that it deems necessary to operate the pool. However, on some occasions those activities may not necessarily be in the best interests of growers. A more appropriate mechanism would be for the WEA to set the criteria by which the single desk operates, rather than have the private company operate in the manner that it does in setting that criteria.

Senator O'BRIEN—I guess I am thinking about it in the context of the legislation—the legislation does not nominate a particular company. The company has an exemption under the legislation—apart from other powers—from the need to get explicit authority to export wheat. Do you think that those powers of the Wheat Export Authority ought to be linked specifically to the exemption in the legislation to export without the approval of the Wheat Export Authority?

Mr Hunter—That may be one way of doing it. It is something we had not considered explicitly.

Senator O'BRIEN—I am trying to think of how the legislation works and how you would achieve what you are talking about through a legislative model imposed upon an unknown company, because it could be, in the future, that AWBI is replaced by another company for some reason or other. I am wondering whether the powers or requirements for the company—whatever it might be—to do and provide certain things might best be linked to the exemption of the legislation from the requirement to gain approval from the Wheat Export Authority to export wheat. Have you considered this?

Mr Hunter—Not explicitly, but that could work.

Senator O'BRIEN—Are you taking legal advice on how that would work in the legislation?

Mr Hunter—Not at this stage, no.

Senator O'BRIEN—I want to ask about your statement in relation to the wheat industry benchmark. My understanding of the benchmark is that it is an internal tool designed by AWB Ltd for the use of AWBI and is not, therefore, in any way, an independent measure of performance. What is VFF's view on that?

Mr Hunter—We agree.

Senator O'BRIEN—Should it be the subject of some independent measurement assessment?

Mr Hunter—It is our understanding that that would be the role of the Wheat Export Authority—that is, the growers' independent body and who the growers rely on to determine if the performance pool is adequate. The short answer is: yes, we would agree with you.

Senator O'BRIEN—In relation to your comments about the value of the single desk, how does the VFF know that AWB Ltd is not capturing a significant share of the single desk benefits that you understand to exist?

Mr Hastings—We do not.

Senator O'BRIEN—At present, you would rely on the Wheat Export Authority to assure you that that was not the case. Is that a fair comment?

Mr Hastings—Yes.

Senator O'BRIEN—Have you received such an assurance?

Mr Hastings—I believe WEA would say that they believe that is the case. I do not think we doubt that. We are trying to say that we believe there should be more transparency so that it is easier for the grower community to understand.

Mr Hunter—From the reports that we receive, it would be very difficult not only for us but for any grower to determine that there are no such activities taking place and transfer of income. From the information we receive, it is virtually impossible for us to know that is not occurring.

Senator O'BRIEN—So it all comes down to a question of whether you can be confident that the Wheat Export Authority can provide an accurate, reliable picture.

Mr Hunter—Exactly. In the absence of any detailed information coming to you—the VFF or growers—we have to rely on the WEA. There is no alternative.

CHAIR—Are you happy with the levy being applied, as I understand it, at the point of export and across, obviously, the pool?

Mr Hastings—The suggested levy for a collection?

CHAIR—In other words, do you think the whole of industry or just the exporters should bear the cost?

Mr Nalder—We feel the whole of industry should bear the cost.

CHAIR—Thank you, that is all I wanted. Do you have a view about the further acquisition by AWB of Futuris?

Mr Hastings—In the absence of sufficient information to really make our minds up, yes, we have concerns. But I do not think, as a council, we have formed an opinion yet.

CHAIR—Do you think you should shortly form an opinion given that—

Mr Hastings—Exactly.

Senator FERRIS—What sorts of concerns do you have?

CHAIR—This is a little sensitive.

Mr Hastings—Geoff might like to answer that.

Mr Nalder—An initial concern I have is that in the seed supply industry, there are two major players—AWB has control of one of those companies and Futuris has control of the other. If AWB were to acquire Futuris, which would merge the whole seeds industry under the one umbrella, that is potentially a concern to me and it would be a concern to our membership.

Senator FERRIS—Do you have concerns about the Wheat Board having a banking licence? Do you see that as being an advantage or a disadvantage to growers?

Mr Nalder—The financial services that are supplied to growers at the moment are contestable. I do not perceive that there would be any advantages or disadvantages to growers in the AWB having a banking licence. There certainly would be an advantage to AWB in having that licence, but growers have the ability to get finance outside of it from other avenues.

Senator FERRIS—Do you think that choice would continue?

Mr Nalder—I do not know the answer to that.

Senator FERRIS—Is that an area that falls into your basket of concerns?

Mr Hastings—I think Geoff has summed up the way we understand it currently—that is, at this point in time, we do not see that it would have a conflict. It would depend entirely upon how that developed.

Mr Hunter—I will just add that, in terms of that activity being contestable, it is quite right. What does concern us is the exclusive arrangement that AWB's financial arm has with access to pool information which gives it—without any doubt, in our opinion—a market advantage over all other financial service providers.

CHAIR—With the Geneva operation, from the Victorian farmers' point of view, what do you think would be a reasonable mechanism for a grower that is growing 500 acres of wheat in the windblown Riverina to see that a certain sale—for instance, we have knowledge of Indian wheat being sold to Indonesia and Pakistani wheat being sold to Egypt—was in his best interests and not necessarily just in the best interests of the shareholders of AWB?

Mr Hastings—Again, I think that the position we are trying to put throughout this is that we would see the WEA's role as being an expanded role, and that is where we would get—

CHAIR—Yes, but what do you think that the WEA ought to be looking at to prove the point?

Mr Hastings—I suppose in some ways it would be a case of verifying the statements which Angus previously made, that we are told the pool has both first and last opportunity to sell into a market that has been identified. We just want an independent body verifying that that is the case.

CHAIR—You can be told he is going to win the Melbourne Cup; you can be told lots of things. Should there be some hard process to prove that? I will take it a bit further: do you blokes have confidence that the incentive payment from International back to Limited was well deserved? What is the process where you make up your mind on that?

Mr Hunter—I would have to say that we do not have confidence, because we do not know how the outperformance fee works. We do not know its make-up. It is a confidential measure.

CHAIR—This is all a question of communicating with the poor old grower.

Mr Hunter—It is very difficult for us as an organisation to convey to our members that we have confidence in that payment when we simply do not have access to the information.

CHAIR—For instance, to take it a step further, when Limited put 2.5 million tonnes into the pool, what confidence do you have that that was in the best interests of the growers in the pool?

Mr Hunter—Growers have choice. They do not have to sell to AWB's trading arm; they can deliver into the pool direct. From a commercial perspective, it comes down to grower choice. The question that we ask is: are the traders at AWB in a privileged position in terms of market intelligence compared to our grower members? We do not have any hard evidence that that is the case, but the question must be asked.

CHAIR—But given that it is the charter of the directors at Limited to constitutionally look after the best interests of the growers ahead of the shareholders, how would you ever know?

Mr Hunter—We do not.

Senator FERRIS—I have a couple of questions I would like to ask. Just to clarify things, you talked about your personal shareholding but I wonder if you would like to put on record what VFF's shareholding is in GrainCorp. I should also perhaps say that I understand that GrainCorp have a joint venture with Cargills. I just do not want to have a situation where the questions that I ask you can be in some way besmirched by the suggestion that you are acting out of a corporate conflict of interest. Before I move on to my questions, could you just clarify that for us?

Mr Hunter—Yes. The VFF Property Trust, which is the legal entity for the Victorian Farmers Federation, holds, on behalf of the Grains Group, approximately 500,000 GrainCorp shares. That shareholding is currently being reduced and, for market reasons, I would rather not enter into precise details. Suffice to say that that shareholding is being sold down.

CHAIR—We really do not need to know the details.

Mr Hunter—VFF also holds AWB shares and ABB shares, in addition to other managed investments.

Senator FERRIS—So it would be fair to say that your evidence here today and in your submission has not been influenced by those shareholdings?

Mr Hunter—Definitely not.

Senator FERRIS—I was interested to see that there are six quite important issues of principle that you raise here in relation to WEA. Growers in South Australia, where I come from, saw the WEA as being a tiger when it was first set up and they were very happy with it. Many of those same people now think it is a toothless tiger. Given that you have six areas of difficulty here, would you consider that the WEA is a tiger or a toothless tiger?

CHAIR—Or you may have some other choice of words.

Senator FERRIS—I am using the growers' terms; I am not using my own.

Mr Hastings—Our view would be that it is in the middle somewhere. We believe that it does require more powers, but we would not call it a toothless tiger. We believe that it is doing a reasonable job. We think its powers should be expanded and its reporting back to growers should be increased so that growers have confidence that it is doing the job and that that process is more transparent.

CHAIR—If there are no changes to the construct of the Wheat Export Authority, and they conduct the inquiry—which is to report in 2004—into the performances, do you think anyone will have confidence in that report?

Mr Hastings—Yes, I do. Again that is a part of the charter of WEA, but it is an expanded role that we are talking about. We are not really talking about whether or not that part of the role is done adequately. We are more concerned about whether or not we believe they should be doing more in terms of real-time reporting or real-time monitoring so that, if there are things that we believe may have an impact on the single desk at that time, they should be recognised and fixed prior to then rather than waiting for that report to come out.

CHAIR—But what I am asking is: do you think the Wheat Export Authority in its present form—no changes—has the capacity to make that report and for that report to be confidently accepted by the growers?

Mr Hastings—Yes, I do.

Senator FERRIS—On first reading, section 5(2) appears to be a very all-embracing power, but I think you heard the New South Wales farmers' evidence that suggested that it has been used quite conservatively. There is some suggestion that the power might be more limited than on first reading it appears to be. Do you think that that power is sufficiently explicit to enable the six areas that you have outlined in your submission—and I have a couple more that I would like to raise with you—to be further explored? There seems to be some difference of opinion according to which state you happen to be in, interestingly enough, about the extent to which the WEA is using the power that it appears to have under 5(2). Do you have a comment on that?

