Submission

Review of the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014

January 2018
EXECUTIVE SUMMARY

Co-operative Bulk Handling Limited (“CBH”) makes this submission to the review by the Minister for Agriculture and Water Resources of the first three years of operation of the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014 (“Wheat Port Code”).

In responding to the matters outlined in the Wheat Port Code Review - Taskforce Issues Paper (September 2017), this submission articulates CBH’s view that:

- **Government should, wherever possible, avoid unnecessary regulation in agricultural export supply chains, as it invariably leads to increased costs, inefficiencies and market distortion.** These costs are ultimately borne by the grower. CBH believes it is vitally significant to ensure Australian grain can be exported efficiently in order for Australian growers to be able remain competitive in the global market place. This is particularly significant to address the growing volume of grain being supplied into our traditional export markets by producers from the Black Sea region, which operate in a high-yield, low cost and low regulatory environment. CBH considers there are significant risks to the Australian export market from high levels of port regulation given not only the increased cost but also the inflexibility it imposes, particularly during busy harvest periods when decisions need to be made quickly within the harvest timeframe. To that end, Government should aim to pursue policy that reduces regulatory burdens on Australian growers and the industry;

- **Port access regulation is only necessary in the event that the market cannot effectively respond and a clear need is established based on demonstrated evidence of market failure.** In the case of the Australian grain industry, CBH considers that no market failure has been experienced and concerns regarding access constraints have not eventuated. In Western Australia, CBH is competing with the major multinational agricultural companies to export Australian wheat on behalf of Australian growers. These global giants have the financial capacity to undertake whatever investment they wish, either in port terminals or in upcountry storage, if they believe it is in their best interests to do so and/or if they believe that they are not being appropriately serviced. Indeed, these global giants have invested in strategic upcountry storage networks and even built their own port terminals in most States, including Western Australia. CBH’s position as a grower owned co-operative, representing growers interests needs to be considered in appropriate perspective;

- **If the more prescriptive requirements of the Wheat Port Code had applied to the operations of CBH’s terminals during the record harvest of 2016/17, CBH would not have been able to put in place the access arrangements that allowed it to efficiently manage that record harvest to the benefit of CBH’s cooperative members.** The efficiency delivered by the flexible approach CBH was able to implement benefited growers, export customers, the Western Australian and ultimately the Australian economy. There has been no evidence of market failure in the Western Australian grain export supply chain which would justify making CBH subject to the higher tier of the Wheat Port Code. The re-imposition of more prescriptive regulation would be a retrograde, costly and inefficient step that would put at risk the improvements to the export supply chain that CBH has been able to implement over the last three years with the benefit of the exemption; and

- **In the three years since the commencement of the Wheat Port Code, the Australian grain export industry has evolved to a position where Government can consider a transition towards the repeal of the Wheat Port Code either by, or at the conclusion of the September 2020 review.** Across the board increases in export capacity, a range of new competitive alternatives for grain exporters and the market efficiently managing the export task, even with a record harvest in 2016/17, provides the evidence and impetus required to repeal the Wheat Port Code.

CBH also notes that there is no equivalent code or access regulation in any other jurisdiction in the world, and certainly not in the jurisdictions in which the global grain giants originate. This is a further market indication that this type of regulatory regime does not improve competition and may in fact create inefficiencies to the detriment of all stakeholders.

With the sale of Murray Goulburn to the Canadian dairy company Saputo, CBH is Australia’s only remaining large agricultural co-operative, representing growers’ interests in the market. CBH and its co-operative members feel strongly that the current export supply arrangements are working well and there is no need to re-regulate and create inefficiencies and costs for Western Australian growers that would harm their international competitiveness.
CONTENTS

1.0 INTRODUCTION ............................................................................................................................................... 4
2.0 CBH - AN OVERVIEW ....................................................................................................................................... 4
3.0 BACKGROUND - CBH'S SUBMISSION TO THE JUNE 2014, DRAFT MANDATORY CODE OF CONDUCT ............... 5
4.0 RESPONDING TO THE ISSUES PAPER ............................................................................................................. 6

Q1 SHOULD THE WHEAT PORT CODE BE REPEALED AND IF SO, WHEN? ................................................................. 6
Q2 WHAT ARE THE BENEFITS AND COSTS OF RETAINING THE WHEAT PORT CODE? ............................................... 7
Q3 ARE THERE ALTERNATIVE OPTIONS, INCLUDING NON-REGULATORY OPTIONS, THAT COULD DELIVER THE SAME (OR BETTER) OUTCOMES AS THE WHEAT PORT CODE, BUT AT LOWER COST? ........................................................................................................ 8
Q4 HAVE THERE BEEN CHANGES TO MARKET CONDITIONS OR BUSINESS ARRANGEMENTS IN THE PORT TERMINAL SERVICES SECTOR IN THE PAST THREE YEARS THAT OBViate THE NEED FOR THE WHEAT PORT CODE (IN-FULL OR IN-PART) OR WHICH STRENGTHEN THE CASE FOR RETAINING IT? .......... 10
Q5 WHAT JUSTIFICATION IS THERE TO CONTINUE THE OPERATION OF THE WHEAT PORT CODE OVER AND ABOVE THE PROTECTIONS PROVIDED UNDER PART IIIA OF THE CCA? ................................................................. 10
Q6 WHAT EFFECT HAS THE WHEAT PORT CODE HAD ON THE PROMOTION OF COMPETITION IN UPSTREAM AND DOWNSTREAM MARKETS? ........ 11
Q7 WHAT EFFECT HAS THE WHEAT PORT CODE HAD ON THE ECONOMICALLY EFFICIENT OPERATION OF, USE OF AND INVESTMENT IN PORT TERMINAL FACILITIES? ................................................................................................................................ 12
Q8 HAS THE WHEAT PORT CODE LED TO ANY UNINTENDED, NEGATIVE CONSEQUENCES? ................................................ 12
Q9 HOW DO THE COSTS ASSOCIATED WITH THE OPERATION OF THE WHEAT PORT CODE COMPARE WITH THOSE UNDER THE FORMER ACCESS TEST REGIME? ................................................................................................................................. 12
Q10 WHAT AMENDMENTS SHOULD BE MADE TO IMPROVE THE OPERATION OF THE WHEAT PORT CODE? .................. 12
Q11 SHOULD THE POWER TO EXEMPT COOPERATIVES UNDER SUBCLAUSE 5(1) OF THE WHEAT PORT CODE BE RETAINED? ................................................................................................................................ 12
Q12 SHOULD THE ADDITIONAL REGULATORY REQUIREMENTS UNDER PARTS 3 TO 6 OF THE WHEAT PORT CODE BE RETAINED OR AMENDED? ........ 13
Q13 SHOULD THE REQUIREMENT FOR ALL PORT SERVICE PROVIDERS TO MAKE AVAILABLE A PORT LOADING STATEMENT EACH BUSINESS DAY UNDER CLAUSE 7 OF THE CODE BE RETAINED OR AMENDED? ........................................................................ 13

