

23 April 2010

Productivity Commission  
Locked Bag 2,  
Collins Street,  
East Melbourne VIC 8003

Dear Commissioners,

### **Wheat Export Marketing Arrangements**

The Victorian Farmer's Federation ("VFF") Grains Group would like to thank the Productivity Commission ("the Commission") for the opportunity to provide a submission and input into the Commission's review of Wheat Export Marketing Arrangements. As a representative organisation of grain growers who will ultimately be impacted by the Commission's recommendations, if adopted, VFF also request the opportunity to present to the Commission.

VFF are concerned that the Commission in undertaking its review and providing its draft report of March 2010, have not given *sufficient* regard to the objectives of the *Wheat Export Marketing Act 2008* ("WEMAct") as it relates to and specifically states '...the needs of wheat growers...' and to '...provide a regulatory framework...' accordingly. That is, VFF are concerned the Commission have focussed on broader regulatory issues of service providers within the industry without sufficiently addressing the associated impact on growers.

Further, VFF are concerned the Commission in pursuit of its policy guideline to 'reduce regulation' has in effect done so without *sufficient* regard to its other mandatory guidelines to assess the impact of such on growers as members of 'regional communities', 'consumers' of the industry services in question, and members of the 'Australian Community' in general.

VFF believe the Commission's initial draft report recommends a position of minimalist market supervision, including abolishing the WEA, without providing an adequate legislative framework to address the needs of growers. In effect the draft report implies a system of 'grower beware' with self regulation through 'exercising prudence' and 'voluntary codes of conduct', rather than providing an appropriate legislative or regulatory framework.

VFF consider that while the Commission may not agree with VFF's submission of November 2009, VFF request that the Commission re-assess the draft report of March 2010 and re-consider some more appropriate legislative controls. This is even more evident when considering that markets such as the US and Canada, often held up as the panacea for mature deregulated grain markets by some, still has legislated obligations and significant government funding.

In conclusion, VFF believe the deregulated grain market in Australia is still in the early stages of transition and requires genuine independent legislative controls. These to ensure true competition and market access between regional monopoly's; to ensure that industry good services are provided; and to ensure growers as one of the largest group of industry

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stakeholders have guaranteed representation in the market. Otherwise VFF consider that growers will be left without legislative protections as 'consumers' of big business services who would largely be bound by their own *voluntary* codes of conduct.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'R. Amery', written in a cursive style.

**Russell Amery**

**Grains Group President**

**Victorian Farmers Federation**

**Victorian Farmers Federation**  
**response to the**  
**Productivity Commission Draft Report March 2010**  
**Wheat Export Marketing Arrangements**

## **Introduction**

The Victorian Farmer's Federation ("VFF") Grains Group would like to thank the Productivity Commission ("the Commission") for the opportunity to provide a submission and input into the Commission's review of Wheat Export Marketing Arrangements.

VFF would like to note that it has already provided VFF's position to the Commission in earlier submissions and attendance at public hearings. However, on the grounds that the Commission intend pursuing the findings and recommendations as outlined in its Productivity Commission draft report March 2010 ("the Report"), VFF provide this submission in context of the Commission's draft Report and associated findings and recommendations.

## **Objects of the Review – 'Grower Needs'**

VFF are concerned that the Productivity Commission ("the Commission") in reviewing the *Wheat Export Marketing Act 2008* ("WEM Act") have not given *sufficient* regard to the objects of the WEM Act, which are defined in section 3 of the WEM Act as follows (emphasis added):

- (a) *to promote the development of a bulk wheat export marketing industry that is efficient, competitive and advances the needs of wheat growers*;
- (b) *to provide a regulatory framework in relation to participants in the bulk wheat export marketing industry.*<sup>1</sup>

Furthermore, VFF is concerned the Commission in pursuit of its policy guideline to reduce regulation [section 8(1)(b) of the *Productivity Commission Act 1998* ("the Act")], have not given *sufficient* regard to its other mandatory guidelines as outlined in section 8(1) to assess impacts on growers as members of 'regional communities', 'consumers' of the industry services in question, and members of the 'Australian Community' in general.