Mr Hastings—Yes, but I am rather concerned about commenting, because I do not believe we have the ability to fully understand what those powers are. An opinion is no, but I really put forward the fact that we do not completely understand—we do not have the ability to understand—whether those powers are being fully used or not.

Senator FERRIS—If you do not have the ability to understand, and yet you have outlined a number of concerns that you have, have you ever asked the Grains Council to explore whether they think the powers are adequate or whether the powers are being enforced to the extent they could be?

Mr Hunter—We have had some ability in the past and we have put mechanisms in place to provide us with the ability to formally direct questions via the GCA to the WEA, which we are in the process of undertaking. We are all relatively new to the GCA and we cannot comment too far back because we do not have that experience, but, from what we have observed, there has been limited ability for the various farmer groups to direct specific questions and lines of exploration concerning AWBI's activities via the GCA. Once again, this is simply because of those confidentiality issues. But mechanisms have been put in place for us to undertake further questioning, as I said.

Senator FERRIS—On the basis that, if you pay for it, you should have access to it more easily?

Mr Hunter—As a fundamental principle, yes.

Senator FERRIS—Some of these six areas—I will not explore them in detail—seem to fall into some pretty important areas. What have you done with these areas of concern? I was somewhat amused and puzzled by the VFF having a different view to that of New South Wales. New South Wales says that only a bit of tweaking might be required, yet over the border your growers have a great deal more concern. Have you raised these concerns at the GCA, and what has happened to them?

Mr Hunter—Yes, we have raised some of these concerns with the GCA. On some occasions I suppose we have been stonewalled. But, as I said, because we have these mechanisms in place now, we are expecting far better outcomes in terms of answers to some of our questioning.

Senator FERRIS—I notice that the two areas that have been raised with me in South Australia as being areas of concern are not on your list. One of them is the extent to which there is transparency between the AWB and the AWBI in relation to pool sales, commodity hedging and foreign exchange hedging, and the extent to which a group in one has knowledge of the other. Is that an area that you have ever thought about, and do you have any concerns about that?

Mr Hunter—I am sorry, I am not sure I follow your question. It was transparency between which components of the AWB?

Senator FERRIS—In relation to foreign exchange hedging, commodity hedging and the pool sales program, there is some suggestion that AWB trading staff actually have access to more privileged knowledge. That is something we have raised with the AWB, and they have said that they do not. But there are growers who have looked at this in more detail than perhaps the VFF have, and they believe that there is an exchange of privileged knowledge. Does the VFF have a view about that?

Mr Hunter—We do not have a view, and we have no evidence that that activity takes place. So, to that extent, our view is not relevant.

Senator FERRIS—What about wheat breeding? This is another area that has been raised in the hearings. Do you have a view on the suggestion that there is, or potentially is, a conflict of interest in relation to issues pertaining to the classification of varieties and to export market information which is trapped by the single desk in that area? Is that something that you have a comment on at all?

Mr Nalder—We agree that there is conflict there and that it is an issue that needs to be addressed.

Senator FERRIS—That is not one of the six issues that you have outlined in your submission, yet in South Australia it has been raised with me repeatedly that the WEA should be exploring this area. Do you have a view on it, or do you not think it is an area that is significant in relation to the other six?

Mr Nalder—It is an area that needs to be considered and looked at, and the GCA will have a role in following that through.

Senator FERRIS—Is that an issue that has been raised at the GCA?

Mr Nalder—I am unaware of whether it has been raised, but to my knowledge it has not been raised by the VFF. I would say that that issue was not raised in our submission because we were looking more towards the WEA, its role and how it functions.

Senator FERRIS—It has been put to me that, in South Australia, growers believe that the AWB has a major conflict of interest in investing in plant breeding with Syngenta, forming the joint venture Long Reach. Is that something you have a view on?

Mr Hastings—Honestly, we do have some concerns about it, but it is not an issue we have raised here in terms of the WEA. It is something that, rightly, as or if our concern increases, we would take to GCA and discuss at that level and then presumably go on. But we did not see it as fitting into this particular discussion.

Senator FERRIS—But, in principle, it is an area that you are concerned about. Is that correct?

Mr Hastings—Yes, we have some concerns about it.

Senator FERRIS—Most of my preliminary questions have been asked by Senator O'Brien, so I will hand over to Senator Colbeck.

Senator COLBECK—You comment that reporting times are of concern to you. It was mentioned in previous evidence that verbal reports are coming through much more quickly now. Is that something that you have experienced, and is that changing your level of satisfaction?

Mr Hastings—Yes, we have experienced it. It certainly has increased our level of satisfaction, but we still have concerns and we believe that the report should be more comprehensive.

Senator COLBECK—You question whether the WEA should be setting parameters under which the single desk should operate. As an oversight authority or a body that is set there as a watch-guard, would it be more appropriate for them to have the group that they are monitoring set parameters in advance and then approve or disapprove those?

Mr Hunter—That would be appropriate, if it is possible.

Senator COLBECK—Essentially you are saying that there should be parameters there that are monitored or checked at some point in time, but you are not necessarily concerned as to who sets the parameters. Is that fair?

Mr Hunter—This would be enhanced by giving the WEA a far greater ability to set the parameters and guidelines by which the single desk is operated and run. At the moment, the AWBI undertake activities without approval from the WEA. The WEA then monitors those activities to determine whether they are in the best interests of growers. It seems to us that the cart is before the horse and perhaps it should be done in reverse. In particular, when you have an outperformance fee in place, if the WEA determine that some of those activities were perhaps not in the best interests of growers, the horse has bolted.

Senator COLBECK—Essentially you are saying that there should be some parameters in place for an activity, and they should be agreed prior to that activity being undertaken?

Mr Hunter—Yes.

Senator COLBECK—Senator Ferris mentioned earlier the perception of the strength of the WEA to undertake some of the checks and balances that it takes based on the legislation. You have mentioned that you have not chased that down yourselves. Are you aware of any of the other legal advice that is floating around in relation to that?

Mr Hunter—Sorry; any of the legal advice coming from where?

Senator COLBECK—My understanding is—and I think it was given in previous evidence—that the WEA, particularly, has legal advice as to the strength of its capacity, and I understand that some other bodies may have gained that sort of advice as well. Are you aware of what that might say?

Mr Hunter—No, we are not.

Senator FERRIS—I should have asked you the question that I asked the New South Wales people in relation to the expansion of infrastructure. Growers in South Australia have expressed concerns to me about the amount of money being invested in infrastructure. I asked those questions of the New South Wales farmers. They said that they were not concerned about it. They said that it made services more contestable and instituted some competition into the marketplace. Do you have the same view? If you do not, would you like to make a comment on that?

Mr Nalder—We are certainly on the public record as being opposed to the duplication of storage infrastructure in Victoria, for reasons which I will now mention. One is that in Victoria there are quite a lot of smaller silo sites that farmers have been able to access. Our farming operations are smaller in size than in other states; therefore, the operations need to have silos that are closer together, because they do not have the infrastructure to cart a long distance. The advent of the so-called super sites is putting the cost back onto the farmer, because he has to either upgrade his truck or bring a contractor in to be able to get the grain to these super sites where there is a reduction in the handling and freight charges.

Our analysis of the reductions that are being achieved or being posted at those sites is that it is not the storage and handling provider that is taking a cut in the cost of it; it is the rail operator that is taking all of the cut, and the storage and handling providers are still taking their full-tote-odds returns. So there has been no real reduction in the return that the storage and handling provider is getting over what they have got historically. We are fundamentally opposed to it in Victoria.

Senator FERRIS—What is the Victorian outlay for the expansion? I am familiar with New South Wales and South Australia, but I do not have any figures on Victoria. Do you know the cost of the new infrastructure? Do not worry if you don't know. It is just that I am not familiar with it and I would be interested to know.

Mr Nalder—No.

Mr Hunter—No.

Mr Hastings—I just want to back up the things that Geoff has said there. There is concern amongst our council and growers that there is no real saving to the actual grower. While there are statements made of the savings in the chain, the actual grower from his farm does not believe that those savings have come through because he has to cart further and put infrastructure in place to do that.

Senator FERRIS—It is the same wallet, as I said before, and there are multimillion-dollar investments being made. It would be quite a long time before those savings flow through. My biggest concern is with the

amount of infrastructure. In years like this one just past, storage is not going to be required and yet the costs of maintaining the storage will still have to be made.

Mr Hastings—I need to qualify my last statement inasmuch as those growers who are within a relatively small distance of the bigger sites certainly are receiving a benefit, and that would be a percentage of Victorian growers. I could not comment on how big that is, but the areas that are 60-and-beyond kilometres away from those bigger sites really are not seeing any saving.

CHAIR—Just out of curiosity, what percentage of Victorian wheat growers does the Victorian Farmers Federation represent and what percentage of wheat do they produce in Victoria? Do you have those sorts of figures? Do you represent 50 per cent of the growers?

Mr Hunter—No, it is significantly higher than that. We think our representation is probably up in the region of 80 per cent to 85 per cent. I do not know what that reflects in tonnage, but my hunch is that it is about the same.

Mr Hastings—That is a guess, but we believe it is a reasonably well qualified guess. Certainly, in my area of the north-western corner of the state, we have plus-85 per cent membership.

CHAIR—That is a pretty impressive percentage—I do not know whether that means you carry a baseball bat around or not. Thank you very much for your presence and evidence today.

[11.40 a.m.]

TAYLOR, Mr Glen, Chief Executive Officer, Wheat Export Authority

WALTER, Mr John, Chairman, Wheat Export Authority

CHAIR—I welcome to the committee hearing the Wheat Export Authority representatives.