OTHER ISSUES ......................................................................................................................................................... 13

The availability and transparency of relevant market information to participants in the export supply chain. ................................................................. 13

FOR FURTHER INFORMATION ...................................................................................................................................... 17
1.0 INTRODUCTION

Co-operative Bulk Handling Limited (“CBH”) makes this submission to provide factual material to assist the Minister for Agriculture and Water Resources’ review of the first three years operation of the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014 (“Wheat Port Code”) which prescribes a mandatory code of conduct regulating the behaviour of bulk wheat port terminal service providers.

In particular it is noted that the Department for Agriculture and Water Resources, in conducting this review, is to examine the following:

- Whether the Wheat Port Code is still necessary;
- The effect that the Wheat Port Code has had; and
- Whether the Wheat Port Code can be improved.

As an organisation representing Western Australian grain growers and an export industry worth in excess of $3.5 billion to the State each year, CBH is both well placed and very pleased to assist and provide factual input into this review.

The Australian Government has an important role to play in ensuring effective regulatory oversight of multi-user supply chain infrastructure, especially under monopoly environments, to enable efficient and effective access to export supply chains for Australian growers.

However, wherever possible, and in the absence of clear evidence of market failure, CBH considers it incumbent on Government to seek to minimise export supply chain regulation as it generally leads to increased costs, inertia, inefficiencies and market distortion; the adverse effect of which and associated costs, are ultimately borne by primary producers. CBH expressed a similar view during the consultation process conducted prior to confirmation of the Wheat Port Code.

2.0 CBH - AN OVERVIEW

CBH is a unique organisation with a history almost as long as the grain industry it serves in Western Australia. The co-operative’s commitment to maintaining a partnership with its Western Australian grain grower members has helped build an industry that has been the backbone of the State’s rural economy since the beginning of the bulk handling system over 80 years ago.

This partnership has also been the basis of CBH’s strength and success. With the sale of Murray Goulburn to the Canadian dairy company Saputo, CBH is Australia’s only remaining large agricultural co-operative, representing growers’ interests in the market.

CBH has constantly innovated and grown with operations today extending along the value chain from grain storage, handling and transport to marketing, shipping and grain processing. Now Australia’s biggest co-operative and a leader of the nation’s grain industry, CBH is controlled by 4,100 grain growers and:

- Operates a grain storage and handling network incorporating 150 country receival sites with a total storage capacity in excess of 20 million tonnes and four export terminals, exporting 90 per cent of the State’s grain crop;
- Is Western Australia’s largest trader of wheat, barley, canola and lupins, acquiring and marketing around 50% of all grain produced in Western Australia to more than 30 export destinations and over 200 customers globally;
- Purchased $175 million worth of custom-built locomotives and rail wagons in order to deliver above rail efficiencies to the Western Australian grain industry;
- Is a 50% joint venture partner in the Interflour Group (Interflour). Interflour operates 10 flour mills and a malting plant, in Indonesia, Malaysia, Vietnam, the Philippines and Turkey. Interflour has a total milling capacity of more than 2 million tonnes per year making it one of the largest flour millers in South East Asia and an important customer for Australian exports; and
- Has invested in Blue Lake Milling, a wholly owned subsidiary oat processor operating in South Australia and Victoria, with a milling capacity of 60,000 tonnes (due to double with a new mill under construction in Western Australia).

In a typical year, Deloitte Access Economics calculated that CBH and its grower members contribute almost $3.5 billion in gross value-add to the Western Australian economy. CBH’s commitment reaches all levels of Western Australia’s wheatbelt communities, meaningfully participating in and enhancing the sustainability and vitality of the regions.
At the peak of harvest, CBH employs approximately 2,700 permanent and casual personnel. These employees are located across the co-operative’s 10 regional offices, 150 receive site locations, four ports, representative offices in Adelaide, Hong Kong, Japan, and Russia, and a head office in West Perth.

Perhaps most importantly, CBH as a co-operative, is focused on delivery of an efficient and cost effective export supply chain to Western Australian grain growers. CBH believes the costs of its export supply chain are globally competitive as explained in CBH’s submissions on the introduction of the Wheat Port Code.

3.0  BACKGROUND - CBH’S SUBMISSION TO THE JUNE 2014, DRAFT MANDATORY CODE OF CONDUCT

In the extensive consultations that took place in the lead up to establishing the Wheat Port Code, CBH was consistent in its view that Government should, wherever possible, avoid unnecessary regulation in agricultural export supply chains, as it invariably leads to increased costs, inefficiencies and market distortion that is ultimately borne by the grower.

CBH stated in its 2014 Submission that port access regulation is only appropriate in the event that the market cannot effectively respond and a clear need is demonstrated. In the case of the Australian grain industry, CBH considered that no market failure had been experienced.

Three years on from the establishment of the Wheat Port Code, the wheat export industry has matured further. CBH is competing in Western Australia with some of the largest agricultural companies in the world, including the global “ABCD” giants – ADM, Bunge, Cargill and Louis Dreyfus, as well as Glencore/Viterra, and Sumitomo. Each of these multinationals has financial resources far in excess of CBH and the capacity to invest in grain export terminals, should it so wish. Indeed, Bunge has already done so, prior to the change to the Wheat Port Code. If CBH did not currently provide sufficient export capacity to these multinationals, or did not export their grain efficiently, they would have no restriction in their ability to make such an investment, as has occurred on the east coast of Australia where they have constructed their own terminals, upcountry storage networks and even their own above rail operations (locomotives and wagons).

This industry and market maturity allows for a transition towards the repeal of the Wheat Port Code. This is on the basis that port operators such as CBH continue to provide consistent and equitable access to third parties to export grain via their facilities and the arrival of and expansion of the number of players, particularly the large multinationals as highlighted above.

