



Senate Regional and Rural Affairs and Transport Committee

Inquiry into the

Wheat Export Marketing Amendment Bill 2012

April 2012

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NSW Farmers' Association Background

The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, Livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

Summary of Recommendations

- ***To ensure reliability of Australian wheat on the export market, NSW Farmers recommends that an accreditation scheme be retained for exporters of wheat which includes a system of cargo control.***
- ***Due to the fact that reputational risk is faced through both bulk wheat exports, as well as exports in containers and bags, NSW Farmers recommends that this be a condition of all wheat exports.***
- ***That an accreditation scheme which looks at risk management and financial capability be continued through the WEM Act.***
- ***That Wheat Stocks information should be provided be provided weekly during harvest, and monthly at other times by:***
 - ***Silo location/port zone***
 - ***Grade of wheat***
 - ***Warehoused – committed or purchased***
- ***That an accreditation scheme which continues the requirement of the port access test for exporters who operate port terminal facilities or are related entities to operators of port terminal facilities be continued through the WEM Act.***
- ***That Government assistance to industry to provide industry good functions will assist the market to operate in a manner that will enable its capacity to maintain and increase value capture for the benefit of all segments of the market.***
- ***That WEA should maintain an accreditation function, as well as be given charter to perform industry good functions.***
- ***That the WEC should remain and funds connected used to fund WEA to undertake accreditation and industry good functions.***

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Section 1. Introductory Comments

The Wheat Export Marketing Amendment Bill 2012 (the Bill) has been introduced with the objective of implementing the Australian Government's initial response to the Productivity Commission's (PC) review of the wheat export marketing arrangements introduced by the *Wheat Export Marketing Act 2008* (Cth) (the WEM Act).

NSW Farmers has previously gone on record to note its concerns with the manner in which the PC review was required to be undertaken and its findings.

Shortcomings in the process can be seen in the statutory requirement for the final report to be handed down by 1 July 2010.¹ This was before all of the 2009-10 harvest crop targeted for export would have been moved from up-country storage; with 2009-10 being only the second harvest after the commencement of the liberalised export marketing arrangements. Some of NSW Farmers concerns with the findings of the PC are included within the main body of the submission.

NSW Farmers is opposed to the Bill for the reasons outlined in this submission.

In particular the Bill seeks to:

- Schedule 1 (proposed commencement 1 October 2012)
 - Repeal the Wheat Export Accreditation Scheme (the Scheme) and abolish the Wheat Export Charge (the WEC).
 - Retain the port access test as a requirement of wheat exporters who either operate a port terminal, or as an associated entity to an operator of a port terminal.
 - Transfer the jurisdiction of the port access test to the Australian Competition and Consumer Commission (ACCC).
 - Enable the Minister to approve a non-prescribed voluntary industry code of conduct' regarding access to port terminals.²
 - Make transitional arrangements for the functions undertaken by Wheat Exports Australia (WEA) following the removal of the Scheme.
- Schedule 2 (proposed commencement 1 January 2013)
 - Wind up Wheat Exports Australia (WEA)
 - Make provision for the administration of the Wheat Exports Australia Special Account following the winding up of WEA.
- Schedule 3 (proposed commencement not before 1 October 2014)

¹ *Wheat Export Marketing Act 2008* (Cth) s 89 (4).

² Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, 2.



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- Repeal the port access test provisions and other features remaining within the WEM Act, provided that the Minister has approved the port access code of conduct.

This submission will make general comments on the desirable elements of a wheat export arrangement, that NSW Farmers believes necessary to deliver competitive performance to all sectors of the market; as well as retaining protection of Australia's reputation as an exporter of quality grain, and of the wheat growing participants within the market. NSW Farmers believes that the latter component remains an important function of regulation, as grain farmers, due to the size of operation and focus on production over marketing expertise, often face a market power imbalance against other operators within the value chain.