Mr Walter—We are pleased to be here in order to assist the committee in its deliberations.

CHAIR—I would like to ask a couple of questions on the mechanism that you use to come to a conclusion on the performance of the pool and the co-relationship between Ltd and International in delivering the best interests, as the constitution says, for the growers ahead of the shareholders, who could be anybody. For instance, with the wheat that was taken from Ltd, which is owned by the shareholders, and put into the pool—as we understand it, 2½ million tonnes in recent times—how do you assess that there was a benefit for the growers in the pool from that movement of wheat?

Mr Walter—I think we said in earlier evidence to the committee that the relationship between the pool on the one hand and AWBL's cash trading activities on the other was one which we were particularly focusing on. You would understand, Senator, that our role is confined to AWBI and the benefits which its activities bring to growers—and I emphasise the word 'growers'. Growers have two roles in relation to AWBI's activity. One is as a pool participant. Another issue to do with the activity of AWBI conceivably is the way in which AWBI's activities, as a party having a relationship with AWB, may have some impact on the position of growers more generally in their role as vendors to AWB from a cash trading perspective. Having said that, our focus is on AWBI and the benefits to growers which its activities bring.

CHAIR—Doesn't that in itself say that if there is action by AWB Ltd that benefits the shareholders, you have to make an assessment of whether that action was to the benefit or detriment of the pool holders? So with respect to this 2½ million tonnes, what I am saying is pretty simple stuff. Where the hell was the benefit for the people in the pool when the cash wheat from the Ltd shareholders was dumped into the pool? I would have thought, obviously, that there was some benefit for the shareholders or they would not have done it. But it does not necessarily follow that there is a benefit in the pool.

Mr Walter—It also goes, Senator, to the role of AWBI. AWBI has effectively an obligation to acquire all grain which is offered to it. That grain might come from AWBL or it might indeed come from other non-grower sources who have also acquired their grain in the cash trading market.

CHAIR—I understand that, but given that it is the parent company, as it were, that is delivering the grain—obviously, I would hope, to the benefit of the shareholders—isn't there some sort of potential conflict there that has to be resolved, and you are the referee?

Mr Walter—The only way we can resolve that conflict is by looking at the activities of AWBI and at whether the activities of AWBI are to the benefit of growers. AWBI has a relationship with AWBL. If the relationship with AWBL were, for example—and I think we referred to this in our growers report—such as to provide advantages to AWBL in relation to the accumulation of wheat—and you have given as an example the figure of 2½ million tonnes of wheat—that would certainly be something that we would be looking at and making comment and statements about.

CHAIR—So how do you actually go about assessing that?

Mr Walter—It is actually quite a difficult task—

CHAIR—I bet it is.

Mr Walter—because our focus is on AWBI and our role is in relation to AWBI. There are informational advantages which flow to AWBL, and we have referred to this in the report which has been made to growers. The issue is whether those informational advantages are to the benefit or the detriment of growers.

CHAIR—My difficulty, which I talked about in Perth, was: how can a grower who is short of money, turns up at the Junee silo and takes the cash price from AWBL—and I presume there is some correlation, except if there is a miller somewhere who is short of wheat for the next week or two who might jump ahead of what AWBL is offering—be confident that that price has been set at a level that has not got a little bit left in it for the shareholder?

Mr Walter—I think that it is for AWBL, the cash trader, to form an assessment as to the price at which it might be prepared to buy in competition with other cash traders the grain which may be offered to it or which it may solicit.

CHAIR—But, given that they have all the market information from everything, they in some ways are in a position to set the cash price.

Mr Walter—It is clear that there are some information flows for certain purposes, in particular related to the fact that AWBL supplies the underwritten protection for those growers who seek the underwriting protection when they submit to pools. The task for us—and I think I mentioned it explicitly during the last set of evidence I gave—is to see whether that information is properly quarantined and does not cause the sort of adverse situation which you have identified.

CHAIR—There is the potential, shall I say, for a bit of insider trading, as it were. That is a poor choice of words, I guess; but how would you ever know that there is not a peephole in the china wall? How would you ever know that?

Mr Walter—The only focus we can have is on the activities of AWBI. It may be, for example, that when you look at the inward sales to AWBI—and you have taken the example of AWBL making that sale—there is some evidence of correlation in terms of movements in sale prices and posted realisations in terms of estimated pool returns. But it is an area that we at the Wheat Export Authority are looking at. We have indicated that in our growers' report. We are confined, however, to information which comes to us from AWBI and other information which may be provided to us by other market participants and interested parties.

CHAIR—Are you confident, with the information that is available to you, that you are able to make a reasonable assessment on behalf of all Australia's wheat growers that the market was not manipulated by that dumping into the pool?

Mr Walter—We can only make an assessment on the basis of the information available to us.

CHAIR—Once again I am thinking about the poor old wheat grower. The benefit to the wheat grower is the job of the Wheat Board, primarily, ahead of the benefit to the shareholder. The NSW representatives described this as 'a rock and a hard place' situation. When the Geneva desk makes a sale from India to Indonesia or Pakistan to Egypt, what role do you have in seeing that the best interests of the growers in the pool are served by that process?

Mr Walter—Once again, our focus is AWBI. Insofar as AWBI and the pools are part of that process, we can look at it from that perspective.

CHAIR—But can you give a bit of information about what you actually did or have done about those sales? Have you looked at them?

Mr Walter—I cannot respond to that question explicitly. I would need to take that on notice.

CHAIR—Can the chief executive? Surely to God somebody has had a look.

Mr Taylor—The Wheat Export Authority has had discussions with AWBI on the issues of pool trading. It has sought and received information from AWBI on those transactions and is currently analysing that data.

CHAIR—Who is analysing it?

Mr Taylor—The WEA has contracted an assistant—

CHAIR—But is there a paper trail, where someone rang up someone or wrote a letter and said, 'We've got the opportunity of this sale—do you mind if we grab it instead of the pool,' and all of that? Is there a paper trail to that effect?

Mr Taylor—The Wheat Export Authority's responsibility is to look backwards, so—

CHAIR—But I am asking you whether there is evidence that you can look at or do you just have to take hearsay—'Oh, yes, sure, we rang up'?

Mr Taylor—The authority is able to ask for information from AWBI, but it is dependent on information that comes from AWBI and other market sources.

CHAIR—Have you got it?

Mr Taylor—Yes, data has been received from AWBI.

CHAIR—So you have written evidence that you could hold up at a growers meeting and say, 'This is what they wrote and this is what happened'?

Mr Taylor—I have not seen the data information personally, so I am not in a position—

CHAIR—If you have not seen it, what chance do you have of making a decision?

Mr Taylor—The authority is analysing that information currently and it will be the subject of reporting in the performance monitoring report to the minister and also in the growers' report.

CHAIR—Best of luck!

Senator O'BRIEN—What is the status of the information we have received from the authority?

CHAIR—You are saying that the two documents we have received have a confidential status at the moment. Would you like to let the committee know why you think that should remain so? We can go in camera if you want.

Mr Taylor—Can we please clarify the two documents that you are referring to?

CHAIR—The documents of 25 March and 14 April.

Mr Taylor—Are they the responses to the questions that the authority was requested to respond to by the committee?

CHAIR—It is the question on the legal advice et cetera.

Mr Walter—Perhaps, if I can clarify that—

CHAIR—Does the legal advice need to be kept confidential?

Mr Walter—From our point of view, there is no reason why that legal advice should be kept confidential.

CHAIR—All of it?

Senator O'BRIEN—Or have they already censored it?

Mr Walter—All of it.

Resolved (on motion by **Senator O'Brien**):

That this committee authorises publication, including publication on the parliamentary database, of the documents.

Senator O'BRIEN—The advice that you have given us refers to a proposal by AWBI that it enter into a memorandum of understanding or confidentiality agreement with the Wheat Export Authority in relation to commercial-in-confidence information from AWBI. The advice states that at that point—as at 10 March 2000—the Wheat Export Authority did not support this proposal. The advice states that the Wheat Export Authority was unable to finalise the modelling framework until further consultations with other stakeholders had occurred. Then it states that the Wheat Export Authority was also concerned that such an arrangement may limit its ability to fulfil its statutory functions. It refers to the fact that the Wheat Export Authority had contacted several other organisations that were required to handle commercially sensitive information and they all recommended that the Wheat Export Authority not sign the agreement. Can you identify those other organisations, please?

Mr Taylor—I could not at this stage. I would need to take that on notice.

Senator O'BRIEN—Can you expand on the basis of their advice to you about not signing up to a memorandum of understanding or confidentiality agreement?

Mr Taylor—My recollection of the discussions that were had is that they were phone calls to a range of organisations who had roles that were related to that which the Wheat Export Authority has. I do not believe that there was any detailed advice or correspondence entered into.

Senator O'BRIEN—Can you check that?

Mr Taylor—Yes, I can.

Senator O'BRIEN—Would you supply it, if it is available?

Mr Taylor—If it is available. I will take that on notice.

Senator O'BRIEN—Further in the legal advice, the Wheat Export Authority asked about the extent of the power provided under section 5(2) of the legislation. The advice was that section 5(2) was not sufficient to enable the Wheat Export Authority to compel AWBI to provide information and stated, further, that an express power to provide information would be required. That legal advice suggests that an MOU might be an appropriate mechanism if that were the only way to access the information required and the form of the agreement did not fetter the Wheat Export Authority's ability to monitor the AWBI. So it is fair to say, isn't it,

that in March 2000 the Wheat Export Authority had legal advice that it did not have the legal authority to gain access to the information necessary to do its job?

Mr Walter—That is not quite what the advice said. It identified the fact that there was no power to compel evidence, or compel production of material, from AWBI. That is different from the proposition that you put.

