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TRANSCRIPT
OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO WHEAT EXPORT MARKETING ARRANGEMENTS

DR W. CRAIK, Presiding Commissioner
MS A. MacRAE, Commissioner

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON TUESDAY, 24 NOVEMBER 2009, AT 2.30 PM

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MS MacRAE: I would just like to welcome everybody here today. This is our first day of hearings for the Productivity Commission inquiry into wheat export marketing arrangements. The inquiry started with a reference from the treasurer and covers the export of bulk wheat and the associated arrangements for that. We have, as most of you know already, issued an issues paper and submissions have been made. The closing date for submissions has now passed but we are happy to accept submissions up until the time of the draft report. Obviously the earlier we can get those, the better it is for us to be able to take them on board and we certainly are grateful to all those who have managed to make their submissions already and for those who are coming and appearing at the hearings today.

The purpose of the hearings is really to provide an opportunity for interested parties to discuss their submissions and put their views on the public record. Following these hearings, there will be hearings held in other wheat-growing states in Australia and then we'll be working towards the completion of a draft report. There will be an opportunity for further public comment at that stage and another round of hearings and submissions should people wish to make them.

We do like to conduct the hearings in a reasonably informal manner but I just would advise participants that there is a full transcript being taken and for that reason we can't take comments from the floor through the day but there will be an opportunity for anyone who wants to comment at the end of the day to do so. Participants are not required to take an oath but under the Productivity Commission Act, they are asked to be truthful in their remarks, I'm sure we won't have any problems with today, and participants are very welcome - and in fact we like to hear comments on issues raised in other submissions if you'd like to do that.

The transcript will be made available to participants. It will be available on the commission's web site following the hearings and you can also order copies and staff have forms available if you wish to do that. Copies will be available to participants after the hearings. Submissions are also available on our web site and again we'd encourage you to look at those if you're interested in commenting on others. If there are any media representatives here today, some general rules apply and I would ask you to approach the staff about the rules that will be explained in a handout that they can provide to you.

I should say Wendy Craik is the presiding commissioner and would generally be doing this introduction but unfortunately is not able to join us in person today, but is here by video-link, and I'm Angela MacRae, the other commissioner on the study, and we do have a number of our staff here today.

To comply with the requirements for occupational health and safety, I do have to advise about the fire emergency evacuation procedures to follow, so you just

follow the green exit signs; I think you will see one on the door over there. Follow those signs to the nearest stairwell, lifts are not to be used, and please follow the instructions of floor wardens at all times. If you believe you would be unable to walk down the stairs, it is important that you advise the wardens who will make alternative arrangements for you. Unless otherwise advised, the assembly point for the commission is Lansdowne Street on the east side of the Treasury Gardens.

I'd now like to welcome our first participants, the National Competition Council. If I could ask you to just first give your name and the organisation you're representing and then if you've got a brief statement to open and then perhaps we can have some questions. Thank you.

MR FEIL (NCC): Thank you. My name is John Feil. I'm the executive director of the National Competition Council. With me, I have Jessamine Lumley and Ross Campbell, who are both also with the NCC. I think in the way it turns out, I'll probably end up doing most of the talking, but if I get anything wrong, my colleagues will no doubt kick me in the shins or interrupt.

You have the submission which we lodged I guess a couple of weeks ago now. I presume that you have had an opportunity to look at it. It's not as daunting as it looks. There are two large annexes attached that you don't need to read word for word. They were there to elaborate on some of the points, so the substance of the submissions are reasonably brief. If it's okay by you, I'll take a couple of minutes just to outline that and then I think we will probably gain more out of the discussion, and any questions you have.

MS MacRAE: Yes.

MR FEIL (NCC): Essentially our submission is in three or four parts. Firstly, we explain the role of the National Competition Council and I guess that's, in relation to this matter, a dual role. For a number of years, the council was responsible for jogging governments to comply with the National Competition Policy, and in that role we had an ongoing interest in regulatory reform and the proper consideration of the reform of the export marketing of wheat. Part of our submission, which I won't go into a lot of detail on, is based on that experience. I think the big takeaway in that area is that while the wheat single desk persisted for a good number of years and was reviewed on a number of occasions, nowhere in that process was an objective considered review able to find that there were net benefits and therefore under the National Competition Policy obligations, it should have been ie moved as a single desk or a better review conducted some time before the more recent reforms occurred.

Our second role which is probably the one that we can help you with most in

respect of this inquiry is in relation to access regulation, as I'm sure the presiding commissioner knows very well, but others will also know the council is responsible for the declaration phase in the Part IIIA provisions of the Trade Practices Act. Essentially we are the recipient of applications for declaration of services under the Trade Practices Act. We then provide, after a period of consideration, advice to normally the federal treasurer but on occasions other ministers as to whether or not a particular service should be declared. If it is declared, then it is available to third parties to access and if they can't reach a negotiated basis for access, there is an ability to take the dispute to the ACCC who would arbitrate it. That is one of the paths under Part IIIA, access undertakings which a variant of what is currently in place.

Normally there are voluntary access undertakings where a party can go to the ACCC and seek to have an access arrangement agreed to. In the case of wheat, there was a fair bit of legislative arm twisting and the consequences of some companies not getting access undertaking approval was a loss of a right to participate in the market. We would characterise that as somewhat different to the voluntary regime.

The third leg is a certified regime where states and territories can put in place an access regime of their own and if they seek and succeed in getting it certified, that regime then takes precedence over the national regime. A couple of states at the time that the wheat marketing arrangements put in place did have regimes that at least in part covered some of the common ground. Under the wheat marketing arrangements there was an option of either lodging an access undertaking or moving within a certified state regime. Now, none of those regimes had been certified and we received no applications, so in the end, the only viable option was the access undertaking route to the ACCC.

I can make a couple of points about the access regime in general. I guess the best place to start is the Council's view is that to the extent there are issues related to access to grain-handling facilities at ports or indeed grain-handling facilities anywhere else, they should be able to be dealt with under Part IIIA and the general provisions and if they can't be dealt with under that, that could be for two reasons, one is that they don't meet the declaration criteria. Our answer to that is that if they don't meet the declaration criteria, then they probably shouldn't be regulated. The declaration criteria are relatively stringent. They require that six criteria are met. The major ones that are of particular relevance are that it is uneconomical to duplicate the particular facility that provides the service. We think that's an important test. You shouldn't be, in our view, interfering with private rights to deal with who you choose if there are choices or if there are economic options for replicating or producing an alternative facility.

The second criteria is that declarations are only available where it would

materially promote competition in a relevant market, an upstream or downstream market from the facility. Again, if that criteria isn't met, you really do have to wonder why there is any need for regulatory intervention. The other criteria go to health and safety and the existence of an effective state access regime; there is an overall public interest test as well and also a national significance test. You will see in our submission we identified the national significance test as potentially one where some grain-handling facilities and even some of the port facilities might have had some difficulty meeting that test.

It's not for the council to pre-empt any declaration application, so we're not going to come here and say whether or not particular ports or ports in general would or would not be able to be declared. It would be unfair to do that before you got the process and before we went through a process of considering that. But we did identify that the national significance criteon is one that might be a bar to the arrangement applying. We don't know that it is. It's not a provision that has been brutally tested. Even in some of our more contested declaration applications, the parties haven't argued that they are not nationally significant or that the facility's contribution is not nationally significant. On the face of it, some grain-handling facilities may run close to that but it would come down to an assessment on a case-by-case basis. I guess our answer to, "This doesn't work because it might not meet the national significance test," is if these facilities aren't nationally significant, why are we concerned about regulating them?

MS MacRAE: Yes.

MR FEIL (NCC): I'll come to the other possible barrier to Part IIIA in a moment. So we would suggest that if there's a problem, then it's a problem that should be objectively tested through the declaration criteria and that if the criteria are met, then there is scope to adequately regulate the port grain-handling facilities or anything else for that matter under Part IIIA.

The other possible concern that might arise in respect of applying Part IIIA is speed. There have been some high-profile matters of declaration that are currently in their sixth year of process. That's clearly an unacceptable outcome to anybody. There are some companies and legal advisers who take the view that if you're prepared to spend as much money as this, you can put off declaration indefinitely. To the extent that may have been true, it's a concern that arises generally and certainly not just in respect of wheat handling. The previous government had already taken some steps to put in place time limits and greater control to avoid unnecessary delay. The current government has announced another set of measures which we've outlined in our submission which are designed to make that even quicker and also to get around some of the incentives for delay. At the moment if you lodge an appeal, the decision, if it were to declare, is stayed, pending the resolution of that. The

government's changes, assuming they are implemented, would take that automatic stay away and make it a matter of discretion for the relevant appeal body.

So we think that to the extent that timeliness is a problem, and we acknowledge in the past in some cases clearly it has been, given there are already steps in place to remedy that and if it's a problem, then it's a problem for everybody, not just for wheat growers and the solution should be a general one, not bypassing the regime as required.

If I could make just a couple of other general points, more specifically related to the wheat marketing arrangements: clearly, they're not costless. The transaction costs and the administrative costs are evidenced by some of the submissions you've received. I must admit I'm somewhat surprised about how high some of them are. We regularly get people, in the context of some of our other work, who want to avoid coverage or declaration, making claims about the cost of access arrangements; they are rarely in the millions of dollars, although I'm sure some are. Here, you seem to have quite significant amounts of money. Now, maybe that's because of the first-up nature of these, but to have those regularly repeated - so clearly they're not costless in a direct sense. They're also potentially not costless in a broader sense and one of the things we note in our submission is that in a period where you're moving from a monolithic single desk to a variation of alternative arrangements, a lot of the benefit is in the dynamics and how the organisation and the structures change, how the logistics chain might change. Now, if you put in regulatory barriers that force people down a particular route or even encourage them down a particular route, I think you have to be concerned about whether that is actually interfering with some dynamics that should have been allowed to operate. The more you intervene, the more you may put rigidities in the system, continuing to operate in the same way as it's always operated, notwithstanding that the world has changed, and that again would be a significant cost.

I think that's probably enough. The bottom line in our submission is that we don't think that it is either necessary or desirable to continue the arrangement past the transition phase. We have no particular view on the transition - that's history now - but to continue it when there appears to be a logical alternative that does put in place some rigorous testing of the basic need for regulation before any arrangements can go on, once you get past that point, the ACCC we think has adequate powers to effectively deal with access problems if they genuinely exist. We would like to see the question about whether they exist to the point where you should regulate properly tested, and that's what the declaration phase is for. Thank you.

MS MacRAE: Okay, thank you. I've got a couple of questions I can put, Wendy. Did you want to go first?

DR CRAIK: Yes, I've got a couple. John, I have a reasonable understanding of the access arrangements. I guess I'm interested in the amendments to the timings and things like that that are proposed. When do you anticipate they're likely to come in?

MR FEIL (NCC): They have been referred to a senate committee which has until early March of next year to report. I think the usual reply beyond that is it's in the hands of parliament and the government. We'd like to see them implemented quickly. There are a number of people out there who, looking at past practice, could well take the view at a million dollars a month, you can put this off forever.

DR CRAIK: Yes.

MR FEIL (NCC): We think that the existing arrangements, which move to an indicative or a best-endeavours time frame, are a step in the right direction but we think that we need a variety of other things to make it bite. I'd hope that that would be in place by the middle of next year. Notwithstanding those, the Council has I guess learnt a few bitter lessons and we are anxious to try and progress our arrangements for dealing with these matters too. We are imposing what we think are reasonable time frames but we tend not to be allowing them to slip. If you face multiple lawsuits challenging your jurisdiction, there's sometimes not much you can do about that, but I think a lot of those have been clarified and really the grounds were never that strong.

DR CRAIK: I guess following on from that, in your recollection, do you recall ever having issues raised about access or a proposal for declaration under the Trade Practices Act for infrastructure from individuals, because I guess one of the major groups of concerned people is farmers and I suppose unless a farmer organisation decided to take it on, you'd be down to individuals, and I can't imagine the sort of process that individuals are very likely to take on.

