

Wheat Export
Marketing

Productivity Commission
Arrangements

Issues Paper

October 2009

The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website or by contacting the Media and Publications section on (03) 9653 2244 or email: maps@pc.gov.au.

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ISSUES PAPER

THE ISSUES PAPER

This paper is intended to assist you in preparing a submission to the Productivity Commission's inquiry into Wheat Export Marketing Arrangements.

In this paper, the scope and conduct of the inquiry are outlined, followed by a range of issues about which the Commission is seeking comment and information.

Participants should not feel that they are only to comment on matters raised in the issues paper. The Commission wishes to receive information and comment on issues that participants

consider relevant to the inquiry's terms of reference. Participants should give evidence to support their views, such as data and documentation.

MAKING A SUBMISSION

Please read Attachment A to this paper for details about how to make a submission, and use the submission cover sheet provided in Attachment B. While the Commission would welcome submissions early, your submission should reach us by no later than 13 November 2009. This will ensure that the Commission can give your submission due consideration in formulating the inquiry's draft report, which will be released in mid March 2010.

KEY INQUIRY DATES

Due date for initial submissions 13 November 2009
Initial public hearings and roundtables mid November/mid December 2009
Draft report released mid March 2010
Draft report submissions due mid April 2010
Draft report public hearings and roundtables mid April/mid May 2010
Final Report presented to government 1 July 2010

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WHEAT EXPORT MARKETING ARRANGEMENTS

About the inquiry

What has the Commission been asked to do?

The Australian Government has asked the Commission to examine the operation and effectiveness of the current wheat export marketing arrangements (see Attachment C for the full terms of reference).

The Wheat Export Marketing Act 2008 (Cwlth) (the Act) came into effect on 1 July 2008. Under the Act, a new regulator — Wheat Exports Australia (WEA) — was established to formulate and administer an accreditation scheme for bulk wheat exporters. The Wheat Export Accreditation Scheme 2008 (Cwlth) (the Scheme) also came into effect on 1 July 2008.

The inquiry covers the operations of the Act and of the Scheme. Among the matters to be considered by the Commission are:

- the effectiveness of the arrangements in meeting the objectives of the Act, including the role of WEA
- the suitability of the eligibility criteria for accreditation of exporters
- the appropriate level of assessment of each applicant for accreditation by WEA against these eligibility criteria

- the appropriateness of the access test requirements for accreditation of port operators as exporters
 - the effectiveness of, and level of competition in, the transport and storage supply chain for wheat
 - the availability and transparency of market information.
- If considering changes to the operation of the Act or the Scheme, the Commission will also examine how such changes would affect arrangements to fund WEA and the use of cost-recovery mechanisms.

The Government has described the inquiry as 'one of a number of checks and transparency measures incorporated to assist wheat growers and industry with the transition [*italics added*]' (Sherry and Burke 2009). The Commission has therefore

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not been asked to compare the current arrangements for wheat exports with those that previously prevailed through the single desk arrangements. Rather, the inquiry will focus on possible changes to the current arrangements.

The terms of reference ask the Commission to assess the arrangements in meeting the objectives of the Act. At a high level, the Act can be seen as having two key objectives:

- the accreditation of bulk wheat exporters to ensure that they are 'fit and proper' to export wheat from Australia
 - ensuring that the operators of port terminal facilities that also want to be exporters cannot use access to their facilities to inhibit competition from rival exporters.
- The Act ties port access to accreditation by requiring that operators of port terminal facilities seeking bulk wheat export accreditation must satisfy an 'access test' regarding their port facilities. However, interested parties might find it useful to separately assess each key objective when responding to these and other issues raised in this paper.

Conduct of the inquiry

The Government has requested that the Commission consult widely with relevant stakeholders, and that stakeholders be given the opportunity to comment on the operation of the arrangements for the export of the 2009-10 crop.

The Commission's approach, as in all of its inquiries, is to review the relevant literature, analyse data, and take evidence from submissions, public hearings and roundtable discussions. The Commission has already held initial meetings with a range of interested parties to identify relevant issues.

The Commission is calling for submissions in preparation of a draft report outlining the Commission's preliminary findings and recommendations. The due date for submissions is 13 November 2009. The Commission will then hold public hearings

and roundtable discussions from mid November to mid December 2009, and the draft report is expected to be released in mid March 2010.

Participants will have the opportunity to comment on the draft report and make further submissions. The Commission also plans to hold a further series of public hearings and roundtable discussions with interested parties on the draft report. The Commission will then present its final report to the Australian Government by 1 July 2010.

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The draft report will draw upon data for the 2008-09 crop and, if available, preliminary data on the 2009-10 crop. A more comprehensive assessment of the 2009-10 crop will be made in the Commission's final report.

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Issues and questions

*** PREAMBLE

THIS REVIEW WAS TO TAKE PLACE AFTER TWO YEARS OF OPERATION UNDER THE NEW SYSTEM OF MARKETING. OBVIOUSLY, GROWERS ARE NOT BEING GIVEN A FAIR OPPORTUNITY FOR INPUT WHEN THE CLOSING DATE FOR SUBMISSIONS IS BEFORE MANY OF US BEGIN THE SECOND HARVEST AND AT A TIME WHEN FARMERS ARE SO BUSY THAT THEY CANNOT TAKE THE TIME TO MAKE A REASONABLE CONTRIBUTION. ALSO, FOR MANY, THE HARVEST WE HAVE EXPERIENCED UNDER THE NEW ARRANGEMENT WAS SO LIGHT DUE TO DROUGHT, THAT IT BEARS LITTLE RELEVANCE.

THIS NEW SELLING ARRANGEMENT CANNOT BE ASSESSED PROPERLY UNTIL WE HARVEST AND SELL THE ENTIRE PRODUCTION FROM A LARGE HARVEST ACROSS THE WHOLE COUNTRY. THIS COULD TAKE SEVERAL YEARS EVEN AFTER SUCH A HARVEST IS COMPLETED.

Accreditation of exporters

WEA was established under the Act to formulate and administer an accreditation scheme for bulk wheat exporters, to replace the arrangements that followed the removal of the AWB monopoly over wheat exports.

Why accredit bulk wheat exporters?