CHAIR—In hindsight everyone is wise. Do you think it would have been an oversight not to have pointed to that in your annual report?

Mr Walter—I think we have made reference to the informational arrangements in our reports to growers. Glen, you may be able to assist me.

Mr Taylor—I would have to revert to the document to check that.

Mr Walter—Can we take that on notice?

CHAIR—Sure. I think it would have been an item of interest out there.

Senator O'BRIEN—So you do not think being dependent on AWBI to decide whether they would supply you with information limited the legal authority of the Wheat Export Authority to do its job?

Mr Walter—The advice didn't say that. My response to your question was a response to the proposition you put. I think the advice was simply to the effect that there were those limitations.

Senator O'BRIEN—You couldn't compel them to provide any information was the advice, wasn't it?

Mr Walter—The advice was that we could not compel them to provide any information. That is correct, and that is the context which government has set for us to operate in.

Senator O'BRIEN—Are you saying that the Wheat Export Authority knew from day one that you did not have that power?

Mr Walter—It is clear from the advice which has been given to us and the views which the authority has consistently expressed—and consistently expressed for some time—that the authority has no power to obtain information from AWBI or from any other person.

Senator O'BRIEN—And you took legal advice in March 2000 which confirmed that you did not have that power?

Mr Walter—It stated that we did not have that power. I do not know that it confirmed it.

Senator O'BRIEN—I was not sure from your previous answer whether the authority had the view that you did not have that power from its initiation.

Mr Walter—I cannot answer that question because I have no specific recollection of the dates and times, but certainly we had received that advice in March 2000.

Senator O'BRIEN—And did the authority advise the department and the minister or his office about this limitation?

Mr Walter—The issue of information gathering is one where—as you have seen from the advice and the statements I have made over time, including to other committees of which you are a member—there is no particular blinding discovery about it. We have no power to compel provision of information. That issue in the ordinary course would have been part of our process of dialogue with the other organs of government.

Senator O'BRIEN—You took specific advice which confirmed a view or raised the issue of the inability to compel AWBI to provide information. Was that advice conveyed to the minister or the department or the minister's office?

Mr Walter—I believe the issue of the powers we had was conveyed to government generally, and I think that includes government in all its manifestations.

Senator O'BRIEN—The government generally is a large, amorphous group. Did the authority tell someone in the department?

Mr Walter—I can take that on notice, but I have no specific recollection. I suspect, and to the best of my recollection, information as to the sorts of issues which are addressed in the opinion would have been advised to the department at about the time of the receipt of the information.

Senator O'BRIEN—I want to go to the agreement between AWBI and the Wheat Export Authority signed off on by Mr Lindberg on behalf of the AWBI on 30 June 2000. I might say that this agreement denies the

authority the ability to properly perform its function, but that is my view. Part C of the agreement sets out detailed principles for the provision, collection, use and disclosure of information. Section 113 states:

AWBI retains the sole discretion as to the manner or form in which information is provided or whether certain types of information are provided.

Section 311 also states:

The Wheat Export Authority will not disclose any or all of the AWBI information unless AWBI provides its written consent.

It also provides an exemption where that information is requested by the minister, where there is a legal obligation to provide it or where the information is for the use of consultants or employees in the course of their work provided they have signed a confidentiality agreement. That is a fair reflection of the situation, isn't it?

Mr Walter—I think you will see also that there is advice which has been provided about the operation of provisions 3 and 4 of part C of the confidentiality arrangements.

Senator O'BRIEN—I was going to come to that.

Mr Walter—Yes.

Senator O'BRIEN—But, generally what I have said is a fair reflection?

Mr Walter—Generally, I think it is a fair reflection; it reflects the proposition that the information is able to be used for particular purposes, including communications with the minister. As I recollect these provisions, I think there is also an exception for information disclosure required as a matter of legal compulsion.

Senator O'BRIEN—Legal advice to the authority advises that exemption from the principles of part C is not necessarily sufficient to permit disclosure of the information by the Wheat Export Authority. The advice refers to the fact that in addition to the general principles relating to the handling of information in clause 4 of the agreement it contains a specific prohibition on allowing access to or disclosing information provided by AWBI, and further the legal advice points to the fact that the wording in clause 4 is more restrictive than that in clause 3 because it is limited to the disclosure of findings, conclusions or matters of opinion based on the information provided by AWBI. In citing that agreement, hasn't the Wheat Export Authority signed up to limiting provisions in terms of its information gathering and reporting ability?

Mr Walter—I would need to consider the detail of what you say, but my perception of the agreement—which is not a specific response to what you say—is that we were free to perform our statutory and legal functions of monitoring the activity on the basis of the data received and we were free, within constraints, to report in terms of more general reporting than the minister. As I think I have said to you on previous occasions, we were and remain subject to the confidentiality arrangements with AWBI and this is the source of those confidentiality obligations.

Senator O'BRIEN—It is significant that, even though you have been given some access, the confidentiality agreement provides AWBI with a controlling right, in effect, as to how you use the information.

Mr Walter—I cannot respond to that without looking in detail at the agreement.

Senator O'BRIEN—I have pointed to two provisions in the agreement.

Mr Walter—I understand you have, and the reluctance I have in responding is that I would like to consider that comment in the context of the agreement as a totality. I can respond, I think, on a broader level by saying that, in terms of the ability to report to the minister, there has been no inhibition. We have, as you are aware, been concerned about our confidentiality obligations, in particular with respect to reporting arrangements to growers and also more generally with respect to the issue of dealing with the information flow as part of a general communication strategy.

CHAIR—That agreement was signed in 2000, wasn't it?

Mr Walter—Yes.

CHAIR—In your 2001-02 annual report, you say:

Monitoring the export performance of AWB(I) and examining and reporting on the resulting benefits to growers continues to be a challenge for the WEA.

Has anything changed?

Mr Walter—I think it will always be a challenge. I do not mean to suggest that it is any more or any less of a challenge. I think you have identified—and this committee has identified—some of the issues which we have to grapple with, and they are not easy issues. So I would not resile from that statement, then or now.

Senator O'BRIEN—Mr Walter, it appears to me that we have legislation that has a deficiency and that we have an agreement that reinforces those deficiencies in the area of your powers vis a vis obtaining information—so who did the authority consult about the terms of the agreement before it was signed off? Was AFFA consulted and, if so, what did they say? Was the minister or his office consulted and, if so, what was the outcome?

Mr Walter—I cannot answer those two questions specifically. It was some time ago. I am happy to take that on notice, but I would have to say that this agreement was regarded as appropriate and prudent in terms of the performance by the Wheat Export Authority of its obligations.

Senator O'BRIEN—Did the board of the authority ever consider it appropriate to ask the minister if the legislation in its form delivered the sort of outcome in terms of WEA's authority to gain information that the government intended and whether there was any need to make some changes that might make more explicit your powers?

Mr Walter—I think you raised questions previously about whether the issue of the informational powers had been raised with the department in particular, and I answered affirmatively to that. I think it is the responsibility of the Wheat Export Authority to inform government as to the issues which arise in its administration, and that was done.

Senator O'BRIEN—And you are confident that you did that?

Mr Walter—We did that.

Senator O'BRIEN—I appreciate that you need to obtain information from your records, but I think this committee should know when that occurred, given the proximity of the legal advice and the confidentiality agreement, for want of a better term.

Mr Walter—We will take it on notice and respond.

Senator O'BRIEN—In terms of the relationship between AWB Ltd and AWBI, the service agreement between those two entities is a key document in determining the return to growers from the management of the single desk export powers by AWBI: that is a fair comment, isn't it?

Mr Walter—It is a key document, yes.

Senator O'BRIEN—The contract between the two companies has the potential to trap benefits from this monopoly rather than have those benefits flow through to growers in the pool—in my view at least. Mr Walter, you told us last time that the Wheat Export Authority has no interest in the institutional relationship between AWB Ltd and AWBI, which does not seem to align with comments you made today in answer to questions from Senator Heffernan—

Mr Walter—I think they are perfectly consistent. I think the institutional context is that AWB is in fact the owner of all of the shares in AWBI, and that simply is the institutional structure that exists. The service agreement is nevertheless the arrangement under which services are provided to AWBI by AWB Ltd, and that relationship might properly be the focus of our attention—and is.

Senator O'BRIEN—Yes, I was wondering how that statement in fact lined up with your request for legal advice on 12 April, which I think is reflected in the Australian Government Solicitor's advice dated 8 May 2002, which recounts in point 4 on the second page:

You say that in the course of the WEAs performance monitoring activities, it has become clear that there are some issues regarding the lack of separation between AWB Limited and AWB[I] in regard to the benefits derived from the single desk and the flow on effects to the commercial activities of the AWB Group of companies.

You have deleted the examples of possible effects from the advice provided to the committee.

Mr Walter—That is correct.

Senator O'BRIEN—But I am still trying to line up the statement that you made last time we had a hearing—I think it was 6 March—that WEA had no interest in the institutional relationship. Perhaps I am not understanding the nuance of your answer.

Mr Walter—I feel no difficulty with the proposition, but it may be because I am used to splitting my brain in half. It is that we focus on the service level agreement. The service level agreement provides the basis upon

which services are provided and indeed provides the basis upon which information flows and activities are conducted for AWBI by AWB Ltd, and that is part of the relationship, if you will, between them. I cannot recollect the specifics that have been deleted—because they certainly relate to specific activities, I suspect, and specific factual circumstances of which we have become aware. But I see no inconsistency between that and saying that our focus is not on the fact that AWBI happens to be, as it is, a wholly owned subsidiary of AWB Ltd, with, as we know, processes and procedures between them.