Of course, as a grower controlled cooperative, CBH has no incentive to exploit growers or exporters in their supply arrangements. Rather, CBH and its Western Australian grower members have a significant interest in ensuring their crops are supplied into global markets at an efficient price. To that end, CBH will always seek to encourage the most competitive market possible for Western Australian grain, including facilitating competition through increased access to rival grain marketers – something that again has factually occurred.

Given both its co-operative structure and a track record of facilitating the efficient export of grain from Western Australia, CBH was granted an exemption under the Wheat Port Code on the basis that the cooperative and mutual business structure is fundamentally different to a corporate model. Unlike publicly listed companies or privately-owned businesses, CBH, as a co-operative, is not motivated by profit or returns to external shareholders. CBH exists solely to create and return value for Western Australian grain growers and “promote the development of the grain industry in Western Australia.”

It is also significant that, as a co-operative, CBH returns surpluses via rebates to growers, based on their proportionate usage of the export supply chain, when harvest volumes are sufficient to generate those returns. Nonetheless, even in poor seasons, CBH as a co-operative still invests in the capacity of the export supply chain. In this sense, CBH operates the export supply chain for the long term benefit of Australian growers, rather than the short term achievement of profits.

Ultimately, a real benefit of CBH’s co-operative structure is that individual growers are able to obtain access to large scale efficiencies without having to take the seasonal risk of that infrastructure investment directly on their own balance sheets.

The co-operative exemption granted to CBH through the Wheat Port Code has assisted CBH, growers and grain exporters by way of:

- Enhanced flexibility – CBH has been able to negotiate Long Term Agreements (see Q5) providing marketers and users of CBH’s port infrastructure with improved service and unparalleled flexibility to maximise grain export opportunities, not possible under previous arrangements;

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1 As stipulated in CBH’s Constitution.
- Greater capacity – operating within a context of lower regulatory burden has seen CBH’s port capacity increase to 18.75 million tonnes per annum; and
- Reduced costs – CBH’s Western Australian based supply chain is the most competitive in Australia offering growers and marketers low cost access to efficiently operated export infrastructure.

Figure 1: CBH Storage and Handling fees (minus grower rebates) compared to other Australian major bulk handling providers.

Significantly, CBH believes that, in the absence of the co-operative exemption, it would not have been able to put in place long term supply arrangements or operate its export supply chain as flexibly and efficiently as it did to support the record harvest in 2016/17. Ultimately, such inefficiencies would have been borne by growers and CBH’s export customers.

In responding to the questions raised in the Discussion Paper that are relevant to the CBH business, this submission seeks to demonstrate these principles and developments accordingly based on factual evidence.

4.0 RESPONDING TO THE ISSUES PAPER

Q1 Should the Wheat Port Code be repealed and if so, when?

CBH considers that following the satisfactory completion of this review, it is opportune for the Australian grain industry to transition towards the repeal of the Wheat Port Code.

As discussed in the Executive Summary, Q3, Q5 and the ‘other issues’ section of these submissions, in the absence of market failure or inability of other participants to enter and provide services if they so wish, CBH does not consider there is a need for specific regulation in this area. As the Australian grain industry continues its transition to a fully deregulated marketing environment, existing regulatory frameworks should be considered. CBH notes the existence of Part IIIA of the *Competition and Consumer Act 2010* (Cth)
Indeed, the recent Harper Reforms to the CCA which came into force on 6 November 2017 included amendments to Part IIIA to facilitate the continued ability to declare monopoly infrastructure assets under Part IIIA through the amendments to criterion (b). Glencore’s successful declaration of the channel at the Port of Newcastle and access arbitration before the Australian Competition and Consumer Commission (ACCC) demonstrate that Part IIIA is able to be used.

Government has already undertaken comprehensive consultations regarding Australia’s wheat export arrangements obviating the need for any further review, for example:

- Productivity Commission, Wheat Export Marketing Arrangements
  - Report No. 51 (2010); and
  - 2013, National Access Regime, Report No. 66
- Australian Parliament, House of Representatives
  - Standing Committee on Agriculture, Resources, Fisheries and Forestry, Wheat Export Marketing Amendment Bill (2012);
  - Senate, Inquiry into ownership arrangements of grain handling (2013);
  - Senate, Inquiry into operational issues in export grain networks (2011); and
  - Senate, Inquiry into Australian grain networks (2014).

Over and above these formal reviews, port terminal operators have been subject to a number of regulatory processes that have involved substantial industry consultation, including, ACCC access undertaking processes in 2009, 2011 and 2014.

In addition, industry gathered and agreed on the principles for a voluntary code of conduct in 2012 and on the principles of a mandatory code of conduct in 2012/2013 that reduced overall regulation.

It therefore seems there is little to be gained by further analysis in the absence of clear evidence of market failure, other than to confirm among industry stakeholders an appropriate timeline for an orderly transition towards the removal of the Wheat Port Code either by, or at the conclusion of the September 2020 review.

Q2 What are the benefits and costs of retaining the Wheat Port Code?

In its original submission to the Wheat Port Code, CBH put forward that the nature of regulation at that time was harming Australia’s competitiveness in a global marketplace and that this regulatory impost, rather than enhancing efficient operation of export chains, was creating an environment of unnecessary and excessive cost, making Australian grain less competitive on world markets. As an example, CBH, pursuant to the provisions of the Wheat Export Marketing Act 2008 (Cth) (“WEMA”), was required to provide an access undertaking to the ACCC, in relation to the export of wheat from its port terminals.

Direct costs of dealing with port access undertakings over the five years (2008-2013) were substantial, and estimated to have burdened CBH and Western Australian growers in the order of $2.6 and $3.5 million.

By contrast, operating under an exemption from the Wheat Port Code has seen the regulatory cost to CBH, and thereby Western Australian growers, decrease significantly. In addition, the exemption has allowed CBH to operate with the improved flexibility to respond to customer needs and the increasingly competitive landscape. The result of which is considerable efficiencies for the CBH export supply chain from the ability to act in a timely manner, respond quickly to agricultural events and develop port operations that maximise throughput and capacity (see Q5). For example, under the WEMA prescribed regulation, CBH was required to obtain approvals from the regulator for any changes to its export capacity arrangements even when weather events impact harvest quality and therefore redirected port terminal usage. Due to the fast moving nature of supply chain operations, by the time approvals could have been obtained the opportunity to gain efficiencies were often lost.