These desirable elements are:

- A regulatory accreditation scheme which focuses on:
 - The performance of Australian exporters to meet standards established to enhance Australia's reputational status and encourage greater value capture at the offer of parcels of wheat into the export market.
 - Mechanisms which establish due diligence on behalf of exporters to ensure that they are able to meet payments to growers as they fall due. At the very least this should provide transparent mechanisms which enable growers to easily identify and assess the counter party risk of a prospective purchaser of wheat, such as providing proof of letters of credit or other financial facilities supporting the exporter, to better determine the appropriate risk premium required for a trade.
 - Mechanisms which promote competitive function within the export wheat supply chain including:
 - The provision of optimal information into the market to enable the identification of opportunities to:
 - Assemble high value parcels of grain for export;
 - Enter into the market as an exporter, or the provider of new infrastructure, to compete for any excessive margin caused by lack of competition; and
 - Regulatory control over port access.

- Funding and delivery arrangement for accreditation and industry good functions which takes into account that the benefits of the above accrue throughout the value chain.

The submission will then seek to provide recommendations targeted at the specific amendments proposed within the Bill.

Section 2. General Comments

Section 2. 1. Regulatory Accreditation Scheme

The PC review of the export wheat accreditation attributed a range of benefits that are obtained by the accreditation scheme. These benefits included:

- Reassurance to growers.³
- Facilitating access.⁴
- Protecting Australia's reputation as an exporter of high performing grain.⁵
- Facilitating a smooth transition from the single desk arrangements which in addition to those outlined above included:
 - Assisting exporters by 'enhancing governance and risk management processes' through the accreditation scheme's requirements.⁶
 - Providing industry good functions which were undertaken as part of the single desk marketing arrangements.⁷

NSW Farmers find it inadequate that in assessing these benefits against the direct and opportunity costs of the accreditation scheme, that the PC failed to undertake an independent quantitative assessment as part of a proper benefit-cost analysis. NSW Farmers believes that such a process would have provided a more objective platform for the PC to draw its recommendations from, and to enable industry and

³ Productivity Commission, *Wheat Export Marketing Arrangements*, Report No. 51, (2010) 143-145.

⁴ Ibid 146 – 147.

⁵ Ibid 147-148.

⁶ Ibid 148.

⁷ Ibid 149.



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government to make better informed decisions regarding the correct policy positions for the future of the export wheat marketing.

As outlined above, NSW Farmers sees the two major functions of an accreditation scheme are that of ensuring performance standards of export grain and providing comfort to growers to facilitate trade. Other functions which are beneficial for the operation of a competitive market, which may be undertaken either through an accreditation scheme or by other statutory means, will be discussed later in the submission.

2.1 (a) Performance Based Accreditation Scheme

In its consideration of the accreditation scheme, the PC considered the argument that an accreditation scheme was not required on the basis that the risk associated with reputation is managed by the market for the export of other grains, and indeed wheat within the container and bag trade. However, quality failures within the container export trading of wheat have been subsequently identified as being a high risk to Australia's reputation as a wheat exporter by GrainGrowers Ltd's *What the World Wants from Australian Wheat* report.⁸ This indicates a failure of the market to ensure quality since the dismantling of regulation from the bag and container trade.

However, more importantly NSW Farmers however feels that in making its recommendations that the PC failed to adequately weight the importance of wheat functionality to the value of Australia's export wheat trade. That is ensuring that wheat, when sold and matching contract specifications, has the desired performance and functionality during baking or processing operations.

This functionality is a key driver to adding value through the export wheat supply chain.⁹ The difference in value that wheat functionality creates can be seen in programs that grower groups from wheat exporting nations are undertaking to seek to improve the quality of their wheats. In 2011, a budget request from the US National Association Wheat Growers and the National Wheat Improvement Committee highlighted the need to ensure grain functionality, as a key element for providing value through the export wheat market, in the following way:

- *'Wheat is not corn' – Functionality Quality Drives \$ Value; and*
- *Quality is Fundamental to Competitiveness*

⁸ K Quail, M Southern, G McAulay, O Avis and G Aley, 'What the World Wants from Australian Wheat', (Stakeholders Report, Grain Growers Limited, April 2011) 7.

⁹ Ibid 7-9.