Senator O'BRIEN—The advice is in fact headed 'Advice on relationship between AWB Ltd and AWB (International) Ltd', and it is clear from that advice that the authority identified problems resulting from the lack of separation between the two entities in relation to the benefits flowing from the export monopoly. And there is a large section of that advice which I referred to and quoted it in my previous question. We then have, I think, four blank pages. So the authority, certainly in the advice, has identified a lack of separation between those two entities, and you have identified commercial benefits derived by the AWB group through the export monopoly power at the expense of growers. Can you tell us why the deleted sections of this advice have been deleted and why the committee should not have access to that material to consider during these hearings.

Mr Walter—It is my recollection that the deletion of these provisions related to the confidentiality arrangements we have in place, which we have already discussed. I would also emphasise that this letter, which I think was early 2000—is that right?

Senator O'BRIEN—May 2000.

Mr Walter—May 2000? It was also at a point of time when—

Senator O'BRIEN—Sorry, let me not mislead you: it was 8 May 2002.

Mr Walter—Yes, the propositions which I have put to you as to both the validity of my statement to you on 6 May and the context that the focus which the Wheat Export Authority has adopted on the service arrangements and the activities of AWBI and AWBL is relevant only insofar as it relates to AWBI are consistent with my recollection of the advice. The bottom line is that the propositions can quite easily stand together. We are not concerned with institutional activities and the institutional relationship, but we certainly are concerned with the activities of AWBI insofar as their relationship with AWBL impinges on those relationships and activities.

Senator O'BRIEN—The chairman referred to an instance where AWB Ltd might purchase its spot-price grain and at some stage make a decision not to sell it domestically but to put that grain into the pool. Surely the institutional arrangement between the two entities would bear upon whether you could be sure that that transaction was conducted without detriment to the interests of the beneficiaries of the pool.

Mr Walter—I do not think that is the case, because the focus is on the activities of AWBI, as the purchaser. What AWBL does is whatever AWBL does. The only question is whether the activities of AWBL have impinged in a negative way on the benefits to growers which might arise from the activities of AWBI.

CHAIR—Isn't that a question for you, though?

Mr Walter—That is precisely the point. That is a question for us insofar as it relates to the activities of AWBI.

CHAIR—So how do you measure that?

Mr Walter—That indeed is the question I think you asked previously. The focus we have is then on seeing, for example, what the informational relationships, as we have referred to in our growers report, between AWBI and AWBL might be. There is no inhibition in terms of our remit on AWBL buying grain; that is up to AWBL.

CHAIR—So have you considered that yet?

Mr Walter—I think it is quite clear that we are looking at that issue specifically at this moment in terms of the growers report, the informational relationships which may exist and the limitations on that information.

CHAIR—There would be circumstances where it could be advantageous—if there were a world wheat shortage—but if there were a glut it might go the other way. The difficulty is that it is after the event.

Senator O'BRIEN—Let me respond to that by saying that the only circumstance in which I think it might be advantageous for the pool holders is where it gave the entity a chance to increase the overall return—and in fact the circumstances the chairman refers to would perhaps have a restraining effect on the world pool price, potentially at least.

Mr Walter—As they say, that is contingent; it all depends.

Senator O'BRIEN—That is right, but, when we come back to the institutional arrangements between the two entities, there is the issue that the chairman referred to about whether there can be certainty that information with respect to potential pool returns does not effectively pass to AWBL, which encourages a person on staff to make a decision to say, 'We're not going to sell that wheat domestically because it would do better in the pool.'

Mr Walter—I have said to you that that is one of the issues which we are looking at.

Senator O'BRIEN—But that is about the institutional relationship between the two, isn't it?

Mr Walter—With respect, that is about prospective service arrangements between the two. The institutional relationship is the fact that you have one as a subsidiary of the other. Maybe it is a definition—

Senator O'BRIEN—One employs the staff of the other. Is that the service arrangement?

Mr Walter—That arises by reason of the service and related arrangements, yes.

Senator O'BRIEN—I would put it to you that the details of the relationship between the two companies and having access to and understanding those details are fundamental to the authority doing its job.

Mr Walter—I would agree with you: insofar as it relates to the activities of AWBI and the services which are provided by AWBL, the answer is absolutely yes.

Senator O'BRIEN—At the last hearings, Senator Ferris asked about the 77 services provided by AWBL to AWBI, and that list has been provided. A more generalised version of the list is contained in the AWBI pool report for 2000-01. Senator Heffernan also asked that the costs of those services be disaggregated. AWBI's written response to that request was that AWB Ltd does not disaggregate the service costs and does not provide that information to AWBI. Your authority has told us that WEA depends on AWBI for its information and AWB has told us it does not get any disaggregated information in relation to the service agreement. Therefore, WEA does not have access to any disaggregation of service costs either; is that correct?

Mr Walter—We have access to information, provided to us by AWB Ltd, about costs in particular areas. You are perfectly correct to say we are dependent for that cost information, in the sense of costs incurred, on information received from AWBI. You will also notice that the way in which AWB's benchmarks are expressed is in terms of historic costs for a number of those services—that is the basis of some of it. We have also said that we will be looking at whether they are appropriate measures for examining the basis upon which the costs and pools might be charged. I think when we spoke last, I said our focus is on optimising revenue and minimising costs because that gives rise to the greatest residue in the pools for the growers. Do you have anything to add, Mr Taylor?

Mr Taylor—I have nothing to add.

Senator O'BRIEN—How much of the costs of the 77 services that Senator Ferris referred to are disaggregated? It seems to me that AWBI cannot give you any information about disaggregation because they do not have it. So presumably any information you get comes from AWB Ltd.

Mr Walter—I cannot comment on the precise granularity of the data, but I can certainly agree with the proposition that we are dependent on AWBI for information.

Senator O'BRIEN—So if they do not have the information, you do not get it?

Mr Walter—That is correct.

Senator O'BRIEN—Is it fair to say that any assessment by the Wheat Export Authority to determine whether AWBI, and therefore growers, are getting a good deal from AWB Ltd can only be assessed against a base fee and performance incentives scheme—as against the services agreement?

Mr Walter—It is assessed against the data which is provided by AWBI and the historic cost data, yes.

CHAIR—The benchmarking for the \$60 million, or whatever it is, performance payment from AWB (International to AWB Ltd: do you look at that?)

Mr Walter—Yes, we certainly do. We look at the hurdle rate which applies before the sharing.

CHAIR—I want to go back to the 2½ million tonnes from the cash market into the pool, which I would have taken if I were an ordinary person out there in the market—you would because it is the best place for getting rid of it to commercial advantage for the shareholders. If that in itself dulled the pool, as it were, is

that not of interest to you in looking at this benchmarking \$60 million, or whatever it is, performance payment? Don't you have to look at that stuff to know that that did not damage the market in the pool?

Mr Walter—We do not monitor AWBL; that is not what we do at all.

CHAIR—No, but you monitor what happens to the wheat that comes into your pool and the effect that that has on the pool.

Mr Walter—Bear in mind that the pool has an obligation to take effectively all wheat which is submitted to it—not simply from AWBL but from other non-grower owners of wheat. Our focus is on the activities of the pool.

CHAIR—But this is a body that has as its constitutional requirement to look after the very best interests of the growers ahead of the shareholders. Are you in this rock and hard place situation, too?

Mr Walter—You may describe it as such; I do not see it as such.

CHAIR—Those were someone else's words.

Mr Walter—Our focus is on the activities of AWBI, and that is the activities of AWBI by reference to the position of the growers. One of the institutional constraints that AWBI has, as I understand it, is that it must take consignments of wheat which are submitted to it. That is a given in the sense of the way it operates. We can make comment, conceivably, on the relationship of that to growers.

CHAIR—But it is possible, given that AWBL would have all the information available in the marketplace—and it does have, and good on them—that they could decide that the best way to get rid of that wheat, to their advantage, would be to put it into the pool, and that would not necessarily be to the advantage of the pool.

Mr Walter—Of course one can always construct circumstances, but our concern, to be repetitive, is whether AWBI has in any sense contributed to that situation by its actions and activities. That is to say, has AWBI caused there to be any diminution of the benefits which might otherwise have gone, by rights, to growers. The example you are giving is, I would suggest, an action of AWBL.

CHAIR—But for an ordinary person out there, if you have an organisation which provides all the services, aggregated and not deconstructed, and it is more or less lock, stock and barrel, and you have this dumping arrangement, doesn't that raise a question in your mind at all?

Mr Walter—We are looking, as one of our priority areas, at the informational relationship between AWBI and AWBL. We certainly are looking at it. It is a priority area. The reason I am resisting some of the propositions that you are putting is because it is not our role to monitor AWB. That is not our role at all.

CHAIR—I understand that.

Senator O'BRIEN—So the Wheat Export Authority—for that matter, I guess, AWBI—cannot make any detailed assessment of the competitiveness of AWB Ltd services relating to grain accumulation on farm, international customer delivery, logistics management, storage and handling, road and rail transport and sea freight, and chartering arrangements under the present arrangements, and there is no way of determining what AWB Ltd pays for many of these services and what it then charges AWBI for these services.

Mr Walter—I think that overstates the position. Glen, you might want to comment on that.

Mr Taylor—The Wheat Export Authority does have access to detailed data on a range of the areas that you have just identified, Senator, and it is using that data to track the performance of AWBI. For example, the Wheat Export Authority does have access to AWBI data as a result of its transparency on the wheat industry benchmark—the WIB—on the site costs for supply chain management, for example. The Wheat Export Authority is tracking how that—

Senator O'BRIEN—Don't just give me an example; tell me what they know, what you can get from them and which of those areas they do not know and you cannot get from them.

Mr Taylor—What the authority does get from AWBI is all the data relating to the costs that it has available to it. The authority also has available to it data that arises from AWBI's sales. Sales include all costs involved in that transaction.

CHAIR—In disaggregated form?