A source of specific industry frustration under this previous regulation evolved from CBH’s then regulator-approved port capacity auction system. While conceptually an attractive mechanism for capacity allocation, the practical realities of the nature of agricultural production, risk to the exporters and management of a

complex logistics network meant the system was inefficient, locked up significant industry capital and lacked real world application. Despite many attempts to gain approval for an alternative capacity allocation system in the form of long term customer agreements, CBH was only successful in implementing these agreements, with much support from its export customers, under the exemption from the Wheat Port Code.

**Q3 Are there alternative options, including non-regulatory options, that could deliver the same (or better) outcomes as the Wheat Port Code, but at lower cost?**

It is worthwhile looking at the origins of the Wheat Port Code. In 2008, at the time the port terminal access regulation was proposed, there was concern by some sections of industry that there needed to be access regulation in order to prevent port operators from excluding competitors from access to export infrastructure. However, this concern was not based on any actual evidence and overlooked that each port operator had already been providing access to third parties, allowing them to export other grains through their facilities. Looking at what actually transpired, no market failure has been experienced and the issue of port access constraints was and remains purely hypothetical.

CBH has been loading grain at its port terminals since 1933, and up until deregulation of the bulk wheat export market in 2008, was required to service two predominant customers. Since deregulation of the bulk wheat export market, CBH has been required to evolve its service offerings and refine its supply chain to cater for the multiple export customers now participating in Western Australia. The Wheat Port Code has been in operation for three years, and any requirement for transitional regulation has well and truly passed. In addition, CBH is subject to a legislative obligation under section 19 of the *Bulk Handling Act 1967* (WA) which requires CBH to receive and out turn all grain tendered to its system.

The key assumption for implementing the initial regulations and then the Wheat Port Code was that port operators’ export facilities could not be replicated. However, all the evidence continues to be to the contrary. New port operators have entered in a timely fashion, demonstrating that there is actually a competitive constraint on port operators.

Since deregulation of wheat exports, new ports have opened at Adelaide, Geelong, Brisbane, Newcastle, Bunbury and Port Kembla. Plans have also been proposed on varying occasions for a new facility to be opened at the Eyre Peninsula and for the possible use of a woodchip loader to export grain at Albany.

If new entrants are not constrained from entering to compete against incumbent port terminal operators, and the evidence of real and meaningful entry is irrefutable, then it follows that there is a significant actual and potential competitive constraint on port terminal operators. Exporters have the ability to build their own operations if they have any concerns as to negotiating access (including the price and terms of that access) at port or related parts of the bulk grain export supply chain. In this circumstance it is difficult to see the potential for abuse of the market power that concerned some in the industry in 2008.

Further, the actual evidence of increased capacity and usage by international exporters in Western Australia and their growth at the expense of CBH’s own marketing arm factually addresses the realities of whether trading arms are treated preferentially, rather than unsupported claims and perceptions from industry sources.

CBH’s views continue to align with various submissions and reports made by independent Government bodies such as the Productivity Commission and the NCC.

- The Productivity Commission in its report on Wheat Export Marketing Arrangements (2010) found that initial issues on the Wheat Export Marketing Inquiry were around grain export terminals. However, it subsequently found and noted (see pages 15 and 16 of the Productivity Commission’s Submission to the Agricultural Competition Taskforce) that:

  "In the long term the benefits are likely to diminish and the associated costs (particularly related to investment incentives) are likely to become more significant and outweigh the benefits."

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3 See http://www.qldbulkterminals.com
4 See http://www.naterminal.com.au
6 See http://www.quattroports.com.au
"the 'access test' introduced at the time of wheat marketing deregulation had been effective in ensuring a relatively smooth transmission to the new arrangements but, over time, the benefits would diminish and associated costs would be more significant;

the access test should be abolished and access to grain terminals be subject to Part IIIA of the [then] Trade Practices Act (with merit in the adoption of a voluntary code to govern port access)."

In the Productivity Commission’s Report in relation to the National Access Regime (no. 66, 25 October 2013), it stated that (at page 2):

"When considering whether to regulate access to infrastructure services in the future, governments should seek to demonstrate that there is a lack of effective competition in the market for the service that is best addressed by access regulation. An assessment of the net benefits should determine whether access regulation is most appropriately applied at the facility or industry level.

Further industry-specific regimes should apply only where there is sufficient similarity between infrastructure services within the industry and where the industry has features that justify different regulatory treatment from that offered by the generic National Access Regime.

Caution should be exercised before mandatory undertakings are implemented in the future. Where mandatory undertakings are used, they should be subject to upfront and ongoing assessment to ensure they are used to target the economic problem. Safeguards for the provider and other existing users of the service should be consistent with those for declared services."

Similarly, the NCC stated in its letter dated 11 November 2009 to the Productivity Commission, as follows:

"In the Council’s view, to date little if any evidence has been provided to establish that it is necessary to regulate access to port terminal services for bulk wheat export. The increasingly deregulated environment and the greater number of market participants militate against the exercise of monopoly market power by wheat marketers that own handling facilities. There is also a question as to whether some of the transport and handling facilities used to provide wheat export services, particularly up-country grain storage and handling facilities but also some port storage and handling facilities, have natural monopoly characteristics.

CBH wishes to emphasise this point – there is ample evidence that upcountry storage and handling is entirely contestable in the sense that there are no barriers to entry to create new storage facilities and networks. As the industry has seen demonstrated, new entrants are able to strategically invest in upcountry sites and create networks that best service their exports. This evidence shows the lack of barriers to entry and the fact that the concept of market power does not exist for upcountry storage. On that basis, CBH does not believe there is any demonstrated evidence to support suggestions of an extension of the Wheat Port Code to such facilities. To implement an extension would be contrary to the principles set out in Part IIIA of the CCA as acknowledged by the NCC and would create a significantly greater regulatory impact than envisaged when the Wheat Port Code was introduced.

In such circumstances, the Council considers that it is undesirable and risky to continue imposing access regulation to port terminal services (or to introduce any additional access regulation other than where the processes and requirements of Part IIIA of the TPA are met). In the absence of clear evidence of a need for regulated access, unnecessary costs and regulatory burdens are likely to be imposed on wheat export marketers and other participants in wheat markets. In particular, inappropriate access regulation could restrict investment and innovation, and impede desirable change. In a period where the wheat industry is emerging from a period of regulated monopoly, it is important that the processes and structures which arose in that period are not cemented by unnecessary regulation that introduces rigidities and barriers to change.

In the event that access regulation is needed the Council’s view is that access to port terminal services can be appropriately regulated under the National Access Regime."

