

REGULATION IMPACT STATEMENT

Government Response to the Productivity Commission Review of Wheat Export Marketing Arrangements

This Regulation Impact Statement provides detailed information on the proposed Government response to the Productivity Commission (PC) review of wheat export marketing arrangements and includes proposed further reform of these arrangements.

Background

Wheat is the most important grain crop grown in Australia in terms of area sown, volume of grain produced and value of the crop. The main producing states are Western Australia, New South Wales, South Australia, Victoria and Queensland. Wheat production averages about 20 million tonnes per year but can vary significantly from year to year and is primarily dependent upon prevailing weather conditions. Because wheat competes with other crops and agricultural activities for limited arable land, wheat prices relative to other agricultural commodities, as well as relative production costs, also contribute to variations in area sown and production. In 2010-11, an estimated 13.374 million hectares were sown to wheat, with production estimated to reach a total of 26 325 million tonnes and the gross value of production estimated to be \$7.6 billion. It is estimated that there are about 26 000 businesses growing wheat in Australia.

Because of the relatively small domestic demand for wheat, usually about 6 million tonnes annually, the Australian industry is heavily export oriented, with about 60-70 per cent of annual production going to overseas markets. While wheat may be exported in bags, containers or in bulk, the majority of wheat exported is in bulk. Exports of wheat for 2010-11 are estimated at 18 300 million tonnes, valued at \$5.5 billion.

The Australian Government introduced new wheat export marketing arrangements on 1 July 2008 through the *Wheat Export Marketing Act 2008* (the Act). The Act removed the previous single desk arrangement and introduced competition to the Australian bulk wheat export market. The long-standing export monopoly held by the Australian Wheat Board (AWB) International Limited was replaced by the *Wheat Export Accreditation Scheme 2008* (the Scheme), which also came into effect on 1 July 2008. A new regulator called *Wheat Exports Australia* (WEA) was established to administer the Scheme. WEA's primary source of funding is the *Wheat Export Charge* (WEC), which is an administrative charge applied to all exported wheat (including wheat exported in bulk, containers and bags) at the rate of \$0.22 per tonne.

The Scheme applies to bulk exports only and was introduced to provide a degree of comfort that companies operating in the newly deregulated market were reputable and likely to be able to pay growers for their wheat. The Scheme requires exporters to meet strict probity and performance tests to satisfy WEA that they are fit and proper entities to hold accreditation. Compliance of accredited exporters with the conditions of their accreditation is monitored by WEA, which has the power to vary, suspend or cancel accreditation in certain circumstances. The Australian Customs and Border Protection Service (Customs) controls the export of bulk wheat at port under *Regulation 9AAA* of the *Customs (Prohibited Exports) Regulations 1958* which prohibits exports of wheat in bulk except by an accredited exporter.

The Act also requires parties seeking bulk wheat accreditation that own, operate or control port terminal facilities to pass access test requirements. The access test addressed concerns within industry that wheat exporters with port terminal operations could use control of terminals to

advantage their wheat export operations at the expense of rivals. Under the requirements, accredited exporters that operate bulk wheat terminals must have formal access undertakings developed under Part IIIA of the *Trade Practices Act 1974* (now the *Competition and Consumer Act (CCA) 2010*) accepted by the Australian Competition and Consumer Commission (ACCC), and publish terms and conditions on their website on which they will allow other accredited exporters to have access to their port terminal facilities. GrainCorp, Viterra and Cooperative Bulk Handling (CBH) Ltd are required to pass the access test. These companies have access undertakings approved to 30 September 2011. The ACCC has approved a new access undertaking lodged by GrainCorp to 30 September 2014 and is considering new undertakings lodged by Viterra and Cooperative Bulk Handling (CBH) that will cover the same period. In addition, Australian Bulk Alliance Pty Ltd (ABA), which operates the Melbourne Port Terminal through its subsidiary Melbourne Terminal Operations Pty Ltd, has lodged a voluntary access undertaking with the ACCC for approval. As ABA is not an accredited exporter or an associated entity of an accredited exporter it is not required to have an access undertaking in place under the Act.

At the end of June 2011, there were 26 companies accredited to export wheat in bulk, although not all are active. Three of these large, regionally-based bulk handling companies provide up-country storage and handling services and, together with Melbourne Terminal Operations Pty Ltd, operate a total of 20 grain port terminal facilities which receive, handle and export wheat in bulk. A number of independent storage and handling service providers compete with the major bulk handlers.

Under Section 89 of the Act, the PC was required to commence an inquiry into the operation of the Act and the Scheme by 1 January 2010 and report to government by 1 July 2010. It did so. The PC was required to assess the effectiveness of the arrangements in meeting the objectives of the Act and consider the operation of the Act and the Scheme, including the role of WEA, as a whole. Consideration was also given to how individual components of the Act and the Scheme affect relevant stakeholders and the costs and benefits they deliver.