Section 3 of the Scheme states that its purpose is to establish a system of accreditation for companies to export bulk wheat, as evidence that they are 'fit and proper' to export wheat from Australia. Exporters of wheat in bags and containers or of other grains do not require accreditation.

Accreditation by WEA is intended to promote competition and choice in marketing for growers while providing them with some level of assurance that a bulk wheat exporter will not default on its liabilities (Burke 2008). However, neither the Act nor the accreditation scheme provide any financial guarantee or underwriting of accredited exporters.

Have market participants benefited from accreditation of bulk wheat exporters?

Does the information provided by WEA through accreditation assist growers with their export marketing decisions? Does WEA provide information that cannot be obtained from other sources?

What role, if any, does accreditation play in the efficient operation of the wheat export market? Does it alter the incentive to export wheat in bags or containers rather than bulk, or vice versa?

Is there an ongoing role for accreditation of some form or is it needed only for a transitional period?

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If ongoing accreditation is required, are there alternative options for accreditation that would deliver better outcomes? What are the costs and benefits of alternative options for accreditation?

Is it appropriate that bulk wheat exporters be subject to an accreditation process when those in industries such as the following are not:

- non-bulk exports of wheat and other grains
 - domestically traded wheat and other grains
 - other bulk export grains?
- If ongoing accreditation is not required, what is an appropriate time for it to end?

What would be the consequences of removing accreditation?

In the absence of accreditation, would regulation of other aspects of bulk wheat exporting still be required? If so, which aspects? Is there anything particular about the wheat industry that requires additional regulations that other grains and commodities are not subject to?

Criteria and conditions

To fulfil the eligibility criteria for accreditation under section 5 of the Scheme, a prospective exporter must:

- be a registered company or co-operative, that is subject to Australian law
- satisfy WEA that the company is fit and proper against a broad range of probity and performance indicators
- satisfy WEA that the company is not an externally administered body corporate
- pass an access test in relation to its port terminal services, where it also provides such services.

Accreditation is also subject to a number of conditions including the preparation of annual export and compliance reports and a requirement to report to WEA on notifiable matters. In addition, WEA has the discretion to impose other

conditions
on accreditation if it deems necessary.

Are the eligibility criteria for, and conditions imposed on, accreditation of bulk wheat exporters appropriate? If not, what changes need to be made? What is the appropriate duration of accreditation? If accreditation is ongoing, should there be more stringent tests for initial accreditation than for renewals?

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Is there an overlap between the accreditation criteria (and conditions) set out in the Act and requirements of other existing regulation, such as the Corporations Act 2001 (Cwlth) and the Customs Act 1901 (Cwlth)?

Level of assessment

The Act and the Scheme are not prescriptive about the level of assessment that the WEA should undertake in accrediting bulk wheat exporters and the conditions it imposes on accreditation. Inherent in this flexibility is the need to achieve the objective of assessing whether exporters are 'fit and proper' while not imposing unnecessary barriers to entry for potential exporters, excessive compliance costs on accredited exporters, and large costs on the regulator – which ultimately are passed on to growers.

Is the level of assessment and number of audits undertaken by WEA commensurate with the expectations of market participants?

What benefits are provided by the current level of assessment, including audits?

What compliance costs are associated with accreditation for bulk wheat exporters?

What regulatory costs do WEA incur from running the accreditation scheme?

Could accreditation present an unnecessary barrier to entry for potential exporters of bulk wheat?

How might the compliance and regulatory costs of accreditation change as the Scheme matures? Is renewal of accreditation a less onerous process than initial accreditation? Should it be?

Role and funding of WEA

The role of WEA is to regulate exporters of bulk wheat from Australia by managing the accreditation scheme.

Preliminary discussions with stakeholders suggest a wide range of views about the ongoing role for WEA, with some suggesting it be abolished and others suggesting its role should be expanded.

WEA is funded through the Wheat Export Charge (WEC) and accreditation fees. The WEC is currently set at \$0.22 per tonne, and is levied on all wheat exports

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(both bulk and non-bulk). The expectation is that WEA will be fully funded by the wheat industry (DAFF 2009a).

Low export volumes due to the drought have reduced revenue collected through the WEC. Operating expenses in the initial year of operation of WEA were also expected to be larger than in subsequent years. Therefore, the Australian Government has provided up to \$5 million to assist WEA's operations through the transition period (Burke 2008).

Is there any ongoing role for WEA? If so, what should the nature of that role be and how should ongoing functions be funded?

Are there any other organisations that could take on the role of accreditation? Is there scope for tendering out accreditation? If so, would this reduce the cost of the accreditation process?

Are the current funding arrangements for WEA appropriate and sustainable?

Are market participants getting value for money in the services provided by WEA?

Can Australia learn from the approach that other countries take?

*** ACCREDITATION FOR EXPORTERS IS NECESSARY TO AT LEAST GIVE GROWERS SOME ASSURANCE THEY ARE DEALING WITH REPUTABLE COMPANIES BY WEA OR A SIMILAR INDEPENDENT BODY.

COSTS SHOULD BE SIGNIFICANTLY LESS FROM NOW ON WITH RENEWALS LESS "ONEROUS" THAN INITIAL ACCREDITATIONS.

Port terminal access and services

In addition to seeking to ensure that bulk wheat exporters are 'fit and proper', the Act also aims to ensure that the operators of port terminal facilities that also want to be exporters cannot use access to their facilities to inhibit competition from rival exporters.

With the introduction of competition into the export of bulk wheat, there have been concerns that exporters which operate port terminals could use their control of the terminals to advantage their wheat export operations at the expense of rival exporters (SCRRAT 2008). The port terminal facilities are perceived as having natural monopoly characteristics. Access to those facilities and services under reasonable terms and conditions is essential to promoting competition amongst exporters.

The Act provides that, where parties seeking bulk wheat export accreditation also provide port terminal services, they must satisfy an 'access test' in respect of their port facilities to obtain wheat export accreditation.

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From 1 October 2009, these exporters must have a formal access undertaking accepted by the ACCC, pursuant to Part IIIA of the Trade Practices Act 1974 (Cwlth) (TPA). If the ACCC accepts the undertaking, it is then binding on the service provider (ACCC 2009).

Furthermore, bulk wheat exporters providing port terminal services must comply with 'continuous disclosure rules' requiring them to publish the daily 'shipping stem' and protocols for port access.