In short, as the Commission acknowledge, there are approximately 26,000 businesses, a large proportion of which are regional family farms in Australia, that will be directly impacted by the Commission's recommendations if adopted as currently proposed in the draft. VFF consider that the commission is obliged by the review of the WEM Act and its own Act's guidelines to consider how to mitigate such impacts upon *growers*, prior to making its final recommendations.

The Report acknowledges that the major impacts on price returns to growers are world prices, storage, handling, freight, and foreign exchange rates. Furthermore the Report acknowledges that

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<sup>1</sup> Wheat Export Marketing Act 2008, No 65, 2008, section 3.

the industry is still in transition (see page 39), and that there are three dominant supply chain providers in the industry.

Therefore, VFF do not consider it appropriate that the Commission recommend the simple abolition of significant portions of existing legislation, including those implemented as 'consumer/grower' protections after only one growing season. Nor should it recommend such without recommending a transitional package and appropriate safe-guards for Australian growers and the wider industry.

VFF do not believe it is appropriate to abolish or repeal legislation and suggest that the industry will simply adapt – if so at what cost will the 26,000 farmers, their families, and regional businesses and communities 'adapt'?

## Accreditation

VFF agree with the Commission that the accreditation scheme has provided a degree of benefit ("comfort") to growers. However, VFF consider that this benefit has been under-estimated as accreditation acts as a means of 'screening' exporters and ensuring a degree of probity.

While VFF agree that all businesses should "...undertake the appropriate due diligence..."<sup>2</sup>, VFF consider that abolishing accreditation in full and repealing the associated legislation is inappropriate. In effect, that this is proposing a 'buyer beware' or 'grower beware' approach without any supporting legislative or regulatory controls, except the natural attrition that may occur amongst traders (as has occurred in the past) at the expense of growers.

While measuring the cost of the system, the majority of which is born by growers, the Commission has only arbitrarily assessed the potential benefits of this screening process. It does not appear to have assessed benefits to growers in terms of, for example, the real costs incurred by creditors of past corporate failures (as noted on page 61 of the Report) that will be endured by growers if they re-occur in the future.

While the accreditation system "...does not provide financial security or guarantee of payment..."<sup>3</sup>, it should be noted that its total removal will provide even less security as it allows all entrants to the market place with even less probity checks.

While VFF supports the role of WEA, VFF consider that efficiency gains could be garnered to the benefit of the industry, exporters and growers alike, by adopting a more streamlined system of accreditation (*similar* to those criteria of ESCOSA). However, that such powers and criteria should still be administered by an independent Grains Industry body (WEA or like body). This would:

- Reduce the regulatory burden & cost to exporters;
- Reduce costs to growers (export fees);
- Reduce potential barriers to entry for exporters;
- Remove potential rigidities and duplication; and
- Yet such a system would still provide for an 'independent umpire'.

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<sup>2</sup> Wheat Export Marketing Arrangements, Productivity Commission Draft Report, March 2010, page 58.

<sup>3</sup> Ibid, page 105.

Such a system would provide an independent umpire, largely funded by growers, yet providing independent industry services.

## Marketing/Pricing/ & Risk Management

As discussed in chapter 3 of the report VFF concur that there are issues regarding price transparency and price setting not just around Pools but cash pricing standards as well.

As mentioned earlier, while VFF agree that all businesses should “...undertake the appropriate due diligence...”<sup>4</sup>, VFF consider that the lack of transparency in pricing combined with lack of other regulatory protections due to exemptions from the Corporations Act, is yet another justification for an independent grower representative industry body.