The PC's final report was tabled in parliament on 28 October 2010. The report recommendations that relate directly to wheat export marketing arrangements are that the Scheme, WEA and the Wheat Export Charge (WEC) be abolished on 30 September 2011, and the access test requirements for grain port terminal operators be abolished on 30 September 2014.

The other recommendations in the PC report are being addressed under separate processes.

Assessing the problem

The government is required to respond to the PC review of wheat export marketing arrangements.

The PC found that the regulatory arrangements have been beneficial during the transition to competition in the bulk wheat export market since deregulation of the market in 2008. However, it also concluded that the *benefits of accreditation* of exporters will rapidly diminish in the post-transitional phase, leaving only the costs. The Commission therefore recommended that the Scheme, WEA and the WEC be abolished on 30 September 2011.

The PC found that the grain port terminal access test has provided greater certainty for traders and made access easier, more timely and less costly than it could have been by relying on potential declaration under Part IIIA of the *Trade Practices Act 1974* (now the *Competition and Consumer Act (CCA) 2010*). It also found that the *benefits of the access test* would diminish over time and the test could become costly in the long term. The PC believes that there are still some transitional issues associated with port access and contestability in the logistics supply chain. It recommends that the access test should remain a condition of export for port terminal operators who also export

bulk wheat until 30 September 2014 and access should be regulated by Part IIIA of the CCA from 1 October 2014 with continuation of the continuous disclosure rules, supplemented by the adoption of a voluntary code of conduct by all port terminal operators.

Objective of government action

To implement arrangements that promote the operation of an efficient, competitive and profitable bulk wheat exporting industry, consistent with arrangements for other grain commodities.

Options that may achieve the objective

Option 1 - Status Quo

WEA, funded by the WEC and application fees charged on a cost recovery basis, would administer the Scheme in a similar manner to how it currently operates. Customs would continue in its border protection role of ensuring that only accredited exporters are able to export wheat in bulk.

Option 2 – Retain the current arrangements but implement a ‘lighter-touch’ wheat export accreditation scheme

The PC recommended the adoption of a ‘light-handed’ regulatory approach if the government decided not to abolish the Scheme. This could be achieved under a licensing system resembling that administered by the Essential Service Commission of South Australia (ESCOSA) that previously operated for barley exports from that state. This system involves the issuing of licences. There is no monitoring body and licensees are required to provide annual reports on compliance.

Alternatively, the level of assessment, investigation and compliance, and hence the cost, under the existing scheme could be reduced to achieve a ‘lighter-touch’ approach, within the provisions of the existing legislation, particularly in relation to WEA investigation of access test issues. WEA would continue to monitor continuous disclosure rules but would rely on advice from the ACCC on whether accredited port terminal operators have not complied with their access undertakings. WEA would still have the capacity to respond to any issues that relate to accreditation of an exporter.

Under both these alternatives, Customs would continue in its border protection role of ensuring that only accredited exporters are able to export wheat in bulk.

Option 3 – Implement in full the PC recommendations relating directly to the scheme

This would remove current regulation around wheat export marketing arrangements through a staged approach.

30 September 2011 to 30 September 2014

The key elements are:

- WEA and the WEC would be abolished on 30 September 2011
- DAFF to determine which grain port terminal operators are required to have an access undertaking with the ACCC that is enforced by Customs (compulsory access arrangements).

Post 30 September 2014

- Current compulsory access arrangements abolished on 30 September 2014
- Like other infrastructure grain port terminal operators would be subject to the normal provisions under Part IIIA of the *Competition and Consumer Act 2011* (CCA) and thereby may provide an access undertaking to the ACCC or be declared by the National Competition Council (NCC).

- After 2014, the requirement to comply with the continuous disclosure rules would continue with compliance monitoring by the ACCC. This would involve exporters that operate a port terminal service publishing shipping stem details on their websites on a daily basis, namely
 - the name of each ship scheduled to load grain using the port terminal service; and
 - for each ship — the time when the ship was nominated to load grain using the port terminal service; and
 - for each ship — the time when the ship was accepted as a ship scheduled to load grain using the port terminal service; and
 - for each ship — the quantity of grain to be loaded by the ship using the port terminal service; and
 - for each ship — the estimated date on which grain is to be loaded by the ship using the port terminal service.