MR FEIL (NCC): No, it's probably not a process that a single individual is likely to take on, but if by its nature the issue is one that has this sort of impact that might make the declaration criteria having a prospect of being met, you would imagine that there's plenty of room for a coalition of people to come together. The standing rules for being able to apply are virtually limitless and any person may apply. There's nothing to stop a farmer organisation applying on behalf of its members. There's nothing to stop a small group of people coming together and applying on behalf of a broader range of people. One of the features of the declaration arrangement is it operates not just for the benefit of the applicant, so if a service is declared, then any person who uses that service, whether or not they are involved in the first case or not, can benefit and can take an access dispute to the ACCC. So in the case of the Pilbara Rail, while Fortescue is driving the applications, every other junior miner can come in, assuming the declarations survive appeals, and can proceed to lodge access

disputes. So there is ample opportunity for parties to find a way of bringing a matter to the Council.

The process is also administrative. While some parties are fond of reaching for their lawyers pretty quickly, we have had applications from laypeople representing bodies, we've had applications from bodies that did not have big legal teams. It's not designed - and sometimes it's distorted to end up looking like a court - but it's not designed to be that. The council inquires of its own volition to make sure that as best we can we come up with the right recommendation, so we're not entirely dependent on an applicant. That said, we vastly prefer applicants who know what they're doing and put together sound applications. I guess there's a balance. You don't want to lower the standard for meeting the hurdle of declaration because otherwise you'd be declaring things willy-nilly. I've said before that it is not a costless exercise, even through our process. But it is possible for a thoughtful applicant to put together an application that can succeed.

DR CRAIK: The third question I had, John, was to really seek a comment from you; in your submission, you've got a comment that there's a question as to whether some of the transport and handling facilities used to provide wheat export services, particularly the up-country grain storage and handling facilities and I guess transport facilities have natural monopoly characteristics, because certainly one of the major issues that's been raised with us is concern about the bulk handling companies, not only controlling the port facilities and access to the port but also the up-country storage, given their dual role as marketers as well, as traders as well.

MR FEIL (NCC): Yes. One of the critical declaration criteria is whether or not the facility that provides the relevant service can be economically duplicated. Our standard sort of short form of language suggests that that means that they have to exhibit natural monopoly characteristics and that is whether one such facility can service all current and likely future demand. Where that criteria is met and that set of characteristics exist, it is wasteful for Australia's general economy to duplicate such infrastructure. Now, most infrastructure is not of that nature and there's no good reason why there shouldn't be facilities based competition, even different forms of facilities based competition. A bulk handler with an integrated supply chain may well have to compete with storage that's available on farm or storage available to other parties. If the natural monopoly characteristics are not met, then prima facie the most efficient outcome is what the market produces and if that involves people doing it different ways, then that's the right outcome. I think before you interfered with that outcome, you'd want to be firmly convinced there was an underlying characteristic that made that uneconomical. Now, I can't prejudge whether one big integrated supplier in each state is the way this industry should be structured and I don't think, looking at what's happened in the short period of time since the regulatory reform to remove the single desk is much of an illustration of what the

long-term outcome should be. So I think you have to go back to fundamental principles and you would have to look in the context of a declaration application and the underlying costs and whether genuinely these things are natural monopolies.

We have got multiples of them that can essentially service the same market and in most cases that's a pretty good indicator that it's not the answer we want, and certainly at some of the ports, there appear to be, at least on the face of it, potential for competing facilities with different ownership. Where that's the case, it would be a little hard to see how that leads you to a natural monopoly.

DR CRAIK: Thanks, John. Angela, over to you.

MS MacRAE: I had similar questions about small players and how they might access, if it was to go to a Part IIIA type test only. What sort of costs might be involved? I appreciate we've talked a little bit about the big guys and how long they can take and the deep pockets and all that but if there was a much more - given if we could assume that the speed tests are sort of met and say a farmer organisation did take something of this nature on, what sort of costs might they be incurring? Obviously it would depend a little bit on how attractive the bait became but as a kind of - - -

MR FEIL (NCC): It's hard to give you a ballpark figure. You've also got to compare it to how much it costs to lobby to get these legislative arrangements in place. But in a lot of ways, the resource that is required is a knowledge of how the industry operates which you would hope we could get without buying it, and an objective assessment against the criteria. Sometimes that's a little harder for people that are right in the middle of a dispute or an argument; that's possibly where some additional legal advice is required. But in my experience, industry organisations generally can access in a strategic way the legal advice they want and do it sensibly. If, on the other hand, you go to a law firm and say, "I've got unlimited money, get me a declaration," then you will get to use most of that unlimited money. So it's a matter of how intelligent and carefully you decide to do the exercise.

It's not going to cost you $10. There is no application fee but that is never a figure that worries anybody. It may cost tens of thousands of dollars if it's disputed, but lobbying is not free and if the evidence that's in your submissions is that the imposition of this has cost some individual companies a million dollars plus, that's been wrongly imposed and if there hasn't been the declaration process to consider this, which there hasn't been, then you've got to balance that off with the net result. I don't think you can say it's a million dollars that the operator has had to spend because I think in the nature of this market, there's a pretty good chance it's going to get shot back to the users.

MS MacRAE: Just in relation to the access tests that do apply now, should an access undertaking be applied under a Part IIIA type arrangement, would it be a similar kind - I mean, I guess that's really over to the ACCC rather than to what you do, but is the sort of tests that they've imposed there similar to something you'd expect to come out of a Part IIIA type test, if it was to be - - -

MR FEIL (NCC): Approaching the general operation of Part IIIA is that - the declaration phase tests, whether or not it should be regulated. Now, that process hasn't happened and I don't think the ACCC would suggest for a moment that it had to meet all of those hurdles before it could accept the access undertaking. Once it's declared, the arrangement is what's short-form described as "negotiate-arbitrate", so it establishes a right for a party to negotiate for access; if they can't succeed in doing that commercially, then they can take a dispute to the ACCC. I guess the system that's operated up till now pretty much got you to that point.

MS MacRAE: Yes.

MR FEIL (NCC): Beyond that, the ACCC can design an arbitration outcome to suit the matter that's before it. If it was a one-off dispute about a particular access term or even an access price that only affected one party, you would expect them to answer that question and move on. If, on the other hand, they took the view that it was likely that in fact this was the first of dozens of the same one, then you would hope that the ACCC - and they certainly have the discretion to do this because they can answer more questions than the one they were asked in the dispute - so they would have scope to impose a broader solution; they would have to make a judgment about that. I guess as a matter of principle, you would hope that they didn't go further than was necessary, but that may be further than simply dealing with the dispute that's sitting across from them. At its broader end, they could impose something remarkably like the access undertaking, probably without having to reject three or four versions of it before they get to it.

MS MacRAE: Yes.

MR FEIL (NCC): But whether that's necessary in a particular case is not a matter I can answer.

MS MacRAE: Just the way that the current access arrangements work, the Port of Melbourne has been not required to have an access undertaking. The way that that outcome I guess has fallen out of our current legislative arrangements is not the sort of outcome you'd expect from a Part IIIA, and you'd basically have to ask the question in respect of each port and meet those tests in each case, and the sort of difference that the legislation currently makes or how it's described it and defined it is not consistent with how the Part IIIA test is - - -

MR FEIL (NCC): No, the applicant essentially defines what service it wants and the underlying facility that provides it. There's no test of whether it's owned by or not owned by a vertically integrated party.

MS MacRAE: Yes.

MR FEIL (NCC): I think it might be relevant to the declaration criteria themselves. If it's truly arm's length, you would sort of wonder why they were discriminating one way or another, but I guess legal loopholes don't get in the road of the declaration itself.

MS MacRAE: I guess the other thing I was just interested in is that the access undertakings that are currently made provide a requirement that certain information be provided, so quite a lot of the growers and such say it's not just about getting access to the facility, it's also getting access to the information that they need to be certain that they're getting a proper place in the queue and that sort of thing. Is that sort of information requirement likely to be something that might come out of an access undertaking under Part IIIA?

MR FEIL (NCC): You wouldn't normally expect so - the resolution of an access dispute is designed to solve a specific problem or a set of similar problems. If in the context of a dispute the parties to the dispute could convince the ACCC that some broad sweeping information requirement was necessary to enforce the undertaking or to enforce the outcome, then I guess they would look at doing that, but information for information's sake, it's not a costless exercise again. There have been some information enhancements. I read the submission from the Statistics Bureau, but you would want to see a reasonably concrete link between the information requirement that's going to be imposed and enforcing a real outcome. Some general sort of, "I'd like to know," is a bit short of that.

MS MacRAE: Yes.

MR FEIL (NCC): I guess someone could seek a service which was the provision of the information if it was related to the facility but I think you'd be starting an uphill slog to get that sort of thing declared in its own right. If it was seen as necessary to bring about and enforce the outcome of an arbitration, that's one thing, but the ACCC is responsible for that leg of it more than we are.

MS MacRAE: All right. Anything else, Wendy?

DR CRAIK: Just one more thing I've thought of, John. What's the shortest time an application for declaration has taken from go to whoa?

MR FEIL (NCC): I wouldn't suggest it's typical but I think they've actually done a couple in three months, but we've also got a couple that are running into multiple years, so on average, we don't look that good. But the timetable, currently we're required to use our best endeavours to complete our process in four months, and for straightforward ones, we have been able to achieve that. The new legislation will put a binding time limit of six months. We think that that's probably a reasonable period for a binding time limit. We'd be concerned if we had a binding time limit that was shorter than that, but that doesn't mean that they all take that time. To some degree, we've got to look at the exigencies of the particular circumstance which is partly the reason behind our promotion of getting away from the automatic stay. But I will admit now, you cannot do these in three weeks. You've got to go through a process where it's properly considered. The declaration can then last for - I think we regularly deal with them at 20 years.

Our normal process is not dissimilar to the Productivity Commission's. We publish the application, we conduct a set of inquiries, consider submissions, we produce a draft, another round of submissions, then the final recommendation and then the minister has 60 days to make a decision. He or she doesn't need to take 60 days, they sometimes take 59, but again if there's pressure to do it more quickly, then we will try and deal with it. But you can't allow proper consideration of proper natural justice to all the parties by giving them five minutes, and there is no provision to do it and then worry about all the testing afterwards. That's just a fact of life.

MS MacRAE: Just one other area that I think is subject to a bit of confusion and I'm just wondering if you could elaborate a little bit, in relation to the fact that an access undertaking is really, as I understand it, in relation to excess capacity only, so there's no requirement that once you have an access arrangement that you're going to throw off the owners - - -

MR FEIL (NCC): No, the fact is that - - -

MS MacRAE: I just wonder if you could elaborate on that a little because I think there's a bit of a misunderstanding in the - - -

MR FEIL (NCC): There are a set of provisions that apply to how the ACCC must conduct its arbitrations. One of the things it cannot do is displace a user's existing or reasonably foreseeable use of the facility itself to make room for others. That's not contemplated by Part IIIA. It shouldn't have been permissible under the access undertaking because those safeguard provisions apply generally. I think it's worth remembering that these parties did invest in these assets.

MS MacRAE: Yes.

MR FEIL (NCC): They own them, and this is not about taking them away, it's not about stripping their use. It would be contrary to the operation of Part IIIA to do that. So it is about excess or additional capacity. There is provision for the facility to be extended to provide more capacity. That can be done and it can be ordered as part of an arbitration. The person that wants the capacity will get to pay for it and will have to pay the owner to make the extensions.

Similarly, any access price that's determined has to be one that provides a commercial return to the owner of the asset. It's not about providing a free ride or a subsidy or anything else. The moment you start down that route, you really do run into some of the scare tactics that are run about risks of investment. You do not want to crush incentives for investment, and Part IIIA is not about doing that. It is about ensuring that you provide access where it's necessary and desirable for Australia's national interest at a fair commercial price which is very rare the access seeker wants to pay. Sometimes it's not as much as the owner would like, it is a regulated price but it must bring a return, and it cannot shed capacity that's there for the existing operator's use to make it available to third parties. That would more than likely produce a very inefficient result.

MS MacRAE: All right. Thank you. I think that's all then, so thanks for coming today.

DR CRAIK: Thank you.

MS MacRAE: Have we got our next participants here, the Victorian Farmers Federation? If not, we'll take a short break until they arrive. Hopefully by 3.30, we'll have the VFF here, so we'll come back again at 3.30. Thank you.