Mr Taylor—That is correct. What WEA does not necessarily have is access to comparative information from other players in the marketplace who may be competing in one form or another with AWBL, in some cases.

Mr Walter—But we have sought that data.

Mr Taylor—Yes.

CHAIR—So how do you work out whether they are on the job for the right money?

Mr Taylor—The authority has, as identified in the growers report, used the performance of AWBI in year 1—the first performance monitoring report done by the WEA—as a base year to track AWBI's performance in subsequent years to see whether performance has improved and whether grower benefits have increased or not.

CHAIR—But that does not relate to the market out there, does it? If someone wants to work for half the money for some other organisation or has some sort of an incentive deal, you do not know.

Mr Taylor—Much of the information relating to supply in particular is commercial-in-confidence for all parties in that industry and has not been available to the Wheat Export Authority, so benchmarks against competitor service providers are difficult to establish.

CHAIR—But isn't that a realistic way of assessing the market—having some sort of competitive comparing? What you are doing is comparing one year's performance with another year's performance internally. Isn't that a fundamental flaw?

Mr Taylor—What the process allows is identification of whether AWBI's processes of negotiation with AWBL through the provision of services and the services agreement is actually improving the returns to growers by more efficient services.

CHAIR—But that does not relate to the rest of the market. It is an internal comparison, isn't it?

Mr Walter—Not always.

CHAIR—When isn't it?

Mr Walter—Some of the transportation costs are not necessarily an internal comparison. The question might be: what is the least cost pathway to port? That might involve the examination of a series of suppliers.

CHAIR—Once again, I am familiar with what happens in Junee. There is an opportunity for you to deliver to Junee, which is a Grain Corp installation. I accept, by the way, that a lot of submissions are driven by self-interest. I also accept that, if I were AWB, which is a public corporation, I would be hanging on to as much detail for confidentiality and commercial reasons as I could. That is where you are going to have your continuing difficulty. But, if there is an opportunity to snare a bit of wheat from Junee Grain Corp and take it to AWB at Stockinbingal and you line up some trucks and do that at a very competitive price—which would be at a loss for some operators—you could actually disguise those costs in the pool, because you have the wheat in your pool. You do not have the opportunity to look at that stuff, do you?

Mr Walter—Perhaps, Glen, you should deal with this question.

Mr Taylor—The authority does have access to individual site cost, system and silo returns from AWBI.

CHAIR—Those so-called subsidised operations—very competitive operations—to get wheat to go past other silos to take it to a particular silo could be papered over in the pool and you would never know about it.

Mr Taylor—If you are talking about instances where the least cost supply chain may not be pursued by AWBI—if that is the example you have raised—then the authority has had discussions and is having continuing discussions with AWBI about where those instances occur and what the process of recording and charging those increased transaction costs is, and which growers they are—whether it is averaged across the pool or whether it goes back to growers at a particular site.

Senator O'BRIEN—You said in a letter to Mr Eyres date 19 December last year that the base fee for services from AWB Ltd to AWBI is designed to allow for the provision of essential services without undue profit. How do you define 'undue profit'?

Mr Taylor—As outlined by the chairman, how the Wheat Export Authority has approached the establishment of the base fee is to determine the rigour that was gone through by the representatives of AWBI who had negotiated that arrangement and the relativity of the base fee to what might be realistic costs. The WEA has noted that, in the establishment of the base fee, AWBI has used historic costs. The authority has noted that, as a starting point, that may be a reasonable approach, but the authority is continuing to monitor the base fee and what changes may arise as a result of that and whether any efficiency improvements are reflected through the base fee of their remuneration arrangement.

Senator O'BRIEN—It would be very difficult for you to know what the profit was on the service arrangement under the current arrangements, so how would you know if there was undue profit?

Mr Taylor—That is correct; that is a very difficult one.

Senator O'BRIEN—Mr Walter, you said in earlier evidence that the Wheat Export Authority was able to undertake an analysis of pricing performance because you had a run of data over two to three years—that is on page 40 of the *Hansard* record of the last hearing—and you pointed to the fact that the analysis would be based on AWBI data. You told us that the Wheat Export Authority was intending to focus on that this year in relation to the supply chain. Does that mean that there will not be a run of data to analyse because you are only focusing on this important issue now or do you have a set of historic data to focus on?

Mr Walter—Is this for supply chain costs?

Senator O'BRIEN—Yes.

Mr Walter—I think it is fair to say that the issue there, as has been raised, is the question of examining whether least cost paths are being used for the movement of grain and identifying circumstances where those least cost paths are not being used.

Senator O'BRIEN—But will you have a run of data on that?

Mr Taylor—Yes. The information that is provided by AWBI will cover at least the period commencing in July 1999. Supply chain costs have been included in the WEA's performance monitoring activities since the establishment of the framework.

Senator O'BRIEN—How long has that information been supplied to the authority?

Mr Taylor—I would have to check that.

Senator O'BRIEN—Are you getting a bulk lot of data now or has it been supplied on an ongoing basis?

Mr Taylor—The information is generally supplied on an ongoing basis.

Senator O'BRIEN—The authority also advised Mr Eyres, in a letter of 19 December 2002, that it considers that the use of gross pool value in the remuneration model does not provide AWB Ltd with the maximum incentive to reduce supply chain costs. The authority says that the use of net pool value—that is, net of supply chain costs—would provide a better incentive. In that letter the authority also says that it has put that proposition to AWB International. When did it do that?

Mr Taylor—I would have to take that specific question on notice. I believe that the issue of NPV versus GPV has been raised with AWBI and was a subject of discussion in the last performance monitoring report, completed in September last year.

Senator O'BRIEN—Given that this new agreement came into effect in September 2001, why did it take a year to get to that point?

Mr Walter—I do not believe that it took a year to get to that point. It is a question of looking at our records if you want us to check that further. That is a specific time at which it was clearly raised, but we are happy to take that question on notice.

Senator O'BRIEN—Turning to the 2004 review, the minister stated on 3 April, in Adelaide, that he expected the review and its report to be provided in May or June next year. Is that the timetable the Wheat Export Authority has been working to or was the minister's announcement shifting the reporting date from December back to June?

Mr Walter—That is the timetable we have been working to.

Senator O'BRIEN—The Wheat Export Authority sought legal advice in relation to the 2004 review on 12 February last year and received advice, dated 27 March, from the Australian Government Solicitor. It says:

We think that section 57(7)—

of the act—

and in particular subparagraph (a) should be interpreted as requiring the WEA to report on the future operation of the export monopoly, including whether AWB[I] should continue to have special export rights under the Act.

It goes on to state:

In terms of what reporting on the future operation of the export monopoly may involve, in our view, it would be open to the WEA to consider the following types of issues in the review and report under section 57(7):

the advantages and disadvantages to the Australian wheat industry as a whole in continuing the statutory export monopoly beyond 2004,

general economic trends, including the current economic policies of the government, for example, in relation to competition issues,

whether any changes should be made to the current export monopoly arrangements.

It states further:

As we outlined above, we think that the WEA could, for example, recommend in its report that AWB[I] should no longer have special export rights under the Act after 2004, or that those special export rights should be transferred to another company.

So the statement made by the minister in Grains Week that the legislation is clear on the content of the 2004 review—that is, that it should be limited to the performance of AWBI as the manager of the single desk—is not correct, according to that advice. That legal advice is in fact clear that the 2004 review is not limited to the performance of AWBI but is much wider—is that not so?

Mr Walter—With respect, I think that is all a question of interpretation of both the advice and the statement by the minister.

Senator O'BRIEN—Are you saying that is not a correct interpretation of the advice?

Mr Walter—I am saying that, for example, elsewhere in this advice it says that we are obliged, in the view of the adviser, to make a statement about whether AWBI should continue to hold the single export desk rights. It is not a question of it being open to us, which I think is a nuance that you might get from the wording 'you might'. The other comment I would make is that clause 24 is dealing with matters which would be open to AWBI to report on. All this comes from the words in the legislation, as you would recollect, Senator, which require a report as to the operation of, effectively, nominated company B, which is AWBI. I think the minister's statement and the advice we have received sit quite happily side by side.

Senator O'BRIEN—What do you believe the minister was saying? I interpreted him as saying that the 2004 review was limited to the performance of AWBI as the manager of the single desk. The advice does not seem to be saying that, so I am trying to find out whether the advice is sound in the view of the authority.

Mr Walter—I would see that as simply a paraphrasing, if you will, of the words in the legislation which do refer specifically to the operation of AWBI. That is indeed the wording that the minister is paraphrasing.

Senator O'BRIEN—So does the minister direct the authority as to how to conduct a review?

Mr Walter—The review is a matter for the authority. Clearly, a view that the minister has expressed would be considered, but it is a matter for the authority.

Senator O'BRIEN—When will a decision be made as to the breadth of issues to be looked at—or is that an ongoing process?

Mr Walter—That is an ongoing process. You will see that the advice simply says that it is 'open' to us to refer to these matters; it does not say that we are obliged to refer to them.

Senator O'BRIEN—So, without the direction of the minister, the authority could look at the benefits or otherwise of the monopoly export powers in this review and not wait until 2010?

Mr Walter—It is open to us, effectively, to make a general report as to the future operation of AWBI. That is the context.

Senator O'BRIEN—In other words, to define whether the monopoly export powers were beneficial or not.

Mr Walter—We are to report on the benefits to growers of the activities of AWBI—

Senator O'BRIEN—Exactly.

Mr Walter—and we are, due to the view we have, obliged to make a comment as to whether AWBI should continue to hold the single desk export rights—or not, as the case may be. We are obliged to make that statement. We are at liberty to make other statements.

Senator O'BRIEN—That is all I have for the moment, thank you.