Three bulk handling companies, CBH, ABB Grain and GrainCorp, have undertakings approved by the ACCC for two years. The ACCC had previously made draft decisions to not accept the initial undertakings of the three companies, but accepted revised undertakings provided in September 2009. Subsequently, WEA has renewed the accreditation for the bulk handlers.

A publish-negotiate-arbitrate approach has been adopted by the ACCC in these undertakings. At this stage, it does not consider that price regulation is required. However, this could be reviewed in the future.

How significant are competition concerns relating to port access? Is there evidence of owners of port facilities gaining a trade advantage over rival exporters?

In the absence of access regulation, what is the likelihood of 'regional monopolies' being formed? Is the 'access test' under the Wheat Export Marketing Act necessary?

What is the prospect of rival port terminal facilities being built? Does this vary across jurisdictions?

Could access to port terminals be adequately regulated using only Part IIIA of the Trade Practices Act (without any link to bulk export accreditation)?

Would the port terminals be declared under the National Competition Council process if the requirement for accreditation were removed? If not, why is there a requirement for access undertakings under the Act? What would be the consequences of removing the 'access test' from the Act?

How significant are the compliance costs (to exporters and others) and regulatory costs (to the ACCC) associated with the requirement to have access undertakings?

Have export opportunities for bulk handlers been disrupted due to the uncertainty stemming from the access process? Has the uncertainty around the access undertakings affected other exporters?

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Is the requirement for port terminal access undertakings affecting investment in port facilities? If so, how?

Should terminal access arrangements be consistent across all grains? If so, what should be the nature of those arrangements? If not, what are the consequences, if any, of bulk wheat being treated differently?

Is the publish-negotiate-arbitrate approach to access regulation the best approach? If not, what would be better?

Are the charging mechanisms used by bulk handlers transparent? Do they advantage wheat exporting by the bulk handlers?

Is the ACCC well placed to deal with access disputes? Should another body be available to facilitate negotiation and arbitration of day-to-day issues where prompt resolution is important to exporting opportunities?

The Commission seeks views on whether bulk handlers should be subject to 'ring fencing' regimes (that is, some form of separation of the wheat exporting and bulk handling operations). There is concern that information held by the bulk handling operations could provide an 'unfair' competitive advantage to the exporting arms of the bulk handling companies. The accepted undertakings of the bulk handlers did not contain ring fencing provisions, although the ACCC has noted such provisions might be required in the future.

Should the bulk handlers have their wheat exporting businesses 'ring fenced'? If so, what form should ring fencing arrangements take?

To what extent would ring fencing result in a loss of economies of scope from a more vertically integrated business? Would it affect investment and innovation decisions?

In addition to the access undertakings required under the wheat export marketing legislation, bulk handlers are also subject to state legislation affecting access to their facilities, such as the Bulk Handling Act 1967 (WA) and the Maritime Services (Access) Act 2000 (SA). The Commission is seeking feedback on the relationship between the 'access test' under Commonwealth legislation and the state Acts, and whether the interactions between the various Acts create unnecessary regulation.

What is the relationship between the 'access test' under the Wheat Export Marketing Act and state legislation relating to bulk handling companies? Do interactions between the Acts create unnecessary regulatory costs?

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The Commission is also seeking views on other issues related to port terminal access. For example, the Commission is aware of concerns about bulk handlers owning land around terminal facilities (sometimes referred to as 'land-banking').

Some have suggested this raises competition concerns by acting as a potential 'barrier to entry' for potential rivals (including those who might want to offer rival storage facilities close to port).

Is there evidence of land-banking by bulk handlers? If so, is it of concern?

WEA has the legislated responsibility to determine whether a company seeking accreditation, or an associated entity, is a provider of a port service. In the case of

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the Melbourne Port Terminal, WEA considers Melbourne Terminal Operations Pty Ltd to be the port service provider, which is not seeking export accreditation and is not considered by WEA to be an associated entity of an accredited exporter. The facility is jointly owned by Australian Bulk Alliance (a joint venture between accredited wheat exporters ABB Grain and Sumitomo) and accredited wheat exporter AWB.

Are there any issues raised by the exemption of the Melbourne Port Terminal from the access undertaking requirements? Is the exemption appropriate? What are the likely consequences?

In the first year of deregulation, ships were queued at port in Western Australia for extended periods, leading to significant demurrage costs for exporters. The port operator CBH is introducing an auction system for the forthcoming harvest to allocate limited port capacity at peak periods.

Are the shipping problems experienced in the first year of deregulation likely to persist? To what extent were they teething problems in the first year of deregulation? Or are they symptomatic of broader problems, or typical of a peak load situation?

What role did the Grain Express arrangements play in alleviating (or exacerbating) these logistical problems?

Did these logistical problems impede Australia's export performance?

Will the new CBH (auction based) shipping allocation system in WA work adequately to allocate port capacity at times of peak load? Could the scheme be improved?

Are similar problems likely to emerge in other states when those states have larger harvests?

*** SINCE GOVERNMENT HAS DEREGULATED WHEAT EXPORTS, THEY CANNOT EXPECT TO CONTROL PRIVATELY OWNED PORTS OR STORAGE AND HANDLING FACILITIES.

THE WAY THIS WAS HANDLED IS A CLEAR ADMISSION OF THE INADEQUACY OF THE GOVERNMENT SCHEME.

SHIPPING AND DEMURRAGE PROBLEMS CAN ONLY INCREASE. SIMILAR PROBLEMS TO WA WILL OCCUR IN THE EASTERN STATES IF WE EVER HAVE A DECENT CROP AGAIN SHOWING THE INADEQUACY OF THE GOVERNMENT LEGISLATION FORCED ON THE INDUSTRY AGAINST THE WISHES OF THE MAJORITY OF THE GROWERS.

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Transport and storage

In addition to concerns about the access and operation of port terminal facilities, there are a number of other supply chain issues that potentially affect the performance of the deregulated bulk wheat export industry.

The issue of access to 'upcountry facilities' such as receival points and storage facilities was raised by many stakeholders in submissions to the ACCC. Although such facilities have fewer natural monopoly characteristics than port facilities, some interested parties consider they should also be subject to access undertakings. These facilities are largely owned by the same bulk handling companies that own the port terminal facilities.