MS MacRAE: We might start over again. I'd like to now welcome the Victorian Farmers Federation. I'm sure you know Wendy Craik, so I'll just introduce us briefly but she's having to join us from Canberra today. I'm Angela MacRae. If you'd like to introduce yourselves and the organisation you're representing and then perhaps you'd like to make an opening statement and then we can have time for some questions, that would be great.

MR AMERY (VFF): Russell Amery, president, Victorian Farmers Federation Grains Group.

MRS PITTARD (VFF): Tanya Pittard, manager of the Victorian Farmers Federation Grains Group.

MS PHAM (VFF): Akemi Pham-Vu.

MR AMERY (VFF): Thanks, Angela, for allowing us to come and speak today. Just as a way of opening it's probably, as a grain grower, very disappointing that I'm here today because of the time of year. It's very frustrating that in order to represent my industry I have to be here in Melbourne at one of the busiest times of the year and I know that it's not necessarily the Productivity Commission's fault, it's a time line that's imposed upon you. We also notice that the second round of consultations after the draft is released is planned for late April, early May next year and, guess what, that's when we're sowing and once again it's probably as busy and just as an important time for the grain growers of Australia. If the Productivity Commission want our grassroots to come and speak, then they've chosen two of the worst times to do that.

Having said that, I know yesterday you were invited, and in our submission you were invited to come and meet with the growers at our annual conference at Horsham this year at the end of February with two to three hundred growers there. It would be an opportunity for you guys to meet with the grassroots and to give their view of what's happening, especially after harvest is completed. This is the first time that under this system of marketing our wheat that we've had an opportunity to have a decent crop. As you're probably aware the last few years have been disastrous for a lot of us. Some of us have had crops and this is the first time that we have had an opportunity to actually figure out what's going to happen and how it's all going to change.

One of the other things that I'd like to say is that as you move around the state and around the country, it might be worthwhile noting that in different places growers will speak to you and just speaking to those who were there yesterday, some of the guys from the Wimmera who were close and handy and were able to be in Horsham have, over the last few years, had an opportunity or for the last 20-odd

years to grow a lot of alternate crops, pulses, canola, which has enabled them to learn the system of marketing. Once you move away from that area and go further north and into the Mallee and other areas of the state, the opportunities to grow a lot of other crops other than cereals, wheat and barley, are reduced and it's difficult for those guys who have had a severe change in marketing to learn. It's a brave new world. Basically for the guys in the Wimmera it's something that they have been doing for the last 20 years, they understand marketing and the changes are not so horrific. It's not so for all across Australia.

I don't know whether you want me to go through the whole process or you want to start some questions now, Angela, or just keep going.

MS MacRAE: I'm happy for you to keep going, if you like, and then we will take questions.

MR AMERY (VFF): Okay. Just some of the things that we have looked at and the questions that you have asked - and rather than put them in the order that you have put them in your questions, we have put them in the order that we see them as a list of importance. The first one is the industry good functions. One of the things that really springs to mind and talking some of the marketers and the smaller marketers as they have travelled around is the lack of generic promotion for Australian wheat around the world. Once upon a time the AWB did this for the whole of the industry because they were the single marketer. But now this function is left up to the individual marketers. If you travel around and visit flour mills it's quite obvious that the American Wheat Associates, the Canadian Wheat Board and others have been there before, shown them how to use their type of wheat, how to mill it, how to make dough out of it and how to turn it into bread.

We need something for our Australian wheat which is slightly different and the characteristics are slightly different to the rest of the world. We need the classification that happens or has happened for the last, I don't know how many years under the new system, GRDC, has moved some money aside so that we can have a classification counsel. Funding for that, as I understand, is not ongoing, it has a limited time span. We need to shore that up because classification of wheat, where it fits, what it does is something that's very important to us. It's not only that, it's being able to get the market signals back from the flour millers all over the world back to the breeders and back to the growers as to what we need to be growing to fulfil their market. So there is a role there and we need some ongoing funding there.

It's something that is hugely important and a classic case is just recently a wheat variety by the name of Correll was released a few years ago. Agronomically it's a great variety but sadly its test weight low and the market is now telling us that they don't want it because its test weight is very low and they want it changed or up

the test weights and growers who have chosen to use that variety are being potentially penalised because everything else matches the standards. So we need some clear signals getting back to our growers. We understand that GTA and the other traders have got a role to play in all of this but we need a body that is independent of everybody to be able to do that.

Some of the industries, AOF, is a model that's used. Pulse Australia have got together and worked together as an industry and with the funding stream to be able to do some of the things we talked about and Barley Australia are also another organisation that is another model that's out there. Sadly they need funding and we believe it's a good model but the funding stream for it is not sufficient to make it an organisation that is ongoing for the future.

You asked questions about the consistency across bulk and containerised exports. Anecdotal evidence talks about - and we've heard stories - problems in the quality control in containerised wheat exports. Not necessarily people trying to dupe the system but because of the very nature of the way that truckloads are brought in, put in containers and the differences versus the blended bulk system where in the bulk system it's a large volume of wheat put together and out turned a specific standard and it's all mixed together, commingled sadly with the bulk containers where you can actually have some variations from container to container if it's brought in truckload by truckload. We need to work together, the industry and growers, to try and alleviate some of those problems. We need checks and balances in place to make sure that what leaves our country is what is said on the documentation.

When we talk about deregulation assistance, when we look at some of the other industries and what happened, the assistance to the growers in that industry was quite substantial and sadly in the grains industry we got a very small sum money which was simply for some marketing seminars last year and those of us who were able to attend, that was it and sadly, where has the rest of that money gone? If we're going to go to a complete deregulated market, noting at the moment we have a liberalised market and it's not totally deregulated there will still need to be some assistance to train and to help some of the growers over into that system. The dairy industry is a classic example of the amount of money that was thrown their way to assist their growers to move to totally deregulated system.

You asked questions about the effectiveness of the ACCC and can they manage the ports, can they manage the oversight of the ports. They probably are the right body to do that, but sadly the time taken and their ability to act speedily and in a timely fashion is something that we have serious concerns about. They have the teeth to do what's needed but under the act they're only charged with the charter of overseeing the ports and we'd like to see that act be extended to make sure there is no

unconscionable behaviour in the up-country sites and in the freight movement of grain to the ports. At the moment ACCC don't have those powers and if a small marketer wants to ask a question, if they make too many waves, they've got nowhere else to go; they're between a rock and hard place. We want to make sure there is an independent umpire there that everybody in the industry can go to without fear or favour and know that their concerns will be heard and they won't be penalised by the owners of the ports or the up-country facilities. We believe the WEA is probably the only potential avenue towards doing this and the body that could facilitate or move along this way.

Stock reporting is an issue that we have talked about for a long time. It's a function that the government believe ABARE could do. We believe WEA is probably in a better position with their monitoring of what's going out of the country on a day-to-day basis. Sadly, ABARE's track record in reporting, while their reports might be accurate, they are about six weeks old when they get to you and it's often frustrating to read their reports knowing that things have changed and how much they have changed. We believe that if ABARE are going to be able to continue to do this role, then they need to be able to speed up or somebody else needs to do it. Personally, WEA is probably in a far better position to be able to manage that process.

You ask about whether WEA should stay and we believe that WEA should stay, especially as we change, as we begin to move into this liberalised system. I think it's too early just yet. As I said, for most of us in Victoria this is the first opportunity that we have had to have grain to move to market and to move WEA out of the equation just now would be a bit premature. There are other roles that they may move into, as we said, talked about the stock information and the things that we've talked about previously, that their role may be able to expand to in the future.

Monopolies along the supply chain, I have just talked about that, the potential that, as we know, most of the sites up-country in the eastern part of Australia are our own growing corp so there is a particular monopoly in eastern Australia; ABB, Viterra in South Australia and CBH in Western Australia. It is concerning when these companies not only store our grain but are involved in the movement of grain to the ports and own the ports and if you're a marketer or a small player, then you have to work in amongst those guys. It's a recipe for disaster if it's not handled correctly. Right now we seem to be able to do most things and we would like to make sure that there is significant enough oversight to make sure that there is no impediments to anybody using any of those facilities. AWB sites in Victoria and New South Wales and their port in Melbourne is another. While they are there, they're only very small players in the whole scheme of things and provide very little competition in the overall scheme of things.

The last thing on our list is the Melbourne Port Terminal. While it's unregulated and does not have to have a federal access undertaking, it seems that this is a little bit out of whack with the rest of it. I know that the way the Melbourne Port Terminal is owned it means that it is exempt from needing to have an undertaking. But it is still a port that it is owned by marketers, exporters in their own right and we believe that somebody needs to be able to look over their shoulder to make sure that what they have done and what they do is right and proper. I think that is probably our major points and from there I would allow you to ask some questions and Tanya and Akemi will jump in where I can't.

MS MacRAE: Could I just ask a question of fact in relation to your conference?

MR AMERY (VFF): Yes.

MS MacRAE: We thought that was going to be March.

MRS PITTARD (VFF): It is.

MR AMERY (VFF): Sorry. My apologies.

MS MacRAE: It will make a difference to us whether it's pre or post our draft.

MRS PITTARD (VFF): It's post the release of your draft and it's about two weeks prior - it's 29, 30 and 31 March, so it's two weeks prior to your intended - - -

MS MacRAE: That's okay, that's what we understood. I just wanted to clarify that because it will make a difference how we might be able to participate.

MS MacRAE: I won't speak for us all but we're certainly looking at that and we welcome you welcoming us again because we have been quite involved already. Did you want to begin, Wendy?

DR CRAIK: Thanks very much, Russell, and welcome, Tanya, and co. Thanks very much too for the offer of participating in your conference next year. That would be great and certainly I think some of us will take that up so we will doubtless be in touch with you down the track to get organised and come along. Thanks for that opportunity.

Just going through your submission, Russell, and these are in no particular order but under the issue of level of competition in the transport and supply chain for wheat and I think you have mentioned it too, there have been a number of examples over the past year that should have caused concern and presumably this is about up-country storage and transport. You're saying that it's concerning that this issues

don't appear to have been fully investigated by either party. Even if it's not right now, can you give us details of the issues that should cause concern that have obviously caused concern to the VFF so that we can understand what these issues are.

MRS PITTARD (VFF): It probably would be easiest if we provided some case study example and made sure we got permission from the companies.

DR CRAIK: Yes, that would be ideal if you could do that. That would be very helpful to us. Thank you. It's a bit difficult for us to do everything just with a statement but case studies would be excellent thanks.

MR AMERY (VFF): We are willing to do that if we can help.

DR CRAIK: Thanks. Your comment about Wheat Export Australia and a continuous industry umpire and the work that they have done during the transitional period, do you feel that while the accreditation has been useful, the fact that it doesn't actually provide any financial guarantee, so there's no guarantee that a grower actually gets paid because trader is accredited, does that reduce the effectiveness of the accreditation.

MR AMERY (VFF): It probably does, Wendy, because it's something that the growers have probably been - those who have relied on the single desk have been very much used to, that once you put that grain down the hole, you were going to get paid for it. The understanding or the knowledge that even though an exporter has been accredited to export grain, while they may have been financial when they were checked out, it may not be so when it comes to harvest. It is a concern and whether the powers of WEA need to be changed to allow them to monitor companies, I don't know. It's something that is of a concern because most growers the first thing they want to do is make sure they get paid for what they've grown.

DR CRAIK: Understandably, yes.

MRS PITTARD (VFF): There are also issues because of the restrictions under the Trade Practices Act and everything where if you know that a company is not paying growers - and this has happened many times in the past - you are actually not allowed to go out and publicise that information. We try to provide a service in a credit reference check which does actually give off some warning signals to growers if they pick up the phone and they request that credit check on a company. But, again, that's still only a snapshot of that company's credit history. It's very, very hard when I think Angela and others heard me say at a number of the public meetings we ran in September that there are people who have been around the grains industry, are well known, to start up a company and disappear in March along with the grain and

any money that they have made.

There is no protection for farmers in terms of being considered secured creditors and there's very little industry members can do other than word of mouth warning, but there is no way that you can have a blacklist, so to speak, or even have a white list of companies that have got an extremely good credit history. We have encouraged farmers to do Google checks of people who are claiming to run pools because sometimes that gives off some warnings, but it's very frustrating that the law is on their side rather than on any level of protection for the farmers.