Specifically, the PC recommended that:

- *The Wheat Export Accreditation Scheme 2008 should be abolished on 30 September 2011. The timing would coincide with the end of the 2010-11 marketing year and give the Australian Government sufficient time to put the required legislative changes in place.*
- *Regulation 9AAA of the Customs (Prohibited Exports) Regulations 1958, which prohibits bulk exports of wheat unless exported by an accredited wheat exporter, should be repealed effective 30 September 2011.*
- *Wheat Exports Australia should be abolished on 30 September 2011.*
- *The Wheat Export Charge should be abolished on 30 September 2011.*
- *The requirement for grain port terminal operators to pass the access test contained in the Wheat Export Marketing Act 2008 (continuous disclosure requirements and an ACCC accepted port access undertaking) as a condition for exporting bulk wheat should remain in place until 30 September 2014. Responsibility for determining if the access test is met (including the continuous disclosure requirements component) should rest solely with the ACCC beyond 30 September 2011, whether or not accreditation continues past that date.*
- *Ideally, grain port terminal operators not subject to the access test between 30 September 2011 and 30 September 2014 would voluntarily publish their shipping stem and port access protocols.*
- *The requirement for port terminal operators to pass the access test as a condition for exporting bulk wheat should be abolished on 30 September 2014.*
- *The requirement for continuous disclosure should continue after 30 September 2014, although this should no longer be a condition for exporting bulk wheat. From this date, the continuous disclosure rules should be applied to all grain port terminals, regardless of ownership. Responsibility for monitoring compliance with continuous disclosure rules should remain with the ACCC after 30 September 2014.*
- *From 1 October 2014, access disputes (other than those relating to the continuous disclosure requirements) should be dealt with by the National Access Regime under Part IIIA of the Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974).*
- *Ideally, port terminal operators would supplement these arrangements with a voluntary code of conduct from 1 October 2014.*
- *Should the access test continue beyond 30 September 2014, it should be reviewed after no more than five years.*

Option 4 – Provide a further 12 months ‘lighter-touch’ transitional period before implementing the major PC recommendations

This would remove current regulation around wheat export marketing arrangements in three stages:

1 October 2011 to 30 September 2012

- A 'lighter-touch' wheat export accreditation scheme within the provisions of existing legislation would apply
- Customs would continue its border protection role of ensuring that only accredited exporters are able to export wheat in bulk, until the scheme is abolished on 30 September 2012

30 September 2012 to 30 September 2014

- The WEA and WEC would be abolished on 30 September 2012
- DAFF to determine which grain port terminal operators are required to have an access undertaking with the ACCC that is enforced by Customs (compulsory access arrangements).

Post 30 September 2014

- Current compulsory access arrangements abolished on 30 September 2014
- Like other infrastructure grain port terminal operators would be subject to the normal provisions under part IIIA of the *Competition and Consumer Act 2011* (CCA) and thereby may provide an access undertaking to the ACCC or be declared by the NCC.

Impact analysis – costs, benefits and risks

Impact group identification

The main groups affected by the wheat export marketing arrangements are:

1. Australian wheat farmers who grow wheat for export;
2. Bulk wheat exporters as the regulated community; and
3. Providers of services relating to the marketing, and handling and storage of export wheat and other grains.

Option 1 – Retain the status quo

Costs

The Scheme

The PC found that beyond the transitional period, the benefits of the Scheme would be limited, leaving only the costs which would be borne by industry. These costs include the direct costs of administering and complying with accreditation and the indirect costs in the form of market distortions and losses in economic efficiency which, although difficult to measure, would be expected to increase over time as the distortions become entrenched.

WEA's total expenditure for administering the scheme is about \$4 million per annum. The industry incurs the cost of paying the WEC (22 cents per tonne of wheat) that funds WEA's operations. While the charge is paid by exporters, this cost is ultimately borne by wheat growers. WEA also charges application fees (the details of application fees are included under *Wheat Export Australia* below) for new accreditations and renewal of accreditations. Exporters bear this cost in addition to the other costs of complying with accreditation requirements, including the preparation of new and renewal applications, responding to information requests and complying with audit requirements.

The PC found that while existing regulatory and compliance costs are not expected to be very large, the benefits of accreditation for the industry would diminish over time and other, indirect costs could be expected to emerge:

- If accreditation remains in place to provide growers with comfort without any actual financial security beyond a transitional period, they would be prevented from exercising due diligence and developing expertise in a changing market environment they now face, which could prove costly to them.
- Retaining accreditation could entrench other market distortions, including: barriers to entry, particularly for smaller players or those new to the industry; distortion of market signals that can inhibit the industry's ability to respond; and regulatory by-pass in response to inconsistent regulation of the bulk and container wheat export markets (wheat exported in containers is exempt from the system).

While such costs are more difficult to measure, and may not be particularly large, they can be expected to increase over time as the market distortions become more entrenched and harder to unwind.

While removal of accreditation would make bulk wheat export requirements consistent with other agricultural commodities, there is likely to be a negative reaction from some grower groups that argued to the PC that they favoured retention of accreditation, both for payment security reasons and as a means of ensuring accredited port terminal operators meet access test requirements.

Many exporters also favour its retention to maintain the link with the access test. The PC noted that the current arrangements in respect of export accreditation have achieved their purpose and that maintaining the link between the scheme and the access test is not sufficient reason to keep accreditation, as the access test can be retained without accreditation.