Do upcountry facilities exhibit natural monopoly characteristics?

*** SOME DO. FOR EXAMPLE: GRAINCORP CONTROL OF THE MAJOR STORAGE AND HANDLING FACILITIES

Are alternative transport and storage arrangements being inhibited by the current arrangements? If so, at what cost?

*** YES. WE HAVE NOT HAD ENOUGH EXPERIENCE OF THE SYSTEM YET TO ASSESS THIS. EG: THE EXTRA FREIGHT COSTS IMPOSED ON THE WEEMELAH LINE OF \$1.50/TONNE. WE ARE LIKELY TO SEE MANY MORE SIMILAR SITUATIONS ARISE.

Do the terms and conditions of access to upcountry facilities represent a barrier to entry for potential exporters?

*** PROBABLY, ACCESS OF PRIVATELY OWNED FACILITIES CANNOT BE EXPECTED AT NO CHARGE OR EVEN IN COMPETITION TO MOVEMENT OF GRAIN BY THE OWNERS OF THOSE FACILITIES.

What is the prospect of competing facilities emerging? Does it vary across jurisdictions?

*** THIS IS ALREADY HAPPENING, EG ON FARM STORAGE.

THERE IS CERTAINLY VARIATION ACROSS JURISDICTIONS.

Is there any evidence of owners of upcountry facilities gaining an advantage over rival exporters?

*** EVEN WITH THE LIGHT HARVEST THAT WE HAVE EXPERIENCED, VERY CLEARLY THOSE WITH SOMEWHERE TO PUT THE GRAIN STRAIGHT OFF THE HEADER RECEIVED MORE GRAIN THAN THOSE WHO HAD NOWHERE TO STORE IT. EG GRAINCORP

Should upcountry facilities be subject to access regimes? Can access issues be addressed through Part IIIA of the TPA? What about for grains other than wheat?

*** IN A DEREGULATED SYSTEM, EVERYONE MUST BE ALLOWED TO RUN THEIR OWN BUSINESS.

If upcountry facilities were subject to access regimes, what would be the impact on the efficiency of the transport and storage system as a whole? Would it

distort
the transport system in favour of road and container transport?

*** I BELIEVE IT WOULD. GROWERS WILL ACCEPT THE EASIEST
AND WHAT THEY SEE AS THE SAFEST ARRANGEMENT FOR THEIR
GRAIN.

Do the Grain Express arrangements raise competition concerns? If so, to what
extent do these offset benefits of economies of scale and scope provided by
Grain
Express?

*** YES. TO THE EXTENT TO WHICH THEY DO, WE HAVEN'T SEEN
ENOUGH TO KNOW YET.

There are concerns about both the quality and ongoing viability of grain rail
lines.
Many lines are in need of significant capital investment if they are to continue
to
operate. However, many of the lines are unlikely to generate commercial returns
and operators and governments face dilemmas determining whether such
investments should take place.

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Concerns also exist regarding road transport. In some areas, port access by road
is
difficult. There is concern about the ability of road transport to cope if some
rail
lines were to close. As with rail, there are issues regarding whether future
investment in some roads is justified where little traffic is carried.

Is the rail system a problem for the export wheat industry? Has deregulation
changed this in any way?

*** YES. EG THE BACK-UP OF TRUCKS AND TURN-AROUND TIMES
AT PORT FACILITIES THIS YEAR EVEN WITH A LIGHT HARVEST.

Are limitations of the rail, road and receival and storage systems impeding
Australia's wheat export performance?

*** THEY CERTAINLY DID IN 2009 EVEN WITH A LIGHT HARVEST
WITH PROBLEMS GETTING THE GRAIN THROUGH THE PORTS.

Given the absence of commercial returns on many rail lines, can large scale
investments be justified? To what extent is the system in need of
rationalisation?

*** YES. WE MUST LOOK LONG-TERM. RAIL IS STILL THE MOST
THE ECONOMIC WAY TO MOVE LARGE QUANTITIES OF GRAIN
AND MUCH SAFER THAN LARGE NUMBERS OF TRUCKS ON
COUNTRY ROADS THAT ARE ALREADY OVER-STRETCHED.

MOST OR ALL RAIL LINES SHOULD BE MAINTAINED TO AN
EFFICIENT STANDARD.

Could the rural road system cope if some rail lines were closed?

*** DEFINITELY NOT. THERE IS ALREADY EVIDENCE OF ROADS
BREAKING UP AND WE HAVEN'T SEEN A DECENT HARVEST.

Are rail logistics a more significant problem on the East coast? If so, to what extent does the road system alleviate this?

*** UNKNOWN

Is truck access to port facilities a problem?

*** YES. THERE WERE LONG HOLD-UPS WITH DELIVERING GRAIN
THIS YEAR WITH A LIGHT HARVEST.

Specific pricing practices of bulk handlers have been raised as issues. For example, in submissions to the ACCC, some stakeholders have noted bulk handlers place additional charges on grain delivered to port that has not been carried on the relevant bulk handler's supply chain. Bulk handlers typically cite biosecurity concerns and the need to re-fumigate grain as justifying these additional charges, although many growers have suggested the motivation is to discourage use of rival supply chains or to discourage on-farm storage.

Do bulk handlers use the prospect of additional charges to discourage use of rival upcountry supply chains? To what extent are additional charges justified?

*** YES, THEY DO. EG LOCATION DIFFERENTIALS IE FREIGHT RATES
FROM PREFERRED SITES COMPARED TO SMALLER STORAGES.
ADDITIONAL CHARGES SHOULD BE MINIMAL.

Bulk handlers have sometimes employed relatively flat charging structures, which stakeholders have suggested were not always reflective of the actual services used by customers or of differences in the costs incurred by bulk handlers in providing those services. To the extent that such charging structures exist they have the potential to lead to inefficient outcomes and sub-optimal supply chains. For example, there could be a proliferation of transport or receipt and storage facilities that would not be viable if the prices charged by bulk handlers reflected the cost of their provision.

To what extent do bulk handlers continue to have relatively flat charging structures? Does this have efficiency implications?

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Is there a need for rationalisation of supply chains and are current pricing practices impeding this?