DR CRAIK: It's sort of caveat emptor, I suppose, or seller beware - -

MRS PITTARD (VFF): Exactly.

DR CRAIK: Your comment there on moves made by industry to develop codes of practice, we understand - we just got a copy today - the GTA put out a code of practice on 9 November. If you've had a chance to read them, is that a useful code of practice?

MR AMERY (VFF): It's a really good start, Wendy. It's something that we believe it's a good base to work on, when you talk to GTA and those of us who were involved in putting it together, there are some things that the growers wanted to put in that code of practice but sadly we couldn't get industry across the line. But it's certainly the basis from which we can start. If you read through the whole code, it tells us that this code is a living document, it will be reviewed, and hopefully we can change it as we see the need to, to include some of these other things in the future. It's the first draft basically and this is the first year that it will operate. Getting all the participants in the industry to sign on and to apply to the code of conduct is the next step. You can put a code out there but if nobody wants to play by it, then it's not very good.

DR CRAIK: That's true. One last question on this section of your submission, have you got any sort of estimate as to when you think WEA should stop existing or do you think it's got a life forever?

MR AMERY (VFF): If WEA takes on some of the other roles that we've talked about, then it will have an ongoing role. If other industry players take up some of those other roles, then I believe it will have a limited time frame, whether it's three to five years I'm not sure, but it's one of those things that I think we need to get a few runs on the board first to make sure that everybody is comfortable with the system before we work out how long we're going to keep the umpire there for. Probably it would be a question that you would ask us after harvest in the next round of consultations, after we've had an opportunity to see how the system has worked and

how people have reacted to it.

DR CRAIK: Angela, I've finished my questions on that section of the submission, so rather than me go on for hours - - -

MS MacRAE: Yes. Just in relation to the ongoing role of WEA, we had a bit of a discussion in Horsham yesterday between various growers and the views about whether it was useful to keep that going as a separate entity or whether you'd be better off consolidating those functions into another existing body that would - I guess they were talking about sometimes where you have a number of bodies that are doing different things within the industry, getting them to communicate and getting the synergies between them isn't always as good as it could be and maybe it would be better - one example was getting the GTA to do more. So rather than giving, say, the WEA the promotion of Australian wheat kind of function and some of the other things you talked about, there was a question about whether GTA might be better placed to do that. I appreciate in putting your submissions together you're probably focusing more on the fact that you think somebody needs to do this, but I guess my question is how strong would your view be about WEA being best placed to do that, rather than another body?

MR AMERY (VFF): Personally, WEA is somebody who is independent of industry. It's out there by itself. GTA is a group of marketers basically who have got together and the growers are not readily represented on that organisation sadly because of financial constraints. We'd like to be there. There is an opportunity for us to be there but financially we can't all be there around that table. WEA doesn't have the baggage basically to do the role that you talk about; the promotion of work wouldn't be sort of beholding to any one particular market who was a member of GTA. It would be somebody who is wholly and solely independent and would be able to do that without fear or favour.

DR CRAIK: So would you see appropriate extra roles of the WEA with one being the information role acquiring data from customs.

MR AMERY (VFF): Yes.

DR CRAIK: And publishing data, plus the marketing?

MR AMERY (VFF): That is a potential role, whether it's WEA or somebody else who takes that role on, but it is a potential role for them into the future, if we can get the right people around the table to do those functions.

MS MacRAE: Just also coming back to the whole question about fit and proper companies to export, we also had a bit of difference of view yesterday in Horsham

about how much value there is in that for growers, particularly as we talked about there not being a guarantee and that there is a cost to this. There was a bit of an argument about, "If we're going to fund this through a cost on our tonnage, then would we be better off?" There seemed to be a view that, "Look, I can do my own checks and I can talk to fellow growers and I do this with my other grains. Sure, this is a new market, so I've got to be a bit wary of new players, but I will be, I'll be a bit wary of the ones I'm not familiar with."

As a result of that, there was an argument that, "Look, if we're going to put money into this" - there was a feeling, at least amongst some that were there, that they'd rather see the money going into promotion of Australian wheat generally and marketing, kind of a guarantee that actually doesn't guarantee and is another check, but I guess there was a feeling that in some ways, those checks weren't going to be a lot more value than what the grower felt he could get out of his own resources and from his own sources. So I'd just be interested in your views about that and how long you think this fit and proper test might be something that would be worthwhile for this body to continue with, because I guess we're saying it's part of the evolution of the market more than something you would see as long term for that particular role.

MR AMERY (VFF): The next question from my point of view when I represent the growers of Victoria is should we increase the powers of WEA to make sure of that role and to make sure that they are fit and proper companies is expanded so that they are monitored. If at some point they fall over or potentially fall over, their export licence or their ability to export grain is pulled straightaway, so that people know that they are going to have potential problems in paying. As I said, we are moving from a system where, once you've put your grain into a pool, you're guaranteed your 80 per cent or whatever it was, and it's going to take a while for some people to get used to that system of actually having to go and check out each marketer, the time that it takes. By doing that, will it exclude some of the newer players in the market who don't have a name because they don't have the runs on the board, if somebody hasn't ticked them off and said, "Yes, they are a fit and proper person to export wheat. We have the confidence that you can sell to them," so there's the other side of it. I think, yes, WEA needs to be in there for a period of time to come.

DR CRAIK: Russell, would farmers be prepared to pay more? If the functions of WEA were expanded, would the farm sector be prepared to pay more than 22 cents a tonne?

MR AMERY (VFF): That's a difficult one to answer.

DR CRAIK: I know what farmers are like with extra charges.

MRS PITTARD (VFF): I think it also has to be taken into consideration that other industries, Meat and Livestock Australia, Dairy Australia, they undertake promotional activities that are both funded through compulsory levies on the farmers and on the industry but also are taxpayer funded. They undertake promotional activities both domestically and internationally for their industries and yet the GRDC is limited in its ability to do that.

DR CRAIK: So it's do with some structure, the way the structure was originally set up.

MRS PITTARD (VFF): Yes.

DR CRAIK: I guess the equivalent package of money would be the GRDC money in the grains industry.

MRS PITTARD (VFF): Yes. Even the horticultural industry, the work that is done by groups within some of the more intensive animal industries like the broiler chicken industry, they are all able to use some of that funding towards promotion of their industry and promotion of industry issues on an international market. The grains industry is not able to.

DR CRAIK: Has there been any consideration of trying to lobby the government to get changes so that grain is, say, more like meat or dairy?

MRS PITTARD (VFF): Yes would be the very short answer. Yes, it requires changes to the PIERD Act and - - -

MR AMERY (VFF): It's not something that's easily done.

DR CRAIK: No, I understand that.

MRS PITTARD (VFF): Yes. It is a shame because some of these things should have been considered prior to removing the single desk so that they had a holistic look at what needed to be done within the grains industry so that whilst they were putting in place the WEA and the associated act, they also needed to have a look at where the gaps were and what other potential legislative changes needed to be made to make sure that some of these functions could seamlessly continue.

DR CRAIK: I should just say straightaway I am on the board of Dairy Australia, so that my interest is clear.

MRS PITTARD (VFF): But it's also your knowledge of what they are able to do.

DR CRAIK: I know, but I should just tell you.

MRS PITTARD (VFF): You can find all sorts of things out on the Web now, Wendy.

MS MacRAE: I don't have anything more on those particular issues, so I guess the other area, if we move now to the access tests and the supply chain and the level of competition and things, Wendy has already asked if you could provide some details of the examples you've got here; that would be very useful. Just more generally, we've just heard from the NCC, arguing that these access tests are really a leapfrog to try and basically subvert what otherwise would have been the case here of Part IIIA operating to determine access of these cases and in their view at least, it would have been a better policy position to have tested the access to the port terminals against the general Trade Practices Act rules that apply, rather than having the specific rules within the Wheat Export Marketing Act. What would your view be - I mean, I guess it's implicit here but it's useful to just have it on the record - about how you see that issue and how important you see the access undertakings that are currently in place and whether you see them as an ongoing necessary part of the market or whether in time you could see a reason why you might revert to a Part IIIA type arrangement.

MR AMERY (VFF): I think, Angela, our greatest concern, whoever has the oversight of the ports and the up-country facilities, is for somebody who has been wronged being able to get a decision or getting something done in a timely fashion. That's our greatest concern. So whether it is the ACCC who have the oversight or whether it's Part IIIA of the legislation, we need something that is not going to take six, 12, 18 months to resolve. It needs to be done. I'm not talking tomorrow, I mean now, so that we can get things done so that people can keep going and continue their business and not have to wade through pages and pages of documents in months' time to try and solve a problem.

MS MacRAE: Just to be clear about the nature of the disputes that might arise, because I think sometimes there's this mismatch between what an access undertaking is trying to achieve and where the disputes arise, are those issues - for example, I've got my grain coming to port and I've been told I'll get this price and I've stored it myself and brought it on board. I'm either not getting access or don't feel I'm getting adequate access to the port, in that I'm not getting a space on the shipping stem or I'm not getting the price I feel that I should have to reflect the fact that I store my own grain. Is that the nature of the - what's the issue that is at the heart of that sort of dispute that you want to have it resolved now? What's the nature of the problem that you're looking to have resolved?

MR AMERY (VFF): Part of it is being able to get the ships in a timely fashion so

that there is not a situation that potentially could arise, where a marketer who owns a port may slip one of their ships in in front of yours and fill that ship and send it off and then fill yours later and you have incurred demurrage, so that is a potential problem. Another potential problem could be where the grain is sourced, you may have grain up-country, have organised the ship and got a slot and you've started to organise the transport and then gone to the owner of the facility and said, "I would like to move grain out of this facility down to port for my ship," on such-and-such a date, and then all of a sudden discover that for some unknown reason, that grain is unavailable because it's either been fumigated or other problems, and therefore you have to source grain from somewhere else within the system and there could be some potential costs incurred in that. These are just potential problems.

As growers, we don't have the opportunity to deliver directly to market or to the ports. The ability to be able to do that to fill a ship is quite limited, so being able to do that is probably not one of those things that we are worried about just yet. Most of the grain that has accumulated for port, especially for bulk shipments, has to be done by rail to get the volumes there in a timely fashion. Having cells available to accumulate when you were promised cells at a port facility is another potential problem, whether somebody else has been allocated those cells for their shipment. So there's a whole lot of things that potentially could happen and we want to make sure that if those things happen, there is an umpire there that can resolve that dispute.

MS MacRAE: So in that instance, given the access undertakings that are currently in place and there is, for example, a shipping stem sort of protocol that goes with that, in your view, does that look like it's got the makings of something that's sufficient to give you certainty around those things as much as you can - - -

MR AMERY (VFF): It's certainly an improvement on what's happened, yes, the undertakings that are in place for this coming harvest do help in that regard.

MS MacRAE: Having the deregulated containers there, I know you mentioned the issue around the quality of containers and we can come to that in a moment, but how much of the opportunity of being able to put your wheat in a container and send it out without the regulation that's applying in the bulk side, how much of that is another avenue, I guess, to the extent that we could think of these things as monopolies - but there's this other alternative for you, containers and bags, is that a real alternative for farmers or is it reasonable to say, "Look, we're not talking about monopoly assets so much because we've got these alternatives of containers and bags"?

MR AMERY (VFF): As you can imagine, the number and the tonnages that can be taken out in containers and bags is limited. It's limited by a number of factors and that's firstly the number of containers and food-grade containers. It's how much we can put on the ships or how many ships we've got available and where we can unload

them at the other end. So there are times when containerised movements of grain out of Australia, especially wheat, is in direct competition to bulk because of the price advantage and there are other times when it in no way competes because containers are that expensive to use, to hire and to get out. Two years ago before the financial crash when China was exporting copious or trying to import copious amounts of coal and iron ore, bulk ships were extremely expensive, so it was cheaper and more cost-effective to use containers and therefore there was genuine competition. Right now, it's the other way around.

MS MacRAE: Right.

MR AMERY (VFF): So do containers offer competition to bulk shipments? What day of the week is it? That's basically it. It's a moving feast. It's different every day. It does give competition, it certainly gives competition in some markets but it's not there every day.