CBH believes there has been no evidence that there has been any inability by it to efficiently manage export harvests, including the recent record harvest of 2016-17. In the absence of market failure or inability of others to enter and provide services if they so wish, it is not appropriate to impose regulations in such circumstances. In particular it is inappropriate to seek to impose regulations that redistribute market shares or disaggregate vertical supply chains where there is no evidence of misuse of any market power (or the

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existence of such market power). To do so may also create significant inefficiencies to the detriment of Australian growers who, themselves, are free to make their own choices as to their suppliers if they are not satisfied with their existing services being provided by CBH.

Q4 Have there been changes to market conditions or business arrangements in the port terminal services sector in the past three years that obviate the need for the Wheat Port Code (in-full or in-part) or which strengthen the case for retaining it?

The number and capacity of Australian grain export terminals has increased since deregulation and the subsequent introduction of the Code. As outlined in Q3, new ports have opened at Bunbury, Adelaide, Geelong, Port Kembla, Newcastle and Brisbane with new facilities proposed at varying times for the Eyre Peninsula and Albany. This ongoing emergence of increased port capacity and competition has continued to obviate the need for the Code.

If new entrants are not constrained from entering to compete against incumbent port terminal operators, and given the evidence of real and meaningful entry by international marketers and global agricultural giants is irrefutable, then it follows that there is a significant actual and potential competitive constraint on existing port terminal operators and no evidence of impediments to access. In this circumstance it is difficult to see the potential for any abuse of market power, which therefore obviates the need for the Wheat Port Code.

Q5 What justification is there to continue the operation of the Wheat Port Code over and above the protections provided under Part IIIA of the CCA?

The existing coverage under the CCA, coupled with CBH's conduct in responding appropriately to customer requirements and demand while operating under its exemption, demonstrates that there appears to be no requirement for the continuation of the Wheat Port Code.

CBH has been able to create considerably enhanced access and flexibility of service for export customers while operating under an exemption from aspects of the Code. As an example, CBH introduced Long Term Agreements (“LTAs”) in 2015 to replace its previous port capacity auction system (which was tying up millions of dollars of exporter’s capital every season).

CBH’s LTAs were designed to provide its export customers with greater certainty on the shipping capacity they could access over a five-year period as well as providing both the exporter and CBH with transparent investment signals so that they could invest in the supply chain. In the first year of introduction, a total of 10.2 million tonnes of capacity was booked under LTA arrangements with another 8.5 million retained under “first-in-first-served” short term capacity arrangements; a clear indication that CBH’s new flexible, tailored arrangements provide the market with much needed flexibility.9

Prior to introduction of its LTAs, CBH undertook a process of stakeholder engagement with several rounds of consultation with exporters. This resulted in a number of exporter driven changes and improvements to LTAs including capacity flexibility, a live capacity management system and reduced take or pay component for customers.

This level of engagement, innovation and agility would not have occurred had CBH been obliged to operate under the more prescriptive requirements of the Wheat Port Code and CBHs inability to progress them under the previous regime is telling given how quickly and broadly LTAs have been embraced by all stakeholders. Rather, CBH’s export supply chain has been able to significantly improve the service provided to its export customers by the following means:

- In May 2015, CBH contracted 10.2 million tonnes of port capacity per annum to 10 export customers (out of 13 grain marketers and traders seeking to utilise the CBH network) under an LTA (5-year term). This surety of volume provides the basis from which export customers can provide stronger pricing signals to grain growers;
- As demonstrated in Figure 2, CBH has been able to increase shipping capacity from approximately 16 million tonnes per annum in 2014/15 to 18.75 million tonnes in 2016/17, enabling the expansion of “short-term capacity” to almost 8.5 million;
- Customers can take a base load of capacity with less risk of not acquiring capacity in key shipping periods. It has also had the effect of stabilising the short term, first in first served capacity allocation

8 Long Term Capacity is capacity booked on a 5-year term under LTA terms and conditions. Short term capacity is the excess capacity that has not been booked under the LTA and is available on a yearly basis when the shipping stem opens in July for a 1 November shipping season commencement.
with much less reliance on customers needing to acquire capacity when the shipping stem opens each year;

- There has been little capacity forfeited since the inception of LTAs given the 10.2 million tonnes of capacity booked is less than the average Western Australian crop (12.2 million tonnes);
- Exporter customers can now move capacity into periods of “spare capacity”, surrender capacity and if spare capacity is rebooked in the port zone, obtain a full “take or pay” refund. In excess of 600,000 tonnes of “surrenders” and re-booking was facilitated in the 2016/17 year; considerably higher than any other surrender system operating in Australia;
- Customers may merge capacity into a larger shipment or reposition capacity with 60 days lead time from the end of the shipping slot. This has resulted in customers repositioning capacity that was not going to be used, leading to higher capacity utilisation with “spot” cargoes able to be shipped out of Western Australia in the event of longer vessel wait times on the east coast; and
- Providing the only real-time capacity booking system which allows exporters to book capacity at any time, receiving immediate confirmation of booked capacity.

CBH is firmly of the view that in the absence of the current co-operative exemption, it would not have been able to achieve these outcomes. In the absence of the certainty provided by the introduction of the LTAs, it would have been difficult to justify investing in increased export capacity for the benefit of Western Australian growers and export customers. This means the exemption, and decreased regulation, has facilitated investment as well as increased competition and allowed the removal of unnecessary costs and distortions that had been created by the auction process.

Figure 2: Total harvest receivals, capacity offered and exports shipped in the CBH grain supply chain.

Q6 What effect has the Wheat Port Code had on the promotion of competition in upstream and downstream markets?

CBH believes that supply innovations such as LTAs (see Q5) developed within CBH’s exemption under the Code have provided the basis from which an increased number of marketers (acquirers) are participating in the market, seeking to purchase growers’ grain. As a result of open access provided by CBH, there are 14
grain exporters currently operating in Western Australia (utilising CBH's export facilities). This has facilitated both upstream and downstream competition to the benefit of all growers.

**Q7 What effect has the Wheat Port Code had on the economically efficient operation of, use of and investment in port terminal facilities?**

As outlined in Q5, while operating under an exemption within the Wheat Port Code, CBH has been able to provide a level of engagement, innovation and agility to its export customers that would have been unlikely to have occurred had CBH been obliged to operate under the higher tier requirements of the Wheat Port Code.

The efficiencies arising out of enhanced port operations is assisting CBH to make further investment in its grain supply chain with in excess of $750 million expenditure planned for expansion and maintenance projects across the Western Australian receival network over the next 3 - 6 years.