Does the ownership structure (or previous ownership structure) of some bulk handling companies lead to supply chain inefficiencies? Does it make it difficult

to price efficiently? Does it make rationalisation of uneconomic receipt and storage facilities more difficult?

Another issue raised by stakeholders relates to legal liability for damage to transported wheat. Although shipments of wheat may be valued at many millions of dollars, bulk handlers typically cap their legal liability at much lower levels. Some exporters argue that this is a disincentive to trade, as exporters bear significant financial risks associated with potential damage to grain after it has left their control. However, it is difficult for bulk handlers to take full legal liability for grain when the cost of fully validating its quality is large.

Are issues of legal liability (transport related) constraining trade in wheat? How might this problem be solved?

*** YES. EG NIL TOLERANCE ON AXLE WEIGHTS. THERE IS NO ALLOWANCE FOR LOADING IN PADDocks WITH NO FACILITIES TO CHECK WEIGHTS AND NO ALLOWANCE FOR MOVEMENT OF THE LOAD IN TRANSPORT.

SUGGEST A REASONABLE TOLERANCE BE ALLOWED WITH NO PENALTY PROVIDING AVERAGE WEIGHTS ARE WITHIN LEGAL REQUIREMENTS.

Information provision and market transparency

The government is funding the provision of some market information as part of the transitional assistance package to implement the new wheat export marketing arrangements. The ABS and ABARE are funded to provide this information for three years, until November 2011.

The ABS collects information on wheat stocks and usage, including exports. These data are released monthly (cat. no. 7307.0), with about a five week lag. Stocks data include stocks stored by bulk handling companies, which is also published in a separate monthly release (cat. no. 7112.0.55.001), and stocks stored by users, but exclude some on-farm wheat stocks. Wheat usage includes exports and domestic use, but excludes wheat used by the dairy industry.

ABARE draws upon the data from the ABS and its own production forecasts to produce its Australia Wheat Supply and Exports monthly report. This report includes an estimate of the volume of wheat that is available for purchase, and wheat exports by destination and shipment method (bulk or container). This report is released about one week after the release of ABS data.

Is the information currently provided by the ABS and ABARE useful and timely?

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If timeliness is a problem, are there any mechanisms to facilitate more timely provision of information?

What amount and type of market information should be made available and who should pay for it?

*** GOVERNMENT AS THEY CREATED THIS SITUATION.

With what frequency should information be provided?

*** REGULARLY AND ON SIGNIFICANT CHANGES. EG DURING HARVEST, WE MUST HAVE THEM AT LEAST DAILY AND MORE OFTEN IF THERE IS A MAJOR CHANGE.

Is there a role for WEA to provide information on the performance of accredited exporters? Would this assist growers in making marketing decisions?

*** YES. GROWERS NEED ALL THE INFORMATION THEY CAN GET TO ASSESS SECURITY OF PAYMENTS AND GOOD PRACTICES.

What are the requirements of disclosure of information on the amount and type of stocks held at grain receival facilities? Should they be changed? If so, how?

Do industry participants have sufficient knowledge of how to use market information?

*** NO. MANY GROWERS HAVE DEPENDED ON AWB TO MARKET THEIR WHEAT AND HAVE NOT DEVELOPED THE SKILLS NEEDED TO UNDERSTAND SOME ASPECTS OF MARKETING. IT IS TOO RISKY FOR SMALLER SCALE PRODUCERS ON AN INDIVIDUAL BASIS TO FORWARD SELL PARTICULARLY IN TIMES OF DROUGHT OR DRY YEARS.

Who is best placed to provide market information and why? Can the industry deal with the provision of market information itself (for example, with a code of conduct)? Or is government involvement required? If so, what form should that involvement take? Regulation? Funding? Provision?

*** IN VIEW OF THE GOVERNMENT DEREGULATION OF THE EXPORT WHEAT MARKET, THEY SHOULD PROVIDE GROWERS WITH A SYSTEM THAT REGAINS THE SECURITY THAT GROWERS HAD AT NO CHARGE TO GROWERS.

5 Wheat classification and market segmentation

Prior to deregulation, AWB was responsible for wheat classification, and established all wheat classes. Wheat classification activities are currently conducted according to the principles described in the Wheat Classification Guidelines. After deregulation, the Wheat Classification Council (WCC) was established by the Grains Research and Development Corporation to provide structure and market direction for wheat breeding, classification and research activities in Australia. It has until June 2010 to develop a model for the future operation of wheat classification in Australia, and oversee current classification operations, including a review of the Wheat Classification Guidelines.

Is the WCC adequate for ensuring wheat quality and the usefulness of wheat classifications?

*** IT HAS YET TO PROVE ITSELF BUT I HAVE SERIOUS DOUBTS.

Could the market deal with these issues without such a body?

*** NO. EG BREAK DOWN IN QUALITY STANDARDS IN EXPORTS
BOTH BULK AND CONTAINER TRADE IN 2009.

Grain Trade Australia (GTA) develops wheat receival standards. It takes information from the Wheat Classification Guidelines and aligns them to GTA's set of consistent receival standards used in contracts. Wheat is sampled and tested at storage facilities, and co-mingled with other wheat varieties within the

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specifications for a particular wheat standard. As a result, the quality characteristics of an individual farmer's wheat are no longer discernable when it is co-mingled.

Blending decisions are made by the storage facility operators in accordance with the supply of grain in the region, and demand from exporters or end users for classes of wheat. In some cases, more narrowly defined segregation of varieties can occur where there is sufficient demand from a buyer to justify a non-standard class of wheat.

Does the market differentiate adequately between qualities of grain? Is the current level of co-mingling activity appropriate?

*** NO. GOLDEN REWARDS GAVE FAIRER RECOGNITION OF QUALITY.

Is there adequate scope for marketing of particular types of wheat to service niche markets that are more narrowly specified than GTA standards? Does exporting through containers and bags provide a satisfactory way to exploit non-standard marketing opportunities?

*** IN A SMALL WAY. BUT THERE IS DANGER OF UNDERMINING OUR
REPUTATION FOR QUALITY.

Are growers able to extract an adequate value for the quality of their wheat?

*** NO. EG LOSS OF GOLDEN REWARDS.

Wheat is again tested upon transportation out of the facility and at port to ensure that it meets the minimum contract specifications.