MRS PITTARD (VFF): It's also important to note that if the AQIS changes had gone through this year and the charges had been increased dramatically, that would have had an impact on the competitiveness of the container trade, quite significantly. The subsidy for the charges was going to be removed which would have actually in some cases tripled the overall fees that would have had to be paid by people trying to export with containers, including the addition of a huge number of fees that would have also been imposed on Australian exports and that would have mainly come down on - it was things like container inspection and certification and different AQIS charges, all part of the full cost recovery process but it also actually involved covering the costs of import certification.

DR CRAIK: So is that going to come in at some later date now?

MRS PITTARD (VFF): I think it's still on the table and it certainly hasn't been taken off the agenda, as something that may come in. So that again is one of those issues looking in a broader scope or a little more holistically, that if that had come in at the same time, that would have essentially destroyed any chance of smaller grower co-ops or other groups trying to enter niche markets or trying to get a premium for their high protein specialty wheats. If they were going to be trying to enter into those specialty markets and carve a niche for themselves, that would have almost stopped it.

DR CRAIK: Okay. Do any individual farmers wish to export wheat? The way the Wheat Export Marketing Act and the Customs Act are set up it's only companies and things like CBH co-op structure that can actually apply for accreditation. Are there any individual farmers who are not in those structures who fancy themselves as exporters?

MR AMERY (VFF): The only one I know is Ron Greentree.

DR CRAIK: He can put it in as Greentree Pty Ltd and so he's got a - - -

MR AMERY (VFF): Yes.

DR CRAIK: I'm just wondering if it was open and some of it wasn't limited to company structures and things whether there would be individuals who would be interested in bulk export. Is it necessary to restrict it like this is what I'm saying.

MR AMERY (VFF): They would have to be on a fairly serious scale to be able to do that to be at the size of Ron or some of the Western Australian growers.

DR CRAIK: It's probably a question we should ask over in WA.

MR AMERY (VFF): Yes, there are probably a few names that spring to mind who would like to have a go.

MRS PITTARD (VFF): There seem to be a growing number of smaller groups of Victorian growers who have set up little co-ops but most of them tend to work through one of the companies or they also work through some of the brokerage companies and they have jointly applied for some of the export investigation funding that was available from DAFF.

DR CRAIK: That's right.

MRS PITTARD (VFF): So it probably would be worthwhile having a look at how many individual farmers applied for some of that export grant money and that would give you an indication of the level of interest.

DR CRAIK: Yes, okay. Thanks.

MS MacRAE: Just in relation to that issue of quality in containers, we're still trying to get a handle on how big a problem that is. So is it a very small percentage of containers that have a quality problem and could we then expect that to the extent that there is an issue, the guy that gets the dud load is going say, "I'm not going to deal with that bloke again," and the market is going to sort all that out or is it such an extensive problem that people are going to start saying, "This Australian wheat's all a bit dud. We've tried a range of containers now. This is not working, we're not going to try those Aussies again." Is it an issue that we expect the market will sort out of over time and if not, what would you do about it?

We're still not sure whether there's a few anecdotal stories that have been retold so often that now people think there is this big problem. Maybe at the end of the day it's the same few cases that are coming through and it's not such a big deal. I guess if you had any idea how big a problem it is and whether it's then causing a problem for wheat more generally or whether it's something that individual buyers are just going to avoid particular sources in future.

MRS PITTARD (VFF): I think it's probably a little bit of both. They mention that at the Grain Trade Australia conference. I think probably it's an illustration of the lack of transparency and at the minute still the lack of open consultation and discussion within the industry about some of the issues that it's facing. Some of the companies that accumulate grain to put out in containers are Melbourne Port Terminal and companies who use Melbourne Port Terminal like Louis Dreyfus and others were certainly telling growers that they would much stricter on refusing truckloads if they didn't meet quality specifications, in particular pest infestation or not meeting chemical withholding periods or even in some cases if the grain had chemicals on it that were clearly unsuitable for the proposed market.

Was it a beat up in order to scare growers into submission in the lead up to harvest or was it an understatement of the issue it's really hard to tell. This harvest will give us a far clearer indication because there is more grain around and there will be more opportunities for exporters to be picky about what they take when there's hardly any grain and they just want to fill the container and get it off will be very different from when they can turn it around and know that they can contact five growers and have another truckload there without hours. So it's one of those things we want to keep a really close eye on this harvest and try to get some decent data and facts behind.

DR CRAIK: Tanya, just following up your comment about Louis Dreyfus using Melbourne Port Terminal. On Melbourne Port Terminal, given - and I know that there are the linkages you've mentioned - but have you ever found using Melbourne Port Terminal preferable or different, I suppose is a better way to put it, from using one of the three bulk handling companies that have marketing arms in their company? Have people found any difference at Melbourne Port Terminal from the others?

MRS PITTARD (VFF): I think Melbourne Port Terminal certainly provided some different opportunities for people to book in shipping time and they seem to have, following concerns that were raised by industry about their exclusion from the port access, they seem to have tried to be more transparent. The only other option in Victoria really is Geelong because Portland hasn't exported grain for quite a while. The access to Melbourne Port Terminal will come down to - and I suppose now some Victorian grain towards the western side and in particular the south-west will now

head over towards Adelaide, depending on where the freight advantage is. It comes down to the bigger picture of who's controlling the grain up-country and who's also got significant control over the trains that are moving the grain and therefore the signals given to growers when they're delivering up-country about the relative freight advantages into one versus the other.

In some cases last harvest there were some odd occurrences where growers delivering barley to - there were two sites in northern Victoria about 25 K's apart. For barley one was disadvantaged into Victorian ports versus getting it sent to an Adelaide port and it was the exact opposite for wheat. Yet this was the same distance, this was a site which was the same distance for both and yet there was no transparency or apparent commonsense in what people we being charged for port access and for transport of those grains. It just seemed to be a matter of where particular people wanted particular grain to go. Of course, then the growers, if they could find that information out before they'd driven all the way to deliver it, then that was all right. But otherwise they'd get there and go, "Great, I've just lost $25 a tonne because I've brought my wheat here for what reason."

So a lot of whether a company uses Melbourne Port Terminal or the Geelong terminal is also about what train lines they've got access to and then the respective freight charges and transport charges that will be levelled at the growers which will mean that the growers in a way make the decision about where to go. There is such a lack of information and such a lack of transparency in some of the provision of those charges. It's getting a little bit better and people have been posting their site charges and other things quite openly now. But even then there's a distrust amongst farmers as to exactly how those figures are calculated, would be the kindest way to put it.

DR CRAIK: Is there much on farm storage being built or created in Victoria

MR AMERY (VFF): Yes, the fastest industry in Victoria is planting silver trees.

DR CRAIK: Really.

MR AMERY (VFF): Yes, it's incredible.

DR CRAIK: Are people building infrastructure or are they using those bags or envelopes or whatever they are or what?

MR AMERY (VFF): More so silos. Bags seem to be a short-term solution, a six to seven-month time frame and you need to get it out whereas silos are probably for a little bit longer and ease of management but mainly silos. There's a lot of growers out there now with between five and 10 tonne storage.

DR CRAIK: That's a lot, isn't it?

MR AMERY (VFF): There's a lot of them.

DR CRAIK: Back to you, Angela.

MS MacRAE: I don't know that I have a lot more questions actually. I've covered most of the things I was going to say, I think. You've nothing more, Wendy?

DR CRAIK: Yes, I do. You pointed out that classification of wheat, that GRDC is funding the work classification stuff at the moment and then made the point that it's going to need ongoing funding. Given that GRDC is 50 per cent funded by farmers' levies, isn't that within the power of the farm sector to ensure that GRDC would be able to continue to fund that classification work through voting with their dollars or their feet or something?

MR AMERY (VFF): We as grain growers or members of GTA who have oversight of GRDC can certainly make some recommendations as to how they spend their money but I don't think we have the power to actually tell them, "You need to do this." I would have to go back and read the PIERD Act to make sure that I'm correct on that one.

DR CRAIK: Yes. I would have just thought it's such a significant industry-wide issue that people would think - there'd be a lot of support I guess is what I'm saying.

MR AMERY (VFF): Yes, it is obvious that where it's being done at the moment is the right place, but we want to make sure that it has ongoing funding for it to continue and be there in the future because it is - - -

DR CRAIK: If you've got a choice of going and trying to hit the government up for more money or trying to use the source of money that's already there, the government, particularly in the current environment, is a bit likely to say, "What's wrong with the RDC?"

MRS PITTARD (VFF): It also would be naive of us to think that the government and its own policy priorities and buzzwords of the year didn't have a significant influence over some of the research investment decisions that GRDC makes. I mean, they do provide 40 per cent of the GRDC funding and you see it when the different investment plans come out from any of the RDCs that there's certainly a sensitivity towards what is the government focus of the day.

DR CRAIK: That's true.

MRS PITTARD (VFF): Which is why we raise it here because we want government to understand how important we feel it is, so that therefore if GRDC do choose to continue and are open to continuing to fund it that there's also not going to be government interference in telling GRDC that's something that they think that industry should be solely responsible for funding.

DR CRAIK: Yes, okay, thanks.

MS MacRAE: We haven't talked a lot about market information, I guess, and the availability and transparency of that. We've talked a bit about stock levels and I think your view was that WEA might be better than ABARE at trying to get a handle on that information. I don't know whether WEA would think that was the case or not. But we've heard a lot of calls for different information and who holds it and how to access it, so that stock starter from your point of view would be the most important sort of gap in what's currently available?

MR AMERY (VFF): Yes, for sure.

MS MacRAE: With that, if it was able to be produced on a more timely basis, is the nature of the information that's currently collected what you would be looking for but you would need it in a more timely sort of fashion?

MR AMERY (VFF): Yes, for sure.

MS MacRAE: How does what's available for wheat compare with what's available for other grains in terms of information and market transparency?

MRS PITTARD (VFF): Pulse Australia seems to be able to have a fairly good crop indication picture, mainly because it's their local Pulse Australia staff that also do quite a lot of conversations with the growers to ascertain the varieties that are planted and how the season is going. The Australian Oilseeds Federation obviously has mainly canola but then you've got the others, soybean and other smaller crops, so they start to get a fairly good picture because there is relatively open dialogue within AOF about what's happening and where crop shifts have been or whether the spectrum of crop plantings has occurred. It doesn't happen so much in the cereals, mainly because AWB used to hold most of that information and obviously that was considered commercial-in-confidence. That information is to a large extent held by GrainCorp because they're the ones who have silo committee meetings which will talk to growers about the different varieties and their different expectations. That will also then in a lot of cases set the segregations for those areas which will then of course - whether or not there is good communication about those crop pictures back to marketers so that they can start to have an idea of what's going on I think is where one of the gaps in communication and transparency is.

We've had a number of issues, not just in wheat and barley but where the growers feel the segregations in their area aren't going to provide them with the best opportunity to sell the grain they have actually got. At the minute, the only avenue to improve the segregation is for either a local marketer to really push to have a segregation opened up or for the growers themselves to go in and say, "No, we actually do have a significant proportion of noodle wheat, so we need a noodle wheat segregation in this area."

Some good examples are of what perhaps happened with GM and non-GM canola and where those segregations were opened and obviously that's not covered by this review but it is a good illustration of where perhaps the lack of communication and transparency can occur. It would be safe to assume that if that was happening in canola, then it's most likely also happening in wheat, that there is that sort of lack of open discussion between what the marketers are wanting, what the growers are growing, and then the relative tonnages of each. None of that information is openly available which makes it very difficult for growers to extract a premium for the higher quality products.

MS MacRAE: I guess we've heard resistance from some growers saying that, "What I hold is my information and I don't want to tell anybody and I feel that there's value for me in knowing what I've got and no-one else knows what I've got."

MRS PITTARD (VFF): That's why they keep it on farm, but as soon as they deliver it into the up-country system, it isn't their information any more. That's held by one company with one marketing export licence.

MS MacRAE: But ideally though, you'd want on-farm stocks too, wouldn't you?

MR AMERY (VFF): There is a discussion as to how - - -

MS MacRAE: I mean, how you do that is another question.