US Wheat is competitive because of attention and commitment to milling and baking quality. The US simply cannot compete as the lowest cost competitor.¹⁰

The report into a recent study tour to South East Asia by WEA provides an illustration as to the importance in maintaining functionality and performance of Australian wheat through ensuring that deliveries not only meet contract specification, but functionality required by market participants. In particular the purchasers of wheat noted:

- Presently APW is considered to a brand that attracts a premium over grain from competitor nations.¹¹
- That Asian millers are concerned about the lack of a regulatory agency to audit the quality of export wheat from Australia, similar to the US Federal Grain Inspection Service.¹²
- Cross blending of grains from different varietal classes has been occurring, which whilst maintaining the specification standards of the contract, may not retain the functionality sought in the purchase.¹³

This analysis is not inconsistent with evidence received by the PC with regard to container wheat exports.¹⁴

On the basis of the above, NSW Farmers believes that an accreditation scheme with a focus on quality is important to the maintenance of value capture in the export wheat market; and as such makes the following recommendations.

To ensure reliability of Australian wheat on the export market, NSW Farmers recommends that an accreditation scheme be retained for exporters of wheat which includes a system of cargo control.

¹⁰ National Association of Wheat Growers and National Wheat Improvement Centre, *Wheat Quality and Competitiveness* (2010) <<http://www.wheatworld.org/wp-content/uploads/Wheat-Quality-Initiative-FY11-Final.pdf>>.

¹¹ Kim Halbert and Peter Woods, 'Wheat Exports Australia South East Asian Trip Report: Issues that affect Australia's Wheat Industry', (Wheat Exports Australia, September 2011) 2.

¹² Ibid 4.

¹³ Ibid 4.

¹⁴ Productivity Commission, above n.3, 147-148; 360.



Due to the fact that reputational risk is faced through both bulk wheat exports, as well as exports in containers and bags, NSW Farmers recommends that this be a condition of all wheat exports.

2.1 (b) Facilitating Trade Through Grower Confidence

NSW Farmers continues to see a key function of market regulation is to protect market participants with unequal market power. With regard to the Australian market exporting wheat, the market participants with the least market power are grain farmers, whose core competencies tend to be production focused more so than in the marketing of crop. The difficulties faced by farmers in undertaking this marketing task are exacerbated by the asymmetrical information regarding the risk management and financial capacity of exporters.

As such, NSW Farmers believes that regulatory oversight of the management of risk and financial capacity, through continuing provisions under s 13 of the WEM Act should continue. Failure to do so is likely to reduce confidence in the very market entrants who have the capacity to drive competitiveness in the market, with uninformed growers choosing to manage the risk surrounding surety of payment by 'deal[ing] exclusively with exporters that they know to be better established'.¹⁵

That an accreditation scheme which looks at risk management and financial capability be continued through the WEM Act.

If, as a result of the Bill, the provisions which make risk management and financial capability are withdrawn from the wheat export arrangements, NSW Farmers recommends that alternative arrangements which enable the market to access information on these capabilities.

This could operate similarly to a product designed for members of the Australian Livestock and Property Agents Association called Stockinsure. Participating exporters would engage with the relevant authority, who would be responsible for benchmarking credit arrangements and risk management systems and providing market transparency on documents outlining credit arrangements through the use of a web-based system or on price notifications to growers. This benchmarking would then be used to provide guidance to the market place to enable farmers to determine how best to manage counter party risk, including risk premium and terms of trade.

¹⁵ Productivity Commission, above n.3, 146.

2.1 (c) Wheat Stocks and Quality Information

In order to facilitate competition within the market, NSW Farmers holds the view that increased information regarding wheat stocks and quality is required. The basis of this view is that currently there is asymmetrical nature of knowledge of un-committed grain stocks held within the bulk handling companies' infrastructure. The asymmetry of this information increases the market power held by the three major bulk handling companies within the Australian market.