In addition, customers usually require exporters to provide independent samples from shipments before they leave Australia. The Australian Quarantine Inspection

Service also provides export inspection and certification services to ensure that there is minimal risk from insects, pests and noxious weeds (DAFF 2009b).

GTA has drafted a grain industry Code of Conduct to cover both bulk and container trade to facilitate quality control across the industry.

Can quality control be left to market-driven forces, with commercial incentives placing a check on the quality delivered to overseas buyers?

*** YES. IF THEY TAKE RESPONSIBILITY FOR THEIR ACTIONS WITH NO REPERCUSSIONS TO GROWERS.

Has deregulation affected the reputation of Australian export wheat?

*** YES. THERE HAVE BEEN EXAMPLES OF QUALITY PROBLEMS IN 2009.

Has deregulation and the co-mingling of stocks increased biosecurity risks?

*** YES. WE DON'T HAVE AS MUCH CONTROL AS WE USED TO HAVE ON MOVEMENTS OF GRAIN BOTH IN AND OUT OF THE COUNTRY THEREBY INCREASING THE RISKS OF IMPORTING DISEASE.

Is quality control more of an issue for container wheat exports than it is for bulk wheat exports?

*** BOTH HAVE THE SAME RESPONSIBILITIES BUT CONTAINER TRADE IS MORE DIFFICULT TO REGULATE.

Is quality control an issue in the domestic market?

*** YES. BUT BUYERS MUST BE ALLOWED TO SET THEIR OWN STANDARDS.

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'Industry good' functions

'Industry good' functions can be defined as services to the industry that support trade and industry development. Many of these functions were previously carried out by the single desk operator.

There has been debate in the past as to what constitutes an industry good function (WIEG 2008). On the one hand, they can be considered legitimate development functions affecting the entire industry (having public good characteristics). On the other hand, they can be considered as purely commercial activities carried out to maintain strong customer relationships for individual firms. This distinction was blurred under the single desk arrangement because one firm represented the entire bulk wheat export industry.

Industry good functions can include the following (WIEG 2008):

- industry strategic planning

- research and development
- wheat variety classification
- wheat receival standards
- information provision
- crop shaping activities
- technical market support
- wheat promotion
- branding
- trade advocacy
- regulatory advocacy.

Some of these functions have been discussed separately above, including classification, standards and information provision.

Does the list above represent legitimate 'industry good' functions? How should 'industry good' functions be defined?

*** YES, BUT MOST OF THESE THINGS HAVE DETERIORATED UNDER THE NEW ARRANGEMENTS, IN PARTICULAR:
#RESEARCH AND DEVELOPMENT: GOVERNMENT IS REDUCING R&D FUNDING
WHEAT VARIETY CLASSIFICATION: HOPEFULLY THIS MAY BE HANDLED SATISFACTORILY BY BRI
WHEAT RECEIVAL STANDARDS: GRAIN TRADE AUSTRALIA HAS TAKEN THIS OVER BUT APPEARS TO BE GIVING LITTLE CONSIDERATION TO CO-OPERATION WITH GROWERS.
INFORMATION PROVISION: GROWER ACCESS AND UNDERSTANDING NEEDS TO BE IMPROVED
WHEAT PROMOTION: IS THERE ANY?
BRANDING: SOME EXPORTS HAVE NOT BEEN UP TO SPECIFICATION

Are there currently gaps in the provision of 'industry good' functions? If so, can these be left to the market to provide? Or is government involvement required? If so, how should these be funded?

*** YES THERE ARE GAPS. CANT JUST LEAVE IT TO INDUSTRY - NEED TO INCLUDE GROWERS. MARKETERS ALONE WILL TAKE ADVANTAGE OF GROWERS.

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Is there scope to use other grains or other agricultural industries as case studies for how 'industry good' functions could be delivered for wheat? Is there potential for synergies in shared provision of 'industry good' functions across industries?

*** YES. THERE IS SCOPE TO USE OTHER GRAINS AS CASE STUDIES EG RICE INDUSTRY AND DAIRY INDUSTRY. WHEAT HAD SOME OF THE BENEFITS THAT RICE STILL RETAINS AND HAS BEEN FORCED INTO DEREGULATION WHICH HAS VIRTUALLY DESTROYED THE DAIRY INDUSTRY.

Is there anything to learn from the way that other countries deal with the provision of industry good functions in the wheat industry? Or other industries?

*** YES. WE SHOULD NEVER BE TOO PROUD TO LEARN FROM ANYONE EITHER IN IMPROVEMENTS OR TRAPS TO AVOID.

Performance of the wheat export marketing arrangements

The terms of reference ask the Commission to assess the operation of the current wheat export marketing arrangements (including the costs and benefits), and inform the Australian Government on the effectiveness of the arrangements. The Commission is therefore interested in feedback from stakeholders on how the current arrangements are operating overall.

Does the market provide sufficient signals to growers to enable them to make informed decisions about growing and selling wheat?

*** THERE MAY BE SUFFICIENT SIGNALS AVAILABLE BUT MOST GROWERS, PARTICULARLY SMALLER ONES, DON'T ACCESS THEM OR DON'T HAVE THE TIME TO STUDY AND UNDERSTAND THEM.

IT WAS MUCH MORE EFFICIENT AND ECONOMIC TIME-WISE WHEN HALF A DOZEN SPECIALISTS IN AN OFFICE IN MELBOURNE COULD DO THIS FOR THE WHOLE COUNTRY.

EG IN THESE DRY YEARS IT HAS BEEN TOO RISKY FOR MANY GROWERS TO FORWARD SELL ANYTHING BUT IF AWB HAD THE WHOLE EXPORT CROP TO SELL, THEY COULD HAVE SOLD SOME SAFELY AND THOSE WHO PRODUCED WHEAT COULD SHARE IN THE BENEFITS.

How easy is it for growers to enter into a contract with an accredited exporter?

Are transaction costs an issue?

*** IT IS NOT EASY. WE HAVE NOT HAD SUFFICIENT WHEAT TO TRY THIS AS IS THE CASE WITH MANY OTHER GROWERS. THERE ARE MANY UNKNOWNNS WITH THIS PROCESS AND MANY GROWERS DON'T HAVE THE TIME OR KNOWLEDGE TO GO THROUGH THE PROCESS.