The PC also noted that although WEA currently monitors the performance of exporters against the continuous disclosure requirements of the access test to ensure compliance with these requirements, and is required to remove accreditation where no access undertaking is in place with the ACCC, it cannot make decisions with respect to the access undertakings. However, if WEA believes that a port terminal operator is operating outside the spirit of the access undertaking, it could remove accreditation if it considered this to be evidence that the port terminal operator did not meet 'fit and proper' criteria required for accreditation.

The PC believes that this overlapping of regulatory responsibilities between WEA and the ACCC increases regulatory uncertainty, inconsistency and, potentially, compliance and administration costs and is, therefore, undesirable. It found that the ACCC is the most appropriate body to deal with access related issues as it has suitable frameworks and guidelines in place and greater relevant experience. In addition, the merit review processes of the *Competition and Consumer Act (CCA) 2010* (CCA) under which the ACCC operates are more thoroughly established in dealing with access related disputes than the processes available under the *Wheat Exports Marketing Act 2008*.

The PC also saw no reason for treating bulk wheat any differently from the container wheat export industry, other grains and the majority of agricultural commodities, all of which are operating effectively without export accreditation schemes, and found that retaining accreditation would only add an unnecessary layer of regulation to an existing body of legislation that serves the market sufficiently.

The access test

There are administrative and compliance costs associated with the access test, which port terminal operators seeking export accreditation incur, in addition to the normal costs of accreditation borne

by other bulk wheat exporters. Submissions to the PC from bulk handlers indicated that the cost of having access undertakings approved averaged about \$1 million while compliance costs were estimated to be about \$0.5 million annually. The Australian Government paid the ACCC \$1.5 million to cover the administrative costs of assessing applications for the initial access undertakings. WEA also incurs expenses in monitoring compliance with the access test.

The long-term costs caused by the access test requirement could be considerable, with the potential to distort investment decisions relating to the ownership of port terminal facilities by:

- creating incentives for wasteful strategic behaviour by both port terminal operators and traders, and potential rival transport and storage providers, seeking access;
- constraining the scope for port terminal operators to deliver and price their services efficiently;
- reducing incentives to invest in port terminal facilities to expand capacity for third-party use or to provide new services or to maintain facilities, particularly if port terminal operators perceive that the regulated terms and conditions are favourable to port users;
- reducing the incentives for third parties to invest in port terminal facilities themselves, further locking in existing supply chains.

Wheat Exports Australia

The operating costs of WEA are estimated to be about \$4 million per annum. These costs were intended to be met on a cost-recovery basis through the WEC and application fees payable for new or renewed applications (\$13,299 and \$7,084 respectively), variation of accreditation (\$6,248) and reconsideration of a decision made by WEA (\$3,344). However, WEA has not been able to generate sufficient income to fully meet its costs and has required *ad hoc* funding assistance of \$1.6 million from the Australian Government.

Wheat Export Charge

WEA has not been able, to date, to generate sufficient income to meet its costs, as intended. DAFF undertook an interim review of the WEC, in consultation with WEA and the Department of Finance and Deregulation (DOFD), in 2010, which found that it would have to be increased by around 30 per cent if current arrangements are retained in the longer-term. If this is the case, a full Cost Recovery Impact Statement would need to be undertaken in line with the Australian Government Cost Recovery Guidelines.

Benefits

The Scheme

The PC found that the Scheme has provided net benefits to the bulk wheat export industry during the transitional period.

Under the ‘fit and proper’ test that companies have to pass to receive accreditation, they must demonstrate they have the resources to meet financial commitments to growers and have established practices to meet customer requirements. This has provided growers with confidence that they will be paid and comfort to international customers that they are dealing with reputable companies. No significant issues have been identified to date.

The access test

It is clear from submissions to the PC review that the access test was a critical element of the transition to multiple exporters, in that it gave potential new exporters security in accessing port facilities operated by rival marketers on a timely and competitive basis. It also provided international customers with comfort about the purchase of wheat. The three major bulk handlers that also operate port terminal facilities are required to have an access undertaking approved by the ACCC and Melbourne Port Terminal Operations Pty Ltd, although not required to have an access

undertaking, has lodged a voluntary access undertaking for approval by the ACCC. Twenty-six exporters have been accredited and certainty of access to ports has been a key driver for these new participants.

The PC found that the access test has been effective and appropriate as a transitional measure and has provided significant short-term benefits, particularly in helping facilitate entry of new players to the industry by providing certainty about port access and establishing a competitive market.

The PC also found that the transitional period relating to changes to port terminal operations has not yet ended. Access undertakings have not yet been in place for two full marketing seasons, with the second marketing season ending in September 2011, and prevailing circumstances have meant that access test requirements have not been fully tested and longer-term operating practices have not been established. There have also been issues with respect to port congestion and the operation of the shipping booking system.