ACTING CHAIR (Senator Ferris)—I will preface my questions by saying that many of the detailed questions that I was going to ask you have been covered by Senator O'Brien, particularly in relation to the services. I want to follow up the question that Senator O'Brien put to you and the answer that you gave. Do

you think the confidentiality agreement that you have entered into will in any way constrain that inquiry that you will carry out in the future? Does that confidentiality agreement apply to the information that you will be seeking in relation to that analysis?

Mr Walter—It applies to the information we receive from AWBI, but bear in mind that we are able to use that information for the purposes of making a report to the minister. So, to that extent, it does not inhibit the use of the information for that purpose.

ACTING CHAIR—Can I put a position to you that growers have put to me, principally in my state of South Australia. When this legislation was introduced, growers believed they were getting a tiger to look over the AWB and the AWBI—we understand that it is now the AWBI. Section 5(2) of the legislation states:

The Authority has power to do all things that are necessary or convenient to be done in connection with the performance of its functions.

I would argue, and I think the growers would say, that it appeared on the face of it to be an all-encompassing power—a great power. Three years ago, in March 2000, you received from the Australian Government Solicitor advice in relation to a question you asked about what you could do in negotiating with AWBI. That advice, which appears on page 3 of this information, said:

... the WEA's powers under subsection 5(2) of the Act to do all things that are necessary or convenient ... are probably not sufficient for it to compel AWB (International) Limited to provide information. An express power to compel the provision of information would be required. Therefore, the WEA should seek the voluntary co-operation of AWB (International) Limited and could offer to enter into some form of agreement if this would encourage such co-operation.

I reckon that if I showed that to growers in South Australia, and they knew that you knew that three years ago—and I cannot find any reference to it in this annual report other than that it 'continues to be a challenge to get information'—I think they would be staggered. I think that they think that you, as a body, have the power to do all things that are necessary. You have not even got the legal power to require information, so you then went on to set up some form of confidentiality agreement. That means that anything you find out cannot go back to the growers but to the industry minister only. So how can you still continue to say that you are exercising what appears to be the intent of this legislation?

Mr Walter—Quite easily, Senator.

ACTING CHAIR—I will be fascinated to hear this.

Mr Walter—In the first place, I think in response to the questions asked by Senator O'Brien I indicated that these issues had been raised at the time. We had at the time of the process of consultation with the GCA, which included on its executive, representatives of South Australian growers, so that—

ACTING CHAIR—Did you tell them that this legal advice existed and that you could not in fact compel AWBI to provide information?

Mr Walter—I cannot recollect whether we told them the specific legal advice existed—

ACTING CHAIR—Can you take that on notice, because it is pretty important.

Mr Walter—but let me proceed: I have no doubt, and we can take the issue on notice, that the grower bodies were well aware of the context within which the Wheat Export Authority was operating.

Senator FERRIS—If that is the case, how was it that this morning—I am not sure if you were here—the VFF Grains Group, members of the Grains Council of Australia, came in here and raised six really important issues to them in relation to the performance of the WEA? I put two more to them, which they agreed were also issues of concern. If they knew that the confidentiality agreement and the legal advice meant that much of this information could not be got and then transferred to growers, why would they have bothered to put this to us and why would they have bothered to develop it at all?

Mr Walter—I cannot answer that question, Senator.

Senator FERRIS—I put it to you that I do not think that they even knew that this advice existed. Was this advice shared with people? Was it public?

Mr Walter—I cannot answer that question, but I can certainly tell you that the context within which the Wheat Export Authority operated was well known. We can go back and look—

Senator FERRIS—Where was it well known? It is not known in here and this advice was obtained three years ago. I might say that the New South Wales farmers did not mention it either, but I am more concerned with the VFF because the New South Wales farmers said only a little bit of tweaking was required. The VFF

have said that there are six—and, if you take on board the two that I raised, eight—issues of principle that they want to raise. The fact is that it is very unlikely that those issues could be raised because, firstly, you would have trouble getting the information and, secondly, if you got it, it would very likely be the subject of a confidentiality agreement. The first thing that happened after this information went through here—this section 5.2 that looks as if you are a tiger with some teeth—was that you tied your own hands in agreement with the AWBI and went into a confidentiality agreement which you did not report in your annual report, which means that that information cannot be given back to growers.

Mr Walter—I am happy to take on notice the question about the context in which we operate in terms of looking at our files and records of the interactions with GCA executive members. In terms of the six issues raised by the VFF, I am happy to consider those, but I am not aware specifically of the items. It is clear that we are dependent, in many respects, on the AWBI for information. It will depend upon the particular circumstances and items which the VFF have raised—and there is, I think, as I heard at the tail end of the VFF's testimony, a process whereby the individual constituent bodies are represented through the GCA peak body raising questions with us—and we are certainly happy to look at the issues which have been raised in that context. We exist, of course, within our institutional arrangements.

Senator FERRIS—Can you tell me why, when something as important as this occurs and when the Government Solicitor has said that an express power to compel the provision of information would be required, you decided that the answer was not to go and ask for that express power to be put into an amending section of the legislation and instead struck what they call 'some form of agreement', which turned out to be a confidentiality agreement? That agreement was not put into the annual report, so that growers who may not be members of the Grains Council of Australia—and, in fact, the evidence that we got in Western Australia suggested that an increasing number of people are no longer members of the Grains Council of Australia and its subsidiary bodies, and they may simply be growers who would read this—have been denied that information.

Mr Walter—The issue is one which I think was well ventilated. As I say, I am happy to go back to the records and look at the question. In terms of the precise detail of raising the issue, there is absolutely no secret about the perspective which the Wheat Export Authority has had of its powers. I think this question arose as long ago as our first interaction, Senator O'Brien. Senator Ferris, it should not be a surprise that this is the perspective which the Wheat Export Authority has of its powers. It should be a surprise to no-one, because these issues can simply be obtained by looking at the legislation. The advice which has been given—with which I agree—is standard: in order to get powers to gain information under compulsion, you have to be given them expressly by statute. The absence of those powers means we do not have those powers, we never had those powers and it was obvious we never had those powers.

Senator FERRIS—Have you ever asked for them?

Mr Walter—To suggest section 5(2) contained those powers is, I think, quite wrong. It is our role as a statutory authority to raise issues. We indeed raised the issue, as was identified by Senator O'Brien.

Senator FERRIS—It has always been the view of members of this committee that the WEA has taken a conservative view of that power, but this is the first time that I have ever seen this piece of legal advice—I believe this is the first time we as a committee have seen it—and I am interested to see that the WEA believed that the way to deal with that was not to ask for the express power but to agree to enter into what turned out to be a confidentiality agreement, when in fact this advice said 'some form of agreement'. That now means that, although you can report to the minister, you cannot report to the people from whom you are seeking funding to continue your operations. The best example of it is these six points that the VFF have raised this morning. That is just the tip of the iceberg. I can tell you: in South Australia I have had representations from many growers who are not members of the GCA because they do not believe the GCA any longer represents their interests. So how are they to know that these agreements exist, and how are they to know that the reason you are not able to address a lot of the issues that they are raising is this legal advice, which is not in here—and never was?

Mr Walter—I cannot speak of the issues which they are raising. I am happy to look at the issues which they are raising. As I said to Senator O'Brien, the authority entered into the confidentiality agreement in order to progress the provision of information from AWBI to the authority so that it might indeed carry out its function of monitoring, on the basis of receiving information from AWBI, rather than being dependent upon information which might be generally available. That was the context, and I think it was a prudent and responsible decision. If there are issues which growers wish the Wheat Export Authority to examine, we are available. We are very keen to hear from growers who may have issues to raise with us.

Senator FERRIS—I look forward to the answers to the questions you took on notice.

Senator COLBECK—Mr Walter, perhaps I can suggest, and you can respond to it, that the development of the relationship between WEA and the AWBI has been the subject of considerable legal advice.

Mr Walter—I would not say that. I would say that it is a relationship which is established by statute and is quite complex, and therefore legal advice is appropriate.

Senator COLBECK—But there has been considerable legal advice, obviously—

Mr Walter—Legal advice—I think appropriate legal advice—has been obtained.

Senator COLBECK—How would you characterise the seeking of that: as part of AWBI challenging the right of the WEA to undertake some of the duties that the WEA considers it might have or as the WEA seeking advice to determine whether it had the powers it thought might have existed?

Mr Walter—The Wheat Marketing Act in these areas is quite broad and general, as you would have seen. Against that background, I think it was—and is—quite prudent for the Wheat Export Authority to seek and obtain advice as to scope of its activities. To respond specifically to your question: I would see it as a proper function, self-determined by the Wheat Export Authority, to obtain that advice.

Senator COLBECK—So, rather than your capacity being challenged by the AWBI, it was you seeking to clarify what rights or powers you actually had?

Mr Walter—I am not saying that in all instances it was simply our own idea to address the issue. In a number of cases, without being able to recollect the particular circumstances, I am sure it would have been obtained as a result of questions being raised by AWBI.

Senator COLBECK—Would you characterise that as being part of the challenge that is described in your report?

Mr Walter—I think the whole task and the responsibility we have is a challenge. I do not think of ‘challenge’ as a negative word; I think of a challenge as a positive thing.

Senator COLBECK—Have you any idea of the costs involved in seeking the advice that has been required?

Mr Walter—I do not. We can take that on notice.

Senator COLBECK—Thank you. Mr Taylor might like to take this question. In response to the questions this morning in regard to the time taken for reporting, do you have any response to the questions asked specifically in the VFF report that indicated that it was taking up to 18 or 24 months to report on benefits to growers?

Mr Taylor—That is not correct. The Wheat Export Authority has a program of an annual performance monitoring report which goes to the minister and the board of AWBI on 30 September each year and then, immediately following that, the growers report is published, so there is a detailed report to the minister and to the board of AWBI and an annual growers report.