TRANSACTION COSTS ARE A CONCERN EG THE MONEY THAT "CLEAR" GRAIN MARKETING ORGANISATION HAS EXTRACTED OUT OF THE INDUSTRY IN A VERY SHORT TIME.

Has deregulation opened opportunities not previously available to Australian wheat growers? Has deregulation enabled growers to extract a premium for their wheat that was previously unavailable? If not, is there potential for this to occur in the future?

*** IT MAY HAVE FOR A FEW LARGE GROWERS AND TRADERS

BUT FOR THE AVERAGE GROWER, DEFINITELY NOT.

NO. IT MAY CREATE COMPETITION, AS WAS CLAIMED, BUT THE ONLY COMPETITION IT HAS CREATED HAS BEEN BETWEEN GROWERS TO MAKE A SALE THEREFORE IT HAS DRIVEN PRICES DOWN RATHER THAN UP.

I EXPERIENCED THIS WITH BARLEY RECENTLY NOW WHEAT IS IN THE SAME BASKET.

Has deregulation presented new challenges for growers? Have any developments been unexpected?

*** YES. PARTICULARLY TO THOSE WHO SUPPORTED DEREGULATION BUT THE CHALLENGES THEY HAVE SEEN SO FAR ARE NOTHING COMPARED TO WHAT THEY WILL SEE IF WE EVER GROW A DECENT CROP.

YES TO THOSE WHO SUPPORTED DEREGULATION. THOSE WHO OPPOSED DEREGULATION ARE SEEING THEIR FEARS REALISED.

IT IS NO LONGER AS ECONOMIC TO GROW WHEAT, WHEAT IS NO LONGER THE RELIABLE CROP IT USED TO BE, AND WE DO NOT HAVE THE STABILITY AND RELIABLE MARKETS WHICH IS FORCING MANY GROWERS TO REDUCE PRODUCTION.

Has deregulation affected large and small growers in the same way? Are smaller growers able to receive the same prices that larger growers receive? Have the distributional impacts varied across jurisdictions or regions?

*** NO. LARGER GROWERS ARE MORE ABLE TO SELL THEIR LARGER QUANTITIES AT COMPETITIVE RATES AND HAVE BETTER CAPACITY TO FORWARD SELL AND USE OTHER STRATEGIES. THEY OFTEN HAVE MORE OF A SPREAD OF PRODUCTION SO MORE LIKELY TO HAVE PRODUCT TO SELL.

NO. SMALLER PARCELS OF GRAIN DO NOT ATTRACT THE SAME COMPETITION THAT LARGER QUANTITIES MAY BENEFIT FROM.

YES. MAINLY DEPENDING ON PROXIMITY TO MARKETS OR END USERS.

Does the effectiveness of the current bulk wheat export arrangements vary across jurisdictions or regions?

*** YES. AVAILABILITY OF MARKETS. FREIGHT COSTS. ACCESS TO ACCREDITED EXPORTERS.

Has the global financial crisis had an impact on the operation of the new wheat export marketing arrangements?

*** YES. IT HAS AFFECTED ANYTHING THAT INVOLVES MONEY.

What have the costs of transition to the new arrangements been? How do these compare with the benefits of the new arrangements?

*** THE COSTS HAVE BEEN GREAT. EG FORCING GROWERS INTO ON-FARM STORAGE, RESULTING IN WEEVIL PROBLEMS AND CARRYOVER WHEAT, AND THE COST OF NEW STORAGE FACILITIES.

BENEFITS HAVE BEEN HARD TO IDENTIFY AND CERTAINLY DO NOT BALANCE THE COSTS.

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Has deregulation altered trends in the share of wheat exported in bulk and in bags and containers? If so, will the trend continue to change if current arrangements remain in place?

*** YES. THE AMOUNT EXPORTED IN BAGS AND CONTAINERS HAS INCREASED BUT THIS MAY NOT BE SUSTAINABLE AS I HEAR THAT MUCH OF IT WAS ONLY A STOP GAP MEASURE UNTIL IMPORTERS WERE ABLE TO ACCESS SUPPLIES FROM OTHER COUNTRIES TO REPLACE AUSTRALIA'S NOW UNRELIABLE SUPPLY.

Given the relatively recent introduction of such major changes, how do you see developments in the wheat export sector in the medium to long term under the existing arrangements? Do you consider that there is still some way to go in allowing the arrangements to 'bed down' and for industry participants to adapt to, and further exploit, the opportunities that a more open marketing arrangement allows?

*** THIS WILL FAVOUR THE LARGER GROWERS. SOME GROWERS WILL BE FORCED TO REDUCE PRODUCTION, LEAVE THE INDUSTRY OR EVEN SELL THEIR FARM.

YES. THERE IS SOME WAY TO GO IN ALLOWING THE ARRANGEMENTS TO "BED DOWN" AND THERE CERTAINLY WILL BE EXPLOITATION BY TADERS AND MARKETERS (OR WHEELERS AND DEALERS) AT THE EXPENSE OF GROWERS AND GENUINE HARD WORKING AUSTRALIANS. AGAIN, CONSIDER HTE MONEY THAT "CLEAR" HAS EXTRACTED OUT OF THE INDUSTRY.

If some form of regulation is required only for a transition period, how long should this transition period last?

*** UNTIL 80% OF GROWERS ARE COMFORTABLE WITH THE ARRANGEMENTS.

What indicators could be used to assess:

- the effectiveness of the current wheat export marketing arrangements
*** INCREASED PROFITIBILITY TO WHEAT GROWERS IN AUSTRALIA

- whether ongoing regulation is required?
*** AND INCREASED PROFITIBILITY TO AUSTRALIA.

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Attachment A

HOW TO MAKE A SUBMISSION

This is a public inquiry and any person can make a submission and/or participate in public hearings.

There is no specified format for a submission (for example, it may be in written or audio format). Submissions may range from a short letter outlining your views on a particular topic to a substantial document covering a range of issues. Where possible, you should provide evidence to support your views, such as relevant data and documentation. Although every submission is welcome, multiple, identical submissions do not carry any more weight than the merits of an argument in a single submission.

As this is a public inquiry, the Commission will make all submissions available for others to read, in accordance with sections 9(d) and 16(b) of the Productivity Commission Act 1998. Copyright in submissions sent to the Commission, however, resides with the author(s), not with the Commission.