CBH also believes that in the absence of the exemption it would not have been able to manage as efficiently the export task for the record harvest in 2016/17.

**Q8 Has the Wheat Port Code led to any unintended, negative consequences?**

As outlined in Q1, 2, 3 & 5, CBH, operating under an exemption within the Code, has structured its supply chain operations including the provision of port access to CBH's export customers with enhanced flexibility and efficiency.

CBH contends that this provides an illustration for how industry can operate without the Wheat Port Code.

**Q9 How do the costs associated with the operation of the Wheat Port Code compare with those under the former access test regime?**

While operating under an exemption precludes it from making any comment regarding the costs associated with operations under the Wheat Port Code, CBH can detail its experience of undertaking operations pursuant to the previous WEMA where it was required to provide an access undertaking to the ACCC, in relation to the export of wheat from its port terminals.

The direct costs of dealing with port access undertakings over the five years (2008-2013) were estimated to have impacted detrimentally on CBH and Western Australian growers by between $2.6 and $3.5 million. This type of regulatory burden must be avoided into the future to ensure Australian grain remains competitive in global markets.

Not only did adhering to previous port access arrangements cost CBH, its customers and its grain grower members millions of dollars every year, they also restricted the flexibility with which port operators and grain marketing organisations could respond to changing market conditions, be it price or production. This lack of flexibility increases the likelihood of international customers seeking grain from alternative origins of supply which has a disproportionate effect on Western Australian growers who are reliant on the export market – resulting in a significant opportunity cost.

CBH can state however that as a result of its exemption and the attendant ability to structure port operations including the provision of port access in line with the requirements of CBH’s export customers, the increased efficiencies and enhanced flexibility has resulted in considerably lower compliance and administrative costs.

**Q10 What amendments should be made to improve the operation of the Wheat Port Code?**

As outlined in Q1, 2, 3, 5 & 8, CBH considers that following the satisfactory completion of this review, it is opportune for the Australian grain industry to transition towards the repeal of the Wheat Port Code, either by, or at the conclusion of, the September 2020 review.

**Q11 Should the power to exempt cooperatives under subclause 5(1) of the Wheat Port Code be retained?**

Yes. CBH believes the power to exempt co-operatives should be retained on the basis that it recognises the inherent differences in motivation between a co-operative business structure which operates to create and return value to its members, and publicly listed companies or privately-owned businesses which are motivated by profit or returns to external shareholders.

In any event, CBH is required to guarantee access to the CBH supply chain to benefit grower members under the Western Australian Bulk Handling Act which applies solely to CBH and requires the cooperative to receive and out turn all grain tendered to its system.

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10 CBH submission to Productivity Commission Inquiry into the National Access Regime April 2013
Under the co-operative exemption CBH has not only continued to effectively manage grain export operations but has proven the capability of the CBH supply chain services with:

- a record shipping volume of 15.01 million tonnes between October 2016 and September 2017, and
- a record, 18.75 million tonnes of capacity released for the 2017/18 season.\(^{11}\)

Removal of the exemption for co-operatives under the Code would:

- contradict efforts to drive supply chain efficiencies and make Australian growers more competitive; and
- add additional cost - complying with previous access regulation imposed direct and indirect costs onto Western Australia grain growers of more than $1 million annually, as well as significant opportunity costs arising from the regulatory inertia and delays associated with access regulation.

Significantly, if the exemption was to be removed, CBH would be required to consider whether the existing arrangements comply with the more prescriptive requirements of the Wheat Port Code. CBH is concerned that the additional costs of this burdensome compliance activity would need to be passed on to its co-operative members and other users of its export supply chain, and ultimately may need to assess whether it would be able to continue its investment program in the absence of the certainty of the long term arrangements that currently apply.

**Q12 Should the additional regulatory requirements under Parts 3 to 6 of the Wheat Port Code be retained or amended?**

Under the exemption CBH is not obliged to adhere to Parts 3 to 6 of the Wheat Port Code and considers that as a result, CBH has been able to provide a level of engagement, innovation and agility to its export customers that would have been unlikely to have occurred had CBH been obliged to operate under the higher tier requirements of the Wheat Port Code.

**Q13 Should the requirement for all port service providers to make available a port loading statement each business day under clause 7 of the code be retained or amended?**

While CBH considers the industry should transition to the repeal of the Wheat Port Code, either by, or at the conclusion of the September 2020 review, it considers the provision of a port loading statement:

- is a necessary business practice that forms both a basic and important element of coordinating effective port operations
- is part of providing comfort to attract and retain customers to the port terminal,

and therefore would be provided by prudent operators in some form in any event.

CBH will continue to provide this information irrespective of future regulatory arrangements at a level of further detail over and above other port service providers. This includes export customers having access to a live on-line platform, updating available capacity in real time.

**Other issues**

*The availability and transparency of relevant market information to participants in the export supply chain.*

There is little doubt that growers are accessing increasing levels of information to assist with their marketing decisions. In a recent survey of CBH grower members, eighty per cent of respondents listed online price discovery mechanisms as their first choice for grain pricing information. With this type of trend, CBH believes there is sufficient evidence that the market is moving to fulfil its information needs and that there is no overarching requirement to legislate for information provision.

This is a position that CBH has articulated on numerous occasions and across a range of submissions including its Response to the Wheat Industry Advisory Taskforce - Adequacy of current stock information provisions (August, 2013).

\(^{11}\) We note ACCC’s comments when publishing the 2015-2016 Bulk Wheat Ports Monitoring Report which suggested judgement on the effect of exemptions would be reserved until the system is faced with a bumper harvest. The 2016-2017 harvest in Western Australia was the biggest on record and CBH was able to efficiently manage the export task and service all export customer demand.
Since the deregulation of the Australian grain industry (wheat at a national level and coarse grains at the state level) there has been discussion about whether the flow of information is being appropriately coordinated. One example is the extent to which the level of publicly-accessible stock information should be increased (volumes of grain held in store) and whether the release of this information would assist growers in making pricing and marketing decisions.

CBH notes the work undertaken by the Wheat Industry Task Force and is supportive of the conclusions outlined in the 2013 discussion paper that:

1. ... based on the reports considered by this paper, there does not seem to be obvious market failure resulting from the information that is currently available, even if this information must be paid for;
2. ... members believe that, as the Australian wheat export market progressively moves towards full deregulation, there is an increasing range of tools and information available for growers, and other industry participants, to manage risk, market their grain, and get the best price;
3. The taskforce found that there was no evidence that growers would obtain a material benefit from an increased level of market information, including stocks. Through the CIE report, the taskforce found that a deficiency of stocks information was not placing Australian growers at a significant market disadvantage, with price instead being driven predominately by global market forces;

As a co-operative owned and controlled by the growers of Western Australia, CBH remains unconvinced that the provision of growers’ stock information to the public is in the best interests of growers.