The PC recommended that the access test be retained until 30 September 2014, noting that this would give the industry sufficient time, and appropriate incentives, to adjust to the new trading environment and institutionalise some new features of the competitive environment, while minimising the chances of damaging future investments or undermining reasonable returns to existing asset holders. It would also address grower and trader concerns about anti-competitive behaviour with respect to port access during the transitional period.

These findings provide good arguments for the retention of the access undertakings until it is clear that practices have been refined to the point where they can operate effectively in any circumstances. Operating practices at ports for bulk wheat exports are expected to be clearly established by 2014 when the access undertakings will have been operating for five marketing years.

Given that benefits are likely to be derived from retaining the test until 30 September 2014, and in view of the likely reaction from growers and traders if the access test was removed while marketing arrangements are still evolving, the access test should be retained until 2014 as recommended by the PC.

Wheat Exports Australia

The PC found that the presence of WEA to facilitate the industry's transition from a single desk to one with many exporters has been of considerable benefit. WEA has been pivotal in ensuring that the transition has been smooth in the light of the degree of change that took place in a short period of time and the additional uncertainty brought about by the global financial crisis that coincided with deregulation. However, it also concluded that this benefit diminishes once the transition period ends (ie on 1 October 2011).

Some growers and grower organisations advocated the expansion of WEA's powers to allow it to perform additional functions such as benchmarking the performance of all accredited exporters and publishing export information in the interest of market transparency.

The PC is of the view that it is best left to industry to self-manage any gaps in the provision of industry good type activities that might emerge. Keeping WEA beyond a transitional period may prevent the industry from making a coordinated effort to find efficient, self-directed solutions. This means that the future of WEA should be dependent only on decisions about the Scheme.

Wheat Export Charge

The WEC provides the primary source of funding for the operations of WEA so that the benefits of the Scheme can be realised.

Option 2 – Retain the current arrangements but implement a ‘lighter-touch’ wheat export accreditation scheme

The PC recommended two alternatives if the scheme is retained beyond 30 September 2011:

1. Introduction of a licensing system resembling that administered by ESCOSA

Costs

The PC notes that, according to ESCOSA’s 2008-09 Annual Report, its running costs for the barley accreditation scheme is a little over \$100,000 per year. While a licensing system similar to the barley accreditation scheme would be the least expensive option, it would take some time to implement, would be unlikely to provide the necessary checks and balances to satisfy grower concerns and does not have a link to the access test, although this could be included in any new legislation.

Benefits

Adoption of an ESCOSA-style accreditation scheme would reduce regulatory and compliance costs and hence provide scope to reduce application fees and the level of the WEC.

Given the costs outlined above, there are insufficient benefits to justify the introduction of a ‘lighter-touch’ scheme with such a low level of scrutiny, even as a short-term measure.

2. Adoption of a ‘lighter-touch’ scheme to reduce the level of assessment, investigation and compliance, and hence the cost, within the provisions of the existing legislation particularly in relation to WEA investigation of access test issues

Costs

The PC shares the concern of accredited port terminal operators that there is an overlap between the responsibilities of WEA and the ACCC. While the ACCC has responsibility for developing and implementing access undertakings and ensuring compliance, WEA undertakes significant monitoring and investigation work in satisfying itself that accredited port terminal operators are meeting this condition of accreditation.

While this may have been appropriate in the initial period, administration of access undertakings is part of the ACCC’s core functions and that organisation should be the judge of what level of investigation is required of accredited port terminal operators to make sure they comply with their requirements.

Benefits

WEA applying a ‘lighter-touch’ (but not necessarily softer) approach, to the extent allowed by the current legislation, would reduce the level of monitoring and investigation undertaken and hence the regulatory burden. This should meet grower concerns about fit and proper issues as well as maintain the link with the access test that many exporters believe is critical. At the same time, it will provide some comfort to the accredited port terminal operators by reducing their compliance costs.

This approach would reduce the operating costs of WEA, without reducing the effectiveness of the scheme, and resolve a potential issue in that the WEC may have to be increased if the accreditation scheme is retained in its current form. An interim internal review undertaken by DAFF, DOFD and WEA in 2010 found that the WEC would have to be increased by around 30 per cent to meet current WEA operating costs. However, increased revenue from a surge in exports since the internal review has resolved the issue in the short-term and WEA should be able to operate within its means in the short-term, particularly given its reduced budget requirements under a 'lighter-touch' approach.

There is merit in implementing a 'lighter-touch' Scheme within the provisions of the Act for a further 12 month transitional period. This is discussed in more detail under option 4.

Option 3 – Implement in full the PC recommendations relating directly to the Scheme

Costs

While abolishing accreditation, WEA and the WEC on 30 September 2011 would make bulk wheat export requirements consistent with other agricultural commodities, there is likely to be a negative reaction from some grower groups that argued to the PC that they favoured retention of accreditation, both for payment security reasons and as a means of ensuring accredited port terminal operators meet access test requirements. Many exporters also favour its retention to maintain the link with the access test.