VFF is *not* advocating that the general relief offered by ASIC to Pool Managers from the managed investment provisions should be rescinded. However agrees that “...there might be a role for an industry governing body to set guidelines for product disclosure of pools...”<sup>5</sup>. VFF consider this could be a role for an independent grain industry body in consultation with existing industry bodies.

## Quality Control - Independence

While the Report concludes that “...industry good functions is best dealt with outside of an accreditation system...”<sup>6</sup>, VFF consider these should still be undertaken by an independent grain industry body or a grower body such as that proposed by *Grain Producers Australia* (“GPA”).

Further, VFF do not concur with the finding that it should be “...left up to industry to devise a system of quality control...”<sup>7</sup>. VFF consider that quality control should be devised in consultation with industry but ultimately implemented by an independent grain industry body.

## Transitional Arrangements - Funding

It is of note that Bulk Handlers, the trade, and end-users, as the Commission itself highlights have had 20 years to deregulate in many cases from state government bodies, to consolidate, and adapt in preparation ultimately for export deregulation (see fig 2.1 page 16). Yet the large sector of the industry represented by grain growers, while arguably having some time to adapt via domestic deregulation, have really only had one season to adapt to export deregulation while having neither the resources nor expertise of large corporate enterprises to facilitate such rapid assimilation to change.

While the PC has acknowledged this fact (chapter 3) it appears un-reasonable to have not provided for any transitional arrangements for growers in this new environment.

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<sup>4</sup> Wheat Export Marketing Arrangements, Productivity Commission Draft Report, March 2010, page 58.

<sup>5</sup> Ibid, page 64

<sup>6</sup> Ibid, page 119.

<sup>7</sup> Ibid, page 119.

VFF consider the Commission should consider recommending transitional arrangements that provide funding for the development and implementation for an appropriate industry structure and implementation.

As one of the largest sectors in Australia valued at approximately \$5 billion per annum in exports alone, and representing 26,000 businesses, VFF consider it is appropriate that government provide transitional funding to implement a long term sustainable industry structure.

VFF consider that the Commission can still pursue its guideline for 'efficient' regulation under its Act, and in so doing 'responsibly assist planning and facilitation of a long-term sustainable grain industry' that 'advances the needs of wheat growers' in an appropriate 'regulatory framework' as per the objects of the WEM Act and the Productivity Commission Act.

This can be achieved through:

- An appropriate industry structure, including a National grower representative body;
- A transitional package to facilitate implementation of this structure; and
- Associated legislative amendments to ensure a 'competitive' industry environment with enabling legislation for the required industry representative bodies.

## Transport

VFF note the Commission's comments regarding road and rail transport, and make the following brief comments:

- VFF support rail standardisation;
- VFF are opposed to the inequity of higher rail rates being charged to grain versus non-grain freight;
- When considering road & rail infrastructure investment that government should also assess community benefits and public good benefits and costs.

For example, the benefit cost analysis of implementing a 'user-pays' principle for grain movements by rail should consider the social costs of forcing grain onto road. Alternately endeavouring to implement a full 'user-pays' principle for roads should take into account the fact that roads are not an excludable public good and that other users only pay a marginal cost.

## Competition – Access Regimes

As the Commission quote the explanatory memorandum to the WEM Act notes:

*"..This clause is intended to ensure that accredited exporters that own, operate or control port terminal facilities provide fair and transparent access to their facilities to other accredited exporters. The test aims to avoid regional monopolies unfairly controlling infrastructure necessary to export wheat in bulk quantities, to the detriment of other accredited exporters. All accredited exporters should have access to these facilities while*

*allowing the operators of the facility to function in a commercial environment. (Burke 2008b, p. 29)...” [emphasis added by VFF].*

VFF consider this is still a sound and valid objective and that the Commission’s recommendations if adopted conflict with these objectives.

The Report acknowledges that Bulk Handling Companies (“BHCs”) have been consolidated into 3 primary providers. VFF consider that without appropriate access regimes then these regional monopolies will continue to dominate the sector and without enforceable undertakings may not provide fair and transparent access, or may favour their own entities at the expense of others.