Western Australia is Australia’s largest grain producing and exporting State with around 90% of our crop exported to the international market in any given year and the release of this information would expose growers’ stock position to the international market. There is no economic analysis to show there is a benefit to growers from the release of stock information. In fact, there would likely be a detriment given the lack of information available from global competitors in their home countries, resulting in a disadvantage to Australian growers.

Given recent industry discussion and to further understand the views of Western Australian growers on this matter, CBH conducted a survey seeking grower’s feedback on whether they support the requirement for CBH to provide stock information on a public basis. In that survey, 83% of growers responded that they are opposed to CBH providing public stock information, with many respondents stating that this is their personal information and their concern that it will have a negative impact on grain prices.

CBH however, is focused on working with growers to provide the information they see as valuable to their farm business and this harvest will provide growers and marketers with the same harvest receival and grain quality information to assist in their marketing decisions. This information will be provided on CBH’s private LoadNet (non-public platform).

The effectiveness of, and level of competition existing under current arrangements for the transport, storage and distribution of wheat in contributing to a sustainable supply chain from farm gate to export load port.

The challenge for Western Australian grain growers to remain internationally competitive

Almost 90 per cent of the grain grown in Western Australia is exported, with Western Australian growers continuing to innovate and create on-farm efficiencies to the extent they are considered among the world’s most productive dryland farmers.

Grain growers, however, are under increasing pressure from international competitors operating with the benefit of more favourable grain-growing conditions and access to increasingly efficient, lower cost supply chains. One of the key current challenges, certainly for the growers of Western Australia is to ensure they have access to infrastructure that enables them to transport their grain to international markets effectively and efficiently.

In mid-2016, CBH commissioned in-depth research to benchmark the Western Australian grain industry against its international competitors including Brazil, Argentina, Russia and the Ukraine. The study, completed by economic advisors Azure Consulting, analysed numerous competitiveness indicators including costs (production, supply chain, shipping fees), potential for return (harvested area, yield) and distance to traditional and emerging markets.

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12 Wheat Industry Advisory Taskforce 2013: A preliminary assessment of wheat export industry stocks information requirements - Page 17
It concluded that competitor nations are growing in strength as a result of better yields, improved supply chain infrastructure and record-low ocean freight rates. More particularly that:

- CBH supply chain costs (including storage and handling, freight and ports costs) at that time were in the order of $47 per tonne. That is, $6 per tonne lower than grain logistics supply chains in the Black Sea region and much less than US and Canadian grain supply chains;
- However, when the full cost of the supply chain is considered – from seed to market (delivered cost) including growing the grain, grain handling from farm to port and ocean freight to major markets, the Black Sea is well ahead of Western Australian (and Australian) supply chains. At the time of study, the delivered cost for growers in the Black Sea region to deliver grain to South East Asia was $166 per tonne. In Western Australia, that cost was $216 per tonne – a gap of $50 per tonne;
- While this figure will likely change year on year due to the cost of ocean freight and seasonal variations, it is anticipated the value differential will increase on a long-term basis and is a major reason for the need for ongoing supply chain investment to drive efficiencies;
- The primary reason for this significant variance is the ability for growers in the Black Sea to achieve large yields with fewer inputs than growers in Western Australia (given their natural advantages of good quality soil and steady rainfall); and
- In Western Australia, the 3-year wheat yield average is 2.2 tonnes per hectare. That is one of the lowest average yield rates in the world (with a ten-year average of 1.8 tonnes per hectare). By contrast, growers in the Black Sea region are achieving on average 4.1 tonnes per hectare and the rate of growth in their yield is likely to increase.

The Western Australian grain industry is significant to the national economy with up to 50% of total grain exported from Australia originating from the State. Given Western Australia’s export focus, it is essential that CBH and its grain grower members have access to key freight and supply chain infrastructure; in particular an efficient and cost-effective transport network (rail and road).

CBH assists Western Australian grain growers to compete in international markets in many ways, including:

- investing heavily in grain supply chain infrastructure;
- providing growers with access to an efficient, world-class value chain and offering low service charges; and
- ensuring quality services and offerings are provided with fast turnaround times at CBH sites.

Accordingly, in addition to the measures outlined above where CBH assists grain growers, if CBH makes an annual surplus this may be returned to growers via rebates. It is common practice for a co-operative to return surpluses to its members and users in circumstance where it is not required for future capital expenditure. As a result of the Bulk Handling Act 1967 (WA) and CBH being registered as a non-distributing co-operative under the Co-operatives Act 2009 (WA), CBH is not permitted to return profits or equity as cash dividend or payment.

As the custodian of the Western Australian export supply chain it is prudent that CBH operates this network in a conservative and commercial manner, managing the inherent risk of the variability of the annual grain harvest and fluctuations in commodity markets. In order to do this CBH must price its service and accumulate grain based on historical averages received and a through the cycle view of likely receivals. To do otherwise would create significant uncertainty for growers in managing their farm business annual profit and loss and would be very likely to distort grower utilisation of the CBH network, confusing investment signals to CBH.

Given CBH’s fees and charges are based on historical averages in a year of high grain production or strong trading CBH is likely to make a surplus, as would any other storage and handling provider or grain marketer in the same environment. The difference with the co-operative model is that this surplus, if not required for future capital is returned to the growers as a rebate based on their actual usage of the CBH system, instead of being paid out as a dividend to external shareholders. Any equally efficient competitor has the ability to provide similar rebates to growers consistent with competitive, efficiency enhancing behaviour.

Rebates are used by growers to offset storage and handling fees, effectively increasing a grower’s cash flow. CBH also offers either a cash out or transfer option for growers who may cease farming, or when a grower business or entity is transferred (i.e. to the next farming generation) preventing rebates from being lost. While CBH continues to invest heavily in grain supply chain infrastructure (in particular its storage and handling network) and seeks to provide Western Australian grain growers with access to an efficient, world-class value chain, CBH would welcome continued collaboration with Government to ensure that:
• an environment is created that incentivises ongoing investment into agricultural supply chains that increases the sustainability and profitability of primary producers;

• there is a wider understanding and appreciation that agriculture is vastly different to other industry sectors (such as mining) given issues of weather, geography and global markets and must be treated differently if it is to provide an ongoing contribution to the national economy;

• policy is developed that strikes a balance between creating an incentive for foreign investment, but where that investment involves monopoly infrastructure (railway lines and roads) that the users of that infrastructure have some assurance that they may continue to access facilities with reasonable service and reasonable pricing: and

• supply chain regulation is minimised where appropriate as it generally leads to increased costs, inefficiencies and market distortion that is all ultimately borne by the grower.