NSW Farmers believes that better information would promote competitive performance within the market by:

- Facilitating 'target purchases and stock swaps' which will facilitate the aggregation of parcels of grain for export at specification.¹⁶ By doing so, it is anticipated that it will also create increased demand for grain farmers' wheat.¹⁷ NSW Farmers believes that the information required is the wheat stocks inventory segregated by:
 - Silo location/port zone
 - Grades
 - Warehoused – allocated
 - Warehoused – purchased

This data should be published weekly during harvest and monthly at other times.

- Exposing opportunities for increased competition within the grain export market, through benchmarking the Australian "bid – offer spread"¹⁸ against that of competitor nations. This could take place similarly to the previous Wheat Industry Benchmark analysis undertaken during the previous single desk arrangement,¹⁹ or other appropriate measures which gauge the performance of the market. This market information will assist in continuing

¹⁶ Wheat Exports Australia, Submission No 7 to Senate Rural and Regional Affairs and Transport Committee, Parliament of Australia, *Inquiry into Operational Issues in export grain networks*, May 2011, 5.

¹⁷ Ibid.

¹⁸ The "bid – offer spread" in this submission refers to the difference between the "bid" price at which grain is purchased off farm, and the "offer" price at which it is sold on international markets.

¹⁹ See Wheat Export Authority, *Wheat Industry Benchmark Factsheet* (2007), <http://www.wea.gov.au/Archived/Mediapre2008/Publicationspre2008/Fact%20Sheets/WEA/08%20Wheat_Industry_Benchmark_final_21.2.07.pdf>.



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to reveal inefficiencies within the logistic chain, as well as excessive rent taking behaviour of existing market participants. The latter has the capacity to act as a market signal to prospective entrants that opportunities exist to engage in the market competitively for available margin.

With regard to wheat stocks inventory, NSW Farmers submits that by making the provision of the above data a provision of accreditation for an exporter who stores grain for reward, or is an associated entity to a company who stores grain for reward, the licensing authority would be in a position to provide this information in a manner which promotes efficient market behaviour.

Better information production estimations during the Australian cereal season and 'grain quality from each harvest' was also identified as a need from overseas purchasers of Australian grain.²⁰

NSW Farmers does not believe that any administrative costs on behalf of those required to provide the information will be excessive. This is on the basis that it is well known that bulk handling companies already have this information readily on hand for stocks within their storage and logistics systems.²¹ Further, GrainCorp's submission to the Senate Rural and Regional Affairs and Transport's Inquiry into operational issues of export grain networks, which outlined their belief that stocks information is proprietary to both the holder of title to the grain and to the storage service provider, infers that it not only has such information close at hand, but also utilises it in its trading undertakings.²²

That Wheat Stocks information should be provided be provided weekly during harvest, and monthly at other times by:

- ***Silo location/port zone***
- ***Grade of wheat***
- ***Warehoused – committed or purchased***

²⁰ K Quail, M Southern, G McAulay, O Avis and G Aley, above n.8, 6.

²¹ See AWB (Australia) Ltd, Submission No 14 to Senate Rural and Regional Affairs and Transport Committee, Parliament of Australia, *Inquiry into Operational Issues in export grain networks*, 9 May 2011, 3-4.

²² GrainCorp Operations Limited, Submission No 12 to Senate Rural and Regional Affairs and Transport Committee, Parliament of Australia, *Inquiry into Operational Issues in export grain networks*, 12 May 2011, 9.

2.1 (d) Port Access

NSW Farmers agrees with the PC that ensuring port access is highly critical to ensuring that the wheat export market can operate competitively.²³ This is on the basis that the integrated system of receipt, accumulation, rail logistics and port terminal facilities operated by the three major bulk handling companies, leads itself to uncompetitive behaviour in the operation of port terminals, which will often be to the advantage of other segments of its operations.²⁴

NSW Farmers understands that the policy position on port access, which is implemented through the WEM Act, is one in which the legislature determined that it was an essential element for a liberalised wheat export market to operate competitively.²⁵ This is a position that NSW Farmers continues to support on the basis that the requirements of the WEM Act administered by WEA, have been more appropriate to the dynamics of the wheat export industry than that of the general competition law. In support of this position, NSW Farmers views the power of WEA to withdraw the accreditation of an exporter as being a suitable enforcement tool against owners of integrated grain handling and trading operations to ensure compliance. Further, the current provisions under the WEM are designed to seek reliability of port terminal facility, which is a major risk for Australia as a wheat exporting nation.²⁶

NSW Farmers holds fears that the proposed move away from a regulated port access to a 'non-prescribed voluntary industry code of conduct'²⁷ will result in behaviour from those operating port terminals will lead to sub-optimal competition and reduced reliability of shipping movements to customers.²⁸ This in turn will reduce value which would otherwise flow to all segments of the market.