MR AMERY (VFF): Yes. But at what point, how much, what size on-farm storage do you include in this? Is it 10,000 tonnes plus, is it 5000 tonnes plus or is it every farm? If it goes to every farm, then it will probably be a bit messy.

MRS PITTARD (VFF): They also wouldn't do it.

MR AMERY (VFF): Yes. I think we've come to the conclusion that it's probably five to 10 thousand plus because that is significant tonnages and it can affect a market in a serious way.

MS MacRAE: I guess there's the question then of whether they do it as well.

MR AMERY (VFF): Yes.

MS MacRAE: I don't know; I'm just going on what we've heard from a number of other bigger growers who were saying, "Well, that's my information and that's valuable for me and I don't want to tell the other side."

MR AMERY (VFF): Yes. The bulk handlers and others have said exactly the same, "That's the information that we hold." We're not necessarily after what is in each site by category, what we want to know is how much total tonnage is in the state or in a region, so that we know what's in Australia to be sold and we don't oversell what we've got.

MS MacRAE: Okay. Wendy?

DR CRAIK: I don't think I have anything else, Angela.

MS MacRAE: No, okay. I think that's all I've got. So thank you very much. We've kept you here for quite a while but it's been very much appreciated. Thank you for your submission, for your invitation to come and see you again when you have your conference and also for making us welcome at some of the other functions that we were able to attend. So thank you for today and I'm sure we'll be in touch again. Thank you.

MR AMERY (VFF): Thank you, Angela and Wendy.

MRS PITTARD (VFF): Thanks, Angela. Thank you, Wendy.

DR CRAIK: Thanks so much.

MS MacRAE: Moving to our next participant now, if you could introduce yourself with your name and any organisation you're representing and if you've got an opening statement, we'd be happy to hear that, and then time for questions. That would be terrific, thank you.

MR COLES (VS): Thank you very much for providing me with the time, Madam Commissioners. My name is Donald Coles. I'm the managing director of a seed company called Valley Seeds. Back in around about 2000, I started the process of developing a new company which became Access Genetics, with the primary aim of introducing new, novel wheat varieties to the Australian market. The purpose of this was to fill niches in the international market which were not otherwise filled by the current range of varieties and quality profiles. I want to state first of all that the paper I've sent in this morning is not a research paper, it really represents a brief summary of the issues that I wanted to raise today.

MS MacRAE: Yes, okay. That's fine.

MR COLES (VS): I just also wanted to state that I have no current financial interest in wheat breeding and I suspect if you haven't had many wheat breeders along to make submissions, then there's a very good reason for that, that some of them are quite reticent to state the issues that have concerned them in the past because of a concern over any potential backlash by those other people in the industry and in particular the marketing organisations.

When we started our business, we immediately aimed to try and fill all the necessary agronomic requirements for wheat varieties. Very few, if any of the varieties that were produced ended up being commercialised. I no longer own that company but I believe that most of that breeding germ plasm is still in Australia but only progressing at a fairly slow pace.

One of the greatest hurdles and the reason why I exited that particular business was that we had trouble getting accepted into any of the classifications. They have very narrow quality parameters that were applied to them and we can only conclude from that that it was AWB's wish to try and keep a small number of segregations for simply distribution efficiency.

DR CRAIK: When you say wouldn't accept it into a classification, are you talking about things like APW and all those sort of things?

MR COLES (VS): That's correct. The kind of markets that have been penetrated by Australia's competitors, such as the US, are for stronger quality varieties. We've also got a number of durum wheats which we're very strong in and which have already been purchased by companies like Barilla in Italy and accepted by them, but

for one reason or another, they weren't accepted into the current classification system.

In my paper I've really put down four concerns over the future of the industry but suffice to say that we now have a large number of licensed exporters which will change the dynamics of the wheat breeders dramatically. We now have a situation where breeders can have an opportunity to obtain a direct relationship with an export licence holder with the view to segregating identity-preserving individual varieties for specific markets. That was something which was very difficult, if not impossible in the past. It was perhaps possible on a very small scale in containers but that's often not sufficient for some of our major buyers overseas.

The four points that I've made in here, one is that the future I've proposed presupposes that there will be sufficient licensed wheat exporters to take advantage of these breeders' innovations; the second one is that market forces are sufficient to encourage bulk handlers to take on board non-classified segregations or individual varieties even; thirdly, that the physical delivery standards are maintained by those exporters. I have real concerns over a deterioration of these physical standards that may well end up inn Australia's reputation as a quality wheat exporter being damaged. The fourth point is that we have a major problem with compliance with intellectual property rules and in particular I mean in plant breeders' rights, the Plant Breeders Rights Act, and the subsequent industry adoption of a thing called endpoint royalties which you may well be familiar with, where our original model was for some 60 to 70 per cent compliance with endpoint royalties and I believe in discussions around the industry that that is significantly lower than that. Do you both have my paper by now?

MS MacRAE: We do, yes.

MR COLES (VS): I wasn't sure whether you'd had a chance to look at it. The dynamics of the industry, in particular classifications, has changed. It's now been funded by the GRDC, as I heard you mention earlier. But of course that puts it back into the same organisation which funds three out of the four remaining breeders. In 2005, in one of the GRDC publications, it was stated that there were 16 breeding companies in Australia; now there are around four and only one of those is truly private and independent. I would suggest to you the reason for that is because of how long it took to discontinue the single desk arrangements and the lack of ability to deal with multiple breeders, multiple offerings, into a very narrow funnel, let's say.

I think that's of great concern, that there are so few, but how long the whole segregation system will last I suspect will be a factor more to do with our international buyers rather than what Australia would like to propose, given that there are so many export licences around.

DR CRAIK: Your comments about GRDC, are you suggesting that they are very restrictive about what they will fund in plant breeding or what?

MR COLES (VS): No, I'm suggesting the GRDC have been a wonderful support to the industry in fact because without them, the marketers would have had to support classification, which they have taken on board. There are a number of industry-good activities which the GRDC has taken on board. There simply hasn't been, let's say, private industry activity sufficient to fund these public-good activities when government has withdrawn from so many.

DR CRAIK: Yes. So you think GRDC's efforts in the plant breeding area have been good?

MR COLES (VS): Probably world leading, I would suggest. The amount of money they've been prepared to spend on that has been second to none in the world. In fact I was invited to present a paper at the Canadian Seed Trade Association a couple of years ago which I've sent in as an attachment. Their question was, "How on earth do you Australians do it? Can you tell us how we can do it? Our voluntary system of funding research just doesn't work. We'd like to know what your secret is."

DR CRAIK: Okay.

MR COLES (VS): Now, I went there to tell them about endpoint royalties but I had to warn them that the endpoint royalties is only one aspect of it. The research levy underpins the activities of GRDC, but at the end of the day you should keep in mind that there are three of the four breeders out there that are almost completely funded by GRDC and certainly within their ownership.

MS MacRAE: Out of that kind of rationalisation with the market back down to only four, if these four factors that you've identified come to pass, would you expect that the number of breeders would grow again or is it more a factor of working with what we've got now? Will a more deregulated market allow the number of breeders to grow again or is that - - -

MR COLES (VS): I would suggest to you that it's a far more robust model to enter the market now than it was when I started.

MS MacRAE: Right.

MR COLES (VS): However, we still have the problem of getting a return on that investment and the end point royalties is the only way of doing that, whereas GRDC

on the other hand have been able to fund in part or in a very large part their breeding company operations by the use of those levies which are compulsory levies, whereas the endpoint royalties is voluntary and without a stronger intellectual property rights system and enforcement of those rights and growers adopting them and accepting them, then we have a very difficult and bumpy road ahead for new entrants into the industry.

DR CRAIK: According to your comment the act is being amended so you don't hold out a lot of hope.

MR COLES (VS): It's being reviewed at the moment. We haven't seen the final report from IP Australia. I have just come from an industry meeting in fact. The previous chair is in the room with us at the moment. There isn't a lot of hope held out that we're going to make much progress. The matter is very serious. It's a structural problem and it's far more than the wheat industry, although the wheat industry is by far the - we'll suffer the greatest downturn in the future if we don't resolve the matter. But all plant industries that use Plant Breeders Rights legislation is suffering the same problem.

DR CRAIK: It's unlimited for endpoint royalties.

MR COLES (VS): We haven't been able to very well at the moment and there's been various systems set up to remind growers of their responsibilities. There is currently a number of contractual systems being set up with grain traders across Australia and we're very hopeful that those systems will overcome the problems so that the debt the farmer owes is transferred to the grain buyer and that that grain buyer agrees to have a deduction for the end point royalty from the payment prior to being made.

DR CRAIK: So is that a voluntary thing?

MR COLES (VS): Most definitely, however, the grower, when he purchases his seed of a new variety has to agree to an agreement to pay those end point royalties. While the Plant Breeders Rights Act has a specific exemption for farmer saved seed which we all accept, it is the over the fence trading and in fact very open sale even through rural publications of Plant Breeders Rights registered varieties that are of greatest concern to us. So saving just a very small amount per tonne is not doing the growers any good at all for the long-term interests of their own industry.

But I understand it's tough times for them, they've been through very significant droughts, they need to save wherever they can and one of the arguments is, "Well, I already pay my levy, why should I pay it twice?" Well, it's not twice. It's not for the same thing, I'm afraid.

MS MacRAE: So would a strengthened act on its own be enough then? I guess if we were thinking about the extent to which we're looking at industry good issues for this inquiry and we are, and we're concerned about the sounds of the industry going forward and the necessity to develop these new breeds is that is a strengthened act sufficient or are there other things that you think would need to happen to ensure a flourishing industry that would allow for growth or expanding breeds where markets are demanding them and that sort of thing.

MR COLES (VS): In fact I argue in my paper to the Canadian Seed Trade Association that - - -

MS MacRAE: I haven't read that yet, I must admit. I read your covering piece but I haven't had a chance to read all the accompanying - - -

MR COLES (VS): I don't blame you for that, it's quite long. I argue in that paper that there are important pre-breeding research that needs to occur and needs to be funded by the industry at large. GRDC is in the best position to do that and has done it very well. But when it comes to applied breeding, the final part of taking those new generic improvements through to actual varieties, I have a view that it ought to be private plant breeding that does that. The history is that private breeding is very efficient at doing that but the act needs to be changed in order to put forward a robust financial model to enable that to happen. But the quick answer is that, yes, I do believe that providing we got the changes we require of the PBR Act then we would have the possibility of reminder growers of their responsibilities under those agreements.

DR CRAIK: Would it be useful for you to document for us the changes that you think would be required because I would have thought in the long run the opportunities in a deregulated industry for a lot of niche markets was significantly greater than in the previous single desk model.

MR COLES (VS): Sorry, you've asked two questions there, I think, if I'm not wrong.

DR CRAIK: I guess what I'm saying is it seems to me that in a deregulated market the opportunity for a lot more niche marketing of different varieties and kinds of wheat is much greater than it was in a single desk model. Given that's the case, I guess it would be of interest and news to us to have documented what you see as the changes that would be needed to the PBR Act to facilitate that.

MR COLES (VS): We have put a lot of work into that. The document is referenced in my paper. It's a submission to the special group which are reviewing

the act under IP Australia and I'm pretty sure that you'll be able to go onto the Internet and go direct to that submission.

DR CRAIK: Thanks very much.

MS MacRAE: Is that your footnote 2, just to be sure I've got the right paper, the further submission to the - - -

MR COLES (VS): Yes, it is.

MS MacRAE: Thanks.

MR COLES (VS): Please let me know if you can't find it.

DR CRAIK: That would be good. That's helpful.

MS MacRAE: Just in relation to the role of the GRDC, are they happy with their place in the scheme of things for this? You're saying from your point of view it's good that they do the pre-breeding side and that the private sector should really be looking more at the applied breeding. Would that be the GRDC view, do you think?

MR COLES (VS): We've asked this question of GRDC on a number of occasions and the answer we get is that they would like to see their breeding companies become self-sustainable and to have sufficient end point royalties to sustain their own operations as independent companies, independent of the GRDC. I don't believe that that has been achieved yet but they initiated significant rationalisation and a good deal of the 16 companies, some of which attached in a truncated way to the GRDC funding process. So they've initiated and achieved a significant rationalisation. There are a number of farmers groups that might see it as a backward step because they've lost their regional breeding organisation, such as New South Wales Queensland, in the process and are very concerned that that germ plasm will be lost and not maintained.