There could be a negative impact on the industry if the Scheme was abolished before transitional issues associated with port access and contestability in the logistics supply chain have a chance to be resolved and all participants in the industry have adapted to the new, more sophisticated trading environment. The PC believes that industry's transition to the current arrangements is approaching its end. However, it notes that there is concern amongst exporters that the supply chain is not yet of a structure that provides for an efficient and effective model in a commercial environment and accepts there are arguments to retain the scheme for a further 12 months, but under 'lighter-touch' arrangements. The details of these arguments are included under option 4.

Abolition of WEA, and the Scheme, would mean that suppliers of bulk wheat would have to undertake their own due diligence on what companies to deal with, rather than rely on the 'fit and proper' test for all accredited exporters. This should not be a major issue given that they should have established relationships with exporters of their choice during the operation of the Scheme. Conversely, bulk wheat exporters may incur additional costs associated with the need to prove their credibility to growers and traders in the absence of their status as an accredited exporter. Again, it is not anticipated that this would be a major issue as exporters should have established relationships during operation of the Scheme with growers and traders to ensure sufficient supplies of wheat to meet export commitments.

The operating practices of exporters in areas such as contract negotiations, meeting quality standards at port and Australian Quarantine and Inspection Service requirements will not be affected.

Benefits

Abolishing the Scheme, WEA and the WEC on 30 September 2011 would remove the direct and longer-term costs that would be expected to result from retaining the status quo which are discussed in detail under Option 1. The PC found that beyond the transitional period, the benefits of the

Scheme would be limited, leaving only the costs which would be borne by industry. These costs include the direct costs of administering and complying with accreditation and the indirect costs in the form of market distortions and losses in economic efficiency which, although difficult to measure, would be expected to increase over time as the distortions become entrenched.

No significant issues with export of bulk wheat or payment to growers have been identified to date:

- The companies likely to export bulk wheat are already accredited and have demonstrated they have the resources to meet financial commitments to growers and have established practices to meet customer requirements. No significant increase in the number of bulk exporters is expected and any new companies are also likely to have the necessary resources and expertise. In fact, the number of exporters is expected to decline, with consolidation, as has been evident in recent months.
- Wheat export issues are more likely to occur with smaller container exporters that do not have the same long-term market commitments and therefore do not have as much to lose if shipments do not meet entry requirements of importing countries.

The PC also presented an argument for retention of the access undertakings until 30 September 2014, by which time practices would have been refined to the point where they can operate effectively in any circumstances, the details of which are also included under Option 4. The access test can be retained without accreditation. In this regard, the PC found that the ACCC, not WEA, is the most appropriate body to deal with access related issues as it has suitable frameworks and guidelines in place and greater relevant experience. In addition, the merit review processes of the *Competition and Consumer Act (CCA) 2010* (CCA) under which the ACCC operates are more thoroughly established in dealing with access related disputes than the processes available under the WEMA.

As noted by the PC, retaining the access undertakings until 30 September 2014 would give the industry sufficient time, and appropriate incentives, to adjust to the new trading environment and institutionalise some new features of the competitive environment, while minimising the chances of damaging future investments or undermining reasonable returns to existing asset holders. Operating practices at ports for bulk wheat exports should be clearly established by 2014 when the access undertakings will have been operating for five marketing years, making it difficult to justify continuing the access test beyond 30 September 2014.

Appropriate and transparent arrangements should be developed by 30 September 2014 to provide security and certainty in the longer-term, e.g. for continuous disclosure rules

- A non-prescribed voluntary code of conduct for all grain export terminals would be developed and implemented before the access test is abolished in 2014. The code would meet the needs of both growers and exporters, be consistent with ACCC guidelines for developing voluntary industry codes of conduct and include continuous disclosure rules. Abolishing the access test in 2014 would be conditional on the code being implemented by 30 September 2014.
- This would **not** include the PC's recommendation that the ACCC should continue to have responsibility for monitoring the continuous disclosure rules after 30 September 2014, as this provision could be included in the voluntary industry code of conduct.

Option 4 – Provide a further 12 months 'lighter-touch' transitional period before implementing the major PC recommendations

The costs and benefits of a 'lighter-touch' scheme are detailed under option 2. The costs and benefits of abolishing accreditation, the WEA and the WEC and retaining the access test and its link with the ability to export bulk wheat until 2014 are discussed under option 3.

Costs

Under this option, DAFF would take on the role of deciding which bulk exporters that operate port terminal facilities are required to pass the access test for the period from 1 October 2012 to 30 September 2014 which may result in additional costs for DAFF. However, as current providers of port terminal services that are likely to export bulk wheat already have access undertakings in place, or are negotiating new undertakings, such a determination would only be required if a wheat exporter purchased an interest in an existing port facility or built a new export terminal. Therefore, it is unlikely that DAFF would need to dedicate significant resources for this work.