Instructional to the continuance of these fears is the position put by GrainCorp, whose website includes the claim that they 'seven of the eight bulk grain elevators

²³ Productivity Commission, above n.3, 174.

²⁴ See Australian Grain Exporters Association, Submission No 20 to Senate Rural and Regional Affairs and Transport Committee, Parliament of Australia, *Inquiry into Operational Issues in export grain networks*, 2011, 4.

²⁵ Productivity Commission, above n.3, 178.

²⁶ See Wheat Exports Australia, 'Report for growers 2010-11' (Wheat Exports Australia, December 2011)17.

²⁷ Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, 2.

²⁸ Kim Halbert and Peter Woods, 'Wheat Exports Australia South East Asian Trip Report: Issues that affect Australia's Wheat Industry', (Wheat Exports Australia, September 2011) 2.

in eastern Australia',²⁹ to the recent Inquiry into operational issues in export grain networks. In dealing with matters pertaining to port terminal access, the majority of GrainCorp's submission dealt with putting forward the view that their port terminal infrastructure should not be 'assumed to be "essential";³⁰ and that no evidence had been put forward that GrainCorp had denied access to this infrastructure in contravention of its access undertaking.³¹

The concern this raises with NSW Farmers, is that with a proposed removal of the statutory requirement for GrainCorp to enter into an access undertaking, it has put forward the position that it is likely that it would not be required to do so under general competition law. Whilst this does not mean that GrainCorp would not provide access to third parties, it provides concerns that the amount and conditions of such access may lead to less than optimal competition and reliability within Australia's export wheat market, with particular ramifications for those on the Eastern Seaboard.

As such, NSW Farmers supports the continued statutory requirement for port terminal service providers who are exporters of wheat, or related entities to exporters of wheat, to meet the port access test.

That an accreditation scheme which continues the requirement of the port access test for exporters who operate port terminal facilities or are related entities to operators of port terminal facilities be continued through the WEM Act.

Section 2.2. Funding and Delivery of Accreditation and Industry Good Functions

2.2 (a) Industry Good Function

At the point in time that the single desk export marketing arrangements were dismantled the majority of industry good functions were undertaken by AWB; either intentionally, or by the nature of the influence it held upon the market in undertaking its duties as the single desk exporter.³² Whilst the PC noted a range of responses as to how industry good functions were being delivered in the liberalised export market, it made the finding that at that point in time that it was

²⁹ GrainCorp, *Ports* <<http://www.graincorp.com.au/prodserv/Ports/Pages/default.aspx>>

³⁰ GrainCorp Operations Limited, Submission No 12 to Senate Rural and Regional Affairs and Transport Committee, Parliament of Australia, *Inquiry into Operational Issues in export grain networks*, 12 May 2011, 6.

³¹ *Ibid.*

³² Productivity Commission, above n.3, 369-373.

‘too early to expect to see evidence of material costs being suffered by the industry’.³³

Since this time GrainGrowers Ltd, supported by the Department of Agriculture Fisheries and Forestry, has released its *What the World Wants from Australian Wheat* report. The report provided a range of recommendations to ensure Australia remains competitive in the global wheat market.³⁴ Many of these recommendations addressed the need for greater provision of industry good function, including:

- Maintenance of the Australia varietal classification and quality systems
- Crop shaping for the needs of international purchasers
- Technical services to purchasers of Australian wheat

Whilst systems have commenced to ensure that these roles transitioned into the post single desk wheat export arrangements era, concerns about the sustainability of providing industry good functions continue. This can be evidenced in the uncertainty surrounding the ongoing funding of Wheat Quality Australia; which executes the functions of the Wheat Classification Council and Variety Classification Panels.