However, the GRDC has put significant investment into molecular plant breeding and in most cases on the current economic system within the wheat industry that is beyond private companies to contemplate. There are a lot of these biotechnology traits that are being researched don't produce such a major economic benefit to producers, they're rather consumer end benefits but still very important to enable Australia to lead the world in wheat quality.

DR CRAIK: Just to go off on a slightly different note, one of the things you do raise is delivery standards and physical delivery standards. I assume this is the sort of standard that GTA are trying to have a role in and prescribe. Is that what you're

talking about there?

MR COLES (VS): Yes, it is what I'm talking about except that one issue in particular which I have raised in there and I have produced some evidence of it bringing another industry almost to a complete halt and that is the export of oat and hay. There were several calves killed in Japan as a result of contamination with rye-grass seed that had toxic galls in the seed. It's a syndrome called annual rye-grass toxicity. There has been quite a lot of research work done and several biological options available to overcome this but it's a sleeping giant and my belief is that without it being addressed it could bring the Australian wheat industry to a halt unless something is done about it progressively over the next few years.

DR CRAIK: So are you suggesting that the standards that GTA have proposed would be insufficient?

MR COLES (VS): My understanding is that they haven't altered the acceptable level of rye-grass in wheat exports. There has been some surveys done by GRDC but they haven't been made public yet. I would hope that they will continue to address that survey and to map out some solutions to overcome the problem without having to reduce the particular delivery standard that points towards the percentage of annual rye-grass in wheat deliveries. A consequence of reducing that is that you might end up with having to put screens into every delivery point around Australia to take out rye-grass to meet a delivery standard. The two consequences of that are the cost of doing that but it would hold up grain deliveries right around Australia with lines of trucks waiting to have their grain screened before it entered into the segregations.

We believe the simple solution is to aggressively attack the biological solutions for this rather than further restricting delivery standards.

DR CRAIK: In the field?

MR COLES (VS): In the field but its going to take some significant change in the attitudes by both farmers and extention personnel.

DR CRAIK: Investment.

MR COLES (VS): Not so much the investment actually because most of that's behind us but it's going to take some cultural changes to enable this, let's say, cross-pollination elimination method to occur to change the actual susceptible rye-grass that's in the field. We're already talking to the oat industry to take steps to try and get that happening.

MS MacRAE: Just in relation to those delivery standards, we've heard a little bit - and I think you might have been here earlier enough to hear the discussion around the container trade and how quality in the container seems to be a growing concern. We're still trying to get a handle on why and how big that problem might be. Do you have a view about the quality standards that apply and whether having that deregulated container side compared to the more regulated bulk wheat side, whether there's a difference in the quality, the physical standards that you get at the end point to market or not?

MR COLES (VS): One of the downsides of losing our single desk is that at least in the segregations we don't have so much mixing of grain so that the poor purity standards of delivery from single farms got mixed up with very clean grain from another farm and you ended up with a satisfactory outcome. Licences for individual container exports have been around for a lot longer but it was said to me recently that there is great concern that we could now have one contaminated farm going into one shipment, be it container or bulk shipment, that could cause real injury to human health in another part of the world.

DR CRAIK: I don't think I have anything else, Angela.

MS MacRAE: Nor me, I don't think. That has been very interesting and quite different to many of the other submissions we've had, a bit more of a niche again but we're learning fast - or trying to. So thank you very much for that and if we've got any queries I'm sure we know how to contact you. Thank you for putting in the time and the effort for coming today and for giving us your submission.

DR CRAIK: Thank you.

MS MacRAE: Hopefully you'll follow us with interest and we'll take a bit more time to read your attachments.

MR COLES (VS): Thank you for the opportunity.

MS MacRAE: Thank you.

MS MacRAE: If you could state your name and the organisation you represent and if you've got an opening statement that would be great and then time for questions.

MR McNAIR (ABA): I'm Simon McNair from the Australian Bulk Alliance. I'm the general manager of the business. Australian Bulk Alliance is a relatively young bulk handling company in Australia - we commenced about 1999 - and we have two facets to our business, one is country storage where we facilitate the trade between growers and marketers and store grain for both those parties. We also own and operate a terminal at the Port of Melbourne called the Melbourne Port Terminal. Just to clarify, the Melbourne Port Terminal is half-owned by a subsidiary of AWB and half-owned by ABA which is a joint venture between ABB, who is now Viterra, and Sumitomo Australia who is part Sumitomo International and a subsidiary of ABA called MTO is the sole operator of the terminal at Melbourne.

You were asking questions before about the terminal. It's interesting when you look at the contractual arrangements for operating the terminal there is a clause in there that says, "The terminal is to be operated by MTO for the sole benefit of MTO." So the owners of the terminal have no say in how it's operated. All they get is a rental based on the grain that goes through there. ABA started in 1999. It was a joint venture between a couple of ex-grain handling companies, one called Grainco from Queensland and Ausbulk from South Australia. Grainco a few years later was bought out by GrainCorp and the ACCC said, "That's too big, you need to divest your equity in ABA." So Sumitomo acquired Grainco's equity in ABA. On the other side, a few years back, Ausbulk was taken over by ABB Grain and then ABB Grain was taken over by Viterra this year.

So in effect we're a fifty-fifty joint venture between Viterra and Sumitomo. We have about eight country facilities through southern New South Wales and Victoria that collect grain from farms and facilitate the trade to market as we store it, principally in bunker storage which is low capital cost, high operating cost. They're very large facilities compared to, let's say, GrainCorp. We'd average in excess of 100,000 tonnes per site.

DR CRAIK: Did you say yours is about 100,000 per site?

MR McNAIR (ABA): Yes, in a good year but I haven't seen a good year for a few years. I can recall three years ago we had seven sites and we had 832,000 tonnes received. So it's pretty much in bunkers, flat storage. I will put it on the record that fewer segregation is possible and it would suit our business. Melbourne terminal is a bit different from a lot of the other bulk terminals in Australia. We have storage for 48,000 tonnes, wheat equivalent tonnes. So we can really only accumulate one cargo at a time. A parallel might be ABB or Viterra's new terminal in Port Adelaide which is going to be 60,000 tonne at capacity so they might be able to accumulate two

30,000 tonne cargos at a time.

But what it does do is it makes it very critical that you handle the logistics right to maximise volume through that facility in a year. By that I mean we need to be able to control what grain comes in, the grades, the owners so we have as fewer segregations as possible to get the maximum storage utilisation as possible. Throughput through the facility is where we make our money, not by providing lots of segregations.

We have not put in a submission to the Productivity Commission, I'm afraid, but I have read a few of the submissions made and I suppose firstly I'd like to say, not all bulk handlers are necessarily tarred with the same brush, some are a little bit different. I'm not sure if I heard positive comments about Melbourne terminal earlier or not but I'll take them as positive. We operate in the only competitive market in Australia for terminals. We compete head-on with GrainCorp's Geelong facility. If you look at the road and rail pathways through Victoria and southern New South Wales, you could pretty much see at a glance that those two terminals complete head-to-head. There are some slight differences in freight costs from here or there but really it's a very competitive market. Those two terminals would have in excess of three and a half million tonne per annum capacity and we haven't seen that much of grain exports out of Victoria for many, many years.

At the margins we also compete with Port Adelaide, Portland and Port Kembla. So a very competitive market. We cannot afford to be lazy in that market. We cannot afford to not do business when it presents itself. So this issue for us - and I know we're exempt from these access undertakings about providing free and fair access to all, it would be commercial suicide not to do so. Whilst a few people have said in their submissions, and even here today, that the three stakeholders in Melbourne Terminal could, if they wished, lock out other people from the terminal or using the terminal, at least two of those would have to get together. At the moment I report to a board of directors that's 50 per cent one shareholder and 50 per cent the other and if there is a deadlock of a major issue, one shareholder needs to buy out the other. That is how it's concluded.

We went through this with the WEA and also with the Essential Services Commission of Victoria about the Grain Handling and Storage Act - I've been a bit experienced at these things in the last two years. To give you an example of why we don't lock out other people, if you looked at what happened with grain exports, bulk exports through Victoria this year and it hasn't been a big year - although it's been bigger than last year - part-owner of the terminal, AWB, exported wheat through Geelong, GrainCorp Geelong, not through us early on. Didn't even give us a look-in and yet they're a part-owner of the terminal and they get rental based on how many tonnes go through the terminal. If you looked at our shipping stem at the moment,

you'll see that there's about eight marketers on there. Some have missed out because we're full for the year and hopefully everyone will execute so we'll make a quid for a change. But we cannot afford to let business go by.

The reason we don't have this, subject to the access undertaking, is because no-one stakeholder controls us. As I said before, MTO is the operator of the terminal, the operating contract says it's to be operated for its own benefit. MTO is owned by ABA and ABA is owned by Viterra and Sumitomo but no one of those parties can control ABA or MTA, there needs to be a joint decision. I believe that's why WEA found that we were not an associated entity and therefore no subject to the access regulations. I can speak with a bit of certainty about the competitive market and the market forces that are out there because of the way we're structured and the business we operate in.

It was also interesting reading the submissions from the other bulk handlers about the cost of achieving the undertakings. There's talk of, I think, in excess of a million dollars each. If we had to go down that process and we incurred those costs and we target that capacity, a bit over a million tonnes a year, it's a dollar a tonne per annum which we would call a tax on our business. A dollar a tonne when you're charging $16 or $17 a tonne only in a competitive market, if we can't recover that, we are going to lose market share. So for us it's potentially a very significant cost compared to the GrainCorps, the ABBs and the CBHs where they have a number of terminals and they're exporting four to seven to eight million tonne a year, the actual cost per tonne of compliance is a lot lower. For us, if we were subject to it, it would ruin the business. A dollar a tonne is that critical at the moment.

I have also heard some people say and, in some submissions, talk about regulation of up-country storage and this was discussed when we looked at the Wheat Export Act. If we look at eastern Australia, if you were going to regulate up-country storage, we need to regulate all up-country storage and I've got no idea how you're going to regulate on-farm storage. On-farm storage is a very, very big competitor. This year and next year we will be taking grain at Melbourne Terminal direct off-farm. We don't have a large impost for it, it's a very small additional fee because of additional sampling and additional risk that we take - I think it's about a dollar a tonne - but we will be doing it.

So if you were going to regulate our country storage, you're going to regulate GrainCorp's up-country storage, we have to regulate on-farm storage and the plethora of private stores that are out there. I know from a previous life that ABB Grain had 11 private storage facilities in Victoria and southern New South Wales in years gone past. I also heard you asking before about how much on-farm storage might be out there. If I can go back to - and I hate admitting this - the early 80s when I worked for a business called the Grain Elevators Board of Victoria which became GrainCorp or

part of GrainCorp is today, I think it was about 1986 they tried doing a survey of on-farm storage and that was when grain storage was regulated. You had to deliver to GB. In fact transport agreements were regulated. If you were going to deliver more than I think 50 or 60 kilometres from the farm gate, it had to be by rail.

Now, that survey back then looked at everything you could store grain in, be it pads, be it silos, be it machinery sheds you might be able to put grain in. The conclusion we drew back then, if my memory serves me correctly, it was the equivalent of the central bulk handling system in on-farm storage which was about 3 million tonne in those days. So if, as the VFF said, it is the growing industry in south-east Australia, I would expect you could say the same again today, that there's millions of tonnes of on-farm storage that compete with our business and GrainCorp's and others.

If I was to talk about the regulation of wheat marketing also, I'd have to ask the question: why is wheat different from any other grain? In the last 10 years we've gone through deregulation of barley marketing; domestic wheat marketing was deregulated in the late 80s. Bear in mind in south-eastern Australia and eastern Australia, all farms have got a choice to sell into domestic or export markets. They don't just have to sell export. We've had the pulse industry and the oilseeds industry grow without any regulation. The sky hasn't fallen in. I think the comment was earlier made about accreditation of wheat exporters for a fit and proper purpose; well, so what? What does it do? There's no guarantee of paying the funds, which you've rightly pointed out. So I cannot see the benefit of continuing a regulation program at all, none whatsoever. I'll just leave it at that.