Senator COLBECK—It reports on the period you are reporting in—you said September—but for what period?

Mr Taylor—It is for the preceding 12-month period. The initial report was for a slightly longer period from 1 July 1999 out to 30 June 2001.

Senator COLBECK—You have said here today, and it is indicted, that your role is to look backwards. Are there any circumstances in which you have actually discussed a potential activity of AWBI prior to its occurring to make an assessment on whether there might be a benefit or whether it might not be a good idea?

Mr Walter—I cannot recollect in terms of those specifics, but clearly any discussion—and there are discussions with AWBI—as to matters which have been discovered might tend to suggest changes, and I think in their submission to you AWBI said that they have made changes to their activities as a result of the processes with the Wheat Export Authority.

Senator COLBECK—Would that be as a result of an event occurring which had proven not to have provided a benefit to growers or as a result of discussions of a potential transaction?

Mr Walter—I think transaction would not be correct. I think we are talking here about constraints, systems and approaches. Whilst cause and effect might not be all together able to be determined, the changed service level arrangements I think reflect increased transparency between AWBI and AWBL, for example,

and, whilst I think cause and effect is not necessarily demonstrable, although AWB has spoken about these issues, I think the existence of the Wheat Export Authority and its monitoring role played a part in that process.

Senator COLBECK—So how would you regard the suggestion from a couple of groups that there be a set of parameters that are agreed in advance for activities so that the process of judgment might not be made easier and you are not always necessarily reflecting?

Mr Walter—I think that in part that exists, of course, through the process under the service level arrangement which involves a wheat industry benchmark. It also exists through the process which I have referred to previously of using pricing data to determine the extent and the capacity for price discrimination, so I think that the issue of knowing the approach of the Wheat Export Authority in relation to its monitoring role and its reporting role is one which is fundamentally at the base of the identification of process which feeds both into the annual reports and the 2004 report. I am not saying that it exists in all respects but I think an understanding of each party's approach is certainly fundamental to our knowledge and fundamental to AWBI's knowledge.

Senator COLBECK—Would you say, particularly given Mr Taylor's response to the previous question on the reporting process, that growers are kept reasonably up to date with the benefits or otherwise of the activities of the AWBI?

Mr Walter—We endeavour to do so. In any human endeavour there is scope for improvement, and we are certainly hoping to improve. The most up-to-date communication is probably through that which is mandated under the legislation. I hear Senator Ferris's comment, but the legislation expressly mandates meetings no less frequently than twice a year with the GCA executive group. As you have seen from the advice, that is indeed seen as part of the process of reporting to the grower bodies. There certainly is that avenue, as well as the formal grower reports, the web sites and whatever other communications strategies there might be, such as presentations in Grains Week and those sorts of things. For example, the chief executive and I have spoken at a number of grower organisation organised meetings about the activities, functions and focuses of the Wheat Export Authority.

Senator COLBECK—What would be the effect for growers if you did away with having to issue permits for boxes and bags?

Mr Walter—I think it is fair to say that that focuses on one of our functions, which is the administration of bagged and containerised exports. I think I am right in saying that they represent something under five per cent of the total exports from Australia. Currently, the legislation requires a process. It is something which could be considered, conceivably, as part of the process of review, consistent with the advice which we have received.

CHAIR—So the sun may not fall out of the sky if you stop issuing those permits?

Mr Walter—That would potentially prejudge the 2004 report.

CHAIR—At the present time, do you monitor what goes in the boxes and bags?

Mr Walter—We have a quality system and a testing system. If you want details of that, we have them.

CHAIR—The question I would ask is: if you did away with the permit system, how would you know that we did not have a kangaroo meat scandal in bagged or boxed wheat? Do you monitor that now?

Mr Taylor—Yes, we do. There is a policy that requires all exporters to provide quality testing results to the Wheat Export Authority. This is a sampling and quality testing regime to identify the quality of the wheat that is being exported. That is in addition to the existing AQIS phytosanitary tests on exports.

CHAIR—Thank you very much for your attendance.

[1.08 p.m.]

HOCKEY, Mr Darryl, General Manager, Public Affairs, Australian Wheat Board Ltd

STEWART, Mr Brendan, Chairman, Australian Wheat Board Ltd

CHAIR—Welcome. I am breaking with what we were originally going to do to allow you to make a brief statement. Do you have any comments to make on the capacity in which you appear?

Mr Stewart—I thank the committee for allowing us to put a clarification. I am also Chairman of AWB International. I would like to place on the record the fact that my family holds both A and B class shares in AWB.

Mr Hockey—I am also a B class shareholder of AWBL.

Mr Stewart—I will start with a couple of points of clarification and correction. In the questions on notice that we took from the last hearings in Perth, one answer is incorrect. I am a former president of the Grains Council of Australia, and I did chair the working group on the AWB restructure in my capacity as Grains Council chairman.

Whilst I have the utmost confidence in the Wheat Export Authority's decision to allow certain aspects of the information given to you by submission to be released publicly I ask, if the chair and the committee are agreeable, to have the opportunity to check that so that there are no commercial issues in relation to that for the AWB group. You would be aware that we have given you a number of pieces of information in camera in relation to that.

I would like to make some very brief comments. Evidence has been given at all three hearings of this committee so far and I want to run through some of the issues raised. I think the important one that has come up today is the issue of confidentiality, and I would like the committee to understand why AWB entered into a relationship and a discussion with the Wheat Export Authority. Obviously this was a new regulatory authority and with that new structure came a whole range of new accountabilities and transparencies, including the listing of the company on the ASX, which is obviously a very important responsibility for the directors. There was never any indication that we wanted to withhold—or have withheld—information from the Wheat Export Authority. Certainly at an operational level the arrangement is very sound. In terms of protecting the legal liabilities of the directors, particularly in relation to those aspects of business which could be impacted in terms of the AWB Ltd business, we wanted the opportunity to ensure that when there was something that needed to be disclosed to the market it was done correctly and with the right processes. I want to allay any concerns that anyone on the committee may have that through this process we have, in any way, shape or form, withheld any information from the Wheat Export Authority. Our board has a very strong view that it is in AWB's interest—both AWBI and AWBL—to have a very strong and effective regulator. That is why we support this legislation and the amendments that are being made to the act.

I want to touch very briefly on a couple of issues that seem to be a burr under the saddle of some of the senators, particularly in relation to infrastructure investments and the profits of AWB Ltd. There was a mention of the profits from pool management. They are clearly transparent and they are available in the AWB Ltd annual report each and every year. In relation to the remuneration model, external advice was considered. External advice was given to AWBI by Towers Perrin and also by the Collins Hill group, who actually developed the remuneration model, so any suggestion that there was no external advice is certainly not correct. In fact they have been involved and, will be involved, in annually renewing that remuneration model.

I want to touch very briefly on a couple of issues in relation to the supply chain. The supply chain costs are very transparent. They are, for the first time this year, included on the web site at AWB. Each and every receival site around Australia has a disaggregated cost of receival, storage and handling, transport and fobbing, which is included on the web site. So they are very transparent and, irrespective of whether it is an AWB site or a competitor's site, they are there for each and every grower or industry participant—in fact, they are available for the general public—to see. As well as that, the finalised costs are included on a statement that is prepared and given to growers. So those costs are totally transparent. Obviously, as a commercial entity AWB Ltd invests in the infrastructure. We have done that on two bases: firstly, so that there is a reasonable rate of return for our shareholders who put up the capital and put it at risk; and secondly, because AWBI, and therefore AWBL, through constitutional and legislative requirements, had an obligation under the outcomes of the national competition policy review in 2000, to put significant pressure on supply chain costs—and that is what we have been able to do.

We accept the evidence given by the VFF group that we are not in a position to make those facilities available to each and every grower in Australia. Therefore we cannot make each and every grower avail themselves of the discounts and the price competitiveness that we have been able to introduce into that market. Also, the assumption that it is only AWB that is crossing into non-traditional grounds is not correct. Each of the bulk handling companies, except for CBH in the west, has crossed into others' boundaries. So this is a new competitive environment.

The genesis of this legislation and the work that the working group did in the development of the structure really started in the 1989 Wheat Marketing Act. It then had some changes in 1993 or 1994. The scope that the working group had to use in coming up with the structure for the industry going forward post 1 July 1999 was dictated by five key areas that 25 public grower meetings around Australia at the time actually identified, as well as the fact that the government was withdrawing its underwriting from the national pool.

In closing, I just say that the single desk is working very effectively. I think we need to look at the outcomes of the single desk, because what we have been able to achieve, as demonstrated by the Wheat Export Authority's report last year, is between \$14 and \$32 a tonne above our international competitors. At the same time, over the last 10 years where Australia's production has increased some eight million to nine million tonnes, we have been able to sell every single grain of it into the international marketplace when our competitors have stockpiled it and put huge pressure on the international market, which our farmers then in a very unsubsidised manner had to actually deal with.

I ask the Senate committee to please support the legislation. We know that the system we have is not perfect. I think if you ever say you are in a perfect situation you are far too comfortable in your position. We know that there will need to be continual refinement, and the board of AWBI and the board of AWB Ltd is committed to that continual refinement. Chairman, we are happy to answer any other questions on notice or we will talk to you next week.

CHAIR—Unless you want to make a statement about the mosaic virus, I think we will leave the questions until Monday.

Mr Stewart—Senator, you probably heard just as much this morning about the mosaic virus as we have heard. I would not like to comment on that because potentially it could have a market implication and we would need to do that in a formal manner.

CHAIR—Thank you very much. In relation to the question of confidentiality, could you point out to the secretary the sensitivity you feel is in there, and we will give consideration to that.

Mr Stewart—Yes, I am quite happy to talk to him.

CHAIR—I now declare this meeting closed.

Committee adjourned at 1.17 p.m.