NSW Farmers rejects the PC’s attempt to differentiate the case of market failure from that faced in the delivery of industry good functions into the wheat industry.³⁵ Instead, NSW Farmers believes that the most efficient means of delivering industry good functions is through an industry funded organisation with statutory authority to deliver industry goods on behalf of, and with accountability to, industry.

To this regard NSW Farmers supports the comments of AWB as to the provision of industry good functions:

‘[I]ndustry good’ functions are those services that should be undertaken by either government authorities or industry representative bodies to ensure information or services are provided in an independent manner for the benefit of all industry participants. These services should create long term benefits by neutralising the impact of issues that would destroy value for the industry in the long term if there were permitted to be undertaken through commercial channels.³⁶

³³ Ibid 383.

³⁴ K Quail, M Southern, G McAulay, O Avis and G Aley, above n.8, 5-8

³⁵ Productivity Commission, above n.3, 383-4.

³⁶ Ibid 368.

This comment notes, that with particular regard to industry good functions such as the wheat quality, crop shaping, and the provision of information, the requirement for long term strategic thinking for the benefit of the entire industry, will often be lost to the short term needs of industry participants' balance sheets; that is the current exposure to the market on a trade, or the agronomic tasks of production.

That Government assistance to industry to provide industry good functions will assist the market to operate in a manner that will enable its capacity to maintain and increase value capture for the benefit of all segments of the market.

2.2 (b) Delivery of industry good and accreditation

The submission has outlined areas in which NSW Farmers believes sound government policy is required to assist in facilitating a strong and competitive market; a market which is capable of capturing value in export markets and ensuring efficient distribution through the different segments of the export wheat industry. It is the view of NSW Farmers that the best mechanisms available to implement these recommendations are:

- the retention of WEA;
- the amending of the accreditation scheme to include a strong performance based criteria and the provision of information, either by legislative amendment or by regulatory instrument;³⁷ and
- the amending of WEA's charter, either by legislative amendment or in accordance with the power of WEA to 'do anything incidental to or conducive to the performance' of its other functions,³⁸ to enable WEA to provide industry good functions. This should include the continuation of the varietal classification, either through funding of Wheat Quality Australia or by other arrangements with Wheat Quality Australia.

That WEA should maintain an accreditation function, as well as be given charter to perform industry good functions.

2.2 (c) Funding of Industry Good and Accreditation Functions

NSW Farmers considers the Wheat Export Charge (WEC) an efficient mechanism for funding the continued operation of WEA, including the performance of accreditation and industry good functions.

³⁷ *Wheat Export Marketing Act 2008* (Cth) s 8.

³⁸ *Wheat Export Marketing Act 2008* (Cth) s 36 (c).

In making this recommendation, NSW Farmers notes that the PC recommended utilising a levy collection model, similar to that which funds GRDC, for the provision of stocks information. For wheat, this is a levy, paid upon every tonne delivered for sale or used in processing. It is generally paid by an 'intermediary' on behalf of the grain farmer,³⁹ with the intermediary generally being the purchaser of the grain from the farmer.⁴⁰ As such, all producers of wheat, whose wheat is used for reasons other than domestic purposes, contribute to the wheat levy.

Given that the main purpose of the functions for which WEA requires funding for its operation are for the benefit of the export market, NSW Farmers believes that it is more appropriate for this funding to be appropriated through the export market. This is on the basis that to fund this operation through the wheat levy would result in grain farmers who do not sell their grain into export networks cross subsidising those who do. As the WEC is only charged on grain which is exported, it is a less distortionary funding mechanism than the general levy.

Further, because the WEC is collected from the exporter of grain,⁴¹ it is more administratively efficient to collect, with fewer transactions leading to the same collection of funds. This however does not mean that the ultimate cost of the WEC is paid for by the exporter, rather, it is well accepted that this cost is ultimately paid for by the grain farmer by way of reduced price for their grain.⁴² To the extent that any costs are not passed down to the grain farmer, assumptions used by ABARES in determining the effect of the carbon pricing scheme, outline that these are likely to be low.⁴³ NSW Farmers would argue that it would not be inappropriate if all of the cost of the WEC was not passed down to farmers if it was being used to fund industry good functions, as they will assist to increase value capture within the entire market, as well as distribute additional value efficiently. This will be for the benefit of both exporters and farmers.