There would be a continuing cost to industry in retaining WEA for a further 12 months. However, WEA could continue to operate effectively without increasing the WEC, in the light of its proposed abolition on 30 September 2012, its small budget (less than \$4 million), and the proposed introduction of a 'lighter-touch' scheme for the 2011-12 marketing year. Growers who pay the WEC have indicated to the PC that they favour retention of accreditation, both for payment security reasons and as a means of ensuring accredited port terminal operators meet access test requirements.

Benefits

While the PC is of the view that industry's transition to the current arrangements is approaching its end, some exporters are concerned that the supply chain is not yet of a structure that provides for an efficient and effective model in a commercial environment and accepts there are arguments to retain the scheme for a further 12 months, but under 'lighter-touch' arrangements. The PC believes there are still some transitional issues associated with port access and contestability in the logistics supply chain. These include shifting peak period congestion at some ports and the associated supply chains, the access test and contestability in the logistics supply chain and the impact of the access test on wheat prices and trading across regions. Some industry participants, including traders and marketers, financial service providers, futures brokers, bulk handlers and growers are still adapting to the complexities of the new marketing environment.

Bulk wheat export arrangements are coming from a highly regulated environment that was in place for more than 60 years and the inclusion of 'lighter-touch' arrangements for a 12 month period would help facilitate the transition. This would be the second phase of a three staged approach to full market deregulation by the end of 2014 (with removal of the access test requirements) which would help ensure the full advantages of the 2008 changes, the first stage, are realised.

The changes introduced under the 'lighter-touch' scheme would meet growers concerns about 'fit and proper' issues as well as maintain the link with the access test that many exporters believe is critical. At the same time, it would provide some comfort and certainty to the accredited port terminal operators by reducing their compliance costs.

They would also address the PC's concern about a potential overlap between the responsibilities of WEA and the ACCC, which plays a role in assessing the access undertakings of grain port terminal operators that are accredited exporters. While WEA would continue to monitor continuous disclosure rules, it would act on ACCC advice to assess whether accredited port terminal operators are complying with their access undertaking requirements.

Consultation

There has been extensive public consultation on wheat export marketing arrangements in the period before the 2008 changes and more recently during the PC review. All the options considered above

were canvassed during these processes and all industry sectors have had the opportunity to provide their views. Many of those who made submissions have reiterated those views to government, either formally or informally.

The stakeholder consultation process that occurred prior to the introduction of the 2008 legislation included release of the draft legislation for public comment, a series of briefing consultations held with stakeholder groups, and the establishment of an Industry Expert Group to provide advice to the Minister on the provision of industry development functions. Further, the Senate Standing Committee on Rural and Regional Affairs and Transport conducted an inquiry into the exposure drafts of the 2008 Bills, which invited public submissions and held public hearings. The government considered the outcomes of these consultations and inquiries before finalising the 2008 Bill.

In undertaking its 2009-10 review, the Productivity Commission invited public comments on an initial issues paper released on 16 October 2009 and received 56 submissions from farmers, grower associations, industry associations, traders, bulk handlers and members of the public. A series of public forums and hearings were held in regional areas and capital cities from November to mid-December 2010. Following release of the draft report on 22 March 2010, a further four public hearings were held in capital cities from April to mid-May 2010 and 44 public submissions were received.

Key comments made by industry in response to the draft Productivity Commission report and during public hearings were:

- Most grower organisations want accreditation to continue as it provides them with confidence that bulk exporters operating in the deregulated market are reputable and are likely to be able to pay growers. Accreditation could continue to operate either in its current form or through 'lighter-touch' regulation such as the scheme previously operated from July 2007 to June 2010 by ESCOSA for barley exports from that state. Growers generally support retention of the access test with the exception of WAFF that supports its abolition from 1 October 2011.
 - The NSW Farmers Association would like an accreditation scheme but suggested implementation of a grower-owned and controlled entity using its former Auswheat plan, which was rejected in 2008, as a template.
- Exporters are generally happy for the Scheme to be abolished in 2011 (or 2012) but, with the exception of the accredited bulk handlers, want the access test provisions to be retained to maintain the incentive for bulk handling companies to provide port access to rival exporters on competitive terms.
- Bulk handling companies claim that the cost of meeting access test requirements exceed the benefits, and that these tests should be removed at the same time as the Scheme in 2011 (except GrainCorp, which believes accreditation and the access test should be abolished from 1 October 2012).

The views of the following government departments and agencies were considered in finalising the government response to the PC review of wheat marketing arrangements:

- the Treasury Department, Department of Prime Minister and Cabinet, Department of Finance and Deregulation, Department of Regional Australia, Department of Infrastructure and Transport, Department of Foreign Affairs and Trade, Australian Customs and Border Protection Service, Department of Innovation, Industry, Science and Research, the Australian Competition and Consumer Commission and Wheat Exports Australia.