DR CRAIK: Simon, the ABA obviously has to publish the daily shipping stem and things like that.

MR McNAIR (ABA): We don't have to. We've told the WEA we would though.

DR CRAIK: Okay. So you're not required to, even though - - -

MR McNAIR (ABA): No.

DR CRAIK: I thought the initial arrangements were that before 1 October, everybody, all the bulk handlers had to - - -

MR McNAIR (ABA): Correct.

DR CRAIK: Or was that just the bulk handlers that were marketers?

MR McNAIR (ABA): No, it was all, and we then gave a commitment to the WEA

that we'd continue to do that and an access protocol, and I think we also said until further notice. But we are doing that, so there is a stem on our web site and an access protocol.

DR CRAIK: Yes, okay. Is there any other way that the Wheat Export Marketing Act affects you directly, the existing regulation?

MR McNAIR (ABA): No, not really, not at all. There are, what, 23, 24 accredited wheat marketers. We do a pretty extensive marketing campaign leading to the start of harvest with our client base, both existing and potential and you can have a look at our stem to see who our major clients are at the moment.

DR CRAIK: Yes. I didn't realise having that storage up-country as well - - -

MR McNAIR (ABA): Yes, we have four in southern New South Wales from Griffith down, two in north-western Victoria, one in the WD and one in the Wimmera. The Wimmera one is the second year, so that's fairly new.

DR CRAIK: So this year you say you're going to accept direct from farmers. Is that right?

MR McNAIR (ABA): No, we always have. Probably earlier this year we did quite a lot. There wasn't a lot of grain around and the clients that we were dealing with, the exporters, they wanted to. As far as I'm concerned, it didn't really matter where it comes from, we'll reject the grain if it doesn't meet their standards, simple as that. If that's a cost to somebody, that's someone else's problem, not ours. We have been taking grain from GrainCorp and GrainFlow and ABA sites in the last 10 years and from private storage. On-farm storage versus a private operator or versus a GrainCorp or a GrainFlow, it's still wheat, it's still got to pass the standards, because the market has asked us when it comes to our facility, even from our own facilities in the country, "Please check that it's the right quality for what we need to put on the ship." If there's insects in it, we reject it, or we have a very, very large cost for fumigating it.

DR CRAIK: Does most of it come in by rail?

MR McNAIR (ABA): In the past, yes. Now it's changed and it's hard to say what the future will hold there because we've had deregulation of rail, we've had change of ownership with the deregulated rail operator. We've got a number of players. There's still debates about the access regime in both New South Wales and Victoria. We have three operators that can bring grain by rail into our site, GrainCorp with PN; AWB GrainFlow with El Zorro, and ABB with GWA. I'd be very, very surprised if I ever saw a GrainCorp train at our site. Something would have gone wrong

somewhere for that to happen. I can't see them looking after their competition. We ourselves have had negotiations over the last three years with train operators to take on trains ourselves but as those negotiations continued into the spring and the spring turned dry, we did pull the plug on those. It is very critical for us because if we get, let's say, three to four trains a day which is entirely possible to the terminal, we can accumulate a cargo in a week by rail, 40,000 tonne.

DR CRAIK: Yes.

MR McNAIR (ABA): We can do about half that by road in a week. The future I think for us is going to be a combination of road or rail.

DR CRAIK: Do you have room for expansion at Melbourne Port storage?

MR McNAIR (ABA): Very limited. When Sumitomo came on board as an owner, they required us to relinquish surplus land at the terminal, so we have a small area that we could put some capacity there. Capacity is a constraint to our business but we haven't had a lot of revenue the last few years to justify growth.

DR CRAIK: Do you export much other grain? Does much other grain go through your port?

MR McNAIR (ABA): Sorry to be pedantic here. We don't export.

DR CRAIK: No, I'm - - -

MR McNAIR (ABA): Look, we've done wheat, canola, barley, pulses. Pulses have come in as well from WA. We've had oats come in and go out, so we've taken grain in the last couple of years.

DR CRAIK: From WA?

MR McNAIR (ABA): Yes, AWB brought some lupins over earlier this year, so we discharged the vessel, stored it and then loaded their trucks to distribute to the domestic market. We've had oats go through the facility. If I had my way, we'd just do wheat, because wheat and barley - you can't put wheat deliberately on top of barley if you want to fill up a bin, and it's even worse with canola because it's quite obvious. I hate to say it. You can sometimes get away with a little bit of barley in your wheat crop when you want to pick it up. So this year we made a concerted effort with our clients to convince them we only wanted to do wheat and our shipping stem has - we've loaded one barley cargo in the last month and a half and might have another one in January. But for us to get the efficiencies we need to get the profitability or the returns that we need, we need to maximise throughput, which

is minimising segregations and maximising turnover of capacity. So if we can get a cargo every two weeks out, I'd be very happy.

DR CRAIK: Given your comments on the level of the current regulation of the wheat industry, I assume you're suggesting that WEA need no longer exist. What about the access undertaking to the ports?

MR McNAIR (ABA): I can understand why the access undertakings are there. I can seriously understand why companies with the financial strength that GrainCorp and ABB and CBH have and their exporting, how they could squeeze out competition, but I do know there are other ways of loading ships as well. We've had Wilmar Gavilon purchase the Brisbane sugar terminal and state they intend to put wheat through it. There have been parties looking at alternative loading arrangements out of Geraldton; in fact I think they've done a vessel this year. I can remember back in the early 90s, someone loaded a vessel of pulses through Portland but not through the GrainCorp facilities. We have the potential to load ships through Lascelles wharf at Geelong which is principally an import wharf for fertilisers and meals, but they had the capability of doing grain.

I do know of people looking at another terminal on the east coast of Australia as well. I'm definitely not allowed to talk about that publicly, maybe privately. So the barriers, to answer you, are not insurmountable. They're expensive; if you look at ABB's out-of-harbour terminal, probably $150 million to build that. Our terminal in 99 cost about 38, 40 million dollars to build. The price of steel has gone up a bit more than CPI in the last few years, so you're probably going to spend in excess of a hundred million a year. The terminal lasts for 50 years; a million tonne a year, interest rates relatively low, yes, 1 to 1.2 million tonne a year, you might be able to make a reasonable return, not a great return. But you're adding capacity at a greater rate than supply and that's going to be a real problem, so someone is going to miss out in all of that.

DR CRAIK: There's already an existing fair degree of capacity in ports for wheat exports.

MR McNAIR (ABA): In the south-east of Australia, there's definitely over-capacity. It's more that if everyone wants to ship at the same time, there's not going to be enough capacity, so there's going to be those peaks and troughs and that's where we have to understand that. Also, the market, we hear people complain about there's not enough capacity, but one thing that does happen, a vessel never turns up when the marketer says it's going to and it's always someone else's fault, a weather delay or they failed survey. A business like ourselves or GrainCorp and a vessel is delayed by a week and we can't accumulate another cargo because we've already got the cargo there, we hold one cargo, that's a week of revenue that this business missed

out on that you never recover. It's an infrastructure business, so that's very, very critical to our business. In a facility like Geelong that's got hundreds of thousands of tonnes of storage, it may not be as bad. So someone building a new terminal, they're probably going to not have surplus capacity, so they're going to have to manage their logistics very closely.

MS MacRAE: We do get complaints and we've heard them and they're usually not very specific complaints but would you say that you have many disputes with growers coming for deliveries and not getting what they thought they were promised? How big a deal is it? Is it something we should be concerned about?

MR McNAIR (ABA): During harvest it's a bit of a pressure situation, particularly if we have a big harvest. There's always some disputes, generally very, very minor. Someone says, "You've measured the protein at 12 and the previous load from the same paddock was 13." We have a mechanism for that. We're prepared to take another sample and retest it. If they still aren't happy, they've got to go to the back of the queue, so there is a mechanism for doing that.

We have a strict sampling testing regime in place whenever we move grain and we keep records of that. That's pretty much an insurance policy for us. You do hear a lot of anecdotal evidence of people saying, "It's this quality and someone else tested it at that because they wanted to make money." We're not a marketer. All we do is what we're told to by our clients. If we're accumulating, let's say, a hard cargo at the terminal and they said, "Yes, take in APW," because they believe they can still deliver hard at the end of the day in terms of the shipment sample, we'll do that, but we're not the marketer there.

You were questioning people earlier about containers and the issue there. A lot of it is going to depend on the contract and how they've sold the grain, if it's sold subject to a consignment sample or a container sample. A consignment sample could be a 20-container consignment or a 40-container consignment and the sample is then representative, so as long as that sample is fine, if the individual container is out of spec, there's no contractual recourse. But if they're selling on a container sample, it could be a lot harder. The sampling regime for 25 tonnes versus 30 tonnes is a bit different. We hear that all the time. We have to be very careful that we do what our clients tell us and we do the testing.

MS MacRAE: Just in relation to you saying you publish your shipping stems and you've got an access protocol, are there disputes around those? Do you have much dispute around those?

MR McNAIR (ABA): Our contract arrangement has dispute resolution clauses but that's probably not about access, it's more about contractual services.

MS MacRAE: Right, okay. That was what I was trying to get with the VFF earlier because from our point of view, there seems to be a lot of confusion about what the dispute is actually about and saying the ACCC is going to get involved in issues that are really nothing to do with access but more to do with contractual - - -

MR McNAIR (ABA): Correct, yes.

MS MacRAE: It's a separate issue really and we're finding in the submissions they're being put together as common elements when they're not.

MR McNAIR (ABA): And I think that's why the other terminal operators are setting up a mechanism - different mechanisms, they may well be - but where exporters can apply for - let's call them shipping slots - I don't necessarily like that terminology because it has some bad implications - and that's it. What we did is we went round to our preferred client base, which were those clients who have worked with us the last couple of years, and said, "What would you like to do next year?" Then we asked them to put some money up-front to confirm their commitment, but very similar to probably what the others are doing, trying to get their nomination fees earlier. But there's a real big opportunity for cost - if someone says they're going to do something and do nothing. In the past we had no recourse. I think we'll probably see a bit more of that because we have - and all the terminal operators have - very large fixed costs and they need to be able to share that revenue volatility with their clients. They haven't been able to for a number of years. Now they wish to, as do I.

MS MacRAE: Okay.

DR CRAIK: Can I ask you, have you had many disputes over contractual services since the market was deregulated?

MR McNAIR (ABA): Since the market was deregulated? I don't know if I want to talk about that. They're confidential.

DR CRAIK: Right.

MR McNAIR (ABA): Every year there will be disputes which we handle according to the contract and according to the law, some major - we haven't had some for a couple of years. We've got a couple on the go at the moment. One I think revolves around the definition of "nil". What is nil? How low is nil? If you look at how grain is tested, a truck comes in, 25 tonnes in a semi, and we take a half-litre sample to determine the quality and we have to test a range of parameters and some are nil; nil for live insects, nil for some contaminations. But we only test a sample, we don't test the whole bulk, so again I say: what is nil, because I could almost

guarantee that every truckload, I could find something wrong with it to knock it back, if I spent enough time looking at it. We take three probes, we create a half a litre sample that is supposedly representative and the industry has accepted that. I think you will find - and we're talking about GTA standards - that this definition of "nil" will be debated more and more over the coming years.

MS MacRAE: But I guess from your point of view, the system can cope well with disputes and there's no additional added regulation or anything that's required, it's just a market contract - - -

MR McNAIR (ABA): The contract disputes, correct. The GTA has got arbitration mechanisms if it's a GTA contract. If it's a non-GTA contract, like our service contract, there are dispute resolution clauses in there. We've talked about the Victorian Arbitration Act. Outside of that you've got the Trade Practices Act if someone wants to try that on you as well.

MS MacRAE: Okay.

DR CRAIK: Okay. I don't think I've got anything else, Angela.

MS MacRAE: No, very informative. We've had a good range of speakers today. Yes, that's been great. So thank you for making the time. I think that then concludes today's scheduled proceedings. There is an opportunity if anyone else did want to say anything before we formally close. No. Then I think we'll adjourn the proceedings for today and we reconvene in Perth on 3 December, not far away. Thanks, everyone, for today and see you in Perth.

AT 5.21 PM THE INQUIRY WAS ADJOURNED UNTIL
THURSDAY, 3 DECEMBER 2009