That the WEC should remain and funds connected used to fund WEA to undertake accreditation and industry good functions.

³⁹ Department of Agriculture, Fisheries and Forestry, *Information Sheet – Wheat Levy* (07 Feb 2012) <http://www.daff.gov.au/agriculture-food/levies/grains/wheat/information_sheet>

⁴⁰ Ibid.

⁴¹ Department of Agriculture, Fisheries and Forestry, *Information on Wheat Export Charge*, (2008) <http://www.daff.gov.au/__data/assets/pdf_file/0010/183583/61_wheat_export_notice.pdf>.

⁴² Productivity Commission, above n.3, 319.

⁴³ L Whittle, B Hug, E Heyhoe, H Ahammad and P Berry, 'Possible short-run effects of a carbon pricing scheme on Australian agriculture' (Research Report No 11.10, Australian Bureau of Agricultural Resource Economics and Sciences, December 2011) 5-7.

Section 3. Comments Specific to the Bill

Section 3. 1. Schedule 1 - Amendments relating to the wheat export accreditation scheme

3.1 (a) Overview

- The amendments contained within the Schedule seek to remove the wheat export accreditation scheme, transfer the operation of the port access test to the ACCC, enable the Minister to approve a code of conduct for port operation, and provide for transitional arrangements.
- It is proposed that the amendments contained within Schedule 1 will commence on 1 October 2012.
- NSW Farmers opposes the removal of the accreditation scheme and the WEC.
- Specific comments are made below

3.1 (b) Item 1

- NSW Farmers is concerned that the proposed amendment seeks to change the objectives of the Act by removing the advancement of the needs of wheat growers.
- The objects of an Act are to be taken into account when interpreting ambiguous provisions of a statute. Whilst the objects of an Act are to be construed from an overall construction of the Act, a specific object provision will be taken into account in determining what the object of the Act in question is.
- Given the power imbalance between wheat growers and other participants within the industry, NSW Farmers believe it is fair that upon a question of resolving an ambiguity within the construction of the WEM Act that the provision be interpreted favourably to the needs of wheat growers.

Recommendation

- On line 9 of page 3 insert the words “and advances the needs of wheat growers” after the word chain.

3.1 (c) Items 4- 67 Repeal of the Wheat Export Accreditation Scheme

- As outlined in Section 2 of this submission, NSW Farmers is opposed to the repeal of the Wheat Export Accreditation Scheme.

Recommendation:

- Delete items 4 – 67 from the Bill.
- Insert new provisions:

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- An amendment to s 7 to include bag and container wheat exports within the accreditation scheme.
- An amendment to s 13 empowering WEA to develop a performance based accreditation scheme.

Section 3. 2. Schedule 2 – Amendments to Wheat Exports Australia

3.2 (a) Overview

- The schedule seeks to wind up WEA, and make provisions for the use of moneys held within the WEA Special Account to be administered in a way that assists the export wheat industry upon the direction of the Minister
- It is proposed that the amendments contained within Schedule 2 would commence on 1 January 2013.
- NSW Farmers is opposed to the winding up of WEA and the associated amendments to the WEA Special Account.

Recommendation

- On the basis of the argument outlined in Section 2, NSW Farmers is opposed to schedule 2.
- If the schedule is moved NSW Farmers seeks amendments that retain WEA as an industry good service organisation funded through the WEC.

Section 3. 3. Schedule 3 – Repeal of the Wheat Export Marketing Act 2008

3.3 (a) Overview

- The schedule seeks to repeal the WEM Act.
- It is proposed that the amendment within schedule 3 cannot commence until 30 September 2014 and not before the Minister has approved a voluntary code of conduct for port terminal access.

Recommendation

- NSW Farmers is opposed to the repeal of the WEM Act.