As the ACCC has indicated in its recent Bulk Wheat Ports Monitoring Report\(^{13}\), all exporters in Western Australia have been able to acquire capacity and CBH Grain Pty Ltd, as a vertically integrated exporter, has not increased its market share across port terminals in Western Australia. This is further evidence to support the view that the access regime in Western Australia is working effectively and competition for grower’s grain and capacity at CBH’s port terminals is healthy.

There may be many factors which determine whether an entity chooses to enter a supply chain, however, CBH understands that two of the key reasons are high supply chain fees and denial of access. CBH notes that, to ensure the most competitive market possible for growers’ grain, CBH’s grower members have made clear their expectation that CBH will offer open access to efficiently operated export infrastructure and will provide all customers with an efficient low cost service.

CBH notes that there are a significant number and wide range of grain exporters participating in Western Australia, and feedback indicates that they believe that CBH offers sufficient capacity and services at its port terminals. In addition to being Australia’s lowest cost grain supply chain operator (as illustrated in Figure 1), CBH is also the lowest cost bulk wheat port terminal service provider by a considerable margin, with a port terminal shipping cost of $12.20 per tonne\(^{14}\).

CBH notes there have also been a number of growers and customers that have elected to utilise CBH’s new direct to vessel service in the last 2 years, which provides a further reduced supply chain cost option to marketers and growers through rebates if certain efficiency conditions are met. This enabled CBH to return an additional $1.4 million through rebates for the 2016-2017 season to growers and customers that opted to use the direct to vessel service\(^{15}\).

Just as new entrants are not constrained from competing against incumbent port terminal operators in Western Australia, CBH does not consider there are any barriers to entry for exporters or other operators in relation to upcountry receival sites\(^{16}\) and that extension of the Code to upcountry is unnecessary. There is no evidence to justify extending the Code upcountry and CBH’s experience is that, in the absence of clear evidence of a market failure, export supply chain regulation generally leads to increased costs, inertia, inefficiencies and market distortion; the adverse effect of which and associated costs, are ultimately borne by primary producers.


\(^{14}\) Notwithstanding that the ACCC Bulk Wheat Ports Monitoring Report for 2016 – 2017, Figure 42 on page 69, suggests that the price of acquiring services at CBH’s port is $19.70. To explain further, CBH has historically aggregated charges along the supply chain through the Grower Receival Fee (for delivering grain to CBH receival sites) and a separate Export Fee (for port outloading services, as well as various storage, handling and administrative services. There was also a separate charge for customers who outturned grain from CBH receival sites (the Domestic Outturn Fee) and transported to port or domestic customers. During 2014 and 2015, CBH commenced a review of its grain supply chain export arrangements aimed at increasing export efficiencies for the benefit of Western Australian grain growers and, supported by the ACCC, to more transparently reflect the intermediary steps along the supply chain. Since the beginning of the 2016-2017 harvest season, CBH has charged a Grower Receival Fee, Storage and Throughput Fee (for outloading of grain on to road or rail) and a separate Port Terminal Shipping Fee of $12.20 for port outloading services. Marketers can also buy grain at CBH sites, maintain site based entitlement and choose to use CBH transport, or other transport providers, to transport grain to port or domestic customers.

\(^{15}\) CBH Media Release dated 24 January 2017. Growers receive a rebate of $3.80 per tonne on the receival fee charged by CBH while marketers receive a rebate of $3.50 per tonne.

\(^{16}\) The ACCC has recommended in its Bulk Wheat Ports Monitoring Report 2016 – 2017 to extend the application of certain provisions in the Code to upcountry service providers of bulk storage for grain export.
The Productivity Commission and the NCC have each recognised that upcountry receival sites of CBH are not monopoly infrastructure and are able to be replicated. Exporters, domestic customers or transporters each have the capacity and opportunity to develop their own upcountry receival sites as has occurred on the east coast of Australia and in Western Australia. As stated in Q3, there is ample evidence that upcountry storage and handling is entirely contestable in the sense that there are no barriers to entry to create new storage facilities and networks. In fact, the evidence is that new entrants are able to selectively choose strategic sites and create networks that best service their exports.

In addition, CBH notes that:

- entry into storage and handling at selective and strategic sites is possible from an economic and technological point of view within a relatively short timeframe through building on-farm storage or up-country multi-user sites as seen in both the Eastern States and Western Australia;
- there is a high level of satisfaction with the services being provided at CBH’s upcountry sites;
- growers may elect to utilise on farm storage or deliver to a CBH port terminal using a different service (i.e. using their own or marketer arranged transport) as services are available to cater for these alternatives; and
- there are a significant number and wide range of export customers currently bidding for and exporting grain out of port terminals across Western Australia, who operate supply chains including up-country sites and port terminals around the world that are equipped with the financial and technical expertise to provide that service in Western Australia if they choose.

On that basis, CBH does not believe there is any demonstrated evidence to support suggestions of an extension of the Wheat Port Code to upcountry facilities. To implement an extension would be contrary to the principles set out in Part IIA of the CCA as acknowledged by the NCC and would create a significantly greater regulatory impact than envisaged when the Wheat Port Code was introduced.

CBH considers that it is delivering a service meeting the needs of the industry in circumstances. The fact that it currently meets the needs of almost the entire industry cannot be construed that competition (whether actual or potential) is lacking and that new entrants are constrained from entering to compete against incumbent port terminal operators or up country. CBH works hard to ensure that its current service is meeting the market expectation of all stakeholders and there is sufficient capacity available at a fair price, however, its historical position does not provide it with any protection from competitive entry if it fails to do so.

CBH will continue to seek to increase the efficiency and reduce the cost of the export supply chain in Western Australia to the benefit of Western Australian growers. To that end, the grower members of CBH appear to be satisfied with CBH providing services and giving them the advantage of scale efficiencies, instead of each grower having to set up on-farm storage and place that capital cost and seasonal utilisation risk onto their own balance sheet.

**FOR FURTHER INFORMATION**

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