Submissions will become publicly available documents once placed on the Commission's website, which will normally occur shortly after receipt of the submission, unless it is marked confidential or accompanied by a request to delay release for a short period of time.

The Commission strongly encourages participants to make their submissions publicly available. Under certain circumstances the Commission can accept material in confidence. You are encouraged to contact the Commission before submitting such material. Such material should then be provided under a separate cover and clearly marked 'IN CONFIDENCE'.

To help the Commission comply with privacy laws, each submission should be accompanied by a submission cover sheet on which submitting individuals and organisations can provide personal and organisational details. The submission cover sheet is on the next page or is available on the inquiry home page at www.pc.gov.au (under 'Projects').

Submissions may be sent by mail, fax, audio cassette or email. Arrangements can also be made to record oral submissions over the telephone. An electronic copy, if not already provided, would be appreciated either by email or on 3.5 inch diskette. The electronic version can be either a text document (.doc, .txt) or Adobe Portable Document Format (.pdf). Submissions will be published on the Commission's website in pdf format.

Please ensure that the version sent to the inquiry is the final version, that you have removed any drafting notes, track changes, annotations, hidden text, marked revisions, as well as any internal links, large logos and decorative graphics (to keep file sizes down). This will enable the submission to be easily viewed and downloaded from the

website.

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Attachment B

Productivity Commission
SUBMISSION COVER SHEET

(not for publication)
Wheat Export Marketing Arrangements Inquiry

Please complete and submit this form with your submission to:

Wheat Export Marketing Arrangements OR By facsimile (fax) to:
Productivity Commission 03 9653 2305
Locked Bag 2, Collins Street East By email: wheatexport@pc.gov.au
Melbourne Victoria 8003

Organisation:

Principal contact:

Position:

Email address:

Street address:

Suburb/City:

Phone:

Fax:

Mobile:

State & P'code:

Postal address:

Suburb/City:

State & P'code:

Please note:

- For submissions made by individuals, all personal details other than your name and the State or Territory in which you reside will be removed from your submission before it is published on the Commission's website.

- Submissions will be placed on the Commission's website, shortly after receipt, unless marked confidential or accompanied by a request to delay release for a short period of time. Submissions will remain on our website as public documents indefinitely.

- Copyright in submissions resides with the author(s), not with the Productivity Commission. Please indicate if your submission:

contains NO confidential material
contains SOME confidential material (provided under separate cover and clearly marked)

Attachment C

Productivity Commission Inquiry into Wheat Export Marketing Arrangements

Terms of Reference

I, Nick Sherry, Assistant Treasurer, pursuant to Parts 2 and 3 of the Productivity Commission Act 1998 hereby request that the Productivity Commission undertake an inquiry into wheat export marketing arrangements and report before 1 July 2010.

Context

This inquiry will assess the operation of the current wheat export marketing arrangements, including the costs and benefits, and inform the Australian Government on the effectiveness of the arrangements.

Background

The Wheat Export Marketing Act 2008 (the Act) came into effect on 1 July 2008. The Act established a new regulator, Wheat Exports Australia (WEA), to formulate and administer an accreditation scheme for bulk wheat exports. The Wheat Export Accreditation Scheme 2008 (the Scheme) also came into effect on 1 July 2008.

The Scheme requires exporters to meet strict probity and performance tests to satisfy WEA that they are fit and proper entities to hold accreditation. In addition, to be accredited exporters that own or operate port terminal services need to meet an access test under the Act, which requires them to have access undertakings approved by the Australian Competition and Consumer Commission (ACCC) in place by 1 October 2009.

Compliance of accredited exporters with the conditions of their accreditations is monitored by WEA which has the power to vary, suspend or cancel accreditations in certain circumstances.

Section 89 of the Act requires the Productivity Commission (the Commission) to conduct an inquiry into the operation of the Act and the Scheme.

Scope of the inquiry

Under the Act, the Commission must review:

- the operation of the Act, including the costs and benefits; and
 - the operation of the Scheme, including the costs and benefits.
- In conducting the inquiry, the Commission will assess the effectiveness of the arrangements in meeting the objectives of the Act and will consider the operation of the Act and the Scheme, including the role of WEA, as a whole. The Commission will also consider how individual components of the Act and the Scheme affect relevant stakeholders and the costs and benefits they deliver. The Commission should provide comment on those aspects that are working effectively and identify those that require

change. The Commission will take into consideration recent reports and studies into

Australia's grain supply chains.

The Commission will give consideration to issues that may or do affect the effective operation of the Scheme including, but not limited to:

- the suitability of the eligibility criteria required for, and conditions imposed upon accreditation;
 - the appropriate level of assessment of each applicant for accreditation by WEA against these eligibility criteria;
 - the appropriateness and effectiveness of the access test requirements that apply both before and after 1 October 2009;
 - the effectiveness of, and level of competition existing under current arrangements for the transport, storage and distribution of wheat in contributing to a sustainable supply chain from farm gate to export load port;
 - the availability and transparency of relevant market information to participants in the export supply chain; and
 - any other factors that may affect the performance of WEA.
- If considering changes to the operation of the Act or Scheme, the Commission will examine how such changes would affect arrangements to fund WEA and the use of cost-recovery mechanisms.

In conducting its inquiry, the Commission will consult widely with interested parties including WEA, growers, grains industry representatives, accredited exporters, bag and container exporters, potential bulk exporters, bulk handling companies, the ACCC and relevant government departments.

Consultation with interested parties can occur at any time but there must be an opportunity for stakeholders to comment on the operation of the arrangements for the export of the 2009-10 crop. This will allow consideration to be given to the export of wheat through peak shipping periods for two harvests.

This will be done in an open and transparent manner and include release of a draft report for public comment. It may also include public hearings in major wheat growing areas, if deemed necessary by the Commission.

The Commission is required by the Act to commence its review by 1 January 2010 and report to the Government before 1 July 2010.

NICK SHERRY

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— 2009b, The New Wheat Export Marketing Arrangements Operating from 1 July 2008: Frequently Asked Questions, January.

SCRRAT (Standing Committee on Rural and Regional Affairs and Transport) 2008, Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008, April, Canberra.

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