Conclusion and recommended option

Analysis of the options indicates that the Scheme has been beneficial during the transition to competition in the bulk wheat export market since deregulation of the market but has served its purpose and the benefits of accreditation after transition will rapidly diminish over time. While, in the PC's view, the industry's transition to the current arrangements is approaching its end, a further 12 month transitional period under a 'lighter-touch' scheme would help ensure that the full advantages of the 2008 changes are realised.

While a licensing system similar to the barley accreditation scheme previously administered by ESCOSA would be the least expensive option, it would take some time to implement, would be unlikely to provide the necessary checks and balances to satisfy grower concerns and does not have a link to the access test, although this could be included in any new legislation. It is therefore considered that there are insufficient benefits to justify the introduction of a 'lighter-touch' scheme with such a low level of scrutiny, even as a short-term measure. Applying a 'lighter-touch' to the existing scheme within the bounds of the existing legislation is considered a better option.

The access test has provided greater certainty for traders and made access easier, more timely and less costly than it could have been by relying on a potential declaration under Part IIIA of the CCA. There are benefits in retaining the access test as a condition of export for port terminal operators who also export bulk wheat until it is clear that practices have been refined to the point where they can operate effectively in any circumstances, but these would also diminish over time. Operating practices at ports for bulk wheat exports are expected to be clearly established by 2014 when the access undertakings will have been operating for five marketing years.

Given that benefits are likely to be derived from retaining the test until 30 September 2014, and in view of the likely reaction from growers and traders if the access test was removed while marketing arrangements are still evolving, the access test should be retained until 2014 as recommended by the PC.

Therefore, a three-staged approach to full market deregulation (option 4) is recommended. The first stage of this transition would be introduction of a 'lighter-touch' accreditation scheme for a further 12 months that would operate within the bounds of the existing legislation from 1 October 2011 until 30 September 2012. During the second stage, the accreditation scheme, WEA and the WEC would be removed from 1 October 2012. As recommended by the PC, the access test would remain in place until 30 September 2014 and the link between the requirement for port terminal operators to have approved access undertakings in place and their ability to export bulk wheat would be maintained. The third and final stage would operate from 1 October 2014 with removal of the access test. The market would be fully deregulated and access issues would be governed by general competition law.

This approach is recommended on that basis that, in the short term, accreditation and a linked access test would provide comfort to growers and customers, while phasing down the level of investigation and compliance activities to bring these arrangements more in line with those for other agricultural commodities. This approach is consistent with the PC recommendations, noting that the abolition of the Scheme would be delayed with the retention of accreditation under a 'lighter-touch' scheme for a further 12 months.

The proposed approach is expected to deliver net benefits to the wheat industry, which has an important role in many regional economies.

There are expected to be no significant resource implications from a budget perspective.

- The move to a ‘lighter-touch’ accreditation scheme aims to be a budget neutral scheme and no increase in the Wheat Export Charge will be necessary. It will allow WEA which, in the past, has relied on ad-hoc support from the government, to operate within its budget;
- Administration of access undertakings by the ACCC will be consistent with its treatment of undertakings and competition issues in other industries and, therefore, should be able to be undertaken within the ACCC’s core budget.

Implementation

The lighter touch scheme to apply from 1 October 2011 to 30 September 2012 would be implemented by the Minister for Agriculture, Fisheries and Forestry exercising his ability to advise WEA that he requires it to include certain matters under its Corporate Plan.

An amended WEMA 2008 is the preferred option to implement the proposed October 2012 reforms as it provides the simplest model for legislative change and maintains continuity of wheat legislation in the transition to deregulation.

The access test would be retained after 1 October 2012, with exporters of bulk wheat that operate grain export port terminal facilities required to have access undertakings in place that include continuous disclosure rules until 30 September 2014. If a required undertaking is not in place, those port terminal operators would not be able to export bulk wheat, thereby retaining the link between the access test and the ability to export.

Decisions on which bulk wheat exporters that operate port terminal facilities are required to pass the access test (currently made by WEA) would be made by DAFF. DAFF would be responsible for advising the ACCC which grain export port terminal operators are required to have undertakings in place and comply with the access test, based on the same criteria that currently apply.

Customs would control the ability to export wheat. The ACCC would advise Customs if a grain port terminal operator that required an undertaking did not have one in place, which would be the trigger for Customs to refuse exports. Shipments from other wheat exporters handled by that port terminal would not be affected by the notice.

There is no need for further formal review of the preferred option because its implementation will result in a deregulated bulk wheat export market, making wheat consistent with other agricultural commodities. DAFF would continue to monitor the industry. The ACCC would respond to any competition issues that arise. WEA would continue to monitor compliance with accreditation conditions and the access test until 30 September 2012, after which the ACCC would monitor the access test on a complaint basis until 30 September 2014. Deregulation of the bulk wheat market would then be complete, with the market being subject to general competition law administered by the ACCC.

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