VFF disagree with the Report’s primary concern regarding access arrangements “...*that they can lock in existing supply chains and discourage investment...*”<sup>8</sup>.

VFF consider that the size and scale of the big 3 BHC/trading companies is now the single biggest barrier to entry to other entrants investing and competing in the sector. Combined are the disincentives of the scale of capital investment required, the market power of those existing regional monopolies, and also the limited ability of potential competitors/investors to ‘go round’ existing providers. VFF note that the next largest competitor (AWB/Grainflow) invested in the industry prior to export deregulation when it still controlled the single desk, and it is questionable whether it would make the same investment decisions in an environment as proposed by the Report.

Therefore, VFF maintain its position that an enforceable access regime remains in place. Further that this should not be replaced by voluntary undertakings, or limited to section 46 of the Trade Practices Act, which in itself may be a dis-incentive for a new market entrant being quite legalistic and therefore expensive and time-consuming.

## Information Transparency

VFF concur with the Report’s findings that timely and accurate information is essential for supporting an efficient export market, including the net benefit of providing stocks information.

VFF do contend however that information provided by ABS is untimely and unwieldy, and if the Report’s cost estimate of ABS producing this information is \$1million per annum (see page 215), that this could be done more efficiently and cost effectively by an industry body. Generic information such as that for ABS & ABARE annual reports could still be provided by the industry body to ABS & ABARE as users of the data as required. However collection and dissemination of industry specific data would be undertaken by the industry body.

Exporters and BHC’s should be mandated to publish (via their web sites) and provide export data, shipping stem information, and stocks data to an independent grains industry body (WEA or independent grower industry body such as GPA) similar to the US. This is data that BHC’s and exporters similarly make available regarding port terminals but should simply be replicated by site. The data should be relatively easy to provide and should be able to be published and forwarded at minimal cost impost to the industry.

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<sup>8</sup> Ibid, page 137.

This information could be made readily available by an 'industry good body', as recommended in the Report, utilising both grower levies & government funds to part fund its operations.

## **'Industry Good' Services**

VFF maintain its position that industry 'public' goods have not been adequately provided for in the Draft Report, and further that such services should be undertaken by an independent grains industry body such as that proposed by *Grain Producers Australia* ("GPA").

Given the scale of the industry and number of different interest groups involved across the entire supply chain, VFF do not consider it is practical or achievable for industry to reach a resolution on an independent industry good body without intervening legislation.

Services of an Industry Good body would include:

- Generic Trade Advocacy & market promotion;
- Provision of Market Information & statistics, such as wheat stocks, etc;
- Classification of wheat varieties;
- Providing existing legislative functions to do with GRDC, etc; and
- Technical issues management such as food standards, food security issues, etc.

VFF considers such a system would enable efficient provision of services exhibiting a degree of public good characteristics. Further, that such a grower body providing these type of services does not have the conflict of interest that other industry sponsored bodies may be prone to. That is, customer and/or BHC sponsored bodies may have a conflict in providing timely or accurate data, whereas it is in the independent grower organisation's interest to ensure a transparent and competitive market place.

Such a system would provide a long-term sustainable industry structure funded largely by growers via grower levies and some government funding for public good services. For example, precedents exist for funding such a body either through:

- The existing Wheat Exports levy and government funding; or
- Existing GRDC levy and matching government funds (for public good services), not that dissimilar to funding arrangements for Dairy Australia (which provides analogous services in the dairy industry).

Note – VFF support the continued service provision and funding of the Grains Research & Development Corporation ("GRDC"). VFF also support GRDC maintaining the management of the existing 'Wheat Classification Council', however if this function were divested from GRDC then VFF consider it appropriate that such a function be managed by an industry good body. VFF consider that until such an alternate system is implemented services such as Wheat Classification should continue to be managed and funded by GRDC in the interim as an independent body.

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